

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-11-4 (Chemical Dependency Counselors Certification Program) Notice of Public Hearing on Proposed Amendment - Education Requirement - Documentation Required for Verification of 1000 Hours Supervised Counseling Experience - Application Procedures - Written Examination - Counselors Certified in Other States - Renewals - Continuing Education Procedures and Documentation.	2344-2350
8-50-28 (Board of Private Security Patrol Officers and Investigators) Notice of Public Hearing on Proposed Amendment - Fee Schedule.	2351-2353
8-58-58 (Board of Realty Regulation) Notice of Public Hearing on Proposed Amendment - Fee Schedule - Renewal - Property Management Fees.	2354-2357
8-70-18 (Building Codes Division) Notice of Public Hearing on Proposed Amendment - Incorporation by Reference of Uniform Building Code - Funding of Code Enforcement Program - Certification of Code Enforcement Programs - Incorporation by Reference of Uniform Plumbing Code.	2358-2362

COMMERCE, Continued

8-127-12 (Montana Lottery) Notice of Public Hearing on Proposed Amendment - Retailer Commission - Sales Staff Incentive Plan. 2363-2366

ENVIRONMENTAL QUALITY, Department of, Title 17

17-132 (Board of Environmental Review) (Major Facility Siting) Notice of Proposed Amendment - Major Facility Siting Act. No Public Hearing Contemplated. 2367-2371

LIVESTOCK, Department of, Title 32

32-3-147 (Board of Livestock) Notice of Proposed Amendment - Fluid Milk and Grade A Milk Products - Milk Freshness Dating. No Public Hearing Contemplated. 2372-2378

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-75 (Board of Oil and Gas Conservation) Notice of Public Hearing on Proposed Amendment and Repeal - Definitions - Adoption of Forms - Drilling Permits Pending Special Field Rules - Reports from Transporters, Refiners, Purchasers, 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. 2379-2387

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-169 Notice of Proposed Amendment - Reimbursement to State Institutions for Outpatient Drugs. No Public Hearing Contemplated. 2388-2389

REVENUE, Department of, Title 42

42-2-660 Notice of Public Hearing on Proposed Amendment and Repeal - Natural Resource Taxes. 2390-2402

RULE SECTION

COMMERCE, Department of, Title 8

NEW (Economic Development Division) Advanced Telecommunications Infrastructure Tax Credit. 2403-2405

EDUCATION, Title 10

NEW (Board of Public Education) Teacher
AMD Certification. 2406-2414
REP

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

NEW Day Care.
AMD
REP 2415-2431

AMD Continuity of Care and Transitional Care
Provided by Managed Care Plans. 2432

INTERPRETATION SECTION

Before the Department of Commerce, Montana State
Electrical Board.

Petition for Declaratory Ruling.

In the Matter of the Petition for Declaratory
Ruling on the Clarification of Low Voltage
Electrical Communication or Signal Equipment,
Whether Parking Lot or Street Lighting are Covered
by Electrical Code and Which Electrical Code is
Applicable. 2433-2436

Before the Department of Commerce, Board of
Nursing.

Petition for Declaratory Ruling.

In the Matter of the Petition for Declaratory
Ruling on the Issue of Whether the Scope of the
Nurse Practice Act Allows All Levels of Nursing to
Conduct Un-waived CLIA Tests. 2437-2439

SPECIAL NOTICE AND TABLE SECTION

Functions of Administrative Rule Review Committee. 2440-2441

How to Use ARM and MAR. 2442

Accumulative Table. 2443-2453

CHEMICAL DEPENDENCY COUNSELORS CERTIFICATION PROGRAM
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to education, verification of) ARM 8.11.106 EDUCATION
supervised counseling) REQUIREMENT, 8.11.108
experience, application) DOCUMENTATION REQUIRED FOR
procedures, written examina-) VERIFICATION OF 1000 HOURS
tions, counselors certified) SUPERVISED COUNSELING
in other states, renewals and) EXPERIENCE, 8.11.110
continuing education) APPLICATION PROCEDURES,
) 8.11.112 WRITTEN EXAMINATION,
) 8.11.114 COUNSELORS CERTIFIED
) IN OTHER STATES, 8.11.115
) RENEWALS, AND 8.11.118
) CONTINUING EDUCATION
) PROCEDURES AND DOCUMENTATION

TO: All Concerned Persons

1. On October 6, 2000, at 9:00 a.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 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 Chemical Dependency Counselor Certification Program no later than 5:00 p.m., on September 27, 2000, to advise us of the nature of the accommodation that you need. Please contact Cynthia Reichenbach, Chemical Dependency Counselor Certification Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2391; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail creichenbach@state.mt.us.

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

8.11.106 EDUCATION REQUIREMENT (1) through (2)(d) will remain the same.

(e) ~~chemical dependency and addiction~~ 30 hours
theory alcohol and drug studies; and

(f) will remain the same.

(g) multi-cultural competency - knowledge 12 hours
of and sensitive to the cultural factors and
needs of diverse populations and demonstrate
competency in applying culturally relevant skills.

Auth: Sec. 37-35-103, MCA

IMP: Sec. 37-35-202, MCA

REASON: Subsection (2)(e) is being amended because access to specific addiction theory classes is difficult for those interested in joining the profession. This amendment will broaden the category to alcohol and drug studies that tend to include theory and are more widely available. Subsection (2)(g) is being added because the need for knowledge of cultural factors is steadily rising in the counseling arena as ethnic populations increasingly seek services. The numbers of persons of ethnic origin seeking counseling are on the rise within state approved agencies and with private practitioners.

8.11.108 DOCUMENTATION REQUIRED FOR VERIFICATION OF 1000 HOURS SUPERVISED COUNSELING EXPERIENCE (1) The name of the certified counselor who has agreed to supervise the counseling experience must be indicated on the application for certification and submitted to the chemical dependency counselor certification program ~~within 30 days after beginning the supervised work experience hours.~~

(2) In order for the supervised hours to be counted toward the 1000 hours required for supervised experience, the eligible counselor must maintain weekly time sheets documenting experience in the ~~eight~~ nine skill areas (form C), available through the program office. The weekly time sheets must be signed by the approved supervisor and submitted to the chemical dependency program at the completion of the required 1000 hours. One summary sheet (form D), available through the program office, summarizing the total weekly time sheets must be attached, to verify the required minimum hours have been earned in each of the core areas.

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

(6) Counselors must have a minimum number of hours in each of the counselor skill groups. The skill groups specified in the "weekly time sheets" maintained by eligible counselors shall include ~~500~~ 512 of the 1000 hours experience in the following areas:

(a) through (h) remain the same.

(i) multi-cultural competency 12 hours

Auth: Sec. 37-35-103, MCA

IMP: Sec. 37-35-202, MCA

REASON: Subsection (1) is being amended because at the time the original rule was written DPHHS Chemical Dependency programs required interns to make application within 30 days. This rule was written with them in mind. If interns are employed at a state approved chemical dependency facility they tend to enroll promptly upon employment. If they are enrolled at a university or otherwise employed they tend to be aware of the importance of timeliness. Subsections (2) and (6) are being amended to include the addition of multi-cultural education.

8.11.110 APPLICATION PROCEDURES (1) Individuals applying for chemical dependency counselor certification in

Montana must meet the education requirement before making application for certification or beginning the 1000 hours of supervised work experience. ~~Applicants must make application for certification within 30 days of beginning the supervised work experience.~~ Individuals who have submitted an application that is accepted by the department are then determined to be "eligible" for certification. Applicants who meet the education requirement must submit:

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

Auth: Sec. 37-35-103, MCA
IMP: Sec. 37-35-202, 37-35-203, MCA

REASON: When the original rule was written DPHHS chemical dependency programs required interns to make application within 30 days. This rule was written with them in mind. Interns employed at a state approved chemical dependency facility generally enroll promptly upon employment. Persons enrolled at a university or otherwise employed are generally aware of the importance of timeliness.

8.11.112 WRITTEN EXAMINATION (1) will remain the same.

(2) The Montana certification program has authorized use of the national association of alcoholism and drug abuse counselors (NAADAC) written examination. ~~This examination is composed of a maximum of 250 multiple-choice, objective questions with a total testing time of four hours. In order to achieve a passing score, applicants must have 170 correct answers.~~ Applicants must receive a passing score as prescribed by the NAADAC commission to successfully meet the written exam requirement. Written examinations are administered in Helena on dates as determined by the chemical dependency program or its contracted examination service.

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

Auth: Sec. 37-35-103, MCA
IMP: Sec. 37-35-202, MCA

REASON: The NAADAC commission has the authority to change the examination. Removing the number of questions and score number would eliminate any conflict should a change occur.

8.11.114 COUNSELORS CERTIFIED IN OTHER STATES

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

(4) Individuals certified by a nationally recognized addiction organization prior to February 1, 1997 may submit an application for certification by exam. The educational requirement may be waived and the applicant may participate in the oral and written examination if the applicant:

(a) holds a current, unexpired certificate, in good standing, from a nationally recognized addiction organization;
(b) has completed 270 contact hours of specific chemical dependency and counseling courses. These are contact hours that may be obtained through academic course work, approved

workshop training or approved home study courses. The 270 hours must include minimum hours in each of the following areas:

(i) chemical dependency assessment and patient placement (must include chemical dependency assessment, biopsychosocial testing, diagnosis, referrals and patient placement) 30 hours

(ii) counseling 45 hours

(iii) pharmacology (must include drug classification, effects, detoxification and withdrawal) 12 hours

(iv) ethics (ethics for addiction counselors) 6 hours

(v) alcohol and drug studies 30 hours

(vi) treatment planning and documentation 15 hours

and

(vii) multi-cultural competency - knowledgeable of and sensitive to the cultural factors and needs of diverse populations and demonstrate competency in applying culturally relevant skills and 12 hours

(c) has completed 1000 hours (6 months) supervised chemical dependency counseling experience in a chemical dependency treatment setting.

(5) To apply for this certificate by examination in Montana, the applicant must:

(a) complete the three page application for certification and pay the Montana application fee;

(b) attach documentation of 270 education hours and the required 1000 hours supervised work experience in a chemical dependency treatment setting; and

(c) provide a copy of the applicant's current national certificate.

(6) This certification by exam shall be available to applicants for a period of one year from [the effective date of the rule adoption]. All applicants after that date must apply for certification according to the requirements of the current statutes and rules.

Auth: Sec. 37-35-103, MCA

IMP: Sec. 37-35-202, MCA

REASON: The state of Montana is currently experiencing a shortage of chemical dependency counselors. Offering this certification option to other nationally certified individuals would increase the number of counselors eligible for certification while adequately maintaining current standards for chemical dependency counselors.

8.11.115 RENEWALS (1) At least one three months before the renewal date, a renewal notice will be sent by the department to each certificate holder to the last address in the program's files. Failure to receive such notice shall not relieve the certificate holder of the holder's obligation to

pay renewal fees in such a manner that they are received by the department on or before the renewal date.

(2) will remain the same.

(3) A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the department. A certificate holder, that has not received his/her certificate from the department due to failure of the certificate holder to meet continuing education requirements or to pay the renewal fee, will be notified in writing by the department. The certificate holder shall have 12 months from the renewal date to obtain continuing education acceptable to the department.

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

Auth: Sec. 37-35-103, MCA

IMP: Sec. 37-35-203, MCA

REASON: One month is insufficient time for professionals as well as program staff to deliver and process renewals. The amendments to this rule implement the audit process for renewal of certificates for chemical dependency counselors. A change to the audit system improves the use of human resources in processing renewals

8.11.118 CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION (1) ~~Documentation of continuing education must be submitted every two years at end of the renewal period. Certificates must be renewed by June 30th of each two-year renewal period according to the department audit process.~~

(2) ~~The continuing education submission form must be completed and submitted with the renewal form as documentation of continuing education. The continuing education submission form and instructions will be provided to all counselors with the biennial renewal form. The department shall provide the renewal application form and instructions for the audit process to all counselors at least three months in advance of the renewal date.~~

(3) Certificate holders shall affirm their understanding of and compliance with continuing education requirements and the audit process of renewal with the signing of the renewal form.

(4) The renewal application form must be completed and submitted, together with the renewal fee, as verification of continuing education hours earned during the renewal period.

(5) Certificate holders are required to keep a record of continuing education they have completed. These records shall be made available to the department if the certificate holder is chosen as a part of the random audit review.

(3) through (5) will remain the same but be renumbered (6) through (8).

Auth: Sec. 37-35-103, MCA

IMP: Sec. 37-35-203, MCA

REASON: The proposed amendments to this rule implement the audit process for renewal of certificates for chemical dependency counselors. A change to the audit system improves the use of human resources in processing renewals.

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 Chemical Dependency Counselor Certification Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to creichenbach@state.mt.us and must be received no later than the close of the hearing to be held on October 6, 2000.

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

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

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

CHEMICAL DEPENDENCY COUNSELOR
CERTIFICATION PROGRAM
STEPHEN MELOY, DIVISION
ADMINISTRATOR

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, August 28, 2000.

BEFORE THE BOARD OF PRIVATE SECURITY PATROL OFFICERS
AND INVESTIGATORS
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 fees) OF ARM 8.50.437 FEE
) SCHEDULE

TO: All Concerned Persons

1. On October 6, 2000, at 1:00 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 of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Security Patrol Officers and Investigators no later than 5:00 p.m., on September 25, 2000, to advise us of the nature of the accommodation that you need. Please contact Vanessa Olson, Board of Private Security Patrol Officers and Investigators, 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 compolpsp@state.mt.us.

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

8.50.437 FEE SCHEDULE

- (1) through (2)(c) will remain the same.
- (3) Licensee and employee renewals
- (a) Licensee renewals ~~100~~ 120
- One-half fee for renewals for each additional license or multiple licenses
- (b) Contract security employee ~~30~~ 45
- (c) Proprietary security employee ~~30~~ 45
- (d) Security alarm installer employee ~~30~~ 45
- (e) will remain the same.
- (4) through (8) will remain the same.

Auth: Sec. 37-1-134, 37-60-202, MCA
IMP: Sec. 25-1-1104, 37-1-134, 37-60-304, 37-60-312,

MCA

REASON: With the current and projected expenses of the Board, the Board's state special revenue cash balance is decreasing at a relatively fast rate. In order for the board to cover its legislatively approved appropriations, fees needed to be increased to increase revenue. It is expected that the

proposed fee increases will generate additional revenue of \$16,305.00.

Costs which have increased include: legal cost of applicants contesting licensure denials, moving to the Federal Building, upgrading to a new database, purchasing the new ID card printer and paying the Department of Justice cost for FBI fingerprint cards.

This rule change will affect approximately 996 contract security companies, proprietary security organizations, private investigators, private investigator trainees, security alarm installers, security guards and security alarm installer employees. The Board chose to raise the renewal fees on these licensure categories due to the last rule change raising the fees for application for licensure and the majority of the increase in costs benefit current licensees.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Private Security Patrol Officers and Investigators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolpsp@state.mt.us and must be received no later than the close of the hearing on October 6, 2000.

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

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

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

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
GARY GRAY, 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, August 28, 2000.

BEFORE THE BOARD OF REALTY REGULATION
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 fees, renewal and property) OF ARM 8.58.411 FEE SCHEDULE,
management fees) 8.58.426 RENEWAL, 8.58.713
) FEE SCHEDULE

TO: All Concerned Persons

1. On October 26, 2000, at 10:00 a.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 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 Realty Regulation no later than 5:00 p.m., on October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail compolrre@state.mt.us.

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

8.58.411 FEE SCHEDULE (1) through (3) will remain the same.

- (4) For each original resident broker's license prorated to next full renewal cycle \$120 100
- (5) For each renewal of a resident broker's license ~~prorated to assigned renewal cycle~~ 240 200
- (6) For each original non-resident broker's license prorated to next full renewal cycle 120 100
- (7) For each renewal of a non-resident broker's license ~~prorated to assigned renewal cycle~~ 240 200
- (8) For each original salesman's license prorated to next full renewal cycle ~~60~~ 87.50
- (9) For each renewal of salesman's license prorated to assigned renewal cycle 120 175
- (10) For each change of place of business or change of employer or contractual associate ~~30~~ 45
- (11) will remain the same.
- ~~(12) For each duplicate pocket card, where the original is lost or destroyed and affidavit is made thereof~~ _____ 15
- (13) and (14) will remain the same but be renumbered (12) and (13).
- ~~(15)~~ (14) For activating a license on

inactive status	30	<u>45</u>
(16) will remain the same but be renumbered (15).		
(17) <u>(16)</u> Late renewal fee	100	<u>200</u>
(18) <u>(17)</u> Continuing education course		
application for approval and renewal	50	<u>75</u>
(19) <u>(18)</u> Continuing education instructor		
application for approval and renewal	25	<u>50</u>
(20) through (23) will remain the same but be renumbered (19) through (22).		
(24) <u>(23)</u> Late filing of annual continuing education	100	<u>200</u>
<u>(24) License history/license verification</u>		<u>15</u>
<u>(25) Rookie CE course pre-registration</u>		<u>100</u>

Auth: Sec. 37-1-134, 37-51-203, 37-51-207, MCA
 IMP: Sec. 37-1-101, 37-51-204, 37-51-310, 37-51-311,

MCA

8.58.426 RENEWAL (1) Beginning with the renewal of December 31, ~~1997~~ 2001, one-half of the licensees will renew for a period of two years with an expiration date of December 31, ~~1999~~ 2003. ~~One-half of the licensees will renew for a period of four years with an expiration date of December 31, 2001.~~ Following this initial renewal period, each licensee will renew for a period of ~~four~~ two years by December 31 of their expiration year.

Auth: Sec. 37-51-203, MCA
 IMP: Sec. 37-1-101, 37-51-310, MCA

8.58.713 FEE SCHEDULE (1) and (2) will remain the same.

(3) Examination fees:		
(a) for initial examination	\$ 40	<u>50</u>
(b) for each subsequent or rescheduling of examination	40	<u>50</u>
(4) For each original license	50	<u>60</u>
(5) For each annual renewal	40	<u>75</u>
(6) For each change of place of business or affiliation	30	<u>45</u>
(7) through (10) will remain the same.		
(11) For activating an inactive license	30	<u>45</u>
(12) will remain the same.		
(13) Late renewal fee	100	<u>200</u>
(14) Continuing education course application	50	<u>75</u>
(15) Continuing education instructor application	25	<u>50</u>
(16) will remain the same.		
(17) Pre-licensing course	200	<u>250</u>
<u>(18) License history/license verification</u>		<u>15</u>

Auth: Sec. 37-1-134, 37-1-203, 37-51-207, MCA
 IMP: Sec. 37-1-101, 37-51-204, MCA

REASON: The Board of Realty Regulation has made the decision to abandon the four year renewal cycle. It has proven difficult to administer and track licensees. It is costly to pursue legal action for continuing education and has not proven to be an efficient use of staff time. Additionally, the Board had been operating on a deficit budget for a number of years. The mid-90's saw an increase in the number of licensees which resulted in cash reserves. Spending was not increased during this same time period by directive of the Governor. As the number of licensees began to decline and the services provided by the board increased, resulting in a larger budget, the board used up the cash reserves that had been accumulated. The collection of revenue was also set to collect four years of renewals from half the licensees every two years. Switching to a biennial renewal will result in the collection of two years of fees from half the licensees in FY 2002 and nothing from the half of the licensees that renewed for four years in 1999. Revenues must be increased to cover the cost of operating the board program while collecting half the projected renewal fees. The board anticipates collecting \$163,100 for FY 2001 under the proposed fee schedule for an increase of \$63,934. The projected revenue for FY 2002 under the new fee schedule is \$619,850, an increase of \$72,737 with half the licensees renewing for two years. Approximately 4,600 licensees will be affected by the proposed fee schedule. These fees will result in revenue commensurate with the cost of funding the board at the current level.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to compolrre@state.mt.us and must be received no later than the close of the hearing on October 26, 2000.

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

6. The Board of Realty Regulation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to compolrre@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF REALTY REGULATION
JOHN BEAGLE, 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, August 28, 2000.

BEFORE THE BUILDING CODES DIVISION
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 the Building Codes Division) OF RULES PERTAINING TO THE
) BUILDING CODES DIVISION

TO: All Concerned Persons

1. On October 13, 2000 at 10:00 a.m. the Montana Department of Commerce, Building Codes Division will hold a public hearing in conference room #285, Federal Building, 301 S. Park, Helena, Montana, to consider the proposed amendment of rules pertaining to the Building Codes Division.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 6, 2000, to advise us of the nature of the accommodation that you need. Please contact Eric Fehlig, Department of Commerce, Building Codes Division, 301 S. Park, Federal Building, Room 239, PO Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2040; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2050.

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

8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) will remain the same.

(a) Appendix Chapter 3; Division I (Detention and Correctional Facilities), Division II (Agricultural Buildings), Division III (Requirements for Group R, Division 3 Occupancies) as amended by ARM 8.70.101(24)(22);

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

(d) Appendix Chapter 13 (Energy Conservation in New Building Construction), as amended by ARM 8.70.101(20)(18);

(e) through (8)(b) will remain the same.

~~(9) The division requires submittal of two complete sets of plans and specifications for all projects covered by ARM 8.70.101(9).~~

(10) through (42) will remain the same, but will be renumbered (9) through (41).

Auth: Sec. 50-60-104, 50-60-203, MCA

IMP: Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA

REASON: The Department is proposing these amendments to ARM 8.70.101 for the following reasons (referred to by subsection number):

(1)(a) and (1)(d): To correct cross-reference numbering errors created by 1999 amendments.

(9): To correct an error created by 1999 amendments which repealed the guidelines for when stamped plans were required but overlooked the reference to how many copies of stamped plans were required.

8.70.208 FUNDING OF CODE ENFORCEMENT PROGRAM (1) will remain the same.

(2) Permit fees must only be used for those costs related to building code enforcement activities, except for the building codes education fund as provided in ~~Ch. 472, L. 1999 50-60-116, MCA~~, with building codes being only those codes adopted by the division in subchapters 1, 3, 4 and 15 of ARM Title 8, chapter 70. It is not intended that permit fees be used to support fire departments, planning, zoning or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the building code enforcement program.

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

(b) a proportionate share of the local government's indirect costs, which are those costs incurred for common or joint purposes that benefit more than one program or activity. ~~These include, but are not necessarily limited to, legislative services, executive services, administrative services, financial services, data processing services, purchasing services, personnel services, legal services and facilities administration.~~ Indirect costs shall be treated as provided by 50-60-106(2)~~(f)~~(g)(i), MCA.

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

Auth: Sec. 50-60-203, 50-60-302, MCA

IMP: Sec. 50-60-106, 50-60-302, MCA

REASON: The Department is proposing these amendments to ARM 8.70.208 for the following reasons (referred to by subsection number):

(2): To correct a citation error.

(3)(b): To delete an inaccurate description of what constitutes indirect costs and correct an incorrect cross-reference number.

8.70.214 CERTIFICATION OF CODE ENFORCEMENT PROGRAMS

~~(1) A county or municipality with a previously approved code enforcement program in existence on June 30, 1998, shall be considered by the department of commerce, building codes division, as certified and in compliance with applicable statutes and department certification rules with the authority to enforce codes within its jurisdictional area, until such time that an initial annual report is filed and the division reviews the report, and makes a determination as to whether or not the county or municipality is in compliance with applicable statutes and rules based upon the information contained in the report and any on-site evaluation. This provision does not prevent the division from identifying an~~

~~area of noncompliance independently and apart from the initial annual report.~~

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

Auth: Sec. 50-60-203, 50-60-302, MCA

IMP: Sec. 50-60-302, MCA

REASON: The Department is proposing the amendment to ARM 8.70.214 to delete a temporary treatment of local government's certification status pending the submission and review of the initial annual report. The initial annual reports were submitted September 1, 1998.

8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The building codes division of the department of commerce adopts and incorporates by reference herein the Uniform Plumbing Code, ~~1997~~2000 Edition, referred to as the Uniform Plumbing Code, unless another edition is specifically stated, together with the following appendix chapters and amendments:

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

(c) Appendix C, ~~Additional Referenced Standards~~ Sizing of Category I Venting Systems is adopted.

(d) and (e) will remain the same.

(f) Subsection 103.1.3, is amended with the addition of the following language: ~~This section shall not be construed to require a plumber license as a prerequisite for obtaining a plumbing permit.~~ The requirements for who must be licensed to perform plumbing work is regulated by Title 37, chapter 69, MCA. ~~The issuance of a plumbing permit does not in any way address the need for licensure by the plumbing permit holder.~~

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

(i) Section 218, Definition of Plumbing System, is amended to read: Includes all potable water supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, ~~plumbing fixtures and traps, drainage and vent pipes and building drains and building sewers,~~ including their respective joints and connections, devices, receptacles and appurtenances within the property line of any premises, ~~up to 20 feet beyond the building foundation line,~~ and includes ~~potable water piping,~~ water heaters and the vents for the premises.

(j) will remain the same.

(k) Delete subsection 603.3.23.

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

(q) Subsection 701.1.4, is amended ~~to read as follows~~ with the addition of the following language: Copper tube for underground drainage and vent piping shall have a weight of not less than that of copper tube type L.

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

Auth: Sec. 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

IMP: Sec. 50-60-203, 50-60-504, 50-60-508, MCA

REASON: The Department is proposing these amendments to ARM 8.70.302 for the following reasons (referred to by subsection number):

(1): The Department proposes to adopt the 2000 Edition of the Uniform Plumbing Code, the most current version. Updating and amending the Uniform Plumbing Code serves to keep the Montana construction industry current with technological advances and consistent with other states.

(c): Appendix C, Additional Referenced Standards was converted to Chapter 14, Mandatory Referenced Standards in the 2000 Uniform Plumbing Code and Appendix C, Sizing of Category I Venting Systems, is a new appendix chapter in the 2000 Uniform Plumbing Code. The Department is proposing to adopt Appendix C, Sizing of Category I Venting Systems, to keep the industry current with technological advances and to formally adopt the current vent sizing chart used by many power suppliers.

(f): Subsection 103.1.3 is deleted from the 2000 Uniform Plumbing Code. The Department is proposing the changes to the present administrative rule to clarify the applicable reference to the Montana statutes requiring plumbing licensure.

(i): This amendment deletes repetitious language in the present administrative rule, due to typographical errors, and clarifies that building sewers and water lines within the property line of the premises are a portion of the plumbing system by definition.

(k): This amendment updates a change in the subsection numbering of the 2000 Uniform Plumbing Code.

(q): This amendment updates a format change to the subsection numbering of the 2000 Uniform Plumbing Code and provides for inclusion of one of Montana's long standing amendments of the Uniform Plumbing Code.

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 Department of Commerce, Building Codes Division, 301 S. Park, Federal Building, Room 239, PO Box 200517, Helena, MT 59620-0517, or by facsimile number (406) 841-2050, to be received no later than 5:00 p.m., October 13, 2000.

5. Eric Fehlig has been designated to preside over and conduct this hearing.

6. The Building Codes 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 Building Codes Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Building Codes Division, 301 S. Park, Federal Building, Room 239, PO Box 200517, Helena, MT 59620-0517, or may be made

by completing a request form at any rules hearing held by the agency.

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

BUILDING CODES DIVISION
JAMES BROWN, BUREAU CHIEF

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, August 28, 2000.

BEFORE THE MONTANA LOTTERY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to the retailer commission and sales staff incentive plan) NOTICE OF PUBLIC HEARING
) ON THE PROPOSED AMENDMENT
) OF RULES PERTAINING TO THE
) RETAILER COMMISSION AND
) SALES STAFF INCENTIVE PLAN

TO: All Concerned Persons

1. On October 5, 2000 at 10:00 a.m. the Montana Department of Commerce, Montana Lottery will hold a public hearing in the upstairs conference room, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of rules pertaining to the retailer commission and sales staff incentive plan.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 28, 2000, to advise us for the nature of the accommodation that you need. Please contact Leslie Darfler, Department of Commerce, Montana Lottery, 2525 North Montana, PO Box 200544 Helena, Montana 59620-0544; telephone (406) 444-5825; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-5830.

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

8.127.407 RETAILER COMMISSION (1) Each retailer is entitled to a base commission of 5% of the face value of instant tickets activated and ~~chances that he purchases from the lottery and does not returned.~~ Retailers who sell on-line tickets are entitled to a 5% commission of the face value of on-line tickets printed. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales.

(a) will remain the same.

(b) For each instant ticket quarterly sales period, the retailer's instant tickets activated sales and not less returned tickets are is measured against the assigned base.

(c) For each ~~20%~~2% increase in retailer's sales during the quarterly period over his established base sales, the retailer's commission shall be increased by an additional ~~1%~~0.5% to a cap of 10% total commission for any quarterly period.

(d) Retailer instant ticket sales bases may be adjusted annually at the discretion of the commission.

(e) Annually, the director's staff shall review the plan for providing additional commissions to sales agents based on

incremental sales and report to the commission. This review will include a recommendation for maintaining the existing plan or modifying the plan for the next year.

Auth: Sec. 23-7-202, 23-7-301, MCA

IMP: Sec. 23-7-202, 23-7-301, MCA

REASON: The Lottery Commission needs to review this program annually and make changes in response to increases or decreases in ticket sales. The program is designed to be an "incentive", a program that entices one to take action. In this case, the program must be deemed as achievable and the reward must be worthwhile to compensate for additional efforts. The program must be reviewed annually to assure that it fulfills its intended purpose while giving consideration to the Lottery Commission's obligation to operate effectively and efficiently. Through this amendment the Lottery intends to provide a program that requires annual review and adjustment, if deemed necessary by the Lottery Commission. Further, these amendments update the rules to reflect current Lottery operations and programs.

8.127.1007 SALES STAFF INCENTIVE PLAN (1) will remain the same.

(a) ~~Field sales~~ Sales staff representatives will receive a bonus of \$20 for each new retailer recruited to sell lottery products, providing the retailer stays active for at least 90 days. ~~Each field Sales staff representatives person will also receive a 1% commission on the total number of for each instant tickets activated delivered, less and not returned, by to the a new retailer in their region during the first six months of sales, excluding the first 2,000 tickets. New stores added to Existing lottery chain accounts will be excluded from this new retailer bonus for new stores added to the chain account.~~

(b) ~~Field s~~Sales staff representatives, the sales supervisor manager, the key accounts manager, the sales marketing accounts manager and tel-sell assistants will receive incentive pay, up to 8% of their annual salaries, based on quarterly incremental increases in ticket sales. In situations where an employee is performing more than one function which qualifies for incentive pay, the employee will receive incentive pay for whichever individual function generates the highest sales increases for the sales period.

(i) will remain the same.

(ii) For each ~~5%2%~~ that an employee's sales increase over his base sales, the employee will receive ~~1%0.8%~~ of his annual salary as incentive pay, to a cap of 8% of his annual salary for any quarterly period.

~~(c)(iii)~~ Sales staff ~~Employee~~ sales bases may be adjusted annually at the discretion of the commission.

(iv) Annually, the director's staff shall review the plan for providing sales staff incentive pay based on incremental increases in ticket sales and report to the commission. This review shall include a recommendation for

maintaining the existing plan or modifying the plan for the next year.

Auth: Sec. 23-7-202, MCA:

IMP: Sec. 23-7-202, MCA

REASON: The Lottery estimates all 611 of its current active retailers will be affected by the change. Also, 10 Lottery personnel will be affected by changing their bases. The cost to the retailers and staff will be zero. The Lottery assumes all costs related to the change. However, the change may impact the retailers and staff causing a decrease in the bonus they earn since the base is expected to increase. Therefore, sales will have to increase for a bonus to be paid.

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 Department of Commerce, Montana Lottery, 2525 North Montana, PO Box 200544, Helena, MT 59620-0544, or by facsimile number (406) 444-5830, to be received no later than 5:00 p.m., October 5, 2000.

5. Peter Ohman has been designated to preside over and conduct this hearing.

6. The Montana Lottery 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 Montana Lottery administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Montana Lottery, 2525 North Montana, PO Box 200544, Helena, MT 59620-0544 or may be made by completing a request form at any rules hearing held by the agency.

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

THE MONTANA LOTTERY
JERRY LACHERE, DIRECTOR

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, August 28, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.20.804, 17.20.1501,)
17.20.1502 and 17.20.1604)
pertaining to the major)
facility siting act)
)

NOTICE OF PROPOSED
AMENDMENT

(MAJOR FACILITY SITING)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On October 16, 2000, the Board proposes to amend ARM 17.20.804, 17.20.1501, 17.20.1502 and 17.20.1604.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., September 25, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.20.804 DOCUMENTATION OF INFORMATION SOURCES AND OMISSION OF CERTAIN INFORMATION REQUIREMENTS

(1) remains the same.

(2) An application should include only information relevant to the facility. The application requirements in these rules address a comprehensive range of issues for the wide range of facilities covered by the Act. The applicability or relevance of the requirements to a particular facility are dependent on its type, its design, how its output will be marketed, its size or length, and on the characteristics and complexity of the geographic area(s) where the facility may be located. An application shall contain the information required by ~~ARM 17.20.1502 through 17.20.1512~~ subchapters 7 through 9 and 12 through 15 unless specific provisions for submitting less information are contained in the rule, or unless the department gives written permission, prior to filing the application, to omit certain information. Unless a rule provides differently, an applicant desiring to omit information it considers irrelevant to the project shall submit to the department a written request to make the omission, along with documentation justifying its request. The department shall review the applicant's request and shall make a written determination of whether the information may be omitted. If there is a substantial cost to the department to verify the applicant's justification, the applicant shall contract with the department and reimburse it for expenses incurred pursuant to 75-20-106, MCA.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, MCA

17.20.1501 ENERGY GENERATION AND CONVERSION FACILITIES,
GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN

(1) An application for an energy generation or conversion facility must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation, maintenance, and decommissioning, and to assess reliability and construction and operation costs of the proposed facility at the preferred site as specified in ARM 17.20.1502 through 17.20.1505. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize transportable energy resources. An equivalent description and design is required for all energy generation or conversion facilities defined by ~~75-20-104(10)~~ 75-20-104(8), MCA. Applicants for energy generation or conversion facilities that employ a nontransportable energy resource must consult with the department concerning facility description and design requirements.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.1502 ENERGY GENERATION AND CONVERSION FACILITIES,
DESIGN CHARACTERISTICS

(1) through (5)(e) remain the same.
(f) ~~waste-handling systems:~~ all waste-handling systems, both on and off-site, including a description of the collection, storage, treatment, disposal processes and monitoring procedures and plans for each system, consistent with the requirements of ARM ~~17.20.1503(5)~~ 17.20.1504(5) (Operation and Maintenance Analysis); and
(g) remains the same.
(6) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.1604 ALL FACILITIES, UTILITIES, PUBLIC INTEREST,
CONVENIENCE AND NECESSITY STANDARD

(1) In order for the ~~board~~ department to find that a proposed facility will serve the public interest, convenience and necessity as required by ~~75-20-301(2)(g)~~ 75-20-301(1)(f), MCA, the ~~board~~ department must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) through (e) remain the same.
(f) any other factors the ~~board~~ department considers relevant.
(2) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-301, MCA

4. The Board is proposing to amend ARM 17.20.804 and ARM 17.20.1502 to correct clerical errors in cross-references. ARM 17.20.804(2) states that an application must contain the information required by ARM 17.20.1502 through ARM 17.20.1512 unless the Department grants a written request by the applicant to omit certain irrelevant information. Prior to the reorganization of state environmental regulatory agencies in 1995 and rule revisions to reflect reorganization, the substance of ARM 17.20.804 was contained in ARM 36.7.2104. That rule required that an application contain the information specified in ARM 36.7.1902 through 36.7.3012, unless a written request to omit certain information was granted. The proposed amendment of the reference from ARM 17.20.1502 to ARM 17.20.702 would correct a clerical error and return the meaning of the rule to its original intent.

ARM 17.20.1502(5)(f) states that an application must contain a description of waste-handling systems, consistent with the requirements of ARM 17.20.1503(5). The rule cited should be ARM 17.20.1504(5). The proposed amendment would correct a long-standing clerical error in the cross-reference. The error was not detected until recent discussions concerning the possibility of siting two new generating plants in Montana. Also, the internal catchphrase is being deleted to comply with ARM 1.2.215.

The Board is proposing to amend ARM 17.20.1501 and 17.20.1604 to conform to amendments by the 1997 Montana legislature. ARM 17.20.1501(1) states description and design requirements for energy generation or conversion facilities, as defined by Section 75-20-104(10), MCA. In 1997, the legislature changed the numbering of the definition of the term "facility" from Section 75-20-104(10), MCA, to Section 75-20-104(8), MCA.

ARM 17.20.1604(1) refers to the finding that a proposed facility will serve the public interest, convenience and necessity, as required by Section 75-20-301(2)(g), MCA. In 1997, the legislature changed the numbering of that requirement to Section 75-20-301(1)(f), MCA.

The Board is also proposing to amend ARM 17.20.1604(1) and (2) to refer to findings on an application by the Department, rather than the Board. In 1997, the legislature amended Section 75-20-301, MCA, to substitute the Department for the Board as the entity authorized to approve applications under the Major Facility Siting Act. Other rules of the Board also refer to the Board as the entity with approval authority, and the Board intends to propose similar amendments to those rules in the near future.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than October 9, 2000. To be

guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. October 9, 2000.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Environmental Review, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be received no later than October 9, 2000.

7. If the Board receives requests for a public hearing on the proposed action from either 10% or 25 of the persons 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 3 persons based on there being 29 persons on the Department's list of persons interested in rule-making under the Major Facility Siting Act.

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

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

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State August 28, 2000.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendment)	NOTICE OF PROPOSED
of ARM 32.8.101 through)	AMENDMENT
32.8.103 as they relate to)	
fluid milk and grade A milk)	NO PUBLIC HEARING
products; and ARM 32.8.201)	CONTEMPLATED
through 32.8.204 as they)	
relate to milk freshness)	
dating)	

TO: All Concerned Persons:

1. On October 11, 2000, the board of livestock proposes to amend ARM 32.8.101 through 32.8.103 as they relate to fluid milk and grade A milk products; and ARM 32.8.201 through 32.8.204 as they relate to milk freshness dating.

2. The board of livestock 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 livestock no later than 5:00 p.m. on September 21, 2000, to advise us of the nature of the accommodation that you need. Please contact Jan Finn, 301 N. Roberts St. - Rm. 323, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-2043; TTD number: 1-800-253-4091; fax:(406)444-1929.

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

32.8.101 DEFINITIONS AND ADOPTION OF GRADE A PASTEURIZED MILK ORDINANCE AND ASSOCIATED DOCUMENTS (1) As used in chapter 8, unless the context otherwise requires, the following definitions shall apply:

(a) "Arabic numerals" are defined as numbers (not spelled out) such as 3/20 or 12/31.

(b) A "day" is defined as any 24 hour period beginning when pasteurization of a unit of milk is completed.

(c) "Milk" is defined as whole milk, reduced fat milk, lowfat milk, fat free milk, artificially flavored milk, whipping cream, half and half and/or any other pasteurized liquid milk product designed to be consumed in the form in which it is packaged, except buttermilk, eggnog, and ultra-pasteurized or aseptic processed milk products.

(d) "Pasteurized date" is the same date a unit of milk completes pasteurization.

(e) A "sell-by" date is defined as the 12th consecutive day, never to exceed 288 hours, following pasteurization of a unit of milk.

(f) "Standard abbreviations" are defined as a date code such as MAR 31, or NOV 12.

(g) A "unit of milk" is a quantity of milk that is pasteurized during one pasteurization processing cycle.

(1) through (2) remain the same, but are renumbered (2) and (3).

~~(3)(4) Copies of the above related federal ordinances and associated documents are on file with the department and are carried by each sanitarian employed by the department. In addition, copies of each document are available from the superintendent of documents, U.S. government printing office, Washington, D.C. 20402, for a fee by requesting the appropriate stock number as follows:~~

- ~~(a) PMO: 017-001-00419-7~~
- ~~(b) MMSR: 017-001-00421-9~~
- ~~(c) SSSC: 017-001-00413-8~~
- ~~(d) EML: 017-001-00412-0~~
- ~~(e) DMO: 017-001-00420-1~~

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

32.8.102 MILK AND MILK PRODUCTS WHICH MAY BE SOLD

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

~~(b) grade A raw milk produced and processed according to the terms of ARM 32.8.103 except that raw milk or milk products may not be sold in those counties or communities which have by ordinance prohibited the sale of such items;~~

(c) remains the same, but is renumbered (b).

~~(d)(c) in an emergency the sale of pasteurized milk and milk products which have not been graded or the grade of which is unknown may be made when authorized by the department. Milk and milk products sold under this sub-section must be labeled "ungraded."~~

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

32.8.103 CIRCUMSTANCES UNDER WHICH RAW MILK MAY NOT BE SOLD FOR HUMAN PUBLIC CONSUMPTION ~~(1) Notwithstanding any prohibition against the sale of raw milk for human consumption contained in the Pasteurized Milk Ordinance, grade A raw milk may be sold for such use provided the dairies and personnel involved in the production of raw milk for human consumption meet every standard contained in the pasteurized milk ordinance, are subject to the inspections required by the ordinance, and meet the following additional requirements:~~

~~(a) All milk produced in retail raw dairies must be from animals and herds which have been tested negative to tuberculosis and blood tested negative to brucellosis at least once each year or more after as the department may direct.~~

~~(b) Milk and milk products sold raw, except milk products produced in compliance with chapter 9 of this title, must be bottled on the farm where produced. Bottling and capping must be done in a sanitary manner by means of approved equipment and these operations must be integral in one~~

~~machine. Caps or cap stock must be purchased in sanitary containers and be kept therein in a clean, dry place until used. Hand capping is prohibited. The cap or cover must protect the pouring lip to at least its widest diameter.~~

~~(2)(1) No new retail raw milk dairies will be licensed to sell grade A retail raw milk for public consumption subsequent to January 1, 1996.~~

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.8.201 SCOPE OF RULES (1) ~~These rules apply to whole milk, low fat milk, nonfat milk chocolate milk, whipping cream, half and half and/or any other liquid milk product designed to be consumed in the form in which it is packaged, except buttermilk. For purposes of this sub-chapter "milk" means any of the above products. Employing the definitions in ARM 32.8.101, and in 81-23-101, MCA, these rules apply to milk producers, processors, distributors, wholesalers, and retailers who conduct business in Montana.~~

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.8.202 TIME FROM PROCESSING THAT FLUID MILK MAY BE SOLD FOR HUMAN PUBLIC CONSUMPTION (1) ~~No grade A pasteurized milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale no more than 12 days after pasteurization is completed.~~

~~(2) No grade A raw milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than 12 days after the bottling is completed.~~

~~(3) For purposes of this rule, the 12 day period ends on the first midnight following 12 consecutive 24 hour days. In no instance may the period be less than 288 hours.~~

(1) When 12 days or more have passed following pasteurization of a unit of grade A milk, there will be no quantities of that unit of milk sold or otherwise offered for public consumption.

~~(4)(2) No grade A pasteurized milk or grade A raw milk may be put in any container marked with a pull sell-by date which is more than 12 days after pasteurization or bottling of the milk for sale in Montana, whichever is applicable, without notification to the department of both the amount of and state destination of the milk. The department will provide necessary forms for detailing the amount and destination of the milk.~~

~~(5) No grade A pasteurized milk or grade A raw milk put in any container marked with a pull date which is more than 12 days after pasteurization or bottling of the milk, whichever is applicable, may be offered for sale or otherwise disposed of for human consumption at retail or wholesale in Montana.~~

~~(6)~~(3) Unless otherwise agreed upon, the person who offers the milk for sale to the public is responsible for removing the milk at or before the expiration of the 12 days.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.8.203 LABELING OF MILK CONTAINERS TO SHOW THE PASTEURIZED DATE AND LAST DAY OF LEGAL SALE (1) Each container into which grade A pasteurized ~~or grade A raw~~ milk is placed for sale for ~~human public~~ consumption must be marked with a pasteurized date and a pull sell-by date. ~~The pull date will state in arabic numerals or standard abbreviations for months, the month and day which is the last day the milk may be sold as set forth in ARM 32.8.202.~~

(a) The sell-by and pasteurized date will be displayed in Arabic numerals or standard abbreviations for day and month, which shows the last day the milk may be sold as required by ARM 32.8.202.

~~(2) Language in substance the same as "sell by" or "not to be sold after" must be placed by the date in a manner which clearly shows that the milk must be sold by the date on the container.~~

~~(3)~~(2) No person, other than the packager of the milk, may mark the package with a pull date pasteurized date and a sell-by date without permission of the department of livestock.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.8.204 EXEMPTION FROM PASTEURIZED DATE LABELING REQUIREMENT (1) ~~Licensed grade A raw milk dairies are exempt from the labeling requirements imposed by ARM 32.8.203 when all milk packaged for human consumption is sold directly to the consumer either at the licensed retail raw dairy or through a delivery route directly operated by the licensed retail raw dairy. The Montana correctional enterprises (state prison system) and/or any other licensed grade A processor is exempt from the pasteurized date code requirement as long as they do not sell or in anyway distribute milk to the public.~~

(2) No pasteurized date is required for containers of milk processed for sale and sold out of state.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

4. ARM 32.8.101 is being amended to provide definitions for words, terms and phrases that are used throughout chapter 8 and because the U.S. printing office, Washington D.C. no longer keeps or provides the documents listed in (3) according to stock number.

(a) There is a need to define new and existing terms because new technologies and marketing practices, along with the need for clarity, require definition of both new and existing terms and concepts.

(b) Concerning the definition of "milk" in (c), ultra-pasteurized and aseptic processed milk products have an extended shelf life as recognized by Food and Drug Administration standards. Some processors supplying milk to Montana are now using ultra pasteurization or aseptic processing methods, but these methods are not currently recognized by the state of Montana administrative rules. Therefore, an exception to the sell-by date for freshness is needed for products processed by either of these methods. Concerning the definition of "milk" in (c), milk is now commonly flavored with flavors other than chocolate.

5. ARM 32.8.102, ARM 32.8.103 and ARM 32.8.204 are being amended for the following reasons:

(a) Effective January 1, 1996, the board of livestock resolved to no longer license raw milk dairies in Montana due to concerns regarding the healthfulness of unpasteurized milk. However, at that time, the board also resolved that any raw milk dairies then operating in Montana could continue in business and would not be subject to the January 1996 resolution. Since then, all raw milk dairies in Montana have ceased operations, thus eliminating any present need to regulate them.

(b) Licensing dairies to sell raw milk (i.e. unpasteurized milk) is inconsistent with the department's statutory mandates to ensure a healthful supply of milk for Montana consumers.

(c) Other licensed grade A processors, such as the Montana correctional enterprises (state prison system), which do not bottle milk to sell or otherwise distribute milk to the public, are not required to use the pasteurized date code.

6. ARM 32.8.201 is being amended to clarify to whom these rules apply and to accommodate relocation and/or insertion of relevant terms, words, and phrases into ARM 32.8.101.

7. ARM 32.8.202 is being amended to clarify the meaning of the "12th day after pasteurization" and to eliminate redundant language within the present rule.

8. ARM 32.8.203 is being amended to ensure and facilitate compliance with and reasonable enforcement of Montana's policy mandating the production and maintenance of an adequate supply of healthful milk. [81-23-102(1)(b), (g) and (h), MCA]

9. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Dr. Ken Lee, 301 N. Roberts Street - Room 303, PO Box 202001, Helena, MT 59620-2001, to be received no later than October 10, 2000.

10. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the same address as above. The comments must be received no later than October 10, 2000.

11. If the board receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 had been determined to be 11 persons based on the 111 licensed processors and distributors in Montana.

12. The milk and egg bureau of the Montana department of livestock 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 fluid milk and grade A products and milk freshness issues. Such written request may be mailed or delivered to the Milk and Egg Bureau, 301 N. Roberts Street - Room 304, PO Box 202001, Helena, MT 59620-2001.

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

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State August 28, 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 amendment of)	NOTICE OF PUBLIC
ARM 36.22.302 DEFINITIONS,)	HEARING ON PROPOSED
36.22.307 ADOPTION OF FORMS,)	AMENDMENT AND REPEAL
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 October 26, 2000, a public hearing will be held in the Petroleum Club of the Sheraton Hotel at Billings, Montana, to consider the 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.

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 September 21, 2000, to advise us of the nature of the accommodation that you need. Please contact Shannon Kirby, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684.

3. The rules proposed to be amended provide as follows, 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) remain the same.

(22) "Degrade" means that as a result of any source discharging pollutants to groundwater or surface water, the concentration of a pollutant for which maximum contaminant levels are established in subsection (4) of ARM 16.20.1003 has become worse, or that the concentration of other pollutants has become worse, and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(23) through (30) remain the same.

(31) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in ~~82-11-101~~ 82-1-111, MCA. (~~Section 82-11-101, MCA.~~)

(32) through (37) remain the same.

(38) "Hazardous waste" means any waste defined as a hazardous waste in ARM ~~16.44.303~~ 17.54.303.

(39) through (47) remain the same.

(48) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form by ordinary production methods and that are not the result of condensation of gas before or after it leaves the reservoir. (~~Section 82-11-101 (10)~~ 82-1-111, MCA.)

(49) through (52) remain the same.

(53) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he the person produces from a pool either for himself the person or others or for the person and others, and the term includes all persons holding that authority by or through him the person with the right to drill. (Section 82-11-101, MCA.)

(54) and (55) remain the same.

(56) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state. (Section 82-11-101~~(12)~~, MCA.)

(57) through (78)(d) remain the same.

(e) does not mean the production of oil or gas from any pool or by any well to the full extent that such the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board. (Section 82-11-101~~(18)~~, MCA.)

(79) through (81)(c) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-111, MCA

REASON: The board is proposing these amendments because ARM 16.20.1003, which defined maximum contaminant levels, was repealed, ARM 16.44.303 was renumbered when it was transferred to Title 17 under the new Department of Environmental Quality, and to clarify statutory references and conform definitions to statute.

36.22.307 ADOPTION OF FORMS (1) The forms hereinafter listed are hereby adopted and made a part of these rules for all purposes, and the same must be used as herein directed in giving notice and in making reports and requests to the board. Copies of printed forms will be supplied by the board on request. Address requests for forms to: Board of Oil and Gas Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601.

(1) through (4) remain the same, but are renumbered (a) through (d).

~~(5) Form No. 4A Continuation Sheet Form 4~~

(6) through (10) remain the same, but are renumbered (e) through (i).

~~(11) Form No. 9A Continuation Sheet Form 9~~

(12) through (16) remain the same, but are renumbered (j) through (n).

~~(17) Form No. 15A N.G.P.A. Application for New Natural Gas Determination~~

~~(18) Form No. 15B N.G.P.A. Application for New Onshore Production Well Determination~~

~~(19) Form No. 15C N.G.P.A. Application for Stripper Well Natural Gas Determination~~

~~(20) Form No. 16 Objection to N.G.P.A. Application~~

~~(21) Form No. 17 Notice of Classification Determination~~

(22) through (24) remain the same, but are renumbered (o) through (q).

~~(25) Form No. 21 Application for Release of Well from Bond~~

(26) and (27) remain the same, but are renumbered (r) and (s).

(t) Form No. 24 Irrevocable Standby Letter of Credit

AUTH: 82-11-111, MCA

IMP: 2-4-201, MCA

REASON: The board is proposing these amendments because some previously adopted forms are no longer used and one new form has been adopted.

36.22.607 DRILLING PERMITS PENDING SPECIAL FIELD RULES

(1) Upon receipt by the board at ~~its Helena, Montana,~~ office of an application or petition from any person requesting the establishment of special field rules for spacing of wells within a certain designated area, all or a portion of which is not then subject to field rules, or upon a decision by the board to call a hearing for the establishment of such special field rules, applications for permits to drill within such area will be held in abeyance by the board until such time as the matter has been fully heard and determined, unless the location of the well or wells in such applications to drill conform to the spacing applied for.

(2) remains the same.

AUTH: 82-11-111, MCA

IMP: 82-11-124, 82-11-201, MCA

REASON: The board is proposing this amendment because applica-

tions and/or petitions are received in more than just the Helena office.

36.22.1243 REPORTS FROM TRANSPORTERS, REFINERS, PURCHASERS, AND GASOLINE OR EXTRACTION PLANTS (1) All transporters of crude oil shall make monthly reports to the board on Form No. 7. All refiners of crude oil shall make monthly reports to the board on Form No. 8. All transporters purchasers of gas shall make monthly reports to the board on Form No. 9. All operators of gasoline or other extraction plants shall make monthly reports to the board on Form No. 10. Such forms shall contain all information required therein and shall be filed with the board on or before the last day of each month covering the preceding month.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

REASON: The board is proposing this amendment to clarify who is to submit Form No. 9.

36.22.1306 APPROVAL FOR PULLING CASING AND RE-ENTERING WELLS (1) remains the same.

(2) No oil or gas well which has been plugged in accordance with these rules shall be reentered for any purpose without first filing Form No. 2 22 and securing approval of the petroleum engineer or his authorized agent.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

REASON: The board is proposing this amendment because the number of the form for reporting this activity has been changed.

36.22.1307 RESTORATION OF SURFACE (1) The owner of any well drilled in search of oil and gas or for injection purposes or the driller of a stratigraphic test or core hole or seismographic shot hole shall, as soon as weather or ground conditions permit, upon the final abandonment and completion of the plugging of any well or after a seismographic shot hole has been utilized, restore the surface of the location to its previous grade and productive capability and take necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representative, to a different plan of restoration.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

REASON: The board is proposing this amendment to require that owners of wells drilled for injection purposes are responsible for surface restoration also.

36.22.1308 PLUGGING AND RESTORATION BOND (1) Except as otherwise provided in these rules, the following bonds are required for wells within the board's jurisdiction:

(a) through (6) remain the same.

(a) the plugging and restoration of the surface of the well is approved by the board; or

(b) a new bond is filed by a successor in interest and such bond is approved by the board; or.

~~(c) notification is made by the owner or operator for the release of the well from a bond on Form No. 21, and such notification is approved by the board.~~

(7) through (10) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

REASON: The board is proposing this amendment because the statute requiring notification was repealed.

36.22.1401 DEFINITIONS For the purposes of this sub-chapter the following are defined:

(1) "Area of review" means the area surrounding an injection well to a radius calculated according to the criteria set forth in ~~ARM 36.22.1424~~ 36.22.1425 or a fixed radius of one quarter mile, or for an area project, the project area plus a radius calculated according to the criteria set forth in ARM 36.22.1425, or the project area plus a circumscribing area the width of which is one quarter mile.

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

(g) is used to inject exempt waste fluids associated with oil or natural gas exploration and production as long as their physical state allows it, including produced water fluid, drilling fluids, drill cuttings, rigwash, well completion fluids, work-over wastes, gas plant dehydration wastes, gas plant sweetening wastes, spent filters and backwash, packing fluids, produced sand, production tank bottoms, gathering line pigging wastes, hydrocarbon-bearing soil, and waste crude oil from primary field sites.

(5) through (12) remain the same.

~~(13) "Produced water" means that fluid injected into an injection zone through a class II injection well, and includes liquids recovered from drilling pits, waste water from gas plants which are an integral part of production operations, (unless those waters are classified as hazardous waste by EPA at the time of disposal), and recovered workover fluids.~~

(14) through (20) remain the same but will be renumbered (13) through (19).

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

REASON: The board is proposing this amendment to correct wrong cites, insert inadvertently omitted words, change a definition to reflect a broader scope, and eliminate an incorrect definition.

36.22.1403 APPLICATION CONTENTS AND REQUIREMENTS (1) The application for water a class II injection permit or disposal of

produced water must be filed with the board showing:

(a) through (j) remain the same.

(2) One application may be made for multiple class II injection wells in a geographic area if all wells within that geographic area have substantially the same mechanical and geologic characteristics and are operating in the same field, unit, or lease. Where appropriate, an application for underground injection of fluids on an area basis may include the information required in subsection (1) of this rule for a typical class II injection well in lieu of submitting such information on all class II injection wells in the application provided such class II injection wells have substantially the same characteristics. ~~The area of review for such an area application is the project area plus a circumscribing area the width of which is one quarter (1/4) mile.~~

(3) remains the same.

AUTH: 82-11-111, MC A

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, and 82-11-137, MCA

REASON: The board is proposing this amendment because all Class II injection applications must be filed with the board, and because the area of review is already included elsewhere in the rules.

36.22.1408 FINANCIAL RESPONSIBILITY (1) and (2) remain the same.

(3) Owners or operators proposing to drill or acquire additional injection wells must provide the individual well bonds described in ARM 36.22.1308(1)(a)(i) or (ii) as appropriate for the depth of the well unless such additional well(s) are covered under a multiple well UIC bond as provided in this rule. The multiple well bond described in ARM 36.22.1308(1)(b) is not available for injection wells.

(4) remains the same.

(5) The board may accept a letter of credit in lieu of a surety bond or certificate of deposit. A letter of credit must meet the following conditions:

(a) it must be issued by an FDIC-insured, Montana commercial bank; or an out-of-state FDIC-insured, commercial bank having assets in excess of \$200,000,000;

(5)(b) through (6) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, and 82-11-137, MCA

REASON: The board is proposing this amendment to correct the reference in (3) to 36.22.1308 and add needed punctuation.

36.22.1410 NOTICE OF APPLICATION (1) Notice of application for underground injection permit must be mailed to each current operator, lease owners, and surface owners, within the area of review. ~~A copy of the notice must also be mailed to the Region VIII office of the EPA.~~ Such notices must be mailed on

or before the date the application is mailed to or filed with the board.

(2) Applicants for an additional new well or wells, or for recompletion of an existing well or wells to injection service, within an approved area or enhanced recovery project must:

(a) mail notice to each current operator, lease owner of non-operated lease, mineral owner of non-operated lease within the area of review, and the surface owner of each new well site, on or before the date the application is mailed to the board; and

~~(3)(b) The applicant must~~ advise each party to which notice is given that the application is eligible for administrative approval by the program director, unless objections are received within 20 days of receipt of the application by the program director.

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

REASON: The board is proposing this amendment to clarify who must be notified and what applicants for wells in existing units must do.

36.22.1418 EXEMPT AQUIFERS (1) through (1)(b)(iii) remain the same.

(iv) the aquifer is located above a class III well mining area subject to subsidence or catastrophic collapse; and or

(c) through (2)(d) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

REASON: The board is proposing this amendment to make this rule consistent with the federal regulations used to develop state rules.

36.22.1423 INJECTION FEE - WELL CLASSIFICATION (1) remains the same.

(2) Wells will be classified as injection wells, under these regulations, if the well is:

(a) is actively used for injection;

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

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

REASON: The board is proposing this amendment to reflect correct grammatical use of the word "is."

36.22.1425 AREA OF REVIEW (1) The area of review for each injection well or each field, project, or area of the state shall be determined according to either (2) or and (3), or (4) of this rule unless a variance from these requirements is granted by the board.

(2) and (3) remain the same.

(4) To determine the fixed radius:

(a) In the case of application(s) for well individual class II permit(s), a fixed radius around the well of not less than one-fourth mile may be used.

(b) and (5) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

REASON: The board is proposing this amendment to clarify how to determine area of review.

36.22.1702 CERTIFICATION OF ENHANCED RECOVERY PROJECTS

(1) The board, upon application of an interested party and notice and hearing, will certify to the department of revenue its approval of a new or expanded enhanced recovery project. Projects requiring compulsory unitization under 82-11-204, MCA, et seq. and wholly voluntary projects requested under ARM 36.22.1229 through ~~36.22.1234~~ 36.22.1232 must comply with the application, notice, and hearing requirements under the applicable rule or statute.

AUTH: 7-7-2101 and 82-11-111, MCA

IMP: 15-23-601 and 15-36-101, MCA

REASON: The board is proposing this amendment because ARM 36.22.1233 and 36.22.1234 were repealed.

36.22.1703 APPLICATION - CONTENTS AND REQUIREMENTS

(1) Applications for certification and approval of secondary recovery projects and new tertiary recovery projects that comply with the requirements of 82-11-204, MCA, et seq. need not file an additional application for certification; the project will be certified upon approval by the board. Applications for secondary recovery projects and new tertiary recovery projects following the procedure in ARM 36.22.1229 through ~~36.22.1234~~ 36.22.1232 must additionally include a map or plat showing the project boundaries and a legal description of all of the tracts to be included in the project area. Applicants for certification of tertiary projects must also describe the tertiary method(s) to be used. Applicants will be required to supply technical and economic evidence that the project can reasonably be expected to result in a significant increase in the ultimate recovery of oil.

(2) remains the same.

AUTH: 7-7-2101 and 82-11-111, MCA

IMP: 15-23-601 and 15-36-101, MCA

REASON: The board is proposing this amendment because ARM 36.22.1233 and 36.22.1234 were repealed.

4. ARM 36.22.1706, the rule proposed to be repealed, is on page 36-5124 of the Administrative Rules of Montana.

AUTH: 7-7-2101 and 82-11-111, MCA

IMP: 15-23-601 and 15-36-101, MCA

REASON: The board is proposing to repeal this rule because the statute, 15-23-601, MCA, was repealed.

5. In addition to the reasons specified in particular rules, the board proposes to amend the rules as a result of a comprehensive study and review to update, edit and make whatever revisions and modifications appeared necessary to provide clarity and consistent statutory language in its rules.

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to Terri Perrigo, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, or e-mailed to tperrigo@state.mt.us and must be received no later than October 5, 2000.

7. David Ballard, Chairman, Board of Oil and Gas Conservation, P.O. Box 201601, Helena, MT 59620-1601 has been designated to preside over and conduct the hearing.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF
NATURAL RESOURCES

BOARD OF OIL AND GAS
CONSERVATION

By: /s/ Donald D. MacIntyre By: /s/ Terri H. Perrigo

DONALD D. MACINTYRE
Rule Reviewer

TERRI H. PERRIGO
Executive Secretary

Certified to the Secretary of State August 28, 2000.

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

In the matter of the) NOTICE OF PROPOSED
amendment of ARM 37.86.1105) AMENDMENT
pertaining to reimbursement)
to state institutions for) NO PUBLIC HEARING
outpatient drugs) CONTEMPLATED

TO: All Interested Persons

1. On October 17, 2000, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 11, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (4) remain the same.

(5) Reimbursement for outpatient drugs provided to medicaid recipients in state institutions shall conform with provisions of the state contract for pharmacy services. ~~Such reimbursement shall not exceed, in the aggregate, reimbursement under (1).~~ be as follows:

(a) for institutions participating in the state contract for pharmacy services, the rates agreed to in that contract. Such reimbursement shall not exceed, in the aggregate, reimbursement under (1); or

(b) for institutions not participating in the state contract for pharmacy services, the actual cost of the drug and dispensing fee. Such reimbursement shall not exceed, in the aggregate, reimbursement under (1).

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

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA.

3. The proposed rule changes are necessary to allow necessary flexibility in the Department's methodology for reimbursement of outpatient drugs for medicaid recipients in state institutions. Under the current rule, some state institutions do not participate in the state contract for

pharmacy services and would prefer to have individual institution contracts for outpatient drug services. The proposed change would allow the Department to participate in the most cost-effective provision of services to medicaid recipients in state institutions.

The alternative to this proposed revision is to make no change to the existing rule. This would require that the Department reimburse an individual state institution at either the state contract rate or the retail pharmacy rate, both of which would be more costly. In order to choose the most cost-effective reimbursement methodology, the Department rejects the no change option.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 5, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 5, 2000.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one based on the 5 institutions affected by rules covering reimbursement to state institutions for outpatient drugs.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 28, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 42.25.1101,)
42.25.1102, 42.25.1103,)
42.25.1104, 42.25.1105,)
42.25.1111, 42.25.1112,)
42.25.1113, 42.25.1114,)
42.25.1115, 42.25.1118,)
42.25.1119, 42.25.1701,)
42.25.1702, 42.25.1703,)
42.25.1704, 42.25.1706,)
42.25.1707, 42.25.1708,)
42.25.1802, 42.32.101,)
42.32.107; and repeal of)
ARM 42.25.1705 relating to)
Natural Resource Taxes)

NOTICE OF PUBLIC HEARING
ON THE PROPOSED AMENDMENT
AND REPEAL

TO: All Concerned Persons

1. On September 27, 2000, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.25.1101, 42.25.1102, 42.25.1103, 42.25.1104, 42.25.1105, 42.25.1111, 42.25.1112, 42.25.1113, 42.25.1114, 42.25.1115, 42.25.1118, 42.25.1119, 42.24.1701, 42.25.1702, 42.25.1703, 42.25.1704, 42.25.1706, 42.25.1707, 42.25.1708, 42.25.1802, 42.32.101, 42.32.107; and repeal of ARM 42.25.1705 relating to Natural Resource Taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 18, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2855; fax (406)444-3696; or e-mail canderson@state.mt.us.

3. The rules that the department proposes to amend provide as follows:

42.25.1101 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

(1) "After crushing" refers to after all crushing but before grinding.

(2) "Improvements and repairs" are defined as buildings and improvements to the land located at the mine site.

~~(1)~~(3) "Mine" or "mining claim" is the location at which a mineral is produced, extracted, or quarried. The mining claim may include one or more mines depending upon ownership (single), location, integration of mining system, and single management.

~~(2)~~ (4) "Mineral" includes precious or semiprecious stones or gems, gold, silver, lead, coal, lime rock, granite, marble, travertine, talc, phosphate, and other minerals, rock, or stone extracted from underground mines, quarries, open pits, dumps, or tailings.

~~(3)~~ (5) "Reduction works" shall ~~be meant to~~ include mills, crushing, washing, or treatment plants which that prepare the product mined to a point where it has marketable value.

AUTH: 15-23-108, MCA

IMP: 15-23-501, 15-23-502 and 15-23-503, MCA

42.25.1102 NET PROCEEDS TAX RETURN (1) A return and statement for the assessment of net proceeds must be on the form prescribed by the department of revenue and must contain the following detailed information:

(a) through (c) remains the same.

(d) ~~the~~ county in which the mining operation is located, and if the mining operation extends across county lines, the percentage of the ore or mineral extracted ~~for~~ from each county;

(e) ~~the~~ legal description of the location of the mining operation by section, township and range, and the school district in which it is located, and if the mining operation extends into more than one school district, the percentage of ore of mineral extracted ~~for~~ from each school district;

(f) ~~the~~ total tonnage must be reported (~~also~~ the value of the ore in ~~constituents~~ components of monetary value for each mineral must be shown):

EXAMPLE FORM

Total tonnage mined	_____			
_____	oz. gold	@\$_____	per oz.	\$_____
_____	oz. silver	@\$_____	per oz.	\$_____
_____	lb. lead	@\$_____	per lb.	\$_____
_____	lb. copper	@\$_____	per lb.	\$_____
_____	tons _____	@\$_____	per ton	\$_____
_____	carats _____	@\$_____	per carat	\$_____
			Total Value	_____

(g) and (h) remain the same.

(i) costs of ~~operations~~ operating of the reduction works;

(j) costs of ~~repairs and replacements of~~ repairing and replacing the reduction works;

(k) and (l) remain the same.

(m) costs of marketing the product and ~~conversion~~ converting it into money;

(n) costs of construction, repairs, and ~~betterments~~ improvements to the mine.

(2) remains the same.

(3) ~~No return on which the required information is incomplete will be accepted as the required filing~~ Incomplete returns will not be accepted as satisfying the filing requirements.

AUTH: 15-23-108, MCA

IMP: 15-23-502, MCA

42.25.1103 VALUATION (1) The department of revenue shall calculate and compute from the returns the gross product yielded from the mine and its gross value ~~in dollars and cents~~ for the year covered by the return, ~~and also~~ The department shall also calculate and compute the net proceeds ~~in dollars and cents~~ yielded to the mine operator. The net proceeds shall be ascertained and determined by subtracting from the gross value ~~in dollars and cents~~ the deductions which that are allowed to the operator of the mine. Allowable deductions are set forth in ARM 42.25.1111 through 42.25.1117.

(2) Each operator shall be notified of the assessment to ~~be placed on for~~ each mine. ~~Any changes made in auditing the net proceeds return, which result in a change in the net proceeds assessment from the amount shown by the taxpayer, shall be explained in this notification.~~ The taxpayer shall be notified of any changes made by the department when auditing the net proceeds return.

AUTH: 15-23-108, MCA

IMP: 15-23-102 and 15-23-503, MCA

42.25.1104 MINING VERSUS NON-MINING PROCESSES (1) remains the same.

(a) The points at which mining processes end for specific minerals are listed below: i

<u>Mineral</u>	<u>Valuation Point</u>
Bentonite	after crushing and drying
Gypsum	after crushing
Limestone	after crushing
Talc	after crushing and sorting
Vermiculite	after screening

(b) No deductions will be allowed for processing costs incurred beyond the valuation point. ~~"After crushing" refers to after all crushing but before grinding.~~

AUTH: 15-23-108, MCA

IMP: 15-23-502 and 15-23-503, MCA

42.25.1105 COMPUTATION OF GROSS VALUE (1) remains the same.

(2) Listed in the order in which they are to be considered, Gross gross value at the point of valuation will be

determined using one of the following methods: ~~which are listed in the order they are to be considered.~~

(a) The producer's actual sales prices for mineral products sold at the point of valuation will be considered the best evidence of value provided the sales are arm's-length and represent approximately 30% of total mineral production. Sales of less than 30% of total production may be acceptable indicators of value if the sales price per unit is corroborated with other representative market data for minerals of like kind and grade. ~~Documentation for this method must be provided by the producer to the department on request~~ Upon request, the producer must provide documentation for this method to the department.

(b) If the producer does not have the sales information discussed in (2)(a) above, a market survey of other producers' sales of like kind and grade mineral products may be done. If this method is used, the producer must obtain market data for 3 ~~three~~ or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for minerals of comparable quality sold in quantities approximating the producer's level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. ~~All information obtained by the producer to support this method must be provided to the department on request~~ Upon request, the producer must provide all information obtained that supports this method to the department.

(c) If the information required by (2)(a) and (b) above is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is: ~~stated below.~~

$$\text{Taxable value/unit} = \frac{\text{Direct costs through valuation point}}{\text{Total direct costs}} \times \text{Sales price/unit}$$

(i) remains the same.

(ii) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products ~~which that~~ have not been manufactured or fabricated. These costs will typically include grinding, burning or calcining, blending with other materials and treatment effecting a chemical change.

(iii) and (iv) remain the same.

(d) If warranted by an unusual situation, The the department may use an alternative valuation method ~~if warranted by an unusual situation.~~

AUTH: 15-23-108, MCA

IMP: 15-23-502 and 15-23-503, MCA

42.25.1111 TREATMENT OF ROYALTIES (1) remains the same.

(2) Each royalty interest shall be assessed at its full cash value in the same manner as net proceeds regardless of the net proceeds of the operator or whether he the operator deducted the royalty to arrive at his the net proceeds.

(3) ~~Upon receipt of royalty lists the~~ The department of revenue shall transmit ~~it~~ royalty lists to the respective ~~county assessors~~ local department field office in whose the county where the mine is located.

(4) Each royalty owner shall be notified of the royalty assessment amount of ~~his royalty assessment~~ as reported by the mine operator.

(5) Certain royalties are considered ~~to be~~ nontaxable and shall not be assessed. ~~These nontaxable royalties are defined in (6).~~

~~(6) With certain exceptions as defined below, All all~~ royalties are subject to taxation, ~~with certain exceptions as defined below.~~

(a) Royalties paid to the U.S. United States government, state of Montana, county, city, school district, or other political subdivision of the state are considered ~~to be~~ nontaxable.

(b) Royalties paid to Indian tribes from production on tribal land ~~have been determined to be~~ are taxable, but royalties paid to the U.S. United States government from production on allotted Indian land ~~have been determined to be~~ are nontaxable.

AUTH: 15-23-108, MCA

IMP: 15-23-505 and 15-23-507, MCA

42.25.1112 EXPENSES RELATED TO MACHINERY (1) remains the same.

(2) Machinery shall include all that is used in:

(a) the construction, ~~or~~

(b) sinking, or running of shafts, tunnels, drifts, ~~or~~

(c) other works in the extracting or mining of the ore deposit.

(3) and (4) remain the same.

(5) No expenditures for machinery including leased and rented machinery shall be allowed as a deduction unless all machinery is reported to the ~~county assessor~~ local department field office of the county in which ~~such~~ the mine is located for assessment purposes.

(6) Deductions for mining equipment shared by otherwise separate mining operations must be pro-rated to each operation. Tonnage removed, man-hours expended, or other appropriate criteria may be used to allocate the expenses.

(7) remains the same.

AUTH: 15-23-108, MCA

IMP: 15-23-503, MCA

42.25.1113 LABOR COSTS (1) Labor expenses will include amounts paid to employees, up to and including, mine and mill foremen and superintendents. No deduction will be allowed for any person or officer not actually engaged in the mining or

milling operations. Labor expenses ~~for the following functions~~ will be deductible to the extent they relate specifically to the mining and processing operations up to the point of mineral valuation for the following functions:

(a) through (m) remain the same.

(2) Labor expenses ~~for the following functions~~ are not deductible for the following functions:

(a) through (g) remain the same.

(3) through (3)(n) remain the same.

(4) Accounting records for labor expenses must be maintained by the taxpayer. These records must include contemporaneous man-hour logs for employees who do not work 100% of their time in one of the functions listed in (1) above or who are involved in processing minerals both up to and beyond the point of mineral valuation.

AUTH: 15-23-108, MCA

IMP: 15-23-503, MCA

42.25.1114 COSTS OF IMPROVEMENTS, AND REPAIRS, AND BETTERMENTS (1) All monies expended for improvements, and repairs, and betterments necessary in and about the working of the mine shall be allowed as a deduction at the rate of 10% per annum for a period of 10 consecutive years. The period shall beginning with the year of expenditure in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103.

~~(2) The term "improvements, repairs, and betterments" is defined as buildings and improvements to the land located at the mine site.~~

AUTH: 15-23-108, MCA

IMP: 15-23-503, MCA

42.25.1115 COSTS OF MILLING, SMELTER, AND REDUCTION WORKS

(1) All monies expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103. There must not be included in this schedule any amount expended for the construction of new buildings or the purchase or installing of new machinery or apparatus ~~which that~~ are in the nature of additions or ~~betterments~~ improvements to plant or equipment. ~~Amounts expended for making repairs to buildings, machinery or equipment, or for constructing new buildings or purchasing and installing new machinery may be deducted~~ Deductions are allowable when the buildings constructed or repaired, or machinery purchased and installed, are for the sole purpose of replacing old, worn out, or obsolete buildings or machinery.

~~(2) An amount equal to six percent of the assessed valuation of the mill or reduction works, for the calendar year for which the return is made, may be deducted if the person working the mine or deposit also operates the mill or reduction works and mills or treats the ore or deposit mined by him. If the person working the mine or deposit also operates the mill or reduction works and mills, or treats the ore or deposit, six percent of the assessed valuation for the calendar year the~~

return represents may be deducted. However, if the mill or reduction works is used to mill or treat the ore or deposit from any other mine or mines, then the amount of ~~such depreciation~~ the six percent assessed valuation must be apportioned so that only the proper proportionate part thereof will be included in this return.

(3) Milling and reduction expenses are either:

(a) repairs or replacements; or

(b) additions or ~~betterments~~ improvements to the plant.

(4) Costs for repairs and replacements which are fully deductible when incurred may not be added to the ~~amortization~~ six percent assessed valuation base.

AUTH: 15-23-108, MCA

IMP: 15-23-503, MCA

42.25.1118 GENERAL TREATMENT OF DEDUCTIONS (1) The Mines Net Proceeds of Mines Law, Title 15, chapter 23, part 5, MCA, as amended, provides for the ad valorem taxation of minerals as they are extracted from the ground and is intended to provide a tax in lieu of a property tax on such minerals ~~in place~~. To determine the assessed value of the mineral, certain specific expenses are permitted as deductions from the gross value of the mineral.

(2) remains the same.

(3) The Mines Net Proceeds of Mines Law law provides for limited deductions incurred at the mine location in Montana and not the broad spectrum of deductions allowed by income tax laws. These deductions are specific and should not be construed to include items not listed. The deductions may vary depending on the point of valuation of the mineral, but will never be greater than those provided by statute.

AUTH: 15-23-108, MCA

IMP: 15-23-503, MCA

42.25.1119 SPECIAL DEDUCTIONS FOR ~~INSURANCE, WELFARE, RETIREMENT, MINERAL TESTING, SECURITY AND ENGINEERING~~ (1) Fire, boiler, machinery, and public liability insurance will be allowed as a deduction to the extent that it is insurance for equipment and buildings in the mine, and equipment and buildings in the reduction works, to the extent the insurance for the reduction works is not beyond the point of valuation. No insurance costs will be allowed for offices or other administrative buildings. Where buildings are used both for administrative purposes and for the mining operation, the department will allocate, on a case by case basis, the costs between administration and mining. The department will allow only the insurance expenses attributable to the mining operation.

(2) and (3) remain the same.

(4) The cost of security, in and around the mine and including the cost of security around the mill or reduction works in Montana, shall be deductible provided these costs are not incurred beyond the point of valuation.

(5) remains the same.

(6) Engineering and geological services will be allowed as described in 15-23-503(1)(h), MCA.

(7) The costs of labor, supplies, and equipment used to reclaim the mine site are deductible. If during the process of reclamation, other costs are incurred that result in an improvement ~~or betterment~~ in and about the working of the mine, those costs will be amortized over a 10-year period. The deductions provided in this paragraph section are allowable beginning in the 1985 production year.

AUTH: 15-23-108, MCA

IMP: 15-23-502 and 15-23-503, MCA

42.25.1701 DEFINITIONS OF "THIRD PARTY INTERMEDIARY" The following definitions apply to this sub-chapter:

(1) "Third party intermediary" ~~is defined to mean~~ any individual, corporation, partnership, subsidiary, or other entity which purchases coal on behalf of, or for the benefit of, another party. Any coal purchased by a third party intermediary is considered to be a purchase by a broker and not a qualified purchaser. In determining eligibility for the tax credit, if if a qualified purchaser ~~does purchases~~ coal from a third party intermediary, that purchase will be included in either the base or current consumption level ~~or the current consumption level~~ depending upon when that purchase occurred ~~for the qualified purchaser in determining eligibility for the tax credit.~~ Any partner or joint owner of a coal using facility who purchases coal on behalf of, or for the benefit of, another partner or joint owner of that facility is included in the definition of a third party intermediary, but However, this only applies to ~~only to the extent that the partner or joint owner who purchased coal on behalf of, or for the benefit of, another partner or joint owner.~~

AUTH: 15-35-122, MCA

IMP: 15-35-103, MCA

42.25.1702 BASE CONSUMPTION LEVEL DETERMINATION - JOINTLY OWNED FACILITIES (1) Separate consumption levels will be

determined for each partner in a jointly owned coal using facility. Each partner will be allocated a portion of the facility's total consumption based either on actual coal consumed by each partner, electrical generation received, percentage ownership, or any other reasonable method determined by the department ~~of revenue.~~ A joint owner's share of the consumption from a jointly owned coal using facility will be added to other Montana coal purchases by that purchaser to determine the total base level consumption for that purchaser.

AUTH: 15-35-122, MCA

IMP: 15-35-102, MCA

42.25.1703 BASE CONSUMPTION LEVEL - SALE OF INTEREST

(1) If base consumption levels are adjusted according to this rule, A a purchaser of a coal using facility or an interest in a facility is a qualified purchaser for coal used in that

facility only if base consumption levels are adjusted according to this rule.

(2) remains the same.

AUTH: 15-35-122, MCA

IMP: 15-35-102, MCA

42.25.1704 ELIGIBILITY FOR TAX CREDIT (1) A joint owner will be eligible for the tax credit provided according to 15-35-202, MCA, if the joint owner's total purchases of Montana coal, including ~~his~~ the joint owner's share of the coal consumed by the jointly owned coal using facility, exceed ~~his~~ the joint owner's base consumption level. A joint owner's share of coal consumed by a jointly owned facility will normally be determined for purposes of the tax credit computation in the same manner used to determine the base consumption level. However, if the department determines that the method used to determine a joint owner's base consumption level no longer properly reflects a joint owner's share of current level consumption, the method used to determine a joint owner's current consumption share will be changed. However once determined, a joint owner's base consumption level ~~once determined~~ will not be modified except as provided under ARM 42.25.1703.

AUTH: 15-35-122, MCA

IMP: 15-35-202, MCA

42.25.1706 IMPUTED VALUATION FOR REFINED COAL (1) remains the same.

(2) The imputed value of refined coal will approximate market value FOB mine of similar type coal after primary and secondary crushing where drying, cleaning, or other further processing has not occurred. The FOB mine price of similar type coal ~~means~~ is the price of such coal as established by the market price ~~will~~ reflecting the selling price of coal with like characteristics within the region, as determined by spot sales or other methods ~~which~~ reflecting the market value of unrefined coal at the time the sale of refined coal occurs.

(a) Example-: Refined coal is sold for \$12/ton. The FOB price of similar type coal where drying, cleaning, or further processing has not occurred is \$10/ton. The imputed value is \$10/ton.

AUTH: 15-35-122, MCA

IMP: 15-35-107, MCA

42.25.1707 DETERMINATION OF CONTRACT SALE PRICE (1) through (1) (c) remains the same.

(2) In computing production taxes the operator may include ~~that~~ the amount which he that the operator expects to pay or the amount charged to the purchaser. If the taxes actually paid on the production are more or less than the production taxes deducted and affect the contract sales price, the difference shall be an adjustment in production taxes deducted for the following year.

(3) remains the same.

AUTH: 15-35-122, MCA

IMP: 15-35-102 and 15-35-103, MCA

42.25.1708 IMPUTED VALUATION (1) The department may impute the value when when coal is sold or used under the following circumstances, the department may impute the value:

(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process;

(b) a person sells coal under a contract which that is not an arm's length agreement, and the transaction price is less than market value; or

(c) the person neglects or refuses to file a statement.

(2) remains the same.

(3) The department will not impute a value according to (1)(b) above unless the price differential is more than 10 cents/ton or 1% one percent of FOB mine price, whichever is higher.

(4) ~~The department will maintain the confidentiality of all comparable contract data. Contract data provided by the producer in question will be used whenever possible.~~

AUTH: 15-35-122, MCA

IMP: 15-35-107, MCA

42.25.1802 DECLARATORY RULING PROCEDURE (1) When an operator is uncertain how these regulations will apply to a particular circumstance, that person may petition the department for a declaratory ruling as ~~to the applicability of the statute and regulation, or both of them, to that person's activity or proposed activity provided in ARM 42.2.102 through 42.2.106, effective May 26, 2000. Copies of these rules may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805. Section 2-4-501, MCA, provides the authority, and regulations. ARM 1.3.227 through 1.3.229 provides the procedures to be used in requesting a ruling.~~

(a) In addition to the contents of the petition outlined in ~~ARM 1.3.227~~ 42.2.103, a petition must delineate the well or wells for which the petition is submitted.

(2) remains the same.

AUTH: 15-1-201 and 15-36-322, MCA

IMP: 2-4-501, 15-1-222, 15-36-301 through 15-36-306, 15-36-309 through 15-36-315, 15-36-319 through 15-36-321, 15-36-324 and 15-36-326, MCA

42.32.101 TERMINOLOGY DEFINITIONS The following definitions apply to this chapter:

(1) "Mineral" ~~For as used for~~ resource indemnity trust tax purposes, mineral is defined as means any precious stones or gems, gold, silver, copper, coal, lead, scoria, travertine, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana, including sand and gravel.

AUTH: 15-1-201, MCA

IMP: 15-38-103 and 15-38-105, MCA

42.32.107 COMPUTATION OF GROSS VALUE (1) remains the same.

(2) Gross value of product at the time of extraction will be determined using one of the following methods for each product produced as noted:

(a) For coal, the gross value of the product is ~~defined as~~ the "contract sales price" for the coal severance as stated in 15-35-102, MCA, times the tons produced; except the tonnage exemption defined in 15-35-103(4), MCA, cannot be claimed in computing the resource indemnity trust tax.

(i) If the department imputes a value for coal pursuant to 15-35-107, MCA, the same imputed value will be used in computing the resource indemnity trust tax.

(b) For talc, the gross value of the product is ~~defined as~~ the tons produced in the year for which a return is filed times the value stated in 15-23-515(2), MCA.

(c) For vermiculite, the gross value of the product is ~~defined as~~ the tons produced in the year for which a return is filed times the value stated in 15-23-516(2), MCA.

(d) For gold, silver, copper, lead, or any other metal or metals, or precious, semiprecious gems or stones, of any kind for which a resource indemnity trust tax return is filed, the gross value of the product ~~are~~ is the "receipts received" as defined in 15-23-801(5), MCA.

(e) For lime rock, granite, marble, travertine, phosphate, bentonite, barite and other minerals, rock or stone extracted from underground mines, quarries, or open pits, gross value at the time of extraction will be determined using one of the following methods which are listed in the order they are to be considered:

(i) The producer's actual sales prices for mineral products sold at the time of extraction will be considered the best evidence of value provided the sales are arm's-length and represent more than 30% of total mineral production. Sales of less than 30% of total production may be acceptable indicators of value if the sales price per unit is corroborated with other representative market data for minerals of like kind and grade. ~~Documentation for this method must be provided by the producer to the department on request~~ Upon request, the producer must provide documentation for this method to the department.

(ii) If the producer does not have the sales information discussed in (2)(e)(i) above, a market survey of other producers' sales of like kind and grade mineral products may be done. If this method is used, the producer must obtain market data for three or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for minerals of comparable quality sold in quantities approximating the producers level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. All information obtained by the producer to support this method must be provided to the department on request.

(iii) If the information required by (2)(e)(i) or (ii)

above is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is stated below.

$$\text{Taxable value/unit} = \frac{\text{Direct costs through extraction}}{\text{Total direct costs}} \times \text{Sales price/unit}$$

(A) remains the same.

(B) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products ~~which~~ that have not been manufactured or fabricated. These costs will typically include hauling, sorting, crushing, grinding, drying, smelting, refining, etc. Final reclamation costs related to dismantling facilities may also be included in total direct costs.

(C) and (D) remain the same.

(iv) remains the same.

(3) For oil and gas, gross value of product for the purposes of the resource indemnity trust tax will be determined at the time of extraction at the wellhead. The gross value of product is ~~defined as~~ the total value of all petroleum and other mineral or crude oil or natural gas produced each year. The value is determined by taking the total number of barrels or cubic feet thereof produced each month during such year at the average value at the mouth of the well during the month the same product is produced. However, the total value shall be reduced for royalties paid to the United States, the state of Montana, Indians, and Indian tribes, a county, or municipal government.

AUTH: 15-1-201, MCA

IMP: 15-38-104 and 15-38-105, MCA

4. The Department proposes to repeal the following rule:

42.25.1705 APPLICABLE TAX RATES which can be found on page 42-2580 of the Administrative Rules of Montana.

AUTH: 15-35-122, MCA

IMP: 15-35-103, MCA

5. The Department proposes the amendments to ARM 42.25.1102, 42.25.1103, 42.25.1104, 42.25.1105, 42.25.1111, 42.25.1112, 42.25.1113, 42.25.1114, 42.25.1115, 42.25.1118, 42.25.1119, 42.24.1701, 42.25.1702, 42.25.1703, 42.25.1704, 42.25.1706, 42.25.1707, 42.32.101, 42.32.107 as housekeeping changes resulting from the Department's biennial review of chapters 25 and 32.

To assist the Department's customers, the Department has amended ARM 42.25.1101 by incorporating various definitions from other rules in chapter 25 into ARM 42.25.1101. The definition of "after crushing" was moved from 42.25.1104(1)(b) and "improvements and repairs" from 42.25.1114(2).

ARM 42.25.1708(4) is being amended to remove the reference

to maintaining the confidentiality of all comparable contract data. This amendment is necessary to comply with the Montana Supreme Court's opinion in The Associated Press, Inc. v. Montana Department of Revenue, No. 99-175 case.

ARM 42.25.1802 is being amended to reference the Department's newly adopted declaratory ruling rules, ARM 42.2.102 through 42.2.106, effective May 26, 2000, and provide information on where customers may obtain copies of these rules.

ARM 42.25.1705 is being repealed because the rates are at the lowest level and the rates are now cited in the statute.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

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

and must be received no later than October 6, 2000.

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

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

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State August 28, 2000

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULES
of rules pertaining to Advanced) PERTAINING TO THE ADVANCED
Telecommunications Infrastruc-) TELECOMMUNICATIONS INFRAS-
ture Tax Credit) TRUCTURE TAX CREDIT

TO: All Concerned Persons

1. On July 13, 2000, the Economic Development Division of the Montana Department of Commerce published a notice of public hearing on the proposed adoption of rules pertaining to the advanced telecommunications infrastructure tax credit at page 1723, 2000 Montana Administrative Register, issue number 13. A public hearing was held August 15, 2000.

2. The Department has adopted Rule III (8.99.703) exactly as proposed. The Department has adopted Rule I (8.99.701), Rule II (8.99.702), Rule IV (8.99.704), and Rule V (8.99.705) as proposed but with the following changes: (authority and implementing sections will remain the same as proposed)

8.99.701 DEFINITIONS In addition to the definitions set forth in 15-23-129, MCA, the following definitions apply for purposes of these rules:

(1) will remain the same as proposed.

(2) "Area" means the state and regions of the state, including counties, incorporated municipalities, unincorporated areas, public school districts, university campuses, the university system, public libraries and any part of the foregoing list of areas. In judging the merits of an application for tax credits, the degree to which the citizens of Montana benefit from the proposed advanced telecommunications infrastructure project will be a priority.

(2) through (6) will remain the same as proposed, but will be renumbered (3) through (7).

8.99.702 APPLICATION FOR TAX CREDITS

(1) Telecommunications service providers shall make written application for tax credits to the department. The applicant must provide the department with one original of the application and five copies. The application shall include the following information:

(a) through (d)(iv) will remain the same as proposed.

(v) a complete description of the services and charges for those services currently offered to customers of the applicant and competitors of the applicant, compared to the services and charges that will be available to those customers if the telecommunications service provider installs the advanced telecommunications infrastructure. If the applicant is unable to determine competitors' services and charges, it shall disclose that in the application.

(2) will remain the same as proposed.

8.99.704 DEPARTMENT REVIEW AND DECISION (1) The department will review and consider each application based on the criteria set forth in ARM 8.99.702 and the Act, and whether the proposal is competitive with other proposals received during the application based on the criteria set forth in 8.99.702 and the Act. The department may grant the total tax credits available or any portion thereof depending upon the merits of the applications received.

(2) and (3) will remain the same as proposed.

8.99.705 APPLICATION TIMELINES (1) During the calendar year 2000, applications must be postmarked or received ~~submitted by the department by~~ September 15, 2000, ~~to the department~~ at the following address, Department of Commerce, 1424 Ninth Avenue, PO Box 200501, Helena, Montana 59620-0501. The department will evaluate the applications and notify applicants by October 15, 2000, of the amount, if any, of tax credit that the proposed project has been awarded. For calendar years 2001 through 2004, the application deadline will be October 1st of the preceding calendar year. The department will evaluate the applications and notify applicants within 60 days of the application deadline of the amount, if any, of tax credit that the proposed project has been awarded.

(2) The department retains the right to reopen the application process in the event the total \$2 million available for the telecommunications infrastructure tax credit is not awarded in the applicable consecutive 12-month period. In the event the department reopens the application process it will provide written notice of the same to all applicants who applied for the tax credit in the preceding 12-month period.

3. The Department has thoroughly considered all comments and testimony received. Those comments and the Department's responses are as follows:

COMMENT NO. 1: The Montana Independent Telecommunications System, through its general counsel, Michael Strand, commented that it would be helpful if the Department defined what it meant by use of the word "area".

RESPONSE: The Department concurs and adopted the foregoing definition of the word "area".

COMMENT NO. 2: The Montana Independent Telecommunications System commented that it was difficult to know what other services were being provided by competitors, and requested that the Department remove the requirement that such information be provided in the telecommunication service provider's application for the tax credit.

RESPONSE: The Department understands the concern,

however, section 15-53-203(2)(b), MCA, specifically states that applications must include "verification that the advanced telecommunications infrastructure improvements will contribute to greater access to advanced telecommunications services and enhance existing telecommunications infrastructure." Accordingly, the Department modified the subject rule to require information about competitors' services and charges in the application, however, if the applicant is unable to determine what its competitors' services and charges are, it must state the same in the application.

COMMENT NO. 3: The Montana Independent Telecommunications System questioned whether the application for the year 2000 will allow credits for projects that have already occurred or are occurring in 2000.

RESPONSE: The Department refers to section 15-53-202(3), MCA, which states that "the credit must be applied in the year the advanced telecommunications infrastructure improvements were made".

COMMENT NO. 4: The Montana Independent Telecommunications System commented that it would make sense to provide a supplemental round of applications in the event the entire \$2 million is not allocated in the first round.

RESPONSE: The Department concurs and adopted the revised version of Rule V (8.99.705).

COMMENT No. 6: Quest Communications, through its Vice-President, Rick Hays, commented that the proposed rules were clear and useable.

RESPONSE: The Department acknowledges and thanks Quest Communications for its comments.

ECONOMIC DEVELOPMENT 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, August 28, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION,
adoption, amendment, and) AMENDMENT, AND REPEAL OF
repeal of rules relating) RULES RELATING TO
to teacher certification) TEACHER CERTIFICATION

TO: All Concerned Persons

1. On June 15, 2000, the Board of Public Education published notice of the proposed adoption, amendment, and repeal of rules concerning teacher certification, at page 1388 of the 2000 Montana Administrative Register, Issue Number 11.

2. After consideration of the comments received, the Board has adopted the following new rules exactly as proposed: RULE I (10.58.210), RULE II (10.58.304), RULE III (10.58.305), RULE IV (10.58.306), RULE V (10.58.307), RULE VI (10.58.308), RULE VII (10.58.309), RULE VIII (10.58.409), RULE IX (10.58.410), and RULE X (10.58.603). Two comments were received in support of the proposed new rules as shown below.

COMMENT 1: Ric Floren, Facilitator for the Task Force on Unit Standards, and Havre Public Schools Administrator, reviewed the development of the standards presented and expressed his support for the actions of the Task Force in recommending the rules listed above.

COMMENT 2: Eric Burke, Policy Advisor for Education and Labor, Office of the Governor, indicated his support for the proposed Professional Educator Preparation Standards which "...provide a strong foundation for the enhancement of educator preparation in Montana and to a great extent fulfill the hopes of the Governor-appointed Montana Commission on Teaching regarding quality teacher preparation."

RESPONSE 1 and 2: The Board accepted the recommendations as presented and voted to adopt new Rules I through X exactly as proposed.

3. After consideration of the comments received, the Board has amended the following rules exactly as proposed: ARM 10.58.102, 10.58.103, 10.58.104, 10.58.201, 10.58.202, 10.58.204, 10.58.502, 10.58.503, 10.58.507, 10.58.508, 10.58.509, 10.58.510, 10.58.511, 10.58.512, 10.58.513, 10.58.516, 10.58.518, 10.58.519, 10.58.520, 10.58.521, 10.58.522, 10.58.524, 10.58.525, 10.58.526, 10.58.527, 10.58.528, 10.58.701, 10.58.704, and 10.58.707.

10.58.509 ENGLISH/LANGUAGE ARTS

COMMENT 3: Norma Bixby, Chairperson, Montana Advisory Council on Indian Education (MACIE), indicated concern that

knowledge of English as a second language (ESL) and how the concepts apply to teaching English/Language Arts, was missing from the standards for that area.

RESPONSE 3: Because the extent of preparation in the ESL could vary from one course to a minor in that area and no specific wording was recommended, it would be premature to make changes in the preparation of English teachers at this time. Current language of ARM 10.58.509 includes content on language acquisition, dialects, and "the influence of social, regional, economic, and cultural factors on language variations and use." This matter is suggested for further study.

10.58.527 AREAS OF PERMISSIVE SPECIAL COMPETENCY

COMMENT 4: Dr. Julie Bullard, Professor at Western Montana College, and Facilitator for the writing team, submitted written testimony urging the acceptance of the revisions to the early childhood education standards under this rule.

RESPONSE 4: The Board adopted the proposed standard without change.

10.58.528 COMPUTER SCIENCE

COMMENT 5: Jerry Esmay, Professor of Computer Science, University of Montana, and Facilitator for the computer science writing team, spoke in favor of adoption of the proposed standard. He commented on the effectiveness of the review process and expressed concern that more enrollment in computer science teaching was needed to supply the needs in Montana schools.

RESPONSE 5: The Board voted to adopt the proposed standard without change.

10.58.704 SCHOOL PRINCIPALS AND SUPERINTENDENTS

COMMENT 6: Carol Juneau, Chairperson, Montana/Wyoming Indian Education Association, commented that "Our schools of Montana need educational leadership that has the skills of working with all its students as well as their families and communities. It is important for our school principals and superintendents to have the same skills and knowledge of American/Montana Indians to help provide the guidance and supervision necessary for an educational environment that does meet Montana constitutional mandates."

RESPONSE 6: The Board concurred with the statement of Ms. Juneau, and supports current mandates by the Montana Board of Education (Joint Board), regarding the implementation of HB 528. Within that mandate, school-wide professional

development and curricular changes will result in greater understanding and skills among teachers and administrators in Montana. Without specific recommendations for changes in the proposed language, the Board adopted the proposed language in ARM 10.58.704 without change.

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

10.58.203 STUDENT ADMISSION, RETENTION, AND EXIT POLICIES AND PRACTICES (1) The institution shall provide orderly procedures for obtaining and maintaining information about admission to professional education, and include in this information, data regarding race/ethnicity, for assessing the progress of students through their course of studies, and for evaluating the success of its graduates after they have left the institution; these assessments shall be used in a systematic cycle of program review and revision.

(2) through (5) remain the same as proposed.

COMMENT 7: Carol Juneau, Chairperson, Montana/Wyoming Indian Education Association, commented that "It is important to gather appropriate information on race and ethnicity in our process of admissions, retention and exit policies in Montana's institutions. With such a low percentage of Indian teachers and administrators in our public schools, we need to have accurate data to help provide the educational leadership on determining what is working and what is not working in order to make the changes needed."

COMMENT 8: Norma Bixby, Chairperson, Montana Advisory Council on Indian Education, concurred with the recommendation cited above.

RESPONSE 7 and 8: The Board voted to include the wording which would result in the collection of appropriate data on race/ethnicity.

10.58.501 GENERAL REQUIREMENTS (1) through (1)(h) remain the same as proposed.

(i) emulates the reflective practitioner who continually evaluates the effects of his or her choices and actions on others (students, families, and other professionals in the learning community), and who actively seeks out opportunities to grow professionally; and

(j) fosters relationships with school colleagues, families, and agencies in the larger community to support students' learning and well-being; and

(k) understands the importance of contextual and experiential learning to the success of students and is capable of demonstrating connections between academic learning and the skills required in the present and future workforce.

COMMENT 9: Eric Burke, Policy Advisor for Education and Labor, Office of the Governor, stated that there was a "Lack of emphasis on preparing teachers to connect student academic learning to career preparation and life-long learning."

RESPONSE 9: The Board voted to add the text recommended by the Governor's Office as provided.

COMMENT 10: Mr. Burke further commented that language could be added to each teaching area or specialization, suggesting that these teachers develop the ability to link academic learning in their area with specific contextual or career development experiences.

RESPONSE 10: The Board determined that as a "General Requirement," the adopted statement, now item (k), would constitute this commitment for all content areas. No additional action is necessary to implement this statement.

COMMENT 11: Eric Burke, also commented that there was a "Lack of inclusion of specific references or requirements related to awareness and knowledge of American Indian culture, language, history, and contemporary issues." An additional reference was recommended for ARM 10.58.501.

RESPONSE 11: In light of a number of specific changes in both rule and accompanying policies and procedures, and these recommendations having extensive review by representatives of American Indian groups, including the Montana Advisory Council on Indian Education and the Montana/Wyoming Indian Education Association, the Board concluded that this shortcoming had been sufficiently corrected.

10.58.505 BUSINESS AND INFORMATION TECHNOLOGY EDUCATION

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

(b) organize and advise a vocational student organization such as ~~distributive education clubs of America (DECA)~~ DECA, an association of marketing students, or business professionals of America (BPA);

(c) through (ad) remain the same as proposed.

COMMENT 12: Cheryl Graham, Business Education Specialist, Office of Public Instruction, stated that changes in the national organization name required the correction in the standards used to review those programs.

RESPONSE 12: The Board voted to replace the proposed wording with correct information.

10.58.514 FAMILY AND CONSUMER SCIENCES (1) and (1)(a) remain the same as proposed.

(b) appreciate human worth across the lifespan and accept responsibility for one's successes and failures in family and work life;

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

(g) demonstrate responsible actions and decision-making as leaders in family, community and work settings through the use of ~~future homemakers of America/home economics related occupations (FHA/HERO~~ family, career and community leaders of America (FCCLA) as a youth leadership development structure and process; and

(h) and (2) remain the same as proposed.

COMMENT 13: Cheryl Graham, speaking for Laurie Stelter, Family and Consumer Sciences Specialist, Office of Public Instruction, presented written testimony from Ms. Stelter requesting the changes noted above. The recent change of organization name prompted the correction of the noticed language.

RESPONSE 13: The Board voted to accept the changes as requested by Ms. Stelter, presented by Ms. Graham.

10.58.515 INDUSTRIAL/TECHNOLOGY EDUCATION (1) through (1)(e)(vii) remain the same as proposed.

(viii) establish and maintain a student organization within the program, such as skillsUSA-VICA or technology students association (TSA);

(ix) through (xvi) remain the same as proposed.

COMMENT 14: Cheryl Graham, speaking for David Strong, Industrial/Technology Education Specialist, Office of Public Instruction, presented written testimony from Mr. Strong requesting the above change to identify the recent name changes of student vocational organizations.

RESPONSE 14: The Board voted to accept the requested addition to this standard.

10.58.517 LIBRARY MEDIA K-12 (1) The program designed to produce a library media specialist, whose aim is to provide students with skills which are basic components of lifelong, independent learning, shall provide:

(a) ~~skills in instructional services including instruction in educational partnerships to include:~~

(i) ~~the ability to teach the use of information, media (including use of computer software and electronic resources), reference, research, literature and production skills as basic components of lifelong, independent learning in a manner which is integrated into the school curriculum;~~ lessons in the collaborative design and development of a curriculum in which information literacy becomes a coherent thread across all subjects and grade levels. Information literacy means:

(A) the ability to access information efficiently and effectively, including the ability to:

(I) discern the need for relevant information;

(II) identify potential sources; and

(III) develop and use strategies for locating information in a variety of resources;

(B) the ability to evaluate information critically and competently, including the ability to:

(I) select information appropriate to the task at hand;

(II) distinguish among fact, point of view, and opinion;

and

(III) select information appropriately;

(C) the ability to use information accurately and creatively, including the ability to:

(I) organize and synthesize information;

(II) use information in problem solving; and

(III) communicate new knowledge and information in meaningful, appropriate and creative ways; and

~~(ii) planning and implementing uses of technology in teaching and learning;~~

~~(iii) participating with teachers and administrators in design and development of a curriculum in which information literacy becomes a coherent thread across all subjects and grade levels;~~

~~(iv)(ii) serving as an instructional partner with all members of the learning community to meet learner goals within and beyond the curriculum; and instruction in how to work collaboratively with administrators and teachers to develop and implement programs and units;~~

~~(v) assisting in selection, use and production of appropriate media to achieve specific instructional objectives and learner outcomes;~~

(b) skills instruction in organization—and administration of the library media center including:

(i) evaluating how to evaluate library media programs and procedures according to state, regional and national guidelines;

(ii) assessing how to assess needs and setting set goals, objectives and priorities while supporting the mission of the school;

(iii) formulating budgets and developing funding proposals as part of short and long range planning how to engage in comprehensive and collaborative long range, strategic planning from which budgets are formulated, and funding proposals and programs are developed;

(iv) establishing how to establish and implementing implement policies and procedures;

(v) interpreting how to interpret and advocating advocate the program through public relations;

(vi) developing how to develop job descriptions and relationships and supervising and training personnel; and organization charts;

(vii) how to develop plans for supervision and training of personnel;

(viii) how to use various computer applications and other technology for management of the library media center, including electronic circulation and cataloging programs;

~~(vii)(ix) participating in a supervised practicum experience comparable in length and emphasis to the student teaching experience~~ how to plan use of facilities and equipment;

(x) how to create a climate in the library media center which is conducive to a positive attitude toward questioning and active learning;

(xi) how to keep current with curricular and technological advances, research, trends and issues as they apply to learning and teaching in a school setting;

(xii) an understanding of the roles and functions of professional organizations, and local, state and federal agencies;

(xiii) familiarity with laws, regulations and guidelines pertinent to library media programs such as those concerning copyright, confidentiality and intellectual freedom;

(xiv) familiarity with American library association documents such as the code of ethics and the library bill of rights, with its various interpretations;

(xv) a broad knowledge of curriculum contents, development and evaluation in K-12 settings; and

(xvi) meaningful participation in a supervised internship experience comparable in length and emphasis to the student teaching experience;

~~(c) knowledge of instruction in~~ information sources and services including:

(i) reference interviews, reference works and uses;

(ii) and (iii) remain the same as proposed.

(iv) electronic resources, including internet, databases and CD ROM's to locate and retrieve information; and

~~(v) educational applications of computer programs such as word processing, databases, spreadsheets and multi-media authoring;~~ how to operate, maintain and do minor repair of audio, projection, video and computer equipment which is commonly used in schools; and

(vi) production of basic non-print media;

~~(d) skills instruction~~ in selection, acquisition and organization of resources and media including the use of:

(i) evaluative selection aids including standard and current review sources for print/nonprint media (including electronic resources) and equipment, plus standard and current review sources;

(ii) acquisition resources such as publishers, jobbers, producers, and vendors, along with ordering procedures;

~~(iii) standardized library procedures such as including~~ cataloging, indexing, processing and managing records management;

(iv) basic principles of collection development and maintenance; and

(v) local and state networking for the purpose of resource sharing to include interlibrary loans, cooperative collections and catalog development, and electronic resources and networks; and

(vi) traditional and electronic ordering procedures;

~~(e) practical skills in the management of all information formats including instruction in educational leadership to include:~~

~~(i) using computers and other technology in instructional programs promoting development of curriculum which shows the relationship between information-based learning and skills students need for the future;~~

~~(ii) using computers and other technology for management of the library media center, including electronic circulation and cataloging programs planning and implementing professional development activities for teachers designed to increase awareness, familiarity and integration of various educational resources, both traditional and electronic;~~

~~(iii) operation of audio, projection, video and computer equipment which is commonly used in schools; identifying legislation and policy at the local, state and national levels that affect the school library media program and taking appropriate and professional action; and~~

~~(iv) producing basic nonprint media; communicating effectively with other colleagues, faculty, staff, administrators, parents, students, and the general public to develop and promote a library media program which effectively promotes information literacy.~~

~~(v) planning use of facilities and equipment; and~~

~~(vi) creating a climate in the library media center which fosters a positive attitude to questioning and active learning;~~

~~(f) instruction in:~~

~~(i) professional development to include:~~

~~(A) keeping current with curricular and technological research, trends and issues;~~

~~(B) understanding the role and function of professional organizations and state and federal agencies; and~~

~~(C) knowledge of current research on learning and teaching and its application in a school setting;~~

~~(ii) the ethics of library management, to include:~~

~~(A) adhering to the American library association's (ALA) code of ethics;~~

~~(B) familiarity with laws and regulations pertinent to library media programs such as those concerning copyright, confidentiality and intellectual freedom;~~

~~(C) familiarity with ALA documents such as the Library Bill of Rights and its various interpretations; and~~

~~(D) achieving a broad knowledge of curriculum contents, development and evaluation in K-12 settings;~~

~~(g) skills in instructional leadership to include:~~

~~(i) promoting development of curriculum which shows the relationship between information-based learning and skills students need for the future;~~

~~(ii) planning and implementing professional development activities for teachers designed to increase awareness, familiarity and integration of various educational resources (both traditional and electronic);~~

~~(iii) identifying legislation and policy at the local, state and national levels that affect the school library media program and taking appropriate and professional action; and~~
~~(iv) communicating effectively with students, faculty, staff, administrators, parents, other colleagues and the general public, to develop and promote a library media program which effectively promotes informational literacy.~~

COMMENT 15: Suzanne Goodman, Library Media Writing Team Facilitator, and librarian, Livingston Public Schools, submitted written testimony. She suggested emphasizing "information literacy" and a more logical organization of the content of the rule.

RESPONSE 15: The Board agreed with Ms. Goodman and has made the appropriate changes to ARM 10.58.517.

10.58.523 SOCIAL STUDIES (1) through (1)(e)(ii) remain the same as proposed.

(iii) the organization, powers, and politics of the national, state, tribal and local units of American government;

(iv) through (h) remain the same as proposed.

COMMENT 16: Carol Juneau, Chairperson, Montana/Wyoming Indian Education Association, indicated that keeping the word "tribal" in section (iii) above, and other language already in the noticed language, "...will certainly add to the strength of the government teachers in our schools."

COMMENT 17: Norma Bixby, Chairperson, Montana Advisory Council on Indian Education, indicated her support for the proposed language with the inclusion noted above.

RESPONSE 16 and 17: The Board voted to include the word "tribal" in the adopted rule language.

5. The Board of Public Education has repealed ARM 10.58.205, 10.58.206, 10.58.207, 10.58.209, 10.58.301, 10.58.302, 10.58.303, 10.58.401, 10.58.402, 10.58.403, 10.58.404, 10.58.405, 10.58.406, 10.58.407, 10.58.408, and 10.58.506 as proposed.

/s/ Kirk Miller
Chairperson
Board of Public Education

/s/ Wayne Buchanan
Rule Reviewer
Board of Public Education

Certified to the Secretary of State August 28, 2000.

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

In the matter of the adoption)	NOTICE OF ADOPTION,
of Rules I through XV, the)	AMENDMENT AND REPEAL
amendment of ARM 37.95.102,)	
37.95.106, 37.95.108,)	
37.95.117, 37.95.210,)	
37.95.602, 37.95.606,)	
37.95.610, 37.95.611,)	
37.95.613, 37.95.618,)	
37.95.619, 37.95.620,)	
37.95.701, 37.95.705,)	
37.95.706, 37.95.708,)	
37.95.715, 37.95.720,)	
37.95.1001, 37.95.1002,)	
37.95.1003, 37.95.1004,)	
37.95.1010, 37.95.1011,)	
37.95.1015, 37.95.1016,)	
37.95.1021 and the repeal of)	
ARM 37.95.101, 37.95.107,)	
37.95.112, 37.95.113,)	
37.95.116, 37.95.125,)	
37.95.201, 37.95.220,)	
37.95.221, 37.95.230,)	
37.95.231, 37.95.232,)	
37.95.235, 37.95.240,)	
37.95.601, 37.95.603,)	
37.95.607, 37.95.612,)	
37.95.621, 37.95.630,)	
37.95.707, 37.95.716,)	
37.95.717, 37.95.721,)	
37.95.722, 37.95.726,)	
37.95.901, 37.95.905,)	
37.95.906, 37.95.910,)	
37.95.911, 37.95.912,)	
37.95.913 and 37.95.1020)	
pertaining to day care)	

TO: All Interested Persons

1. On June 29, 2000, the Department of Public Health and Human Services published notice of the proposed adoption, amendment and repeal of the above-stated rules at page 1573 of the 2000 Montana Administrative Register, issue number 12.

2. The Department has adopted the rules I [37.95.109], II [37.95.115], IV [37.95.127], V [37.95.126], VI [37.95.139], VIII [37.95.140], IX [37.95.132], XI [37.95.640], XII [37.95.730], XIII [37.95.702] and XV [37.95.711] as proposed.

3. The Department has amended rules 37.95.106, 37.95.108, 37.95.210, 37.95.602, 37.95.606, 37.95.610, 37.95.611,

37.95.613, 37.95.618, 37.95.619, 37.95.705, 37.95.708, 37.95.715, 37.95.720, 37.95.1001, 37.95.1002, 37.95.1003, 37.95.1004, 37.95.1010, 37.95.1011, 37.95.1015, 37.95.1016 and repealed rules 37.95.101, 37.95.107, 37.95.112, 37.95.113, 37.95.116, 37.95.125, 37.95.201, 37.95.220, 37.95.221, 37.95.230, 37.95.231, 37.95.232, 37.95.235, 37.95.240, 37.95.601, 37.95.603, 37.95.607, 37.95.612, 37.95.621, 37.95.630, 37.95.707, 37.95.716, 37.95.717, 37.95.721, 37.95.722, 37.95.726, 37.95.901, 37.95.905, 37.95.906, 37.95.910, 37.95.911, 37.95.912, 37.95.913 and 37.95.1020 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 III [37.95.121] SAFETY REQUIREMENTS (1) through (10) remain as proposed.

(11) Trampolines are prohibited for use by children in care. Trampolines on facility premises must be inaccessible to children in care.

(12) through (14)(b) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE VII [37.95.128] DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR INFANTS (1) through (1)(d) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE X [37.95.141] RECORDS (1) through (3) remain as proposed.

(4) Prior to a child being enrolled or entered into a day care facility, the following must be on file on forms provided by the department:

(a) through (d) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE XIV [37.95.718] GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP (1) through (3) remain as proposed.

(4) Overlap care may be approved by the department in situations, such as before and after school, when the number of children in care over 3 years of age would exceed, for a short period of time, the registered capacity.

(a) and (b) remain as proposed.

(c) Group day care facilities may be approved to provide overlap care for up to 4 additional children during the approved

overlap time if there are at least 2 caregivers providing direct care at any time there are more than 6 9 children being cared for at the facility.

(d) through (h) remain as proposed.

(i) Group day care homes which exceed 12 children during approved overlap are may be subject to inspection by the state fire prevention and investigation bureau and the state sanitarian.

AUTH: Sec. 52-2-735, MCA

IMP: Sec. 52-2-735, MCA

5. The Department has amended 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.

37.95.102 DEFINITIONS (1) through (18) remain as proposed.

(19) "Preschooler" means a child between 36 months of age and the age the child will be when he or she initially enters ~~the first grade of a public or private school system.~~

(20) through (34)(b) remain as proposed.

AUTH: Sec. 52-2-704, 53-4-212 and 53-4-503, MCA

IMP: Sec. 52-2-702, 52-2-703, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-501, 53-4-504, 53-4-601, 53-4-611 and 53-4-612, MCA

37.95.117 DAY CARE FACILITIES, JOINT PROGRAMS

(1) and (2) remain as proposed.

(3) If multiple programs, including multiple day care programs or facilities in the same building, increase the number of people regularly in the building to more than 12 individuals, all fire, safety and sanitation requirements which may be impacted must be complied with by the day care facility.

(a) multiple day care group homes which are currently operating under a "double group" registration within a single structure will have 3 years or until September 30, 2003, to either upgrade to center status and meet all center requirements, or relinquish one group registration and limit the number of children accordingly.

(4) Persons, corporations or organizations may be licensed or registered for more than one day care facility if facility sites, staff, and space are completely separate from one another.

(a) and (b) remain as proposed.

(c) If the day care facility is contained in a multi-family structure, such as an apartment building, the structure will be allowed to house multiple day care facilities that meet the requirements of (1) through ~~(4)~~ and (2) above.

(d) remains as proposed.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.620 DAY CARE CENTERS, STAFFING REQUIREMENTS (1) and (2) remain as proposed.

(3) An aide must be directly supervised by a primary caregiver and shall be at least 16 years of age and meet the following qualifications:

(a) through (d)(viii) remain as proposed.

(ix) observation and assessment; or

(x) professionalism; or

(xi) cultural and developmental diversity.

(4) through (8) remain as proposed.

AUTH: Sec. 53-4-503 and 52-2-704, MCA

IMP: Sec. 52-2-723, 53-4-504, 53-4-506, 53-4-508,

52-2-702, 52-2-704, 52-2-731 and 52-2-735, MCA

37.95.701 GROUP AND FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) through (6) remain as proposed.

(7) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first ~~60~~ 90 days of certification. This orientation must include the following areas:

~~(a) emotional, cognitive, physical and social development of children and creative, developmentally appropriate activities for children;~~

~~(b) appropriate discipline of children;~~

~~(c) first aid;~~

~~(d) nutrition, sanitation and universal precautions; and~~

~~(e) fire safety~~

(a) health;

(b) safety;

(c) child development/well-being;

(d) discipline/guidance;

(e) nutrition/food safety; or

(f) business aspects of a child care business.

(8) The provider and all caregivers must verify that they have received a minimum of at least 8 hours of continuing education annually provided by the department or other professional child care education and development programs of national, state or local child care organizations, or college course work in early childhood areas or child development. Continuing education must relate to the Montana early care and education knowledge base, including, at a minimum:

(a) through (h) remain as proposed.

(i) observation and assessment; or

(j) professionalism; or

(k) cultural and developmental diversity.

(9) For the first year of registration by the facility or employment by the provider or caregiver, the mandatory orientation required in (7) above will be considered sufficient to meet the 8 hour continuing education requirement.

(9) remains as proposed but is renumbered (10).

AUTH: Sec. 52-2-704 and 53-4-503, MCA
IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731 and
53-4-504, MCA

37.95.706 GROUP AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS (1) and (2) remain as proposed.

(3) A fire extinguisher must be easily accessible on each floor level. The minimum level of extinguisher classification is 2A10BC. Fire extinguishers shall be located near outside exit doors. ~~All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications. If individual battery-operated smoke detectors are used, the following maintenance is required:~~

(4) All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications. If individual battery-operated smoke detectors are used, the following maintenance is required:

(3)(a) and (b) remain as proposed but are renumbered (4)(a) and (b).

(4) through (6) remain as proposed but are renumbered (5) through (7).

AUTH: Sec. 52-2-704 and 53-4-503, MCA
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1021 DAY CARE FACILITIES CARING FOR INFANTS, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS (1) through (3) remain as proposed.

(3) and (4) remain as proposed but were incorrectly numbered and will be renumbered (4) and (5).

AUTH: Sec. 52-2-704 and 53-4-503, MCA
IMP: Sec. 52-2-731 and 53-4-504, MCA

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

NEW RULE III [37.95.121]

COMMENT #1: One comment was received stating new Rule III(7) [37.95.121(7)] should not delete the requirement of having a fenced outside play area for children, as the safety of children will be jeopardized by having children in an open area without some means to keep their play area contained.

RESPONSE: The Department notes that the language in this rule notice of Rule III (7) [37.95.121 (7)] regarding fencing does not propose "deletion" of any fencing requirement. This language was taken from a repealed rule and moved to this new Rule III [37.95.121] so it will be included in the "General Requirements" subchapter of the rules. The Department further

notes that the rule language does give sufficient guidance for the safety of the children in outside play areas, and will not be considered for change at this time.

COMMENT #2: Two comments were received stating new Rule III(11) [37.95.121(11)] should better define the prohibition of trampolines by a day care facility. The rule should state whether home providers may have trampolines for their family's personal use as long as a child in care is not allowed to use the trampoline.

RESPONSE: The Department agrees with the comment, and will amend the rule as shown to clarify that trampolines are prohibited for children in care, but may be on the premises for the family's personal use, as long as the trampoline is made inaccessible to children in care.

NEW RULE IV [37.95.127]

COMMENT #3: One comment was received stating new Rule IV(2) [37.95.127(2)] should specify the depth in inches for "wading pools" as some new wading pools are very deep.

RESPONSE: The Department notes that the language in Rule IV(2) [37.95.127(2)] was taken from a repealed rule and moved to this subchapter intact. The Department will, however, investigate and consider the issue for future rule changes.

NEW RULE VI [37.95.139]

COMMENT #4: One comment was received stating the language in new Rule VI(3) [37.95.139(3)] which refers to ARM 16.28.1005 and the requirements for TB testing is not adequate. The comment stated that only one TB test is to be administered upon registration, licensure, or employment in a child care facility. The comment noted that local physicians and the Health Department were of the opinion that annual testing should be required for anyone working with very young children, as a single test upon entry would not guarantee that the provider would remain free of TB.

RESPONSE: The Department's TB program promulgated ARM 16.28.1005. These health specialists have determined the initial screening upon entry into the child care system is adequate.

NEW RULE VII [37.95.128]

COMMENT #5: Two comments were received stating new Rule VII [37.95.128] should clarify in the title that the rule refers to INFANTS only when it requires documentation of the absence of unusual health risks.

RESPONSE: The Department agrees with the comment and will amend

the rule as shown to insert the word "infants" in the rule title to clarify the documentation of the absence of unusual health risks refers to infants only.

NEW RULE X [37.95.141]

COMMENT #6: Two comments were received stating new Rule X(4)(d) [37.95.141(4)(d)] should specify that the emergency consent form to be used by providers is the yellow DFS 113 form.

RESPONSE: The Department agrees with the comment and will amend the rule as shown to clarify that the records listed in (4) should all be kept on forms provided by the Department. The Department will not, however, specify color or name of form in the rules, as both are subject to frequent change.

NEW RULE XIII [37.95.702]

COMMENT #7: Four comments were received stating new Rule XIII(1) [37.95.702(1)] places a higher staff/child ratio requirement on group homes than exists for family homes in overlap situations. The rule requires a group home to have a second staff person when the number of children exceeds 6, whereas a family home may have overlap care for additional children up to 8 children with only one caregiver.

RESPONSE: The Department agrees that new Rule XIII(1) [37.95.702(1)] and new Rule XIV(4) [37.95.718(4)] as proposed are in conflict regarding group facilities and overlap care. The Department will therefore change new Rule XIV(4)(c) [37.95.718(4)(c)] to state "Group day care facilities may be approved to provide overlap care for up to 4 additional children during the approved overlap time if there are at least 2 caregivers providing direct care at any time there are more than 9 children being cared for at the facility".

This change will still allow 2 overlaps for family day care facilities (under new Rule XIV(4)(d) [37.95.718], and 4 overlaps for group day care facilities (under new Rule XIV(4)(c) [37.95.718(4)(c)]). The statement in new Rule XIII(1) [37.95.702(1)] regarding the need for 2 caregivers when there are more than 6 children present at the home is in regards to a NON-overlap situation. These changes will allow group homes to have an additional 2 children in an overlap situation, consistent with the family home standard.

NEW RULE XIV [37.95.718]

COMMENT #8: Two comments were received stating new Rule XIV [37.95.718] entitled "Night Care and Overlap" should be separated so that "night care" and "overlap" are in separate rules.

RESPONSE: The Department notes that this change was not

included as part of the original rule notice. The Department feels adequate notice was not therefore given. The Department will, however, consider this suggestion and may include this change in a future rule notice.

COMMENT #9: Two comments were received stating new Rule XIV(3) [37.95.718(3)] on the requirement of a caregiver providing no more than 12 consecutive hours of care in a 24 hour period would have a negative impact on the availability of evening and overnight care. The comment stated that the work world has transitioned to 24 hours a day, seven days a week, and that parents seeking extended hour care prefer a family home setting. The comment suggested the rule should allow a caregiver in a family or group day care home setting to serve two children in addition to their own beyond the 12 continuous care limit. This would allow home-based facilities to serve a few children while still meeting the rules.

RESPONSE: The Department notes that this requirement of no more than 12 hours of continuous care within a 24 hour period for caregivers was placed in new Rule XIV [37.95.718] so it would become a general requirement, consistent in both group and family day care facilities providing both day and night care. The Department further notes that this requirement will ensure a healthier environment for both caregivers and children.

COMMENT #10: Four comments were received stating that new Rule XIV(4)(i) [37.95.718(4)(i)], which would require all day care facilities which exceed 12 children (including overlap times) to be subject to fire marshall and sanitarian inspections, should be reconsidered. The comments stated that each day care facility under this provision, even if the 12 children who are in overlap care are only present for a short time, would have to meet all handicap requirements, fire codes, etc., which would be too costly. The rule would require remodeling to include handicap accessible bathrooms, outside ramps, fire retardant paint, etc. The comments further noted that this requirement would significantly reduce the availability of before and after school care.

RESPONSE: The Department will amend the rule as shown above to clarify that the inspections are not mandatory, or required by THIS Department. Instead, a statutory requirement, found at 76-2-412, MCA, states that any safety or sanitary regulation of DPHHS, any other state agency, cities or counties may not be applied to day care homes serving 12 or fewer children. Therefore, if the day care facility serves more than 12 children, the safety and sanitary requirements of the fire marshall, state and county sanitarians, etc., DO apply. This statute means the Department of Public Health and Human Services is not the authority for all inspections. Some other state agencies or local authorities may have the authority to make safety or sanitarian inspections and impose requirements without consultation with or permission from DPHHS.

The Department of Public Health and Human Services may only require safety and/or sanitarian inspections on its own under appropriate circumstances, but cannot impose a rule in violation of the state statute by saying no inspections will be required from any other state or local authority.

The Department will consider further addressing its own criteria for requesting safety or sanitarian inspections by Department policy.

COMMENT #11: One comment was received stating new Rule XIV(4) [37.95.718(4)] should allow overlap care for day care centers. The comment stated that this would equalize the standards for all child care facilities, by giving the same consideration to day care centers as is given to family or group day care facilities.

RESPONSE: The Department notes that a day care center license can always be expanded to allow for greater numbers of children within the facility. Therefore, a special overlap provision is not required for day care centers. This type of provision is needed for group and family day care facilities, which cannot expand beyond their licensure numbers without a special rule provision allowing for overlap care over numbers.

NEW RULE XV [37.95.711]

COMMENT #12: One comment was received stating new Rule XV(5) [37.95.711(5)] menu plans should be available to parents upon request is not necessary if food is brought to the child care facility from the child's home. The comment noted that there is no apparent rationale for menu plans in those circumstances, as each day would be unknown as to what each child will be served.

RESPONSE: The Department notes that this language was taken from a repealed rule and moved to this subchapter intact. The information was put in new Rule XV [37.95.711] so that it could be in the General Requirements subchapter of the rules, and apply to all group and family day care facilities. The Department will consider the suggestion for future rule changes.

ARM 37.95.102

COMMENT #13: One comment was received stating ARM 37.95.102(9) defining "Group day care home" does not contain a clear definition of "other structure in which day care is provided". The comment stated that this wording of "other structure" may affect the validity of existing law as far as conditional use permits or other zoning requirements.

RESPONSE: The Department notes that the use of the phrase "other structure in which day care is provided" is a statutory definition found at 52-2-703(7), MCA. The Department has repeated this language in its rules for clarity so that "group

day care home" may be defined in the rules without cross referencing back to the statutes. The Department cannot change statutory language, as this must be done by the Montana Legislature.

In addition, the local jurisdictions have authority over zoning issues. Zoning is not within the Department's control or authority.

COMMENT #14: One comment was received stating ARM 37.95.102(19) defining "preschooler" should not include kindergarten children. The comment noted that when children enter a school system, they no longer want to be considered "preschoolers". The comment suggested that the definition of "school age child" (found at (31)) should include children that are 5 years old and have entered kindergarten in a public or private school system.

RESPONSE: The Department agrees with the comment, and will amend the rule as shown above. The definition at ARM 37.95.102(19) of "preschooler" and the definition at (31) of "school age child" were in contradiction. The Department will amend (19) to remove the reference to first grade, so that the definition of "preschooler" does not include kindergarten children, but only those children who have not yet entered a public or private school system. The definition of "school age child" will remain the same to include children at least 5 years of age, including kindergarten children.

COMMENT #15: Two comments were received stating ARM 37.95.102(28) defining "regular basis" is too open ended and promotes drop-in facilities. The comment suggested leaving out the 4 days per week and number of hours per day currently contained in the definition. The comment noted that parents using a facility just 2 days a week all year long should still be in a registered facility.

RESPONSE: The Department notes that the new language on "regular basis" is being added to clarify the definition so that drop-in facilities may be identified. The new language will make it easier to denote which facilities provide care on a "regular basis", and which do not.

ARM 37.95.106

COMMENT #16: One comment was received stating that ARM 37.95.106 should require a background check on all persons over age 13 in the facility, not just over age 18. The comment noted that there has been an increase in reports of child on child sexual abuse throughout the state. The comment noted that a background check of teenagers living in the home may identify high-risk households and avoid this serious problem.

RESPONSE: The Department notes that persons under age 18 cannot give consent to a search of their records. These releases

(consents) are used for conducting background checks. Instead, the Department would need the consent/release of the parents to check on the child. It would not always be possible to obtain this parental consent.

In addition, the Department notes that no child protective services (CPS) records are usually substantiated for "child abuse" against a child under age 18. Therefore, no CPS background records will exist for teenagers with substantiation records.

Finally, since criminal youth court records are always sealed, the same reasoning would dictate that children's records are not to be distributed further on CPS allegations also.

ARM 37.95.117

COMMENT #17: Five comments were received stating ARM 37.95.117(3) and (4) would require some day care facilities which currently house two group day care programs within one structure to comply with more stringent fire and sanitation requirements which currently only apply to day care centers. The comments noted that imposing these stricter center-type requirements may cause some facilities with current double group licenses to close. Several comments noted that the "double group home" licenses were "grandfathered" in during the early 1990s, and these facilities would likely have to close if they cannot continue as "double group" homes, without upgrading to meet the more stringent day care center licensure standards.

RESPONSE: The Department partially agrees with the comment, and will therefore amend the rule as shown above to allow a 3 year window for these facilities to come into compliance with all administrative rules for appropriate licensure for the number of children served. The Department notes that the new rule language in ARM 37.95.117(3) and (4) is the best course of action for fire safety and sanitation to protect all children. The status of "double group home" on a license will not protect the greater numbers of children in the event of a catastrophic fire which could have been prevented by compliance with fire code regulations.

The Department will amend the rule as shown to allow three years to bring previously "grandfathered" facilities and programs into compliance. If the center requirements have not been met, and a center license issued for any day care facility in one structure serving more than 12 children by September 30, 2003, the Department will act to close the facility. The facility could also, of course, choose to hold only one group registration, and restrict its numbers of children to 12 or under.

Further, no new licenses will be issued, under the language of ARM 37.95.117(3) and (4) for multiple programs in one structure

unless an appropriate center license is issued and all center fire, sanitation and other requirements are met.

COMMENT #18: One comment was received stating ARM 37.95.117(3) would require fire, safety and sanitation inspections of facilities in the same building where there may be more than 12 individuals, and would seem to require such inspections if more than one program exists in an apartment complex. The comment noted that more than 12 individuals would be regularly in an apartment building, and would therefore affect university housing complexes, in which the children served also live in the family housing complex.

RESPONSE: The Department agrees with the comment and will amend the rule at ARM 37.95.117(4)(c) as shown above. The rule will now require facilities in apartment complexes to meet subsections (1) and (2) of the rule on separate staff and separate space, plus no contact with other persons, but will not have to meet (3) and (4), where the fire, safety and sanitation requirements are set forth.

ARM 37.95.613

COMMENT #19: One comment was received stating ARM 37.95.613(2) on the categories for play equipment for day care centers should use category language which reflects the Montana Early Care and Education Knowledge Base.

RESPONSE: The Department notes these play equipment categories are existing language in the rule, and were not proposed for change under this rule notice. The Department will, however, consider including this change in a future rule notice.

ARM 37.95.620

COMMENT #20: One comment was received stating that ARM 37.95.620(1) on director qualifications should be clearer, and should link this rule with current programs funded as quality initiatives such as Career Development. The comment further provided suggested language to accomplish this change.

RESPONSE: The Department feels a change to the suggested language would cause a loss of much flexibility which currently allows a director several methods of qualifying.

COMMENT #21: One comment was received stating ARM 37.95.620(2)(b) requiring CPR and first aid courses should allow those courses to be counted in the required 8 annual Continuing Education (CE) hours.

RESPONSE: The Department does not agree, and notes that CPR is a minimal requirement for day care providers apart from the required 8 hours of CE.

COMMENT #22: Two comments were received stating ARM 37.95.620(3)(d) and ARM 37.95.701(8) requiring 8 hours of CE annually should include a tracking method by which the Department may keep track of the CE hours. The comments suggested a method such as requiring proof of the training (certificates, etc.) be submitted upon renewal.

RESPONSE: The Department agrees with the comment, and will require submission of certificates of completion for each staff person upon annual renewal of the license/registration. This information will be put in Department policy and disseminated to the providers and staff.

COMMENT #23: Two comments were received stating ARM 37.95.620(3)(d)(i) through (xi) regarding CE and the early care and education knowledge base is not specific enough in stating which knowledge base categories will require which number of hours.

RESPONSE: The Department has listed the 11 categories of the early care and education knowledge base as it did because the Department did not want to designate any requirement for training hours in any specific content areas. Instead, the list will allow providers the flexibility to design their own training plans and attend CE accordingly, based upon their own facility's needs.

COMMENT #24: Two comments were received in support of ARM 37.95.620(3) which requires 8 hours of CE and additional hours of CPR and first aid training, as well as the language allowing providers to select their own training based upon their individual needs.

RESPONSE: The Department acknowledges receipt of the comments in support.

COMMENT #25: One comment was received stating ARM 37.95.620(3)(d) which lists the early care and education knowledge base should include "cultural and developmental diversity" to the list of knowledge base content areas. The comment noted that this appears to be an oversight, as this is one of the categories of the knowledge base.

RESPONSE: The Department agrees with the comment and will amend the rule as shown to include "cultural and developmental diversity" to the list.

COMMENT #26: One comment was received stating ARM 37.95.620(3) should allow facility directors to train their own staff on an ongoing and regular basis within their own facility. The comment noted that training from an outside source should not be mandatory.

RESPONSE: The Department does not agree with the comment and

notes that the current rule, which requires outside the facility training, exposes caregivers to a greater level of educational opportunity and to current educational trends. The Department notes this outside training requirement may additionally serve to decrease isolation which is common among caregivers.

COMMENT #27: One comment was received stating ARM 37.95.620(7) on child to staff ratios should be changed to include toddler/staff ratios. The comment suggested that a child older than 18 months has different developmental needs than an infant, and is in need of different stimulation. The comment suggested a child to staff ratio for toddlers of 8:1.

RESPONSE: The Department notes that the child to staff ratios are existing rule language, although they have been renumbered as a subsection within this rule. Since the ratio language was not proposed for change, it cannot be changed at this time. However, the Department will consider this issue for a future rule change.

ARM 37.95.701

COMMENT #28: Two comments were received stating ARM 37.95.701(2) requiring completed criminal and background checks on all providers and staff is not realistic, as facilities cannot be expected to wait for the CPS and criminal background checks to be completed before a new helper may provide care.

RESPONSE: The Department notes that the rule language in ARM 37.95.701(2) states the background checks must be completed "before providing direct care to children..." A new employee may therefore start employment with proper and adequate supervision until the background checks are completed. The Department will continue to require the provider/director to obtain the background checks for the safety of the children attending the facility.

COMMENT #29: Two comments were received stating ARM 37.95.701(3) which states the provider shall be responsible for the children through "active involvement" should better define the phrase "active involvement".

RESPONSE: The Department does not agree with the comments and will continue to use the phrase "active involvement", as it is currently used in the rule, without further definition, as this allows flexibility in defining the provider's role.

COMMENT #30: One comment was received stating ARM 37.95.701(7) requiring orientation for day care providers should allow the orientation hours to count as continuing education hours for provider's first year of licensure or registration.

RESPONSE: The Department agrees with the comment and will amend the rule as shown to state that for the first year of

registration, the mandatory orientation will count as meeting the 8 hour CE requirement.

COMMENT #31: One comment was received stating ARM 37.95.701(7) listing the required topics for orientation is not consistent with the Child Care Resource and Referral agency topics which the Department contract mandates those agencies to offer at new provider orientation. The comment stated the requirements should be examined together and made consistent.

RESPONSE: The Department agrees with the comment and will amend the rule as shown above to list the correct orientation topics, consistent with the Child Care Resource and Referral contract.

COMMENT #32: One comment was received stating ARM 37.95.701(7) contains a new 90 day requirement for new provider orientation, which is in conflict with the Child Care Resource and Referral contracts, which state orientation must be done every 60 days.

RESPONSE: The Department agrees with the comment and will amend the rule as shown above to state the orientation period is 60 days, to be consistent with the Child Care Resource and Referral contracts.

COMMENT #33: One comment was received stating ARM 37.95.701(8) should be clarified as to whether it will be mandatory for providers to be involved with the Practitioner Registry.

RESPONSE: The Department notes that ARM 37.95.701(8) does not make it mandatory for providers to be involved with the Practitioner Registry, and no clarification of rule language is necessary. However, the Department is allowing providers the opportunity to voluntarily participate by use of the language in subsection (8).

ARM 37.95.706

COMMENT #34: Two comments were received stating ARM 37.95.706(3) should split up the requirements for fire extinguishers and for smoke detectors. The comments noted that smoke detector requirements should be listed under a separate heading than fire extinguishers to make them easier to find and read.

RESPONSE: The Department agrees with the comments and will amend the rule as shown above to put smoke detector requirements under a separate subsection heading.

COMMENT #35: One comment was received in support of ARM 37.95.706(6) which requires a minimum of 8 fire drills annually.

RESPONSE: The Department acknowledges receipt of the comment in support.

COMMENT #36: One comment was received stating ARM 37.95.706(6) which addresses records for the 8 annual fire drills should state that the records "must be on file for review".

RESPONSE: The Department does not agree with the comment and notes that the current language stating the records "must be available for review" is basically the same as the suggested language. The current language, however, merely requires the records to be "available", whether they are kept on site or not.

COMMENT #37: One comment was received stating ARM 37.95.701(6) on mandatory fire drills and records of those drills should be substantiated by a file at the facility for random sampling, or by a check off format at license/registration renewal time.

RESPONSE: The Department will develop a policy for its staff to further clarify how the mandatory fire drills will be substantiated. The Department will consider both methods suggested by the comment.

COMMENT #38: One comment was received stating ARM 37.95.720(3) should allow portable high chairs that hook onto tables.

RESPONSE: The Department is aware of studies by the American Academy of Pediatrics stating that portable high chairs which hook or fasten onto tables contain coil springs, which could fail and cause the child to fall to the floor. The Department therefore views use of portable high chairs that hook onto tables as unsafe for children in day care.

ARM 37.95.1003

COMMENT #39: One comment was received stating ARM 37.95.1003(6) which requires bottles and nipples to be sanitized by boiling for 5 minutes should be eliminated. The comment further suggested the rule could include language that a home dishwasher could be used for sanitizing bottles and nipples.

RESPONSE: The Department does not agree with the comment on eliminating sanitization of bottles and nipples by boiling. The Department notes the boiling language is existing language in current rules, and is not proposed for change by this rule notice. The Department further notes that this is a simple sanitization issue. The National Health and Safety Standards recommend this method of sanitization for bottles and nipples. Although home dishwashers are an acceptable alternative, they are not usually used for sanitization of nipples, and therefore it is not necessary to add this language to the rule.

COMMENT #40: Two comments were received stating ARM 37.95.1021(3) which requires a smock to be worn over clothing is outdated and should be eliminated.

RESPONSE: The Department notes that the language in ARM

37.95.1021(3) is existing language in the current rule, and was not proposed for change on this rule notice. The Department further notes that the rule language currently allows for any type of clean clothing to be available to prevent infection should the first set of clothing become soiled. The smock is not an absolute requirement.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 28, 2000.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.108.229)
pertaining to continuity of)
care and transitional care)
provided by managed care)
plans)

TO: All Interested Persons

1. On July 13, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 1742 of the 2000 Montana Administrative Register, issue number 13.

2. The Department has amended rule 37.108.229 as proposed.

3. 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 August 28, 2000.

BEFORE THE MONTANA STATE ELECTRICAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition)
for declaratory ruling on the) NOTICE OF PETITION FOR
clarification of low voltage) DECLARATORY RULING
electrical communication or signal)
equipment, whether parking lot or)
street lighting are covered by)
electrical code and which)
electrical code is applicable)

TO: All Concerned Persons:

1. On October 11, 2000 at 9:00 a.m. in conference room B-07 of the Professional and Occupational Licensing Division, Federal Building, 301 South Park Avenue, Helena, Montana, the Montana State Electrical Board will consider a petition for declaratory ruling on the above cited matter.

2. This petition for declaratory ruling is filed on behalf of the International Brotherhood of Electrical Workers (IBEW), Local 233.

3. Petitioner alleges that there is a lack of clarification as to what is or is not included in 37-68-103, MCA, EXEMPTIONS. This statute has not been amended since 1987 and the industry has changed since then. Fiber-optic work is now covered by the National Electric Code; low voltage switching and control work can now do much more than in 1987 and computer drops and associated raceways which are commonplace today were virtually unheard of in 1987.

4. Petitioner requests that the Montana State Electrical Board find that all of this work falls within the purview of the National Electric Code and that everything within the purview of the National Electric Code requires licensure by this Board; that raceways, parking lot and street lighting are covered by the National Electric Code and therefore should be covered by licensure requirements of this Board.

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

6. The Montana State Electrical Board identified the following as interested persons:

4G Electric
P.O. Box 3538
Missoula, MT 59806

Colstrip Electric
P.O. Box 1934
Colstrip, MT 59323

Integrity Electric
701 Red Letter
Helena, MT 59601

Ace Electric
P.O. Box 505
Laurel, MT 59044

Curley-Naylor Elec.
1123 3rd Ave. N.
Billings, MT 59101

J&M Electric
3316 W. Central
Missoula, MT 59801

Action Electric
P.O. Box 10337
Helena, MT 59604

Eagle Electric
P.O. Box 5324
Helena, MT 59625

Johnson Electric
1926 17th Ave. S.
Great Falls, MT
59405

Addson Electric
117 West Galena
Butte, MT 59701

Eickelberg & Co.
P.O. Box 4498
Bozeman, MT 59772

Kalispell Electric
P.O. Box 8823
Kalispell, MT 59904

Advantage Electric
P.O. Box 3636
Butte, MT 59702

Electrical Systems
P.O. Box 10143
Kalispell, MT 59904

Kane Bldg. Services
P.O. Box 1433
Bigfork, MT 59911

ARC Electric
P.O. Box 4094
Butte, MT 59702

Elkhorn Electric
P.O. Box 336
Choteau, MT 59422

Lee Electric
2100 Argyle Street
Butte, MT 59701

AUSUM Enterprises
701 N. 4th St.
Hamilton, MT 59840

Enterprise Electric
P.O. Box 2172
Great Falls, MT 59403

McCarthy Electric
P.O. Box 194
Butte, MT 59703

Avalanche Electric
148 Buffalo Stage
Kalispell, MT 59901

Fister Electric
629 Plymouth St.
Missoula, MT 59801

Mechanical Tech.
P.O. Box 1376
Billings, MT 59103

B&G Electric
1017-B W. Balsam
Libby, MT 59923

Rob Giles Electric
P.O. Box 8526
Kalispell, MT 59904

Midland Electric
P.O. Box 80030
Billings, MT 59108

Big Sky Electrical
400 Danielson Rd.
Kalispell, MT 59901

Glascow Electric
P.O. Box 192
Belgrade, MT 59714

Nelson Electric
P.O. Box 1260
Bigfork, MT 59911

Birdtail Electric
P.O. Box 671
Cascade, MT 59421

Goggans & Pennie
1106 Central Ave.
Great Falls, MT 59401

N.C.I.
P.O. Box 3666
Butte, MT 59702

Cascade Electric
P.O. Box 2909
Great Falls, MT
59403

Helena Electric
4285 N. Montana
Helena, MT 59601

Palmer Electric
2407 Harve Ave.
Missoula, MT 59801

Circuit Electric
P.O. Box 80142
Three Forks, MT
59752

Henninger Electric
2011 Bridger Drive
Bozeman, MT 59715

Polar Electric
P.O. Box 5446
Helena, MT 59604

Preferred Electric
P.O. Box 1544
Libby, MT 59923

Foothills Electric
832 S. Shore Route
Polson, MT 59860

West Electric
590 N. Montana St.
Dillon, MT 59725

Pro-Tech Mechanical
P.O. Box 23334
Billings, MT 59104

Talco Electrical
2430 Dixon Ave.
Missoula, MT 59801

Yellowstone Elec.
P.O. Box 2018
Billings, MT 59103

Quantum Electric P.O. Box 5442 Kalispell, MT 59903	Sure Fine Electric RR1, Box 71 Columbus, MT 59019	Scott Construction P.O. Box 777 E. Helena, MT 59635
Ray Peterson Elec. 511 Maple Street Anaconda, MT 59711	Tasker Electric P.O. Box 726 Sidney, MT 59720	R&R Electric 631 Utah Butte, MT 59701
TNT Electrical P.O. Box 40 Three Forks, MT 59752	Reddi Electric P.O. Box 20272 Billings, MT 59104	Trademark Electric P.O. Box 3786 Butte, MT 59701
Rivera Electric 188 Totem View Victor, MT 59875	Treasure State Elec. P.O. Box 21379 Billings, MT 59104	Tri-County Electric P.O. Box 5928 Helena, MT 59604
Service Electric P.O. Box 1196 Bozeman, MT 59715	Rocky Mountain Elec. 3816 Pine Cove Rd. Billings, MT 59106	Valley Electric 2820 Latimor Missoula, MT 59802
Silverbeau Electric P.O. Box 792 E. Helena, MT 59635	Vos Electric P.O. Box 3564 Bozeman, MT 59714	

7. Other interested 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 the Montana State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, e-mail compolele@state.mt.us to be received no later than 5:00 p.m., October 5, 2000.

8. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on October 2, 2000, to advise us of the nature of the accommodation that you need. Please contact Pat Osterhout, Montana State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305, e-mail compolele@state.mt.us.

MONTANA STATE ELECTRICAL BOARD
TODD STODDARD, 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, August 28, 2000.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition)
for declaratory ruling on the) NOTICE OF PETITION FOR
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 October 5, 2000 at 9:00 a.m., in the fourth floor conference room of the Professional and Occupational Licensing Division, Federal Building, 301 South Park Avenue, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of all levels of licensed nurses to perform un-waived Clinical Laboratory Improvement Act (CLIA) tests.

2. This petition for declaratory ruling is submitted at the request of Becky Salminen, Board Administrator for the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, Helena, Montana.

3. Petitioner alleges that conducting un-waived CLIA tests is not within the scope of practice under the Nurse Practice Act.

4. The statute upon which the declaratory ruling is requested is 37-8-102(5)(a) and (b), MCA. The scope of practice of a nurse is set forth therein and provides as follows:

(5)(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral,

psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, case finding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

5. The petitioner requests that the Board of Nursing declare that the performance of clinical laboratory testing by nurses of all levels is not within the scope of their practice and that if Board of Nursing licensees wish to conduct un-waived CLIA tests, a license is needed from the Board of Clinical Laboratory Science Practitioners.

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

7. The Board of Nursing identified the following as interested persons:

Susan Pullman
1154 W. Steel
Butte, MT 59701

Karen McNutt
110 12th Ave. SW
Sidney, MT 59270

Dr. J. David Walker
P.O. Box 8432
Kalispell, MT 59904

Doris Knox
HCR 83, Box 14
Winifred, MT 59489

Sonja Bennett
2214 Remington Square
Billings, MT 59102

Anne Weber
3883 Flaxstem
East Helena, MT 59635

Helena Lee
P.O. Box 200513
Helena, MT 59620-0513

Judy Peterson
MHA
P.O. Box 5119
Helena, MT 59604-5119

Rose Hughes
MHCA
36 S. Last Chance Gulch
Suite A
Helena, MT 59601

Marjorie Vander Aarde
DPHHS Quality Assurance Cert.
P.O. Box 202953
Helena, MT 59620-2953

Claudia Towne
DPHHS
P.O. Box 202953
Helena, MT 59620-2953

Becky Salminen
Board of Clinical Laboratory
Science Practitioners
P.O. Box 200513
Helena, MT 59620-0513

8. Other interested 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 the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, e-mail compolnur@state.mt.us to be received no later than 5:00 p.m., October 5, 2000.

9. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on September 28, 2000, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2343, e-mail compolnur@state.mt.us.

BOARD OF NURSING
RITA HARDING, RN, MN,
CHAIRPERSON

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, August 28, 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 June 30, 2000. This table includes those rules adopted during the period July 1, 2000 through September 30, 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 June 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.

ADMINISTRATION, Department of, Title 2

2.5.502 State Procurement, p. 2092
2.21.227 Annual Vacation Leave Policy, p. 903, 1628
2.21.306 and other rule - Disaster Leave for Trained American Red Cross Volunteers, p. 2315, 446
2.21.1423 and other rules - Persons with Disabilities Preference Policy, p. 2312, 448
2.21.3602 and other rules - Veterans' Employment Preference Policy, p. 2304, 450

(Teachers' Retirement Board)

I and other rules - Teachers' Retirement System - Extra Duty Compensation - Membership of Teacher's Aides and Part-time Employees - Correction of Errors on Contributions and Overpayment, p. 2792, 822

(State Compensation Insurance Fund)

I and other rules - Construction Credit Program - Premium Rates - Premium Modifiers and Dividends, p. 1, 1033

AGRICULTURE, Department of, Title 4

I & II Japanese Beetle (Popillia japonica) Quarantine, p. 905, 1306

- I & II Commodity Research and Market Development Program,
p. 113, 726
4.5.202 and other rule - Category 1 and Category 2 Noxious
Weeds, p. 2796, 451
4.10.1808 Termination of the Pesticide Disposal Program,
p. 986, 1498

(Alfalfa Seed Committee)

- 4.8.203 Grant Funding, p. 1129, 1629

STATE AUDITOR, Title 6

- I-IX Viatical Settlement Agreements, p. 2095
6.6.1110 Determination of Reasonableness of Benefits in
Relation to Premium Charged in Credit Disability and
Credit Life Insurance, p. 1717, 453
6.10.131 Foreign Security Exemption, p. 117, 824

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for
Workers Compensation and Employers Liability
Insurance 1996 ed., p. 1381

COMMERCE, Department of, Title 8

(Board of Alternative Health Care)

- 8.4.503 Direct-Entry Midwife Apprenticeship Requirements,
p. 1933, 456

(Board of Architects)

- 8.6.405 and other rules - Applicants Registered in Another
State - Qualifications for Montana Branch Office -
Examinations - Individual Seals - Unprofessional
Conduct - Fees - Business Entity Definitions -
Emergency Use of Practice - Application for
Architects - Licensure by Examination, p. 1268, 2298

(Chemical Dependency Counselors Certification Program)

- 8.11.106 and other rules - Education Requirements -
Verification of Supervised Counseling Experience -
Application Procedures - Written Examinations -
counselors Certified Continuing Education, p. 2344

(Board of Chiropractors)

- 8.12.603 and other rules - Examinations - Temporary Permits -
Continuing Education Requirements - Unprofessional
Conduct - Fees - Interns and Preceptors -
Recertification - Denial - Revocation - Patient
Records, p. 663, 1307, 1499

(Board of Clinical Laboratory Science Practitioners)

- I Temporary Practice Permits, p. 2130
8.13.301 and other rules - Applications for License - Fees -
Minimum Standards for Licensure - Continuing
Education Requirements, p. 2675, 727, 1034

(Board of Dentistry)

8.16.402A and other rules - Dentist Applications - Fees - Conversion of Inactive Status Licenses - Complaint Procedures - Dental Hygienist Licensure by Credentials - Denturist Examinations - Interns - Renewal - License Reinstatement - Dental Hygienist Local Anesthetic Agent Licensure, p. 518, 1312

(Board of Hearing Aid Dispensers)

8.20.407 and other rules - Records - Unprofessional Conduct - Minimum Testing and Recording Procedures - Definitions - Transactional Documents, p. 777

(Board of Horse Racing)

8.22.503 and other rules - Horse Racing, p. 529, 953

(Board of Landscape Architects)

8.24.409 Fee Schedule, p. 1132, 2004

(Board of Medical Examiners)

I-XI Purpose and Authority - Definitions - License Requirement - Application for a Telemedicine Certificate - Fees - Failure to Submit Fees - Issuance of Telemedicine Certificate - Certificate Renewal Application - Effect of Denial of Application for Telemedicine Certificate - Effect of Telemedicine Certificate - Sanctions, p. 1826

8.28.1501 and other rules - Definitions - Post-Graduate Training Program, p. 2143, 627, 729

8.28.1508 Temporary Approval, p. 1385

(Board of Funeral Service)

8.30.402 and other rules - Applications - Fees - Inactive Status and Reactivation - Contracts - Federal Trade Commission Regulations - Continuing Education - Disclosure Statements on Embalming - Unprofessional Conduct - Crematory Facility Regulation - Processing of Cremated Remains - Perpetual Care and Maintenance Fund Reports - Restrictions on Officers - Transfer of Cemetery Ownership - Perpetual Care and Maintenance Funds - Prepaid Funeral Arrangements - Branch Establishment Facilities - Definitions - Prearranged, Prefinanced or Prepaid Funerals - Requirements for Sale of At-need, Pre-need and Prepaid Funeral Arrangements - Pre-need Funeral Agreements - Trust Funds, p. 668, 1630

(Board of Nursing)

8.32.301 and other rules - Nurse Practitioner Practice - Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapies, p. 537, 954

8.32.304 and other rules - Advanced Practice Nursing - Program Director - Nurses' Assistance Program, p. 2132

8.32.308 and other rules - Temporary Permits - General Requirements for Licensure - Re-examination -

- 8.32.405 Licensure for Foreign Nurses - Temporary Practice Permits - Renewals - Conduct of Nurses, p. 988 and other rules - Licensure by Endorsement - Temporary Practice Permits - Renewals - Standards Related to Registered Nurse's Responsibilities - Prescriptive Authority Committee - Initial Application Requirements for Prescriptive Authority - Limitations on Prescribing Controlled Substances - Quality Assurance of Advanced Practice Nursing - Renewal of Prescriptive Authority, p. 1539
- 8.32.1702 and other rules - Nursing Tasks that may be Delegated - General Nursing Tasks that may not be Delegated - Nursing Tasks Related to Gastrostomy Feeding that may be Delegated, p. 2150, 458

(Board of Nursing Home Administrators)

- 8.34.414 and other rules - Examinations - Continuing Education - Fee Schedule, p. 227, 1035

(Board of Occupational Therapists)

- 8.35.407 Fees, p. 685, 1036

(Board of Outfitters)

- 8.39.501 and other rules - Outfitter Licenses - Qualifications - Examinations - Outfitter Acting as Guide - Renewal - Amendment to Operations Plan - Inactive - Guide or Professional Guide License - Fees for Outfitter Operations Plan - N.C.H.U. - Guide or Professional Guide - Outfitter Records - Safety Provisions - Standards for Outfitters - Guides and Professional Guides - Unprofessional Conduct and Misconduct - Moratorium - Review of New Operations Plan - Proposed Expansion of Net Client Hunting Use Under Existing and New Operations Plans - Sale and Purchase of an Outfitting Operation, p. 2318, 730

(Board of Pharmacy)

- 8.40.702 Definitions, p. 2330, 460
- 8.40.906 and other rules - Forms and Reports - Pharmacy Technicians - Patient Counseling, p. 540, 909, 2005

(Board of Physical Therapy Examiners)

- 8.42.403 Fees, p. 543, 1038

(Board of Plumbers)

- 8.44.402 and other rules - Plumbing Definitions - Applications - Examinations - Master Plumbers - Registration of Business Names - Renewals - Fee Schedule - Qualifications - Journeyman - Temporary Practice Permits - Out-of-State Applicants - Complaint Procedure - Medical Gas Endorsement Required - Application for Endorsement - Annual Renewal of Endorsement - Endorsement Verification, p. 230, 825

(Board of Professional Engineers and Land Surveyors)

8.48.1105 Fee Schedule, p. 1936, 743

(Board of Private Security Patrol Officers and Investigators)

8.50.437 Fee Schedule, p. 2351

(Board of Public Accountants)

8.54.415 and other rules - Licensure of Out-of-State Applicants - Reactivation of Inactive and Revoked Status - Commissions and Contingent Fees - Definitions, p. 1718

8.54.416 and other rules - Licensure of Foreign-Trained Applicants - Credit for Formal Individual Study Programs - Basic Requirement, p. 2332, 461

(Board of Radiologic Technologists)

8.56.409 and other rule - Fees, p. 239, 783, 2008

(Board of Real Estate Appraisers)

I Appraisal Reviews, p. 785, 2301

8.57.406 and other rules - Qualifying Education Requirements - Adoption of USPAP by Reference - Regulatory Reviews, p. 2679, 956

(Board of Realty Regulation)

8.58.406A Applications for Licensure by Salespersons and Brokers, p. 546

8.58.411 Fee Schedule - Renewal - Property Management Fees, p. 2354

8.58.415A and other rules - Continuing Education - Renewal - Mandatory Continuing Education for New Salespersons, p. 1134, 2013

(Board of Respiratory Care Practitioners)

8.59.402 and other rules - Definitions - Procedures for Renewal - Inactive Status Licenses - Continuing Education Requirements, p. 548, 1039

(Board of Speech-Language Pathologists and Audiologists)

8.62.413 Fees, p. 687, 1314

(Board of Veterinary Medicine)

8.64.501 and other rules - Applications - Temporary Permits - Examinations - Licensure of Out-of-State Applicants, p. 1544, 2303

(Weights and Measures Bureau)

8.77.105 and other rule - Weighing Device License Transfer - License Fee Schedule, p. 1275, 2015

(Building Codes Division)

8.70.101 and other rules - Incorporation by Reference of Uniform Building code - Funding of Code Enforcement Program - Certification of Code Enforcement Programs - Incorporation by Reference of Uniform Plumbing Code, p. 2358

(Consumer Affairs Division)

I-V Telemarketing Registration and Fraud Prevention Act,
p. 120, 1501

(Division of Banking and Financial Institutions)

I Investments by Banks to Promote the Public Welfare,
p. 1549, 2306

(Board of County Printing)

8.91.301 and other rules - County Printing, p. 2339, 630

(Local Government Assistance Division)

I Administration of the 2000 Federal Community
Development Block Grant Program, p. 126, 1746

8.94.3001 and other rules - Monumentation of Surveys - Form,
Accuracy, and Descriptive Content of Records Survey,
p. 2156, 462, 1041

8.94.3806 Submission and Review of Applications under the
2000/2001 Treasure State Endowment Program (TSEP),
p. 552, 1042

(Board of Investments)

8.97.910 INTERCAP Program, p. 2142

8.97.1101 and other rules - Board of Investments, p. 2682,
470, 1043

(Economic Development Division)

I-V Advanced Telecommunications Infrastructure Tax
Credit, p. 1723, 2403

I-XIII Montana Board of Research and Commercialization
Technology, p. 1138

8.99.401 and other rules - Microbusiness Finance Program,
p. 555, 1045

(Travel Promotion and Development Division)

8.119.101 Tourism Advisory Council, p. 993, 2307

(Health Facility Authority)

8.120.101 and other rules - Health Facility Authority, p. 995,
1509

(Montana Lottery)

8.127.407 and other rule - Retailer commission - Sales Staff
Incentive Plan, p. 2363

EDUCATION, Title 10

(Office of Public Instruction)

I-XI and other rules - Special Education, p. 129, 1048

(Board of Public Education)

I and other rules - Teacher Certification - Reporting
of Negative Certification Actions, p. 569, 1510

I-X and other rules - Teacher Certification, p. 1388,
2406

- I-CXXXVI Content and Performance Standards for Social Studies, Arts, Library Media, and Workplace Competencies, p. 1148
10.55.2001 and other rules - Standards of School Accreditation, p. 2145
10.56.101 Student Assessment, p. 242, 957
10.57.220 and other rule - Teacher Certification - Recency of Credit - Endorsement Information, p. 911, 1511

(State Library Commission)

- I & II Federation Advisory Boards and Base Grants, p. 247, 1471, 2016

(Montana Heritage Preservation and Development Commission)

- I-VII Acquisition of Real and Personal Property, p. 13, 966

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- 12.9.602 and other rule - Emergency Amendment - Pheasant Enhancement Program, p. 1071
12.9.602 and other rule - Pheasant Enhancement Program, p. 1000, 1512
12.9.602 and other rule - Pheasant Enhancement Program, p. 2719, 831

(Fish, Wildlife, and Parks Commission)

- I-III Importation of Bait Leeches, p. 18, 827
I-V Western Fishing District - Limiting Watercraft to No Wake Speed for Lakes 35 Acres or Less - Instituting a No Wake Zone Contiguous to the Shoreline on Lakes Greater than 35 Acres, p. 1728
12.3.117 and other rules - Special Permits - Special License Drawings - Establishing a License Preference System, p. 1552
12.6.901 Regulating Personal Watercraft on the Tongue River Reservoir, p. 175, 1216, 1315
12.6.901 Limiting the Motor-Propelled Water Craft to No-Wake Speed on the Fort Peck Dredge Cut Trout Pond, p. 2722, 744

ENVIRONMENTAL QUALITY, Department of, Title 17

- I & II and other rules - Underground Storage Tanks - Underground Storage Tank Licensing, p. 572, 969, 2018
17.36.101 and other rules - Subdivisions - Standards for On-site Subsurface Sewage Systems in New Subdivisions, p. 1832
17.36.101 and other rules - Subdivisions - Procedures for Local Health Officer Review of Subdivision Applications, p. 610, 967

(Board of Environmental Review)

- I and other rules - Air Quality - Use of Credible

- Evidence in Assessing Air Quality Compliance, p. 250, 1289
- I-XIV and other rules - Air Quality - Air Quality Compliance Assurance Monitoring - Requirements for Air Quality Operating Permit Content, p. 2725, 839
- 17.8.101 Air Quality - Exclusions from the Definition of Volatile Organic Compounds, p. 257
- 17.8.101 and other rule - Air Quality - Implementation of Revised Federal Air Quality Standards for Particulate Matter, p. 2750, 836
- 17.8.102 and other rule - Air Quality - Air Quality Incorporation by Reference, p. 1298
- 17.8.302 Air Quality - Cement Manufacturing Industry and Primary Lead Smelting Maximum Achievable Control Technology, p. 261, 1316
- 17.8.504 Air Quality - Air Quality Fees, p. 1927
- 17.8.1201 and other rule - Air Quality - Title V Air Quality Operating Permits, p. 2747, 838
- 17.20.804 and other rules - Major Facility Siting - Major Facility Siting Act, p. 2367
- 17.24.101 and other rules - Metal Mines - Metal Mines Reclamation Act, p. 2178, 473
- 17.30.630 Water Quality - Temporary Water Quality Standards for Portions of Mike Horse Creek, Beartrap Creek, and the Upper Blackfoot River, p. 263, 1317
- 17.30.705 Water Quality - Nondegradation Requirements for Outstanding Resource Waters, p. 2753, 843
- 17.38.101 and other rules - Public Water Supply - Water Quality - Siting Criteria for Public Sewage Systems, p. 1859
- 17.38.202 and other rules - Public Water and Sewage System Requirements - Public Water Supplies, p. 1879
- 17.38.606 Public Water Supply - Administrative Penalties, p. 1281

(Department of Environmental Quality and Board of Environmental Review)

- 17.4.101 Incorporation by Reference of the Attorney General's Model Rules, p. 2173, 472

(Petroleum Tank Release Compensation Board)

- 17.58.311 Definitions, p. 1278, 1752

TRANSPORTATION, Department of, Title 18

- 18.2.101 Model Procedural Rules, p. 787, 1335
- 18.8.101 and other rules - Motor Carrier Services Regulations for Overdimensional Vehicles and Loads, p. 269, 1075

CORRECTIONS, Department of, Title 20

- 20.9.101 and other rules - Youth Placement Committees, p. 617, 1078

JUSTICE, Department of, Title 23

- I-V and other rules - Use of a Full Legal Name on a Driver's License - Change of Name on a Driver Record - Collection of an Applicant's Social Security Number - Proof of Residence, p. 1559
23.16.101 and other rules - Video Gambling Machines, p. 1203, 1638

LABOR AND INDUSTRY, Department of, Title 24

- I Payment of Silicosis Benefits, p. 179, 862
I-IX Workers' Compensation Administrative Assessment, p. 22, 844
24.11.101 and other rules - Unemployment Insurance Matters, p. 1934
24.16.9007 Montana's Prevailing Wage Rates - Building Construction Services - Heavy and Highway Construction Services, p. 922, 1639
24.21.414 Wage Rates for Certain Apprenticeship Programs - Building Construction Occupations, p. 925, 1647
24.29.205 and other rules - Workers' Compensation Matters, p. 1733

(Workers' Compensation Judge)

- 24.5.301 and other rules - Procedural Rules, p. 914, 1513

(Board of Personnel Appeals)

- 24.26.215 and other rule - Remands from the Board - Merger of Labor Organizations, p. 1473, 2308

LIVESTOCK, Department of, Title 32

- 32.8.101 and other rules - Fluid Milk - Grade A Milk Products - Milk Freshness Dating, p. 2372
32.8.102 Fluid Milk and Grade A Milk Products - Milk Freshness Dating, p. 1477

(Board of Milk Control)

- 32.24.301 Emergency Amendment - Producer Floor Pricing of Class I Milk, p. 2310
32.24.301 and other rules - Pricing of Producer Milk - Utilization - Procedures to Purchase - Marketing of Surplus Milk, p. 282, 1336, 1652, 1753

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- Establishing a Negotiated Rulemaking Committee to Negotiate and Develop Proposed Rules Relating to Cabin and Homesite Lease Rates, p. 292
I-XII Control of Timber Slash and Debris, p. 928
36.12.102 and other rules - Water Rights Bureau, p. 33, 636

(Board of Oil and Gas Conservation)

- 36.22.302 and other rules - 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 - 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 - p. 2379

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I and other rules - Communicable Disease Control, p. 1972
- I and other rules - Inpatient Hospital Services Reimbursement Rates, p. 1301, 2034
- I and other rules - Nursing Facility Reimbursement, p. 1208, 1754
- I-III Guardianship Services, p. 410, 864
- I-XI and other rules - Transfer from Department of Social and Rehabilitation Services - Home and Community-Based Services Program, p. 296, 2023
- I-XV and other rules - Day Care, p. 1573, 2415
- I-XVIII and other rules - Transfer from Department of Social and Rehabilitation Services and Department of Family Services - Repeal of Rules from the Department of Family Services - Amendment of Rules of the Department of Health and Environmental Sciences and Public Health and Human Services - Fair Hearings and Contested Case Proceedings, p. 356, 1653
- I-XXX The Children's Health Insurance Program (CHIP), p. 416, 1221
- 11.5.201 and other rules - Protective Services for the Developmentally Disabled, p. 2834, 475
- 16.10.201 and other rules - Food Regulations, p. 2206
- 16.10.1301 and other rules - Swimming Pools, Spas and Swimming Areas, p. 2178
- 16.35.101 and other rules - End Stage Renal Disease (ESRD) Recipients, p. 1023, 1660
- 16.38.307 Laboratory Testing Fees, p. 1003, 1663
- 17.70.101 and other rules - Transfer from the Department of Environmental Quality - Radiation Control, p. 189
- 37.34.1801 and other rule - Accreditation Standards for Provider Programs of Community-based Developmental Disabilities Services, p. 1483
- 37.70.401 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 2188
- 37.80.201 and other rules - Child Care Subsidy Programs, p. 1798, 2454
- 37.85.212 and other rules - Resource Based Relative Value Scale (RBRVS) - Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) - Eyeglasses Services - Clinic Services - Dental and Denturist Services - Durable Medical Equipment,

- Orthotics, Prosthetics and Supplies (DMEOPS) -
Hearing Aid Services - Transportation Services -
Non-Hospital Laboratory and Radiology Services,
p. 1008, 1664
- 37.86.1101 Outpatient Drugs Definition, p. 1624, 2313
- 37.86.1105 Reimbursement to State Institutions for Outpatient
Drugs, p. 2388
- 37.86.2901 and other rule - Inpatient Hospital Services,
p. 1017, 1666
- 37.88.1401 and other rules - Reimbursement for Institutions for
Mental Diseases, p. 1491, 2036
- 37.108.229 Continuity of Care and Transitional Care Provided by
Managed Care Plans, p. 1742, 2432
- 46.9.301 and other rules - Grants-in-Aid to Counties -
Community Services Block Grants, p. 39, 745
- 46.12.101 and other rules - Transfer from the Department of
Social and Rehabilitation Services - Medicaid
Eligibility, p. 476
- 46.12.202 and other rules - Transfer from the Department of
Social and Rehabilitation Services - General
Medicaid Services, p. 479
- 46.12.502B and other rules - Transfer from the Department of
Social and Rehabilitation Services - Medicaid Mental
Health Services, p. 195, 865
- 46.12.503 and other rules - Transfer from the Department of
Social and Rehabilitation Services - Medicaid
Services - Primary Care, p. 482
- 46.12.510 and other rules - Transfer from the Department of
Social and Rehabilitation Services - Senior and Long
Term Care Services, p. 489
- 46.12.521 and other rules - Montana Medicaid Passport to
Health Program, p. 42, 866, 1338
- 46.12.1222 and other rules - Nursing Facilities, p. 2827, 492
- 46.12.3804 and other rules - Families Achieving Independence in
Montana (FAIM), p. 2799, 746
- 46.20.106 Mental Health Services Plan Eligibility, p. 2202
- 46.20.106 Emergency Amendment - Mental Health Services Plan
Eligibility, p. 2105

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-III Flexible Pricing for Regulated Telecommunications
Service, p. 2000
- I-XX Protective Orders - Protection of Confidential
Information, p. 939, 2037
- 38.2.314 Practice Before the Public Service Commission,
p. 2559, 749
- 38.3.130 Meaning and Effect of the Landfill Closure Provision
in Class D Motor Carrier Authorities, p. 690, 2047
- 38.3.402 and other rules - Application and Reporting Fees,
p. 934, 1668
- 38.5.1107 Accrual of Interest on Utility Customer Deposits,
p. 1998
- 38.5.1401 Definition of Customer under Termination of Gas and
Electric Service, p. 625, 1080
- 38.5.2202 and other rule - Pipeline Safety, p. 2608, 752

REVENUE, Department of, Title 42

- I and other rules - Endowment Tax Credit, p. 806, 2109
- I and other rules - Oil and Gas Taxes, p. 706, 1347
- I and other rules - Tax Benefits, p. 702, 1343
- I and other rules - Family Education Savings Program Account Rules, p. 693, 1344
- I and other rule - Intangible Personal Property, p. 2620, 872
- I-V Declaratory Rulings, p. 697, 1340
- I-VI Tobacco Rules, p. 1495, 2113
- 42.11.309 Commission Rate Applicability Date, p. 704, 1341
- 42.12.101 and other rules - Liquor Licenses, p. 789, 1762
- 42.23.501 and other rules - New and Expanded Industry Credit, p. 810, 1346
- 42.25.1101 and other rules - Natural Resource Taxes, p. 2390

SECRETARY OF STATE, Title 44

- I Defining Search Criteria for Uniform Commercial Code Certified Searches, p. 818, 2051
- 44.14.101 and other rule - Allow Records to be Retained on Digital Media - Records with a Retention of 10 Years or Longer, p. 815, 1518