

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-104-1 (Hard-Rock Mining Impact Board) Notice of Proposed Amendment and Repeal - Organizational Rule - Rules Governing Awarding of Grants. No Public Hearing Contemplated. 425-427

JUSTICE, Department of, Title 23

23-3-130 Notice of Public Hearing on Proposed Amendment - Driver Licensing and Identification Cards. 428-438

LABOR AND INDUSTRY, Department of, Title 24

8-16-58 (Board of Dentistry) Notice of Public Hearing on Proposed Amendment and Repeal - Licensure of Dentists and Dental Hygienists - Application Requirements for Dentists and Dental Hygienists. 439-449

8-48-24 (Board of Professional Engineers and Land Surveyors) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Board Organization - Board Meetings - Screening Panel - Applications - Reclassification of Engineers and Land Surveyors - Classification of Experience for Land Surveying Applicants. 450-464

LABOR AND INDUSTRY, Continued

24-207-017 Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Elimination of the Required Practical Examination for Cosmetologists. 465-482

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-223 (Board of Cosmetologists) Notice of Public Hearing on Proposed Adoption, Amendment and Repeal - Licensure of Day Care Facilities. 483-502

37-224 Notice of Public Hearing on Proposed Adoption and Amendment - Mental Health Services. 503-520

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-166 Notice of Public Hearing on Proposed Amendment - General Requirement to Obtain License to Supply Electricity. 521-523

RULE SECTION

COMMERCE, Department of, Title 8

NEW (Community Development Division) Application to the Treasure State Endowment Program (TSEP). 524-525

FISH, WILDLIFE AND PARKS, Department of, Title 12

AMD (Department of Fish, Wildlife and Parks and Fish, Wildlife and Parks Commission) Declaring Black-tailed and White-tailed Prairie Dogs to be Nongame Wildlife in Need of Management. 526-528

ENVIRONMENTAL QUALITY, Department of, Title 17

NEW (Air Quality) Air Quality Fee Credit for Use of Postconsumer Glass in Recycled Material. 529-530

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 531-532

How to Use ARM and MAR. 533

Accumulative Table. 534-545

Boards and Councils Appointees. 546-550

Vacancies on Boards and Councils. 551-567

BEFORE THE HARD-ROCK MINING IMPACT BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 8.104.101	)	AMENDMENT AND REPEAL
pertaining to the organizational	)	
rule and the repeal of ARM	)	
8.104.301, 8.104.302, 8.104.303,	)	
8.104.304 and 8.104.305	)	
pertaining to rules governing	)	NO PUBLIC HEARING
awarding of grants	)	CONTEMPLATED

TO: All Concerned Persons

1. On March 30, 2002, the Hard-Rock Mining Impact Board proposes to amend and repeal the above-stated rules.

2. The Hard-Rock Mining Impact Board 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 Hard-Rock Mining Impact Board no later than 5:00 p.m., March 13, 2002, to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Hard-Rock Mining Impact Board, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4482; or by email to [rweddle@state.mt.us](mailto:rweddle@state.mt.us).

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

8.104.101 ORGANIZATION OF BOARD (1) through (2) remain the same.

~~(3) Personnel roster:~~

~~Mike Manuel, Chairman, RR 1, Box 57, Fairfield, Montana 59436 — school district trustee.~~

~~James McCauley, Vice Chairman, P.O. Box 376, 621 N. Monroe, Boulder, Montana 59632 — public member.~~

~~Carol Kienenberger, P.O. Box 187, Dodson, Montana 59524 — county commissioner.~~

~~Roger W. Kornder, Box 512, Lincoln, Montana 59639 — representative of financial institution.~~

~~Frank Gardner, 600 Shields, Butte, Montana 59701 — representative of industry.~~

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

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASON: The roster in rule is not needed as the general public can obtain the names of board members by contacting the Department of Commerce.

4. The Board is proposing to repeal ARM 8.104.301, 8.104.302, 8.104.303, 8.104.304 and 8.104.305 relating to the awarding of grants found on pages 8-3715 and 8-3716 of the Administrative Rules of Montana. The authority section is 90-6-305, MCA, and the implementing section is 90-6-305, MCA. The reason for the proposed repeal is that the 1989 Legislature deleted the statutory provision that authorized the Board to make grants.

5. Concerned persons may present their data, views or arguments concerning the proposed amendment and repeal in writing to Richard M. Weddle, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501; facsimile (406) 444-4482; or by email to [rweddle@state.mt.us](mailto:rweddle@state.mt.us) and must be received no later than 5:00 p.m., March 28, 2002.

6. If persons who are directly affected by the proposed amendment and repeal wish to express their data, views or arguments, either 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 Richard M. Weddle, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501; facsimile (406) 444-4482; or by email to [rweddle@state.mt.us](mailto:rweddle@state.mt.us), no later than 5:00 p.m., March 28, 2002.

7. If the agency receives requests for a public hearing on the proposed amendment and repeal from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment and repeal, 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 more than 25 based on the number of individuals who are interested in hard-rock mining in Montana.

8. The Hard-Rock Mining Impact Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list may make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rules relating to the hard-rock mining industry. This request may be mailed or delivered to the Hard-Rock Mining Impact Board, Department of Commerce, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501, transmitted by telefax to (406) 444-4482, emailed to [cferguson@state.mt.us](mailto:cferguson@state.mt.us), or 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.

BETTY AYE, CHAIR  
HARD-ROCK MINING IMPACT BOARD  
DEPARTMENT OF COMMERCE

By: /s/ Mark Simonich  
MARK A. SIMONICH, DIRECTOR  
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State, February 19, 2002.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PUBLIC HEARING  
proposed amendment of ) ON PROPOSED AMENDMENT  
ARM 23.3.127, 23.3.130, )  
23.3.131, 23.3.147, and )  
23.3.149 pertaining to )  
driver licensing and )  
identification cards )

To: All Concerned Persons

1. On March 26, 2002 at 9:15 a.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 March 20, 2002, to advise us of the nature of the accommodation that you need. Please contact Department of Justice, Motor Vehicle Division, Attn: Phyllis Holm, P.O. Box 201430, Helena, Montana 59620-1430 or telephone 406-444-1772; TTY 406-444-1987; fax 406-444-1631.

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

23.3.127 FULL LEGAL NAME, NAME COMBINATION AND LENGTH

(1) remains the same.

(2) For driver licensing and identification card purposes, an applicant's ~~The name of an individual on a driver's license must be the~~ full legal name is deemed to be the individual's name as shown on the primary document presented by the applicant under ARM 23.3.131 unless:

(a) through (c) remain the same.

(3) The space provided for recording a ~~full legal~~ name on a ~~driver record or driver's license~~ or identification card may not exceed 31 characters, including up to three field delimiters.

(a) If the ~~full legal~~ name exceeds 31 characters on an original or renewal application, the name will be truncated by the department in a manner that will permit proper ~~record storage and printing on the license~~ or card.

(i) If the ~~full legal~~ name of an individual applicant must be shortened, each middle name will be truncated ~~beginning with the last character of the middle name and proceeding, as necessary,~~ through the second letter of the middle name. Each middle initial must be recorded.

(ii) If, after truncating the middle name(s), the full name still exceeds 31 characters, ~~truncation will continue starting with the last character of the first name will be truncated and proceeding, as necessary,~~ through the second letter of the first name. The first initial of the first name must be recorded.

(b) through (c) remain the same.

(d) Multiple middle names must be recorded with without a space separation and, if necessary, truncated according to (3)(a)(i) above.

(e) through (g) remain the same.

(4) A license renewal applicant will not be required to present a primary document to verify the applicant's full legal name unless the driver record maintained by the department for the applicant ~~contains more than one name needs to be updated because the applicant's name changed after the prior license was issued. If more than one name or an alias is present, the applicant will be required to present a primary document, other than the applicant's Montana driver's license or identification card, to verify the applicant's correct full legal name.~~

AUTH: 61-5-125, MCA  
IMP: 61-5-107, 61-5-111, MCA

#### 23.3.130 PROOF EVIDENCE OF MONTANA RESIDENCE ADDRESS

(1) Upon original application for a driver's license, an applicant must present proof evidence of the applicant's Montana residence address. A Montana residence or street address must be provided; if the applicant does not receive mail at the residence or street address, a Montana post office box or mailing address also must be provided.

(2) The department will accept the following documents as proof evidence of residency a Montana residence address, provided the document shows the applicant's name and Montana residence address as it appears on the driver's license application:

(a) through (c) remain the same.

~~(d) an unexpired US passport;~~

(e) through (g) remain the same, but are renumbered (d) through (f).

~~(h)(g) if the applicant is under 18 years of age, a written statement from the applicant's a parent, or guardian, or adult child who has an unexpired Montana driver's license or identification card that the applicant resides at the same address as the parent, or guardian, or adult child, and that address is shown on department records for the parent or guardian, along with a copy of a document permitted under this rule that evidences the Montana residence address of the applicant's parent, guardian, or adult child;~~

~~(i)(h) the original copy of a rental agreement or rent payment receipt signed by the landlord or rental agent that includes the applicant's name and residence address;~~

~~(j)(i) home mortgage or equity loan papers showing the~~

applicant's name and residence address; A rural address will be accepted when there is no other physical address;

(k) through (l) remain the same, but are renumbered (j) and (k).

AUTH: 61-5-125, MCA

IMP: 61-5-103, 61-5-107, 61-3-111, MCA

23.3.131 DOCUMENTING PROOF OF NAME, IDENTITY, AND DATE OF BIRTH FOR ORIGINAL DRIVER'S LICENSE, AND DUPLICATE DRIVER'S LICENSE APPLICATIONS

(1) Upon original application for a driver's license or application for a duplicate driver's license, the applicant must provide proof of identity, including full legal name and date of birth, by presenting one primary document and one or more secondary documents from the lists specified in (2) and (3).

(2) The primary document submitted must show the applicant's full legal name and date of birth and must be verifiable by the governmental authority that issued the document. The following may be presented as a primary document:

(a) a driver's license or identification card, with color photograph or digitized image of the applicant and not expired for more than ~~one year~~ four years, issued by a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada;

(b) ~~an original~~ or a certified copy of a birth certificate issued by a government bureau of vital statistics or board of health of a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada, or a report of a birth abroad of a US citizen issued by the US department of state or a US embassy;

(c) an unexpired military identification card (~~form DD-2~~) issued to the applicant by the US department of defense for that documents the applicant's active duty, reserve or retired personnel status or status as a dependent of active duty personnel and that contains a color photograph or digitized image of the applicant and the applicant's date of birth;

(d) through (f)(xi) remain the same.

(g) a US or Canadian-issued instruction or learner's driving permit, or a receipt for driver's license or permit, if it is current and contains a photo of the permittee applicant and the applicant's date of birth;

(h) a prison inmate identification card issued to the applicant by the Montana department of corrections that contains a photograph or digitized image of the applicant and the applicant's date of birth and adult offender number;

(i) a digital identification card issued to the applicant by a federally recognized Indian tribe whose reservation is located in Montana that contains a digitized image of the applicant and the applicant's date of birth and tribal enrollment number; or



(j) an emergency identification photograph issued and certified by the driver licensing authority of a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada that includes the applicant's name and date of birth.

(3) In addition to presenting a primary document, the applicant must also present one or more secondary documents to confirm the applicant's identity and date of birth. The name on the secondary document presented by the applicant must match or be consistent with the name on the primary document presented by the applicant. The applicant may select a secondary document from the following list:

(a) through (f) remain the same.

~~(g) a military identification card issued to dependents of active duty personnel by the US department of defense (DD-1173 series);~~

~~(h) certification of release of discharge issued by the US department of defense (DD-214);~~

~~(i)(h) a certified copy of a marriage certificate or license issued by a government jurisdiction;~~

(i) a medicare, medicaid or health insurance card with the applicant's name and the applicant's individual medicare, medicaid, or health insurance identification number;

(j) through (m) remain the same.

(n) a US nonmetal social security card or a Canadian social insurance card; or

(o) a current school photo identification card with the student's name and date of birth student identification number; or

(p) a certified copy or a facsimile or photocopy of a certified copy of the birth certificate of the applicant's child, if the certificate lists the applicant's name and date of birth as parent.

(4) In rare, extremely extenuating circumstances where an applicant cannot produce a primary document because the original records have been destroyed or were never created and a duplicate record cannot be obtained from the government agency customarily required to maintain such records, an applicant may ask the chief of the field operations bureau to accept and approve alternate documentation of the applicant's identity, name and date of birth.

(5) The request must be in writing and the applicant's signature must be notarized. The request must describe, in detail, why the appropriate documents cannot be obtained and presented and why alternate documentation should be approved. Copies of the alternate documentation must be attached to the request. The completed request must be submitted to department headquarters. Upon receipt of a request, the chief of the field operation bureau must review the request, conduct an independent investigation of the circumstances underlying the request and the necessity for alternate documentation, and within 30 working days, issue to the applicant a written

determination, approving or rejecting the request, including the chief's rationale for the determination.

AUTH: 61-5-125, MCA  
IMP: 61-5-105, 61-5-107, 61-5-111, MCA

23.3.147 IDENTIFICATION CARDS (1) Any A person who is a Montana resident and who does not have an unexpired is not the holder of a valid driver's license from a jurisdiction other than Montana may apply for an identification card.

(2) through (8) remain the same.

AUTH: 61-12-502, MCA  
IMP: 61-12-501, 61-12-502, 61-12-504, MCA

23.3.149 DUPLICATE LICENSES (1) In the event that a person's driver's license, commercial driver's license, instruction permit or traffic education learner license an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed or the personal information on the license or permit is no longer accurate, the person to whom the same was issued the person may, upon payment of must submit a written application for a duplicate license or permit, present proof of the person's identity in accordance with (2), and pay the fee specified in 61-5-114, MCA, obtain a duplicate or substitute thereof, after furnishing proof satisfactory to the division that such permit or license has been lost or destroyed. The person must also show satisfactory proof of identity before obtaining such duplicate. If the license will expire within six months of its loss or destruction, the person should apply for a renewal rather than a duplicate.

(2) At the time of application, the identity of the applicant must be verified as follows:

(a) except as provided in (2)(b), an applicant appearing in person at a driver's license exam station must present one primary document and one secondary document as listed in ARM 23.3.131 to confirm the applicant's name and date of birth;

(b) if the most recent digital image of the applicant as maintained in department records is readily accessible on-line at the driver's license exam station and department personnel at the exam station, by visual observation, ascertain that the physical features and characteristics of the applicant appearing in person at the exam station match, or are reasonably comparable to, the image and descriptions contained in the department record, the applicant must present one secondary document as listed in ARM 23.3.131 to confirm the applicant's name; or

(c) if a duplicate license application is submitted by mail or telefax, the applicant must include a passport-style photograph of the applicant and a facsimile or photocopy of one primary document and one secondary document as listed in ARM 23.3.131 with the application.

(3) A duplicate license application may be rejected if the applicant's identity and date of birth cannot be determined, proper documentation is not presented or submitted or the required fee is not paid.

AUTH: 61-5-125, MCA  
IMP: 61-5-114, MCA

4. The Department proposes these rule amendments to simplify and expedite the processing of driver's license and duplicate license applications, while retaining procedures necessary to ensure that the identity of the applicant is verified before a driver's license or identification card is issued by the Department.

The statements of reasonable necessity for the proposed amendments are as follows:

ARM 23.3.127:

The proposed amendment to ARM 23.3.127(1) clarifies the process by which the Department will verify an applicant's full legal name. Since 1997, the Department has been required by state law to collect an applicant's full legal name on a driver's license application and display the full legal name on the actual driver's license, once issued. See, 61-5-107(2) and 61-5-111(2), MCA. The Department frequently runs into difficulties with applicants who do not have a primary document as required by ARM 23.3.131, or one of the documents required by ARM 23.3.128, to verify a common law name change asserted by the applicant. Rather than arguing with an applicant about what is or is not the applicant's full legal name, the proposed amendment simply deems the name on the primary document presented by the applicant for identification purposes under ARM 23.3.131 to be the applicant's full legal name for driver licensing and identification card purposes, absent proof of name change via ARM 23.3.128.

The amendments proposed for ARM 23.3.127(3) clarify space limitations on driver's licenses and identification cards as compared to computer storage records maintained by the Department. For record-keeping purposes, the Department can and does accept a name with more than 31 characters. The changes proposed for (3) also simply name truncation rules to eliminate the possibility of creating additional confusion as a result of truncation. Truncation will be to the first initial of a name, rather than to an indeterminate location within a name, e.g., Elizabeth, truncated to E rather than Elizab or Eli, depending on space limitations. Amendments also recognize system limitations for multiple middle names by requiring no space between names.

The proposed amendment of ARM 23.3.127(4) eliminates verification of name on license renewals in instances where

more than one name showed on the Department's record-keeping system. Typically, this would occur when a woman was on the system with a maiden surname and later changed her surname following marriage under name change procedures that preceded the current rules. Requiring verification of the name of record caused problems with, and difficulties for, customers who relied on earlier versions of name change rules and procedures. The Department was soundly criticized for requiring confirmation of historic name changes, long after the fact. With the proposed amendment of (4), if customer's name is on the Department's computer system and customer does not want to change the name on the system, the Department will retain the name of record without further verification.

ARM 23.3.130:

The Department proposes to change the reference from "proof" of residency to "evidence" of residency because the latter is a more accurate description of the information being reviewed for Montana residence. The proposed amendment of ARM 23.3.130(2)(h) expands the permissible use of a written statement as evidence of Montana residence to include adult children, either as an applicant living at home with parents or as homeowner or renter who is sharing residence with an elderly parent. This amendment reflects contemporary living arrangements in families, where two or more generations may share one residence, due to temporary economic circumstances or for care-giving purposes. By eliminating the requirement that the written statement be available only to a parent or guardian who has a Montana driver's license or identification card, the Department would permit persons who are ineligible for a Montana driver's license or identification card to provide alternate evidence of Montana residence to support the application of a co-habitant. The proposed amendment of ARM 23.3.130(2)(i) would permit use of a rental receipt as evidence of Montana residence; a recently dated rental receipt provides as much or more information regarding Montana residence as a rental agreement. The proposed amendment of ARM 23.3.130(2)(j) would accept a rural address in lieu of a street address. In remote areas of Montana, rural route addresses are used in lieu of street residence addresses, therefore, it is unrealistic to expect a street address when no physical or street address has been assigned or street addresses are not utilized in a geographic area. The proposed amendment of ARM 23.3.130(2)(d) deletes use of a passport as evidence of Montana residency because residence information is not included on a passport.

ARM 23.3.131:

The amendment of ARM 23.3.131(2)(a) is proposed to extend the life of an expired driver's license as a primary document for identification purposes. The Department believes that a photo-driver's license that is expired more than one year, but

less than four years, is as likely to resemble a customer's physical appearance as one that is expired less than one year. An expired driver's license actually provides more information concerning an applicant than a certified birth certificate because it gives a Department employee the ability to compare the physical appearance of the applicant to the photograph on the license.

The amendment of ARM 23.3.131(2)(c) is intended to give identification cards issued to active duty military dependents the same status as identification cards issued to active duty, reserve or retired military personnel. The dependent identification card can be as readily verified as an active duty identification card and contains similar information. The language concerning color photograph and date of birth is added to clarify that those attributes are examined by the Department and deemed to be critical in verifying an applicant's identity.

The amendments to ARM 23.3.131(2)(g) and (2)(j) are intended to accord similar privilege to similar documents and conform the rules to current Department practices. Depending on the technology used by a licensing authority in issuing a driver's license receipt or a receipt for a temporary driving permit, the receipt contains the same information as the actual permit and can readily be used to verify identity. Additionally, the Department is frequently called upon to issue temporary identification photographs to licensees or cardholders whose license or identification card has been lost or stolen and who are unable to board a commercial airline or rent a car without emergency identification from a licensing authority. Such emergency photo identification, if it includes the applicant's name of record and date of birth, provides identity information comparable to a current driver's license or identification card.

The addition to ARM 23.3.131(2)(h) and (i) are designed to recognize identification cards issued by other jurisdictions or entities that have like information as cards issued by licensing authorities recognized in (2)(a) and that are secure and can be readily verified.

The addition of (2)(h) relates to the recent prison inmate identification card program implemented by the Montana Department of Corrections. This program is based on criminal fingerprint records and includes vital information such as name, date of birth and a current photograph of the inmate. Due to family dysfunction or foster care placements, an inmate may lack information pertaining to his or her place or date of birth and cannot obtain birth records from government sources. By recognizing prison inmate identification cards issued by Montana Department of Corrections, an inmate can utilize the prison inmate ID to obtain a Montana driver's license or identification card, an essential attribute for rehabilitation

and outside employment, while the Department, in cooperation with Montana Department of Corrections, retains the ability to verify identity information provided to the inmate.

Pursuant to the government-to-government relationship between the state of Montana and the federally recognized tribes in Montana, the Department acknowledges that tribal governments provide tribal identification cards to their members. As with identification cards issued by other jurisdictions, when tribal identification cards are produced using security features and technology analogous to state identification cards, such tribal identification cards should be given reciprocal primacy and accepted as primary forms of identifications by the Department. The Department is aware that at least one tribal government in Montana, the Fort Peck Assiniboine and Sioux tribes have begun issuing digital identification cards to enrolled tribal members. The new identification card includes a digitized image of the enrolled tribal member, the member's date of birth and the member's tribal enrollment number and contains security features similar to Department-issued identification cards.

The proposed amendment to ARM 23.3.131(3) deletes the military dependent identification card as a secondary document, consistent with the change to recognize it as a primary document, and expands the list of permissible secondary identification documents to Medicare, Medicaid or health insurance cards that include the applicant's name and insurance identification number. Health insurance cards are a convenient, readily available form of secondary identification for many customers. Also added to the list of secondary documents in new (3)(p) is a certified copy of a child's birth certificate that lists the applicant's name and date of birth as parent. This too is a document that is convenient for certain customers to provide and is a reliable source of secondary information. The attributes of an acceptable school photo ID have been changed to include student identification number, rather than student birth date, as most school IDs include a student identification number, but infrequently include date of birth information on the face of the ID.

The proposed amendment of ARM 23.3.313(4) is intended to provide an escape valve for individuals who, due to no fault or lack of effort on their part, are not able to produce a primary document because, for example, the source records have been destroyed due to a fire at a local vital statistics registry or a birth took place at home and was never recorded. The Department expects that few customers will be eligible to invoke this subsection, absent unusual or extraordinary circumstances, and each circumstance will be carefully scrutinized to ensure that permitted primary documents truly cannot be obtained and presented.

ARM 23.3.147:

The proposed amendment to ARM 23.3.147 removes an impediment to issuance of a Montana identification card to a Montana resident who has a suspended driver's license or driving privileges in another jurisdiction. The prior language "unexpired driver's license" prevented someone whose driver's license was suspended in a prior state of residence from receiving a Montana identification card on the remote possibility that the out-of-state license could be reinstated during the term of the Montana identification card. Denial of issuance of a Montana identification card created significant hardships for Montana residents seeking employment or other opportunities in this state, but who had unresolved driving records in another jurisdiction.

ARM 23.3.149:

The proposed amendments to ARM 23.3.149 are a product of recent system upgrades that give Department employees in driver's examination stations the ability to access a previously recorded digital image of a licensee on the station computer monitor. This amendment provides an added convenience to customers applying in person for a duplicate license by reducing identification requirements needed to support issuance of the duplicate license. With the system upgrades, Department employees may use the on-line comparison in lieu of a primary document as a means of verifying a person's identity. Additional amendments are intended to clarify requirements for remote issuance of duplicate licenses (requests made by mail or fax) and recognize a common circumstance for issuance of a duplicate license, namely, a change in personal information such as licensee name, residence address, etc.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Brenda Nordlund, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, Montana, 59620-1401, fax 406-444-3549, or be submitted electronically to [contactdoj@state.mt.us](mailto:contactdoj@state.mt.us) and must be received no later than March 28, 2002.

6. Brenda Nordlund, Assistant Attorney General, P.O. Box 201401, Helena, Montana, 59620-1401 has been designated to preside over and conduct the hearing.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies the subject matter of administrative rules in

which the requestor is interested. Such written request may be mailed or delivered to the Attorney General's Office, Attn: Interested Party List, P.O. Box 201401, Helena, Montana, 59620-1401, faxed to the office at (406) 444-3549, e-mailed to [contactdoj@state.mt.us](mailto:contactdoj@state.mt.us) or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Mike McGrath  
MIKE McGRATH, Attorney General

/s/ Ali Sheppard  
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State February 19, 2002.



BEFORE THE BOARD OF DENTISTRY  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.16.402, ) ON PROPOSED AMENDMENT  
8.16.412, 8.16.605, 8.16.605A and ) AND REPEAL  
8.16.611, pertaining to licensure )  
of dentists and dental hygienists, )  
and the proposed repeal of )  
ARM 8.16.402A and 8.16.605B, )  
pertaining to application )  
requirements for dentists and )  
dental hygienists )

TO: All Concerned Persons

1. On March 22, 2002, at 9:00 a.m., a public hearing will be held in the Business Standards Division basement conference room, room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry 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 Dentistry no later than 5:00 p.m., on March 19, 2002 to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305, e-mail dlibsdden@state.mt.us.

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

8.16.402 DENTISTS EXAMINATIONS INITIAL LICENSE OF DENTISTS BY EXAMINATION (1) All candidates applicants for licensure shall submit a completed application on the form furnished by the board or its designee ~~verify passage of the of the national board examination, the and submit a national board certificate and score card from the national board of dental examiners, except that only scores in part II of the national board examination will be required if 10 or more years have passed since the candidate's graduation from dental school.~~ The application must include the following:

(a) an original score card from the national board of dental examiners showing the applicant's score on the written examination administered by the national board of dental examiners;

(b) certification of successful passage of a board approved clinical practical examination. The board accepts,

in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board (WREB) or by the central regional dental testing service (CRDTS) taken after January 1, 2000. Both examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination;

(c) affidavits from three persons not related to the candidate, of the candidate's good moral character;

(d) verification of graduation from a dental school accredited by the commission on dental accreditation for the American dental association, or its successor. Verification must consist of an original dental school transcript or a letter from the dean of the school of dentistry attesting to the program of study and that graduation status was attained;

(e) license verifications from all jurisdictions where the licensee has held or holds a license;

(f) copies of all other state professional licenses that are held by the applicant;

(g) a copy of a self-query of the national practitioners data bank;

(h) a copy of the applicant's current CPR card;

(i) a photograph of the applicant;

(j) the jurisprudence examination fee; and

(k) the license fee.

~~(2) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board. The examination board shall be valid for a period of five years from the date of successful completion of the examination. The applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol or any other drug or substance or by mental or physical illness which in the determination of the board renders the individual unfit or incapable of practicing dentistry.~~

~~(3) A jurisprudence examination shall must be taken once the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required for passing the examination. Applicants shall successfully pass the jurisprudence examination with a final grade of at least 75%, prior to issuance of a license.~~

~~(4) Application material remains valid for six months from the time it is received in the office. If the jurisprudence examination has not been successfully passed within six months, the application will be considered incomplete and a new application and fees must be submitted.~~

AUTH: 37-1-131, 37-4-205, 37-4-301, MCA  
IMP: 37-4-301, MCA

REASON: There is reasonable necessity to amend ARM 8.16.402 at this time in order to clarify and streamline the application and examination process before Spring 2002 dental

school graduates start the application process. The proposed amendments consolidate the application requirements into a single rule, and incorporate the information contained in ARM 8.16.402A, which is proposed for repeal. The proposed amendments also reflect the Board's recent acceptance of an additional clinical examination provider's examination. Finally, the Board believes there is reasonable necessity to amend the rule in order during this revision to clarify the Board's ability to disqualify an applicant who, due to substance abuse or other reasons is impaired and not competent to practice as a dentist, so as to protect the public health, safety and welfare.

8.16.412 DENTIST LICENSURE BY CREDENTIALS (1) The board shall provide for licensing of a dentist without additional examination, except a jurisprudence examination, if the applicant meets each of the following:

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

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

(ii) has successfully passed ~~completed both part I and part II of~~ the national board examination and submits a national board ~~certificate and score card~~;

(iii) has successfully completed a clinical practical examination for licensure ~~comparable to the examination recognized by the Montana board of dentistry. The examination must have included the entry level clinical skills including:~~ administered by the WREB or which is substantially equivalent to the current WREB examination, or administered on or after January 1, 2000, by the CRDTS, or a combination of examinations which are substantially equivalent to the current WREB examination approved by the Montana board of dentistry. Applicants using any examination(s) other than WREB or CRDTS, as defined above, will be reviewed on a case by case basis;

~~(A) a class II amalgam preparation and finished restoration on a live patient;~~

~~(B) preparation of tooth and seated cast gold restoration, minimally involving a class II inlay, onlay or restoration of comparable complexity, up to and including a full crown, on a live patient;~~

~~(C) removable prosthodontics;~~

~~(D) periodontal testing on a live patient, to include patient evaluation, documentation and scaling and root planing;~~

~~(E) root canal treatment on a human tooth involving instrumentation and obturation of at least one canal;~~

(iv) is in good standing from all jurisdictions where the applicant is licensed or has held a license. If the dentist is employed by the federal government, the dentist must be in good standing with the employing federal agency;

(v) remains the same.

(A) remains the same.

(B) length of time at location(s);

(C) through (F) remain the same.

(G) documentation from the dean or appropriate administration of the institution regarding length and terms of employment and their duties and responsibilities and any adverse actions or restrictions, if the dentist is employed by a dental school; and

(H) remains the same.

~~(vi) has not failed a clinical licensing examination within the last five years;~~

(vii) remains the same, but is renumbered (vi).

~~(viii)~~ (vii) has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a license in this state. Courses submitted must meet board approvals as defined in ARM 8.16.1002; and

~~(ix)~~ (viii) is not physically or mentally impaired by habitual or excessive use of addictive drugs, alcohol or any other drug or substance or by mental or chronic physical illness which in the determination of the board renders the individual unfit or incapable of practicing dentistry;

(d) submits a current CPR card;

~~(e) a jurisprudence examination shall be taken after the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required to pass the exam.~~

(e) provides affidavits from three persons not related to the candidate, of the applicant's good moral character; and

(f) submits copies of all other state professional licenses.

(2) The jurisprudence examination must be successfully passed once the application for licensure has been approved. Applicants must successfully pass the jurisprudence examination with a final grade of at least 75%, prior to issuance of a license.

AUTH: 37-1-131, 37-4-205, MCA  
IMP: 37-1-304, MCA

**REASON:** There is reasonable necessity to amend ARM 8.16.412 in order to implement the Board's recent decision to accept an additional clinical examination provider's examination as sufficient evidence of an applicant's clinical skills. Additionally, there is reasonable necessity to amend the rule to make it easier for qualified dentists to become licensed to practice in Montana, in order to provide greater access to dental care by the public, in light of the underserved areas of the state.

8.16.605 DENTAL HYGIENIST EXAMINATION INITIAL LICENSURE OF DENTAL HYGIENTS BY EXAMINATION (1) All candidates for licensure shall verify passage of the national board examination and submit a national board certificate and score card from the national board of dental examiners Each applicant shall submit a completed application on a form

furnished by the board or its designee. The application must include:

(a) an original score card from the national board of dental examiners showing the applicant's score on the written examination administered by the national board of dental examiners;

(b) certification of successful passage of a board approved clinical practical examination. The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the WREB or administered on or after January 1, 2000, by the CRDTS. Both examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination;

(c) affidavits from three persons not related to the candidate, of the candidate's good moral character;

(d) verification of graduation from a dental hygiene school accredited by the commission on dental hygiene accreditation for the American dental hygiene association, or its successor. Verification must consist of an original dental hygiene school transcript or a letter from the dean of the school of dental hygiene attesting to the program of study and that graduation status was attained;

(e) license verifications from all jurisdictions where the licensee has held or holds a license;

(f) copies of all other state professional licenses that are held by the applicant;

(g) a copy of the applicant's current CPR card;

(h) a photograph of the applicant;

(i) the jurisprudence exam fee; and

(j) the licensure fee.

(2) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board. The examination results of the western regional examination board shall be valid for a period of five years from the date of successful completion of the examination. applicant may not be physically or mentally impaired by use of addictive drugs, alcohol or any other drugs or substance, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.

(3) A jurisprudence examination shall be taken once the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required for passing the examination. Applicants must successfully pass the jurisprudence examination with a final grade of at least 75% prior to issuance of a license.

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

AUTH: 37-1-131, 37-4-205, ~~37-4-401~~, 37-4-402, ~~37-4-403~~,  
~~37-4-406~~, MCA  
IMP: 37-4-401, 37-4-402, 37-4-403, MCA

REASON: There is reasonable necessity to amend ARM 8.16.605 at this time in order to clarify and streamline the application and examination process before Spring 2002 dental school hygiene graduates start the application process. The proposed amendments consolidate the application requirements into a single rule, and incorporate the information contained in ARM 8.16.605B, which is proposed for repeal. The proposed amendments also reflect the Board's recent acceptance of an additional clinical examination provider's examination. Finally, the Board believes there is reasonable necessity to amend the rule in order during this revision to clarify the Board's ability to disqualify an applicant who, due to substance abuse or other reasons, is impaired and not competent to practice as a dental hygienist.

8.16.605A DENTAL HYGIENIST LICENSURE BY CREDENTIALS

(1) The applicant for dental hygiene licensure by credentials shall ~~fulfill~~ meet the following requirements and submit ~~an a completed application, and supporting documentation to be licensed by credentials~~ The application must include the following:

(a) a copy of the certificate of graduation from an accredited dental hygiene school accredited by the commission on dental hygiene accreditation for the American dental association, or its successor;

(b) evidence of successful completion passage of the national board of dental hygiene examination. The applicant for licensure by credentials must submit his/her official score card;

(c) evidence of successful completion passage of a clinical examination;

(d) ~~the applicant~~ evidence of current licensure is currently licensed in another state or territory of the United States, and submits license verification from the licensing board(s) of the state(s) under whose jurisdiction the applicant is licensed;

(e) proof that the applicant has practiced dental hygiene continuously for a minimum of 500 hours during the one year immediately prior to application;

(f) ~~submits~~ a copy of the applicant's current CPR card;

(g) ~~upon approval of the application, successful completion of the Montana jurisprudence examination, and affidavits from three persons not related to the candidate, of the applicant's good moral character;~~

(h) ~~payment of appropriate fees.~~ copies of all other state professional licenses; and

(i) payment of all appropriate fees including a credentialing fee.

(2) The applicant may not be physically or mentally impaired by use of addictive drugs, alcohol or any other drugs

or substance, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.

(3) The jurisprudence examination must be successfully passed once the application for licensure has been approved. Applicants must successfully pass the jurisprudence examination with a final grade of at least 75% prior to issuance of a license.

~~(2)~~ (4) Application material is remains valid for six months from the time it is received in the office. If the jurisprudence examination has not been successfully passed taken at the end of six months the application will be considered incomplete and a new application and fees will have to be submitted.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA  
IMP: ~~37-4-404~~ 37-1-304, MCA

REASON: There is reasonable necessity to amend ARM 8.16.605A in order to implement the Board's recent decision to accept an additional clinical examination provider's examination as sufficient evidence of an applicant's clinical skills. Additionally, there is reasonable necessity to amend the rule to make it easier for qualified dental hygienists to become licensed to practice in Montana, in order to provide greater access to dental care by the public, in light of the underserved areas of the state. Finally, the Board believes there is reasonable necessity to amend the rule in order during this revision to clarify the Board's ability to disqualify an applicant who, due to substance abuse or other reasons is impaired, and not competent to practice as a dental hygienist, so as to protect the public health, safety and welfare.

8.16.611 DENTAL HYGIENE LOCAL ANESTHETIC AGENT LICENSURE

(1) remains the same.

~~(2) Application for a local anesthetic permit by examination shall be made by letter of request to the board, with proof of successful completion of a western regional examining board (WREB) local anesthetic certificate, a valid and current CPR card and the appropriate fee. Application for a local anesthetic permit by examination must be made on an application form provided by the board and must include the following:~~

(a) verification of successful passage of the WREB local anesthetic examination within the last five years;

(b) a copy of the applicant's current CPR card;

(c) payment of appropriate fees; and

(d) evidence of having have previously received a Montana dental hygiene license, or of being in the process of applying for a Montana dental hygiene license.

(3) Application for a local anesthetic permit by credentialing shall be made on an application provided by the board and shall including the following: The board shall

~~provide for local anesthetic agent licensure by credentials of a dental hygienist who:~~

~~(a) submits an application on a form provided by the board verification of successful passage of the WREB local anesthetic examination at least five years ago;~~

~~(b) pays all the appropriate fees a copy of the applicant's current CPR card;~~

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

~~(d) submits verification of successful completion of a local anesthetic agent course given by a commission on dental accreditation (CODA) accredited dental or CODA accredited dental hygiene school. The only verification that will be accepted is any one of the following: be evidence that the applicant is in the process of applying for a Montana dental hygiene license or has previously received a Montana dental hygiene license;~~

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

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

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

~~(e) submits verification of successful completion of a clinical and written local anesthetic agent regional or state board examination; verification of successful completion of a local anesthetic agent course given by a commission on dental accreditation (CODA) accredited dental or CODA accredited dental hygiene school. The only verification that will be accepted is one of the following:~~

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

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

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

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

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

~~(4) An applicant who wishes to reactivate a local anesthesia permit in conjunction with the reactivation or reinstatement of a dental hygiene license shall:~~

~~(a) verify passage of a WREB local anesthetic examination;~~

~~(b) submit an application provided by the board;~~

~~(c) submit a copy of the applicant's current CPR card;~~

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



- (i) a letter from the school with the school seal affixed (photocopies will not be accepted); or
- (ii) a notarized copy of the certification of local anesthetic agent course completion; or
- (iii) a notarized copy of the dental or dental hygiene transcript with the local anesthetic agent course recorded;
- (e) copies of any local anesthetic agent license held in other states; and
- (f) written verification that the applicant has practiced administering local anesthetic agents within the last five years.

AUTH: 37-1-131, 37-4-205, ~~37-4-401~~, 37-4-402, MCA  
IMP: 37-4-401, 37-4-402, MCA

**REASON:** There is reasonable necessity to amend ARM 8.16.611 to clarify the rule. The Board has determined that the existing language, adopted in May 2000, is apparently confusing to applicants. The Board has also determined that it is appropriate to provide for a method of reinstating a lapsed local anesthesia license. There is reasonable necessity to amend the rule to improve access to dental care in the underserved areas of the state.

4. The Board of Dentistry proposes to repeal the following rules:

8.16.402A DENTIST APPLICATION REQUIREMENT found at pages 8-503 and 8-504, Administrative Rules of Montana.

AUTH: 37-4-205, MCA  
IMP: 37-4-301, MCA

8.16.605B DENTAL HYGIENIST APPLICATION REQUIREMENTS found at page 8-512, Administrative Rules of Montana.

AUTH: 37-4-205, 37-4-402, MCA  
IMP: 37-4-402, MCA

**REASON:** There is reasonable necessity to repeal the rules in light of the amendments that are being proposed by the Board to clarify and streamline existing rules.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdden@state.mt.us](mailto:dlibsdden@state.mt.us) and must be received no later than 5:00 p.m., March 29, 2002. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at [http://www.discoveringmontana.com/dli/bsd/license/bsd\\_boards/den\\_board/rule\\_page.htm](http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/den_board/rule_page.htm), in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address does not excuse late submission of comments.

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

8. Lewis Smith, attorney, has been designated to preside over and conduct this hearing.

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

10. The Board of Dentistry proposes to make these amendments and repeals effective April 26, 2002. The Board reserves the right to adopt only portions of these proposed amendments, or to adopt some or all of the amendments and repeals at a later date.

BOARD OF DENTISTRY  
GEORGE OLSEN, D.D.S., CHAIRMAN

By: /s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, February 19, 2002.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 8.48.401,	)	ON PROPOSED AMENDMENT,
8.48.403, 8.48.408, 8.48.502,	)	ADOPTION, AND REPEAL
8.48.504, 8.48.507, 8.48.508,	)	
8.48.511, 8.48.601, 8.48.604,	)	
8.48.801, 8.48.802, 8.48.901,	)	
8.48.903, 8.48.1105, 8.48.1106,	)	
and 8.48.1109, pertaining to board	)	
organization, board meetings,	)	
screening panel, applications and	)	
the reclassification of engineers	)	
and land surveyors, the proposed	)	
adoption of NEW RULE I	)	
classification of experience for	)	
land surveying applicants, and the	)	
repeal of ARM 8.48.602, 8.48.603,	)	
8.48.1102, 8.48.1103 and 8.48.1104	)	

TO: All Concerned Persons

1. On March 25, 2002, at 1:00 p.m., a public hearing will be held in the Business Standards Division basement conference room, B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry 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 Professional Engineers and Land Surveyors no later than 5:00 p.m., on March 22, 2002, to advise us of the nature of the accommodation that you need. Please contact Todd Boucher, Board of Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@state.mt.us.

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

8.48.401 BOARD ORGANIZATION ELECTED OFFICERS (1) The board shall elect from its members a chairman presiding officer, ~~chairman~~ vice-presiding officer and a secretary annually.

(2) The ~~chairman~~ presiding officer shall be the executive officer of the board. When present, ~~he~~ the presiding officer shall preside at all meetings.—~~He~~ and shall appoint such committees as the board may authorize from time to time. ~~He~~ The

presiding officer shall sign all certificates and other official documents ~~papers.~~—He and shall perform all other duties usually pertaining to the office of chairman presiding officer and permitted by law.

(3) The ~~vice-chairman presiding officer~~, in the absence of the chairman presiding officer, shall perform the duties delegated to the chairman presiding officer in the preceding subsections, except the chairman presiding officer shall sign all official papers of the board.

(4) In the absence of the chairman presiding officer and ~~vice-chairman presiding officer~~ from a regular or special meeting of the board, the remaining members shall ~~elect~~ appoint a board member to serve as the presiding officer, who shall serve until the conclusion of the meeting or until the arrival of the chairman elected presiding officer.

AUTH: 37-67-202, MCA  
IMP: 37-67-201, MCA

REASON: The board has determined there is reasonable necessity to amend this rule to implement changes of the names of the board officers made by the 2001 Legislature in House Bill 120, Section 152, enacted by Chapter 492, Laws of 2001.

8.48.403 BOARD MEETINGS (1) The board shall hold at least two meetings annually, with 10 days notice, and as called by the chairman presiding officer.

AUTH: 37-67-202, MCA  
IMP: 37-67-201, MCA

REASON: The board has determined that there is reasonable necessity to amend this rule to implement changes of the titles of the board officers made by the 2001 Legislature in House Bill 120, Section 152, enacted as Chapter 492, Laws of 2001.

8.48.408 SCREENING PANEL (1) The board screening panel shall consist of one professional engineer board member; one land surveyor board member; and one public board member, as chosen by the chairman presiding officer. The chairman presiding officer may reappoint screening panel members, or replace screening panel members as necessary at the chairman's presiding officer's discretion.

AUTH: 37-67-202, MCA  
IMP: 37-1-307, MCA

REASON: The board has determined that there is reasonable necessity to amend this rule to implement changes of the titles of the board officers made by the 2001 Legislature in House Bill 120, Section 152, enacted as Chapter 492, Laws of 2001.

8.48.502 APPLICATIONS (1) Applications received by the department must be on a board approved form and accompanied by

~~proper appropriate~~ fees. An application not accompanied by the ~~proper appropriate~~ fees or not completed in its entirety with all required information shall be returned to the applicant with instructions. Fees will be deposited as received.

AUTH: 37-67-202, MCA

IMP: 37-67-303, MCA

**REASON:** The board has determined there is reasonable necessity to amend this rule to use the word "appropriate", which is used in 37-67-303, MCA.

8.48.504 APPLICATION REFERENCES (1) ~~Upon receipt of an application, a copy of the board's uniform questionnaire and form letter shall be transmitted to five or more references. Three or more of the references shall be registered in the profession being applied for as professional engineers or professional land surveyors. No member of the board will be accepted as a reference. The department shall provide the applicant with copies of the board's uniform reference letter and the applicant shall submit same to five references. The applicant shall arrange for the submission of completed reference forms as described in 37-67-305 and/or 37-67-308, MCA. The application must include a reference form, which the applicant shall provide to the references listed on the application. The reference form must be received directly from the applicants' references. For each working engagement listed showing experience, at least one individual shall serve as a reference for that engagement.~~

(2) ~~No statement of a reference will be accepted by the board unless such statement answers fully the questions submitted by the board, the reference form is fully completed and bears the signature of the reference. Until such time as the required replies from the references forms are received, the board will not take action on the application, provided that if If the required complete replies reference forms are not received within a period of three months after the date of receipt of the application in the office of the board, the application may shall be rejected and the application fees forfeited.~~

AUTH: 37-67-202, MCA

IMP: 37-67-303, 37-67-305, 37-67-308, MCA

**REASON:** The board has determined there is reasonable necessity to amend this rule to avoid repeating statutory language. In addition, there is reasonable necessity to amend the rule to allow verification of references of the experience claimed by the applicants. The forfeiture of fees is associated with board staff time to maintain files, send reminders, and assist with the application process. After three months the fees will not cover the staff members continued time to process the application. The board is required by 37-1-134, MCA, to set fees commensurate with costs.

8.48.507 CLASSIFICATION OF EXPERIENCE (1) Engineering

experience ~~or land surveying experience~~ shall include the following:

(a) Sub-professional experience is experience that is gained before graduation and will be awarded at a one year maximum. This experience shall be credited to the required pre-professional experience at a ~~maximum~~ of one-half the period of experience. Credible experience may include one or more of the following:

(i) through (iii) remain the same.

(b) Pre-professional experience pertains to experience gained after graduation and is four years of total progressive experience, all of which is required to be have been completed at the time of application. Credible experience may include one or more of the following:

(i) approved sub-professional experience (one year maximum credit given);

(ii) progressive experience on engineering/land surveying projects which indicate the experience is of increasing quality and required greater responsibility;

(iii) remains the same.

(iv) experience gained under the supervision of a licensed professional engineer/land surveyor or, if not, an explanation of why the experience should be considered acceptable;

(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board. Land surveying teaching experience shall also be at an advanced level on a land surveying curriculum approved by the board;

(vi) through (2) remain the same.

(3) Experience should be gained under the supervision of a registered licensed professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable.

(4) remains the same.

~~(5) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.~~

~~(6) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.~~

~~(a) Land survey experience such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation, consists of work done under the supervision of a registered professional land surveyor.~~

~~(b) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.; construction staking for land modification; and construction staking for highways, roads, utilities, etc.~~

AUTH: 37-67-202, MCA  
IMP: 37-67-306, ~~37-67-309~~, MCA

REASON: The Board has determined there is reasonable necessity to amend this rule to delete references to land surveyors, clarifying the scope of the rule. The board is proposing to adopt NEW RULE I, Classification of Experience for Land Surveying Applicants. A change to replace the use of registered to licensed throughout the rule as a result of Chapter 492, Laws of 2001.

8.48.508 EXAMINATION PROCEDURES (1) The examinations required are defined in 37-67-311, MCA.

(2) Applicants will be notified of the time and place of examination at least 30 days in advance. The applicant will not be allowed to reschedule the examination without approval by the board or its designee, if the board is not advised 30 days in advance of the examination date of the extenuating circumstance which requires rescheduling. If the board does not approve the rescheduling, the applicant will have to pay a rescheduling fee.

(3) remains the same.

(4) A candidate failing to pass any examination may take that examination a second time at a subsequent examination period upon payment of the re-examination fee specified by ARM 8.48.1105. However, if more than three examination periods dates have passed since the candidate's original failure, ~~he or she~~ the candidate must submit a new application and pay the appropriate application and test fee specified by ARM 8.48.1105 before ~~he or she~~ the candidate will be re-examined.

(5) The examinee may review ~~his~~ the examination paper in the board office within ~~90~~ 60 days after being notified of ~~his~~ the status. No notes are to be made nor any marks made on the examination paper.

(6) remains the same.

AUTH: ~~37-1-134~~, 37-67-202, MCA  
IMP: ~~37-1-134~~, 37-67-311, MCA

REASON: The Board has determined there is reasonable necessity to amend (2) to recover costs associated with rescheduling examinations from ordering examination, reserving facilities, and staff times to reschedule. The Board is required by 37-1-134, MCA, to establish fees that are commensurate with costs. The amendment to (5) is to eliminate examination reviews too close to the next examination review cycle.

8.48.511 INACTIVE STATUS AND REACTIVATION (1) through (3) remain the same.

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana; and

(b) presents satisfactory evidence that the applicant has attended 30 hours of continuing education which comply with the



continuing education rules of the board; and.

~~(c) submits certification from the professional engineer and land surveying licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status; including the extent of the disciplinary treatment imposed.~~

(4) In the event an inactive licensee does not maintain a current license in any jurisdiction for the three previous years prior to requesting reinstatement, ~~the applicant may be required~~ board may require the applicant to take the principles and practice of engineering (PE) examination or the principles and practice of land surveying (PLS) examination.

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-319, 37-67-315, MCA

**REASON:** The board has determined there is reasonable necessity to amend this rule because the application for reactivation of an inactive status would require the applicant to indicate if any disciplinary action has been taken against their license in any jurisdiction. This statement is similar to the renewal that is completed by all licensees each renewal and would eliminate an unwarranted requirement for the applicant to provide verifications from all states of licensure.

8.48.601 COMITY FOR PROFESSIONAL ENGINEERS (1) The board may, upon application and payment of proper fee, issue a license as a professional engineer, to any person who submits evidence ~~that he holds a national council records certificate issued to him~~ the person by proper authority of the national council of examiners for engineering and surveying (NCEES), or ~~of~~ verification of licensure from any state or territory or possession of the United States, or any country, provided that the applicant's qualifications meet the requirements of the law and of the rules established by the board. Such applicants shall, as part of their application, complete and send to the department the standard application form. Applicants who have a current council record must complete only the following sections of the application for registration as a professional engineer:

- (a) general information~~;~~
- (b) licensure in other states~~;~~
- (c) affidavit~~;~~ and
- (d) engineering experience a completed engineer laws and rules questionnaire.

(2) ~~When application for licensure by comity is made, the Montana board shall secure from the board from which the license was issued, complete information as to the basis for the issuance of said certificate. Professional engineers applying by comity without an NCEES record are required to complete all sections of the application. The following are also required:~~

- (a) transcripts;

(b) five completed reference forms as required by ARM 8.48.504;

(c) verification of taking and passing both the fundamentals of engineering (FE) examination and principles and practice of engineering (PPE) examination from the state of original licensure; and

(d) a completed engineer laws and rules questionnaire.

AUTH: 37-67-202, MCA

IMP: 37-1-304, 37-67-312, MCA

**REASON:** The board has determined there is reasonable necessity to amend this rule to clarify the current process of applying for comity consideration, in order that applicants are aware of the requirements.

8.48.604 COMITY CONSIDERATION FOR PROFESSIONAL LAND

SURVEYORS (1) The board may, upon application and payment of proper fees and passing a written examination, issue a license as a professional land surveyor to any person who submits evidence that he holds a license issued to him by proper authority of any state or territory or possession of the United States, based upon qualifications that were not less stringent than those of this state at the time the applicant received his or her license in the other state, territory or possession. Licensed land surveyors from any state or territory or possession of the United States, or of any country, can apply for comity consideration. Comity applicants shall meet the minimum requirements of the law and rules established by the board. Applicants shall complete and send to the department the standard application and appropriate fees based on one of the following:

(a) Applicants who have a current national council of examiners for engineering and surveying (NCEES) council record must request a copy of their record be sent to the board office. In addition, they must complete only the following sections of the application for licensure as a professional land surveyor:

(i) general information;

(ii) licensure in other state;

(iii) affidavit; and

(iv) the land surveyor laws and rules questionnaire.

(b) If the comity applicant does not have a council record, the entire application must be completed and submitted. The applicant shall submit the following within three months of the boards' receipt of a completed application:

(i) college or university transcripts when applicable;

(ii) five completed reference forms as required by ARM 8.48.504;

(iii) verification of licensure from state of original licensure which includes verification of passing the fundamentals of land surveying and principles and practices of land surveying examinations; and

(iv) the land surveyors laws and rules questionnaire.

(2) Once approved by the board, all comity applicants shall pass a closed book, state-specific, land surveying examination.

AUTH: 37-67-202, MCA  
IMP: 37-1-304, 37-67-313, MCA

REASON: The board has determined there is reasonable necessity to amend this rule to clarify the current process of applying for comity consideration, in order that applicants are aware of the requirements.

8.48.801 GRANT AND ISSUE LICENSES (1) remains the same.

(2) A license authorizing the practice of professional engineering or land surveying will be granted by the board and issued by the department after approval of an application and payment of the license fee. The license shall be signed by the ~~chairman~~ presiding officer and the secretary and shall bear the license number of the licensee.

AUTH: 37-67-202, MCA  
IMP: 37-67-306, 37-67-309, MCA

REASON: The board has determined there is reasonable necessity to amend this rule to implement changes of the titles of the board officers made by Chapter 492, Laws of 2001.

8.48.802 LICENSE SEAL (1) Upon approval of the application by the board, the licensee will be advised that the licensee may secure an official seal. The following seals of two different sizes are authorized:

(a) pocket seal, the size commercially designated as a 1 5/8 inch seal; and

(b) a desk seal or rubber stamp seal the size commercially designated as a 2 inch seal;

(c) ~~The~~ seal will bear the licensee's name, license number and the legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor" or "Licensed Professional Engineer and Professional Land Surveyor".

(2) remains the same.

AUTH: 37-67-202, MCA  
IMP: 37-67-314, MCA

REASON: The board has determined there is reasonable necessity to amend this rule to allow use of a rubber stamp seal for stamping plans, in accordance with generally accepted industry standards.

8.48.901 EXPIRATION OF LICENSE - RENEWAL (1) Licenses expire every second year on the date established in ARM 8.2.208 (~~June 30th of each even-numbered year~~) and shall be renewed as outlined in 37-67-315, MCA, upon receipt of the renewal fee set by the board.

(2) remains the same.

AUTH: ~~37-1-101~~, 37-67-202, MCA  
IMP: 37-67-315, MCA

**REASON:** The board has determined there is reasonable necessity to amend this rule to delete the language regarding the renewal date as this information is contained in ARM 8.2.208, which is referenced in (1).

8.48.903 LATE RENEWAL (1) ~~The failure on the part of any licensee to renew the license as required shall not deprive such person of the right of renewal. Any renewal postmarked after the renewal date specified in ARM 8.2.208 is considered late and subject to a late renewal fee.~~

~~(2) The late renewal fee to be paid for the renewal of a license after the date set forth in ARM 8.2.208 (June 30th of each even-numbered year) shall be increased 10% for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed is 50% of the normal renewal fee as shown in ARM 8.48.1105.~~

(3) Failure to receive a renewal notice from the board shall not relieve the licensee of the licensee's obligation to pay renewal fees in such a manner that they are postmarked on or before the renewal date.

AUTH: ~~37-1-101, 37-1-134, 37-67-202, MCA~~  
IMP: 37-67-315, MCA

**REASON:** The board has determined there is reasonable necessity to amend this rule to simplify the late renewal fee process and eliminate staff time in calculating the renewal fee. Subsection (3) is being added to clarify that it is the licensee's responsibility to ensure that the renewal is submitted in a timely manner.

8.48.1105 FEE SCHEDULE (1) through (3) remain the same.

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

(g) Late renewal fees post marked after June 30 of even number years. The late renewal fee is in addition to the biennial renewal fees stated above.

<u>(i) Professional engineer</u>	<u>45</u>
<u>(ii) Professional land surveyor</u>	<u>45</u>
<u>(iii) Dual license as a professional engineer and land surveyor</u>	<u>55</u>
<u>(iv) Certificate of Authority</u>	<u>12.50</u>
<del>(g)(h)</del> Miscellaneous fees	
(i) through (iv) remain the same.	

AUTH: 37-1-134, 37-67-202, MCA  
IMP: ~~37-1-134, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA~~

**REASON:** The board has determined there is reasonable necessity to change the fee schedule for late renewals because a flat late fee is more appropriate. Originally, late fees were paid in at a 10% per month up to 50% maximum of the renewal fee as provided by ARM 8.48.903. The board has determined that the proposed

increased late renewal fee is commensurate with the cost associated with conducting audits of the continuing education on all late renewals as required by 37-1-134, MCA. A comparison of the late fee is provided in the following table:

MONTH	CURRENT LATE FEE	LATE 2000	FEES COLLECTED	PROPOSED LATE FEE	ESTIMATED LATE RENEWALS	FEES COLLECTED	INCREASE IN FEES COLLECTED
<b>PROFESSIONAL ENGINEERS (PE)</b>							
July	9	89	\$801.00	45	89	\$4,005.00	
August	18	33	\$594.00	45	33	\$1,485.00	
September	27	21	\$567.00	45	21	\$945.00	
October	36	14	\$504.00	45	14	\$630.00	
November	45	62	\$2,790.00	45	62	\$2,790.00	
	<b>TOTAL</b>	<b>219</b>	<b>\$5,256.00</b>		<b>219</b>	<b>\$9,855.00</b>	<b>\$4,599.00</b>
<b>PROFESSIONAL LAND SURVEYORS (LS)</b>							
July	9	11	\$99.00	45	11	\$495.00	
August	18	4	\$72.00	45	4	\$180.00	
September	27	1	\$27.00	45	1	\$45.00	
October	36	1	\$36.00	45	1	\$45.00	
November	45	5	\$225.00	45	5	\$225.00	
	<b>TOTAL</b>	<b>22</b>	<b>\$459.00</b>		<b>22</b>	<b>\$990.00</b>	<b>\$531.00</b>
<b>PROFESSIONAL ENGINEER SURVEYORS (ES)</b>							
July	11	4	\$44.00	45	4	\$180.00	
August	22	0	\$0.00	45	0	\$0.00	
September	33	0	\$0.00	45	0	\$0.00	
October	44	1	\$44.00	45	1	\$45.00	
November	55	5	\$275.00	45	5	\$225.00	
	<b>TOTAL</b>	<b>10</b>	<b>\$363.00</b>		<b>10</b>	<b>\$450.00</b>	<b>\$87.00</b>

8.48.1106 COMPLAINT PROCESS (1) Anyone wishing to enter a complaint against a professional engineer and/or land surveyor shall do so on a form prescribed by the board and furnished by the department. A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) The screening panel will employ the following complaint procedure: When an affidavit and complaint are received from an individual complaining about a licensee, the administrative assistant shall immediately send copies to the screening panel for review and shall provide the licensee with a copy of the affidavit and complaint, and request a written response. The screening panel will not act upon anonymous complaints. Complaints must be in writing, and must be filed on the proper complaint form prescribed by the board. The board form shall contain a release of records statement, to be signed by the

complainant.

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

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel will not act upon anonymous complaints.

AUTH: 37-67-202, MCA

IMP: 37-1-308, 37-1-309, 37-67-331, MCA

REASON: The board has determined there is reasonable necessity to amend this rule to more fully explain how the complaint procedure is being conducted.

8.48.1109 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) The form for recordation of corners pursuant to the Corner Recordation Act of Montana has been ~~prescribed approved~~ by and ~~may be obtained from~~ the board of professional engineers and land surveyors, ~~111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513.~~ The approved version was adopted by the board on July 1, 1981. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, 82 Stonecrest Drive, Kalispell, Montana 59901 or by contacting the association directly at (406) 756-0680.

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

AUTH: 70-22-107, MCA

IMP: 70-22-107, MCA

REASON: The board has determined there is reasonable necessity to amend this rule because the board approves the certified corner recordation form; however, no longer supplies copies of the form for general distribution. The Montana Association of Registered Land Surveyors (MARLS) offers the form documents.

4. The board proposes to adopt NEW RULE I as follows:

NEW RULE I CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS (1) Land surveying experience shall include the following:

(a) Sub-professional experience gained before graduation. This experience shall be credited to the required pre-professional experience at a maximum of one-half the period of

experience. Credible experience may include one or more of the following:

- (i) supervised surveying experience;
- (ii) supervised engineering experience; or
- (iii) supervised construction experience.

(b) Pre-professional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include one or more of the following:

- (i) approved sub-professional experience;
- (ii) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;
- (iii) experience not obtained in violation of the licensure act;

(iv) experience gained under the supervision of a licensed land surveyor or, if not, an explanation of why the experience should be considered acceptable; or

(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board.

(2) Experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.

(3) Experience should be gained under the supervision of a licensed professional land surveyor or, if not, an explanation should be made showing why the experience should be considered acceptable.

(4) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.

(5) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.

(a) Land survey experience such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation, consists of work done under the supervision of a registered professional land surveyor.

(b) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.; construction staking for land modification; and construction staking for highways, roads, utilities, etc.

AUTH: 37-67-202 MCA

IMP: 37-67-309, 37-67-310 MCA

**REASON:** The board has determined there is reasonable necessity to adopt this rule to separate the provisions of ARM 8.48.507 into a rule for professional engineers and one for professional

land surveyors in order to improve clarity and decrease possible confusion by the applicants.

5. The board proposes to repeal the following rules:

8.48.602 ENGINEER REGISTRATION BY COMITY WITHOUT EXAMINATION a rule proposed to be repealed, is found at ARM pages 8-1309 and 8-1310.

AUTH: 37-67-202, MCA  
IMP: 37-67-312, MCA

REASON: The board has determined there is reasonable necessity to repeal this rule because the rule dealt with a "grandfather" clause that is no longer applicable and should be repealed.

8.48.603 ENGINEER LICENSURE BY COMITY WITHOUT EDUCATION a rule proposed to be repealed, is found at ARM page 8-1310.

AUTH: 37-67-202, MCA  
IMP: 37-1-304, 37-67-312, MCA

REASON: The board has determined there is reasonable necessity to repeal this rule because the rule dealt with a "grandfather" clause that is no longer applicable and should be repealed.

8.48.1102 LAND SURVEYOR NONRESIDENT PRACTICE IN MONTANA a rule proposed to be repealed, is found at ARM page 8-1329.

AUTH: 37-67-202, MCA  
IMP: 37-67-103, 37-67-301, 37-67-320, MCA

REASON: The board has determined there is reasonable necessity to repeal this rule because the provisions duplicate statutory provisions in 37-67-320, MCA.

8.48.1103 FIRMS, PARTNERSHIPS AND CORPORATIONS REQUIREMENTS a rule proposed to be repealed, is found at ARM page 8-1329.

AUTH: 37-67-202, MCA  
IMP: 37-67-202, MCA

REASON: The board has determined it is reasonable to repeal this rule because subsection (1) duplicates statutory provisions in 37-67-320, MCA. The board has determined that (2) and (3) are not necessary and do not need to be mandated by rule.

8.48.1104 DUPLICATE OR LOST WALL CERTIFICATES a rule proposed to be repealed, is on ARM page 8-1329.

AUTH: 37-67-202, MCA  
IMP: 37-67-202, 37-67-316, MCA

REASON: The board has determined it is reasonable to repeal this



rule because the wall certificate is not proof of licensure, and therefore the rule is unnecessary.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdpels@state.mt.us](mailto:dlibsdpels@state.mt.us) and must be received no later than 5:00 p.m., March 28, 2002. If comments are submitted in writing, the board requests that the person submit six copies of their comments.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Professional Engineers and Land Surveyors rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

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

9. The Board of Professional Engineers and Land Surveyors 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 Professional Engineers and Land Surveyors administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [dlibsdpels@state.mt.us](mailto:dlibsdpels@state.mt.us) or may be made by completing a request form at any rules hearing held by the agency.

10. The expected economic impact of the proposed rule changes is a total annual increase of \$5,217.00, as shown in the table on page 459, and is estimated to affect 250 people.

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

BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
STEVE WRIGHT, CHAIRMAN

By: /s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of February 19, 2002

BEFORE THE BOARD OF COSMETOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed )  
amendment of ARM 8.14.402, 8.14.601,) NOTICE OF PUBLIC HEARING  
8.14.603, 8.14.605, 8.14.606, ) ON PROPOSED AMENDMENT,  
8.14.608, 8.14.611, 8.14.801, ) ADOPTION AND REPEAL  
8.14.802, 8.14.805, 8.14.813 and )  
8.14.814, the proposed adoption of )  
new rules I and II, and the repeal )  
of ARM 8.14.803, 8.14.804 and )  
8.14.1005 concerning the )  
elimination of the required )  
practical examination for )  
cosmetologists )

TO: All Concerned Persons

1. On March 25, 2002, at 8:30 a.m., a public hearing will be held in the Business Standards Division, basement conference room, room B7, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Cosmetologists no later than 5:00 p.m., on March 18, 2002 to advise us of the nature of the accommodation that you need. Please contact Richard Marlow, Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcos@state.mt.us.

3. STATEMENT OF REASONABLE NECESSITY: The Board of Cosmetologists is proposing to amend the administrative rules as they pertain to examinations, temporary permits, licensing processes, and some general housekeeping provisions.

The Board is proposing to eliminate the need for applicants for licensure to take and pass a national "practical" ("hands-on") examination in order to receive a license as a cosmetologist, manicurist, esthetician, instructor, and electrologist. The Board appointed an Examination Committee that was comprised of owners of licensed schools, board members and practicing cosmetologists. After extensive research, the Committee recently recommended to the Board that it terminate the use of any national practical examination. The committee's research concluded that the use of a practical examination lends itself to subjectivity; that the use of the practical examination increases liability to

the Board and to the facilities where the exams are conducted; and that there are high cost factors in the administration of a practical examination, including travel for the candidates, rater training, renting the facility, and equipment expenses.

Instead of requiring candidates for licensure to take a national practical examination, the Board is proposing that the licensed schools be required to conduct a final practical examination prior to receiving a diploma. The majority of the schools already administer some sort of practical examination, and the Board is proposing to make it mandatory for all schools. The proposal is that the school-administered examination comprise all areas of the approved curriculum for the particular profession.

If the national practical examination is eliminated, the process to receive a license will be expedited and candidates will have the opportunity to enter the work force in a short period of time after graduation. Currently, the national examination is only administered four times a year and is only available in Helena. The Board is proposing that candidates will still take a national written examination, but that the examination is proposed to be a computer-based examination and will be offered in several locations throughout Montana five days a week. Candidates could conceivably receive a diploma one day, take the written examination the next day, receive results of the written examination nearly instantaneously, already have an application for licensure on file with the Board office, and receive a license to practice within two days of receipt of the results.

If the national practical examination is eliminated, the need to receive a temporary permit will no longer be necessary because of the accessibility of taking the written examination. Applicants will no longer have to wait three months in order to take a national examination.

In order to take into consideration those applicants who had passed the national examination, but failed the practical examination, the Board is proposing to allow candidates the opportunity to apply for licensure without any additional requirements. It is proposed that candidates that failed the practical examination, but passed the national written examination in the last five years have the opportunity to apply for licensure within a one-year grandfather period.

The Board believes there is reasonable necessity to make the proposed rule changes to implement the recommendations of the Examination Committee and to increase the speed at which candidates can become licensed by the Board.

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

8.14.402 UNPROFESSIONAL CONDUCT (1) For purposes of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as

set forth below. Unprofessional conduct is subject to discipline by the board.

(a) through (r) remain the same.

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

(t) through (y) remain the same but are renumbered (s) through (x).

AUTH: 37-1-136, 37-1-137, MCA

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

**REASON:** The board proposes there is reasonable necessity to remove the requirement for the practical examination due to the streamlining of the examination process. Therefore the deleted portion will no longer be required.

8.14.601 APPLICATION FOR SCHOOL LICENSE (1) through (4) remain the same.

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

(6) through (10) remain the same.

AUTH: ~~37-1-134~~, 37-31-203, 37-31-204, ~~37-31-301~~, 37-31-302, 37-32-201, MCA

IMP: 37-31-203, 37-31-204, 37-31-311, 37-32-304, MCA

**REASON:** The board proposes to amend this rule because there is reasonable necessity in view of the fact that the board is proposing that the school administer the final practical examination prior to graduating. The policies and procedures for administering the final practical examination and a determination of what the passing score shall be will be contained in the school's policies and provided to the students and board office.

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

(3) The school shall maintain a file, for not less than five years, for each student who attended the school. This file must contain records and documentation pertaining to the student's registration, including the student's current name, address, phone number, course of study, enrollment date, daily attendance records, academics, grades, final practical examination with scores, evaluations, breakdown of curriculum

requirements and completion, disciplinary action, student counseling, contracts, tuition costs, accepted transfer of hours from another school, withdrawals and leaves of absence. The school must protect these files from loss, damage or against tampering.

(4) through (10) remain the same.

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

(12) through (19) remain the same.

(20) Upon completion by the student of at least 90% of the required hours of a course of study in cosmetology, manicuring or esthetics and prior to graduating and receiving a diploma, the student shall take the school's final practical examination. The examination schedule shall be determined by the school. The final practical examination must include all components for evaluation as provided in ARM 8.14.605 for each course of study. The final practical examination passing score will be consistent with the school's academic passing requirements.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-301, 37-31-304, 37-31-311, 37-31-312, MCA

**REASON:** The board finds there is reasonable necessity to amend this rule so that the school will provide the final practical examination and scoring criteria instead of a board practical examination.

8.14.605 CURRICULUM - COSMETOLOGY, MANICURING AND ESTHETICS STUDENTS (1) through (1)(a)(iv) remain the same.

(v) the use of manicuring implements, ~~(including the nail drill)~~electric nail file;

(b) through (1) remain the same.

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

(a) Students who completed their course of training but failed the state board examination may remain in school for further study and practice, ~~but shall not be permitted to work on members of the public.~~

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

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

(g) through (11) remain the same.

AUTH: 37-31-203, MCA  
IMP: 37-31-304, 37-31-311, ~~37-31-312~~, MCA

**REASON:** The board has determined there is reasonable necessity to use current terminology. Manicurists are not allowed to use electric nail drills as they qualify under the category of craft or hobby tools. The correct terminology is electric nail file. The board proposes that to be consistent with ARM 8.14.603, students be allowed to work on members of the general public during their course of additional study.

8.14.606 STUDENT REGISTRATION (1) remains the same.

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

(3) through (6) remain the same.

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

(8) remains the same.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA  
IMP: 37-31-304, 37-31-311, 37-31-312, 37-31-323, MCA

**REASON:** The board finds there is reasonable necessity to amend this rule to correctly refer to the necessary paperwork as hour sheets, not time sheets, and to provide the complaints will be processed according to Department complaint procedures, instead of referencing a manual.

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

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

(3) Student, or cadet ~~and temporary~~ instructors must be under the direct on-site supervision of a full-time licensed instructor while practice teaching and shall not be allowed to

work on members of the public during their teacher-training program.

(4) through (6) remain the same.

(7) ~~Upon completion of 650 hours of teacher training, student or cadet instructors may apply for a temporary permit and may continue to function as student or cadet instructors until the examination results are available from the next regularly scheduled examination for instructors. Upon completion by the student of at least 90% of the teacher-training course, the school shall administer a final practical examination prior to graduation and issuance of a diploma. A final practical examination must include all components for evaluation as provided in ARM 8.14.611. The final practical examination and passing score shall be consistent with the school's academic passing requirements.~~

AUTH: 37-31-203, MCA

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

REASON: The board finds there is reasonable necessity to amend this rule due to the change in the practical examination requirements and the computerized written examination streamlining the licensing timeframe.

8.14.611 CURRICULUM - TEACHER-TRAINING UNITS

- |                                     |                      |
|-------------------------------------|----------------------|
| (1) Teaching methods <del>†</del>   | 375 <u>325</u> hours |
| (a) through (j) remain the same.    |                      |
| (2) General psychology <del>†</del> | 100 hours            |
| (a) through (6) remain the same.    |                      |

AUTH: 37-31-203, MCA

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

REASON: The board finds there is reasonable necessity to amend this rule to correct an error in the number of total hours required for "teaching methods". The correct number of hours needed is 325 not 375, which will now correctly total the statutory requirement of 650 hours.

8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

~~(1) Applications to take the examination for an instructor's license must be mailed to the examination service company, indicated on the application, so that it is received no later than the application deadline date for the examination the applicant has selected. The applicant must be complete and accompanied by the appropriate fees and credentials. An applicant for an instructor's license must submit an application on a form prescribed by the board. The applicant application must be complete and accompanied by the appropriate fees and credentials the following documentation: The examination application cannot be submitted earlier than 90 days prior to the scheduled examination date the applicant has selected.~~



(a) applicants with at least 650 hours of teacher training must provide:

(i) the applicant's hour records showing 650 completed hours;

(ii) a diploma issued for a teacher course;

(iii) proof of the applicant's high school graduation. An equivalent will not be accepted;

(iv) a copy of the birth certificate or other verifiable evidence of the applicant's date of birth;

(v) verification of current Montana licensure in cosmetology, manicuring or esthetics in good standing; and

(vi) passage of the written computerized examination.

(b) Pursuant to 37-31-305, MCA, in lieu of the 650 hour teacher training course, the applicant may provide documented proof, such as employer/contractor affidavits and proof of income, i.e. W2 or 1099 forms verifying the applicant's three years of continuous full time practice immediately prior to the application submission for an instructor's license in the field of cosmetology, manicuring or esthetics.

(2) Applicants Persons who have graduated from a teacher training course, administered by a licensed school with an approved teacher's training program, must apply for a license and take the instructor's examination within three five years of the applicant's graduation date from the licensed school and course.

(3) Persons who graduated from an approved teacher's training course, and passed the board's written instructor's examination on or after May 1, 1997, but did not pass the practical examination may apply for licensure in accordance with ARM 8.14.801 at any time up to May 1, 2003.

~~(3) (4) Applications which are incomplete shall be returned to the applicant and not considered received by the board or the examination administration service company. Applicants will not be scheduled for the examination until their application is complete. Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has 90 days in which to supply the remaining information or documents. If the application remains incomplete for more than 90 days, the application is rejected, and the applicant will have to re-submit a new application package and application fees.~~

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

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

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

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

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

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

~~(10) remains the same, but is renumbered (5).~~

(6) The board will accept hours of instruction from schools located outside of Montana towards fulfillment of the hour requirements for the various categories of licenses.

(7) Student applicants from out-of-state must meet the same requirements as instructor students as prescribed in this chapter.

AUTH: 37-31-203, MCA

IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, 37-31-321, MCA

**REASON:** The board proposes to amend this rule for the reasons set forth in the statement of reasonable necessity following ARM 8.14.402. Subsection (2) is being amended to provide that applicants who have completed the instructor training course have five years in which to obtain licensure, which is consistent with other licensing categories. Subsection (3) is being added to provide that applicants who have passed the written instructor examination, but have failed to pass the practical examination have until May 1, 2003 to obtain licensure. Subsections (6) and (7) were added to provide the basic information for out-of-state applicants to apply for licensure.

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

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

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

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

~~(3) Persons who graduated from an approved cosmetology, manicurist and esthetics school, and passed the board's written examination on or after May 1, 1997, but did not pass the practical examination may apply for licensure in accordance with ARM 8.14.801 at any time up to May 1, 2003.~~

~~(4) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has 90 days in which to supply the remaining information or documents. If the application remains incomplete for more than 90 days, the application is rejected and the applicant will have to re-submit a new application package and application fees.~~

~~(5) The examinations are national and shall consist of two portions. A practical demonstration in basic cosmetology, manicuring or esthetics and a multiple choice written examination.~~

~~(6) Applicants must appear for examination in professional apparel and have with them all equipment necessary for performing the practical examination and admission letter and photo ID.~~

~~(7) Any applicants who have failed any part of the practical and written examination and wish to retake the examination, must reapply to be re-examined by the examination deadline and pay the required re-examination fee.~~

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

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

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

~~(11) In order to pass the national examination to practice cosmetology or manicuring or esthetics an applicant must obtain a scaled score of not less than 75% in the practical examination and a scaled score of not less than 75% on the written examination.~~

~~(12) Applicants will be notified of their pass or fail examination results in writing only. Actual scores will not be released.~~

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

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

(5) With respect to cosmetology students, applications for licensure will not be accepted unless complete and accompanied by the appropriate fees and documentation:

(a) the student's hour records showing 2000 hours have been completed;

(b) a cosmetology school diploma;

(c) proof of applicant's high school graduation or equivalency;

(d) photostatic copy of a birth certificate or other verifiable evidence of applicant's birth date; and

(e) passage of the written computerized examination.

(6) With respect to manicuring students, applications for licensure will not be accepted unless complete and accompanied by the appropriate fees and the following documentation:

(a) the student's hour records showing 350 hours have been completed;

(b) a manicuring school diploma;

(c) proof of applicant's high school graduation or equivalency;

(d) photostatic copy of a birth certificate or other verifiable evidence of applicant's birth date; and

(e) passage of the written computerized examination.

(7) With respect to esthetic students, applications for licensure will not be accepted unless complete and accompanied by the following appropriate fees and documentation:

(a) the student's hour records showing 650 hours have been completed;

(b) an esthetic school diploma;

(c) proof of applicant's high school graduation or equivalency;

(d) photostatic copy of a birth certificate or other verifiable evidence of applicant's birth date; and

(e) passage of the written computerized examination.

(8) The board will accept hours of instruction from schools located outside Montana towards fulfillment of the hour requirements for the various categories of licenses.

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

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-303, 37-31-304, 37-31-308, 37-31-321, MCA

REASON: The board proposes to amend this rule for the reasons set forth in the statement of reasonable necessity provided in paragraph 3, above. The change in the procedures for examinations required that the procedures for licensure of out-of-state applicants be changed to be consistent with the requirements for a Montana applicant.

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

(a) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has 90 days in which to supply the remaining information or documents. If the application remains incomplete for more than 90 days, the application is rejected and the applicant will have to re-submit a new application package and application fees. If the application is incomplete, the application will be returned and the applicant shall correct any deficiencies and re-submit the endorsement application. Failure to re-submit the endorsement application within 90 days shall be treated as a voluntary withdrawal of the application and fees will be forfeited.

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

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

(i) an application prescribed by the board with the appropriate fees and proof of completion of 2,000 hours of training in an approved school of cosmetology~~;~~

(ii) a copy of applicant's birth certificate or other verifiable proof of birth date~~;~~

(iii) a copy of applicant's high school graduation or equivalency, ~~a copy of a current out-of-state license;~~ and  
(iv) an original state board transcript or verification from each state in which the applicant holds or ever held a license.

(b) The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript or verification.

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

(a) To qualify for licensure by endorsement, an out-of-state esthetician must submit:

(i) an application prescribed by the board with the appropriate fees and proof of completion of 650 hours of training in an approved school of esthetics or esthetics course~~;~~<sub>i</sub>

(ii) a copy of applicant's birth certificate or other verifiable proof of birth date~~;~~<sub>i</sub>

(iii) a copy of applicant's high school graduation or equivalency, ~~a copy of a current out-of-state license;~~ and

(iv) an original state board transcript or verification from each state in which the applicant holds or ever held a license.

(b) The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript or verification.

(4) ~~Out-of-state cosmetology applicants with less than the 2,000 hours of training must take the national practical and written examinations for cosmetology, or obtain additional hours as may be directed by the board to achieve the total of 2,000 hours.~~ For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for manicurists as 350 hours of formal training and successful completion of a board accepted written examination with a passing score set forth by board rule. Applicants who do not possess 350 hours of formal training shall successfully pass the board accepted written examination as specified in [NEW RULE I]. Work experience obtained in the profession will not be considered as part of a manicurist applicant's qualifications or credit for hours.

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

~~(6)(5)~~ Applicants tested and licensed in a state which administers a ~~national practical and board accepted~~ written examination and the applicant received a scaled score of the minimum score required for licensure in Montana may qualify for licensure by endorsement.

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

~~(8)(7)~~ Applicants from foreign countries will be granted a license on the same basis as out-of-state applicants. The applicant must first receive board approval for the foreign hours of training in accordance with the established curriculum in ARM 8.14.605 or 8.14.611.

~~(9)~~ Out-of-state licensed instructor applicants will be required to take and pass the national written and practical examinations for instructors.

~~(10)~~ Out-of-state licensed electrologist applicants will be required to take and pass the national written examination for electrologists.

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

(8) For the purposes of this rule, a written examination is "acceptable" by the board if the examination is written and administered by the national interstate council of state boards of cosmetology or any other nationally recognized written examination.

AUTH: 37-1-131, 37-31-203, MCA

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

**REASON:** The board proposes to amend this rule for the reasons set forth in the statement of reasonable necessity (paragraph 3). The change in the procedures for examinations required for licensure of out-of-state applicants should be changed to be consistent with the requirements for a Montana applicant.

8.14.813 LAPSED LICENSE (1) Pursuant to 37-1-141, MCA, if a license has lapsed for a period of up to three years, but no longer than three years, the license may be renewed upon payment of license fees plus penalty late renewal fees for each year due.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-141, 37-1-131, 37-31-322, MCA

**REASON:** The board finds there is reasonable necessity to amend this rule to change the language to correctly state the licensee is charged a late renewal fee, not a penalty fee.

8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND FEES (1) through (6) remain the same.

~~(7) 90-day temporary practice permit fee \_\_\_\_\_ 20~~

(8) through (13) remain the same, but are renumbered (7) through (12).

~~(14) (13)~~ Examination fees will be paid to the examination administration service ~~company~~ contracted by the board. In the event the board does not contract the examination services, the fees will be paid to the board.

~~(15) (14)~~ Effective ~~July 1, 2000~~ May 1, 2002, each examination candidate will be required to pay an examination fee to the examination administrators not to exceed \$140 90.

(16) through (20) remain the same, but are renumbered (15) through (19).

AUTH: 37-1-134, 37-31-203, 37-31-323, 37-32-201, MCA

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

**REASON:** The board feels there is reasonable necessity to amend this rule to eliminate (7) because of the repeal of the temporary permit. Numbers (14) and (15) are amended for clarification and to reflect the reduction in fees for a written examination only, effective May 1, 2002.

5. The proposed rules provide as follows:

NEW RULE I EXAMINATION REQUIREMENTS AND PROCESS

(1) Persons to sit for the written examination must adhere to the standards and requirements for admission to the examination and site, including the payment of appropriate fees.

(2) The examination is a multiple choice, computerized, written examination as provided by the examination administration service contracted by the board.

(3) Persons with special needs must file a request for modification in the administration of the examination for reasonable accommodations, in accordance with the Americans with Disabilities Act of 1990, with the examination administration service contracted by the board prior to taking the examination.

(4) In order to pass the examination for an instructor's license, the candidate must obtain a scale score of not less than 85% on the written instructor examination.

(5) In order to pass the examination for a cosmetology, manicuring or esthetics license, the candidate must obtain a scale score of not less than 75% on the written examination.



(6) The examination candidate's pass/fail score will be electronically submitted to the board for processing by the examination administration service, normally within 24 hours. The actual pass/fail scores will not be released to the candidate.

(7) In addition to the requirements of 37-31-308, MCA, instructor candidates who have taken the examination and failed must apply to be re-examined and pay the necessary examination fees as required by the examination administration service contracted by the board.

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

(9) Any manicurist applicant twice failing to pass the written examination for licensure must take 35 hours of additional training at a licensed school for manicuring or must wait six months before re-taking the written examination.

(10) Any esthetics applicant twice failing to pass the written examination for licensure must take 65 hours of additional training at a licensed school for esthetics or wait six months before re-taking the written examination.

(11) Persons having only the requirement to pass the written examination for licensure in Montana may apply for a licensure prior to taking the written examination in accordance with ARM 8.14.801 or 8.14.802 in order to expedite the licensing process. The application will be held by the board for up to 90 days in order to obtain verification of the applicant's passing score on the written examination.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-304, 37-1-319, 37-31-304, 37-31-305, 37-31-308, 37-31-321, MCA

**REASON:** The board finds there is reasonable necessity to explain the process and requirements for taking the written computerized examination. The rule also provides for the re-taking of the examination.

NEW RULE II ELECTROLOGY LICENSE APPLICATION AND EXAMINATION PROCESS

(1) Applications for an electrologist license must be submitted to the board on a form prescribed by the board together with the appropriate fee and documentation.

(2) Applicants who have graduated from a registered school of electrology must apply for licensure within five years of the applicant's graduation date.

(3) To be eligible for licensure the applicants must provide the following documentation:

(a) a copy of the birth certificate or other verifiable evidence of the applicant's date of birth;

(b) proof of the applicant's high school graduation or taken and passed an equivalence test;

(c) completion of a continuous course of theoretical study in electrology;

- (d) completed practice of at least 600 hours;
- (e) be in good standing;
- (f) proof of a diploma from a registered school of electrology; and
- (g) passage of a written computerized examination.

(4) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has 90 days in which to supply the remaining information or documents. If the application remains incomplete for more than 90 days, the application is rejected, and the applicant will have to re-submit a new application package and application fees.

(5) Persons to sit for the written examination must adhere to the standards and requirements for admission to the examination and site, including the payment of appropriate fees.

(6) The examination is a multiple choice computerized written examination as provided by the examination administration service contracted by the board.

(7) Persons with special needs must file a request for modification in the administration of the examination for reasonable accommodations, in accordance with the Americans with Disabilities Act of 1990, with the examination administration service contracted by the board prior to taking the examination.

(8) In order to pass the examination for the electrology license, the candidate must obtain a scaled score of not less than 75% on the written electrology examination.

(9) The examination candidate's pass/fail score will be electronically submitted to the board for processing by the examination administration service, normally within 24 hours. The actual pass/fail scores will not be released to the candidate.

(10) Examination candidates who have taken the examination and failed must apply to be re-examined and pay the necessary examination fees as required by the examination administration service contracted by the board.

(11) Any electrology applicant, failing twice to pass the written examination for licensure, must take 60 hours of additional training at a licensed school for electrology or wait six months before re-taking the written examination.

AUTH: 37-1-131, 37-32-201, 37-32-302, MCA  
IMP: 37-32-201, 37-32-302, 37-32-304, MCA

**REASON:** The board feels there is reasonable necessity to explain the process and requirements for the licensure of electrologists and explain the written computerized examination. The rule also provides for the re-taking of the examination.

6. The Board proposes to repeal the following rules:

8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY PERMITS a rule proposed to be repealed, is found at ARM pages 8-430 and 8-431.

AUTH: 37-1-131, 37-31-203, MCA  
IMP: 37-1-304, 37-1-319, 37-31-304, 37-31-308, 37-31-311, MCA

REASON: The board has determined there is reasonable necessity to repeal this rule because the board has decided to repeal the temporary permit and move the other language to ARM 8.14.802 and 8.14.814.

8.14.804 EXAMINATION - OUT-OF-STATE STUDENTS a rule proposed to be repealed, is found at ARM page 8-432.

AUTH: 37-31-203, MCA  
IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-308, MCA

REASON: The board finds there is reasonable necessity to repeal this rule and incorporate the language in ARM 8.14.801 and ARM 8.14.802.

8.14.1005 EXAMINERS - LICENSE EXAMINATIONS a rule proposed to be repealed, is found at ARM page 8-456 and 8-457.

AUTH: 37-1-131, 37-32-201, 37-32-302, MCA  
IMP: 37-32-201, 37-32-302, 37-32-303, MCA

REASON: The board finds there is reasonable necessity to repeal ARM 8.14.1005 because there is no longer a practical examination, only a computerized written examination. The licensing requirement language is moved to NEW RULE II.

7. Between July 1, 2000 and June 30, 2001, there were approximately 188 candidates that applied for temporary permits at a cost of \$20.00 per permit. The Board's total revenue collections in the next fiscal year will decrease by \$3,760. Because the Board has a fund balance of \$265,343 as of July 1, 2001, other fees will not have to be increased to cover the cost of the loss revenue. There will be a cost savings of \$50.00 per examination candidate as a result of the reduced fees that will be paid to the examination services. There were approximately 314 candidates in calendar year 2001 that applied for the examination. Since the fees were paid directly to the test administrators, there will be no economic impact to the Board's special revenue account. The candidates will see a savings of \$50.00 on their examination fee.

8. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or

by e-mail to dlibsdcos@state.mt.us and must be received no later than 5:00 p.m., March 28, 2002. If comments are submitted in writing, the board requests that the person submit eight copies of their comments.

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

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

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

12. The Board of Cosmetologists will meet on April 8, 2002, at 1:30 p.m. in the basement conference room B-07, 301 South Park Avenue, Helena, Montana to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed rule changes. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed rule changes beyond the March 28, 2002 deadline.

BOARD OF COSMETOLOGISTS  
WENDELL PETERSEN, CHAIRMAN

By: /s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, February 19, 2002.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of New Rules I and II, the	)	ON PROPOSED ADOPTION,
amendment of ARM 37.95.102,	)	AMENDMENT AND REPEAL
37.95.106, 37.95.108,	)	
37.95.109, 37.95.115,	)	
37.95.117, 37.95.121,	)	
37.95.127, 37.95.132,	)	
37.95.139, 37.95.207,	)	
37.95.210, 37.95.227,	)	
37.95.610, 37.95.620,	)	
37.95.640, 37.95.701,	)	
37.95.705, 37.95.706 and	)	
37.95.718 and the repeal of	)	
ARM 37.95.1010 pertaining to	)	
the licensure of day care	)	
facilities	)	

TO: All Interested Persons

1. On March 27, 2002, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

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 site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 18, 2002 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 rules as proposed to be adopted provide as follows:

RULE I DETERMINATION OF NEED FOR LICENSE OR REGISTRATION:  
COUNTING PROVIDER'S OWN CHILDREN (1) The department shall, upon request or as its own action, make an initial count of children to determine whether an applicant or a provider is required to obtain a license or registration from the department.

(2) Children of the provider's own household or children who are present in the home or facility only when their own parent is also present shall not be counted in determining whether supplemental parental care is being provided to other children.

(3) If the initial count determines that supplemental parental care is being provided to three or more children, not counting those listed in (2), the provider shall be licensed or registered as a day care facility.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704 and 52-2-731, MCA

RULE II DETERMINATION OF NUMBER OF CHILDREN UNDER CARE: COUNTING PROVIDER'S AND OTHER CHILDREN (1) The department shall make a separate count of children, apart from the initial licensure or registration determination count, to determine the type of license or registration required. The licensure or registration type count shall not include the provider's own children age 6 or over who attend school full time. The licensure or registration type count shall include all children, including the provider's own children under age 6, who are present during hours when supplemental parental care is provided.

(2) The licensure or registration count shall determine:

(a) whether the provider must be registered as a family day care home or group day care home, or licensed as a day care center;

(b) whether the day care facility is in compliance with applicable staff to child ratios;

(c) whether sufficient space is provided; and

(d) whether any other safety, health or program requirements or registration or licensure restriction requiring counting of children is affected or violated.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704 and 52-2-731, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.95.102 DEFINITIONS (1) remains the same.

(2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. In addition to the previous definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.

(3) through (8) remain the same.

(9) "Group day care home" means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also

means a day care facility providing care to 7 to 12 children with no more than 6 children under 2 years of age, unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which supplemental parental care is provided for up to 8 infants. No other children shall be in attendance.

(a) remains the same.

(10) "Harm to children" means harm to a child's health or welfare as defined in 41-3-102, MCA.

(10) through (27) remain the same but are renumbered (11) through (28).

~~(28)~~ (29) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance 4 or more days a week for 6 hours a day or more.

(29) through (31) remain the same but are renumbered (30) through (32).

(33) "Supervision" means the provider and all caregivers shall be able to see and hear the children at all times.

(32) through (34) remain the same but are renumbered (34) through (36).

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

37.95.106 DAY CARE FACILITIES, REGISTRATION OR LICENSING APPLICATION (1) and (2) remain the same.

(3) Before a license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) through (h) remain the same.

(i) a written fire and emergency evacuation plan. For license renewal there must also be documentation of 8 annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and

~~(j) upon initial application only, the names, addresses, and telephone numbers of 3 personal references not related to the applicant who have knowledge of the applicant's character, experience and ability; and~~

(k) remains the same but is renumbered (j).

(4) Before a registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) remains the same.

~~(b) upon initial application only, the names, addresses and telephone numbers of 3 personal references not related to the applicant(s) who have knowledge of the applicant's character, experience and ability;~~

(c) through (f) remain the same but are renumbered (b)

through (e).

(5) through (7) remain the same.

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

IMP: Sec. 52-2-722, 52-2-731, 53-4-504 and 53-4-507, MCA

37.95.108 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES (1) The department may investigate and inspect the conditions and qualifications of any day care center or any person seeking or holding a license or registration.

(1) through (7) remain the same but are renumbered (2) through (8).

~~(8)~~ (9) Suspension or revocation may be immediate if:

(a) and (b) remain the same.

(c) the provider has made any misrepresentations to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes; or

(d) the provider, a member of the provider's household or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 37.95.1016-;

(e) through a child care licensing investigation, it is determined that the provider, provider staff or member of the provider's household has violated a licensing regulation which results in the harm to a child as defined in 41-3-102, MCA; or

(f) information received from law enforcement and tribal law enforcement indicating the provider has caused physical, sexual or emotional harm to a child.

(9) remains the same but is renumbered (10).

~~(10) The licensee or registrant shall allow custodial and non-custodial parental access to the facility at any time during which child day care services are provided, barring any court order preventing parent-child contact.~~

(11) through (13) remain the same.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-723, 52-2-731, 52-2-732 and 52-2-733, MCA

37.95.109 CAREGIVER QUALIFICATIONS FOR ALL DAY CARE FACILITIES (1) remains the same.

(2) Each director, caregiver, volunteer, support staff adult or person over the age of 18 residing in the home shall have a state criminal, a child protective services/adult protective services (CPS/APS) and if applicable, a tribal criminal and child protective services (CPS) background check conducted.

~~(2) No caregiver, adult or person in residence shall:~~

~~(a) have been convicted or adjudicated of a crime involving harm to children or physical or sexual violence against any person.~~

(a) The state shall not grant approval or licensure nor allow a license or registration approval if any director, caregiver, volunteer or support staff person or person over the age of 18 residing in the home has been convicted by a court of



competent jurisdiction of a felony or misdemeanor involving:

- (i) child abuse or neglect;
- (ii) spousal abuse;
- (iii) a crime against a child or children (including child pornography); or
- (iv) a crime involving violence, including rape, sexual assault or homicide, but not including other physical assault or battery.

(b) The state shall not grant approval nor allow a license or registration approval if any director, caregiver, volunteer or support staff person or person over the age of 18 residing in the home has, within the last 5 years been convicted by a court of competent jurisdiction of a felony or misdemeanor involving:

- (i) physical assault;
- (ii) battery; or
- (iii) felony drug related offense.

~~(i)~~ (c) A caregiver who is charged with a crime involving children or physical or sexual violence against any person or any felony drug related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

~~(b)~~ (3) No director, caregiver or adult in residence shall be currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist.

~~(i)~~ (a) The department may request that a caregiver person obtain a psychological or psychiatric evaluation at the caregiver's provider's own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists.

~~(e)~~ (4) No director, caregiver or adult in residence shall be chemically dependent upon illegal drugs or alcohol or use legal drugs or medications in a habitual and inappropriate manner. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the caregiver to a person obtain an evaluation at the caregiver's provider's own expense if there is reasonable cause to believe chemical dependence exists.

~~(d)~~ (5) No director, caregiver or adult in residence shall have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.

(6) No director, caregiver or adult in residence shall be identified through a department licensing investigation to have violated a licensing regulation which results in or knowingly allows harm to a child as defined in 41-3-102, MCA.

(3) through (5) remain the same but are renumbered (7) through (9).

(10) Caregivers must supervise child at all times.

(a) The provider and all caregivers shall be responsible for direct care, protection, supervision and guidance of children through active involvement or direct observation.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-723, 52-2-731 and 52-2-735, MCA

37.95.115 DAY CARE PARENT INFORMATION (1) through (2) remain the same.

~~(3) Unless prohibited by court order, parents or guardians must have unlimited access to the day care facility during day care hours.~~ The licensee or registrant shall allow custodial and non-custodial parental access to the facility at any time during which child day care services are provided, unless there is a current court order preventing parent-child contact.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-723, 52-2-731 and 52-2-735, MCA

37.95.117 DAY CARE FACILITIES, JOINT PROGRAMS (1) Any day care facility which operates a day care program in connection with another non-day care program on the same premises must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.

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

(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) remains the same.

(b) If the multiple program day care facility is in a non-residential structure, and is owned by the same entity or person it will be licensed as a center and will be required to meet all center regulations.

(c) If more than one day care program exists in one retail or commercial structure, and there are separate owners or entities of each program, the department will grant individual registrations or licenses.

(c) and (d) remain the same but are renumbered (d) and (e).

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

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

37.95.121 SAFETY REQUIREMENTS (1) through (5) remain the same.

(6) The ~~home~~ indoor and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.

(7) Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas,

the play area must be enclosed with a fence in good repair that is at least 4 feet high without any holes or spaces greater than 4 inches in diameter or natural barriers to restrict children from these areas.

(a) Outdoor play areas shall be designed so that all parts are always visible and easily supervised by staff.

(8) through (13) remain the same.

(14) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.

~~(a) First story main levels~~ All facilities must have 2 accessible exit doors means on each level that are unlocked when children are in care and are easily operable from the inside with a single action. If the facility utilizes The 2 exit doors as the means of egress, then the doors must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to exit doors must be kept clear of obstructions. Deadbolt locks that can be opened from the inside only with a key are prohibited.

(b) remains the same.

AUTH: Sec. 52-2-704 and 2-2-731, MCA  
IMP: Sec. 52-2-704 and 52-2-734, MCA

37.95.127 DAY CARE FACILITIES SWIMMING (1) remains the same.

~~(2) Portable wading pools, if used, must be drained, cleaned, sanitized and refilled with fresh water at least daily in accordance with ARM 37.95.227(2)(b) are prohibited in child care facilities and can not be erected on day care facility property during the hours of operation.~~

(3) Children shall not be permitted in hot tubs, spas, or saunas.

(a) Hot tubs must have bolted and securely locked covers.

(b) Spas and saunas must be inaccessible to children.

(4) Bathtubs, buckets and other water receptacles shall be emptied immediately after use.

(5) Ponds shall be fenced to prevent access to children.

~~(3)~~ (6) All in ground and above ground swimming pools located in the outdoor play space area or accessible to children must be fenced with a locked gate. The fence shall be at least 5 feet high and come within 3 1/2 inches of the ground. The fence shall be constructed to discourage climbing. Exit and entrance points shall have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall shall not constitute one side of the fence unless there are no openings in the wall. When children are swimming, supervision must include at all times at least one person currently certified in red cross advanced life saving or an equivalent certificate by a recognized organization. This person shall not be counted in the staff-child ratio. One person with a life guard training certificate is required for each group of 25 or fewer children.

(a) Each swimming pool more than 6 feet in width, length

or diameter shall be provided with a ring buoy and rope and either a throw line or a shepherd's hook. Such equipment shall be of sufficient length to reach the center of the pool from the edge of the pool and shall be safely and conveniently stored for immediate access.

(b) All pool pumping equipment shall be screened to prevent access and injury.

(7) Swimming pool safety rules shall be posted near the swimming pool.

(8) The staff-child ratio shall be maintained whenever children participate in swimming activities, including swimming instruction.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731 and 52-2-735, MCA

37.95.132 TRANSPORTATION (1) through (3) remain the same.

(4) With the exception of public transportation or rented or leased buses which are not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age and weight appropriate safety restraints, which must remain fastened at all times the vehicle is in motion. Each child shall have his or her own safety restraint. Children shall not share a safety seat or a safety restraint.

(5) and (6) remain the same.

(7) ~~The requirements of ARM 37.95.1010 must also be met when transporting children.~~ Facilities providing transportation for children under 4 years of age or 40 pounds shall comply with the following requirements:

(a) all vehicles shall be equipped with children's car seats that meet federal department of transportation standards for the age and weight of the child being transported;

(b) car seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts anchored to the floor;

(c) there shall be no more than one child in each car seat;

(d) there shall be one adult in addition to the driver for each 4 infants being transported. No child shall be left unattended in a vehicle; and

(e) an adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

37.95.139 DAY CARE FACILITIES, HEALTH CARE REQUIREMENTS

(1) The parent(s) of each child admitted to the day care facility shall provide the name of the physician or health care facility the parent wishes to have called for the parent's child and a release authorizing the provider to call said physician in case of an emergency.

(2) through (9) remain the same.

(10) Every employee, volunteer, or resident at a day care facility must:

(a) remains the same.

(b) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101 degrees or greater, or if the person exhibits any of the symptoms outlined in (4) above for which a child would be excluded;

(c) through (11) remain the same.

(12) A first aid kit must be kept on site at all times and contain at least the following:

(a) unexpired syrup of ipecac (one ounce bottle) or activated charcoal;

(i) these substances may only be administered upon directive from the poison control center of the local emergency service program (i.e., 9-1-1 operator, local hospital or physician).

(b) through (16) remain the same.

AUTH: Sec. 52-2-704 and 52-2-735, MCA

IMP: Sec. 52-2-731 and 52-2-735, MCA

37.95.207 GENERAL HOUSEKEEPING (1) As general housekeeping measures, a day care center must ensure that:

(a) through (e) remain the same.

(f) at the end of each week of use, or more frequently as needed, toys are cleaned and sanitized in a solution containing 100 ppm available chlorine (1/4 ~~cup~~ ounce household bleach to 1 gallon of water) or a comparable sanitizing solution, air dried after sanitizing, rinsed with clean water after the first air drying step, and air dried again;

(g) through (k) remain the same.

AUTH: Sec. 52-2-735 and 53-4-506, MCA

IMP: Sec. 52-2-735 and 53-4-506, MCA

37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING CRIBS OR DIAPERS (1) If a day care center cares for children requiring cribs or diapers, it must:

(a) ensure that cribs, playpens, and toys used by those children are made of washable, nontoxic materials and are kept clean and sanitized with a solution containing at least 100 ppm chlorine (1/4 ~~cup~~ ounce household bleach to 1 gallon water) or equivalent sanitizing solution, air dried, rinsed with clean water after the first air drying step, and air dried again. This must be done daily;

(b) and (c) remain the same.

(d) handle diapers in the following manner:

(i) remains the same.

(ii) after each diapering, thoroughly clean and sanitize the diapering area, using a solution of at least 100 ppm chlorine (1/4 ~~cup~~ ounce household bleach to 1 gallon water) or an equivalent sanitizing solution, air dry, rinse with clean

water after the first air drying step, and air dry the area again;

(iii) through (f)(iv) remain the same.

AUTH: Sec. 52-2-735, MCA

IMP: Sec. 52-2-735, MCA

37.95.227 SWIMMING POOLS (1) The department hereby adopts and incorporates by reference ~~ARM Title 16, chapter 10, subchapter 15~~ Title 37, chapter 111, subchapter 11, setting construction and operation standards for swimming pools. A copy of ~~ARM Title 16, chapter 10, subchapter 15~~ Title 37, chapter 111, subchapter 11 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau Section, P.O. Box 202951, Helena, MT 59620-2951.

(2) In regard to swimming, a day care center must:

(a) allow children to use only a swimming pool which is constructed and operated in accordance with ~~ARM Title 16, chapter 10, subchapter 15~~ Title 37, chapter 111, subchapter 11 and in accordance with ARM 37.95.127.

~~(b) in the event that a portable wading pool is used, add 1 to 3 ppm chlorine (1 tablespoon household bleach to 100 gallons of water) to the pool on the day of use; drain, clean, and refill it with fresh water daily, and refill it with fresh water when needed. Bleach must be added any time the pool is refilled and drained.~~

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

AUTH: Sec. 52-2-735 and 53-4-506, MCA

IMP: Sec. 52-2-735 and 53-4-506, MCA

37.95.610 DAY CARE CENTERS, SPACE (1) through (2)(b) remain the same.

(3) Outdoor play areas at the facility must be surrounded by a fence that is at least 4 feet high and in good repair without any holes or spaces greater than 4 inches in diameter. Outdoor areas must be designed so that all parts are always visible and directly supervised by child care staff.

(4) remains the same.

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

IMP: Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA

37.95.620 DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) remains the same.

(2) A primary caregiver must be at least 18 years of age and shall meet all of the qualifications of (3)(d) plus the following:

(a) remains the same.

(b) hold a current course completion card in ~~cardio-pulmonary resuscitation including infant choking response. If the caregiver is only caring for children over the age of 8 years, adult CPR will suffice~~ infant, child and adult CPR and

infant choking response; and

(c) through (3) remain the same.

(4) Any person who provides care to children in a day care facility with the exception of volunteers as specified in (9), for at least 160 hours a year is required to maintain the 8 hours of continuing education.

(4) through (6) remain the same but are renumbered (5) through (7).

~~(7)~~ (8) The child to staff ratio for a day care center is:

(a) 4:1 for infants 0 ~~to~~ 24 months through 23 months;

(b) 8:1 for children 2 ~~to~~ 4 years through 3 years;

(c) 10:1 for children 4 ~~to~~ 6 years through 5 years; and

(d) 14:1 for ~~over~~ 6 years and over.

(8) remains the same but is renumbered (9).

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

IMP: Sec. 52-2-702, 52-2-704, 52-2-723, 52-2-731,  
52-2-735, 53-4-504, 53-4-506 and 53-4-508, MCA

37.95.640 DAY CARE CENTERS, LICENSING SERVICES PROVIDED

(1) through (2) remain the same.

~~(3) The department may investigate and inspect the conditions and qualifications of any day care center and/or any person seeking or holding a license.~~

AUTH: Sec. 52-2-704 MCA

IMP: Sec. 52-2-731 and 52-2-733, MCA

37.95.701 GROUP AND FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) through (9) remain the same.

(10) Any person who provides care to children in a day care facility for at least 160 hours a year is required to maintain the 8 hours of continuing education.

~~(10)~~ (11) The provider must hold a current course completion cards in cardio-pulmonary resuscitation including infant choking response. ~~If the caregiver is caring for children under the age of 8, it is also required that the provider have certification in infant-child CPR infant, child and adult CPR and infant choking response and standard first aid.~~

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

IMP: Sec. 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-735 and 53-4-504, MCA

37.95.705 GROUP AND FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS (1) The day care home must have a minimum of 35 square feet per child of indoor space, excluding floor area devoted to fixed equipment or support functions such as kitchen, offices, bathrooms, etc., as well as 75 square feet per child of outdoor play space. All areas used for day care purposes must have at least one door for egress of not less than 34 inches wide and a minimum of one other means of egress of at least 24

inches high by 20 inches wide of full clear opening. If windows are used for egress, the total area must be 5.7 square feet of clear opening. If windows are used for rescue or exiting purposes, the provider shall have a written and feasible evacuation plan. All exits must be unobstructed at all times.

(2) remains the same.

(3) All rooms used for napping by children must have at least one operable window which can be readily used for ventilation. If this window is also considered for rescue or exiting, then the window(s) must meet egress requirements and the provider must have a feasible evacuation plan.

(3) through (8) remain the same but are renumbered (4) through (9).

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

IMP: Sec. 52-2-731, 52-2-734 and 53-4-504, MCA

37.95.706 GROUP AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS (1) In an emergency, all occupants of the day care facility must be able to escape from the home or building in a safe and timely manner.

(a) the ground or main level must have two accessible exit ~~doors~~ means easily opened from the inside with a single action. Deadbolt locks that can be opened from the inside only with a key are prohibited. If the facility utilizes The two exit doors, as the means of egress, then these doors must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to exit doors must be kept clear of obstructions.

(2) through (7) remain the same.

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

IMP: Sec. 52-2-731, 52-2-734 and 53-4-504, MCA

37.95.718 GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP (1) through (3) remain the same.

(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 the same.

(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 9 8 children being cared for at the facility.

(d) through (h)(i) remain the same.

AUTH: Sec. 52-2-731 and 52-2-735, MCA

IMP: Sec. 52-2-723, 52-2-731 and 52-2-735, MCA

4. The rule 37.95.1010 as proposed to be repealed is on page 37-23567 of the Administrative Rules of Montana.



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

5. The proposed new rules, rule amendments, and rule repeal are necessary for the following reasons:

Rules I and II

Rules I and II are necessary because a version of this rule existed previously, and is now being re-created under the department's statutory authority to determine when a provider must become registered, what type of facility they are to be registered for and whether the proper requirements for initial registration are met.

ARM 37.95.102(2)

The proposed amendment to (2) is necessary to add language clarifying that the term "child care" does not include care provided by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA. The change is necessary so that the Early Childhood Services Bureau may also refer to this definition of "child care" in their rules, while still including the possibility that some relative caregivers may need to become licensed or registered in order to qualify for the various child care assistance programs. The change will also make the subsection definition consistent with (4)(a) which defines "day care facility" with a similar exception for relatives licensed or registered for payment purposes.

ARM 37.95.102(9)

The proposed amendment is necessary so that language may be added in the definition of "Group Day Care Home" to further delineate the number of infants that can be cared for within this registration capacity. Adding this language makes this definition format consistent with that of the Family Day Care Home which specifies the number of infants for whom care can be provided.

ARM 37.95.102(10)

The proposed amendment is necessary so that "harm to children" will be defined the same as an existing definition found in Title 41, MCA. The day care licensing program often uses this phrase in investigations involving Child Protective Services issues which have subsequent licensing actions; therefore, the definition is being added to the day care licensing rules.

ARM 37.95.102(29)

The proposed amendment is necessary because this language has hampered the department's ability to regulate some facilities.

This language has affected those after school programs--which are caring for large numbers of children--and other like programs from being regulated. The department believes that these programs should in fact be licensed or registered for the purposes of assuring a minimal level of health and safety for the children. Deleting the language will allow Department regulation.

ARM 37.95.102(33)

The proposed amendment is necessary because the definition of "supervision" in the day care context is often a point of contention with providers when the Department cites them for lack of supervision without a definition of the word in the rule. Additionally, the Montana Child Care Association (MCCA) requested that the department adopt a formal definition of supervision. The MCCA contend that this will help its members to create a safer environment for the children.

ARM 37.95.106(3)(j) and (4)(b)

The proposed amendments are necessary because prior to the implementation of criminal and protective services background checks in approximately 1995, the only means of determining "good moral character" as required by 52-2-723, MCA was to request character references. However, the Department is now conducting criminal and Child Protective Services background checks as a more definitive method of determining "good moral character." This method is a better determiner of whether a person is suitable to provide child care services. Additionally, the department has found that the process of obtaining these references delays the licensure or registration rather than assisting the department in issuing approvals.

ARM 37.95.108(1)

The proposed rule amendment is necessary because it relocates language which was previously found in ARM 37.95.640(3). The department is simply re-locating the language for clarity.

ARM 37.95.108(9)(e)

The proposed rule amendment is necessary because the day care licensing program was previously unable to take licensing action in certain suspected child abuse or neglect situations without an actual child abuse substantiation from the Child and Family Services Division. The new language will allow the day care licensing program to take licensing action when a licensing violation has resulted in harm to a child as defined by statute.

Additionally, the rule has not previously referred to day care licensing actions based on local or tribal law enforcement actions. The proposed language in (9)(f) will allow licensing actions based on law enforcement reports that the provider

caused physical, sexual, or emotional harm to a child.

ARM 37.95.108(10)

The proposed rule amendment is necessary because this language is currently repeated in two places within the rules. The department amendment will strike the language from ARM 37.95.108 and place into ARM 37.95.115 where it is more applicable.

ARM 37.95.109(2)

The proposed rule amendment is necessary because the department currently conducts criminal background checks on all adult persons residing in a household, if the facility is located within the residence of the provider. The department also conducts background checks on all care giving staff within a center. This rule specifies who receives the background check. Previous rule language did not include Directors as persons requiring background checks. Some Day Care Centers have Directors who do not provide primary caregiving duties, however, they are ultimately responsible for staff and the care children receive. Therefore, the proposed amendment will add language to include Directors.

Additionally, the department is conducting Adult Protective Services Checks and Tribal criminal background checks, but these checks have not been specifically mentioned in rule previously.

ARM 37.95.109(2)(a)(i) and (ii) and 37.95.109(2)(c) and (e)

The proposed rule amendments are necessary because this language is being added to the day care licensing rules to correspond with the federal Adoption and Safe Families Act of 1997. This change will help the department identify disqualifiers when making a "fitness" determination for the purposes of protecting children in day care facilities.

ARM 37.95.109(10) and (10)(a)

The proposed rule amendments are necessary because the language specifies that all children must be supervised, and delineates the necessary responsibilities of providers and caregivers on supervision and interaction with the children in care.

ARM 37.95.115(3)

The proposed rule amendment is necessary because this rule was duplicative with language found elsewhere. The department transferred the language to this subsection alone for clarity and stronger impact.

ARM 37.95.117(4)(b)

The proposed rule amendment is necessary because the added

language in this rule serves to clarify that if more than one day care program is housed in a non-residential structure, and is owned by the same person or entity, then that program must be licensed as a center.

ARM 37.95.117(4)(c)

The proposed rule is necessary because the rule currently limits each structure to one program only, thus one registration certificate. New (4)(c) is added to accommodate those programs which exist in commercial structures such as a "strip mall" with one program at one end of the mall and a second at the opposite end. The proposed rule language allows a commercial setting-type situation.

ARM 37.95.121(6)

The proposed rule amendment is necessary because all areas that are occupied by children need to be free of rubbish and health hazards. Language is added to include indoor areas as well as outdoor areas.

ARM 37.95.121(7)

The proposed rule amendment is necessary because this language already exists in ARM 37.95.610(3) for day care centers. The proposed language is added here for consistency and applicability to all day care facilities.

ARM 37.95.121(7)(a) and 37.95.610(3)

The proposed rule amendments are necessary because the program has recently investigated many serious deficiencies regarding supervision and visual access to children in outdoor play areas. No current rule specifically addresses the need for providers to keep visual contact with children at all times they are outdoors, thus the proposed language will be added.

ARM 37.95.121(14)(a) and 37.95.705(1)

The proposed rule amendments are necessary because egress requirements maintain that there must be two means of egress from each day care facility. The proposed amendment clarifies that there must be two means of egress from all levels of the facility, not just the main story. Some older homes which currently house day care programs do not meet the first story, two exit door requirement. Requiring them to do so, could be cost prohibitive. The proposed rule amendment will allow two means of egress (such as a door and an operable window) rather than requiring two doors as a reasonable means of exit from the structure.

ARM 37.95.127 and 37.95.227(2)(b)

The proposed rule amendments are necessary because the department proposes to prohibit the use of wading pools in day care facilities. Wading pools present many drowning concerns. National statistics have shown that a child can drown in small amounts of water, including an inch of water. The Department has significant concerns regarding the lack of supervision by adults when children use wading pools, and the accessibility to wading pools by children.

Further proposed changes to this rule are designed to prevent injury and drowning in full-sized swimming pools. The addition of the fencing specifications will prevent accidental access by children.

In proposed (14)(a), of this rule, any pool more than 6 feet in width, diameter and length shall have a ring buoy and rope or a throw line and shepherd's hook. This is typical equipment used at public pools and is recommended by national standards to be used with home pools.

Proposed (14)(b) of this rule is consistent with the American Society for Testing and Materials (ASTM) standards for swimming pool use.

Staff ratios are also outlined in this proposal because it is necessary that an adult be present who can provide lifesaving techniques in the event of an emergency. Should this situation occur, it is critical that the staff ratios be maintained to provide supervision to the remaining children.

ARM 37.95.132(4)

The proposed rule amendment is necessary because new federal transportation requirements concerning safety restraints have been modified to include age and weight criteria in determining the type of restraint necessary for children. The use of restraint devices while riding in a vehicle reduces the likelihood of a child suffering serious injury or death if the vehicle is involved in an accident. Additionally, restraints are made for securing one person only. To "double buckle" compromises the integrity of the restraint thus contributing to injury or death of a child should the vehicle be in an accident.

ARM 37.95.132(7)(a) through (e)

The proposed amendments are necessary because this language was previously contained in ARM 37.95.1010. The language was moved for clarity. Also, the rule was previously contained in the infant section, but should apply to all children.

ARM 37.95.139(1)

The proposed amendment is necessary because language in this section was redundant. In many cases, parents do not have a specific provider, but rather use Urgent Care services or utilize a practice in which multiple doctors can be accessed. The language added here is to allow for those situations.

ARM 37.95.139(9)(b)

The proposed amendment is necessary because the health professionals within the department concur that day care providers with a cold or a sore throat without fever, pose no more of a health risk than any other person in any other environment who exhibits the same symptoms.

ARM 37.95.139(12)(a) and (i)

The proposed amendments are necessary because first aid kits must contain syrup of ipecac for poison ingestion purposes. However, the American Academy of Pediatrics (AAP) has concluded that expired ipecac can cause more harm than good. Additionally, ipecac and activated charcoal are considered semi-controlled substances and should only be used in certain situations. Therefore, it is recommended by AAP and other medical advisory groups that these substances not be administered unless directed to do so by a physician, a 9-1-1 operator, the poison control center or other appropriate medical professional.

ARM 37.95.207(1)(f), 37.95.210(1)(a) and (d)(iii)

The proposed amendments are necessary because the ratio of bleach to water for sanitizing purposes was incorrect. The amount as indicated would be very potent. The appropriate amount is a 1/4 ounce to 1 gallon of water.

ARM 37.95.620(2)(b)

The proposed rule amendment is necessary because most providers care for children ages 0 through 12. Under current protocols established by CPR service providers such as the American Red Cross, the techniques for performing CPR on children aged 8 and older is exactly that as is for adults. Therefore, the department proposes the language as written to clarify the intent of the rule while being consistent with the protocols of the varying agencies and professional organizations who teach CPR.

ARM 37.95.620(4)

The proposed rule amendment is necessary because many providers have "occasional" or "substitute" employees who temporarily provide care while the provider is away for short periods of

time. Most substitutes are employed outside of the day care environment the majority of time care occurs.

Under current rules, anyone who provides care, even occasionally, is subject to the 8 hour continuing education requirement. This encourages providers to continue to utilize the "occasional provider," but not list them as caregivers on their application or renewal paperwork. Thus, these occasional providers are not undergoing the background check, CPR training, and immunization checks which give an assurance that the caregiver is a safe person to be around children. There is no value to attending to this continuing education requirement when the occasional employees are only in the day care facility for short periods of time on a highly irregular basis.

The 160 hours is based upon the Department of Labor's definition of an "employee." Under this rule, if a person providing care in a day care facility does so for 160 hours a year or more, they would be subject to the 8 hour training requirement.

ARM 37.95.620(8)(a) through (d), 37.95.701(10) and 37.95.701(11)

The proposed rule amendments are necessary as it clarifies when the child's age changes requires staff ratio changes. No change is being made to the existing ratio requirement.

ARM 37.95.640(3)

The proposed rule amendment is necessary as this language is being removed from this rule and added to ARM 37.95.108(1).

ARM 37.95.705(3) and 37.95.706(1)(a)

The proposed rule amendments are necessary because when several children occupy a napping room, there must be an appropriate source of ventilation for fresh air exchange. If the window is also an egress method, then the window must meet egress requirements. The additional language clarifies that when the napping window is used for egress, the provider must assure that the plan for evacuation is reasonable.

Additionally, egress requirements maintain that there must be two means of egress from each day care facility. Some older homes which currently house day care programs do not meet the first story, two exit door requirement. Requiring them to do so could be cost prohibitive. Two means of egress (a door and an operable window) will meet this requirement.

ARM 37.95.718(4)(c)

The proposed rule amendment is necessary because this rule was written incorrectly during previous rule changes. A second caregiver must be present any time there are 8 or more children present, not 9.

ARM 37.95.1010(1) through (4)(e)

This rule is proposed to be repealed in its entirety and the language moved to ARM 37.95.132(7)(a) through (e).

6. 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on April 4, 2002. Data, views or arguments may also be submitted by facsimile (406)444-9744 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.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State February 19, 2002.



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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rules I and II and the	)	ON PROPOSED ADOPTION AND
amendment of ARM 37.86.2207,	)	AMENDMENT
37.86.2219, 37.86.2221,	)	
37.86.3505, 37.86.3507,	)	
37.86.3515, 37.86.3705,	)	
37.86.3707, 37.86.3715,	)	
37.88.101, 37.88.907,	)	
37.88.1106, 37.89.106 and	)	
37.89.114 pertaining to	)	
mental health services	)	

TO: All Interested Persons

1. On March 20, 2002, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

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 site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 11, 2002, 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 rules as proposed to be adopted provide as follows:

RULE I TEMPORARY RATE ADJUSTMENT (1) There is an emergency reimbursement reduction in effect for the following provider types for medicaid mental health services provided January 11, 2002 through June 30, 2002:

- (a) psychiatrists;
- (b) psychologists;
- (c) licensed social workers; and
- (d) licensed professional counselors.

(2) The fee reduction will apply to the provider types listed in this rule both in private practice as well as those providing services through a licensed mental health center.

(3) The net pay reimbursement for provider types listed in this rule will be 2.6% less than the amount provided in ARM 37.85.212, 37.86.105, 37.88.206, 37.88.306 and 37.88.606.

(a) For purposes of this rule, "net pay reimbursement" means the allowed amount minus third party liability payments,

copayments, coinsurance, incurments, and other deductions.

(4) If there are sufficient funds available as a result of these reductions at the end of state fiscal year 2002, the providers of services affected by this rule may be eligible for a rebate.

(5) If a rebate is to occur, the department will define a process for calculating and issuing the rebate.

AUTH: Sec. 53-6-113 and 53-12-201, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-21-201, MCA

RULE II FRONTIER RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION

(1) Subject to the availability of sufficient county and federal funding, the department will pay, in addition to the established medicaid rates provided in ARM 37.88.907, a frontier rate adjustment payment to an eligible community mental health center in Montana as defined at 53-21-201, MCA when:

(a) the community mental health center's usual and customary (billed) charges are greater than the reimbursement received from Montana medicaid; and

(b) the community mental health center is funded, or partially funded, including tax district funding, by a county with fewer than six residents per square mile based on the latest population data published by the United States bureau of the census; and

(c) the community mental health center is reimbursed under Montana medicaid; and

(d) county funds are transferred directly to the department and are certified by the contributing county as match for payment of services eligible for federal financial participation in accordance with 42 CFR 433.51. The county funds shall not be federal funds or shall be federal funds authorized by federal law to be used to match other federal funds; and

(e) the community mental health center has executed and entered into a written agreement with the department and has agreed to abide by the terms of the written agreement.

(i) The written agreement between the department and the community mental health center must be executed prior to the issuance of the frontier rate adjustment payment.

(ii) A community mental health center that does not enter into a written agreement with the department or does not abide by the terms of the agreement will not be eligible for the frontier rate adjustment payment process.

(2) The department will calculate the amount of the frontier rate adjustment payment for each eligible community mental health center using paid claims data from frontier counties in the mental health region established pursuant to 53-21-204, MCA, for the quarter ending one quarter before the quarter in which the frontier rate adjustment payment will be paid. The frontier rate adjustment payment for each eligible community mental health center shall the least of:

(a) the difference between the community mental health center's usual and customary (billed) charges and the

reimbursement received from Montana medicaid;

(b) the amount of county funds transferred to the department plus federal financial participation; or

(c) a premium over the established rates consisting of the sum of:

(i) 20% over the established rate for outpatient services provided by psychiatrists, other physicians, physician assistants, advance practice registered nurses, licensed psychologists, licensed clinical social workers, licensed clinical professional counselors and in-training practitioners as defined in ARM 37.88.901 to eligible beneficiaries residing in frontier counties; and

(ii) 25% over the established rate for case management, community-based psychiatric rehabilitation and support services provided to eligible beneficiaries residing in frontier counties.

(3) No aggregate rate of medicaid reimbursement, including established medicaid rate and frontier rate adjustment payments, for all community mental health centers shall exceed the corresponding medicare rate, if any.

(4) For the community mental health centers eligible for the frontier rate adjustment payment, the department will pay the frontier rate adjustment payment quarterly beginning July 1, 2001.

(5) The department shall include all frontier rate adjustment payments in the department's quarterly reports as required by federal law and regulations.

(6) The frontier rate adjustment payment is subject to the restrictions imposed by federal law.

AUTH: Sec. 53-6-113 and 53-12-201, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-21-201, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (1)(b) remain the same.

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT fee schedule. The department hereby adopts and incorporates herein by reference the department's EPSDT fee schedule effective ~~July 2000~~ January 2002. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (5) remain the same.

(6) Reimbursement will be made to a provider for reserving a therapeutic youth group home or therapeutic youth family care, (other than permanency therapeutic family care), bed while the recipient is temporarily absent only if:

(a) and (b) remain the same.

(c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic home visit; and

~~(d) the recipient is absent from the provider's facility for no more than 3 patient days per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence; and.~~

~~(e) if the therapeutic home visit is in excess of 2 patient days, the visit has been approved by the department in advance of the visit. Requests for approval under this subsection must be received by the department or its designee at least 2 working days in advance of the start of the visit.~~

~~(7) No more than 14 patient days per recipient in each rate year will be allowed for therapeutic home visits. For purposes of this 14 day limit, all therapeutic home visits must be included whether or not such visits were of sufficient length to require advance approval under (6)(e).~~

~~(a) The provider must report to the department or its designee each therapeutic home visit of 2 or fewer patient days within 30 days after the start of the visit. Each visit must be reported on a form acceptable to the department.~~

~~(8) Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with the addictive and mental disorders division or its designee.~~

~~(9) (8) A service for which a fee is not set in or determinable through the EPSDT provider manual, ARM 37.85.212 or 37.86.105 is reimbursed at a fee negotiated in advance of the provision of the service. A service provided before there is a negotiated fee is reimbursed at an amount determined by the department.~~

(9) The department will not reimburse providers for two services that duplicate one another on the same day. The department hereby adopts and incorporates by reference the matrix of services excluded from simultaneous reimbursement dated January 11, 2002. A copy of the matrix is posted on the internet at the department's home page at [www.dphhs.state.mt.us/divisions/hcs/provider\\_fee\\_schedule.htm](http://www.dphhs.state.mt.us/divisions/hcs/provider_fee_schedule.htm) or may be obtained by writing the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(10) remains the same.

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

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

37.86.2219 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC YOUTH GROUP HOME SERVICES (1) through (1)(e) remain the same.

(2) Medicaid reimbursement is not available for therapeutic youth group home services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need that

certifies the necessary level of care for recipients who have a serious emotional disturbance (SED) as defined in ARM 37.86.3702. The certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(a) through (e) are met, or for moderate or campus-based level services, must certify that 3 of the criteria in (2)(a) through (e) are met. The recipient A child or adolescent must meet at least 4 of the following criteria for moderate or campus-based therapeutic group home services and 5 of the following criteria for intensive therapeutic group home services:

~~(a) is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;~~

~~(b) is at significant risk for placement in a more restrictive environment if therapeutic living care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;~~

~~(c) has a prognosis for beneficial treatment at a level of care lower than therapeutic living is very poor because the recipient demonstrates one or more of the following:~~

~~(i) significantly impaired interpersonal or social functioning;~~

~~(ii) significantly impaired educational or occupational functioning;~~

~~(iii) lack of family or other community or social support networks;~~

~~(iv) impairment of judgment; or~~

~~(v) poor impulse control;~~

~~(d) exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and~~

~~(e) exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.~~

(a) Symptoms of the individual's emotional disturbance or mental illness are of a severe or persistent nature requiring more intensive treatment and clinical supervision than can be provided by outpatient mental health service.

(b) The beneficiary exhibits behaviors related to the covered diagnosis that result in significant risk for psychiatric hospitalization or placement in a more restrictive environment if therapeutic living care is not provided or the person is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting.

(c) The prognosis for treatment of the individual's mental illness or emotional disturbance at a less restrictive level of care is very poor because the individual demonstrates 3 or more of the following due to the emotional disturbance or mental illness:

(i) significantly impaired interpersonal or social

functioning;

(ii) significantly impaired educational or occupational functioning;

(iii) impairment of judgment; or

(iv) poor impulse control.

(d) As a result of the emotional disturbance or mental illness, the individual exhibits an inability to perform daily living activities in a developmentally appropriate manner.

(e) As a result of the emotional disturbance or mental illness, the beneficiary exhibits maladaptive or disruptive behavior that is developmentally inappropriate.

(3) The department hereby adopts and incorporates by reference the revised guidelines dated January 11, 2002 and providers of therapeutic youth group home services are required to abide by them. A copy of the revised guidelines may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller Ave., P.O. Box 202905, Helena, MT 59620-2905.

(3) through (5) remain the same but are renumbered (4) through (6).

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

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

37.86.2221 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC FAMILY CARE TREATMENT SERVICES (1) through (1)(b) remain the same.

(c) The therapeutic portion of permanency therapeutic family care treatment, as defined in (2)(c)(i), is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive therapeutic family care services.

(i) Permanency therapeutic family care treatment is intensive level therapeutic family care treatment for which the foster family placement is permanent and which includes:

(i)(A) through (d) remain the same.

(2) Medicaid reimbursement is not available for therapeutic youth family care services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need that certifies the necessary level of care. The certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(a) through (e) are met, or for moderate level services, must certify that 3 of the criteria in (2)(a) through (e) are met. The recipient A child or adolescent must meet at least 4 of the following criteria for moderate therapeutic family care treatment services and 5 of the following criteria for intensive therapeutic family care treatment services:

~~(a) is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;~~

~~(b) is at significant risk for placement in a more~~

~~restrictive environment if therapeutic family care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;~~

~~(c) has a prognosis for beneficial treatment at a level of care lower than therapeutic family care is very poor because the recipient demonstrates one or more of the following:~~

~~(i) significantly impaired interpersonal or social functioning;~~

~~(ii) significantly impaired educational or occupational functioning;~~

~~(iii) lack of family or other community or social support networks;~~

~~(iv) impairment of judgment; or~~

~~(v) poor impulse control;~~

~~(d) exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and~~

~~(e) exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.~~

(a) Symptoms of the individual's emotional disturbance or mental illness are of a severe or persistent nature requiring more intensive treatment and clinical supervision than can be provided by outpatient mental health service.

(b) The beneficiary exhibits behaviors related to the covered diagnosis that result in significant risk that the beneficiary will require psychiatric hospitalization or placement in a more restrictive environment if therapeutic living care is not provided or the beneficiary is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting.

(c) The prognosis for treatment of the individual's mental illness or emotional disturbance at a less restrictive level of care is very poor because the individual demonstrates 3 or more of the following due to the emotional disturbance or mental illness:

(i) significantly impaired interpersonal or social functioning;

(ii) significantly impaired educational or occupational functioning;

(iii) impairment of judgment; or

(iv) poor impulse control.

(d) As a result of the emotional disturbance or mental illness, the individual exhibits an inability to perform daily living activities in a developmentally appropriate manner.

(e) As a result of the emotional disturbance or mental illness, the beneficiary exhibits maladaptive or disruptive behavior that is developmentally inappropriate.

(3) Providers of therapeutic family care treatment services are required to abide by the revised guidelines adopted in ARM 37.86.2219.

(3) through (5) remain the same but are renumbered (4) through (6).

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

37.86.3505 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SERVICE COVERAGE (1) and (2) remain the same.

(3) Care coordination case management services for adults with severe disabling mental illness are case management services, as specified in (1), provided in accordance with these rules by a licensed mental health center ~~or a practitioner~~. Care coordination case management services may include telephone services.

~~(a) For purposes of ARM 37.86.3501, 37.86.3502, 37.86.3505, 37.86.3506, 37.86.3507 and 37.86.3515, a practitioner is a physician, mid-level practitioner, licensed psychologist, licensed clinical social worker or licensed professional counselor.~~

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

37.86.3507 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, PROVIDER REQUIREMENTS (1) and (2) remain the same.

(3) Care coordination case management services for adults with severe disabling mental illness must be provided by either a licensed mental health center ~~or a practitioner, as defined in ARM 37.86.3505~~, enrolled in the Montana medicaid program as a case management services provider.

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

37.86.3515 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, REIMBURSEMENT (1) through (4) remain the same.

(5) The department will pay the lower of the following for case management services for adults with severe disabling mental illness:

(a) remains the same.

~~(b) the amount specified in the department's medicaid mental health fee schedule adopted in ARM 37.86.2207. the department fee schedule contained in this rule.~~

~~(6) The fee schedule for case management services for adults with severe disabling mental illness is the following:~~

~~(a) for intensive case management services for adults with severe disabling mental illness, \$224.00 per full month and \$112.00 per half month per recipient; and~~

~~(b) for care coordination case management services for adults with severe disabling mental illness:~~

~~(i) for individual care coordination services, \$8.50 per 15-minute unit of service; and~~

~~(ii) for group care coordination services, \$2.50 per 15-~~



~~minute unit of service per participant.~~

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

37.86.3705 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE COVERAGE (1) and (2) remain the same.

(3) Care coordination case management services for youth with serious emotional disturbance are case management services, as specified in (1), provided in accordance with these rules by a licensed mental health center ~~or a practitioner~~. Care coordination case management services may include telephone services.

~~(a) For purposes of ARM 37.86.3702, 37.86.3705, 37.86.3706, 37.86.3707 and 37.86.3715, a practitioner is a physician, mid-level practitioner, licensed psychologist, licensed clinical social worker or licensed professional counselor.~~

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

37.86.3707 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS (1) and (2) remain the same.

(3) Care coordination case management services for youth with serious emotional disturbance must be provided by either a licensed mental health center ~~or a practitioner, as defined in ARM 37.86.3705~~, enrolled in the Montana medicaid program as a case management services provider.

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

37.86.3715 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT (1) through (4) remain the same.

(5) The department will reimburse for up to 3 months of medically necessary intensive case management services while a youth is authorized to receive either therapeutic youth group home services or therapeutic family care treatment services.

~~(5) (6) The department will pay the lower of the following for case management services for youth with serious emotional disturbance:~~

~~(a) remains the same.~~

~~(b) the amount specified in the department's medicaid mental health fee schedule adopted in ARM 37.86.2207. the department fee schedule contained in this rule.~~

~~(6) The fee schedule for case management services for youth with serious emotional disturbance is the following:~~

~~(a) for intensive case management services for youth with serious emotional disturbance, \$246.00 per full month and \$123.00 per half month per recipient; and~~

~~(b) for care coordination case management services for youth with serious emotional disturbance:~~

~~(i) for individual care coordination services, \$8.50 per 15-minute unit of service; and~~

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

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) Prior authorization is required for all mental health services provided to a medicaid recipient under the Montana medicaid program, except: ~~for these services designated by the department.~~

(a) the first 24 visits in the 12 month period beginning July 1, 2002 and each 12 month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology, 4th edition (CPT4) codes 90804, 90806, 90808, 90810, 90812, 90814, 90846, 90847, 90849, 90853, and 90857 only. For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management. Practitioners who believe that more than 24 sessions are medically necessary may request prior authorization for additional sessions;

(b) the first 12 visits in the period from January 11, 2002 through June 30, 2002 for outpatient mental health counseling services billed under CPT4 codes 90804, 90806, 90808, 90810, 90812, 90814, 90846, 90847, 90849, 90853, and 90857 only. Practitioners who believe that more than 12 sessions are medically necessary may request prior authorization for additional sessions;

(c) other services designated by the department;

(d) the department may waive a requirement for timely authorization when the provider can document that:

(i) there was a clinical reason why the filing could not happen at the required time;

(ii) filing was not possible because of a failure or malfunction of equipment that prevented the transmittal of the filing at the required time; or

(iii) the timely authorization requirement shall not be waived except as provided in this rule; or

(e) under no circumstances may a waiver under (1)(d) be granted more than 30 days after the deadline set in (1)(a) and (b).

(2) through (5) remain the same.

AUTH: Sec. 53-6-113, MCA

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

37.88.907 MENTAL HEALTH CENTER SERVICES, REIMBURSEMENT

(1) through (2) remain the same.

(3) Reimbursement will be made to a provider for reserving an adult foster care or mental health adult group home bed only if:

(a) through (c) remain the same.

~~(d) the recipient is absent from the provider's facility for no more than 3 patient days per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence; and~~

~~(e) no more than 14 patient days per recipient in each rate year will be reimbursed for therapeutic visits.~~

~~(e) if the therapeutic visit is in excess of 2 patient days, the visit has been approved by the department in advance of the visit. Requests for approval under this subsection must be received by the department or its designee at least 2 working days in advance of the start of the visit;~~

~~(f) no more than 14 patient days per recipient in each rate year will be reimbursed for therapeutic visits. For purposes of this 14-day limit, all therapeutic visits must be included whether or not such visits were of sufficient length to require advance approval under (4)(e);~~

~~(g) the provider must report to the department or its designee each therapeutic visit of 2 or fewer patient days within 30 days after the start of the visit. Each visit must be reported on a form acceptable to the department; and~~

~~(h) reimbursement for therapeutic visits will not be allowed unless the properly completed form is filed timely with the addictive and mental disorders division or its designee.~~

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

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

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(1) through (8) remain the same.

(9) Reimbursement for inpatient psychiatric services provided to Montana medicaid recipients in facilities located outside the state of Montana will be as provided in ARM 37.86.2905(1)(c). a percentage of the provider's usual and customary charges. The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If the provider does not submit the medicare cost report and other financial information necessary to determine the cost to charge ratio, the percentage will equal 60% of the provider's usual and customary charges.

(a) For facilities located outside the state of Montana, the department may set an interim rate and pay for services using the interim rate until sufficient information has been submitted to determine the provider's final rate under (9). The interim rate shall be 60% of the provider's usual and customary charges. If the department pays using an interim rate or, if the department pays for services at a rate determined under (9) but subsequently obtains additional information necessary to fully apply (9), the department may settle the rates and adjust any overpayment or underpayment in accordance with ARM 37.88.1107.

(b) In addition to the requirements of (9)(a), the

~~department may require out-of-state providers to submit a copy of their most recent audit report in those instances where the provider has not prepared or is not required to prepare a health care financing administration (HCFA) form 2552. The audit report must have been performed in accordance with generally accepted auditing standards as defined by the American institute of certified public accountants.~~

(10) remains the same.

(11) Reimbursement will be made to a residential treatment facility provider for reserving a bed while the recipient is temporarily absent only if:

(a) and (b) remain the same.

(c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic home visit; and

(d) the recipient is absent from the provider's facility for no more than 3 patient days per absence, ~~unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence; and.~~

~~(e) if the therapeutic home visit is in excess of 2 patient days, the visit has been approved by the department in advance of the visit. Requests for approval under this subsection must be received by the department or its designee at least 2 working days in advance of the start of the visit.~~

(12) No more than 14 patient days per recipient in each rate year will be allowed for therapeutic home visits. ~~For purposes of this 14 day limit, all therapeutic home visits must be included whether or not such visits were of sufficient length to require advance approval under (11)(e).~~

~~(a) The provider must report to the department or its designee each therapeutic home visit of 2 or fewer patient days within 30 days after the start of the visit. Each visit must be reported on a form acceptable to the department.~~

~~(13) Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with the addictive and mental disorders division or its designee.~~

(14) remains the same but is renumbered (13).

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

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

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) through (5)(a)(ii) remain the same.

(6) If the department determines that the average per-case cost of mental health services plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) through (b)(iii) remain the same.

(c) no person enrolled in the MHSP on September 4, 2000, shall be determined ineligible solely as a result of the determination by the department provided for in ~~(12)~~ (6)(a).

(d) notwithstanding the provisions of ~~(12)~~ (6)(a) through (c) of this rule, the department may enroll a qualified

applicant if the applicant is:

(i) through (iii) remain the same.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) through (2)(g) remain the same.

(h) the therapeutic component of therapeutic youth group home care and therapeutic family care services for children and adolescents who are also covered by CHIP. ~~Room and board in therapeutic youth group homes and therapeutic youth family care is covered if the therapeutic component is covered and if funding for room and board is not available from any other source; and~~

(2)(i) through (11)(a)(ii) remain the same.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-405, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

4. The Department of Public Health and Human Services is proposing the adoption of amendments making permanent the temporary emergency rules effective January 1, 2002 to address imminent and substantial budget deficits in the Montana Medicaid program and Mental Health Services Plan (MHSP) for state fiscal year (SFY) 2002 and the rest of the biennium. If cost-saving measures are not adopted, Medicaid expenditures will exceed appropriations. 17-8-104, MCA subjects public officials to civil penalties if they fail to keep expenditures, obligations and liabilities within the amount of the legislative appropriation as required by 17-8-103, MCA.

Therefore, in addition to other cost-saving measures, the Department is proposing amendments that would continue the 2.6% Medicaid rate reductions and adjustments to the Montana Medicaid mental health program. The expected effect of these rules would be to reduce total state and federal expenditures for Medicaid mental health services in Montana by approximately \$1,840,112 annually. State expenditures would be reduced a total of approximately \$629,093. The Department believes the savings from these proposed amendments will allow the Department to stay within legislative appropriations and thus avoid severe reductions in Medicaid mental health services and MHSP services to recipients or the elimination of some or all services. However, if these rules are not effective in bringing expenditures within appropriations, the Department will initiate additional cost saving measures.

The Department is proposing new rule I that would continue the

reduction in the Medicaid payment for services provided by mental health practitioners by 2.6% that will expire April 12, 2002. For purposes of this fee reduction, practitioners include psychiatrists, psychologists, licensed social workers, and licensed professional counselors. The fee reduction would continue to apply to those provider types both in private practice as well as those providing services through a licensed mental health center. A rule amendment proposed by the Department in MAR Notice No. 37-218, 2002 Montana Administrative Register page 56 would reduce reimbursement for psychotropic drugs and other Medicaid reimbursement rates by 2.6%. If both reduction rules happen to apply to a single service, the Department will not reduce reimbursement for that service by more than 2.6%. If there are sufficient funds available as a result of the proposed rate reductions at the end of a State fiscal year, the providers of services affected by this rule may be eligible for a rebate.

The Department is proposing Rule II to generate an increase in Medicaid mental health funds for participating Community Mental Health Centers (CMHCs) that provide priority mental health services to eligible individuals in "frontier" counties, those with fewer than six residents per square mile. Under this proposal, the Department would use matching funds provided by participating "frontier" counties to supplement state matching funds to obtain increased Medicaid funding to supplement rates paid those CMHCs.

The Department has recently learned that in "frontier" counties the cost of offering some high priority services provided by the CMHCs substantially exceeds the reimbursement rates established by the Department. Montana's counties have historically contributed county funding to CMHCs, but those contributions have not been matched with federal Medicaid funds. Subject to certain limitations, Section 1902(a)(2) of the Social Security Act [42 U.S. Code 1396a (a)(2)] and 42 CFR 433.50 allow county and local governments to participate with the state in financing the non-federal portion of Medicaid expenditures.

Faced with the possible loss of priority services in rural areas, the Department proposes the designation of counties with fewer than six residents per square mile as "frontier" counties; that "frontier" counties' contributions to CMHCs be used to expand the non-federal match for Medicaid mental health funding; that the additional Medicaid mental health funding be used to pay an enhanced "frontier rate" for specified priority services provided by CMHCs serving "frontier" counties, thereby increasing the available Medicaid funding for mental health services in those counties. The Department believes the "frontier rate" will preserve the availability of quality mental health services in "frontier" counties.

The proposed rule will not increase or decrease state or local spending. Available Medicaid funds will be increased by using

current level county contributions to supplement current state funds used as non-federal Medicaid matching funds with CMHC reimbursement rates adjusted accordingly. The Department has no plans to reduce the amount of the state appropriation used as Medicaid matching funds. Since the non-federal match is currently 100% state, and the proposed rate increases will not exceed 25%, the state contribution can not fall below 40% of the total non-federal match as required by 42 CFR. 433.53(b). If the proposed rule is adopted, the Department will not rely on contributions by a county as a method of determining whether or not CMHC services to residents of that county will be reimbursed at the frontier rate.

The proposed rule could affect as many as four CMHCs and increase Medicaid reimbursement of those CMHCs as much as \$285,273.

The Department considered the option of providing no "frontier rate." It rejected this option because it would have risked the loss of essential mental health services in "frontier" counties. The Department also considered and rejected the option of increasing rates statewide for the specified mental health services. This option would have resulted in higher total payments than necessary and would have required cuts in other Medicaid services to stay within budgeted state Medicaid contribution limits.

ARM 37.86.2207, 37.88.907 and 37.88.1106

The proposed amendments to the rules for reimbursement of therapeutic home visits will suspend the requirement for prior authorization of visits in excess of two patient days and for reporting to the department of therapeutic home visits of two or fewer patient days. The department has developed the internal capacity to effectively use the retrospective review process to ensure that reimbursement for therapeutic home visits meets the requirements established in rule. The department will continue its practice of not reimbursing for a therapeutic home leave of more than three patient days and will continue to limit the number of days allowed for therapeutic home visits each rate year to 14.

ARM 37.86.3505, 37.86.3507, 37.86.3705 and 37.86.3707

The Department is proposing permanent amendments to its rules governing case management services for adults with severe disabling mental illness and youths with serious emotional disturbance. These amendments will permit reimbursement for care coordination case management services only if provided by a licensed mental health center enrolled in the Montana Medicaid program as a case management provider.

Physicians, mid-level practitioners, licensed psychologists, licensed clinical social workers and licensed clinical

professional counselors who are not employed by a licensed mental health center will not be reimbursed for care coordination case management after January 11, 2002.

ARM 37.86.3715 and 37.89.114

The Department proposes a permanent amendment to the rule governing case management services for youths with serious emotional disturbance allowing up to three months of medically necessary intensive case management services when a youth is authorized for therapeutic group home care or therapeutic family care. Intensive case management may be provided to assist with a transition into another facility or as part of planning prior to a youth's discharge from a service. No restriction would apply to care coordination case management for youth in this level of care. ARM 37.89.114 would be amended to conform to this proposal.

ARM 37.86.2207

The Medicaid mental health fee schedule adopted by reference at ARM 37.86.2207 would be amended to permanently discontinue payment of room and board charges through ACS/Consultec for Medicaid and MHSP youth in therapeutic group homes or in therapeutic family care who are not otherwise in the custody of the State of Montana. The Department will contract with individual providers for a grant that will be applied to the cost of room and board for youth who do not have alternative reimbursement. This is a reduction, but not an elimination of reimbursement for this cost component.

The Department proposes to make permanent the rule that it will not reimburse for two services that duplicate one another on the same day. A matrix specifying the applicable billing codes is adopted by reference and is available at the Department's Internet home page at: [www.dphhs.state.mt.us/divisions/hcs/first\\_health\\_services/therapeutic\\_home\\_services/revised\\_guidelines](http://www.dphhs.state.mt.us/divisions/hcs/first_health_services/therapeutic_home_services/revised_guidelines) or by writing the Addictive and Mental Disorders Division.

ARM 37.86.2219 and 37.86.2221

Clinical management guidelines for therapeutic youth group home and therapeutic foster/family care would be permanently amended to reflect a stricter interpretation of the use of federal Medicaid funds for medically necessary treatment provided out of the home. Copies of the revised guidelines will be mailed to providers and posted on the Department's Internet home page at: [www.dphhs.state.mt.us/divisions/hcs/provider\\_fee\\_schedule.htm](http://www.dphhs.state.mt.us/divisions/hcs/provider_fee_schedule.htm)

ARM 37.88.101

The Department is proposing amendment of the rule governing authorization of mental health services to make permanent the exception allowing 24 outpatient therapy sessions per year



before authorization is required. This will affect the services represented by CPT codes 90804, 90806, 90808, 90810, 90812, 90814, 90846, 90847, 90849, 90853, and 90857. For purposes of the proposed rule, a year is defined as July 1 through June 30. The limit applies to all providers, including mental health centers, and will be applied to both children and adults. Visits with a physician for the purpose of medication adjustment are not counted for purposes of this limitation.

Practitioners who believe that additional sessions are medically necessary may request authorization from the Department's utilization review contractor. The criteria for determination of medical necessity and specific instructions on how to submit a request are posted at:

[www.dphhs.state.mt.us/divisions/hcs/provider\\_fee\\_schedule.htm](http://www.dphhs.state.mt.us/divisions/hcs/provider_fee_schedule.htm)

In addition to the amendments adopted in the emergency rule of January 11, 2002, the Department is proposing an amendment to ARM 37.88.101 that defines the time limit and conditions under which the established requirement for timely requesting authorization of Medicaid mental health services may be waived by the Department. The amendment is necessary to allow the Department the ability to respond appropriately to conditions that interfere with a provider's ability to meet requirements for prior authorization. The alternative would have been to enforce the timely prior authorization requirement without consideration for conditions beyond the provider's control. The amendment will only have a financial impact on providers in those cases that would otherwise have been denied reimbursement for failure to request authorization in a timely manner.

ARM 37.88.1106

The Department is also proposing that the methodology for establishing a reimbursement rate for out-of-state inpatient psychiatric services be the same as the methodology adopted by the Department for hospitals located more than 100 miles outside the borders of the state of Montana as provided in ARM 37.86.2905(1)(c) implemented July 1, 2001. The present reimbursement methodology for out-of-state inpatient psychiatric services uses information from each provider's most recent Medicare cost report to compute a cost to charge ratio. The ratios currently fall between .374 and 1.

The proposed amendment would have two benefits. First, the reimbursement rate would be standardized and the complex process of determining the individual rate for each would be simplified. Second, although some providers would experience a reduction of their reimbursement rate; others would experience an increase. The overall projected effect of the proposed amendment would be a savings of \$683,526 total funds annually. This savings estimate is based on billed charges of the 13 out-of-state providers who delivered inpatient psychiatric services to Montana Medicaid recipients in state fiscal year 2001. The

Department considered the alternative of continuing use of its current method for calculating reimbursement rates and rejected it as unnecessarily complex and time-consuming. Furthermore, the cost savings expected from the proposed amendment reduce the likelihood that Medicaid expenditures will exceed appropriations. If that were to occur, the Department would have to eliminate or substantially curtail coverage for other important mental health services, eliminate eligibility for groups for whom federal Medicaid law does not mandate coverage or take other steps to bring expenditures back within appropriations.

5. Rule II is intended to be applied retroactively to July 1, 2001. Since the rule provides for a rate increase to participating CMHCs and does not reduce reimbursement or benefits for other mental health providers or Medicaid recipients, the retroactive applicability date will have no detrimental effect.

The amendments to other rules are intended to be effective May 1, 2002 to allow an uninterrupted transition from the temporary emergency rules.

6. 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 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 March 28, 2002. 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.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State February 19, 2002.

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

In the Matter of the Amendment) NOTICE OF PUBLIC HEARING  
of ARM 38.5.8001 Pertaining to) ON PROPOSED AMENDMENT  
General Requirement to Obtain )  
License to Supply Electricity )

TO: All Concerned Persons

1. April 2, 2002, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of ARM 38.5.8001.

2. The Public Service Commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on March 26, 2002 to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, Commission Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618; email rsimmons@state.mt.us.

3. The rule proposed for amendment provides as follows (new matter underlined, stricken matter interlined):

38.5.8001 GENERAL REQUIREMENT TO OBTAIN LICENSE TO SUPPLY ELECTRICITY (1) All electricity suppliers, including unregulated public utility affiliates, for-profit affiliates of cooperative utilities that provide electricity supply service using public utility distribution facilities, market aggregators, marketers and brokers must file an application and receive a license from the public service commission before selling or offering to sell electricity to consumers in the state of Montana. An application must include a certificate of service showing that the application was sent to each distribution services provider on a list of providers created and maintained by the commission. The commission will issue a license within 30 days of receipt of a complete application. The commission may reject an application deemed incomplete or inadequate, and issue an order specifying the deficiencies of the application and, if practical, identify alternative ways to overcome deficiencies.

(2) An electric cooperative supplying electricity to its members is not required to obtain a license from the commission, whether or not the electric cooperative has opened its local distribution system to other suppliers. A for-profit affiliate of an electric cooperative must obtain a license from the commission before supplying electricity to the parent cooperative's members.

(3) Any electricity supplier granted a license under this subchapter is presumed to have agreed that the distribution service provider is granted agency status regarding administering Bonneville power administration residential exchange rights associated with eligible load that may be served by the electricity provider. The presumption is overcome if the electricity provider demonstrates to the commission that it has entered into a residential exchange agreement on behalf of eligible load served.

(4) The Bonneville power administration residential exchange rights are as defined in public law no. 96-501, s. 885, the Northwest Power Act of 1980.

AUTH: 69-8-403, MCA

IMP: 69-8-404, MCA

4. The amendment is reasonably necessary in order to ensure that retail electricity customers of a public utility who choose to receive electricity supply service from a licensed electricity supplier, pursuant to the Choice Act (69-8-101-701, MCA), continue to receive benefits to which they are entitled under the Northwest Power Act (NPA), defined in Public Law No. 96-501, s. 885. Pursuant to the NPA, Bonneville Power Administration (BPA) is required to distribute benefits of the Columbia River hydroelectric power system to citizens in the Northwest.

Montana Power Company and BPA have entered into contractual agreements that facilitate the distribution of benefits to Montana citizens within the Montana Power Company service territory. Any entity supplying eligible loads (Montana citizens and small farms west of the continental divide) may enter into similar contractual agreements with BPA to facilitate the distribution of benefits to citizens served by that entity.

The proposed rule does not affect the legal rights of any electricity supplier to enter such agreements. However, in the event that an electricity supplier provides service to Montana citizens entitled to benefits pursuant to the NPA, but does not have the necessary contractual agreement with BPA, the proposed rule would ensure that Montana citizens continue to receive benefits to which they are entitled. Under the proposed rule, electricity suppliers serving eligible load that have not established the necessary contractual arrangements with BPA would be deemed to have assigned to the public utility that delivers the electricity to the eligible load the right to distribute the aforementioned benefits.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena,

Montana 59620-2601, and must be received no later than April 1, 2002. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-02.1.2-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Legal Division at (406) 444-7618, emailed to rsimmons@state.mt.us or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Jay Stovall  
Jay Stovall, Vice Chairman

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 19, 2002.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption )  
of a new rule for application ) NOTICE OF ADOPTION  
to the Treasure State )  
Endowment Program (TSEP) )

TO: All Concerned Persons:

1. On December 20, 2001, the Local Government Assistance Division (now the Community Development Division) published a notice of public hearing on the proposed adoption by reference of the above-stated rule at page 2447, 2001 Montana Administrative Register, issue number 24. The Department convened the hearing on January 10, 2002, at 1:30 p.m. in the downstairs conference room at the Department of Commerce building, 1424 9th Avenue, Helena Montana.

2. The Department has adopted new rule I (8.94.3808) as proposed, but with the following changes (new matter underlined, stricken matter interlined): (authority and implementing sections will remain the same as proposed)

8.94.3808 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment ~~2002~~ Program Application Guidelines dated 2002 published by it as rules governing the submission and review of applications under the TSEP program.

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

3. The reason for the changes noted above is to clarify that the new guidelines will not expire after 2002 but will continue to apply to future funding cycles until they are amended or repealed.

4. Four members of the public attended the hearing, but only two offered testimony. In addition, the Department received seven written comments during the public comment period. With the exceptions noted below all of the commentators endorsed the Department's proposal.

Comment No. 1: One person expressed approval of the proposed guidelines except for the one under which the Department would have the discretion in certain circumstances to recommend that the Legislature award a larger grant to an applicant than the applicant had requested, even if the greater amount would exceed the general \$500,000 limitation on grant requests. On the other hand, three commentators specifically endorsed the Department's proposal.

Response: The Department has decided to retain this provision in part because the majority of the individuals that

expressed views on the matter favored the proposal. Further, the TSEP staff discussed this particular proposal with the 2001 Legislature's Joint Long-Range Planning Subcommittee, and the Committee expressed no concern regarding it. Finally, because the Legislature closely scrutinizes all of the Department's funding recommendations and is not bound by them, there is little chance that the Department would exercise its discretion inappropriately.

Comment No. 2: One of the written comments was critical of the Department's proposal to allow applicants to conduct income surveys rather than requiring them to rely solely on U.S. Census income information. However, three commentors endorsed the idea.

Response: The Department has decided to retain this provision because available U.S. Census data are now over 10 years old and may no longer accurately reflect the current income levels within an applicant community. Also, census information specific to county water and sewer districts is not available. Consequently, in applying for TSEP grants these districts have had to rely on data for the large block group within which they are located. These block group data have tended to incorrectly inflate the income levels of the residents of the district to the districts' competitive disadvantage. The Department's requirements for conducting independent income surveys are considerably more rigorous than those employed by the U.S. Bureau of the Census. Thus, the information obtained from them can be expected to provide the Department with a more accurate basis for evaluating grant applications than has census information.

5. No other comments or testimony were received.

COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE

BY: /s/ MARK A. SIMONICH  
MARK A. SIMONICH

/s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, Rule Reviewer

Certified to the Secretary of State, February 19, 2002.

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

In the matter of the )  
amendment of ARM 12.2.501 )  
declaring black-tailed and ) NOTICE OF AMENDMENT  
white-tailed prairie dogs to )  
be nongame wildlife in need )  
of management )

TO: All Concerned Persons

1. On September 20, 2001, the Department of Fish, Wildlife and Parks (department) published notice of the proposed amendment of ARM 12.2.501 declaring black-tailed and white-tailed prairie dogs to be nongame wildlife in need of management at page 1806 of the 2001 Montana Administrative Register, Issue Number 18.

2. The agency has amended ARM 12.2.501 with the following changes, stricken matter interlined, new material underlined:

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT

(1) and (2) remain the same.

AUTH: 87-5-105, 87-1-301, MCA

IMP: 87-5-105, 87-1-301, MCA

3. The department originally published notice of the amendment of ARM 12.2.501 under its rulemaking authority authorized by 87-5-105, MCA. The commission was informed of the rulemaking proceedings and decided to become involved in the process under 87-1-301, MCA. The commission was kept updated on all public comment, and the department scheduled, staffed, and conducted all the hearings as it customarily does for commission rules as well as department rules. The commission adopted the rule and all proceedings connected with the rulemaking process. This notice is being captioned as a commission and department rule to reflect the involvement and authority of both the commission and department to jointly adopt this rule.

4. This rulemaking is one part of an overall prairie dog management plan. In creating the complete plan, the commission adopted an annual prairie dog shooting regulation, the commission and department proposed amending ARM 12.2.501, the prairie dog working group designed a management plan, and the department conducted an Environmental Assessment to evaluate how the ARM rule, annual rule and management plan would work together in achieving management objectives.



Few comments were received pertaining to this specific rulemaking regarding the adoption of the ARM 12.2.501 amendments. However, the department and commission received a total of 370 comments regarding the annual prairie dog shooting rule adopted by the commission, the management plan designed by the work group, and the Environmental Assessment (EA) conducted by the department. A copy of the Record of Decision, including all public comments and department and commission responses, can be obtained by contacting Fay Moore, Department of Fish, Wildlife and Parks, Wildlife Division, P.O. Box 200701, Helena, MT 59620-0701, email fwpwld.state.mt.us, fax (406) 444-4952. The Record of Decision is also being mailed to all individuals who commented on the management plan, ARM rule, annual rule or EA. Additionally, the Record of Decision, including comments and responses, is posted on the department website at [www.fwp.state.mt.us](http://www.fwp.state.mt.us).

The following is a summary of the comments specific to the amendment of ARM 12.2.501 together with the department and commission responses to the comments:

COMMENT 1: Concern that the proposed change in the legal status of prairie dogs will preclude the ability of landowners to control prairie dogs on private lands by shooting and poisoning.

RESPONSE 1: As provided by HB 492, and outlined on the third page of the ARM notice (1808), and page 4 of the EA, the proposed action specifically maintains the existing prerogative of landowners to control prairie dogs by poisoning and shooting on private lands. Both the ARM notice and EA also reiterate provisions of HB 492 that affirm continued prairie dog control by counties and the department of agriculture under provisions of "vertebrate pest" and "rodent" statutes.

COMMENT 2: Don't change the status of prairie dogs; it is necessary to keep pest/varmint classification.

RESPONSE 2: The department of agriculture and the counties currently classify prairie dogs as "vertebrate pests" and "rodents" for purposes of control. There is no "varmint" status for prairie dogs in Montana law. Rather than substitute existing status of "vertebrate pest" and "rodent" with the status as "nongame wildlife in need of management," the proposed action would institute a dual legal status for prairie dogs - as both a "vertebrate pest"/"rodent" as well as "nongame wildlife in need of management" (third page of the ARM notice (1808) and page 4 of the EA).

COMMENT 3: Prairie dog populations are expanding; are in no way threatened or endangered; should not have been found warranted for listing; should not be listed.

RESPONSE 3: From the date that the first petition to list the black-tailed prairie dog was filed, the department and commission have maintained that the black-tailed prairie dog is not faced with threatened or endangered status here in Montana. This is also the position of nine of the other ten states within the range of the black-tailed prairie dog (the black-tailed prairie dog has been extirpated in Arizona). The state's prairie dog population is currently increasing, attributable in part to on-going recovery from plague events of the late 1980's and early 1990's. At the time that the petition was filed, Montana was the only one of the eleven affected states that had statewide survey data documenting existing prairie dog acreage. If the other states had had prairie dog population surveys equivalent to that of Montana, the United States Fish and Wildlife Service may not have found the black-tailed prairie dog to be warranted for listing.

COMMENT 4: Concern that if the status of prairie dogs is changed, the species will not be controlled on public lands, with the result that nearby private lands will be overrun by prairie dogs.

RESPONSE 4: Conferring the status of "nongame wildlife in need of management" to prairie dogs would complement, rather than replace, legal authority and provisions for control. Distribution and abundance goals for prairie dogs outlined in the draft prairie dog conservation plan do not preclude public land managers from controlling prairie dog populations at sites where problems exist, including situations that could impact adjacent private lands. In fact, the proposed dual status of prairie dogs accommodates foreseeable management needs.

By: /s/ M. Jeff Hagener      By: /s/ Rebecca Dockter Engstrom  
M. Jeff Hagener                      Rebecca Dockter Engstrom  
Director                                      Rule Reviewer

By: /s/ Dan Walker  
Dan Walker, Chairman  
Fish, Wildlife and Parks  
Commission

Certified to the Secretary of State February 19, 2002

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rule I pertaining to an )  
air quality fee credit for use )  
of postconsumer glass in ) (AIR QUALITY)  
recycled material )

TO: All Concerned Persons

1. On October 11, 2001, the Department of Environmental Quality published a notice of public hearing on the proposed adoption of the above-stated rule at page 1950, 2001 Montana Administrative Register, Issue No. 19.

2. The Department has adopted new rule I (17.8.506) exactly as proposed.

3. The Department received two comments concerning the proposed new rule. Those comments, along with the Department's responses, follow:

Comment 1: A county solid waste advisory board commented in support of the rule.

Comment 2: The U.S. Environmental Protection Agency (EPA) commented in opposition to the fee credit. EPA's comments refer to Sections 75-2-224 through 75-2-227, MCA, as the new rule, so the comments are actually directed at the legislation that created the fee credit and mandated rulemaking, rather than the Department's proposed new rule implementing the legislation.

EPA noted that, under 40 CFR 70.9(a), state air quality programs must require owners or operators of facilities subject to the Title V air quality operating permit program to pay annual fees sufficient to cover permit program costs and must ensure that fees required under EPA's Title V regulations are used solely for permit program costs. EPA commented that: allowing credits toward Title V fees would be inconsistent with federal requirements; to the extent that any fee credit comes from State Implementation Plan (SIP) program fees, the state program would be inconsistent with EPA's approval of the state's demonstration that it has enough resources and staff to implement the SIP; the fiscal impact analysis prepared for HB 499 indicated the maximum estimated fiscal impact to be as high as \$50,400, which would have a significant impact on operation of the state's Title V program; while the state would have the discretion to implement cuts in a variety of ways, EPA understands the maximum estimated impact to be equivalent to 1 to 1.5 FTE operating permit engineers, which could significantly impact one or more state permit or SIP programs; although, the legislation sunsets in 2005, EPA has concerns about the state's ability to fully implement the Title V operating permit program; EPA strongly suggests that the state clarify that the credit

will be funded from general funds or other air fees and not from the fees collected to fund the state's Title V or SIP program; and that EPA will monitor and evaluate the impacts of the credit, and, if necessary, discuss the matter further with the Department.

Response 1: In addition to mandating that the Department adopt rules to implement the credit against air quality fees for certain uses of postconsumer glass, House Bill 499, Chapter 516, Laws of 2001, amended Section 75-2-220, MCA, by adding a new subsection (11) that provides in relevant part as follows: ". . . The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements of this chapter." Therefore, the Department would continue to collect Title V and preconstruction permit fees adequate to support the state's air quality permit programs.

MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: Jan P. Sensibaugh  
JAN P. SENSIBAUGH, Director

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State February 19, 2002.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2001. This table includes those rules adopted during the period October 1, 2001 through December 31, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2001, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2000, 2001 and 2002 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.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130, 2433
- 1.2.421 and other rules - Fees for Administrative Rules of Montana and Montana Administrative Register, p. 834, 1185

ADMINISTRATION, Department of, Title 2

- I Montana's Volume Cap Allocation, p. 2196, 2456
- I-VII Approved Investments for Montana Banks - Investment Policies, p. 2066
- I-VIII State Vehicle Use, p. 1386, 2013
- 2.4.101 and other rules - Regulation of Travel Expenses, p. 2198, 2455
- 2.5.201 and other rules - State Procurement of Supplies and Services, p. 1498, 2009
- 2.21.1803 and other rule - Exempt Compensatory Time Policy, p. 1699, 2133

- (Public Employees' Retirement Board)
- 2.43.302 and other rules - Retirement Systems Administered by the Montana Public Employees' Retirement Board, p. 1222, 1834, 2219



(State Fund)

2.55.319 and other rules - Multiple Rating Tiers - Premium Modifiers - Individual Loss Sensitive Dividend Distribution Plan - Premium Rates, p. 2073, 164

(Office of Consumer Affairs)

8.78.101 and other rules - Transfer from the Department of Commerce - Consumer Affairs - Motor Vehicles - Telemarketing, p. 1176

(Banking and Financial Institutions)

2.59.107 Investments of Financial Institutions, p. 136  
2.59.112 and other rules - Approved Investments for Montana Banks - Investment Policies, p. 2066, 166  
8.80.101 and other rules - Transfer from the Department of Commerce - Banking and Financial Institutions, p. 1178

(State Banking Board)

8.87.101 and other rules - Transfer from the Department of Commerce - State Banking Board, p. 1181

(State Board of County Printing)

8.91.101 and other rules - Transfer from the Department of Commerce - State Board of County Printing, p. 2406

(State Lottery Commission)

8.127.101 and other rules - Transfer from the Department of Commerce - State Lottery Commission, p. 2407

(Burial Preservation Board)

8.128.101 and other rules - Transfer from the Department of Commerce - Burial Preservation Board, p. 2409

AGRICULTURE, Department of, Title 4

I-IX Specific Agricultural Chemical Ground Water Management Plan, p. 734, 1086  
4.12.402 and other rules - Feed Penalties, p. 1  
4.12.3104 and other rules - Seeds - Labeling - Analysis Fees, p. 2278, 70  
4.14.301 and other rule - Loan Qualifications, p. 1231, 1723, 71

STATE AUDITOR, Title 6

I-XX Formation and Regulation of Captive Insurance Companies, p. 2351, 171  
I-XVIII Life Insurance Illustrations, p. 1244, 2234  
6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1259, 2221  
6.6.802 and other rule - Annuity Disclosures - Updating References to the Buyer's Guide Contained in Appendix A, p. 1275, 2239

6.6.4202 and other rules - Continuing Education Program for Insurance Producers and Consultants, p. 1161, 1511, 1702, 2134, 2457

6.10.121 Registration and Examination of Securities Salespersons, Investment Adviser Representatives, Broker-Dealers, and Investment Advisers, p. 2283, 73

(Classification Review Committee)

6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New Classifications, p. 812, 1175

COMMERCE, Department of, Title 8

(Local Government Assistance Division)

I Administration of the 2002 Federal Community Development Block Grant Program, p. 2449

I Application to the Treasure State Endowment Program (TSEP), p. 2447

I Administration of the 2001 Treasure State Endowment Program (TSEP), p. 1173, 2019

8.94.3806 Submission and Review of Applications Under the 2000-2001 Treasure State Endowment Program (TSEP), p. 516, 845

(Board of Research and Commercialization Technology)

8.100.104 and other rule - Definitions - Application Procedures, p. 2203, 74

(Board of Housing)

I Confidentiality and Disclosure of Information in Possession of the Board of Housing, p. 144, 952

I-XV Affordable Housing Revolving Loan Fund - TANF Housing Assistance Funds, p. 1513, 75

(Travel Promotion and Development Division)

8.119.101 Tourism Advisory Council, p. 1278, 1838

8.119.101 Tourism Advisory Council, p. 595, 1098

EDUCATION, Title 10

(Office of Public Instruction)

10.13.307 and other rules - Traffic Education, p. 6

10.16.3505 Special Education - Parental Consent, p. 597, 1099

10.41.101 and other rules - Vocational Education, p. 1784, 2206

(Board of Public Education)

10.54.2501 and other rules - Content and Performance Standards for Career and Vocational/Technical Education - Program Area Standards - Curriculum and Assessment - Standards Review Schedule, p. 214, 953

10.55.601 Accreditation Standards and Procedures, p. 2359, 172

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- 12.2.501 Declaring Black-tailed and White-tailed Prairie Dogs to be Nongame Wildlife in Need of Management, p. 1806
- 12.9.601 and other rules - Upland Game Bird Release Program, p. 1280, 1725, 2020
- 12.9.802 and other rules - Issuance of Supplemental Game Damage Licenses to Hunters in Lieu of Kill Permits, p. 20

(Fish, Wildlife, and Parks Commission)

- I Regulating the Use of Snowmobiles on Open Public Water, p. 27
- I Emergency Adoption - Use of Snowmobiles on Open Water, p. 1639
- I Limiting the Number of Class B-1 Nonresident Upland Game Bird Licenses That May Be Sold Each Hunting Season, p. 151, 1321
- 12.3.124 and other rules - Clarifying Procedures of the Bonus Point System, p. 1802, 2287
- 12.3.402 Refunding of the Two-day Resident Fishing License, p. 17
- 12.7.801 and other rules - Fishing Contest Regulations, p. 29
- 12.11.501 and other rules - Creating a No Wake Zone at Hell Creek Marina on Fort Peck Reservoir - Updating the Index Rule - List of Water Bodies, p. 432, 847
- 12.11.3205 Creating No Wake Zones on Hauser Lake near Devil's Elbow Campground, Clark's Bay, and York Bridge Fishing Access Site, p. 601, 1100

ENVIRONMENTAL QUALITY, Department of, Title 17

- I Air Quality - Air Quality Fee Credit for Use of Postconsumer Glass in Recycled Material, p. 1950
- 17.50.801 and other rules - Solid Waste - Licensing - Waste Disposal - Recordkeeping - Inspection for Businesses Pumping Wastes from Septic Tank Systems, Privies, Car Wash Sumps and Grease Traps - Other Similar Wastes, p. 3299, 848
- 17.53.102 and other rules - Hazardous Wastes - Management of Hazardous Wastes, p. 35
- 17.56.105 and other rule - Underground Storage Tanks - Variances - Issuance of Compliance Tags and Certificates, p. 51
- 17.56.121 and other rules - Underground Storage Tanks - Operating Permits - Operating Tags - Scope of Compliance Inspections - Compliance Plans, p. 2080, 2459
- 17.56.308 and other rule - Underground Storage Tanks - Operating Permits or Compliance Plans - Compliance Inspections, p. 2452, 139

(Board of Environmental Review)

- 17.4.501 and other rules - Major Facility Siting - Regulation of Energy Generation or Conversion Facilities and Linear Facilities, p. 1874, 2410
- 17.8.101 and other rules - Air Quality - Definitions - Incorporation by Reference of Current Federal Regulations - Additional Conditions of Air Quality Preconstruction Permit, p. 268
- 17.8.101 and other rules - Air Quality - Odors that Create a Public Nuisance, p. 291, 976
- 17.8.302 and other rule - Air Quality - Emission Guidelines for Existing Small Municipal Waste Combustion Units, p. 931, 2022
- 17.8.505 Air Quality - Air Quality Operation Fees, p. 1391, 2412
- 17.8.514 Air Quality - Open Burning Fees, p. 928, 2023
- 17.8.701 and other rules - Air Quality - Issuance of Montana Air Quality Permits, p. 276
- 17.20.1607 and other rules - Major Facility Siting - Centerline Approval for Linear Facilities, p. 1945, 2415
- 17.30.201 Water Quality - Water Quality Permit and Authorization Fees, p. 2361, 382
- 17.30.502 and other rules - Water Quality - Surface Water Quality, p. 1920, 387
- 17.30.2003 Water Quality - Enforcement Actions for Administrative Penalties, p. 263

(Petroleum Tank Release Compensation Board)

- 17.58.336 Reimbursement of Claims, p. 1396, 2024

TRANSPORTATION, Department of, Title 18

- I & II Collection of Motor Fuel Tax for Diesel Vehicles Found to have Dyed Fuel in the Supply Tank, p. 1704, 2147
- 18.8.101 and other rules - Maximum Allowable Weight - Definitions - Temporary Trip Permits - Special Vehicle Combinations - Insurance - Confiscation of Permits, p. 1522, 2142
- 18.9.101 and other rules - Motor Fuel Definitions - Late File and Pay Penalties when Filing Electronically - Off-highway Vehicle/Equipment - Dyed Special Fuel Allowance, p. 1399, 2143

(Transportation Commission and Department of Transportation)

- 18.3.101 and other rules - Debarment of Contractors Due to Violations of Department Requirements - Determination of Contractor Responsibility, p. 2860, 3330, 3496, 978

(Transportation Commission)

- 18.6.211 Collection of Permit Fees for Outdoor Advertising Signs, p. 2208, 2465

JUSTICE, Department of, Title 23

- 23.5.101 and other rules - Motor Carrier Safety, p. 1023
- 23.15.101 and other rules - Creating the Office of Victims Services, p. 1810
- 23.15.101 and other rules - Emergency Amendment - Creating the Office of Victims Services, p. 1327
- 23.16.102 and other rules - Forms Used by the Department in Regulating Gambling - Gambling Applications - Video Gambling Machine Testing Fees, p. 308
- 23.17.311 Montana Law Enforcement Academy Student Academic Requirements for the Basic Course, p. 1027

(Board of Crime Control)

- I Authorizing Reimbursement to Counties for Detention of Indian Youth, p. 142, 305

LABOR AND INDUSTRY, Department of, Title 24

(Alternative Health Care Board)

- 8.4.101 and other rules - Transfer from the Department of Commerce - Alternative Health Care Board, p. 1642
- 8.4.301 and other rules - Fees - Continuing Education for Naturopathic Physicians and Midwives - Licensure of Out-of-State Applicants - Direct-entry Midwife Protocol Standard List Required for Application, p. 815, 1644

(Board of Architects)

- 8.6.101 and other rules - Transfer from the Department of Commerce - Board of Architects Rules, p. 173
- 8.6.405 and other rules - Licensure of Applicants Who Are Registered in Another State - Examinations - Renewals - Fees, p. 1408, 175

(Board of Athletics)

- 8.8.2501 and other rules - Transfer from the Department of Commerce - Board of Athletics Rules, p. 2148
- 8.8.2802 and other rules - Definitions - Licensing Requirements - Contracts and Penalties - Fees - Boxing Contestants - Physical Examination - Promoter-matchmaker and Inspectors - Club Boxing, p. 1009, 2150
- 8.8.2902 and other rules - Female Contestants - Downs - Fouls - Handwraps - Officials, p. 505, 1088

(Board of Barbers)

- 8.10.101 and other rules - Transfer from the Department of Commerce - Board of Barbers Rules, p. 393
- 8.10.414 and other rule - Prohibition of Animals in Barbershops - Certain Records of Barber Schools, p. 1953, 176
- 8.10.414 Prohibition of Animals in Barbershops, p. 1018

8.10.414 and other rules - General Requirements - Posting Requirements - Toilet Facilities - Inspections, p. 208, 1089

(Board of Clinical Laboratory Science Practitioners)

8.13.306 Continuing Education Requirements, p. 914, 2416

(Board of Cosmetologists)

8.14.401 and other rules - General Requirements - Inspections - School Layouts - Curriculum - Construction of Utensils and Equipment - Cleaning and Sanitizing Tools and Equipment - Storage and Handling of Salon Preparations - Disposal of Waste - Premises - Definitions, p. 3467, 935, 1090

8.14.402 and other rules - General Practice of Cosmetology - Schools - Instructors Applications - Examinations - Electrology Schools - Electrolysis - Sanitary Standards for Electrology Salons - Sanitary Rules for Beauty Salons and Cosmetology Schools - Aiding and Abetting Unlicensed Practice - Renewals - Booth Rental License Applications - Walls and Ceilings - Doors and Windows - Ventilation, p. 3437, 536, 1092

(State Electrical Board)

8.18.402 and other rules - Definitions - Licensee Responsibilities - Electrical Contractor Licensing - Licensure by Reciprocity or Endorsement - Renewals - General Responsibilities - Licensure of Out-of-State Applicants, p. 916, 2418

(Board of Hearing Aid Dispensers)

8.20.101 and other rules - Transfer from the Department of Commerce - Board of Hearing Aid Dispenser Rules, p. 349

8.20.402 and other rules - Fees - Examination - Pass/Fail Point - Minimum Testing and Recording Procedures, p. 819, 1412, 2422, 82

(Board of Medical Examiners)

I Occasional Case Exemptions, p. 591, 1475

8.28.101 and other rules - Transfer from the Department of Commerce - Board of Medical Examiners, p. 1471

8.28.416 Examinations, p. 589, 1474

8.28.1705 and other rules - Ankle Surgery Certification - Fees - Failure to Submit Fees, p. 211, 1094

(Board of Funeral Service)

8.30.406 and other rules - Examination - Continuing Education - Sponsors - Renewal, p. 1297, 84

(Board of Nursing)

8.32.302 Nurse-Midwifery Practice - Fees - Nursing Tasks That May Be Delegated - General Nursing Tasks That May

Not Be Delegated - Executive Director  
Qualifications, p. 1414, 2152

(Board of Outfitters)

8.39.514 and other rules - Licensure - Guide or Professional  
Guide License - Licensure -- Fees for Outfitter,  
Operations Plan, Net Client Hunting Use (N.C.H.U.),  
and Guide or Professional Guide, p. 3295, 843

(Board of Pharmacy)

8.40.401 and other rules - Substantive Pharmacy Rules -  
Automated Data Processing - Certified Pharmacies -  
Internship Regulations - Continuing Education for  
Pharmacists - Dangerous Drug Act - Collaborative  
Practice Agreement Requirements - Security of  
Certified Pharmacy - Administration of Vaccines by  
Pharmacists - Explosive Chemicals - Prescription  
Copies for Legend Drugs, p. 1422, 178

8.40.1301 and other rules - Pharmacy Technicians -  
Registration of Pharmacy Technicians - Renewal,  
p. 1447, 86

(Board of Professional Engineers and Land Surveyors)

8.48.1105 Fees, p. 1169, 2288

(Board of Psychologists)

8.52.602 and other rules - Non-resident Psychological  
Services - Application Procedures - Required  
Supervised Experience - Examination - Fees -  
Parenting Plan Evaluations, p. 744, 1742

8.52.616 Fees, p. 1526, 2154

(Board of Public Accountants)

8.54.410 Fees, p. 1020, 1707, 2240

(Board of Real Estate Appraisers)

8.57.101 and other rules - Transfer from the Department of  
Commerce - Board of Real Estate Appraisers, p. 1331

8.57.409 Qualifying Education Requirements for General  
Certification, p. 593, 1333

24.207.401 and other rules - Fees - Adoption of USPAP by  
Reference - Qualifying Experience - Inactive  
License/Certification, p. 144

(Board of Realty Regulation)

8.58.301 and other rules - Definitions - Trust Account  
Requirements - General License Administration  
Requirements - Renewal - License Renewal - Late  
Renewal - Continuing Property Management Education -  
Continuing Property Management Education Reporting  
Requirements, p. 1529, 2291

8.58.301 and other rules - Definitions - Continuing Education  
- Continuing Education Course Approval - Grounds for  
License Discipline - Grounds for Discipline of

Property Management Licensees - Internet Advertising, p. 319, 785, 951

(Board of Respiratory Care Practitioners)

8.59.402 and other rule - Definitions - Fees, p. 141, 1096

I Unemployment Insurance Matters - Voluntary Layoff, p. 2090, 2466

8.70.101 and other rules - Building Codes Bureau - Incorporation by Reference of Uniform Building Code - Certification of Code Enforcement Programs - Annual Report - Audit - Decertification of Code Enforcement Programs - Building Codes Education Fund Assessment - Wiring Standards - Electrical Permit - Electrical Inspections Fees - Incorporation by Reference of Elevator Code - Certificates of Inspection - Incorporation by Reference of Boiler and Pressure Vessel Code - Fees - Boilers Exempted - Boiler Inspections, p. 1536, 2293

8.70.104 and other rules - Transfer from the Department of Commerce - Building Codes Bureau, p. 2301

24.11.443 Unemployment Insurance Benefit Claims, p. 822, 1334

24.16.9001 and other rules - Prevailing Wage Matters, p. 313

24.16.9007 Prevailing Wage Rates - Non-construction Services, p. 523, 1102

24.29.1571 and other rules - Workers' Compensation Fee Schedules for Chiropractic, Physical Therapy and Occupational Therapy Services, p. 1290

24.301.107 and other rules - Building Codes - Modifications to the Uniform Building Code Applicable Only to the Department's Code Enforcement Program - Adoption of the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings, p. 345

(Workers' Compensation Judge)

24.5.303 and other rules - Procedural Rules of the Court, p. 2211, 93

LIVESTOCK, Department of, Title 32

I Ruminant Feeds for Livestock Prohibition, p. 825, 1336

32.2.502 Certification of Specially Qualified Deputy Stock Inspectors, p. 828, 1335

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.21.415 and other rule - Fees - Tests for Yield and Drawdown, p. 3504, 562, 1645

(Board of Oil and Gas Conservation)

36.22.1242 Privilege and License Tax Rates on Oil and Gas, p. 1576, 2243



(Board of Land Commissioners and Department of Natural Resources and Conservation)

I Biodiversity and Old-growth Management, p. 831, 1337  
36.25.110 Minimum Rental Rate for Grazing Leases under the Jurisdiction of the State Board of Land Commissioners, p. 756, 2030

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Licensure of Minimum Standards for Critical Access Hospital (CAH), p. 1956, 205  
I Child Support Enforcement Reasonable Cost of Health Insurance, p. 1047, 1646  
I-XII Quality Assurance for Managed Care Plans, p. 381, 1342  
16.4.101 and other rules - Distribution of Funds for Local Health Services, p. 1580, 2244  
16.10.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Food and Drug Standards, p. 2423  
16.10.630 and other rules - Transfer from the Department of Health and Environmental Sciences - Public Accommodations, p. 2425  
16.10.1601 and other rules - Transfer from the Department of Health and Environmental Sciences - Minimum Sanitation Requirements for Tattooing, p. 2429  
16.22.101 and other rules - Fluoridation of Public Water Supplies, p. 1578, 2245  
16.24.901 and other rules - State Plans for Maternal and Child Health (MCH) - Lab Services - Montana Health Care Authority, p. 379, 981  
16.26.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Women, Infants and Children (WIC), p. 982  
16.30.102 and other rules - Transfer from the Department of Health and Environmental Sciences - Emergency Medical Services, p. 2305  
16.32.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Licensure of Health Care Facilities, p. 185  
16.32.302 Health Care Licensure, p. 1959, 192  
16.32.302 Health Care Licensure, p. 772, 1105  
16.32.601 and other rules - Minimum Standards for Mental Health Centers, p. 1962  
16.38.290 and other rules - Transfer from the Department of Health and Environmental Sciences - Approval of Laboratories - Laboratory Fees - Prenatal and Premarital Test Requirements, p. 2246  
37.5.307 and other rules - Fair Hearings and Contested Case Proceedings, p. 622, 1107  
37.8.101 and other rules - Vital Statistics, p. 2373, 397  
37.40.302 and other rules - Nursing Facilities, p. 642, 1108  
37.40.905 and other rules - Medicare and Medicaid Cross-over Pricing, p. 1709, 2156

- 37.40.905 and other rules - Medicaid Cross-over Pricing, p. 1029, 1476
- 37.70.304 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1453, 2037
- 37.76.101 and other rules - Temporary Assistance for Needy Families (TANF), p. 149
- 37.85.204 and other rules - Independent Diagnostic Testing Facilities - Medicaid Reimbursement, p. 56
- 37.85.212 and other rules - Emergency Amendment - Medicaid Reimbursement, p. 94
- 37.85.212 Resource Based Relative Value Scale (RBRVS) Reimbursement, p. 612, 984
- 37.86.1001 and other rules - Dental Services - Eyeglasses Reimbursement, p. 617, 1117
- 37.86.1802 and other rules - Medicaid Fees and Reimbursement Requirements for Prosthetic Devices, Durable Medical Equipment (DME) and Medical Supplies, p. 604, 986
- 37.86.2207 and other rules - Emergency Adoption and Amendment - Mental Health Services, p. 193
- 37.86.2207 Medicaid Mental Health Services, p. 1044, 2041
- 37.86.2207 and other rules - Mental Health Services, p. 436, 989
- 37.86.2401 and other rules - Medicaid Transportation and Ambulance Services, p. 759, 1183, 2247
- 37.86.2605 Medicaid Hospital Reimbursement, p. 626, 1119
- 37.86.4401 and other rules - Rural Health Clinics (RHC) - Federally Qualified Health Centers (FQHC), p. 1301, 2043
- 37.89.114 Mental Health Services Plan, Covered Services, p. 1040, 1747
- 37.108.507 Components of Managed Care Plan Quality Assessment Activities, p. 349

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Consumer Requested Privacy Regarding Telephone Numbers, p. 1585
- I Electronic Filings, p. 1582, 398
- I Unauthorized Change of a Telecommunications Provider, p. 775, 1648
- 38.5.2202 and other rule - Pipeline Safety, p. 2093, 2467

REVENUE, Department of, Title 42

- I Production Threshold for Beer Taxes, p. 379
- I & II Purchase of Tax Sale Certificates, p. 1996, 2431
- 42.15.315 and other rules - Penalties and Interest Charges for Late Filed and Late Paid Taxes, p. 352
- 42.17.101 and other rules - Withholding and Unemployment Insurance Tax Rules, p. 1050, 1650, 1839
- 42.18.106 and other rules - Montana Appraisal Plan Rules, p. 356
- 42.19.1102 and other rule - Treatment of Gasohol Production Facilities, p. 65

- 42.21.113 and other rules - Trending Schedules for Property Tax Rules, p. 1814, 2249
- 42.22.104 Motor Vehicles and Special Mobile Equipment, p. 2403, 99
- 42.22.1311 and other rules - Exemptions - Reduced Tax Rates - and Credits for Energy Facilities, p. 369
- 42.23.103 Corporation License Taxes, p. 1600, 2046
- 42.23.413 Carryovers of Net Operating Losses for Corporation License Taxes, p. 2127, 2468, 207
- 42.24.102 and other rules - Special Provisions Applicable to Corporation License Taxes, p. 1615, 2047
- 42.25.1809 and other rule - Tax Rates and Distribution of Oil and Gas Proceeds, p. 1588, 2048
- 42.26.101 and other rules - Corporation Taxes, p. 2096, 2469, 403
- 42.29.101 and other rules - Universal System Benefits Credits, p. 2216, 209
- 42.31.501 and other rules - Retail Communications Excise Tax, p. 2399, 68

SECRETARY OF STATE, Title 44

- I-XII Fees for Records Management Microfilming, Imaging and Storage Services, p. 837, 1186, 1748, 2161
- 1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130, 2433
- 1.2.421 and other rules - Fees for Administrative Rules of Montana and Montana Administrative Register, p. 834, 1185, 2159
- 44.5.101 and other rules - Filing and Copy Fees for Corporations, p. 2000, 2472
- 44.6.201 and other rule - Uniform Commercial Code Filings (UCC) - Searches, Amendments and Consumer Liens, p. 1083
- 44.15.102 and other rules - Filing Fees for Notary Public Licensure - Bonding Requirements - Notarial Acts under Federal Authority and Foreign Notarial Acts, p. 1720, 2162

(Commissioner of Political Practices)

- 44.10.101 and other rules - Organizational - Procedural - Campaign Finance and Practices - Ethics Rules, p. 1619, 2049

## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in January 2002, appear. Vacancies scheduled to appear from March 1, 2002, through May 31, 2002, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 5, 2002.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Chiropractors (Labor and Industry) Dr. Daniel Prideaux Missoula Qualifications (if required): licensed chiropractor	Governor	Montgomery	1/14/2002 1/1/2005
Board of Pardons and Parole (Corrections) Ms. Sheryl Hoffarth Billings Qualifications (if required): auxiliary member with knowledge of Indian culture	Governor	Wilson	1/7/2002 1/1/2005
Ms. Roxanne Wilson Busby Qualifications (if required): public member with knowledge of Indian culture	Governor	Neihart	1/7/2002 1/1/2006
Board of Speech Language Pathologists and Audiologists (Labor and Industry) Ms. Julie Fiske Kalispell Qualifications (if required): public member who is a consumer	Governor	Bean	1/10/2002 12/31/2004
Mr. Darrell Micken Bozeman Qualifications (if required): licensed audiologist	Governor	Griffin	1/10/2002 12/31/2004
Ms. Sheila Skinner Belgrade Qualifications (if required): speech-language pathologist	Governor	reappointed	1/10/2002 12/31/2004
Judicial Nomination Commission (Justice) Mr. James Mockler Helena Qualifications (if required): public member	Governor	Rein	1/10/2002 1/1/2006

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Phil Hill Mosby	Governor	reappointed	1/23/2002 1/1/2005
Qualifications (if required): holder of active preference rights within the state grazing district			
Mr. Bill Loehding Ekalaka	Governor	reappointed	1/23/2002 1/1/2005
Qualifications (if required): holder of active preference rights within the state grazing district			
Risk Management Advisory Council (Administration)			
Mr. Devin Garrity Helena	Governor	Dolan	1/10/2002 2/21/2003
Qualifications (if required): representative of the Department of Administration			
State Employee Group Benefits Advisory Council (Administration)			
Mr. Steve Barry Helena	Director	reappointed	1/1/2002 12/31/2002
Qualifications (if required): none specified			
Mr. Monte Brown Helena	Director	reappointed	1/1/2002 12/31/2002
Qualifications (if required): none specified			
Ms. Amy Carlson Helena	Director	reappointed	1/1/2002 12/31/2002
Qualifications (if required): none specified			
Mr. Richard Cooley Helena	Director	reappointed	1/1/2002 12/31/2002
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Employee Group Benefits Ms. Mary Dalton Helena Qualifications (if required): none specified	Advisory Council (Administration) Director	cont. reappointed	1/1/2002 12/31/2002
Sen. Duane Grimes Clancy Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002
Mr. Todd Lovshin Helena Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002
Mr. John McEwen Helena Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002
Mr. John W. Northey Helena Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002
Mr. Thomas Schneider Helena Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002
Ms. Barbara Smith Helena Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002
Mr. Dale Taliafero Helena Qualifications (if required): none specified	Director	reappointed	1/1/2002 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce)			
Mr. Homer Staves	Governor	Baumgart	1/9/2002
Billings			7/1/2004
Qualifications (if required): representative of Custer Country			



VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Mr. Eugene Vogl, Billings Qualifications (if required): registered architect	Governor	3/27/2002
Board of Athletics (Commerce) Mr. John Kinna, Fairfield Qualifications (if required): public member	Governor	4/25/2002
Board of Dentistry (Commerce) Mr. Clifford Christenot, Libby Qualifications (if required): denturist	Governor	3/29/2002
Dr. Sheldon Ivers, Great Falls Qualifications (if required): dentist	Governor	3/29/2002
Ms. Nancy Rupert, Billings Qualifications (if required): public member	Governor	3/29/2002
Ms. Julie Fullerton, Lolo Qualifications (if required): dental hygienist	Governor	3/29/2002
Board of Hail Insurance (Agriculture) Ms. Rebecca McCabe, Ekalaka Qualifications (if required): public member	Governor	4/18/2002
Board of Nursing Home Administrators (Commerce) Ms. Jaena Richards, Deer Lodge Qualifications (if required): representative of an institution concerned with the care of the aged	Governor	5/28/2002
Board of Plumbers (Commerce) Mr. Jerry Lyford, Kalispell Qualifications (if required): master plumber	Governor	5/4/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Commerce) cont. Mr. Terry Tatchell, Helena Qualifications (if required): journeyman plumber	Governor	5/4/2002
Board of Real Estate Appraisers (Commerce) Mr. Thomas C. Moss, Billings Qualifications (if required): real estate appraiser	Governor	5/1/2002
Mr. Donald Andrews, Ronan Qualifications (if required): real estate appraiser	Governor	5/1/2002
Board of Realty Regulation (Commerce) Mr. Terry Hilgendorf, Great Falls Qualifications (if required): public member	Governor	5/9/2002
Board of Veterans' Affairs (Military Affairs) Mr. George G. Hageman, Jordan Qualifications (if required): veteran	Governor	5/18/2002
Commission on Practice of the Supreme Court (Justice) Mr. Gary Davis, Helena Qualifications (if required): elected	elected	4/1/2002
Mr. Sam Haddon, Missoula Qualifications (if required): elected	elected	4/1/2002
Governor's Council on Organ Donor Awareness (Public Health and Human Services) Mr. Lowell Bartels, East Helena Qualifications (if required): representative of business	Governor	3/23/2002
Ms. Nancy Ellery, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont. Governor Judy Martz, Helena Qualifications (if required): representative of state government and donor families	Governor	3/23/2002
Mr. Ted Marchion, Anaconda Qualifications (if required): representative of donor recipients	Governor	3/23/2002
Mr. Ron Davis, Butte Qualifications (if required): representative of the media	Governor	3/23/2002
Mr. Paul Buck, Missoula Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Jan Hendrix, Kalispell Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Joyce Kramer, Billings Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Sandi Stroot, Superior Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Carole Erickson, Missoula Qualifications (if required): public member	Governor	3/23/2002
Mr. Dean Roberts, Helena Qualifications (if required): representative of the Department of Justice	Governor	3/23/2002
Ms. Mary Hainlin, Helena Qualifications (if required): representative of organ donor families	Governor	3/23/2002
Rev. Kenneth Mottram, Kalispell Qualifications (if required): clergy	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont. Ms. Pamela Meyer, Lame Deer Qualifications (if required): Native American representative	Governor	3/23/2002
Ms. Jennifer Keck, Conrad Qualifications (if required): recipient	Governor	3/23/2002
Governor's Standing Committee for Inmate Projections (Corrections) Mr. Marko Lucich, Butte Qualifications (if required): representing juvenile probation	Governor	3/2/2002
Mr. Troy W. McGee, Helena Qualifications (if required): representing law enforcement	Governor	3/2/2002
Sen. Sue Bartlett, Helena Qualifications (if required): legislator	Governor	3/2/2002
Sen. Vicki Cocchiarella, Missoula Qualifications (if required): representing the Montana Legislature	Governor	3/2/2002
Rep. Jim Shockley, Victor Qualifications (if required): legislator	Governor	3/2/2002
Mr. John Strandell, Great Falls Qualifications (if required): representing law enforcement	Governor	3/2/2002
Ms. Mary LaFond, Helena Qualifications (if required): representing the Governor's Budget Office	Governor	3/2/2002
Mr. Don Crabbe, Helena Qualifications (if required): representing the Board of Crime Control	Governor	3/2/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Standing Committee for Inmate Projections (Corrections) cont. Mr. Ted Clack, Helena Qualifications (if required): representing the judiciary	Governor	3/2/2002
Ms. Christine Cooke, Hardin Qualifications (if required): representing county prosecutors	Governor	3/2/2002
Mr. Craig Thomas, Deer Lodge Qualifications (if required): representing the Board of Pardons and Parole	Governor	3/2/2002
Ms. Mary Fay, Helena Qualifications (if required): representing the Department of Corrections	Governor	3/2/2002
Mr. Bill Furois, East Helena Qualifications (if required): representing the public at large	Governor	3/2/2002
Mr. Rudy Gideon, Missoula Qualifications (if required): representing the University System	Governor	3/2/2002
Ms. Melissa Harrison, Missoula Qualifications (if required): representing the University System	Governor	3/2/2002
Mr. Jeff Rosky, Helena Qualifications (if required): representing the Department of Corrections	Governor	3/2/2002
Helena College of Technology of the U of M Executive Board (University System) Ms. C. Lynn Robson, Helena Qualifications (if required): public member	Governor	4/15/2002
MSU-Billings Executive Board (University System) Mr. Jim Sites, Billings Qualifications (if required): public member	Governor	4/15/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
MSU-Northern Executive Board (University System) Mr. David G. Rice, Havre Qualifications (if required): public member	Governor	4/15/2002
MSU-Great Falls College of Technology Executive Board (University System) Mr. Jack King, Great Falls Qualifications (if required): public member	Governor	4/15/2002
Martin Luther King Holiday Commemorative Commission (Community Services) Mr. Donald Louie Clayborn, Helena Qualifications (if required): Director of Indian Affairs	Governor	3/23/2002
Ms. Angelina Vallejo Cormier, Billings Qualifications (if required): public member	Governor	3/23/2002
Mr. Robert Fourstar, Wolf Point Qualifications (if required): public member	Governor	3/23/2002
Ms. Kay Maloney, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Cristina Medina, Helena Qualifications (if required): public member	Governor	3/23/2002
Mr. Brian Schnitzer, Billings Qualifications (if required): public member	Governor	3/23/2002
Ms. Michelle Wilkerson, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Carol Murray, Browning Qualifications (if required): public member	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Martin Luther King Holiday Commemorative Commission (Community Services) cont. Mr. William Jones, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Betty McCoy, Bozeman Qualifications (if required): public member	Governor	3/23/2002
Mr. Alan Thompson, Helena Qualifications (if required): public member	Governor	3/23/2002
Ms. Kathy Day, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Lindley Dupree, Kalispell Qualifications (if required): public member	Governor	3/23/2002
Mr. Hilton McClendon, Billings Qualifications (if required): public member	Governor	3/23/2002
Ms. Gwendolyn Kircher, Billings Qualifications (if required): public member	Governor	3/23/2002
Montana Abstinence Education Advisory Council (Public Health and Human Services) Sen. Duane Grimes, Clancy Qualifications (if required): public member	Governor	3/14/2002
Ms. Helen Beausoleil, Helena Qualifications (if required): public member	Governor	3/14/2002
Ms. Elaine Collins, Dillon Qualifications (if required): public member	Governor	3/14/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Ms. Jill Flynn, Townsend Qualifications (if required): public member	Governor	3/14/2002
Mr. Bill Hodges, Hardin Qualifications (if required): public member	Governor	3/14/2002
Ms. Janet Meissner, Belt Qualifications (if required): public member	Governor	3/14/2002
Ms. Karen S. Sloan, Havre Qualifications (if required): public member	Governor	3/14/2002
Ms. Jessie Stinger, Polson Qualifications (if required): public member	Governor	3/14/2002
Mr. Gary Swant, Deer Lodge Qualifications (if required): public member	Governor	3/14/2002
Mr. Bryce Skjervem, Helena Qualifications (if required): public member	Governor	3/14/2002
Ms. Cassie Rice, Helena Qualifications (if required): public member	Governor	3/14/2002
Mr. Jim Good, Bozeman Qualifications (if required): public member	Governor	3/14/2002
Mr. Jason Gleason, Butte Qualifications (if required): public member	Governor	3/14/2002
Ms. Joleen Spang, Lame Deer Qualifications (if required): public member	Governor	3/14/2002



VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Ms. Traci Hronek, Great Falls Qualifications (if required): public member	Governor	3/14/2002
Ms. Julie Rossignol, Wolf Point Qualifications (if required): public member	Governor	3/14/2002
Rep. Ken Peterson, Billings Qualifications (if required): public member	Governor	3/14/2002
Ms. Susan Smith, Billings Qualifications (if required): public member	Governor	3/14/2002
Ms. Julie Ippolito, Helena Qualifications (if required): public member	Governor	3/14/2002
Montana Heritage Preservation and Development Commission (Historical Society) Mr. Jeffrey J. Safford, Bozeman Qualifications (if required): Montana historian	Governor	5/23/2002
Ms. Maureen Averill, Bigfork Qualifications (if required): member of the Tourism Advisory Council	Governor	5/23/2002
Rep. Jeanette S. McKee, Hamilton Qualifications (if required): experienced in historic preservation	Governor	5/23/2002
Montana Public Safety Communications Council (Administration) Ms. Barbara Ranf, Helena Qualifications (if required): representative of the Department of Administration	Governor	5/31/2002
Mr. Dan Gutebier, Livingston Qualifications (if required): representative of local government	Governor	5/31/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Public Safety Communications Council (Administration) cont. Mr. Dennis M. Taylor, Billings Qualifications (if required): representative of local government	Governor	5/31/2002
Mr. Bill Slaughter, Helena Qualifications (if required): representative of law enforcement	Governor	5/31/2002
Mr. Lloyd Jackson, Pablo Qualifications (if required): tribal representative	Governor	5/31/2002
Mr. William S. Strizich, Great Falls Qualifications (if required): representative of federal government	Governor	5/31/2002
Mr. John Blacker, Helena Qualifications (if required): representative of state government	Governor	5/31/2002
Mr. Larry Fasbender, Helena Qualifications (if required): representative of state government	Governor	5/31/2002
Mr. Bob Jones, Great Falls Qualifications (if required): representative of law enforcement	Governor	5/31/2002
Mr. Drew Dawson, Helena Qualifications (if required): representative of emergency medical services community	Governor	5/31/2002
Mr. William Jameson, Bozeman Qualifications (if required): representative of citizens at large	Governor	5/31/2002
Mr. Scott Waldron, Frenchtown Qualifications (if required): representative of fire protection services	Governor	5/31/2002
Ms. Elisabeth S. Rice, Butte Qualifications (if required): representative of Montana Power Company	Governor	5/31/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Public Safety Communications Council (Administration) cont. Mr. Robin Stobe, Billings Qualifications (if required): representative of federal government	Governor	5/31/2002
Ms. Anne Kindness, Billings Qualifications (if required): representative of the 9-1-1 community	Governor	5/31/2002
Montana State University Executive Board (University System) Mr. Lee Oldenburger, Manhattan Qualifications (if required): public member	Governor	4/15/2002
Montana Tech of the University of Montana (University System) Mr. Dan Berube, Anaconda Qualifications (if required): public member	Governor	4/15/2002
Montana Wolf Management Advisory Council (Governor) Dr. Charles E. Buehler, Butte Qualifications (if required): public member	Governor	4/28/2002
Mr. Hank Fischer, Missoula Qualifications (if required): public member	Governor	4/28/2002
Rep. Chase Hibbard, Helena Qualifications (if required): public member	Governor	4/28/2002
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): public member	Governor	4/28/2002
Ms. Darlyne Dascher, Fort Peck Qualifications (if required): public member	Governor	4/28/2002
Mr. Bruce Malcolm, Emigrant Qualifications (if required): public member	Governor	4/28/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Wolf Management Advisory Council (Governor) cont. Dr. Nelson Wert, Townsend Qualifications (if required): public member	Governor	4/28/2002
Ms. Robin Hompesch, Bozeman Qualifications (if required): public member	Governor	4/28/2002
Mr. James Cross, Kalispell Qualifications (if required): public member	Governor	4/28/2002
Mr. Terry Beaver, Helena Qualifications (if required): public member	Governor	4/28/2002
Mr. Ira Newbreast, Browning Qualifications (if required): tribal representative	Governor	4/28/2002
Mr. Jay Kirkpatrick, Billings Qualifications (if required): public member	Governor	4/28/2002
Public Employees' Retirement Board (Administration) Ms. Carole Carey, Ekalaka Qualifications (if required): public employee	Governor	4/1/2002
State Library Commission (Montana State Library) Ms. Dorothy Laird, Whitefish Qualifications (if required): public member	Governor	5/22/2002
Mr. Alvin Randall, Troy Qualifications (if required): public member	Governor	5/22/2002
State Small Business Development Center Advisory Council (Commerce) Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Small Business Development Center Advisory Council Mr. Dave Sharpe, Bozeman Qualifications (if required): none specified	(Commerce) cont. Director	4/26/2002
Ms. Carol Willis, Billings Qualifications (if required): none specified	Director	4/26/2002
Mr. Bud Leuthold, Billings Qualifications (if required): none specified	Director	4/26/2002
Mr. Chris Busch, Ronan Qualifications (if required): none specified	Director	4/26/2002
Mr. Scott Heck, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Shirley Beck, Philipsburg Qualifications (if required): none specified	Director	4/26/2002
Mr. Ryan Reid, Colstrip Qualifications (if required): none specified	Director	4/26/2002
Ms. Nancy Snow, Great Falls Qualifications (if required): none specified	Director	4/26/2002
Ms. Patricia Jurenka, Havre Qualifications (if required): none specified	Director	4/26/2002
Ms. Toni Broadbent, Helena Qualifications (if required): none specified	Director	4/26/2002
Mr. Ken Green, Whitefish Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Small Business Development Center Advisory Council Mr. Craig Rawlings, Missoula Qualifications (if required): none specified	(Commerce) cont. Director	4/26/2002
Mr. James Johnson, Wolf Point Qualifications (if required): none specified	Director	4/26/2002
Mr. Paul Tuss, Cut Bank Qualifications (if required): none specified	Director	4/26/2002
Mr. John Langenheim, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Mr. Rich McLaughlin, Butte Qualifications (if required): none specified	Director	4/26/2002
Dr. Bob Taylor, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Judi Tilman, Butte Qualifications (if required): none specified	Director	4/26/2002
Mr. John Balsam, Missoula Qualifications (if required): none specified	Director	4/26/2002
Ms. Linda Reed, Helena Qualifications (if required): none specified	Director	4/26/2002
Dr. Richard Dailey, Missoula Qualifications (if required): none specified	Director	4/26/2002
Ms. Michelle Johnston, Helena Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
University of Montana Executive Board (University System) Colonel Sam A. Roberts, Missoula Qualifications (if required): public member	Governor	4/15/2002
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) Mayor Judy H. Jacobson, Butte Qualifications (if required): representing local government	Governor	4/26/2002
Mr. Chris Marchion, Anaconda Qualifications (if required): member of the public active in conservation or recreation	Governor	4/26/2002
Commissioner Gail Jones, Deer Lodge Qualifications (if required): local government representative	Governor	4/26/2002
Mr. Jim Flynn, Anaconda Qualifications (if required): businessperson	Governor	4/26/2002
Ms. Mary Seccombe, Butte Qualifications (if required): conservation district representative	Governor	4/26/2002
Mr. Tom Bugni, Butte Qualifications (if required): member of the public active in conservation or recreation	Governor	4/26/2002
Ms. Kathleen Hadley, Deer Lodge Qualifications (if required): local natural resource scientist	Governor	4/26/2002
Mr. Bruce Hall, Milltown Qualifications (if required): local planner or local development specialist	Governor	4/26/2002
Dr. Pat Munday, Walkerville Qualifications (if required): engineer	Governor	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) cont.		
Mr. Rob Collins, Helena	Governor	4/26/2002
Qualifications (if required): representative of the Natural Resource Damage Litigation		
Mr. Matt Clifford, Missoula	Governor	4/26/2002
Qualifications (if required): representative of a non-profit organization		
Ms. Carole Lankford, Pablo	Governor	4/26/2002
Qualifications (if required): representative of the Salish and Kootenai Tribes		
Ms. Carol Fox, Helena	Governor	4/26/2002
Qualifications (if required): representative of the Natural Resource Damage Litigation		
Ms. Jan Sensibaugh, Helena	Governor	4/26/2002
Qualifications (if required): representing the Department of Environmental Quality		
Mr. M. Jeff Hagener, Helena	Governor	4/26/2002
Qualifications (if required): representing the Department of Fish, Wildlife, and Parks		
Ms. Sally Johnson, Missoula	Governor	4/26/2002
Qualifications (if required): member of the public who does not represent one of the above interests		
Western Montana College of the University of Montana (University System)		
Ms. Maryellen Wilkerson, Dillon	Governor	4/15/2002
Qualifications (if required): public member		
Wild Medicinal Plants Task Force (Natural Resources and Conservation)		
Mr. Gary Gingery, Helena	Governor	4/20/2002
Qualifications (if required): representative of the Department of Agriculture		



VACANCIES ON BOARDS AND COUNCILS -- March 1, 2002 through May 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Wild Medicinal Plants Task Force (Natural Resources and Conservation) cont. Mr. Curley Youpee, Poplar Qualifications (if required): representative of tribal governments	Governor	4/20/2002
Ms. Robyn Klein, Bozeman Qualifications (if required): knowledge of the scientific aspects of indigenous medicinal plants	Governor	4/20/2002
Ms. Kathleen Wagnild, Outlook Qualifications (if required): knowledge of the scientific aspects of indigenous medicinal plants	Governor	4/20/2002
Dr. Rustem S. Medora, Missoula Qualifications (if required): representative of the Montana University System	Governor	4/20/2002
Mr. Peter McCay, Lolo Qualifications (if required): representative of the medicinal plant production industry	Governor	4/20/2002
Mr. Kirk Denny, Lame Deer Qualifications (if required): knowledge of the cultural, historical and spiritual aspects of wild medicinal plants	Governor	4/20/2002
Mr. Kevin Chappell, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	4/20/2002