

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
pertaining to abatement)
of renewal fees)

TO: All Concerned Persons

1. On June 29, 2004, at 10:00 a.m., a public hearing will be held in room 471, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

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 Business Standards Division no later than 5:00 p.m., on June 24, 2004, to advise us of the nature of the accommodation that you need. Please contact Kris Cavazos, Business Standards Division, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail kcavazos@state.mt.us.

3. The rule proposed to be adopted provides as follows:

NEW RULE I ABATEMENT OF RENEWAL FEES (1) Pursuant to 17-2-302, MCA, state programs that charge a fee for services are generally not permitted to let their cash balance exceed twice the program's annual appropriation. However, despite the best projections of a program, there may be times when cash balances exceed the amount authorized by statute. This rule is intended to provide a process for a program that needs to reduce its cash balance with a standard methodology to do so, in fair and equitable manner. This rule provides for an abatement of certain fees when the cash balance is excessive.

(2) Except as provided by (3), a program that has an excessive cash balance may abate the renewal fees for the program's licensees or registrants for one or more renewal cycles until the program's cash balance does not exceed the allowable maximum.

(a) The abatement of renewal fees may be the total amount of the renewal fee, or only a specified portion of the renewal fee.

(b) If a program has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The program may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a

reduced renewal fee for all classes is disproportionately high. In such a case, the program must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that the renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling the renewal requirements, including submission of a renewal application and/or continuing education documentation. A program, to the extent it so provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule does not apply to programs for which an exception to 17-2-302, MCA, exists and is applicable. As an example, a program with a three-year renewal cycle will have an apparent excess cash balance during the first year of the renewal cycle, based on a collection of three year's worth of fees for operations expenses.

(4) This rule does not relieve a program from the duty to establish fees at a level commensurate with costs.

(5) A licensing board attached to the department for administrative purposes may adopt the procedures specified in this rule by incorporating this rule by reference. Such an adoption of this rule authorizes the department to make such abatements as are appropriate, without further vote or action by the board. Incorporation by reference of this rule does not relieve the board of its obligations to set fees in a manner commensurate with costs. This rule does not relieve a board from its duty to undertake appropriate rulemaking to modify its fee structure when there are recurrent instances of cash balances in excess of the amount allowed by statute.

AUTH: 37-1-101, MCA

IMP: 17-2-303, 17-2-303, 37-1-101, 37-1-134, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to ensure that the Department has a methodology in place for it to promptly eliminate excess cash accumulations in the various licensing programs the Department operates. Excess cash accumulations are generally prohibited by 17-2-302, MCA, and a reduction in fees is required pursuant to 17-2-303, MCA. The Department proposes to abate renewal fees where doing so will bring cash balances to an appropriate level. The Department believes that abatement of renewal fees is the best way to target the licensees and registrants who have paid fees into the program for the temporary relief provided by an abatement.

The Department believes that most excess cash balances arise from circumstances outside the control of the agency, are the result of unexpectedly high licensing or registration levels, or some other non-typical event. Such an event is often a sudden "spike" in the usual trend, and usually is unlikely to be repeated on a regular basis. The Department recognizes that trends that are predictable or regular and generate excess cash balances are best addressed by an overall adjustment to the

program's fee structure, and should be handled in that manner. The Department believes that NEW RULE I is designed to avoid the over-corrections that might otherwise occur if the Department immediately made a permanent fee schedule adjustment for a program with an excess cash balance.

There also is reasonable necessity to adopt NEW RULE I as a "Department of Labor and Industry" rule, in that the Department is the licensing authority, rather than an administratively attached Board, for various programs, such as addiction counselors and construction blasters. The Department anticipates that at least some of the professional and occupational licensing Boards will decide to incorporate by reference the provisions of NEW RULE I into the Board's rules. The Department concludes that there will be greater uniformity of application of the principles contained in NEW RULE I if the various Boards have the option of incorporating the rule by reference.

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 Business Standards Division, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to liaddington@state.mt.us, and must be received no later than 5:00 p.m., July 7, 2004.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd>. 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 Business Standards Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Business Standard Division's administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to Mark Cadwallader, P.O. Box 1728, Helena, Montana 59620-1728, faxed to the office at (406) 841-2305, e-mailed to

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

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

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

DEPARTMENT OF LABOR AND INDUSTRY

/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 May 24, 2004.