

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
amendment of ARM 2.21.3603,	)	AMENDMENT
2.21.3607, 2.21.3616 and)	
2.21.3623 pertaining to the	)	NO PUBLIC HEARING
Veterans' Employment	)	CONTEMPLATED
Preference policy)	

TO: All Concerned Persons

1. On October 1, 2003, the Department of Administration proposes to amend ARM 2.21.3603, 2.21.3607, 2.21.3616 and 2.21.3623 pertaining to the Veterans' Employment Preference policy.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rule making process and need alternative accessible formats of this notice. If you require an accommodation, contact the Department to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; Montana Relay Service 711; FAX (406) 444-0544; or E-mail hpeck@state.mt.us.

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

2.21.3603 DEFINITIONS For the purposes of ~~the~~ this sub-chapter, the following definitions apply:

~~(1) "Active duty" means, as provided in 39-29-101, MCA, "full time duty with military pay and allowances in the armed forces, [and does not include] training, determining physical fitness, or service in the reserve or national guard."~~

~~(2)~~(1) "Armed forces" means, as provided in 39-29-101, MCA, "the ~~United States~~:"

(a) United States army, navy, air force, marine corps, and coast guard; ~~and~~

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs-; ~~and~~

(c) Montana army and air national guard."

(3) remains the same, but is renumbered (2).

(3) "Military duty" means, as provided in 39-29-101, MCA, "duty with military pay and allowances in the armed forces."

(4) through (10) remain the same.

(11) "Under honorable conditions" means, as provided in 39-29-101, MCA, :

(a) "a discharge or separation from ~~active~~ military duty characterized by the armed forces as under honorable conditions.

(i) The term includes honorable discharges and general discharges. ~~but~~

(ii) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable."

AUTH: Sec. 39-29-112, MCA
IMP: Sec. 39-29-101, et seq., MCA

2.21.3607 ELIGIBILITY (1) remains the same.

(2) ~~A veteran must have, as~~ As provided in 39-29-101, MCA, a veteran must be a person who:

(a) ~~been~~ "was separated under honorable conditions from ~~active~~ federal military duty in the armed forces after having served more than 180 consecutive days, other than for training; ~~or~~

(b) as a member of a reserve component under an order of ~~active~~ federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."~~;~~ or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of six years service in the armed forces, the last three years which have been served in the Montana army or air national guard."

(3) A disabled veteran must have, as provided in 39-29-101, MCA:

(a) been "separated under honorable conditions from ~~active~~ military duty in the armed forces; and

(b) through (4) remain the same.

AUTH: Sec. 39-29-112, MCA
IMP: Sec. 39-29-101, et seq., MCA

2.21.3616 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION (1) through (6) remain the same.

(7) When appropriate, documentation will include the following or a substitute acceptable to the hiring authority:

(a) from a veteran, disabled veteran, or eligible relative~~;~~

(i) a document issued by the department of defense or equivalent certification from the U.S. department of veterans' affairs listing military status, and discharge type, commonly form DD 214 or military discharge papers; or

(ii) a document issued by the office of the adjutant general of the Montana national guard which certifies the veteran is or has been a member of the Montana army or air national guard and has satisfactorily completed a minimum of six years service in the armed forces, the last three years of

which have been served in the Montana army or air national guard;

(b) through (10) remain the same.

AUTH: Sec. 39-29-112, MCA
IMP: Sec. 39-29-101, et seq., MCA

2.21.3623 RETENTION DURING REDUCTION IN FORCE (1) As provided in 39-29-111, MCA, "during a reduction in [work] force, a public employer shall retain" over all others a veteran, disabled veteran or eligible relative who:

(a) and (b) remain the same.

(c) has the same or greater length of service. Length of service means continuous employment ~~by~~ with an individual public employer as ~~listed in ARM 2.21.3610~~ defined in 39-29-101, MCA.

(2) through (4) remain the same.

AUTH: Sec. 39-29-112, MCA
IMP: Sec. 39-29-111, MCA

REASON: Rules 2.21.3603, 2.21.3607, and 2.21.3616 must be amended to reflect changes the 58th regular session of the Montana legislature made to the Veterans' Public Employment Preference laws. House Bill 35 expanded the veterans' public employment hiring preference to include people who have completed a minimum of six years service in the armed forces. The last three years must have been served in the Montana army or air national guard. Rule 2.21.3623 must be amended because ARM 2.21.3610 has been repealed. The Department of Administration proposes to make the rule amendments effective on the same date that House Bill 35 becomes effective, which is October 1, 2003.

4. Concerned persons may submit their data, views or arguments in writing to Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or E-mail to hpeck@state.mt.us. Comments must be received no later than September 12, 2003.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request to the address listed above. A written request for hearing must be received no later than September 12, 2003.

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

a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based on the number of public sector employees in Montana.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding personnel rules. Such written request may be mailed or delivered to Hal Peck, Department of Administration, State Personnel Division, P.O. Box 200127, Helena, MT 59620-0127; E-mailed to hpeck@state.mt.us; or made by completing a request form at any rules hearing held by the Department of Administration.

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

By: /s/ Scott Darkenwald
Scott Darkenwald, Director,
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State August 4, 2003.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of new rules pertaining to the	)	ON PROPOSED ADOPTION
State of Montana Voluntary)	
Employees' Beneficiary)	
Association Health Benefit)	
Plan)	

TO: All Concerned Persons

1. On September 12, 2003, at 9:00 a.m., a public hearing will be held in Room 136, Mitchell Building, 125 N. Roberts Street, Helena, Montana, to consider the proposed adoption of new rules pertaining to the State of Montana Voluntary Employees' Beneficiary Association Health Benefit Plan.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 5, 2003, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; TDD (406) 444-1421; FAX (406) 444-0544; E-mail hpeck@state.mt.us.

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

RULE I SHORT TITLE (1) This subchapter may be cited as the voluntary employees' beneficiary association (VEBA) health benefit plan policy.

AUTH: 2-18-1305, MCA
IMP: 2-18-1301, MCA

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to establish a means for public employers to make contributions to a qualified tax-exempt trust organization to assist public employees, their dependents, and beneficiaries in the payment of qualified health care expenses.

(2) Nothing in this policy is intended to prohibit an employer from establishing a similar program as an alternative or in addition to participation in the statewide voluntary employees' beneficiary association (VEBA) health benefit plan.

(3) It is the objective of this policy to establish procedures for implementing the VEBA health benefit plan.

AUTH: 2-18-1305, MCA
IMP: 2-18-1301, 2-18-1302, MCA

RULE III DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Employee" means a person employed by the employer, but does not include an independent contractor or person hired by the employer under a personal services contract.

(2) "Employer" means a legally constituted department, board, or commission of the state, county, incorporated city or town government, or political subdivision of the state, including a school district or a unit of the university system.

(3) "Group" means a collection of employees who are employed by the same employer under an existing organizational structure as provided for in Montana statute, who elect to participate in the VEBA health benefit plan.

(4) "Member" means an employee who belongs to a voluntary employee benefit association established under 2-18-1310, MCA.

(5) "Sub-unit" means a collection of employees who are employed by the same employer under a recognized organizational division for the purposes of administration of the statutory or otherwise designated duties of the employer. A sub-unit must consist of at least 10 employees.

AUTH: 2-18-1305, MCA

IMP: 2-18-1301, 2-18-1303, MCA

RULE IV PLAN ADMINISTRATION (1) The department shall enforce the VEBA health benefit plan in accordance with its terms and shall be charged with its general administration.

(2) The department may delegate all or a portion of its administrative duties to an administrator. The administrator shall exercise all of its discretion in a uniform, nondiscriminatory manner and shall have all necessary power and discretion to accomplish those purposes.

AUTH: 2-18-1305, MCA

IMP: 2-18-1301, 2-18-1304, 2-18-1309, MCA

RULE V ELIGIBILITY, ELECTION, AND PARTICIPATION

(1) Employees eligible to participate in the VEBA health benefit plan include those employees of an eligible employer who work a minimum of half time.

(2) For the purposes of election and administration of the VEBA health benefit plan:

(a) a department, county, incorporated city or town, school district, or unit of the university system, may form sub-units.

(i) However, boards, commissions, and other political subdivisions of the state of Montana do not have the option of defining sub-units for the purposes of election and administration of the VEBA health benefit plan. These groups should consider using existing political boundaries.

(3) Membership elections shall be conducted in accordance with the provisions of 2-18-1310, et seq., MCA.

(4) Members of a group may hold an annual election to determine whether or not they will continue their participation in the VEBA health benefit plan.

(a) If a majority of eligible members elect to discontinue their participation, their group is disbanded until another election is conducted in accordance with the provisions of 2-18-1310, MCA.

(b) Once a group disbands, an employer shall not make further contributions to members' accounts until the employer's eligible employees form another group in accordance with the provisions of 2-18-1310, MCA. However, distributions from existing members' accounts must be made in accordance with the provisions of the VEBA health benefit plan.

(5) Subject to the limitations of this rule and the eligibility provisions of employer policies and applicable collective bargaining unit agreements, an employee becomes a participating member of the VEBA health benefit plan at the time of the first employer deposit to the member's account, and proper completion of an enrollment form.

AUTH: 2-18-1305, MCA

IMP: 2-18-1301, 2-18-1310, MCA

RULE VI CONTRIBUTIONS (1) Each employer shall make deposits to the VEBA health benefit plan on behalf of its eligible members pursuant to the terms of collective bargaining agreements or employer policies. Employer deposits shall be specifically allocated to each participating member's account.

(2) Pursuant to 2-18-1311, et seq., MCA, each participating employer shall provide for a member to annually designate how many hours (if any) of the member's sick leave balance in excess of 240 hours will be automatically converted to an employer contribution to the member's account each pay period.

(3) Each participating employer may establish a maximum amount of sick leave hours that may be automatically converted to a contribution.

AUTH: 2-18-1305, MCA

IMP: 2-18-1301, 2-18-1311, MCA

RULE VII BENEFITS IN THE EVENT OF DEATH (1) If a participating member's account has a positive account balance after the death of the member, and no surviving spouse or dependent(s) remains eligible for qualified health care benefits, the account balance will be available to pay qualified health care benefits incurred by the person(s) certified to be the beneficiary by the executor or administrator of the estate of the last to die of the member, surviving spouse and dependents.

(2) In the event any member's account shall have been unclaimed for a period of at least three years since the whereabouts or continued existence of the person entitled to the account was last known to the administrator, the member's

account shall be disposed of in accordance with Montana statute on unclaimed or abandoned property.

AUTH: 2-18-1313, MCA
IMP: 2-18-1313, MCA

4. The proposed rules are necessary to implement the Voluntary Employees' Beneficiary Association Act, which was created by the 57th regular session of the Legislature. The Legislature has directed the department to provide for the overall implementation and administration of the VEBA plan. The proposed rules are reasonably necessary to ensure the orderly enrollment of members, the oversight of members' accounts, and the overall administration of the statewide VEBA plan. The proposed rules also provide a reasonable means for the department to communicate the basic VEBA plan structure to a multitude of eligible Montana public employers and their employees.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Department of Administration, State Personnel Division, Attention Melanie Denning, P.O. Box 200127, Helena, MT 59620-0127, E-mail mdenning@state.mt.us, no later than September 12, 2003.

6. The State Personnel Division, Department of Administration has been designated to preside over and conduct the hearing.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing 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 personnel rules. Such written request may be mailed or delivered to Department of Administration, State Personnel Division, Attention Hal Peck, P.O. Box 200127, Helena, MT 59620-0127, faxed to the office at (406) 444-0544, or may be made by completing a request form at any rules hearing held by the Department of Administration.

/s/ Scott Darkenwald
Scott Darkenwald, Director
Department of Administration

/s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State August 4, 2003

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption)	AMENDED NOTICE OF PROPOSED
of new Rule I and amendment of)	ADOPTION AND AMENDMENT
ARM 2.43.422, 2.43.423 and)	
2.43.428, pertaining to the)	
purchase of federal volunteer)	NO PUBLIC HEARING
service by members of the)	CONTEMPLATED
Public Employees' Retirement)	
System Defined Benefit)	
Retirement Plan)	

TO: All Concerned Persons

1. On July 17, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-331 at page 1414 of the 2003 Montana Administrative Register, Issue Number 13, regarding the proposed adoption and amendment of the above-stated rules. The notice of proposed agency action is amended as follows because of comments received from a Legislative Services Division staff attorney regarding the inadequacy of the rationale for the proposed new Rule I.

2. The Public Employees' Retirement 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 Public Employees' Retirement Board no later than 5:00 p.m. on August 18, 2003, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@state.mt.us.

3. The proposed new Rule provides as follows, matter to be deleted from the original proposal is interlined, new matter is underlined:

RULE I ELIGIBLE FEDERAL VOLUNTEER SERVICE (1) Federal volunteer service eligible to be purchased into a member's PERS account is limited to:

(a) any documented period of service in the peace corps;
and

(b) any documented, successfully completed required term of service in the following National Community Service Act (NCSA) programs:

~~(a) peace corps;~~
~~(b) (i) americorps vista;~~
~~(c) (ii) americorps national community conservation corps; and or~~

~~(d) (iii) state and national americorps~~ any other NCSA programs program that require requires the volunteer to enroll

for a specific term of service.

(2) Federal volunteer service eligible to be purchased into a member's PERS account does not include NCSA programs such as:

- (a) freedomcorps;
- (b) seniorcorps;
- (c) learn and serve America; ~~and~~ or
- (d) any other NCSA program for which a specific term of service is not required.

AUTH: 19-2-403, MCA

IMP: 19-3-515, MCA

The proposed amendments to existing rules remain as originally proposed.

REASON: Chapter 292, Laws of 2003, codified at section 19-3-515, MCA, permits members of the Public Employees' Retirement System (PERS) to purchase membership service and service credit in PERS "for up to 5 years of the members' service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq [NCSA]." The proposed rule and the proposed amendments to existing rules implement this new legislation.

RULE I: The new legislation addresses two distinct types of federal volunteer service: (1) service as a volunteer in a United States service program; and (2) a successfully completed term of service in a national service position created by the NCSA. Further clarification is required regarding exactly what federal volunteer service can be purchased.

The PERB could not find a definition of the term "United States service program" in the United States Code. Absent clearer guidelines, the PERB has determined to limit the purchase of service in a United States service program to that specified in the legislation, service in the peace corps. To do otherwise may expand the ability to purchase service beyond the intent of the legislature. The PERB prefers to be conservative when attempting to implement legislation.

The PERB believes the legislature would not have used the terminology "successful completion of a term of service" if the legislature had not contemplated that the member be limited to purchasing only that service for which a specific term of service is required. Otherwise, there would be nothing on which to gauge "successful completion".

The PERB consulted with individuals in Montana's Office of Community Service and Montana representatives of the Corporation for National and Community Services, for

assistance in implementing the purchase of the second type of federal volunteer service. Freedomcorps, Seniorcorps and Learn and Serve America are NCSA programs. However, those programs do not have a specified term of service. Rather, volunteers are free to participate or not, based on their own availability and wishes. Thus, they are not covered by the new legislation.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; FAX (406) 444-5428; e-mail moconnor@state.mt.us no later than 5:00 p.m. on August 20, 2003.

5. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmiller@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

By: /s/ Terry Teichrow
Terry Teichrow, Chairman
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on August 4, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.4.303) AMENDMENT
relating to insured crops)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 13, 2003, the Montana Department of Agriculture proposes to amend the above stated rule relating to insured crops.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 28, 2003, to advise us of the nature of the accommodation that you need. Please contact Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.4.303 INSURED CROPS (1) All crops authorized under ~~section~~ 80-2-205, MCA, including the following, may be insured at any time to August 15.

wheat	corn	peas	rape
oats	rye	beans	sugar beets
flax	speltz	mustard	potatoes
barley	alfalfa	safflower	<u>alfalfa seed</u>
<u>canary seed</u>	<u>canola</u>	<u>herbs</u>	<u>lentils</u>
<u>millet</u>	<u>mint</u>	<u>sorghum</u>	<u>soybeans</u>
<u>sunflowers</u>	<u>triticale</u>	<u>truck crops</u>	<u>wheatgrass</u>
<u>grass crops (does not include forage)</u>			

AUTH: 80-2-201, MCA
IMP: 80-2-205, MCA

REASON: The State Board of Hail Insurance felt it was necessary to expand the crop listing to include those crops requested to be insured.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Lee Boyer at the Montana Department of Agriculture, 303 N.

Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than September 11, 2003.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Lee Boyer at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than September 11, 2003.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 120 persons based on 1200 State Hail Insurance policyholders in the state of Montana.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us; or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the Department's website at www.agr.state.mt.us, under the Administrative Rules section. The Department strives to make the electronic copy of the 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. 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State August 4, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a new rule for the) PROPOSED ADOPTION
submission and review of)
applications to the Treasure)
State Endowment Program (TSEP))

TO: All Concerned Persons

1. On September 4, 2003, at 1:30 p.m., a public hearing will be held in Room 202, at the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption by reference of rules governing the submission and review of applications to the Treasure State Endowment Program (TSEP).

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Community Development Division no later than 5:00 p.m., on August 28, 2003, to advise the Division of the nature of the accommodation that you need. Please contact Jim Edgcomb, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620; telephone (406) 841-2785; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to jedgcomb@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I 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 reference the Montana Treasure State Endowment Program Application Guidelines, dated 2004, published by the department as rules governing the submission and review of applications under the TSEP program.

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

- (a) eligible applicants and projects;
- (b) types of financial assistance available under TSEP;
- (c) general requirements for TSEP applications;
- (d) application review process; and
- (e) application ranking criteria.

(3) Copies of the guidelines adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

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

REASON: It is reasonably necessary to adopt this rule because local government entities must have these application guidelines before the eligible entities may apply to the Department for financial assistance. The guidelines describe the types of projects that are eligible for TSEP funding and the types of assistance available. The guidelines also describe the review process by which the Department evaluates applications and makes funding recommendations to the Legislature.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620; by facsimile to (406) 841-2771; or by e-mail to jedgcomb@state.mt.us to be received no later than 5:00 p.m., September 11, 2003.

5. Jim Edgcomb has been designated to preside over and conduct this hearing.

6. The Community Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list may make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rules relating to the Treasure State Endowment Program. This request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, Helena, Montana 59620, transmitted by facsimile to (406) 841-2771, or made by completing a request form at any rules hearing held by the Division.

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

Reviewed by:

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

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

Certified to the Secretary of State, August 4, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
proposed amendment of ARM) ON PROPOSED AMENDMENT
10.55.602 regarding the)
definition of combined school)
district)

TO: All Concerned Persons

1. On September 4, 2003, at 9:30 a.m. a public hearing will be held in the library at the Board of Public Education office, 2500 Broadway, Helena, Montana, to consider the amendment of a rule relating to the definition of "combined school district".

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on August 25, 2003 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.Montana.edu.

3. Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend ARM 10.55.602 to clarify what types of school districts are included in the term "combined school district" and to further the intent of the Accreditation Task Force.

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

10.55.602 DEFINITIONS For the purposes of this chapter, the following terms apply:

(1) through (3) remain the same.

(4) "Combined elementary-high school district" means an elementary district and a high school district which are combined for district administration purposes, including districts designated as "K-12 districts" pursuant to 20-6-701, MCA. Most town school districts in Montana would fit this category, i.e., Helena, Hamilton, Whitehall.

(5) through (13) remain the same.

AUTH: Sec. 20-2-114, MCA

IMP: Sec: 20-2-121, 20-3-106, 20-7-101, MCA

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 by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.Montana.edu and must be received no later than 5:00 p.m. on September 11, 2003.

6. Steve Meloy has been designated to preside over and conduct the hearing.

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Board of Public Education rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, or by e-mail to smeloy@bpe.Montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chairperson
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Rule Reviewer
Board of Public Education

Certified to the Secretary of State August 4, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of ARM	)	ON PROPOSED AMENDMENT
10.57.420, 10.57.421,)	
10.57.422 and 10.57.423)	
regarding reinstatement and)	
renewal of Class 4 career and)	
vocational/technical educator)	
licenses)	

TO: All Concerned Persons

1. On September 4, 2003, at 9:00 a.m. a public hearing will be held in the library at the Board of Public Education office, 2500 Broadway, Helena, Montana, to consider the amendment of rules relating to reinstatement and renewal of Class 4 career and vocational/technical educator licenses.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on August 25, 2003 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.Montana.edu.

3. Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend ARM 10.57.420, 10.57.421, 10.57.422 and 10.57.423 to further the intent of the Board and the Certification Standards and Practices Advisory Council by clarifying the requirements for the renewal and reinstatement of Class 4 licenses.

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

10.57.420 CLASS 4 CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) through (4) remain the same.

(5) A lapsed class 4 license may be reinstated by showing verification of:

(a) 60 renewal units, 40 of which must be earned by college credit and/or technical studies if the licensee does not have a master's degree, earned during the five-year period preceding the validation date of the new license;

(b) 120 renewal units, 80 of which must be earned by college credit and/or technical studies if the licensee does not have a master's degree, earned during the nine-year period preceding the validation date of the new license;

(c) 60 renewal units earned during the five-year period preceding the validation date of the new license if the licensee has a master's degree; or

(d) 120 renewal units earned during the nine-year period preceding the validation date of the new license if the licensee has a master's degree.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

10.57.421 CLASS 4A CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) through (1)(b) remain the same.

(i) for health occupations an individual may hold a related health or science education endorsement; ~~and,~~

~~(A) have completed an approved internship program in a recognized medical setting of a minimum of 200 hours (five weeks), ~~or~~ and~~

~~(B) hold a current professional license or certificate.~~

(ii) remains the same.

(2) Class 4A licenses (with a master's degree) shall be renewable by earning 60 renewal units. The first renewal must show evidence of renewal units earned in the following content areas that include the following:

(a) and (b) remain the same.

(3) Class 4A licenses (with a bachelor's degree) shall be renewable by earning 60 renewal units, 40 of which must be earned through college credit and/or technical studies. The first renewal must show evidence of renewal units earned in the following content areas and include the following:

(a) and (b) remain the same.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

10.57.422 CLASS 4B CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) and (2) remain the same.

(3) Class 4B licenses (with a bachelor's degree) shall be renewable by earning 60 renewal units, 40 of which must be earned through college credit and/or technical studies. The first renewal must show evidence of renewal units earned in the following content areas and include the following:

(a) through (d) remain the same.

(4) Class 4B licenses (with a master's degree) shall be renewable by earning 60 renewal units. The first renewal must show evidence of renewal units earned in the following content areas:

(a) principles and/or philosophy of career and vocational/technical education;

(b) curriculum and instruction in career and vocational/technical education;

(c) learning styles/teaching styles, including students with special needs; and

(d) safety and teacher liability.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

10.57.423 CLASS 4C CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) remains the same.

(2) The class 4C license shall be renewable by completing 60 renewal units, 40 of which must be earned through college credit and/or technical studies. Appropriate content areas shall include but not be limited to that include the following:

- (a) through (e) remain the same.
- (f) teaching methods; ~~or~~
- (g) remains the same.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

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 by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.Montana.edu and must be received no later than 5:00 p.m. on September 11, 2003.

6. Steve Meloy has been designated to preside over and conduct the hearing.

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Board of Public Education rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, or by e-mail to smeloy@bpe.Montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chairperson
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Rule Reviewer
Board of Public Education

Certified to the Secretary of State August 4, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.50.401, 17.50.402,)	PROPOSED AMENDMENT
17.50.403, 17.50.410,)	
17.50.411, 17.50.412 and)	
17.50.416 pertaining to solid)	(SOLID WASTE)
waste fees)	

TO: All Concerned Persons

1. On September 16, 2003, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board 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 no later than 5:00 p.m., September 8, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.50.401 PURPOSE (1) The purpose of this subchapter is to establish solid waste management system licensing requirements and fee schedules provided for in 75-10-115, and ~~75-10-204~~ 75-10-221, MCA.

AUTH: 75-10-115, ~~75-10-204~~ 75-10-221, MCA
IMP: 75-10-115, ~~75-10-204~~ 75-10-221, MCA

REASON: The 2001 Legislature (Section 8, Chapter 170, Laws of 2001) eliminated the reference to annual renewal and license application fees in 75-10-204, MCA, and added a reference to fees in 75-10-221, MCA, and the proposed change reflects that action.

17.50.402 AUTHORITY (1) Authority for rules promulgated in this subchapter is provided for in 75-10-104, 75-10-105, 75-10-115, ~~75-10-204,~~ and 75-10-221, MCA, under which the ~~department board~~ may establish and the department may collect fees for the management and regulation of solid waste disposal. These fees may include:

(a) remains the same.

(b) An A flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal based upon the categorization of

solid waste management facilities into separate classes identified by the following formula criteria:

~~(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, \$3,500;~~

~~(ii) for an intermediate facility with a planned capacity of more than 5,000 tons of solid waste a year but not more than 25,000 tons a year, \$3,000;~~

~~(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, \$2,500; and~~

(i) the quantity of solid waste received by the solid waste management facility;

(ii) the nature of the solid waste received;

(iii) the nature of the waste management occurring within the solid waste management system; and

(c) A volume tonnage-based fee on solid waste disposal.

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The 2001 Legislature (Sections 4 and 5, Chapter 170, Laws of 2001) amended 75-10-204 and 75-10-221, MCA, so that the Board of Environmental Review establishes solid waste fees by rule and the Department collects them. The proposed amendment reflects the current Board and Department roles as set by law.

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) "Barn waste" means the bedding, waste feed, manure and other animal excretions generated from the operation of a barn or feedlot.

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

(4) "Commercial waste" means waste generated from stores, offices, restaurants, food processing facilities, warehouses, and other non-manufacturing activities, and non-processing wastes such as office and packing waste generated at industrial facilities.

(3) remains the same, but is renumbered (5).

~~(4) "Container site" means a facility for the collection of solid waste generated by more than one household or firm, generally open to the public, in refuse container(s) with a total site capacity of more than 10 cubic yards.~~

(6) "Contaminated soil" means soil, rocks, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. The term does not include soils contaminated solely by inorganic metals or soils that meet the definition of hazardous waste under ARM 17.54.201.

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

(10) "Farm waste" means waste from farms that is not household waste, hazardous waste, or barn waste. It includes,

but is not limited to, cull potatoes and spoiled crops such as hay or grain.

(8) and (9) remain the same, but are renumbered (11) and (12).

(13) "Interim closure" means the period of time from the final receipt of waste at a solid waste management facility until the department approves closure under ARM 17.50.530.

(14) "Intermediate Class II facility" means a Class II facility with a planned capacity of more than 5,000 tons per year but not more than 25,000 tons per year.

(15) "Intermediate incinerator" means an incinerator facility with a planned capacity of more than 5,000 tons per year but not more than 25,000 tons per year.

(16) "Intermediate landfarm facility" means a landfarm facility that has more than 1,600 cubic yards but less than 8,000 cubic yards of contaminated soil, from single or multiple events, undergoing treatment and accepted for treatment at the facility at any time during a calendar year.

(17) "Landfarm facility" means a solid waste management system engaged in the controlled remediation through landfarm treatment technologies of non-hazardous contaminated soil that is not subject to regulation under the underground storage tank/leaking underground storage tank statutes and rules found in Title 75, chapter 11, MCA, and ARM Title 17, chapter 56.

(18) "Large composter operation" means a composting operation that does not meet the definition of small composter operation. Co-composters and facilities that accept sewage sludge for composting are large composter operations.

(19) "Major Class II facility" means a Class II facility with a planned capacity of more than 25,000 tons per year.

(20) "Major Class III facility" means a Class III facility that disposes of 1,000 tons or more of material per year.

(21) "Major Class IV facility" means a Class IV facility with a planned capacity of 1,000 tons or more per year.

(22) "Major incinerator" means an incinerator facility with a planned capacity of more than 25,000 tons per year.

(23) "Major landfarm facility" means a landfarm facility that has 8,000 cubic yards or more of contaminated soil, from single or multiple events, undergoing treatment and accepted for treatment at the facility at any time during a calendar year.

(24) "Minor Class II facility" means a Class II facility with a planned capacity of not more than 5,000 tons per year.

(25) "Minor Class III facility" means a Class III facility that disposes of less than 1,000 tons of material per year.

(26) "Minor Class IV facility" means a Class IV facility of less than 1,000 tons per year.

(27) "Minor incinerator" means an incinerator facility with a planned capacity of not more than 5,000 tons per year.

(28) "Minor landfarm facility" means a landfarm facility that has up to 1,600 cubic yards of contaminated soil from single or multiple events either undergoing treatment or accepted for treatment at the facility.

(10) and (11) remain the same, but are renumbered (29) and (30).

(31) "One-time household hazardous waste collection event" means a collection of household hazardous waste from the public on a one-time basis.

(32) "One-time landfarm" means a landfarm facility for remediation of less than 1,600 cubic yards of non-hazardous contaminated soil generated from a single event, regardless of the source.

(12) through (15) remain the same, but are renumbered (33) through (36).

(37) "Recycling facility" means a facility, generally open to the public, that handles only source-separated or presorted material for the purpose of recycling either in bulk or in container(s) with a total site capacity of more than 40 cubic yards.

(38) "Remediate" means to treat contaminated soil to the point that it no longer poses a threat to human health or the environment.

(16) through (20) remain the same, but are renumbered (39) through (43).

(44) "Small composter operation" means a composting operation that:

(a) has less than two acres of active working area;

(b) accepts less than 10,000 cubic yards annually; and

(c) produces less than 1,000 tons of compost annually; and

either:

(i) accepts primarily yard waste, with a maximum of 25% barn or farm waste, by weight; or

(ii) accepts primarily farm or barn waste generated on-site.

(21) through (30) remain the same, but are renumbered (45) through (54).

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-221, MCA

REASON: The proposed additions to the definitions are the result of the general rule reorganization and the need to define and regulate waste management practices that were not recognized when the original rule was written ten years ago. "Landfarm facility," "intermediate landfarm facility," "major landfarm facility," "minor landfarm facility," "one-time landfarm," "one-time household hazardous waste collection event," and "recycling facility" are new types of facilities not defined in the current fee rules. Definitions of "large composter operation," "major Class III facility," "minor Class III facility," and "small composter operation" are currently found in ARM 17.50.412. They are proposed for inclusion in the definitions rule, ARM 17.50.403, for clarity and consistency. Because they would be defined in ARM 17.50.403, they are being proposed for deletion from ARM 17.50.412. Definitions of "barn waste," "commercial waste," "contaminated soil," "farm waste," and "remediate" are necessary because they are used to define other terms in these

rules. It is necessary to define "interim closure" because it is used in ARM 17.50.410 for holding fees in abeyance while a facility completes closure as required under ARM 17.50.530. "Container site" is defined by statute in 75-10-103(2), MCA. The definition in the current rule conflicts with the statutory definition and is proposed for deletion.

"Major Class II facility," "major incinerator," "intermediate Class II facility," "intermediate incinerator," "minor Class II facility," and "minor incinerator" were previously determined based on language proposed for deletion in ARM 17.50.402(1)(b). They are proposed for inclusion instead in the definitions found in ARM 17.50.403 for clarity and consistency. "Major Class IV landfill" and "minor Class IV landfill" are currently defined in ARM 17.50.412(7) and assessed the same fees as Class III landfills in Tables 1, 2, and 3. This language is proposed for deletion and the fees for Class IV landfill facilities are specifically listed in new Tables 1, 2, and 3. The terms "major Class IV facility" and "minor Class IV facility" are proposed for inclusion in ARM 17.50.403 instead of the terms "major Class IV landfill" and "minor Class IV landfill" for clarity and consistency.

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) Except as provided in 75-10-214, MCA, no person may dispose of solid waste or operate or maintain a solid waste management system after July 1, 1991, without an operating license from the department. The license period ~~shall be for a base year from~~ is July 1 ~~of one year~~ through June 30 ~~of the subsequent year~~.

(a) When an applicant for a license to operate a solid waste management system submits to the department the license application required by ARM 17.50.508, the department will determine the applicable fee specified in Table 3 and send an invoice to the applicant within seven working days after receipt of the application. The department shall begin processing the application upon receipt of the invoiced amount.

~~(a) (b)~~ A licensee shall file an annual report with the department by April 1 of each year. The report ~~shall~~ must be filed on a form ~~available from~~ provided by the department.

~~(b) (c)~~ The department shall mail invoices for license renewal fees to ~~license holders~~ licensees by June 15 of each year. The department shall calculate and assess license ~~License~~ renewal fees ~~will be calculated~~ in accordance with Table 1, "Annual License Solid Waste Fees Schedule." ~~Any~~ A solid waste management facility that does not fit into one of the categories listed in Table 1 ~~shall~~ must be assessed fees no greater than major Class II landfill facilities. ~~Payment of renewal fees~~ A licensee shall pay the assessed fee by July 31 of each year, but may be submitted submit the fees to the department quarterly, with the first payment due on or before July 31 of each ~~base~~ year, and subsequent quarterly payments due on October 31, January 31, and April 30. Failure to submit payments when due ~~shall subject~~ subjects the ~~license holder~~ licensee to the provisions of 75-10-116, MCA.

~~(c)~~ (d) The ~~annual license solid waste fee~~ specified in Table 1 ~~will be~~ is pro-rated by quarter for the year in which a license is originally issued.

(2) The department ~~will~~ shall mail renewal application forms to ~~renewal applicants~~ licensees by February 1 of each year. Application for renewal of a solid waste management system license ~~shall~~ must be submitted to the department by April 1 of each year. ~~Applicants~~ Licensees who are required to apply for license renewal and to pay fees under this subchapter, and who failing to submit the relicensing application and appropriate fees within the specified time shall be are subject to the provisions of 75-10-116, MCA.

(3) through (5) remain the same.

(6) The department shall license the following free of charge:

(a) persons conducting one-time household hazardous waste collection events;

(b) small composter operations; and

(c) recycling facilities that accept waste from more than one source.

(7) Fees at a facility in interim closure must be held in abeyance by the department. Fees held in abeyance are due and payable to the department if the facility does not complete closure in the time specified in ARM Title 17, chapter 50, subchapter 5.

~~TABLE 1. ANNUAL LICENSE FEE SCHEDULE~~

<u>FACILITY</u>	<u>ANNUAL LICENSE FEE</u>	<u>DISPOSAL FEE/TON</u>
Major Class II Landfill	\$3,500	\$0.31
Intermediate Class II Landfill	3,000	0.31
Minor Class II Landfill	2,500	0.31
Major Class III Landfill	1,000	
Minor Class III Landfill	500	
Major Incinerator	3,500	0.31
Intermediate Incinerator	3,000	0.31
Minor Incinerator	2,500	0.31
Container System (Initial Site)	360	
Each Additional Container Site	50	
Transfer Station (>10,000 tons/yr)	1,050	
Transfer Station (<10,000 tons/yr)	400	
Large Composter Operation	1,500	

~~TABLE 2. LICENSE TRANSFER FEE~~

<u>FACILITY</u>	<u>TRANSFER FEE</u>
Major Class II Landfill	\$500
Intermediate Class II Landfill	400
Minor Class II Landfill	300
Major Class III Landfill	200
Minor Class III Landfill	150
Major Incinerator	500
Intermediate Incinerator	400
Minor Incinerator	300

Container System (Initial Site)	100
Each Additional Container Site	40
Transfer Station (>10,000 tons/yr)	400
Transfer Station (<10,000 tons/yr)	250
Large Composter Operation	400

~~TABLE 3. APPLICATION REVIEW FEE SCHEDULE~~

<u>FACILITY</u>	<u>APPLICATION REVIEW FEE</u>
Major Class II Landfill	\$10,000
Intermediate Class II Landfill	7,500
Minor Class II Landfill	5,000
Major Class III Landfill	3,000
Minor Class III Landfill	2,000
Major Incinerator	10,000
Intermediate Incinerator	7,500
Minor Incinerator	5,000
Container System (Initial Site)	1,000
Each Additional Container Site	100
Transfer Station (>10,000 tons/yr)	7,000
Transfer Station (<10,000 tons/yr)	4,000
Large Composter Operation	3,000
Other Class II Materials	5,000

TABLE 1. SOLID WASTE FEES

<u>FACILITY</u>	<u>ANNUAL LICENSE FEE</u>	<u>DISPOSAL FEE/TON</u>
Major Class II facility	\$4,200	\$0.40
Intermediate Class II facility	\$3,600	\$0.40
Minor Class II facility	\$3,000	\$0.40
Major Class III facility	\$1,200	\$0.40
Minor Class III facility	\$ 600	\$0.40
Major Class IV facility	\$1,200	\$0.40
Minor Class IV facility	\$ 600	\$0.40
Major incinerator	\$4,200	\$0.40
Intermediate incinerator	\$3,600	\$0.40
Minor incinerator	\$3,000	\$0.40
Major landfarm facility	\$1,800	\$0.40
Intermediate landfarm facility	\$1,200	\$0.40
Minor landfarm facility	\$ 600	\$0.40
One-time landfarm	\$ 0	\$0.00
Transfer station (≥10,000 tons/yr)	\$1,260	\$0.00
Transfer station (<10,000 tons/yr)	\$ 480	\$0.00
Large composter operation	\$1,800	\$0.00
Small composter operation	\$ 0	\$0.00

TABLE 2. LICENSE TRANSFER FEE

<u>FACILITY</u>	<u>TRANSFER FEE</u>
Major Class II facility	\$600
Intermediate Class II facility	\$480
Minor Class II facility	\$360
Major Class III facility	\$240
Minor Class III facility	\$180

<u>Major Class IV facility</u>	<u>\$240</u>
<u>Minor Class IV facility</u>	<u>\$180</u>
<u>Major incinerator</u>	<u>\$600</u>
<u>Intermediate incinerator</u>	<u>\$480</u>
<u>Minor incinerator</u>	<u>\$360</u>
<u>Major landfarm facility</u>	<u>\$600</u>
<u>Intermediate landfarm facility</u>	<u>\$480</u>
<u>Minor landfarm facility</u>	<u>\$360</u>
<u>One-time landfarm</u>	<u>\$ 0</u>
<u>Transfer station (≥10,000 tons/yr)</u>	<u>\$480</u>
<u>Transfer station (<10,000 tons/yr)</u>	<u>\$300</u>
<u>Large composter operation</u>	<u>\$480</u>
<u>Small composter operation</u>	<u>\$ 0</u>

TABLE 3. APPLICATION REVIEW FEE SCHEDULE

<u>FACILITY</u>	<u>REVIEW FEE</u>
<u>Major Class II facility</u>	<u>\$12,000</u>
<u>Intermediate Class II facility</u>	<u>\$ 9,000</u>
<u>Minor Class II facility</u>	<u>\$ 6,000</u>
<u>Major Class III facility</u>	<u>\$ 3,600</u>
<u>Minor Class III facility</u>	<u>\$ 2,400</u>
<u>Major Class IV facility</u>	<u>\$ 3,600</u>
<u>Minor Class IV facility</u>	<u>\$ 2,400</u>
<u>Major incinerator</u>	<u>\$12,000</u>
<u>Intermediate incinerator</u>	<u>\$ 9,000</u>
<u>Minor incinerator</u>	<u>\$ 600</u>
<u>Major landfarm facility</u>	<u>\$ 3,600</u>
<u>Intermediate landfarm facility</u>	<u>\$ 2,400</u>
<u>Minor landfarm facility</u>	<u>\$ 1,200</u>
<u>One-time landfarm (≥800 cubic yds)</u>	<u>\$ 200</u>
<u>One-time landfarm (<800 cubic yds)</u>	<u>\$ 500</u>
<u>Transfer station (≥10,000 tons/yr)</u>	<u>\$ 8,400</u>
<u>Transfer station (<10,000 tons/yr)</u>	<u>\$ 4,800</u>
<u>Large composter operation</u>	<u>\$ 3,600</u>
<u>Small composter operation</u>	<u>\$ 0</u>

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA
 IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The proposed new ARM 17.50.410(1)(a) reflects the change in Department and state accounting practices. It would require an applicant for a new solid waste management system license to submit the application to the Department and the Department would then invoice the applicant within seven working days for the application fee established in Table 3. The Department would then begin processing the application upon receipt of the invoiced amount. The current rule, which contains a Table 3 that sets out application fees, does not explicitly require an applicant to pay the fee set out in the table or state when the fee is due. The proposed amendment is necessary to explicitly require the application fee from Table 3, and to require that the fee be paid upon invoice by the Department in order for the Department to begin processing the

application. The proposed amendments to ARM 17.50.410(1)(a) [renumbered (b)] reflect the current Department practice of mailing an annual renewal form to each licensee. Proposed amendments to ARM 17.50.401(1)(b) specify that annual fees are due on July 31, but that quarterly fees are due July 31, October 31, January 31 and April 31 if the licensee elects to pay quarterly.

Proposed amendments to ARM 17.50.410(2) specify that the Department will mail out renewal forms to current licensees by February 1 so licensees have sufficient time to complete them by the April 1st deadline. The Board is proposing to amend "renewal applicant" to "licensees" to more accurately state to whom the Department is required to send renewal applications. The current rule states that failure to submit a renewal application and appropriate fees subjects an applicant to criminal prosecution under 75-10-116, MCA. Because that statute provides criminal sanctions only for failure to pay fees, the Department is proposing to eliminate the reference to "licensing application" in the rule.

New ARM 17.50.410(6) is proposed to formalize current Department practices. By policy, one-time household hazardous waste collection events and small composters are required to be registered with the Department. According to 75-10-221, MCA, each solid waste management system must have a license from the Department. It is proposed that recycling facilities, one-time household hazardous waste collection events and small composters receive a license without charge because they are waste reduction activities with minor environmental impact. Insubstantial time and cost are required to process and evaluate the applications. The licensing of these systems would provide the Department with information on their location and better enable the Department to provide this information to the public.

One-time landfarms are currently required by policy to register with, but pay no fees to, the Department. These facilities require considerable staff time to examine analytical results and conduct inspections. The proposed fee would cover Department costs associated with this type of facility. Section 75-10-115, MCA, requires that fees must be adopted by the Board of Environmental Review. Fees for other landfarms are currently set in guidance issued in accordance with the requirements of ARM 17.50.410(1)(c).

The proposed new ARM 17.50.410(7), holding fees in abeyance during closure activities, reflects the requirement of the closure rules in ARM 17.50.530(1)(h)(ii).

The proposed fee tables increase the fees assessed to solid waste management systems to cover the costs of regulating and licensing solid waste management systems. Solid waste management systems currently regulated and licensed by the Department include landfills, transfer stations, resource recovery facilities, petroleum impacted soil treatment facilities or landfarms, municipal solid waste (MSW) incinerators, infectious or medical waste treatment facilities, and composting facilities. The Solid Waste Program (SWP) currently collects fees set by statute for application review,

license transfer, and the annual renewal of solid waste management system licenses. A tonnage fee is also collected from Class II (MSW) landfills and Class IV construction and demolition (C&D) waste landfills for each ton of waste disposed of at those facilities. Class III landfills and other inert waste facilities and soil treatment facilities are not currently assessed a tonnage fee. Class III landfills and major, intermediate, and minor soil treatment facilities would be charged tonnage fees under the proposed fee tables. A limited number of Class II landfills are currently assessed an additional fee for each ton of out-of-state wastes disposed of in those facilities. Out-of-state waste generators do not pay into the general funds of Montana and the additional \$.27 per ton fee is to compensate for the general fund revenue that the Department receives to operate the solid waste management programs. This practice would continue under the proposed amendments, as no changes are proposed to ARM 17.50.411(3).

The SWP activities are primarily funded by the revenue generated by fees charged to solid waste management system license holders. These activities include the issuing of licenses, monitoring, inspections, and compliance assistance and enforcement at licensed and unlicensed solid waste management systems. The fees fund 11 full time employees (FTEs) in the Solid Waste Licensing and Regulatory programs, the Pollution Prevention Program and the Department's Legal Unit. The fees have not been changed since they were established in 1991, while Department costs to license and regulate these facilities have risen with inflation.

The proposed fees assessed on each solid waste management system would be based on the type of waste collected, the waste handling process and volume/tonnage of waste treated, stored, or disposed of, as required by 75-10-115, MCA. Licensed solid waste management systems are currently assessed a license renewal fee by June 30 of each year, at the end of the state fiscal year. The fees assessed at the end of the fiscal year reflect the operation of the facility for the previous calendar year. The fees are subsequently remitted to the Department on a quarterly payment schedule during the new fiscal year. This process would not change, but is proposed to be made more specific by the amendments proposed to ARM 17.50.410(1)(c), as previously explained.

The combined effect of the proposed fee increases in Tables 1, 2 and 3 would bring in an estimated additional \$165,046 to the solid waste management account. The fees would be paid by the 116 licensed solid waste management facilities in Montana. Since these facilities bill their customers either directly or through tax assessment, the fee increase would be passed on to virtually everyone in the state and an unknown number of out-of-state persons who dispose of refuse in Montana. The exact number of persons affected is unknown, but would include all of the estimated 909,453 residents of Montana. (2002 census estimate) This would amount to approximately \$0.18 per citizen per year.

TABLE 1 FEE INCREASES

The proposed fees would increase the base fee for each class of facility by 20% and the tonnage fee by 29%. In addition, the Board is proposing a \$0.40 tonnage fee on Class III facilities and landfarm facilities that have not previously been assessed any tonnage fee.

There are 10 major Class II facilities in Montana with a disposal tonnage of 818,833 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is estimated to be \$7,000 for the base fee and \$73,695 for the tonnage fee.

There are 14 intermediate Class II facilities in Montana with a disposal tonnage of 183,211 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$8,400 for the base fee and \$16,489 for the tonnage fee.

There are seven minor Class II facilities in Montana with a disposal tonnage of 17,156 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$3,500 for the base fee and \$1,544 for the tonnage fee.

There are 12 major Class III facilities in Montana with a disposal tonnage of 27,918 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$2,400 for the base fee and \$11,167 for the tonnage fee.

There are 38 minor Class III facilities in Montana with a disposal tonnage of 12,542 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$3,800 for the base fee and \$5,017 for the tonnage fee.

There are two minor Class IV facilities in Montana with a disposal tonnage of 2,763 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$200 for the base fee and \$249 for the tonnage fee.

There is currently only one incinerator in Montana. It is a major incinerator with a disposal tonnage of 12,997 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$700 for the base fee and \$1,170 for the tonnage fee.

There are no major landfarm facilities in Montana at the current time.

There are two intermediate landfarm facilities. The cumulative amount of the proposed fee increase for this class of facility is \$400 for the base fee and approximately \$1,472 for the tonnage fee.

There are four minor landfarm facilities in Montana with a disposal tonnage of 813 tons (FY 2001). The cumulative amount of the proposed fee is \$400 for the base fee and \$325 for the tonnage fee.

There are three small transfer stations in Montana with a disposal tonnage of less than 10,000 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$240 for the base fee.

There are six large transfer stations in Montana. The cumulative amount of the proposed fee increase for this class of facility is \$1,260 for the base fee.

There are four large composter operations in Montana. The cumulative amount of the proposed fee increase for this class of facility is \$1,200 for the base fee.

TABLE 2 FEE INCREASES

The exact dollar amount and the number of persons involved with the increases in license transfer fees is unknown and varies greatly from year to year, but is estimated at less than one facility per year. The fees increase approximately 20% for each category. It also varies greatly as to which type of facility will request a license transfer. Over the past 12 years there have been requests from two major Class II facilities and three major Class III facilities and one large transfer station. At this rate the increase in fees would generate an approximate additional \$34 annually.

TABLE 3 FEE INCREASES

The exact dollar amount and the number of persons involved with the increases in application review fees is unknown and varies greatly from year to year. The fees increase approximately 20% for each category. They also vary greatly as to which type of facility will request a license. Last year there were four applications for various types of facilities that generated \$9,000 in fees. At this rate, the increase in fees would generate an approximate additional \$1,800 annually. New fees are being imposed on one-time landfarms. Small (less than 800 cubic yards) one-time landfarms would be assessed an application fee of \$200 and large one-time landfarms would be assessed an application fee of \$500. It is estimated that there will be five new small one-time landfarms and two new large one-time landfarms annually based on past history. This would generate \$1,000 in fees from small landfarms and \$1,000 from large landfarms.

17.50.411 VOLUME-BASED DISPOSAL FEE (1) Except as provided for in 75-10-214, MCA, and in fee Tables 1, 2 and 3 of ARM 17.50.410, any person licensed to dispose of or incinerate solid waste shall submit to the department an annual fee of ~~\$0.31~~ 0.40 per ton of solid waste incinerated or disposed of at the licensed facility during the previous calendar year. This ~~volume-based fee shall~~ must be submitted to the department in addition to the flat annual license renewal fees and is subject to the ~~same schedule as the license fees~~ in Table 1 of ARM 17.50.410.

(2)(a) ~~The volume-based department shall calculate the fee will be calculated~~ by using one of the following methods:

(i) (a) actual weight of waste managed as reported in the annual report required by ARM 17.50.410; or

~~(ii) (b) estimated weight based upon the volume of waste managed as reported in the annual report required by ARM 17.50.410.;~~

~~(iii) estimated weight based upon service area population;~~
~~or~~

~~(iv) special situations (e.g. 2 or more landfills servicing the same area and population, incinerator ash disposed of in a landfill, acceptance of out of district wastes, acceptance of special wastes, etc.).~~

~~(b) (3) For the purpose of estimating weight based upon the volume of waste managed, the following formulas apply:~~

~~(i) (a) one cubic yard of loose refuse (residential or commercial) shall equal 300 pounds; and~~

~~(ii) (b) one cubic yard of compacted refuse (e.g. packer truck) received at the facility shall equal 700 pounds.~~

~~(c) For solid waste management systems that choose not to weigh or measure the volume of waste managed, the following formulas shall be used for the purpose of estimating weight based upon service area population:~~

POPULATION	TONS PER YEAR
Greater than 5,000	1.04
1,000 - 5,000	0.59
Less than 1,000 and unincorporated areas	0.41

~~(c) The average tire weighs 20 pounds.~~

~~(3) (4) In addition to the volume tonnage-based fee specified in (1) of this rule, any person licensed to dispose of or incinerate solid waste shall submit to the department a quarterly fee of \$0.27 per ton of solid waste generated outside Montana and disposed of or incinerated within Montana. All facilities that accept wastes from outside Montana for the purpose of incineration or disposal must weigh the wastes accepted at that facility to accurately determine the volume accepted.~~

~~(4) remains the same, but is renumbered (5).~~

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-118, 75-10-221, MCA

REASON: The changes proposed to this rule reflect the changes made by the 2001 Legislature at Sections 2-5, Chapter 170, Laws of 2001. Prior law allowed solid waste management facilities to estimate weight based on population, while the current law requires that fees be based on quantities of waste and the nature of the wastes received at the facility. Waste tire facilities manage wastes on a per-tire basis, rather than weight or volume, but their classification for fee purposes is based on tonnage. The volume-to-tonnage conversion factor for estimating solid waste was included in the statement of intent in 1991 Senate Bill 209, Chapter 643, Laws of 1991 and was based on testimony given to the legislature. The Department has no studies to indicate that the conversion factors are incorrect. This enables smaller communities to avoid the cost of installing

scales. The determination that an average tire weighs 20 pounds is based on national averages and uses the same figure as currently used in ARM 17.50.412(5)(a), which is proposed for deletion. The type and number of facilities affected and the cumulative amount of the proposed disposal fee increase were addressed in the reason for the proposed amendment to ARM 17.50.410.

17.50.412 ANNUAL REPORTING, COMPOSTING; SPECIAL WASTES CONSOLIDATED OPERATIONS, LICENSE CLASSIFICATIONS (1) Any person owning or operating ~~facilities~~ a facility that ~~dispose of~~ manages solid waste through ~~landfilling or incineration~~ shall submit to the department by April 1 of each year, on a form provided by the department, the following information:

(a) through (b)(ii) remain the same.

(c) ~~Facilities that do not operate scales and that do not measure the volume of waste received and disposed of shall estimate the total tonnage of waste received and disposed of in the manner provided in ARM 17.50.411(2)(c).~~ For a landfarm facility, a report summarizing the total volume in cubic yards of contaminated soils accepted for treatment and under treatment during the previous year as demonstrated by compilation of waste acceptance forms, bills of lading, or trip tickets;

(d) For a large or small composter facility, a report summarizing:

(i) the kinds of materials accepted;

(ii) the total volume in cubic yards of material accepted;

and

(iii) the tons of compost produced.

(e) For facilities licensed primarily for the storage, treatment, processing, or disposal of waste tires, the kind and number of tires received by the facility and the number of tires processed, treated, disposed of, or removed from the facility during the previous year.

~~(2) All large composter operations must be licensed by the department. For the purposes of licensing fees the following definitions apply:~~

~~(a) A small composter operation must meet all the following criteria:~~

~~(i) under 2 acres active working area;~~

~~(ii) the operation must accept yard waste only;~~

~~(iii) the operation must accept less than 10,000 cubic yards annually; and~~

~~(iv) less than 1000 tons annual production.~~

~~(b) Large composter operations include all composter operations which do not meet the above criteria and specifically include the following:~~

~~(i) co-composters; and~~

~~(ii) any facility that accepts sewage sludge for composting.~~

~~(3) Small composter operations which accept waste from more than one source are required to register with the department on a form provided by the department. Small composter operations which accept waste from more than one~~

~~source are not required to be licensed, but may be inspected by the department and must be conducted in accordance with guidelines issued by the department.~~

~~(4) Any person owning or operating a licensed facility that disposes of Group II solid wastes through landfilling will not be charged additional fees for composting operations conducted on the same site as the licensed facility. Composting operations must be included in the facility's approved plan of operation.~~

~~(5) The storage, treatment, recycling, recovery, or disposal of used tires must be at a licensed solid waste management facility. Class III facilities that are licensed exclusively for tires must keep records of the number of tires accepted by the facility. For the purpose of fee determinations the following conversion factor will apply:~~

~~(a) the average tire weighs 20 pounds.~~

~~(6) For the purpose of fee determination, Class III solid waste management facilities are divided into the following categories:~~

~~(a) Major facility disposes of 1000 tons or more of material per year.~~

~~(b) Minor facility disposes of less than 1000 tons of material per year.~~

~~(2) The department may not assess additional fees for composting, household hazardous waste collection, or landfarm operations conducted at a licensed facility that disposes of Group II wastes through landfilling if those operations are:~~

~~(a) conducted on the same site as the landfill; and~~

~~(b) included in the facility's approved plan of operation.~~

~~(7) (3) Fees for the following special categories of Class IV units and facilities are as follows:~~

~~(a) remains the same.~~

~~(b) For a Class III facility that applies to upgrade to Class IV, the application review fee is 50% of the respective fee specified for the appropriate Class III landfill IV facility in Table 3 of ARM 17.50.410.~~

~~(c) The license transfer fee for a Class IV landfill is the same as the fee specified in Table 2 for a Class III landfill.~~

~~(d) The annual license fee for a Class IV landfill is the same as for the respective Class III landfill, as specified in Table 1, except that the disposal fee/ton for a Class II landfill applies to a Class IV landfill.~~

~~(e) The license application fee for a Class IV landfill is the same as specified in Table 3 for the respective Class III landfill.~~

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The proposed amendments would eliminate estimates based on population and bring reporting requirements in line with the current laws. Annual reporting requirements for landfarms, composter operations and waste tire facilities would be specified. These reporting requirements are necessary to

differentiate between the various classes of facilities for fee purposes. The definitions of large and small composter operations, and major and minor Class II facilities, are proposed for deletion from this rule and are proposed to be added to the definition rule found at ARM 17.50.403. Proposed new ARM 17.50.410(6) would provide for licensing of small composter operations, so the registration requirement in ARM 17.50.412(3) is proposed for deletion. Composting, household hazardous waste collection, and landfarm operations are often conducted at licensed Class II landfills. These waste reduction activities would be part of the plan of operations reviewed as part of the Class II licensing process and the system should not be double-billed or required to obtain a separate license. Only the composter operations were listed in the current rule as not requiring additional fees, and the proposed amendments would include household hazardous waste collection and landfarm operations as activities that could occur at landfills accepting Group II waste without requiring additional license fees. The tire weight section would be moved to ARM 17.50.411(2)(c) in the proposed amendments. This is necessary to make the rules consistent, because other conversion factors are contained in ARM 17.50.411.

The proposed deletions in ARM 17.50.412(7) are necessary because the proposed amendments to ARM 17.50.410 would add the fees for Class IV facilities to Tables 1, 2, and 3 and the reference to Class III landfills is no longer needed.

17.50.416 CONSOLIDATION OF LICENSES; FEES FOR CONSOLIDATED LICENSES (1) through (3)(b) remain the same.

(4) The department ~~will~~ may not assess the ~~\$0.31~~ per ton disposal fee of Table 1, ARM 17.50.410, for the landfill disposal of incinerator residues ~~in the case~~ where the incinerator facility and the landfill facility are both under a solid waste management system ~~license, or licenses,~~ held by a single person and the per ton fee is assessed for all of the solid wastes received for treatment by the incinerator facility.

AUTH: 75-10-115, 75-10-204, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The proposed amendments to ARM 17.50.416 eliminate fee reference to the amount of the fee that will not be assessed for incinerators at landfills that meet certain conditions under ARM 17.50.410 Table 1, since the amount of the fee is set in that table. The Board is also proposing editorial amendments to make the rules easier to read and to conform the rules to current drafting style. These amendments are not intended to have any substantive effect.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary

at ber@state.mt.us and must be received no later than 5:00 p.m., September 23, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David Rusoff
DAVID RUSOFF
Rule Reviewer

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, August 4, 2003.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
adoption of new rules I through) HEARING ON
V concerning collection of) PROPOSED ADOPTION
restitution from felony)
offenders)

TO: All Concerned Persons

1. On September 4, 2003, at 10:00 a.m., a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on August 21, 2003, to advise us of the nature of the accommodation that you need. Please contact Janet Bouchee, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301; telephone (406) 444-3911; fax (406) 444-4920; e-mail jbouchee@state.mt.us.

3. The new rules are proposed to implement House Bill 220 (Ch. 272, L. 2003), which delegates to the Department of Corrections the collection and distribution of restitution resulting from a criminal judgment rather than the individual county clerks of district courts. This change is intended to create a uniform and centralized process to increase the effectiveness of victim restitution.

The legislation further extends the jurisdiction of the Department to collect restitution after an offender has completed state supervision by authorizing the Department to contract with either a public or private entity to execute upon the restitution portion of the criminal judgment.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Administrative fee" means the cost of supervising the payment of restitution authorized by 46-18-201, MCA.

(2) "Cost of collecting the payments for restitution" means the actual cost a collection agency under contract with the department incurs to collect restitution plus the 10% fee for the cost of supervising the payment of restitution for an offender whose criminal sentence has expired.

(3) "Department" means the department of corrections

established in 2-15-2301, MCA.

(4) "Felony offender" means a person who has been found guilty of a felony offense upon a verdict of guilty or a plea of guilty or nolo contendere, and whom a judge has ordered to pay restitution to a victim, including a juvenile convicted under 41-5-206, MCA.

(5) "Inmate account" means the prison inmate trust account an incarcerated offender maintains pursuant to 53-1-107, MCA.

(6) "Offender" has the same meaning as felony offender in (4).

(7) "Restitution" means the amount of money a district court judge has ordered a felony offender to pay to a victim.

(8) "State prison" has the same meaning as found in 53-30-101, MCA.

(9) "Victim" has the same meaning as found in 46-18-243, MCA.

AUTH: 46-18-241 and 46-18-244, MCA

IMP: 46-18-241, 46-18-244 and 46-18-245, MCA

NEW RULE II GENERAL ORGANIZATION - DEPARTMENT RECORDS

(1) The department shall maintain a victim's restitution fund to hold in trust all restitution payments made by or on behalf of offenders. The department shall maintain a special revenue account to hold administrative fees to pay for the cost to administer the restitution program.

(2) For each felony offender subject to a restitution judgment, the department shall maintain the following:

(a) a list of each cause number of each case for which a judge ordered the offender to pay restitution, and the amount the judge ordered the offender to pay in each case; and

(b) each payment the offender has paid and how the department applied it to the offender's outstanding restitution obligation.

(3) The department shall generate and submit quarterly reports to:

(a) the offender's supervising officer if the offender is under supervision of the adult probation and parole bureau; and

(b) the crime victim compensation program of the department of justice.

(4) The department shall give the department of revenue a copy of the restitution order to allow diversion of state and federal tax refunds to the department to meet the restitution obligation.

(5) The department shall notify the district court of record and the department of revenue when an offender has fully satisfied a court-ordered restitution obligation.

AUTH: 46-18-241, MCA

IMP: 46-18-241 and 46-18-244, MCA

NEW RULE III COLLECTION OF RESTITUTION (1) For

offenders who are incarcerated in a state prison, prison officials may take up to 50% of money that enters an inmate's prison account to satisfy the offender's restitution obligation.

(2) The state prison shall withhold 15% of gross wages paid to an inmate in a federally certified prison industries program to satisfy unpaid restitution in the manner provided by these rules. If the obligation has been fully paid or no restitution was ordered, the department shall forward the amount to the crime victim compensation program in the department of justice.

(3) The state prison shall forward the restitution payment to the department's central office in Helena on a monthly basis.

(4) Offenders under supervision of adult probation and parole or a prerelease center shall submit restitution payments directly to the department in an amount determined by the offender's probation and parole officer or case manager in accordance with 46-18-244(6), MCA.

(5) Offenders who are not incarcerated in a state prison or youth correctional facility, or who are no longer under supervision by the state, shall continue to pay restitution and administrative fees directly to the department.

(6) Offenders shall send restitution payments by cashier's check or money order addressed to the Department of Corrections, Attn: Restitution, P.O. Box 201350, Helena, Montana 59620-1350. The department may accept checks from the prerelease centers on behalf of offenders who reside in the center or from an offender's employer pursuant to a garnishment order.

AUTH: 46-18-241, MCA

IMP: 46-18-241, 46-18-244 and 46-18-245, MCA

NEW RULE IV REFERRAL TO COLLECTION AGENCY - GARNISHMENT

(1) The department may refer outstanding restitution obligations for collection by a private collection agency or the department of revenue.

(2) The collection agents specified in (1) shall forward all money collected for restitution less the agency's actual costs of collection to the department.

(3) The department shall withhold an administrative fee of 10% of the payment it receives from a private agency or the department of revenue.

(4) Upon receipt of information that a person under the supervision of the department of corrections is entitled to receive money from any source, the department may request the office of victim services in the department of justice and the county attorney for the county in which the person was sentenced to petition the sentencing court to garnish the money for the payment of restitution, child support, and per diem costs of incarceration.

AUTH: 46-18-241, MCA

IMP: 46-18-237, 46-18-241 and 46-18-244, MCA

NEW RULE V DEPARTMENT PAYMENTS TO VICTIMS (1) The department shall disburse victim restitution fund balances greater than \$25 at least monthly. The department shall disburse fund balances of \$25 or less on a quarterly basis.

(2) If the judgment does not specify the timing or sequence in which multiple victims are to receive restitution, the department shall pay victims by the most equitable method determined in the discretion of the department, following these general guidelines:

(a) for multiple restitution obligations of less than \$500, the department shall distribute restitution payments in the order listed in the judgment until each victim's restitution is paid in full;

(b) for multiple restitution obligations greater than \$500, the department shall distribute restitution payments to all individual victims on a prorated basis; and

(c) the department shall pay the crime victim compensation program, then any state or local government agency after all individual victims have received full restitution.

(3) If the offender owes restitution to victims in more than one judgment, in order of the date of the judgment, the department shall pay all victims in a prior judgment before addressing the obligations of a subsequent judgment.

(4) If the department is unable to locate a victim with an outstanding restitution obligation, the department shall forward the full amount of restitution to the Montana department of revenue to hold in an abandoned property account.

AUTH: 46-18-241, MCA

IMP: 46-18-241 and 46-18-244, MCA

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 Debbie Arneson, Paralegal, Department of Corrections, PO Box 201301, Helena, Montana 59620-1301; fax (406) 444-1494; e-mail darneson@state.mt.us, and must be received no later than 5:00 p.m. on September 3, 2003.

6. Debbie Arneson and Kimberly Timm have been designated to preside over and conduct the hearing.

7. The Department of Corrections maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding community corrections, juvenile corrections, board of pardons and parole, private correctional

facilities or general departmental rulemakings. Such written request may be mailed or delivered to Sherri Townsend, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301, fax to (406) 444-4920, e-mail stownsend@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Corrections.

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

9. An electronic copy of this Notice of Public Hearing is available through the department's web site at www.cor.state.mt.us/news/RestitutionProposal.pdf. The department tries to make the electronic version conform to the official version of this notice, as printed in the Montana Administrative Register. However, the department advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, the department advises that the website might be inaccessible at times, due to system maintenance or technical problems.

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

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

Certified to the Secretary of State August 4, 2003

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment and transfer and repeal) ON PROPOSED AMENDMENT
of existing rules and the proposed) AND TRANSFER, ADOPTION
adoption of new rules I through) AND REPEAL
IV, all pertaining to dentistry,)
dental hygiene and denturistry)

TO: All Concerned Persons

1. On September 4, 2003, at 10:00 a.m., a public hearing will be held in room 438 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and transfer, 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 who 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., August 28, 2003, to advise us of the nature of the accommodation 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. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its periodic review of its rules, and in conjunction with, and in response to the 2001 legislation transferring the Board of Dentistry from the Department of Commerce to the Department of Labor and Industry, the Board is proposing a substantial number of revisions to its rules. Some of the proposed amendments are technical in nature, such as the proposed re-numbering of the rules to designate where in ARM Title 24 (rules of the Department of Labor and Industry) the rule is to be placed when it is transferred from ARM Title 8 (Commerce) to ARM Title 24. Similar technical changes update addresses, substitute modern language for archaic phrasing, and update obsolete or inappropriate statutory references. Other rule changes reflect a decision by the Board to attempt to streamline its rules. Currently, there are completely separate rules that apply to persons licensed as dentists, to persons licensed as denturists, and to persons licensed as dental hygienists. There are a number of historical reasons why completely separate rules existed, but the Board now believes that wherever feasible it is simpler to have a single rule that applies to all license classifications under the Board's jurisdiction. In addition, merging common matters into a single rule applicable to the three license types will

allow the Board to repeal the other two existing rules. Repeal of existing rules will also make the transfer of the remaining rules to ARM Title 24 simpler and more efficient. In some cases, the simplest solution is to draft one new rule to replace the three existing rules. In other cases, new language is being proposed in order to clarify matters that apparently currently are confusing to licensees and members of the public. Accordingly, the Board believes that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt new rules at this time. Where there are additional specific bases for a proposed action the Board will identify those reasons immediately following that rule.

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

8.16.401 (24.138.501) APPROVED DENTAL AND DENTAL HYGIENE SCHOOLS (1) The state of Montana will accept all candidates who are graduates of dental schools that have been accredited by the commission on dental accreditation (CODA), or dental hygiene schools pursuant to 37-4-302, MCA.

AUTH: ~~37-1-103,~~ 37-1-131, 37-4-205, MCA
IMP: 37-4-302, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. Language to add dental hygiene to this rule clarifies the CODA statutory requirement. A repealed authority cite is being deleted.

8.16.408 (24.138.514) APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) remains the same.

(2) An inactive status license does not entitle the holder to practice dentistry, dental hygiene or denturistry in the state of Montana. ~~Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:~~

(3) The board may consider a licensee request for reactivation upon written request to the board if the applicant provides, but is not limited to, the following:

(a) presents satisfactory evidence of operative competency, which may include, but not be limited to: a completed form approved by the board;

(i) (b) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application for reactivation; or within the last five years;

(ii) if the applicant has been out of practice for longer than five years, the applicant shall provide evidence of one of the following:

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

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

~~(b) (c) submits license verification from all jurisdictions where the applicant is licensed or has held a license;~~

~~(c) (d) submits 20 hours of continuing education for each year the license has been inactive, for a maximum of 60 hours each three year cycle; evidence of continuing education as follows:~~

~~(i) 60 hours of continuing education for a dentist, for the three most current renewal years;~~

~~(ii) 36 hours of continuing education for a dental hygienist, for the three most current renewal years; or~~

~~(iii) 36 hours of continuing education for a denturist, for the three most current renewal years;~~

~~(d) (e) submits a current CPR or ACLS card; and~~
~~(c) (f) applicant must take and pass the jurisprudence examination if the applicant has been inactive for five years or longer any other information the board may require for evidence of operative competency.~~

~~(4) If the applicant has been out of practice for longer than five years, the applicant shall provide evidence of, but not limited to, the following:~~

~~(a) completion of:~~

~~(i) a clinical competency course(s) or skills assessment analysis approved by the board; or~~

~~(ii) a board approved regional or state examination within the most recent five years;~~

~~(b) a license verification from all jurisdictions where the applicant is licensed or has held a license;~~

~~(c) evidence of continuing education as follows:~~

~~(i) 60 hours of continuing education for a dentist for the three most current years;~~

~~(ii) 36 hours of continuing education for a dental hygienist for the three most current years; or~~

~~(iii) 36 hours of continuing education for a denturist for the three most current years;~~

~~(d) a current CPR or ACLS card; and~~

~~(e) any other information the board may require for evidence of operative competency.~~

~~(5) Applicants shall take the jurisprudence examination if the applicant has not practiced in Montana within the most recent five years.~~

AUTH: 37-1-319, 37-4-205, ~~37-4-307~~, MCA

IMP: 37-1-319, 37-4-307, ~~37-4-406~~, ~~37-29-201~~, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. It is reasonable and necessary to clarify the procedure for changing from inactive to active licensure to

lessen confusion for applicants requesting to return to active practice. Authority and implementation cites are being amended to incorporate the applicability to all licensees and to correct an erroneous cite.

8.16.409 (24.138.403) DENTIST MANDATORY CPR (1) All licensed active status dentists, dental hygienists and denturists shall possess a current CPR certificate, a copy of which shall be submitted each year with the annual renewal application or advanced cardiac life support (ACLS) card.

~~(2) A dentist who has a current advanced cardiac life support (ACLS) card may submit proof of such as a valid substitute for a current CPR certificate.~~

~~(3) This rule will be effective January 1, 1991.~~

(2) Licensees shall maintain a current CPR or ACLS card on the premises and provide a copy to the board upon request.

(3) Licensees shall affirm the expiration date of the CPR or ACLS card on the annual renewal. The board may audit a licensee for compliance of a current CPR or ACLS card. An active licensee who practices without a current CPR or ACLS card may be subject to disciplinary action by the board.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: ~~37-4-511~~, 37-4-307, 37-4-406, 37-29-401, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board also believes that clarification is needed as to Board procedures affected by online renewals and the shift toward a paperless renewal process. Language is being added to clarify acceptable CPR and ACLS cards, who must maintain the current cards and where, and the consequences that may result if licensees do not comply with this requirement. The rule amendment should help eliminate confusion on these issues. Authority and implementation cites are being amended to incorporate the applicability to all licensees and to correct an erroneous cite.

8.16.410 (24.138.2401) COMPLAINT PROCEDURE (1) through (4) remain the same.

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

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

AUTH: 37-4-205, 37-29-201, MCA

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

REASON: The Board believes it is reasonable and necessary to discontinue Board consideration of anonymous complaints. The Board concludes that this change is necessary to better

protect the public and to facilitate both the investigation and prosecution of complaints to the Board. An authority cite is being added to incorporate the applicability to all licensees.

8.16.411 (24.138.2402) SCREENING PANEL (1) The board screening panel shall consist of three dentists, one dental hygienist, one public member and one denturist. The ~~chairman~~ presiding officer of the screening panel may reappoint screening panel members, or replace screening panel members as necessary at the ~~chairman's~~ presiding officer's discretion.

AUTH: 37-4-205, 37-29-201, MCA
IMP: 37-1-307, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board believes it is reasonable and necessary to clarify that reappointment of screening panel members is done at the discretion of the screening panel chairman or chairwoman. Gender specific language is also eliminated in favor of gender-neutral language. An authority cite is being added to incorporate the applicability to all licensees.

8.16.412 (24.138.505) DENTIST LICENSURE BY CREDENTIALS

(1) through (1)(c)(v) remain the same.

(vi) ~~is not the subject of an~~ submits documentation of all unresolved or adverse decisions based on ~~a~~ complaints, investigations, review procedures or other disciplinary proceedings undertaken by a state, territorial, local or federal dental licensing jurisdiction, dental society or law enforcement agency ~~that relates~~ relating to criminal or fraudulent activity, dental malpractice or negligent dental care;

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

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

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board believes that it is reasonable and necessary to amend this rule to clarify that applicants for licensure by credentials must submit documentation on unresolved and adverse disciplinary actions against them and that the Board will review such information on a case by case basis.

8.16.511 (24.138.301) DEFINITIONS ~~The~~ For the purposes of this chapter, the following definitions apply ~~for purposes of these regulations governing the practice of advertising as well as regarding the rules of professional conduct:~~

(1) remains the same.

~~(2) "Licensee" is any person holding a license to practice dentistry in the state of Montana;~~

(3) remains the same but is renumbered (5).

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

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

(3) "Coronal polishing" is a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal;

(6) "Prophylaxis" is a preventative and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, material alba, accretions and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, root planing and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist.

AUTH: 37-4-205, MCA

IMP: 37-4-101, 37-4-205, 37-29-201, MCA

REASON: The Board determined it is reasonable and necessary to combine definitions into one section and one rule. The language content of the definitions is not amended, but is reorganized and renumbered into one rule, and repealed in another rule. The Board determined that this will facilitate licensees finding information more quickly and will make the rules more user friendly. Implementation cites are being amended to incorporate the applicability to all licensees.

8.16.513 (24.138.3002) ADVERTISING CONTENT (1) The following acts or omissions in the context of advertisement by any licensee dentist shall constitute unethical and unprofessional conduct and shall subject the licensee to disciplinary action pursuant to ~~section 37-4-321~~ 37-1-136, MCA, and ~~ARM 8.16.701, et seq.~~

~~(1)~~ (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed or used, or that convey the message that one licensee dentist is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.

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

~~(3)~~ (c) Promotion of a professional service that the licensee dentist knows or should know is beyond the licensee's dentist's ability to perform.

(4) and (5) remain the same but are renumbered (d) and (e).

~~(6)~~ (f) Use of personal testimonials attesting to a licensee's dentist's competence in service or treatment that is not reasonably verifiable.

~~(7)~~ (g) Use of statistical data or other information based on past performances or other prediction of future

services that creates an unjustified expectation about results that the licensee dentist can achieve.

(8) through (13) remain the same but are renumbered (h) through (m).

~~(14)~~ (n) The use of "bait and switch" advertisements. In investigating complaints of "bait and switch" advertising, the board may require the licensee dentist to furnish to the board or its representative data or other evidence pertaining to sales made at the advertised fee as well as other sales.

~~(15)~~ (o) Misrepresentation of a ~~licensee's~~ dentist's credentials, training, experience or ability.

~~(16)~~ (p) Failure to include the corporation, partnership or individual ~~licensee's~~ dentist's name and address and telephone number in any advertisement. Any dental corporation, partnership or association that advertises by use of a trade name or otherwise fails to list all licensees dentists practicing at a particular location shall provide a list of all licensees dentists practicing at that location upon request and conspicuously display in the ~~licensee's~~ dentist's office a directory listing all licensees dentists practicing at that location.

(17) remains the same but is renumbered (q).

~~(18)~~ (r) Use of the name of any licensee dentist formerly practicing at or associated with any advertised location more than 30 days after that licensee dentist has left the practice. This rule shall not apply to a retired or deceased former associate who practiced dentistry in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.

~~(19)~~ (s) Stating or implying that a certain licensee dentist provides all services when any such services are performed by another licensee dentist.

(20) remains the same but is renumbered (t).

AUTH: 37-4-205, MCA

IMP: 37-4-205, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. This rule is being moved within the Board rules and licensees may incorrectly interpret that it applies to all licensees. The Board determined it is reasonable and necessary to amend an internal reference to a rule that is to be renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry. The Board determined it is reasonable and necessary to amend the language to clarify that this rule applies only to dentists.

8.16.514 (24.138.3102) SPECIALTY ADVERTISING (1) through (1)(d) remain the same.

(e) ~~orthodontics~~ orthodontic dentofacial orthopedics;

(f) remains the same.

- (g) periodontics; ~~and~~
- (h) prosthodontics; ~~;~~
- (i) oral and maxillofacial radiology; and
- (j) other board approved specialties.

(2) A licensee ~~may~~ shall not advertise using the terms "specialist", "specializing" or "practice limited to" unless the licensee has met the board standards for specialization as set forth in ARM ~~8-16-719~~ 24.138.3101 and ~~8-16-720~~ 24.138.3103 and the branch of dentistry advertised as a specialty branch of dentistry is sanctioned as a specialty branch of dentistry by (1) ~~above~~.

(3) remains the same.

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

REASON: The Board determined that it is reasonable and necessary to clarify changes made by the American Dental Association (ADA) to existing approved specialties and to add specialties that are newly recognized by the ADA to those approved for specialty advertising. It is reasonable and necessary to amend internal references to rules being renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry.

8.16.515 (24.138.3003) ADVERTISING RECORDS AND RESPONSIBILITY (1) Each licensee dentist who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision also shall include any licensed professional employees acting as an agent of such firm or entity.

(2) All advertisements are presumed to have been approved by the licensee dentist named therein.

(3) A recording of every advertisement communicated by electronic media and a copy of every advertisement communicated by print media, as well as a copy of any other form of advertisement, indicating the date, place and duration of the advertisement shall be retained by the licensee dentist for a period of two years from the last date of broadcast or publication and shall be made available to the board or its representative upon request.

(4) When placing advertising, the licensee dentist must possess such information which, when produced, would substantiate the truthfulness of any assertion or representation of material fact made in the advertisement.

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

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board is combining rules that apply to all

licensees under the Board's jurisdiction for clarity and simplicity. In light of this combination, the Board determined it is reasonable and necessary to amend the language to clarify that this rule applies only to dentists and not to all licensees.

8.16.601 (24.138.401) INTRODUCTION (1) remains the same.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-4-101, 37-4-401, 37-29-102, MCA

REASON: Authority and implementation cites are being amended to incorporate the applicability of the rule to all licensees.

8.16.605A (24.138.506) DENTAL HYGIENIST LICENSURE BY CREDENTIALS (1) through (1)(a) remain the same.

(b) ~~on~~ an original score card from the joint commission on national dental examinations showing the applicant's score on and passage of the written dental hygiene examination administered by the joint commission on national dental examinations;

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

(2) remains the same.

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

REASON: The Board determined that it is reasonable and necessary to correct an existing grammatical error. An implementation cite is being amended to delete reference to a repealed statute and to more accurately reflect the appropriate implementing statutes.

8.16.701 (24.138.408) SERVICE TO THE PUBLIC AND QUALITY OF CARE (1) The ~~dentists'~~ licensees' primary obligation of service to the public shall include the delivery of quality care, competently and timely, within the bounds of the clinical circumstances presented by the patient. Quality of care shall be a primary consideration of the ~~dental~~ professional practitioner.

AUTH: ~~37-4-321~~, 37-1-131, 37-4-205, 37-29-201, MCA
IMP: ~~37-4-321~~, 37-1-131, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board is combining rules that apply to all three licensee types under the Board's jurisdiction. The Board determined that it is reasonable and necessary to clarify that the delivery of quality of care is required by all licensees. Authority and implementation cites are being amended to incorporate the applicability to all licensees and to delete a reference to a repealed statute.

8.16.702 (24.138.409) PATIENT SELECTION (1) While ~~dentists~~ licensees, in serving the public, may exercise reasonable discretion in selecting patients for their practices, ~~dentists~~ licensees shall not refuse to accept patients into their practice or deny ~~dental~~ services to patients because of the patient's race, creed, color, sex, or national origin.

AUTH: ~~37-4-321,~~ 37-1-131, 37-4-205, 37-29-201, MCA
IMP: ~~37-4-321,~~ 37-1-131, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board is combining rules that apply to all licensees under the Board's jurisdiction. The Board determined that it is reasonable and necessary to clarify that patient selection, as part of the delivery of quality of care, is applicable to all licensees. Authority and implementation cites are being amended to incorporate the applicability to all licensees and to delete reference to a repealed statute.

8.16.703 (24.138.410) PATIENT RECORDS (1) ~~Dentists~~ Licensees are obliged to safeguard the confidentiality of patient records. ~~Dentists~~ Licensees shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient ~~or another dental practitioner,~~ dentists licensees shall provide any information that will be beneficial for the future treatment of that patient.

AUTH: ~~37-4-321,~~ 37-1-131, 37-4-205, 37-29-201, MCA
IMP: ~~37-4-321,~~ 37-1-131, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board is combining rules that apply to all licensees under the Board's jurisdiction. The Board determined that it is reasonable and necessary to clarify that patient record maintenance, as part of the delivery of quality of care, is required by all licensees. Authority and implementation cites are being amended to incorporate the applicability to all licensees and to delete reference to a repealed statute.

8.16.705 (24.138.411) EMERGENCY SERVICE (1) and (2) remain the same.

AUTH: ~~37-4-321,~~ 37-1-131, 37-4-205, MCA
IMP: ~~37-4-321,~~ 37-1-131, 37-4-101, MCA

REASON: The authority and implementation cites are amended to delete reference to a repealed statute and to accurately reflect the appropriate authorizing and implementing statutes.

8.16.706 (24.138.412) CONSULTATION AND REFERRAL (1) and (2) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-321~~, MCA
IMP: 37-1-131, 37-4-101, ~~37-4-321~~, MCA

REASON: The authority and implementation cites are amended to delete reference to a repealed statute and to accurately reflect the appropriate authorizing and implementing statutes.

8.16.707A (24.138.406) FUNCTIONS FOR DENTAL AUXILIARIES
(1) through (3)(k) remain the same.

(1) prophylaxis as per ARM ~~8.16.609(2)~~ 24.138.301.
(4) remains the same.

AUTH: 37-4-205, 37-4-408, MCA
IMP: 37-4-408, MCA

REASON: The Board determined it is reasonable and necessary to amend an internal reference to a rule that is to be renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry.

8.16.708 (24.138.404) JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY (1) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-321~~, 37-29-201, MCA
IMP: 37-1-131, 37-1-308, ~~37-4-321~~, MCA

REASON: The authority and implementation cites are amended to delete reference to a repealed statute and to accurately reflect the appropriate authorizing and implementing statutes.

8.16.709 (24.138.413) REBATE AND SPLIT FEES (1) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-321~~, MCA
IMP: 37-1-131, ~~37-4-321~~, MCA

REASON: The authority and implementation cites are amended to delete reference to a repealed statute and to accurately reflect the appropriate authorizing and implementing statutes.

8.16.719 (24.138.3101) GENERAL STANDARDS FOR SPECIALTIES
(1) remains the same.

~~(2) Dental health screenings do not constitute the practice of dentistry or dental hygiene.~~

AUTH: 37-4-205, MCA
IMP: ~~37-4-103~~, 37-4-205, 37-4-301, MCA

REASON: The Board determined it is reasonable and necessary to amend the title of this rule for more clarity to licensees.

The language in (2) was deleted and is proposed as new rule I. Licensees had difficulty locating this rule in its previous location. The implementation cites are being amended to correct an erroneous cite.

8.16.720 (24.138.3103) STANDARDS FOR MULTIPLE-SPECIALITY ANNOUNCEMENTS (1) remains the same.

AUTH: 37-4-205, ~~37-4-321~~, MCA
IMP: 37-1-131, 37-4-205, ~~37-4-321~~, MCA

REASON: The authority and implementation cites are amended to delete reference to a repealed statute and to accurately reflect the appropriate authorizing and implementing statutes.

8.16.722 (24.138.2301) UNPROFESSIONAL CONDUCT FOR DENTISTS AND DENTAL HYGIENISTS (1) The board defines "unprofessional conduct" for dentists and dental hygienists as follows:

(1) through (3) remain the same, but are renumbered (a) through (c).

~~(4) Failing to report the prescription of drugs to a habitual user or a drug addict within 48 hours to the county attorney, as required by the provisions of 37-2-111, MCA.~~

(5) (d) A dentist's failure Failure to maintain his/her an office(s) in sanitary conditions consistent with current accepted sterilization and disinfection protocols for treatment rooms, sterilization and laboratory areas, or operating under unsanitary conditions after a warning from the board.

~~(6) Consistently maintaining an unsanitary office or operating under unsanitary conditions after warning from the board.~~

(7) through (11) remain the same, but are renumbered (e) through (i).

(j) Failure to respond to correspondence from the board, or to comply with final orders of the board.

(k) Representing or recording as an oral prophylaxis, coronal polishing by itself, without an appropriately licensed dentist or licensed dental hygienist inspecting for and removing any supragingival and subgingival calculus and gingival irritants deemed necessary for removal by an appropriately licensed dentist or licensed dental hygienist.

AUTH: 37-1-319, 37-4-205, ~~37-4-405~~, 37-4-408, MCA
IMP: 37-1-316, 37-4-405, 37-4-408, ~~37-4-511~~, MCA

REASON: It is reasonable and necessary to amend the title to clarify that the rule applies to both dentists and dental hygienists. Section (4) was deleted as it related to a repealed statute. Redundant language was deleted and additional language was added to clarify to licensees that failure to comply with final Board orders is considered unprofessional conduct. The new language provides an avenue

for the Board to require compliance from licensees in this area and the amendment should facilitate the complaint and investigative processes. Subsection (k) was moved from its previous location under the "Definitions" rule as the Board determined this to be a more clear and accurate placement of the subsection. Authority and implementation cites are being amended to correct erroneous cites.

8.16.723 (24.138.405) MANAGEMENT OF INFECTIOUS WASTES

(1) Each ~~dentist~~ licensee licensed by the board shall store, transport off the premises and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA) regulation contained in 29 CFR 1910.1030, ~~adopted as amended~~ and published in the Federal Register, volume ~~56 No. 235 66~~, on ~~December 6, 1991~~ January 18, 2001 beginning at page ~~64175 5325~~, which is hereby incorporated by reference. Copies of the federal regulation referenced above ~~as well as the adoption notice supporting it~~ are available for public inspection in the offices of the Board of Dentistry, ~~Lower Level, Arcade Building, 111 North Jackson, 301 South Park, 4th Floor,~~ Helena, Montana 59620-0513, or via the internet at <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>.

~~(3) This rule will be effective as of March 6, 1992.~~

AUTH: 37-1-131, 37-4-205, 37-29-201, 75-10-1006, MCA
IMP: 75-10-1006, MCA

REASON: The Board determined that it is reasonable and necessary to amend language in this rule to correct the Board's address and to clarify that this rule applies to all licensees. All health care professionals are required to follow the infectious waste guidelines. The Board is combining the rules applicable to all its licensees for clarity and simplicity. This rule is being amended to clarify that denturists and dental hygienists are also responsible for infectious waste. The rule is also being amended to refer to the current version of the applicable federal regulation, and makes the Board's rule consistent with federal law. The authority cites are amended to incorporate the applicability to denturists and the title is amended for correctness in grammar.

8.16.807 (24.138.515) CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL OR REVOCATION (1) remains the same.

(2) Evaluation of reapplication for a license denied ~~under 37-4-323, MCA,~~ will be based upon, but not limited to:

(a) through (f) remain the same.

AUTH: 37-1-136, 37-4-301, 37-4-402, 37-29-201, MCA

IMP: 37-1-136, ~~37-4-323~~, 37-1-137, MCA

REASON: The Board determined it is reasonable and necessary to delete a reference to a repealed statute. The authority and implementation cites are amended to incorporate the applicability of the rule to all types of licensee regulated by the board and to delete reference to a repealed statute.

8.16.901 (24.138.3201) PROHIBITION PRACTICE OF ANESTHESIA

(1) Dentists licensed in this state ~~may~~ shall not apply general anesthesia or conscious sedation techniques, unless and until they have met all of the requirements set forth in these anesthesia rules. To "apply" general anesthesia or conscious sedation means to administer the agent to the patient and does not include performing dental procedures upon a patient to whom another person, qualified under 37-4-511, MCA, has given the agent.

(2) Violation of these rules shall constitute grounds for disciplinary actions as provided in 2-4-631(3)~~7~~ and 37-1-136, ~~and 37-4-321~~, MCA.

(3) Performing anesthetic procedures after the effective date of this rule without an appropriate permit will be interpreted by the board as unprofessional conduct under ARM ~~8.16.722~~ 24.138.2301. This is an interpretive ~~subsection~~.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA

IMP: 37-4-511, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. It is reasonable and necessary to amend the title for clarity of the intent of this rule. Authority cites are being amended to correct an erroneous cite. It is reasonable and necessary to amend an internal reference to a rule that is to be renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry, and reference to a repealed statute.

8.16.902 (24.138.3202) PERMIT REQUIRED FOR ADMINISTRATION OF ANESTHESIA (1) and (2) remain the same.

(3) The board may grant to a licensed dentist, upon receipt of an application and payment of the initial inspection fee, a temporary permit authorizing the dentist to administer general anesthesia, light general anesthesia, or conscious sedation for a period not to exceed 120 days or until the inspectors are able to make the inspection, whichever event occurs first. This temporary permit ~~is not renewable~~ may be extended upon board approval.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA

IMP: 37-4-511, MCA

REASON: The Board determined that it is reasonable and necessary to amend the title for clarity. Language was added to delineate the types of anesthesia allowable under a temporary anesthesia permit, and to explain that the Board may extend temporary anesthesia permits. The authority cites are being amended to correct an erroneous cite.

8.16.903 (24.138.3203) MINIMUM QUALIFYING STANDARDS (1) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA
IMP: ~~37-4-401~~, 37-4-511, MCA

REASON: Authority and implementation cites are being amended to correct erroneous cites.

8.16.904 (24.138.3204) MINIMUM MONITORING STANDARDS (1) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA
IMP: 37-4-511, MCA

REASON: Authority cites are being amended to correct an erroneous cite.

8.16.905 (24.138.3205) FACILITY STANDARDS (1) through (3) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA
IMP: 37-4-511, MCA

REASON: Authority cites are being amended to correct an erroneous cite.

8.16.906 (24.138.3206) ON-SITE INSPECTION OF FACILITIES (1) through (6) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA
IMP: 37-4-511, MCA

REASON: Authority cites are being amended to correct an erroneous cite.

8.16.907 (24.138.3207) REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) remains the same.

(2) Continuing education may include presentation of lectures and/or participation courses related to subject matter(s) listed in ~~ARM 8.16.907(1)(a) through (g)~~ this rule.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA
IMP: 37-4-511, MCA

REASON: The Board determined it is reasonable and necessary to amend an internal reference to a rule to clarify that the

acceptable continuing education courses are listed in this administrative rule. Authority cites are being amended to correct an erroneous cite.

8.16.908 (24.138.3208) REPORTING ADVERSE OCCURRENCES (1) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-511~~, MCA
IMP: 37-4-511, MCA

REASON: Authority cites are being amended to correct an erroneous cite.

8.16.909 (24.138.3209) ANESTHESIA FEE SCHEDULE (1) through (8) remain the same.

AUTH: 37-1-131, ~~37-1-134~~, 37-4-205, ~~37-4-511~~, MCA
IMP: 37-1-134, 37-4-511, MCA

REASON: Authority and implementation cites are being amended to correct erroneous cites and to accurately reflect the appropriate authorizing and implementing statutes. The title is being amended for greater clarity and to differentiate between this anesthesia fee schedule and the general fee schedule elsewhere in these rules.

8.16.1001 (24.138.2101) DEFINITION OF CONTINUING EDUCATION (1) through (1)(b) remain the same.

(c) update knowledge on advances in dental, medical and dental hygiene sciences and denturistry practices.

(2) remains the same.

AUTH: 37-1-319, 37-4-205, ~~37-4-307~~, ~~37-4-406~~, 37-29-201, MCA
IMP: 37-1-306, 37-1-319, 37-4-205, ~~37-4-307~~, ~~37-4-406~~, 37-29-306, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board determined it is reasonable and necessary to combine similar rules for the three professions regulated by the Board for clarity and simplicity. The parallel denturistry rule is repealed and the pertinent language incorporated into this rule. Authority and implementation cites are being amended to incorporate the continuing education of denturists and to correct erroneous cites to more accurately reflect the appropriate authorizing and implementing statutes.

8.16.1003 (24.138.2104) REQUIREMENTS AND RESTRICTIONS

(1) ~~Each dentist and dental hygienist licensed by the Montana board of dentistry~~ Licenseses shall have completed, within a three-year renewal cycle, the following minimum number of continuing education credits of instruction in acceptable courses of continued education:

(a) ~~for dentists, Dentist~~ — 60 per three-year cycle, ~~with such requirements commencing on March 1, 1993.~~ Dentists who have general anesthesia or conscious sedation permits must acquire these 60 continuing education credits in addition to those required for maintenance of those permits; ;

(b) ~~for Dental hygienist dental hygienists,~~ — 36 per three-year cycle, ~~with such requirements commencing on March 1, 1993.~~ ; or

(c) for denturists, 36 per three-year cycle.

(2) and (3) remain the same.

(a) Self-help/pop psychology (i.e., personal goal development, transactional analysis, assertiveness training);

(b) through (e) remain the same.

(4) Continuing education may include presentation of lectures and/or participation courses related to subject matter(s) listed in ~~ARM 8.16.1002(1)(a)(i) through (xvii)~~ 24.138.2102.

(a) and (b) remain the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-4-205, 37-29-306, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board concluded that it is reasonable and necessary to combine the continuing education rules for all three of the regulated professions to simplify the rules. It is reasonable and necessary to correct an internal reference to a rule that is to be renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry. Authority and implementation cites are being amended to incorporate the continuing education of denturists.

8.16.1005 (24.138.2106) EXEMPTIONS AND EXCEPTIONS (1) and (2) remain the same.

(3) Inactive ~~dental and dental hygiene~~ licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must comply with ~~ARM 8.16.408 or 8.16.607~~ 24.138.510. An inactive license, when activated, will begin a new three-year cycle.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-4-205, 37-29-306, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board is combining rules that apply to all three licensee types regulated by the Board for clarity and simplicity. This rule is being combined with a similar one applicable to denturists and the parallel denturistry rule is proposed to be repealed. It is reasonable and necessary to amend an internal reference to a rule that is to be renumbered

when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry. Authority and implementation cites are being amended to incorporate denturists into this rule.

8.17.702 (24.138.518) RENEWALS (1) Licenses must be renewed by March 1st of each year upon payment of the annual renewal fee, proof of continuing education requirements and possession of a current cardiopulmonary resuscitation card. Each year licensees shall:

(a) renew their licenses by the elected date stated in ARM 8.2.203;

(b) submit an annual renewal form and fee, and a late penalty fee, if applicable;

(c) affirm completion of the appropriate continuing education required; and

(d) all active licensees shall submit a completed affirmation statement and the expiration date of the licensees' current CPR or ACLS card.

(2) A denturist who has a current advanced cardiac life support (ACLS) card may submit proof of such, as a valid substitute for a current CPR certificate. In case of default by a dentist in payment of the annual renewal fee, the dentist will be subject to 37-4-307, MCA.

(3) In case of default by a dental hygienist in payment of the annual renewal fee, the dental hygienist will be subject to 37-4-406, MCA.

(4) In case of default in payment of the annual renewal fee by a licensee denturist:

(a) the licensee The denturist must forfeit the license. The board shall give the licensee denturist 30 days notice of the proposed forfeiture action. The notice must be sent by certified letter addressed to the last-known address of the licensee denturist and must contain a statement of the time and place at which the forfeiture will be concluded.

(b) If the licensee denturist pays the renewal fee, plus a delinquent fee as set forth in ARM ~~8.17.501(8)~~ 24.138.402, prior to the time set for forfeiture, the denturist license may not be forfeited.

(c) A denturist license forfeited for nonpayment of the renewal fee may be reinstated within five years of forfeiture if all requirements set forth in ARM ~~8.17.710~~ 24.138.513 have been satisfied.

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA

IMP: 37-4-307, 37-4-406, 37-29-306, MCA

REASON: The Board incorporates by reference the general statement of reasonable necessity contained in paragraph 3 of this Notice. The Board is combining rules that apply to all three licensee types regulated by the Board for clarity and simplicity. This rule was previously in the dentistry rules only. Similar renewal language for dentists and dental hygienists is presently in statute. To clarify the statutes,

language is being added for dentists and dental hygienists in the rule. Language is being amended to clarify requirements applicable to specific types of licensees. Language is being deleted that was combined in another rule. Internal references are corrected for rules being renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry. Authority and implementation cites are being amended to incorporate the applicability to all licensees and to correct erroneous cites.

8.17.705 (24.138.2103) SUBJECT MATTER ACCEPTABLE FOR DENTURIST CONTINUING EDUCATION (1) through (1)(a)(viii) remain the same.

- (ix) clinical jurisprudence; ~~and~~
 - (x) medical emergencies- ; and
 - (xi) practice management.
- (1)(b) through (1)(d) remain the same.

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-306, 37-29-306, MCA

REASON: By request of the denturist member of the Board, language is being added to include practice management in acceptable continuing education. This is currently allowed for dentists and dental hygienists and this amendment will provide the same opportunity for all three licensed professions.

8.17.706 (24.138.2104) REQUIREMENTS AND RESTRICTIONS (1) through (3) remain the same.

(4) Continuing education may include presentation of lectures and/or participation courses related to subject matter(s) listed in ARM ~~8.17.705(1)(a) through (x)~~ 24.138.2103.

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-306, 37-29-306, MCA

REASON: The Board determined it is reasonable and necessary to correct an internal reference to a rule that is to be renumbered when these administrative rules are transferred from ARM Title 8, Department of Commerce, to ARM Title 24, Department of Labor and Industry.

8.17.801 (24.138.2302) UNPROFESSIONAL CONDUCT FOR DENTURISTS (1) The board defines "unprofessional conduct" as follows:

- (1) and (2) remain the same, but are renumbered (a) and (b).
- (3)(c) failure to maintain an office(s) in sanitary condition consistent with current accepted sterilization and disinfection protocols for treatment rooms, sterilization and laboratory areas, or operating under unsanitary conditions

after a warning from the board ~~or consistently maintaining an unsanitary office;~~

(4) through (7) remain the same, but are renumbered (d) through (g).

~~(8) A denturist's failure to maintain his/her office(s) in sanitary conditions consistent with the current accepted sterilization and disinfection protocols for treatment, sterilization and laboratory areas.~~

(9) and (10) remain the same but are renumbered (h) and (i).

~~(11) (j) fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant; and~~

(k) failure to respond to correspondence from the board, or failure to comply with final orders of the board.

AUTH: 37-1-136, 37-1-319, 37-29-201, ~~37-29-311~~, MCA

IMP: ~~37-1-136~~, 37-1-316, 37-29-402, 37-29-403, MCA

REASON: The Board determined that it is reasonable and necessary to remove redundant language and to clarify that failure to comply with final Board orders is considered unprofessional conduct for all licensees, including denturists. Similar language is included elsewhere in rule for dentists and dental hygienists. This amendment provides an avenue for the Board to ensure compliance from licensees in this area and should facilitate both the complaint and investigative processes. Erroneous authority and implementation cites are being deleted to accurately reflect the appropriate authorizing and implementing statutes.

5. The proposed new rules provide as follows:

NEW RULE I DENTAL SCREENINGS (1) Dental health screenings do not constitute the practice of dentistry or dental hygiene.

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

IMP: 37-4-101, 37-4-205, 37-4-401, MCA

REASON: The Board determined it is reasonable and necessary to move this language from ARM 8.16.719 and implement a stand-alone rule. Licensees could not find this rule where it was previously placed. This rule will be placed in ARM Title 24, chapter 138, along with the rest of the Board's rules.

NEW RULE II REINSTATEMENT OF A DENTAL OR DENTAL HYGIENE LICENSE SUSPENDED FOR NON-PAYMENT OF RENEWAL FEE (1) A dentist or dental hygienist applicant requesting reinstatement must meet the requirements set forth in 37-4-307, MCA, for dentists and 37-4-406, MCA, for dental hygienists.

(2) The applicant shall make a written request and complete a form approved by the board.

(3) The applicant shall provide, but is not limited to, the following:

(a) evidence that the applicant has actively and completely practiced in another jurisdiction within the last five years;

(b) a license verification from all jurisdictions where the applicant is licensed or has held a license;

(c) evidence of continuing education as follows:

(i) 60 hours of continuing education for a dentist, for the three most current renewal years; or

(ii) 36 hours of continuing education for a dental hygienist, for the three most current renewal years;

(d) a current CPR or ACLS card; and

(e) any other information that the board may require for evidence of operative competency.

(4) If the applicant has been out of practice for longer than five years, the applicant shall provide, but is not limited to, the following:

(a) evidence of completion of:

(i) a clinical competency course(s) or skills assessment analysis approved by the board; or

(ii) a board approved regional or state examination within the last five years;

(b) a license verification from all jurisdictions where the applicant is licensed or has held a license;

(c) evidence of continuing education as follows:

(i) 60 hours of continuing education for a dentist, for the three most current renewal years; or

(ii) 36 hours of continuing education for a dental hygienist, for the three most current renewal years;

(d) a current CPR or ACLS card; and

(e) any other information the board may require for evidence of operative competency.

(5) Applicants must take and pass the jurisprudence examination if the applicant has not practiced in Montana within five years.

AUTH: 37-1-131, 37-4-205, 34-4-402, MCA

IMP: 37-4-307, 37-4-406, MCA

REASON: The Board determined that it is reasonable and necessary to adopt a new rule to clarify how an individual applies for license reinstatement after non-payment of fees. The Board also wanted the rule to be more specific in the requirements, to help clarify the process and lessen confusion among licensees. This rule will be placed in ARM Title 24, chapter 138, along with the rest of the Board's rules.

<u>NEW RULE III FEE SCHEDULE</u> (1) Original	
application fee for all licensees	\$100
(2) Credentialing fee for dentists	500
(3) Credentialing fee for dental hygienists	75
(4) Local anesthesia certificate application fee	20
(5) Written examination fee for denturists paid directly to testing agency	200
(6) Jurisprudence examination fee for all	

licensees	85
(7) Jurisprudence re-examination fee	40
(8) Active renewal fee for dentists	153
(9) Active renewal fee for dental hygienists	70
(10) Active renewal fee for denturists	100
(11) Inactive renewal fee for dentists	153
(12) Inactive renewal fee for dental hygienists	70
(13) Inactive renewal fee for denturists	100
(14) Late renewal penalty	100
(15) Duplicate wall certificate (computer printed)	10
(16) Duplicate wall certificate (hand lettered)	30
(17) Lists	30
(18) Laws and rules packet	10
(19) Copies (per page, over 50 pages)	0.20

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

IMP: 37-1-134, 37-4-301, 37-4-303, 37-4-307, 37-4-402, 37-4-403, 37-4-406, 37-29-304, MCA

REASON: The Board has determined there is reasonable necessity to combine rules where possible for all three professions regulated by the Board. Duplicate rules are being repealed. This rule is replacing existing ARM 8.16.405 (pertaining to dentists), ARM 8.16.606 (pertaining to dental hygienists) and ARM 8.17.501 (pertaining to denturists), all of which are proposed for repeal. This rule will be placed in ARM Title 24, chapter 138, along with the rest of the Board's rules.

The Board has also determined there is reasonable necessity to review the fees charged for services rendered by the Board. The Board is required by 37-1-134, MCA, to set fees at a level commensurate with costs. Fees for dentists, dental hygienists, and denturists have remained the same, except for the following four fee categories:

(a) fees for local anesthetic application for dental hygiene are being changed from \$10 (for applications for examination) and from \$30 (for applications by credentialing) to a flat \$20 fee. The Board estimates that approximately 28 dental hygienists per year will be affected. The Board estimates there may be a slight increase in the Board's revenue of up to approximately \$150 per year;

(b) a fee for an embossed, computer-generated replacement license certificate (as opposed to a hand-lettered certificate) was added for all license categories. (A license certificate is also available at no charge to a current licensee who is able to download and print a license certificate via the internet.) The Board estimates that approximately an additional eight to ten licensees per year will seek a computer-generated replacement license certificate. The Board estimates it may see an increase in Board revenue of approximately \$50 to \$100 per year;

(c) a fee for large numbers (more than 50) of copies requested by individuals or entities was added. The Board has

determined that this cost reasonably approximates the cost of finding and copying the documents, the cost of paper and the use of personnel and copy machines. The Board believes that individual requests for more than 50 copies of documents are rare, although occasionally requests are made for copies of hundreds or thousands of documents. The Board staff will continue its practice of providing a small number of copies at no charge to the requester. The Board cannot estimate the number of persons or entities who will be affected by the fee, nor the amount of revenue to be generated; and

(d) a fee for re-examination for jurisprudence examination was reduced from \$85 to \$40. The Board has determined that this fee can be reduced, as the Board will now be administering a take-home examination. The Board estimates that approximately 1 applicant a year will be affected, with a savings to that applicant of \$45.

NEW RULE IV DISPLAY OF LICENSES (1) All licensees must display their current license in their place of employment in a noticeable area for review by the public. If a licensee is working in more than one location, a copy of the license can be duplicated for display in another office or offices.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-4-205, 37-4-326, MCA

REASON: The Board determined it is reasonable and necessary to adopt a rule addressing the importance to the public of knowing whether licensees are current with their licensure. This rule also explains where the license(s) must be displayed. This rule will be placed in ARM Title 24, chapter 138, along with the rest of the Board's rules.

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

8.16.405 FEE SCHEDULE found at ARM pages 8-504 and 8-504.1.

AUTH: 37-1-134, 37-4-205, MCA
IMP: 37-1-134, 37-4-301, 37-4-303, 37-4-307

8.16.606 FEE SCHEDULE found at ARM pages 8-512.1 and 8-512.2.

AUTH: 37-1-134, 37-4-205, MCA
IMP: 37-4-402, 37-4-403, 37-4-406, MCA

8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE found at ARM pages 8-513 and 8-514.

AUTH: 37-1-131, 37-1-319, 37-4-205, 37-4-406, MCA
IMP: 37-1-319, 37-4-406, MCA

8.16.608 DENTAL HYGIENIST MANDATORY CPR found at ARM page 8-514.

AUTH: 37-1-131, 37-4-205, 37-4-406, MCA
IMP: 37-4-406, MCA

8.16.609 DEFINITIONS found at ARM page 8-514.

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

8.16.610 COMPLAINT PROCEDURE found at ARM pages 8-514 and 8-514.1.

AUTH: 37-4-205, MCA
IMP: 37-1-308, 37-1-309, MCA

8.17.501 FEE SCHEDULE found at ARM page 8-539.14.

AUTH: 37-1-134, 37-29-201, 37-29-304, MCA
IMP: 37-1-134, 37-29-304

8.17.704 CONTINUING EDUCATION IN DENTURITRY found at ARM page 8-539.21.

AUTH: 37-29-201, MCA
IMP: 37-29-306, MCA

8.17.706 REQUIREMENTS AND RESTRICTIONS found at ARM pages 8-539.21 and 8-539.22.

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-306, 37-29-306, MCA

8.17.707 REPORTING PROCEDURES found at ARM page 8-539.22.

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-306, 37-29-306, MCA

8.17.708 EXEMPTIONS AND EXCEPTIONS found at ARM pages 8-539.22 and 8-539.23.

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-306, 37-29-306, MCA

8.17.709 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE found at ARM page 8-539.23.

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-319, MCA

8.17.802 SANITARY STANDARDS found at ARM page 8-539.30.

AUTH: 37-29-201, MCA
IMP: 37-29-311, 37-29-401, MCA

8.17.811 COMPLAINT PROCEDURE found at ARM page 8-539.32.

AUTH: 37-4-205, MCA
IMP: 37-1-308, 37-1-309, MCA

8.17.812 SCREENING PANEL found at ARM page 8-539.33.

AUTH: 37-4-205, MCA
IMP: 37-1-307, MCA

REASON: The Board determined that it is reasonable and necessary to combine similar rules applicable to all three professions regulated by the Board. Combining the rules will make the rules clearer and more easily understood by licensees. In conjunction with combining the rules, the Board is repealing essentially duplicate rules as unnecessary and redundant.

7. The remainder of the dental, dental hygiene and denturistry rules, not being amended and transferred or repealed at this time, will be renumbered and transferred when final action is taken on these proposed rule amendments, new rules, and rule repeals.

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 by mail to: Sharon McCullough, Board of Dentistry, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@state.mt.us and must be received no later than 5:00 p.m., September 12, 2003.

9. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/den>, 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 do not excuse late submission of comments.

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

11. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

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

13. The Board of Dentistry will meet during the next regularly scheduled Board meeting on October 3, 2003, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments, new rules and repeals. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

BOARD OF DENTISTRY
MIKE MCCARTHY, DDS, CHAIR

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 4, 2003.

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

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.29.4301,)	ON PROPOSED AMENDMENT
24.29.4303, 24.29.4307,)	
24.29.4311, 24.29.4314,)	
24.29.4317, 24.29.4321, and)	
24.29.4329, relating to the)	
reporting of workers')	
compensation data)	

TO: All Concerned Persons

1. On September 10, 2003, at 1:00 p.m., the Department of Labor and Industry will hold a public hearing in the First Floor Conference Room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.29.4301, 24.29.4303, 24.29.4307, 24.29.4311, 24.29.4314, 24.29.4317, 24.29.4321, and 24.29.4329, to update rules related to the reporting of workers' compensation data.

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 Department no later than 5:00 p.m., September 5, 2003, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Claims Assistance Bureau, Attn: David Elenbaas, P.O. Box 8011, Helena, MT 59604-8011; telephone (406)444-6527; fax (406)444-4140; TDD (406)444-5549; or email daelenbaas@state.mt.us.

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

24.29.4301 PURPOSE (1) In 1993, the legislature enacted 39-71-225, MCA, requiring the department to develop a workers' compensation data base to provide management information about Montana's workers' compensation system to the legislative and executive branches. The department has developed a data base system that is designed to be compatible with the ~~currently developing standards for electronic submission of data. The use of standardized electronic reporting will increase the timely entry of information into the data base system, and is expected to reduce the costs of such reporting for insurers and the department~~ principles identified in 39-71-225, MCA.

(2) The department is participating in the international association of industrial accident boards and commissions' (IAIABC) efforts to nationally standardize electronic reporting of workers' compensation data, known as electronic data interchange (EDI). The department ~~anticipates the eventual use of~~ uses or may eventually use IAIABC standards for reporting

claim data, insurance coverage, medical, adjudication and rehabilitation information.

~~(3) The department anticipates that over time it will receive a majority of the reports required by these rules via electronic reporting.~~

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

REASON: There is reasonable necessity to amend this rule in order to reflect the actual implementation of electronic reporting, to provide updated guidance for possible future implementation of electronic reporting in other areas, to remove outdated or irrelevant language, and remove unnecessary duplication of statutory language.

24.29.4303 DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) remains the same.

~~(2) "All insurers" means every Plan 1 self insurer, every Plan 2 private insurer and the state fund.~~

~~(3)~~(2) "Closed" or "closed claim" means a claim on which all medical and ~~compensation~~ indemnity benefits have been paid, and there is no expectation of future liability.

~~(4)~~(5) "~~Compensation~~ Indemnity benefits" means any payment made directly to the worker (or the worker's beneficiaries), other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging.

(5) remains the same but is renumbered (3).

~~(6) "Department" means the department of labor and industry.~~

~~(7) "Designated reporting office" means the location which the insurer chooses as the place from which these reporting requirements are fulfilled.~~

~~(8)~~(4) "Electronic data interchange" or "EDI" means the intercompany exchange of standard business documents in a machine readable and standardized form.

~~(9)~~(6) "Indemnity claim" means a workers' compensation or occupational disease claim where ~~compensation~~ indemnity benefits in addition to medical benefits are being paid or are likely to be paid in the future.

~~(10)~~(7) "IAIABC" means the international association of industrial accident boards and commissions, which is an international trade association of workers' compensation administrators that seeks to advance the administration of workers' compensation systems through education, research and information sharing. The IAIABC establishes standards ~~on~~ for reporting industrial accidents.

(11) and (12) remain the same but are renumbered (8) and (9).

~~(13)~~(10) "Plan 3" or "state fund" means the state compensation insurance fund, established by ~~39-71-2313~~, MCA Title 39, chapter 71, part 23, MCA.

~~(14)~~(12) "Third-party administrator" means an ~~adjuster, entity who contracts~~ contracted to administer all or part of an insurer's or employer's workers' compensation business, which can include adjusting ~~adjust~~ a claim on behalf of the insurer or employer.

(15) remains the same but is renumbered (13).

~~(16)~~(11) "Reporting parties" means any person, firm, corporation, or any other type of entity, including an insurer, that is required by rule to report information to the ~~data base system~~ department.

(15) "Workers' compensation subsequent report" means a report required to communicate payment information related to an indemnity claim, including both medical and indemnity benefits.

~~(17)~~(14) "UEF" means the uninsured employers' fund, established by ~~39-71-502~~ 39-71-503, MCA.

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

REASON: There is reasonable necessity to amend these rules in order to clarify several defined terms, to delete terms which are already defined in statute, eliminate obsolete terms, and to update some definitions to incorporate by reference their proper statutory definitions in the Montana Code Annotated. There are also minor changes in style and numerous renumbering changes to correct alphabetical ordering.

Specifically, the definition of "IAIABC" in new (7) is clarified and updated to be standardized with that of the IAIABC. "Third party administrator" in new (12) is clarified to more closely conform to the IAIABC's definition and to reflect actual practice within the Department. The definition of "reporting parties" in new (11) is clarified to reflect actual practice.

In addition, the term "compensation" is being replaced with "indemnity" in new (2), (5) and (6) to reflect the decision of the Montana Supreme Court in Lockhart v. New Hampshire Ins. Co., 1999 MT 205, 295 Mont. 467, 984 P.2d 744, which held, in part, that "compensation" benefits include both indemnity and medical benefits. For the purpose of these rules, use of the term "indemnity" is used to refer to those benefits which are not medical benefits.

The definition for "workers' compensation subsequent report" is added as new (15) because the term is referenced several times in this subchapter without definition. The definition is consistent with that of the IAIABC.

24.29.4307 CLAIM FILE RECORDS MAINTENANCE AND RETENTION

(1) and (2) remain the same.

(3) Claim files must include, but need not be limited to, all of the following which exist in relation to the claim:

(a) first report of injury and occupational disease, Montana form ERD-991 or department-approved equivalent;

(b) through (4) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

REASON: There is reasonable necessity to amend these rules in order to clarify the name and type of form needed to comply with this part, and to implement actual department policy that allows entities to create, with department approval, their own form which they can use for reporting.

24.29.4311 FORMS USED FOR REPORTING (1) The department will design and approve forms used for hard copy (i.e. paper, rather than electronic) reporting of the information required by these rules. Reporting parties who are not subject to the electronic reporting requirements of 39-71-225, MCA, must use hard copy (i.e., paper) forms approved by the department for reporting the information required by these rules. Reporting parties may either request a supply of department-printed forms, may print their own supply of the approved form, or may request a supply of the form from the department or print their own supply of an equivalent form approved by the department. The department will determine the cost of the printing and mailing of the forms and bill the ordering office directly for its order bill the party ordering department-printed forms for the cost of printing and mailing.

AUTH: 39-71-203, MCA

IMP: 39-71-205, 39-71-208 and 39-71-225, MCA

REASON: There is reasonable necessity to amend these rules in order to update and clarify rules for use of hard copy (paper) forms, and to clarify departmental policy allowing entities to either use the department's forms or create an approved, equivalent form for reporting.

24.29.4314 ELECTRONIC REPORTING (1) Reporting parties are encouraged to report electronically to the department. Reporting parties may contact the department to request information about electronic reporting. Reporting parties may not report electronically without prior approval from the department.

(2)(1) Reporting parties wishing to Insurers or third-party administrators who report electronically, whether voluntarily or when required by 39-71-225, MCA, shall sign a written trading partner agreement with the department. The trading partner agreement will provide the effective date to send and receive the electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent agreements between the parties. The trading

~~partner agreement must be signed by the insurer and approved by the department prior to initial data submission.~~

~~(3)(2)~~ Electronic reporting for the first report of injury and occupational disease and the workers' compensation subsequent report may must be done pursuant to either the IAIABC flat file format or the American national standards institute (ANSI) electronic reporting standards X.12 format. The department will not accept electronic reports submitted in any other formats.

~~(4)(3)~~ The department has not yet established a format for electronic reporting of information other than the first report of injury and the workers' compensation subsequent report. Until such time as an appropriate format is established by the department for other information, the department will not accept electronic reporting.

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: There is reasonable necessity to amend these rules in order to provide consistency with revised definitions in these rules, to delete unnecessarily repeated statutory language, to remove redundant language, to conform to and provide language consistent with 39-71-225, MCA, and to reflect implementation of 39-71-225(7), MCA, which mandates electronic filing under certain circumstances.

24.29.4317 REPORTS PRODUCED BY THE DEPARTMENT

(1) remains the same.

(2) The department ~~may~~ shall determine the cost of developing, printing and mailing of reports and charge an appropriate fee for copies of reports.

AUTH: 39-71-203, MCA
IMP: 39-71-205, 39-71-209, 39-71-224 and 39-71-225, MCA

REASON: There is reasonable necessity to amend these rules in order to conform with 39-71-205(1) and (2), MCA.

24.29.4321 INSURER REPORTING REQUIREMENTS--INJURIES AND OCCUPATIONAL DISEASES

(1) All insurers and the UEF are required to submit ~~the~~ a first report of injury ~~and~~ occupational disease to the department within 30 days of the report to the insurer of the accident or of an occupational disease. ~~The designated reporting office must submit a first report for every claim whenever there is a triggering event. The triggering events for a first report are:~~

~~(a) every industrial accident or occupational disease; or~~

~~(b)(2)~~ All insurers and the UEF are required to submit a first report of injury and occupational disease to the department within 14 days of notification by the department that a previously submitted report contains a data error.

~~(2)(3)~~ All insurers and the UEF are required to submit to the department a workers' compensation subsequent report for

~~every indemnity claim. The designated reporting office shall submit a subsequent report for every indemnity claim within 14 days of the occurrence of any one of the following triggering events for a subsequent report:~~

- ~~(a) the initial payment of compensation benefits;~~
- ~~(b)(a) each six 6 month anniversary of the injury or occupational disease, while the claim is open;~~
- ~~(c)(b) notification by the department that a previously submitted report contains a data error; or~~
- ~~(d) reinstatement of benefits on a previously closed claim;~~
- ~~(e) the closure of the claim; or~~
- ~~(f) remains the same but is renumbered (c).~~

(4) Upon closure of a claim, the workers' compensation subsequent report may be filed either within 14 days of the time the claim is closed or at the next six month anniversary of the injury or occupational disease.

~~(3) An insurer or a third party administrator that submitted 50 or more first reports of injury/ occupational disease to the department in the preceding calendar year must shall submit medical bill data electronically to the department. Beginning July 1, 2001, medical bill data specified in the trading partner agreement resulting from an injury or occupational disease claim paid on or after July 1, 2000, must be submitted to the department within 30 days of the end of the preceding calendar quarter.~~

~~(4) remains the same but is renumbered (5).~~

~~(5)(6) The department may impose penalties as specified in 39-71-307, MCA, upon insurers that fail for failure to comply with these reporting requirements.~~

AUTH: 39-71-203, MCA

IMP: 39-71-225 and 39-71-307, MCA

REASON: There is reasonable necessity to amend these rules to simplify them by eliminating confusing and repetitious language which was discovered during a recent rules review; and to correct and update language in this rule so it is correct, in conformity with statute, and consistent with the proposed changes in ARM 24.29.4303. Some subsections are renumbered and there are additional minor changes in style. Old section (3) is deleted because medical bill data reporting has not been implemented.

Also, as a result of informal discussions with insurers and third party administrators, the department is accommodating several requests to help reduce costs for reporting parties. Therefore, several requirements for reports have been removed, including reports of every initial payment, reports of every claim closure, and reports of every reinstatement of benefits. Further, subsequent reports on indemnity claims will now only be required every six months from the date of injury. The option is also provided to submit a subsequent report upon time of claim closure.

Finally, the implementation citation for this rule is corrected with the addition of 39-71-307, MCA to the citation. This statute was inadvertently omitted in earlier rulemaking and recently noted by the Department.

24.29.4329 VERIFICATION AND ADDITIONAL INFORMATION

(1) remains the same.

(2) All insurers are required to respond to requests by the department for information regarding claims or to resolve discrepancies in data collection within ~~30~~ 14 days of the request from the department.

(3) remains the same.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-225 and 39-71-304, MCA

REASON: There is reasonable necessity to amend these rules in order to be consistent with ARM 24.29.4321(2) and to simplify them by eliminating confusing and repetitious language which was discovered during a recent review.

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

Carol Glead, Bureau Chief
Claims Assistance Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., September 19, 2003. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., September 19, 2003. 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 comment forum do not excuse late submission of comments.

6. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: August 4, 2003.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULE I,) ON PROPOSED ADOPTION
regarding rules applicable to)
barbers, cosmetologists,)
electrologists, manicurists)
and estheticians)

TO: All Concerned Persons

1. On September 5, 2003, at 10:00 a.m. a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of New Rule I related to the new Board of Barbers and Cosmetologists ("the new Board").

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists no later than 5:00 p.m., August 29, 2003, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Executive Officer, P.O. Box 200513, Helena, MT 59620-0513; telephone (406) 841-2320; fax (406) 841-2305; or e-mail gberger@state.mt.us.

3. The new rule as proposed to be adopted provides as follows:

NEW RULE I INTERIM RULE (1) Beginning October 1, 2003, the inception date of the newly formed board of barbers and cosmetologists, and until such time as the newly formed board adopts its own substantive administrative rules, persons licensed by either the former board of barbers or the former board of cosmetologists shall continue to abide by and comply with the administrative rules of whichever board issued the person a license.

(2) Rules applicable to barbers, barbershops and schools may be found at ARM Title 24, chapter 120.

(3) Rules applicable to cosmetologists, electrologists, manicurists, estheticians, salons and schools may be found at ARM Title 24, chapter 132.

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

REASON: The 2003 Montana Legislature enacted Chapter 243, Laws of 2003 (House Bill 196), an act combining the existing Board of Barbers and the existing Board of Cosmetologists into one professional licensing board, the new Board of Barbers and

Cosmetologists ("the new Board"). The bill was signed by the Governor on April 8, 2003. The bill has an effective date of October 1, 2003.

The Department, on behalf of the new Board and with the concurrence of both existing Boards, believes there is reasonable necessity to adopt a new rule, to be applied on an interim basis, clarifying the application of the existing Boards' rules as of October 1, 2003, the effective date of Chapter 243, Laws of 2003, until such time as the new Board formally adopts substantive rules. It is the expectation of the Department, the Board of Barbers and the Board of Cosmetologists, that the existing rules of the Board of Barbers and the Board of Cosmetologists will be reviewed, consolidated and harmonized wherever practicable, and then formally adopted by the new Board. The Department intends to codify the rules of the new Board in ARM Title 24, chapter 121.

NEW RULE I is intended to be in effect only until the new Board is able to consolidate and harmonize the existing rules and then go through the notice and hearing rule-making process to formally adopt those consolidated rules. The Department, on behalf of the new Board, believes that there is reasonable necessity for the adoption of NEW RULE I so that licensees, prospective license applicants and the general public are aware of the standards that the new Board will be applying, starting October 1, 2003, during the interim period before the formal adoption of the new Board's own substantive rules. The Department, on behalf of the new Board, further believes that there is reasonable necessity to hold a public hearing on the proposed adoption of NEW RULE I as soon as is feasible, so that any perceived flaws in the proposed new rule can be addressed at the earliest possible date.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Grace Berger, Executive Officer, P.O. Box 200513, Helena, MT 59620-0513; telephone (406) 841-2320; fax (406) 841-2305; or by e-mail to dlibsdbar@state.mt.us or dlibsdcos@state.mt.us and must be received no later than 5:00 p.m., September 12, 2003.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/bar> and <http://www.discoveringmontana.com/dli/cos>, 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 do not excuse late submission of comments.

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

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

8. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

9. The Board of Barbers and Cosmetologists will meet at a date and time subsequent to the rules hearing to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed new rule. Advance public notice of the subsequent meeting will be provided. Members of the public and all interested persons are welcome to attend the meeting and listen to the Board's deliberations.

BOARD OF BARBERS
DELORES LUND, CHAIR

BOARD OF COSMETOLOGISTS
WENDELL PETERSEN, CHAIR

BOARD OF BARBERS AND
COSMETOLOGISTS

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 4, 2003.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 24.150.501,) HEARING ON PROPOSED
24.150.2201 and 24.150.2301) AMENDMENT
pertaining to examination,)
continuing education and)
unprofessional conduct)

TO: All Concerned Persons

1. On September 18, 2003, at 10:00 a.m., a public hearing will be held in room 438, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Hearing Aid Dispensers no later than 5:00 p.m., on September 11, 2003, to advise us of the nature of the accommodation that you need. Please contact Ms. Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsddhad@state.mt.us.

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

24.150.501 EXAMINATION - PASS/FAIL POINT (1) through (4) remain the same.

~~(5) For the purposes of 37-16-403(2), MCA, additional and educational training recognized by the board will be any educational or technical offering, but may not, under any circumstances, involve any services performed on an individual.~~

~~(6) An applicant who applies to re take the examination after failure of two practical examinations and completing the two year waiting period, must complete an additional 180 hours of supervised training in a board supervised training program. In addition, the applicant must complete the equivalent of two years of required continuing education before re taking all sections of the practical examination, with the process to be continued at the discretion of the board.~~

AUTH: 37-16-202, MCA
IMP: 37-16-403, 37-16-405, 37-16-406, MCA

REASON: There is reasonable necessity to amend ARM 24.150.501 to delete sections (5) and (6) to bring the rule into compliance with the provisions of Chapter 224, Laws of 2003 (Senate Bill 109), which passed the last legislative session and became effective July 1, 2003. The legislation eliminated the "failure of two successive practical examinations" provision in 37-16-403(2), MCA.

24.150.2201 CONTINUING EDUCATION REQUIREMENTS (1) and (2) remain the same.

(3) Continuing education courses recognized by the board pertaining to fitting and dispensing hearing aids include those sponsored by the Montana hearing aid society, the national institute for hearing instruments studies, the American speech language hearing association, the American conference of audioprosthology, the Montana speech and hearing association, the academy of dispensing audiologists, the American academy of audiology, college courses and other such programs approved by the board.

(4) through (8) remain the same.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-306, ~~37-16-404,~~ MCA

REASON: The Board has determined that there is reasonable necessity to make these two additions in order to fulfill the Board's obligation pursuant to 37-1-306, MCA, to provide cost-efficient and geographically accessible continuing education. The Board has determined that because of the quality of their courses and presentation, these additional two sponsors provide meaningful continuing education to licensees, and thus help protect the public by enhancing skills and knowledge of the profession. Additionally, there is reasonable necessity to amend the citations to the authority and implementation statutes to appropriately reflect the basis of the Board's rule, as articulated in the statement of reasonable necessity.

24.150.2301 UNPROFESSIONAL CONDUCT (1) through (12) remain the same.

(13) performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure, including but not limited to:†

(a) the purposeful removal of cerumen from a patient's ear is unprofessional conduct;

(14) through (23) remain the same.

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-16-202, 37-16-411, MCA

REASON: The Board finds there is reasonable necessity to amend this rule because patients have been complaining about problems stemming from licensees removing cerumen ["ear wax"] from the patient's ears. The Board believes that the proposed amendment will eliminate the complaints while enhancing the

protection of the public. In addition, there is reasonable necessity to amend the authorization and implementation citations to more accurately reflect the basis for the Board's duty and authority to engage in rulemaking concerning the conduct of licensees.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsddhad@state.mt.us and must be received no later than 5:00 p.m., September 18, 2003.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/had>, 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 version 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 do not excuse late submission of comments.

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

7. The Board of Hearing Aid Dispensers anticipates meeting subsequent to receipt of transcript and all written commentary to consider those comments and testimony before taking final action on the proposed amendments. Members of the public are welcome to attend the meeting and to listen to the Board's deliberations.

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

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

BOARD OF HEARING AID DISPENSERS
DAVID KING, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 4, 2003.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.301.201,	)	ON PROPOSED AMENDMENT
24.301.202, 24.301.203,	)	AND ADOPTION
24.301.204, 24.301.205,)	
24.301.206, 24.301.207,)	
24.301.208, 24.301.210,)	
24.301.211, 24.301.212,)	
24.301.213, 24.301.214, and)	
24.301.215, and the)	
proposed adoption of New)	
Rule I, all pertaining to)	
building codes)	

TO: All Concerned Persons

1. On September 9, 2003, at 10:00 a.m., a public hearing will be held in the Park Avenue Building, Room B07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 Department no later than 5:00 p.m., September 2, 2003, to advise us of the nature of the accommodation that you need. Please contact Ms. Traci Smith, Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517 Helena, Montana 59620-0517, (406) 841-2040 (telephone), (406) 444-0532 (TTD), (406) 841-2050 (fax), or trasmith@state.mt.us (e-mail).

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

24.301.201 EXTENT OF LOCAL PROGRAMS (1) ~~Counties and municipalities~~ A city, county, or town, as provided by 50-60-102, MCA, may adopt codes to cover all buildings within their respective jurisdictional area areas. However, as provided by 50-60-102, MCA, a ~~county or municipality~~ city, county, or town may not cover residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building and any private garage or private storage structure used only for the owner's own use unless the local legislative body or board of county commissioners by ordinance or resolution makes the building code specifically applicable to those structures. A ~~county or municipality~~ city, county, or town may accomplish this by making its building codes applicable to ~~"all building within the" county's or municipality's jurisdictional area~~ all non-exempt building construction within the respective jurisdiction.

(2) Exceptions to permit requirements listed in 50-60-506(2) and 50-60-506(4), MCA, apply only to state plumbing permits, and ~~certified local governments~~ a city, county, or town may issue plumbing permits for such work in accordance with section 103 of the Uniform Plumbing Code as amended.

(3) When a ~~local government~~ city, county, or town is approved to enforce building, mechanical, electrical or plumbing codes for limited types of buildings, the department of labor and industry, building codes bureau retains authority to enforce building, mechanical, electrical and plumbing codes for all other buildings not covered by the ~~local government~~ city, county, or town and which are not exempt from department regulation.

AUTH: 50-60-203, 50-60-302, 50-60-504, 50-60-603, MCA
IMP: 50-60-202, 50-60-203, 50-60-301, 50-60-302, 50-60-504, 50-60-603, MCA

24.301.202 ADOPTION OF CODES (1) The codes adopted by ~~local governments~~ cities, counties, and towns must be the same as those adopted by the department. However, ~~local governments~~ cities, counties, or towns need only adopt those codes which they are certified to enforce; that is, plumbing, electrical, building or mechanical. The codes adopted by ~~local governments~~ cities, counties, and towns must be the same edition with the same amendments as those adopted by the department. Each time the department modifies the codes, ~~local governments~~ cities, counties, and towns must modify their codes to conform with the department's codes. The department will notify ~~local governments~~ cities, counties, and towns of these code modifications, at which time ~~local governments~~ they will have 90 days from receipt of the notice to conform their codes. ~~Local governments~~ Cities, counties, and towns shall notify the department in writing when the updated codes have been adopted and are being enforced. Such notification shall include a copy of the appropriate code adoption ordinance(s) or administrative action.

(2) remains the same.

(3) Discretionary provisions of a ~~municipal or county~~ city, county, or town building code, i.e., provisions which are not mandated by the department, may not be adopted by administrative action.

(4) remains the same.

AUTH: 50-60-302, MCA
IMP: 50-60-301, 50-60-302, MCA

24.301.203 FUNDING OF CODE ENFORCEMENT PROGRAM (1) The establishment of permit fees shall be left to ~~local governments~~ the city, county, or town. A list of current permit fees must be submitted to the department when the fees are first established or subsequently amended.

(2) Permit fees must only be used for those costs related to building code enforcement activities, except for the building

codes education fund as provided in 50-60-116, MCA, with building codes being only those codes adopted by the department in subchapters 1, 3, 4 and 15 of ARM Title 24, chapter 301. It is not intended that permit fees be used to support fire departments, planning, zoning or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the city, county, or town's building code enforcement ~~program programs~~.

(3) Costs related to building code enforcement activities include:

(a) those necessary and reasonable costs directly related and specifically identifiable to the enforcement of codes adopted by the ~~local government~~ city, county, or town as provided by 50-60-302, MCA; and

(b) a proportionate share of the ~~local government's~~ city, county, or town's indirect costs, which are those costs incurred for common or joint purposes that benefit more than one program or activity. Indirect costs shall be treated as provided by 50-60-106(2)(g)(i), MCA.

(4) The ~~local government~~ cities, counties, and towns must maintain a system and adequate records to:

(a) through (e) remain the same.

(5) Permit fees collected in a given year in excess of the costs of administering ~~the~~ city, county, or town building code enforcement ~~program programs~~ shall be placed in reserve to be used in subsequent years, provided that the reserve amount does not exceed the amount needed to support the building code enforcement ~~program programs~~ for 12 months. Fees must be reduced if necessary to avoid creation of excess reserve.

AUTH: 50-60-203, 50-60-302, MCA

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

24.301.204 FACTORY-BUILT BUILDINGS (1) Once factory-built buildings are approved by the bureau as meeting the codes, the units shall be subject only to ~~local government~~ city, county, or town inspection and fees for zoning, utility connections and foundations. As part of the city, county or town's submittals ~~submittal~~ to the bureau, provisions must be included stating how factory-built buildings will be handled with respect to permits and inspections to include ~~and~~ the charges for permits covering these types of units.

AUTH: 50-60-302, MCA

IMP: 50-60-302, MCA

24.301.205 CERTIFICATION OF CODE ENFORCEMENT PROGRAMS

(1) A ~~county or municipality~~ city, county, or town shall submit the equivalent of an annual report to support a request for certification of a new code enforcement program. Certification of the proposed code enforcement program shall be effective upon the department's written determination that the

~~local government city, county, or town's proposal~~ would be in compliance with applicable statutes and rules.

AUTH: 50-60-203, 50-60-302, MCA

IMP: 50-60-302, MCA

24.301.206 STAFF QUALIFICATION (1) ~~Local City, county, or town~~ plumbing and electrical inspectors must be either Montana licensed journeymen or inspector certified in the craft being inspected.

(2) ~~Local City, county, or town~~ building and mechanical inspectors must be either inspector certified or have a construction related engineering or architecture degree or license. A mechanical inspector may also be qualified by having a Montana plumbing license.

(3) through (5) remain the same.

(6) The types of buildings which may be inspected or plans examined by a particular certification classification shall be determined by the department utilizing the standards and recommendations of the entity administering the certification program. However, as a general rule, ~~one and two family dwelling residential building inspector~~ certification shall be acceptable for inspections of residential buildings containing less than five dwelling units. ~~Light commercial combination Commercial~~ inspector certification shall be acceptable for inspections of residential buildings containing less than five dwelling units and commercial buildings two stories or less and no more than 12,000 square feet of total floor space.

(7) Newly hired building inspectors, mechanical inspectors and plans examiners who do not meet the certification standards listed above may conduct inspections and review plans if they obtain the necessary certification within six months of the date of hiring, and are supervised in the interim by appropriately certified personnel. If the city, county, or town code enforcement ~~program programs~~ cannot provide supervision by a certified person, the newly hired non-certified building inspector or plans examiner must have actual practical experience in the construction trade, and must participate in six working days of on-the-job training with the department. Such training shall be at the expense of the ~~county or municipality~~ city, county, or town employing the inspector. There shall be no fee charged by the department. Upon approval by the department, on-the-job training with another code enforcement program may be accepted. Upon approval by the department, four days of classroom training may be substituted for six days of on-the-job training.

(8) A ~~local government~~ city, county, or town may opt to have a medical gas piping permit and inspection program as part of a plumbing permit and inspection program. If the ~~local government~~ city, county, or town does not opt to have a medical gas permit and inspection program then such program will be administered by the department. Medical gas piping inspectors must either possess a Montana medical gas piping endorsement or

have 30 hours of medical gas piping inspection training acceptable to the department.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

24.301.207 ANNUAL REPORT (1) ~~A local government city, county, or town~~ with a certified code enforcement program may submit to the department of labor and industry an annual report. The department may request a ~~local government city, county, or town~~ with a certified code enforcement program which has not filed an annual report in accordance with this rule to respond to inquiries regarding its code enforcement program so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The department may also make similar inquiries to clarify or further examine details provided in annual reports.

(2) The voluntary annual report should be filed with the department on or before September 1st of each year for the immediately preceding fiscal year. Information provided in annual reports should correspond directly to each item listed in (3)(a) through (k), and each item should be answered and tabbed separately from all other annual report information. The bureau will make an annual report example format available to all Montana cities, counties, and towns prior to September 1, 2004.

(3) Except as provided in (4), ~~The~~ annual report should contain the following information if there is a change in ~~that~~ a particular item of information as it was reported ~~from~~ for the previous year:

(a) a an official map or certified legal description of the jurisdictional area;

(b) a list of building related codes, with including edition dates, being enforced by the city, county, or town;

(c) with copies of ~~adopting~~ ordinances which adopt each building-related code or each administrative order used to adopt each building-related code if not previously provided ~~as required by~~ in accordance with ARM 24.301.202;

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

~~(f)~~(g) a copy of the ordinance establishing the appeal procedure or the acknowledgment that the ~~Uniform Building Code International Building Code~~ appeals procedure will be followed;

(h) a list of the members of the appeals board and their qualifications;

~~(g)~~(i) the current plan for enforcement:

(g)(i) through (iv) remain the same, but are renumbered (i)(i) through (iv).

(v) how factory-built buildings and manufactured homes are ~~handled permitted and inspected;~~

~~(h)~~(j) a list of employees inspecting, reviewing plans or approving any installation with ~~description~~ descriptions of responsibilities and ~~qualification~~ qualifications ~~status~~ of each employee as provided in ARM 24.301.206-; and

(k) if any services relating to building code enforcement are provided through contractual arrangements, a current copy of any and all such contracts.

(4) Beginning on September 1, 2004, and continuing thereafter on a three year rotating basis, cities, counties and towns shall submit annual reports which provide detailed answers to each of the criteria listed in (3), even if there has been no change since the previous reporting period, as follows:

(a) beginning in September 2004, cities, counties and towns whose names begin with the letters A through H;

(b) beginning in September 2005, cities, counties, and towns whose names begin with the letters I through P; and

(c) beginning in September 2006, cities, counties, and towns whose names begin with the letters Q through Z.

AUTH: 50-60-203, 50-60-302, MCA

IMP: 50-60-302, MCA

24.301.208 AUDIT (1) A ~~local government city, county, or town~~ with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and had building permit revenues in the previous fiscal year of more than \$10,000 shall require its independent auditor, in conjunction with the audit required by 2-7-503, MCA, to perform agreed-upon procedures to determine whether the ~~local government city, county, or town~~ has complied with the financial related statutes and administrative rules relating to ~~local city, county, or town~~ building code enforcement programs. The department may require ~~local governments cities, counties, and towns~~ with a certified building code enforcement ~~program programs~~ which do not meet the above criteria to provide such an audit on a case-by-case basis so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American institute of certified public accountants. The engagement must include, but is not limited to, procedures necessary to determine that all construction-related fees or charges imposed and collected by the ~~local city, county, or town~~ building code enforcement program are used and accounted for as provided in 50-60-106(2)(f), MCA, and ARM 24.301.203.

(2) The cost of the agreed-upon procedures engagement shall be paid by the ~~local government city, county, or town~~, but may be considered a direct cost of the code enforcement program.

(3) Copies of the report on applying agreed-upon procedures shall be filed with both the department and the local government services bureau of the department of administration.

AUTH: 50-60-203, 50-60-302, MCA

IMP: 50-60-302, MCA

24.301.210 DECERTIFICATION OF CODE ENFORCEMENT PROGRAMS

(1) If the department of labor and industry determines a

city, county, or town code enforcement program is not in compliance with the applicable statutes or rules it shall-

~~(a)~~ Give the ~~local government~~ city, county, or town notice of such non-compliance and may allow a reasonable amount of time, not to exceed six months, for the ~~local government~~ city, county, or town to come into compliance or have the non-compliant code enforcement program decertified.

~~(b)(a)~~ Failure of the ~~local government~~ a city, county, or town to come into compliance within the time prescribed by the department will result in the de-certification of the ~~local government~~ city, county, or town program to the extent ~~the code enforcement program~~ it is out of compliance.

~~(c)(b)~~ The ~~local government~~ city, county, or town shall be given the opportunity to contest the department determination through contested case proceedings as provided by the Montana Administrative Procedure Act.

(2) A ~~local government~~ city, county, or town may voluntarily decertify all or part of its code enforcement program upon a 90-day written notice to the department, unless the department otherwise accepts a lesser notice or the public health, safety and welfare is at risk.

(3) If a ~~local government's~~ city, county, or town's code enforcement program is decertified, either involuntarily or voluntarily, in whole or in part, the ~~local government~~ city, county, or town shall be obligated to complete inspecting all construction projects started with permits issued under the ~~local government's~~ city, county, or town's program, unless the department otherwise consents or determines that the public health, safety or welfare is at risk.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

24.301.211 BUILDING CODES EDUCATION FUND ASSESSMENT

(1) ~~Local government programs~~ Cities, counties, and towns, which are certified for the enforcement of building-related codes shall remit to the department 0.5% of building fees or charges collected for deposit into ~~the~~ a building codes education fund.

(2) ~~Local governments~~ Cities, counties, and towns with annual revenues from building fees and charges of \$100,000 or more shall make the payment to the building codes education fund in two semi-annual installments, the first half on or before February 1, for revenues collected between the preceding July 1 and December 31, and the second half on or before September 1 for revenues collected between the preceding January 1 and June 30. ~~Local governments~~ Cities, counties, and towns with annual revenues from building fees and charges of less than \$100,000 may make one annual payment on or before September 1 for revenues collected between the preceding July 1 and June 30.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

24.301.212 CODE INTERPRETATIONS (1) Code interpretations concerning any of the state ~~building-related~~ building-related codes enforced by ~~local governments~~ cities, counties or towns (building, plumbing, mechanical and electrical) may be requested by an affected party (building official, contractor, designer, owner, etc.), in writing, on forms provided by the department. The affected party must first show a need for a code interpretation because of differing or inconsistent interpretations of the code provision at issue between ~~local Montana~~ city, county, or town building officials or between ~~local Montana~~ city, county, or town building officials and the department. The department will research and investigate the question and will prepare a preliminary written response, which includes the department's preliminary interpretation and justification of the question as soon as possible.

(2) The preliminary interpretation and justification of the question will be distributed to the requestor, the building codes council and to all ~~local government~~ city, county, or town code enforcement programs, currently certified for enforcement of the applicable code concerning the question, for their review and comment. Comments and suggested amendments concerning the question must be returned to the department within 30 days of the date of the distribution of the preliminary interpretation and justification of the question.

(3) The department will consider all comments and suggested amendments received during the 30 day comment period and prepare a proposed interpretation and justification of the question to be distributed, along with a ballot, to all building officials of ~~local government~~ city, county, and town code enforcement programs, currently certified for enforcement of the applicable code concerning the questions. The ballot will be to "concur" or to "not concur" with the proposed interpretation and the ballot must be signed and dated by each voting building official and returned to the department within 15 days of the date of distribution of the proposed interpretation.

(4) The ballots will be counted by the department and the proposed code interpretation will become final and binding on all ~~local~~ city, county, and town code enforcement programs and the department if a simple majority of voting building officials "concur". If the voting on the proposed code interpretation is tied, the department shall be entitled to break the tie vote. If a simple majority of voting building officials vote "do not concur", the proposed code interpretation will become a technical code advisory, as established in ARM 24.301.213 and is not binding on local code enforcement programs.

(5) Code interpretations, which receive a "concur" status as established in (4) ~~above~~, shall be certified by signature of the building codes bureau chief as having met the established procedures and the code interpretation will be dated, chronologically numbered, placed in the department's central registry and distributed to the requestor, building codes council and all ~~local government~~ city, county, and town code

enforcement programs, ~~currently~~ which are then certified for building code enforcement.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

24.301.213 CODE TECHNICAL ADVISORIES (1) remains the same.

(2) Code technical advisories are not binding on ~~local government~~ city, county, or town code enforcement programs.

(3) Code technical advisories will be dated, chronologically numbered, placed in the department's central registry and distributed to the requestor, building codes council and all certified ~~local government~~ city, county, and town building code enforcement programs.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

24.301.214 SINGLE FAMILY DWELLING PLAN REVIEW AND APPROVAL OF MODEL PLANS (1) through (4) remain the same.

(5) Approved plans with current electrical, plumbing and mechanical components shall be acceptable on a statewide basis as established in (2) ~~above~~ with no further examination other than as provided in 50-60-118, MCA. Any alteration or deviation during construction from the approved plans voids the model plan approval status and the alteration or deviation shall be addressed on a case-by-case basis by the applicable ~~local~~ city, county, or town building official.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

24.301.215 ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, THE UNIFORM HOUSING CODE OR THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The adoption or use of the International Property Maintenance Code, the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings by a ~~local government~~ city, county, or town is independent from any authority or requirement of the state building code. ~~Local governments~~ Cities, counties, or towns may not utilize fees paid from any permits authorized by Title 50, chapter 60, parts 1 through 6, MCA, to finance inspections, enforcement or a repair or demolition fund associated with the International Property Maintenance Code, the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings.

AUTH: 50-60-302, MCA
IMP: 50-60-106, MCA

REASON: There is reasonable necessity to make technical amendments to each of the above rules in order to make them consistent with the wording used in Chapter 443, Laws of 2003

(HB 640). The legislation made substantive changes in Title 50, Chapter 60, Part 3, MCA, relating to jurisdictional areas within which cities, counties, and towns may operate their respective building-related code enforcement programs. Making these changes necessitated changing much of the language in the existing statutes to make clear the legislature's intent, and the proposed amendments are necessary to follow that intent.

There is reasonable necessity to also amend ARM 24.301.201(1), to clarify language in the last sentence. The Department's Building Codes Bureau ("the Bureau") has in the past year had a number of questions from the public and local government employees concerning the meaning of the sentence. The Bureau believes the proposed amendment is easier to understand.

There is reasonable necessity to also amend ARM 24.301.203(1) to clarify when a city, county or town needs to inform the Bureau of the adoption or amendment of local building fees, in order that the Bureau can provide accurate information to interested persons. The Bureau has recently become aware that it is not being promptly informed of fee changes by certified cities, counties and towns. The Bureau also believes there is reasonable necessity to amend ARM 24.301.203 as proposed to ensure that it has accurate and current information concerning the revenue collected from fees in each of the certified cities, counties, and towns. Having this updated information readily available will facilitate the Bureau's ability to audit the information periodically provided by these units of government in accordance with ARM 24.301.208 and ARM 24.301.211.

There is reasonable necessity to also amend ARM 24.301.203 to specify the type of information a certified city, county or town must provide the Bureau, so that the Bureau can provide accurate information to interested persons. The Bureau has recently become aware that it is not being promptly informed of the procedures used by certified cities, counties and towns with respect to factory-built buildings.

There is reasonable necessity to also amend ARM 24.301.206(6) to conform the terminology used for building inspector certification in order to make the rules consistent with the terminology used by the International Code Council, which authors the International Building Code and the International Residential Code, both going into effect on September 27, 2003, as provided by ARM 24.301.151 and 24.301.158. The one-year transition period between use of the Uniform Building Code and the International Building Code started running on September 27, 2002, and concludes on September 26, 2003.

There is reasonable necessity to also amend ARM 24.301.207 to update the annual reporting process for cities, counties and towns that have a certified building code program, in order to increase uniformity of reporting and minimize misinterpretation of the annual reports received by the Bureau. The Bureau

believes there is reasonable necessity to amend ARM 24.301.207(2) so that the annual reports submitted to the Bureau will be in a standardized format. Requiring this standardization will assist reporting units of government to ensure that their annual reports are complete prior to submittal to the Bureau. Receiving annual reports in a standardized format will facilitate the Bureau's ability to efficiently and effectively provide continuous oversight of city, county, and town code enforcement programs. The Bureau as well as those who prepare and submit annual reports will benefit from this standardization requirement because it will minimize the time and effort that is frequently now spent requesting and providing follow-up information that is often sought due to incomplete or insufficient annual reports.

The 2003 legislature also recognized in Chapter 443, Laws of 2003 (HB 640) that various government services which typically characterize building-related code enforcement programs may be provided to citizens through contractual arrangements with other units of government or with private entities. Because the Building Codes Bureau must base its decisions to grant or maintain certifications of city, county or town building code enforcement programs in part on its assessment of how effectively those units of government will provide associated services, the Bureau believes there is reasonable necessity to amend ARM 24.301.207(3) by adding subsection (k). This amendment requires local units of government which rely on contractual arrangements to provide services to citizens to furnish the Bureau with current copies of those contracts.

The Bureau also proposes to amend ARM 24.301.207 by adding section (4), which requests that certified city, county, and town programs submit full and complete annual reports on a three year rotating basis in alphabetical order according to the name of the city, county, or town. This proposed amendment, which is also referenced in the first sentence in ARM 24.301.207(3), is reasonably necessary because the existing administrative rule requires that cities, counties and towns only report changes relative to information provided in their previous annual reports to the Bureau. The existing reporting method has proven to be inadequate in terms of allowing the Bureau to have a clear and current understanding of how each certified code enforcement program in the state is being operated. For example, the Bureau has discovered instances where cities have failed in their annual reports to report annexations of new areas into their jurisdictions or to advise of changes in inspectors, plan reviewers, or other key personnel; instead, simply reporting "no change" from the previous year. While the Bureau has no reason to believe these types of reporting errors are anything but clerical mistakes or the product of insufficient communication among various city, county, or town officials, the Bureau does believe adoption of this amendment is necessary to ensure that cities, counties, and towns periodically review their code

enforcement programs and then report complete and accurate information to the Bureau.

There is reasonable necessity to amend ARM 24.301.207(3)(g) because effective September 27, 2003, the Bureau will no longer allow the use of the Uniform Building Code, pursuant to ARM 24.301.151. As noted above, the Bureau will thereafter enforce the International Building Code. In accordance with ARM 24.301.202(1), certified cities, counties, and towns must also use the International Building Code appeals procedure as the only option to developing their own such procedures.

There is reasonable necessity to amend ARM 24.301.215 to include the International Property Maintenance Code among other similar codes now listed in this rule, to harmonize with the September 27, 2003, move to the exclusive use of the International Building Code. By doing so, the Bureau intends to clarify that certified cities, counties, and towns may also use the International Property Maintenance Code independent of any authority or requirement of the state building code, but that they may not use fees received through their respective code enforcement programs to fund activities carried out in accordance with their potential adoption of this code.

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

NEW RULE I SPECIAL REPORTS (1) A city, county, or town with a certified code enforcement program shall notify the department of labor and industry within 10 days whenever any of the following events occur with respect to their code enforcement programs:

(a) where a code enforcement program provides any part of its services in accordance with or through contractual arrangements, any material changes in such contracts, including but not limited to breach, reformation, rescission, or modification must be reported; or

(b) when building officials or supervisory personnel are no longer employed in those capacities within the certified code enforcement programs.

AUTH: 50-60-302, MCA
IMP: 50-60-106, MCA

REASON: The Bureau believes there is reasonable necessity to adopt NEW RULE I to require cities, counties, and towns that rely on contracted services related to the code enforcement program to notify the department within 10 days whenever any material change occurs with respect to the formation or performance of those contracts, in order to protect the public safety and welfare, in light of the changes in law provided by Chapter 443, Laws of 2003 (HB 640). Together, the proposed amendments and new rule are reasonably necessary to provide an effective means by which the Bureau may continuously monitor

city, county, and town code enforcement programs to ensure they are being operated in compliance with applicable state statutes.

5. Concerned persons may present their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to William H. Jellison, chief of the Building Codes Bureau, at P.O. Box 200517, Helena, Montana 59620-0517, by facsimile to (406) 841-2050, or by e-mail to trasmith@state.mt.us, and must be received no later than 5:00 p.m., September 12, 2003.

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.state.mt.us/dli/bsd/bc/index.htm>. 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 do not excuse late submission of comments.

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 mailing 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 any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department of Labor and Industry.

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

9. Mark Cadwallader has been designated to preside over and conduct the hearing.

10. The Department expects that the proposed amendments and new rule will be adopted and in effect by no later than November 1, 2003. The Department presently intends to apply the proposed amendments and the new rule to initial applications for certification of a city, county or town building code program that is made after September 30, 2003, pursuant to the provisions of law contained in Chapter 443, Laws of 2003 (HB

640). The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the proposed amendments at a later date.

/s/ WENDY J. KEATING

Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 4, 2003.

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

In the matter of the)
amendment of ARM 37.62.1909)
pertaining to child support)
guidelines regarding)
reasonable cost of health)
insurance)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On September 4, 2003, at 10:00 a.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 amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on August 26, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.62.1909 REASONABLE COST OF HEALTH INSURANCE (1) An individual insurance or a health benefit plan is presumed to be available to a parent at a reasonable cost if:

(a) the amount payable for individual insurance or health benefit plan premiums does not exceed ~~25% of that parent's total parental child support obligation when calculated under the child support guidelines without credit for the medical support obligation~~ 5% of that parent's gross income; or

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

AUTH: Sec. 40-5-806 and 40-5-825, MCA

IMP: Sec. 40-5-806 and 40-5-825, MCA

3. The Child Support and Enforcement Division (CSED) proposes changes to ARM 37.62.1909, "Reasonable Cost of Health Insurance", which provides the definition of reasonableness with regard to the cost of health insurance which is borne by parents in child support cases. The proposed changes adopt recommendations of the national Medical Child Support Working Group to define reasonable cost of insurance as premiums that do

not exceed 5% of a parent's total gross income. The CSED anticipates that the United States Congress will adopt the recommendation of the national Medical Child Support Working Group. The CSED further anticipates that the federal Department of Health and Human Services will issue new rules consistent with the recommendation.

The current rule provides that health insurance is presumed to be available to a parent at reasonable cost if the amount of the premium the parent must pay does not exceed 25% of that parent's child support obligation when calculated under the child support guidelines without the medical support obligation included in the calculation. The CSED proposes to change this to provide that health insurance is presumed to be available to a parent at reasonable cost if the amount of the premium the parent must pay does not exceed 5% of that parent's gross income.

45 CFR 303.31(a)(1) provides that health insurance is considered reasonable in cost if it is employment related or other group health insurance and the premium is partially or entirely paid by the employer or other group organization. The CFR does not define reasonableness of insurance which is not paid partly or wholly by an employer or group organization. Adoption of the new definition of reasonable cost of insurance will provide that children are insured when their parents can afford coverage. The present definition is tied to the amount of a parent's support obligation, not the parent's income. The proposed definition is based on the relationship between the cost of insurance and the parent's income, leading to more fair results. Changes to the rule are necessary to adopt the recommendation of the federal Medical Child Support Working Group.

An option considered was to continue with the present definition of reasonableness. This was rejected because it is cumbersome to administer. The present definition can have unfair results. The present definition is tied, in part, to the amount of support owed and not to a parent's income. This may result in a finding that insurance should not be obtained when the support is affected as a result of property or visitation arrangements or when there is a variation from strict application of the support guidelines. The proposed definition reflects the recommendation of the national working group and is based on a relationship between the cost of insurance and a parent's income, leading to fairer results.

Adoption of the new definition will provide that children have private health insurance coverage when their parents can afford coverage. This may financially impact parents who are required to insure their children. In Montana, both parents have a medical support duty. Therefore, both parents should be subject to the same criteria for determining whether insurance is available at a reasonable cost. The Medicaid program may be financially impacted. Additional children may be privately insured under the new rule amendment. Some children may be

uninsured under the new rule amendment, when their parents would have been required to obtain insurance under the existing rule. As of June 1, 2003, the CSED was providing services to 40,687 families -- 30,320 of them receiving child and medical support enforcement services.

4. 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 September 11, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. 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

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State August 4, 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment)	
of ARM 2.43.441, 2.43.1015, and	)	NOTICE OF AMENDMENT
2.43.1040 pertaining to the Public)	
Employees' Retirement System)	
Defined Contribution Retirement)	
Plan administered by the Public)	
Employees' Retirement Board)	

TO: All Concerned Persons

1. On June 12, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-328 regarding the proposed amendment of ARM 2.43.441, 2.43.1015, and 2.43.1040 concerning the Public Employees' Retirement System Defined Contribution Retirement Plan at page 1143 of the 2003 Montana Administrative Register, Issue Number 11.

2. The Board has amended ARM 2.43.441, 2.43.1015, and 2.43.1040 exactly as proposed.

3. No comments were received.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State August 4, 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of)
new rule I and amendment of ARM) NOTICE OF ADOPTION
2.43.1104, pertaining to the) AND AMENDMENT
Municipal Police Officers')
Retirement System Deferred)
Retirement Option Plan administered)
by the Public Employees' Retirement)
Board)

TO: All Concerned Persons

1. On June 12, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-327 regarding the proposed adoption of new RULE I and proposed amendment of ARM 2.43.1104 concerning the Municipal Police Officers' Retirement System Deferred Retirement Option Plan at page 1139 of the 2003 Montana Administrative Register, Issue Number 11.

2. The Board has adopted new RULE I (ARM 2.43.1113) and amended ARM 2.43.1104 exactly as proposed.

3. No comments were received.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State August 4, 2003.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new) NOTICE OF ADOPTION
Rule I regarding examination fees for) AND AMENDMENT
consumer loan businesses and the)
amendment of ARM 2.59.307 regarding)
dollar amounts to which consumer loan)
rates are to be applied)

TO: All Concerned Persons

1. On June 12, 2003, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-2-337 regarding the proposed adoption of new RULE I and the amendment of ARM 2.59.307 concerning examination fees for consumer loan businesses and the dollar amounts to which consumer loan rates are to be applied at page 1147 of the 2003 Montana Administrative Register, Issue Number 11.

2. The Department has adopted new Rule I, ARM 2.59.308 exactly as proposed.

3. The Department has amended ARM 2.59.307 exactly as proposed.

4. No comments were made or testimony received at the public hearing on this matter. The Department received one written comment on this matter.

COMMENT 1: One written comment opposing the rule was received from Brent M. Small with Associated Factoring and Finance, Inc., Missoula, Montana. Mr. Small stated that he was opposed to the imposition of examination fees on consumer loan businesses because they would represent an additional, and in his view unnecessary cost to his small loan company.

RESPONSE: Section 32-5-403, MCA, requires that the Division of Banking and Financial Institutions conduct annual examinations of all consumer loan licensees. That section also states that the Division's expenses incurred in these examinations will be billed at a rate to be established by the Division by administrative rule. Thus, the Division has a statutory obligation to conduct examinations of consumer loan licensees and a legislative mandate to adopt fees for such examinations. Because of this, and the fact that the proposed fees are the same as other Division examination fees which have been set by statute (see for example, sections 31-1-711 and 31-1-810, MCA), the Division believes the fees are both necessary and reasonable.

By: /s/ Scott Darkenwald
SCOTT DARKENWALD, Director
Department of Administration

By: /s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State August 4, 2003.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.36.340 pertaining to)
minimum lot size requirements)
for subdivisions) (SUBDIVISIONS)

TO: All Concerned Persons

1. On June 26, 2003, the Department of Environmental Quality published MAR Notice No. 17-195 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1257, 2003 Montana Administrative Register, issue number 12.

2. The Department has amended the rule exactly as proposed.

3. No public comments or testimony were received.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Jan P. Sensibaugh
JAN P. SENSIBAUGH, Director

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, August 4, 2003.

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2003. This table includes those rules adopted during the period April 1, 2003 through June 30, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2003, 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 2002 and 2003 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.

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