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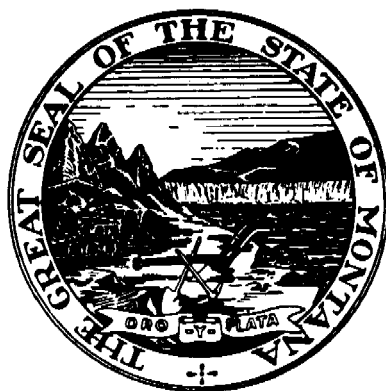
MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed) NOTICE OF HEARING DATE CHANGE
adoption of new rules concern-) ON THE ADOPTION OF A NEW SUB-
ing anesthesia under a new sub-) CHAPTER 5, STANDARDS FOR DEN-
chapter 5.) TISTS ADMINISTERING ANESTHESIA

TO: All Interested Persons:

1. The notice of public hearing on the adoption of a new sub-chapter 5, standards for dentists administering anesthesia, published on December 15, 1983 at pages 1768 through 1774, 1983 Montana Administrative Register, issue number 23 is hereby amended, changing the date of the hearing to January, 27, 1984. The hearing will be held at 1:00 p.m. on that date in the Department of Highway auditorium, at 2701 Prospect, Helena, Montana.

2. The proposed rules and reasons for the proposed adoption are the same as indicated in the original notice.

3. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 26, 1984.

BOARD OF DENTISTRY
DAVID B. TAWNEY, D.D.S.
PRESIDENT

BY: 
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 19, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS

In the matter of the proposed amendments of 8.50.101 organization rule, 8.50.201 concerning procedural rules; proposed repeal of rules 8.50.401 - 8.50.422 substantive rules, and the proposed adoption of new rules governing the board of private security patrolmen and investigators.) NOTICE OF PUBLIC HEARING
) ON THE PROPOSED AMENDMENTS
) OF 8.50.101 ORGANIZATION,
) 8.50.201 PROCEDURAL RULES,
) PROPOSED REPEAL OF RULES
) 8.50.401 - 8.50.422 SUB-
) STANTIVE RULES, and PROPOSED
) ADOPTION OF NEW RULES UNDER
) SUB-CHAPTER 2, PUBLIC PARTI-
) CIPATION, NEW GENERAL RULES
) UNDER SUB-CHAPTER 4, RULES
) UNDER SUB-CHAPTER 5 -MINI-
) MUM CURRICULUM AND STANDARDS
) FOR THE CERTIFICATION OF A
) FIREARMS TRAINING PROGRAM
) AND FOR THE CERTIFICATION
) OF FIREARMS INSTRUCTORS;
) RULES UNDER SUB-CHAPTER 8
) PROFESSIONAL CONDUCT; RULES
) UNDER SUB-CHAPTER 9 -
) COMPLAINT PROCEDURE

TO: All Interested Persons:

1. On January 20, 1984, at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana, to consider the amendment, repeal and adoption of the above-stated rules.
2. The proposed amendment of 8.50.101 will read as follows: (new matter underlined, deleted matter interlined)

"8.50.101 ORGANIZATION (1) The board of private security patrolmen and investigators hereby adopts and incorporates private patrol operators licensing act, section 37-60-101 through 37-60-405, MCA vests in the director of the department of commerce the authority to administer and enforce the law. The position, responsibility and authority of the director is set out in the organizational rules of the department of commerce as listed found in Chapter 1 of this title."

Auth: 37-69-202, MCA Imp: 2-4-201, MCA

3. The board is proposing the amendment to the organizational rule to conform to the change in the statute which occurred in the 1983 legislative session establishing a board and removing the licensing authority from the department director.

4. The proposed amendment of 8.50.201 will read as follows: (new matter underlined, deleted matter interlined)

"8.50.201 PROCEDURAL RULES (1) The administration of the provisions of the board of private security investigators and private patrol operators licensing act shall be subject to these rules of procedure which are set out patrolmen hereby adopts and incorporates the procedural rules of the department of commerce as listed in Chapter 2 of this title."

Auth: 37-69-202, MCA Imp: 2-4-201, MCA

5. The board is proposing the amendment to conform to Chapter 550, 1983 Sessions Laws which established the board and removed the licensing authority from the office of the director of the department of commerce.

6. The board is proposing the repeal of rules 8.50.401 through 8.50.422. The full text of the rules are located at pages 8-1373 through 8-1381, Administrative Rules of Montana. The board is proposing the repeal, rather than trying to amend portions of the rules, repeal full rules and attempting to fit new rules into the current rules. The board feels because of the major changes in Title 37, Chapter 60, MCA, it would be clearer for interested persons if the rules were placed in order.

7. The proposed new rule under sub-chapter 2 will read as follows:

"I. PUBLIC PARTICIPATION (1) The board of private security investigators and patrolmen hereby adopts and incorporates the public participation rules of the department of commerce as set out in Chapter 2 of this Title."

Auth: 37-69-202, MCA Imp: 2-3-102, MCA

8. Section 2-3-102, MCA charges all boards with the duty to adopt by rule guidelines for public participation. The board has determined that the public participation rules of the department of commerce will facilitate public participation in the functions of the board.

9. The proposed new rules under sub-chapter 4 will read as follows:

"II. DEFINITIONS (1) 'Casual employment' means employment which comes about fortuitously and is for no fixed duration of time. An engagement or employment is not 'casual' where a person is employed to do a particular service or class of service recurring somewhat regularly, or with a fair expectation of continuance for a more or less extended

sequence or period of time, such as every Saturday night, a week, or a month.

This definition does not apply to peace officers or reserve officers performing security guard functions for another governmental agency, or to security of in-custody inmates held elsewhere than at a custodial institution or jail or when private security companies are unwilling or unavailable to provide the service.

All other exceptions under this 'casual employment' rule shall be determined by the board based upon the facts presented.

(2) 'Dishonorable discharge' means any military discharge which specifically states dishonorable discharge.

(3) 'Experience'; the term 'year' shall mean 12 average work months (including leaves for vacation with pay) during which the individual was engaged in full time employment. Full time employment is considered to be employment for compensation when the work schedule constitutes at least 1800 hours annually or more. Self employment must be verified by someone that knows of your experience and self employment condition.

(4) For purposes of 37-60-321 (4), MCA, any crime involving moral turpitude means generally anything done contrary to justice, honesty, modesty, or good morals, including acts of baseness, vileness or depravity in the private or social duties which a man owes to his fellow man and to society in general. Such acts include but are not limited to: assault or evidence of assaultive behavior; assault and battery; larceny or embezzlement; shoplifting; crimes involving fraud or misrepresentation; obscenity; public indecency; any firearm violation; sexual offenses; resisting an officer or legal process; vandalism; aiding in an escape; chronic alcoholism, alcohol addiction, a third conviction of driving under the influence over any five-year period and drug addiction.

(5) For purposes of exemption from licensure under Title 37, Chapter 60, MCA, 'insurance adjuster' refers to any person, employed by an insurance company, who is licensed by the state of Montana as an insurance adjuster, who shall be exclusively under the control and supervision of his employee..subject to a master-servant relationship and not as an independent contractor and performs no surveillance activities.

(6) 'Unprofessional conduct' means the failure to conform to and abide by all the standards, rules and regulations set forth in Title 37, chapter 60, Montana Codes Annotated and Title 8, chapter 50, Administrative Rules of

Montana, which regulates the security patrolmen and private investigator professions in the state of Montana."

Auth: 37-60-202, MCA Imp: 37-60-202, 303, 321, 406, MCA

"III. TEMPORARY EMPLOYMENT WITHOUT REGISTRATION OR IDENTIFICATION CARD The board may authorize a licensee to employ temporarily without first obtaining a registration card or an identification card under the following conditions:

(1) the licensee is employing the person under an apprenticeship or training program;

(2) this provides the licensee an opportunity to evaluate the person's performance to determine if the person can adequately perform the duties assigned;

(3) No one person may be temporarily employed more than once by the same licensee in a calendar year unless specifically authorized by the board;

(4) the licensee must notify the board within 5 days of employing such person, the conditions of the employment and must furnish the board any information the board may request regarding these conditions;

(5) the temporary employment shall not be for more than 90 days;

(6) at the end of this period of time the licensee must either terminate the person or have the person make application for either a registration or identification card;

(7) the licensee shall notify the board within 5 days of the termination of such temporarily employed person.

(8) No attempt shall be made to utilize this rule to circumvent any portion of this act."

Auth: 37-60-202, MCA Imp: 37-60-308, MCA

"IV. REQUIRED INFORMATION FOR APPLICATION (1) The board shall conduct or have conducted such investigation on each applicant as it deems necessary to protect the public interest before granting any license. The board shall seek information from law enforcement officials and other interested and informed persons to determine the character, competence and integrity of the applicant before approval for examination.

(2) Each applicant shall provide his or her social security number and answer questions concerning military service if applicable.

(3) Applicant must list 5 references (not related by blood or marriage) and 2 of the 5 shall be former employers or individuals or firms with which he/she had a working

contractual agreement if self-employed, or has knowledge of the agreement or working relationship.

(4) No person convicted of a felony in this state or elsewhere shall be eligible for a license while under a federal or state jurisdiction or for 5 years thereafter and then only with specific approval of the board.

(5) An individual who may desire licensure in more than one licensure category must pass an exam in each licensure category when required.

(8) Each person who applies for an original license shall supply with the application in addition to other pertinent information the board may require; 2 full face, head, and shoulders, black and white photographs of a size that may be cut to 1 1/2 inches by 1 1/2 inches and still retain the full face, head and shoulders in the photo. Name of applicant should be typed or printed on the back side of the photo."

Auth: 37-60-202, MCA Imp: 37-60-304, MCA

"V. EXPERIENCE REQUIREMENTS (1) Experience requirements for contract security company and proprietary security organization shall be as follows:

(a) verified experience as an employee or employer in the field to be licensed; or

(b) verified experience as a sworn member of any federal investigative agency, or as a sworn member of the military police or as a sworn member of any state, county, city investigative or law enforcement group or police department; or

(c) verified experience as a supervisor or administrator in industrial or governmental security; or

(d) professionally related and relevant education or training in the field to be licensed as the board may determine to be equivalent to the foregoing experience requirements. All education and training must be verified and supplied with application, including transcripts, diplomas, seminar certificates, course completion or other supporting evidence;

(e) six months of experience requirement may be met by successful completion of the basic course of the Montana Law Enforcement Academy and proper verification.

(2) Applicant may use a combination of experience, education and training to meet the experience requirement, but education and training may not exceed 1/2 the experience required.

(3) Experience as a licensed insurance adjuster may be counted towards the 3-year experience requirements as a private investigator."

Auth: 37-60-202, MCA Imp: 37-60-303 (1) (g), MCA

"VI. WRITTEN EXAMINATION (1) All applicants must successfully pass a written examination in their area of licensure with a score of 70% or more.

(2) Examination shall consist of questions in the following areas, but shall not be limited to those areas:

(a) private investigator - legal rights and limitations on powers of private investigators, areas of investigation, private investigator law and rules, sources of information, service of legal papers, report writing, interrogation and investigative procedures, contracts, and recovery and disposal of property.

(b) Armed private investigator, armed private security guard, contract security company, private investigator - private security guard, proprietary security organization, private investigator law and rules, principles of management and supervision, report writing, legal procedures, electronics, applicable federal law and rules, and other related material in the licensure area.

(3) Applicants for examination must deposit with the examination proctor all books, notebooks or other papers before starting to write the examination. No applicant is allowed to take with them any papers from the room in which the examination is administered.

(4) All applicants for examination must have the notice of examination for the department with the exam identification number before they will be admitted to the examination.

(5) An applicant may retake that section of the examination he/she has failed upon payment of another examination fee. In the event an applicant shall fail his/her second examination, he/she shall not be eligible for another examination until such time as he/she has furnished documentation of additional education, training or experience in law enforcement or related activities.

(a) In no instance will he/she be eligible for a third exam for a period of six months.

(6) Examinations will be held in Helena daily. Special examination may be made available by prior arrangements with the department."

Auth: 37-60-202, MCA Imp: 37-60-303 (4) MCA

"VII. IDENTIFICATION/REGISTRATION POCKET CARD (1) Only 1 identification/registration card shall be issued for each licensee. The holder of an identification/registration card shall be responsible for the maintenance, custody and control of the identification/registration card, and shall neither let, loan, sell nor otherwise permit unauthorized persons or

employees to use it. If an identification/registration card shall be altered in any way, it shall become invalid.

(2) Each photograph (1 1/2" x 1 1/2") submitted shall fairly and accurately represent the appearance of the applicant. If the department determines that its file copy does not bear substantial resemblance to the applicant, it may request a new photograph."

Auth: 37-60-202, MCA Imp: 37-60-309, MCA

"VIII. INSURANCE REQUIREMENTS (1) All licensees regulated by Title 37, Chapter 60, MCA, shall file with the board, a certificate of insurance evidencing a comprehensive general liability coverage for both licensees and employees for bodily injury, and property damage; the broad form comprehensive general liability endorsement which includes the following: personal injury and property damage with endorsement for assault and battery and personal injury, including false arrest, libel, slander, false imprisonment, malicious prosecution, invasion of privacy, wrongful eviction or wrongful entry, mental injury, mental anguish, shock, defamation of character and discrimination. The minimum amount of coverage of \$300,000 for bodily or personal injury and \$100,000 for property damage. Licensees should also file endorsements for the loss, destruction or damage to property in their care, custody and control and for losses from errors, omissions or acts of the licensees or their employees.

(2) All licensees must be insured by a carrier licensed in the state in which the insurance has been purchased or in this state."

Auth: 37-60-202, MCA Imp: 37-60-202 (8), MCA

"IX. REGULATIONS OF UNIFORM (1) No individual shall, while performing any of the duties regulated by Title 37, Chapter 60, MCA, have or utilize any uniform, vehicle, or equipment displaying the words, 'police', 'law enforcement officer', or the equivalent thereof, or have any patch, emblem, sign marking, accessory or insignia that may indicate that such uniform, vehicle, or equipment is the property of a public law enforcement agency or of the state of Montana or any of its political subdivisions.

(2) Any person, while performing any of the duties regulated by Title 37, Chapter 60, MCA who is required to wear a uniform must have the uniform approved by the board. All uniforms shall, on the outermost garment except for rainwear or foul weather clothing, have: clearly identified the company, the individual's name, and the occupational category."

Auth: 37-60-202, MCA Imp: 37-60-407, MCA

"X. LICENSE RENEWAL (1) Each license expires on December 1st following date of issue and to remain current must be renewed on or before each December 1st.

(2) Each licensee will be notified by mail at his last known address of the current renewal fee and furnished with an application for renewal prior to expiration of license.

(3) Each person who applies for renewal of a license shall submit one recent photograph with the application for renewal which will be used for the current identification card. It be must of a size that can be cut to a 1 1/2 inch by 1 1/2 inch and still retain full face, head and shoulders in the photo.

(4) An expired license may be renewed within 90 days of its expiration date with the payment of the renewal fee and late fee. If more than 90 days have passed since any license has expired, a new application must be made, the appropriate examination taken and passed with appropriate fees paid, before any new license will be issued."

Auth: 37-60-202, MCA Imp: 37-60-312, MCA

"XI. APPLICANT FINGERPRINT CHECK (1) The licensee will submit the application for each employee to the department and provide 2 classifiable sets of his fingerprints. The department will provide the licensee with information as to the applicants employability. Applications shall contain such information as required to process the application."

Auth: 37-60-202, MCA Imp: 37-60-302, 303, 304, 305, 306, MCA

"XII. TERMINATION OF BUSINESS (1) A licensee who terminates his business shall within 5 days mail or deliver his license and identification/registration card to the department. If the licensee opens another business or goes to work for someone before the license or renewal expires, the department may return the license and identification/registration card if the request is in compliance with the law and rules."

Auth: 37-60-202, MCA Imp: 37-60-314, MCA

"XIII. FEE SCHEDULE

- | | |
|---|---------|
| (1) Armed carrier employee application | \$75.00 |
| (2) Armed private security guard employee application | 75.00 |
| (3) Unarmed private security guard employee application | 25.00 |
| (4) Armed alarm response runner application | 75.00 |
| (5) Propriety security organization | |

	application	75.00
(6)	Armed propriety security organization employee application	75.00
(7)	Unarmed propriety security organization employee application	25.00
(9)	Private security guard and street patrol employee application	75.00
(9)	Armed car service application	75.00
(10)	Unarmed private investigator application	50.00
(11)	Armed private investigator employee application	75.00
(12)	Private investigator employer application	75.00
(13)	Branch office application	25.00
(14)	Resident manager application	75.00
(15)	Qualifying agent application	75.00
(16)	Renewals	50.00
(19)	Re-exams	15.00
(20)	Duplicate licenses	10.00
(21)	Late renewals	5.00"
Auth: 37-1-134, 37-60-202, MCA Imp: 37-1-134, 37-60-304, 305, 306, 312, MCA		

10. The board is proposing the new rules under sub-chapter 4 for the following reasons:

Rule II. proposes to adopt definitions to clarify terms adopted in the 1983 legislative session, plus definitions which were included in the former rules that the board feels are necessary to avoid confusion for the licensees and new applicants.

Rule III. is proposed to enable applicants to be employed while his/her qualifications, performance and ability are being evaluated.

Rule IV. is proposed as the information of the application requires basic information on the applicant for purposes of determining whether an individual is competent to protect the public.

Rule V. proposes the experience requirements for contract security company and propriety security organization to define exactly the qualifications for these categories. Section 37-60-303, MCA outlines certain requirements for licensure and allows the board to set additional experience qualifications. The board after much deliberation has determined that the requirements of this rule are necessary to verify experience sufficient to show that the applicant has minimal qualifications to duly serve his clients in a manner suitable to the profession.

Rule VI. is being proposed for adoption to indicate to the applicants the areas which the examination will cover and to fully explain the examination procedures being followed.

Rule VII. is being proposed to set the form of the identification/ registration card and to explain to the licensee his responsibilities regarding the card.

Rule VIII. adoption of insurance requirements sets a comprehensive general liability for both licensees and employees. To comply with the requirements of section 37-60-202 (8), MCA, after much discussion the board has determined that these insurance requirements are the minimum necessary to offer protection for both the licensee and the public.

The proposed rule IX. regulating uniforms and badges will be restrictive to the point that security personnel will be easily identifiable but not confused with law enforcement officers. The board feels it is important that security personnel be easily distinguished from law enforcement officers.

Rule X. contains a December 1 renewal date which was amended earlier this year along with a renewal fee of \$50.00 adopted on November 14, 1983. The rule is being proposed as a new rule to avoid confusion of having current rules intermingled with repealed rules, etc. The December 1 date was chosen because of the late appointment of the board. Also proposed are late renewal procedures.

Rule XI proposes an applicant fingerprint check to determine records of licensees. The fingerprint check reveals any convictions of felonies and moral turpitude which are both reasons for denial of applications.

Rule XII is being proposed in order for the board to be informed of business termination to coincide with new statutes 37-60-301 (3), 37-60-312, 37-60-314, and 37-60-321. Past experience indicates that licensees have a tendency to neglect to keep their status updated with the department. It is hoped that this rule will alleviate the situation.

The proposed fee schedule under Rule XIV. has been set up to defray the costs of administering the new statute. The board has taken into consideration the costs it feels will be related to each program area and allocated the fees accordingly.

11. The proposed rules under sub-chapter 5 entitled Minimum Curriculum and Standards for the Certification of a Firearms Training Program and for the Certification of Firearms Instructors will read as follows:

"XIV. FIREARMS SAFETY AND PROFICIENCY TEST - MINIMUM REQUIREMENTS (1) The test shall be comprised of two parts:

(a) A written test included, but not limited to, gun safety, weapon handling, mechanical operations, shoot-don't shoot situations, liability, federal and state statutes regarding limitations (total of ten hours minimum instruction)

(b) A combat shooting course using a firearm authorized by the board.

(2) Satisfactory completion of the firearms safety and proficiency test shall be a score of not less than 70 percent on each of the two parts and the demonstration of reasonable competence in firearms skills as determined by a certified instructor."

Auth: 37-60-202, MCA Imp: 37-60-202 (5), MCA

"XV. REGISTRATION REQUIRED ANNUALLY (1) Every private security guard and private investigator must renew his/her firearm registration each year. Re-registration will be based upon satisfactory completion of a certified combat shooting course at least once during each year."

Auth: 37-60-202, MCA Imp: 37-60-202 (5), MCA

"XVI. CRITERIA FOR A CERTIFIED SHOOTING COURSE (1) The certified course shall be the Tactical Revolver Course:

(a) 25 yard line - time: 1 minute, 15 seconds, (18 rounds) On command, shooter loads 6 rounds and holsters weapon. On whistle, shooter fires 18 rounds in the following sequence: Kneeling strong hand barricade (6 rounds), over top of barricade (6 rounds), kneeling weak hand barricade (6 rounds)

(b) 15 yard line - time 30 seconds - (12 rounds) On command, shooter loads 6 rounds and holsters weapon. Starting at the 25 yard line, on whistle shooter moves rapidly to 15 yard line, draws and fires 12 rounds, point shoulder position.

(c) 10 yard line - time: 25 seconds (10 rounds) At 15 yard line, shooter loads 6 rounds and holsters weapon, on command. On whistle shooter moves rapidly to 10 yard line, draws and fires 6 rounds, reloads and fires 4 additional rounds.

(d) 5 yard line - Time: 20 seconds (10 rounds) At 10 yard line, shooter loads 6 rounds and holsters weapon, on command. On whistle, shooter moves rapidly to 5 yard line, draws and fires 6 rounds, reloads and fires 4 additional rounds.

(e) Firearm to be used for qualification will be the firearm carried most often on duty.

(f) Scoring: The target to be used is the K-5. 'K' values are computed (250 points possible) and multiplied by .4 for percentage score. Minimum qualification score is 70%.

(2) Stress will be induced by the use of time and physical activities. If the range facilities available are equipped to provide night time firing and/or low light conditions, the instruction and qualification course should include these conditions."

Auth: 37-60-202, MCA Imp: 37-60-202, (5) MCA

"XVII. REQUIREMENTS FOR FIREARMS INSTRUCTORS"

CERTIFICATION (1) To become a certified firearms instructor, an individual must attend and pass a certified firearms instructors course approved by the board.

(2) Firearms instructors must apply for instructor certification every two years by the anniversary date of his original certification.

(3) Each instructor shall be required to conduct at least one certified combat shooting course annually.

(4) Institutions, firms, or persons wishing approval of the board to offer a course in the carrying and usage of firearms must make application to the board and include the following information:

(a) a detailed outline of course to be provided;

(b) the name of the instructor and a documentation of his or her qualifications, and;

(c) places and dates where the course will be offered, length of the course, and an estimate of the maximum number of persons who can be accommodated and a description of facility to be used.

(2) Such information must be supplied to the board at least 15 days before the course is to be given. No student will be enrolled in a course unless he/she has made application for registration to the board.

(3) Approval of a course may be withdrawn by the board in writing."

Auth: 37-60-202, MCA Imp: 37-60-202, (5), MCA

"XVIII. EMPLOYER'S RESPONSIBILITY (1) All employers of private security guards and investigators are responsible for providing or obtaining the necessary training to enable the individual to meet the standards required by these rules and regulations."

Auth: 37-60-202, MCA Imp: 37-60-202 (5), MCA

"XIX. TYPE OF SIDEARM (1) Solid frame revolver approved by the board, capable of single and double-action fire. Caliber .38 special or 357 (only regulation .38 special ammunition will be used), barrel length from two to six inches, five or six-round cylinder, all-steel construction, fixed or adjustable sights. Grips must allow firing with

either hand. Minimum single-action trigger pull 2 1/2 pounds, double-action pull must be smooth. Trigger shoes will not be worn. Revolvers with any portion of the trigger guard and/or hammer spur removed will not be worn or used."

Auth: 37-60-202, MCA Imp: 37-60-405, MCA

12. The board is proposing the rules under sub-chapter 5, as it feels that a very specific outlined training and certification program for firearms needs to be adopted since the public is greatly affected by the permission to carry firearms granted in the new statute. Section 37-60-202 (5) and (6) allows the board to set rules regarding the certification of training programs, including the certification of firearms training programs and firearms instructors as well as the approval of weapons. The board feels a strict regime needs to be adopted to insure proper handling of each and every firearm to guarantee the safety of the public.

13. The rules proposed under sub-chapter 8, Professional Conduct, will read as follows:

"XX. CODE OF ETHICS FOR A PRIVATE INVESTIGATOR (1) It is the responsibility of each private investigator to:

(a) extend the effectiveness of the profession by cooperating with other investigators and related professions, and by the exchange of information and experience, so long as the interest of clients or employers are not violated.

(b) avoid advertising his/her work, skill or merit in an unprofessional manner or in dramatic, misleading or exaggerated fashion and to avoid all conduct or practice likely to discredit or do injury to the dignity and honor of the profession.

(c) cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with private investigator licensing and registration laws and other statutory requirements that pertain to the business.

(d) when the appropriate opportunity presents itself, explain to the public the role of the profession in the furtherance of the administration of justice.

(e) avoid violation of any right or privilege of any individual citizen which may be guaranteed or provided by the United States Constitution, any state constitution, or the laws of the state and federal governments or any subdivision thereof.

(f) make all his/her reportings based upon truth and fact and to only express honest opinions based thereon.

(g) avoid disclosing or relating or betraying in any fashion that trust or confidence placed in him/her by either client, employer or associate, without their consent.

(h) avoid suggesting, condoning or participating in any fashion or degree, for any purpose whatsoever, in entrapment.

(i) refrain from accepting an assignment or employment if a personal conflict of interest lies therein.

(j) deal fairly and equitably with his/her client or employer and will clearly explain his/her duties and the basis for his/her charges in each undertaking.

(k) avoid allowing personal feelings or prejudices to interfere with factual and truthful disclosures on the assignments in which he/she has been employed or consulted.

(l) endeavor to provide the opportunity, education, and skill for the professional development and advancement of investigators in the profession.

(m) avoid directly or indirectly injuring the professional reputation, prospects or practice of another investigator. However, if he/she considers that an investigator is guilty of unethical, illegal, or unfair practice or designs, he/she will present the information to the proper authority for action.

(n) avoid criticizing another investigator's work except in the proper forum for technical discussion and criticism.

(o) avoid illegal competition with other investigators in the solicitation of work.

(p) avoid engaging in the unauthorized practice of law.

(q) avoid soliciting clientele for any attorney.

(r) keep himself/herself informed of laws and ordinances affecting his/her business.

(s) avoid making claims to qualifications he/she does not possess.

(u) charge clients according to the agreements.

(v) honor verbal agreements as if they were written.

(w) obey the laws of the United States, the state of Montana or any of its political subdivisions.

(x) avoid intermingling client's business funds with his/her personal funds.

(y) avoid engaging in deceptive double billings.

(2) Any violation of the above shall constitute unprofessional conduct."

Auth: 37-60-202, MCA Imp: 37-60-202, 321, 401, MCA

"XXI. CODE OF ETHICS FOR PRIVATE SECURITY MANAGEMENT

(1) It is the responsibility of managers of private security functions and the licensed employees to:

(a) recognize that the principal responsibilities are, in the service of their organizations and clients, to protect

life and property as well as to prevent and reduce crime against their business, industry, or other organization and institutions; and in the public interest, to uphold the law and to respect the constitutional right of all persons.

(b) be guided by a sense of integrity, honor, justice and morality in the conduct of business; in all personnel matters; in relationships with government agencies, clients, and employers; and in responsibilities to the general public.

(c) strive faithfully to render security services of the highest quality and to work continuously to improve their knowledge and skills and thereby improve the overall effectiveness of private security.

(d) uphold the trust of their employers, clients, and the public by performing their functions within the law, not ordering or condoning violations of law, and ensuring that their security personnel conduct their assigned duties lawfully and with proper regard for the rights of others.

(e) respect the reputation and practice of others in private security but to expose to the proper authorities any conduct that is unethical or unlawful.

(f) apply uniform and equitable standards of employment in recruiting and selecting personnel regardless of race, creed, color, sex or age.

(g) cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with security licensing and registration laws and other statutory requirements that pertain to their business.

(h) respect and protect the confidential and privileged information of employers and clients beyond the term of their employment, except where their interests are contrary to law.

(i) maintain a professional posture in all business relationships with employers and clients, with others in the private security field, and with members of other professions; and to insist that their personnel adhere to the highest standards of professional conduct.

(j) encourage the professional advancement of their personnel by assisting them to acquire appropriate security knowledge, education and training.

(2) Any violation of the above shall constitute unprofessional conduct."

Auth: 37-60-202, MCA Imp: 37-60-202, 321, 401, MCA

"XXII. CODE OF ETHICS FOR PRIVATE SECURITY EMPLOYEES

(1) Private security employees shall:

(a) accept the responsibilities and fulfill the obligations of his/her role: protecting life and property; preventing and reducing crimes against his/her employer's business, or other organizations and institutions to which

he/she is assigned; upholding the law; and respecting the constitutional rights of all persons,

(b) conduct himself/herself with honesty and integrity and to adhere to the highest moral principles in the performance of his/her security duties.

(c) be faithful, diligent, and dependable in discharging his/her duties, and to uphold at all times the laws, policies, and procedures that protect the rights of others.

(d) observe the precepts of truth, accuracy and prudence, without allowing personal feelings, prejudices, animosities or friendships to influence his/her judgements.

(e) report to his/her superiors, without hesitation, any violation of the law or of his/her employer's or client's regulations.

(f) respect and protect the confidential and privileged information of his/her employer or client beyond the term of his/her employment, except where their interests are contrary to law.

(g) cooperate with all recognized and responsible law enforcement and government agencies in matters within their jurisdiction.

(h) accept no compensation, commission, gratuity, or other advantage without the knowledge and consent of his/her employer.

(i) conduct himself/herself professionally at all times, and to perform his/her duties in a manner that reflects credit upon the employee, his/her employer, and private security.

(j) strive continually to improve his/her performance by seeking training and educational opportunities that will better prepare him/her for his/her private security duties.

(2) Any violation of the above ethical code shall constitute unprofessional conduct."

Auth: 37-60-202, MCA Imp: 37-60-202, 321, 401, MCA

"XXIII. POWERS OF ARREST (1) No licensee or employee shall have greater power of arrest than the average citizen in accordance with section 46-6-502, MCA, which reads as follows:

'A private person may arrest another when:

(a) he believes on reasonable grounds that an offense is being committed or attempted in his presence;

(b) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(c) he is a merchant, as defined in 30-11-301, MCA, and has probable cause to believe the other is shoplifting in the merchant's store.'

(2) If a merchant has employed or contracted for the services of a proprietary security guard or a contracted

security guard, all arrest authority shall be subject to the restrictions contained in 46-6-503, MCA.

(3) In those cases where arrest power has been granted by proper authorities, this rule shall not be applicable.

(4) Abuse of the powers of arrest will constitute unprofessional conduct."

Auth: 37-60-202, MCA Imp: 37-60-202 (9), 321, 401, MCA

14. The board is proposing the specific code of ethics for private investigators, security management, and security employees to be adopted as it will help the licensees in understanding what is considered unprofessional conduct. While the ethics listed are lengthy, the board has thoroughly discussed each and feels that they will help to promote and upgrade the profession, as well as offer the consuming public protection from unethical practice.

15. The proposed rules under sub-chapter 9, entitled Complaint Procedures, will read as follows:

"XXIV. GENERAL PURPOSES (1) The purpose in outlining the following complaint procedure is so that any and all complaints received by the board of private security patrolmen and private investigators, hereinafter referred to as the board, shall be uniform. Secondly, it is the desire of the board that all complaints be handled in a manner that will assure equitable consideration for both the complainant and the subject of the complaint."

Auth: 37-60-202, MCA Imp: 37-60-202, (1), 321, MCA

"XXV. INITIAL PROCEDURES (1) All complaints shall be signed and in writing, and under no circumstances will the board give consideration to any complaints received from anonymous sources or telephonically from persons who are unwilling to reduce their complaint to writing.

(2) The board will receive complaints made in person against any licensee or registrant if the complaint is made by a person appearing at a regularly scheduled board meeting. The board will hear this person either in open or closed session, at its discretion and as the facts of the case may dictate. Even though a complainant may appear personally and lodge a complaint, the board will urge the complainant to reduce his grievance to writing and sign it. Should the complainant be unwilling to do so, the board will then reduce the complaint in writing and require that the person making the complaint sign it.

(3) Regardless of the manner in which a complaint is received, once the complaint has been reduced to writing, the

administrative assistant to the board will immediately forward a copy of the signed complaint to the subject with a request and recommendation that an answer to the complaint be made in writing to the board.

(4) Upon receipt of this answer, a copy of the answer so received shall be immediately forwarded to the complainant, and if it should be deemed necessary by the administrative assistant to cause investigation into the matter, the administrative assistant after conferring with the chairman of the board will appoint a qualified investigator to look into the merits of the complaint and report his or her findings to the board."

Auth: 37-60-202, MCA Imp: 37-60-202, 321, 401, MCA

"XXVI. ACTION BY THE BOARD (1) Upon completion of the above steps, if the complaint received is not of a serious nature, a member of the board designated by the chairman shall contact the complainant and the complaine and see if the matter can be amicably settled between them by stipulation or agreement.

(2) If the matter cannot be so settled, the board is then bound by the Montana administrative procedures act and will instruct the administrative assistant to so advise the complainant and the complaine in writing, enclosing with the letter a copy of sections 2-4-601 through 2-4-623 of the Montana administrative procedures act.

(3) Thereafter, the complaint shall be handled strictly in accordance with the Montana administrative procedures act."

Auth: 37-60-202, MCA Imp: 37-60-202, 321, 401, MCA

16. The proposed adoption of rules under sub-chapter 9 set a formal complaint procedure in order to define definite procedures to be followed to allow complete and accurate records to be kept in the event of litigation as a result of a complaint, as well as to have clear guidelines for those individuals who file complaints or who are complained against.

17. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 26, 1984.

18. Brinton Markle, Board Attorney, Helena, Montana has been designated to preside over and conduct the hearing.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, December 19, 1983.

MAR Notice No. 8-50-11

24-12/29/83

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules under sub-	)	THE PROPOSED ADOPTION OF RULES
chapter 3, concerning general	)	UNDER SUB-CHAPTERS 3 and 4,
provisions and application pro-	)	GENERAL PROVISIONS AND APPLICA-
cedures, and rules under sub-	)	TION PROCEDURES and MONTANA IN-
chapter 4 concerning the Mon-	)	STATE INVESTMENT
tana in-state investment fund.)	

TO: All Interested Persons:

1. On Friday, January 20, 1984, at 10:00 a.m., a public hearing will be held in Room 114, Coach House East, 2101 11th Avenue, Helena, Montana, to consider the adoption of rules under Sub-Chapter 3, general provisions and application procedures, and Sub-Chapter 4, concerning the Montana in-state investment fund.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. Rules proposed under Sub-Chapter 3, entitled General Provisions and Application Procedures

"I. DEFINITIONS (1) As used in Sub-Chapters 3 through 8, and unless the context clearly requires another meaning:

(a) 'administrator' means the administrative officer of the Montana economic development board created in sections 2-15-1806 and 2-15-1807, MCA.

(b) 'application' means the complete application provided for in Rule VIII. An application cannot be submitted unless a short-application has been given a favorable conditional determination.

(c) 'board' means the Montana economic development board created in section 2-15-1805, MCA.

(d) 'completed application' means an application that meets the requirements of these rules.

(e) 'board of housing' means the board of housing created in section 2-15-1814, MCA.

(f) 'board of investments' means the board of investments created in section 2-15-1005, MCA.

(g) 'bond' means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to title 17, chapter 5, MCA.

(h) 'borrower' means the person to whom the proposed loan will be made or the person whose payments under a loan,

lease, or other credit arrangement are guaranteed or proposed to be guaranteed by the board.

(i) 'clean and healthful environment' means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(j) 'conditional determination' means the conditional approval or disapproval of a short-application as provided in Rule VI.

(k) 'financial institution' means a person that

(i) is a state- or federally-chartered bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or qualified Montana Capital Company; and

(ii) maintains an office in Montana; and

(iii) is approved by the board as provided in rules II.

(l) 'lender' means

(i) the approved financial institution that will originate the short-application or application for a financial transaction.

(ii) the financial institution, municipality, or county to whom payments from a borrower on account of a project financed either by the board under Sub-Chapter 5 or by a municipality or county under sections 90-5-101 through 90-5-112, MCA, are proposed to be guaranteed by the board under Sub-Chapter 6.

(m) 'loan participation' means loans or portions thereof bought from a financial institution.

(n) 'local government' means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(o) 'locally owned enterprise' means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(p) 'long-term benefit to the Montana economy' means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the peoples of Montana, either directly or indirectly.

(q) 'Montana economy' means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(r) 'Montana in-state investment fund' means the fund established by 17-6-306, MCA.

(s) 'Montana resident' means a person who has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state is coupled with the intention to make it his permanent residence. Sojourners or persons who come to Montana solely in pursuance of financial assistance from the board or any contract or agreement to perform labor shall under no circumstances be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

(t) 'person' is any individual, partnership, corporation, or other entity which is authorized by law to transact business in Montana.

(u) 'project' means the purpose for which the financing is to be used, including any property to be acquired and services to be obtained, and in an application under Sub-Chapter 4 or 5 is limited to projects as defined in 90-5-101, MCA.

(v) 'project costs' means the costs of acquiring or improving any project, including the following:

(i) the actual cost of acquiring or improving real estate for any project;

(ii) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(iii) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(iv) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and

(v) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding six months after completion of construction.

(w) 'SBA' means the United States Small Business Administration.

(x) 'short application' means the abbreviated submittal of information provided in Rule VI. Filing a short-application is a prerequisite to filing an application.

(y) 'small- and medium-sized business' means a business that has a net worth less than \$6 million; has an average net income, after federal income taxes, for the preceding two years of less than \$2 million (average net income to be computed without benefit of any carryover loss); and has less than 200 employees employed in Montana.

(2) The most current Standard Industrial Classification Manual published by the Office of Budget and Management of the Executive Office of the President shall be used to classify businesses for the purpose of implementing the provisions of statutes and these rules administered by the board."

Auth: 17-5,1521, 17-6-324, MCA Imp: 17-5-1503, 17-6-302, MCA

"II. APPROVAL OF FINANCIAL INSTITUTIONS (1) Financial institutions may apply to become approved financial institutions on forms approved by the board and provided by the administrator. The application shall include a loan participation and/or servicing agreement. The administrator will transmit the application together with a summary and recommendation to the board for a decision.

(2) The administrator shall maintain a list of approved financial institutions. The administrator may coordinate the approval of financial institutions with the board of investments, board of housing, department of natural resources and conservation or other state agencies that require approval of financial institutions. The board may restrict the approval of a financial institution to one or more specified sub-chapters of these rules if it is determined that the financial institution is ineligible for approval for purposes of other sub-chapters under existing law.

(3) The board, at its discretion, may suspend approval of financial institutions and discontinue purchasing certificates of deposit and loans from that financial institution when:

(a) any fees or expenses due the board by the financial institution remain unpaid for more than 30 days.

(b) an unreasonable amount or percentage of loan payments remain delinquent for more than 90 days, as determined by the board.

(c) the financial condition of the financial institution is such that further investment of funds in or purchases of loans from that financial institution is deemed imprudent by the board."

Auth: 17-5-1521, 17-6-324, MCA Imp: 17-5-1526 (1), 17-5-1527 (1), 17-6-310, MCA

"III. CONFIDENTIALITY OF INFORMATION (1) The board will treat as confidential all information submitted by a lender and borrower except the following information (which will be included in a supplement to each short-application):

(a) name and address of lender;

(b) name and address of borrower;

(c) short description of proposed project;

(d) amount of proposed loan;

(e) information required to determine eligibility and preference under Rules XI and XII, and 17-6-302 (6), MCA, 17-6-304, MCA. 17-6-309, MCA;

(f) the program(s) under which the lender or borrower are applying.

(2) The board shall maintain public files including information contained in (1)(a-f), and shall also include a summary of board action regarding the application and the final interest rate established for a project and loan payment records.

(3) This rule is based on the board's finding that beyond the information described in item (1)(a-f), the demands of individual privacy clearly exceed the merits of public disclosure of the personal, financial and business information that is contained in applications to the board."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1526, 17-5-1527, 17-6-304, 17-6-309, MCA

"IV. FALSE OR MISLEADING STATEMENTS (1) Any person who purposely or knowingly makes a false or deceptive statement in an application or short-application or purposely or knowingly omits information necessary to prevent the statements in an application or short-application from being misleading may be prosecuted under section 45-6-317 and 45-7-203, MCA.

(2) The submittal of false or misleading information in an application or short-application is grounds for rejection of the application or short-application and denial of further consideration."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1526, 17-5-1527, 17-6-304, 17-6-309, MCA

"V. UNIFIED APPLICATION PROCEDURES (1) Information on board programs, short-applications and applications can be obtained from the administrator, Montana Economic Development Board, or from approved financial institutions.

(2) The administrator shall prepare and distribute short-application forms and application forms that have been approved by the board for the programs established in Sub-chapters 4, 5, 6, & 7. The forms shall provide for adequate information on proposed projects, business principals including their business history, credit reports, tax returns, business plan, financial plan, feasibility studies, land and buildings, appraisals, leases, machinery, project timetable, proposed employees, local suppliers, potential taxes, potential benefits to the state, other business, credit or economic benefit information, and other information deemed necessary by the board to implement these rules.

(3) All programs in Sub-Chapters 4, 5, 6 & 7 require submission of both the short-application and application form except the following:

(a) short-term certificates of deposit, which are placed on a bid or negotiated basis as provided in Rule XVI.

(b) purchase of federally guaranteed loans or Economic Development Certificates of Deposit, which require only the submission of short-application form.

(4) A short-application or application may be withdrawn by either the lender or borrower at any time prior to notice of the administrator's or board's decision on the application, but no fees theretofore paid will be refunded."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1505, 17-6-310, MCA

"VI. SHORT APPLICATION (1) Each short-application shall be accompanied by a non-refundable short-application fee, signed by both the lender and borrower, and submitted to the administrator. The lender and borrower shall specify on the short-application form the program(s) for which they are applying.

(2) The time and date of filings shall be recorded at the time of filing in the office of the board and shall not be construed to be the date of mailing. Recording the filing time and date does not indicate the application is complete.

(3) The administrator shall review all short-applications and designate those he determines to be complete. In the event that the administrator determines a short-application is deemed incomplete in any respect, the applicant(s) will be notified within 15 days. An incomplete application may be appropriately modified and resubmitted to the administrator.

(4) The administrator will make an initial conditional determination, based upon information in the short-application and such other information as may be obtained, as to whether the proposed project and proposed assistance by the board appear to meet the eligibility and preference criteria established by law and these rules, and will so notify the originator in writing. An adverse conditional determination by the administrator may be reviewed by the board upon the written request of the lender, provided such request is filed with the administrator within 15 days after the notice of disapproval was sent. The board will review only such information as was included in the short-application submitted to the administrator. If adverse determination is made by the board and the lender desires further consideration, an amended short-application with new or changed information may be submitted to the administrator as provided in this rule and processed as a new short-application under this rule.

(5) If the short-application is for purchase of federally guaranteed loans or Economic Development

Certificates, the board may authorize the administrator to purchase such investments after the board's approval of the short-application.

(6) If the approved short-application is for any investment other than the purchase of federally guaranteed loans or economic development certificates, the lender, upon receiving a favorable conditional determination, may submit an application as provided in Rule VIII. The favorable conditional determination of the short-application terminates within 60 days if no complete application is submitted; however, the board or administrator may extend this deadline at their discretion."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1504 (16), 17-5-1505, 17-6-310, 17-6-315, MCA

"VII. APPLICATION (1) An application may not be submitted unless a short-application has been given a favorable conditional determination by the administrator. A complete application under Sub-chapter 3, 4, or 5 must be submitted within 60 days after a favorable conditional determination on a short-application unless extended by the administrator or board. Each application shall be accompanied by a non-refundable application fee. The borrower shall agree to pay any expenses over and above the application fee incurred by the board in reviewing the application and processing and closing the financing. The borrower will be notified prior to incurring any expenses over and above the application fee. Each application shall be signed by both the lender and the borrower, shall include in addition to information required by rule V., the following information:

(a) Any changes or additions to the information in the short-application which are necessary for accuracy or completeness in light of events occurring after submission of the short-application;

(b) A commitment by the originator to originate the loan or enter into the credit arrangement on the terms proposed in the application.

(2) The administrator will review the application, obtain any appropriate additional information, and transmit the application, together with a summary and recommendation to the board. The application will be considered at a board meeting of which the lender shall be given at least 10 days notice. At or after such meeting, the board will determine whether the proposed project and proposed assistance by the board meet the eligibility and preference criteria established by law and in these rules, and will notify the lender of its decision and any conditions in writing and take any official action it deems appropriate. If an adverse decision on the

application is made by the board, an explanation of the reason(s) for the rejection of the application will be provided to the lender. The lender may request reconsideration of the application by submitting to the administrator an amendment to the application including new or changed information that would affect the decision of the board. If submitted within 30 days of receipt of the board's adverse decision, an additional application fee will not be charged. An amended application may be reconsidered by the board, if it is determined that the new or changed information will affect the board's earlier decision."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1504 (16), 17-5-1505, 17-6-310, 17-6-315, MCA

"VIII. SERVICE CHARGE AND FEE SCHEDULE (1) The board shall adopt and periodically establish and distribute to financial institutions a schedule of all fees and charges for all programs and authorized interest rates for Sub-Chapters 4, 5, 6, and 7.

(2) The board may, by participation agreement, or loan agreement, limit the fees and charges of the financial institution for originating and servicing financial transactions."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1504 (16), 17-6-315, MCA

"IX. NON-DISCRIMINATION Borrowers must also agree to comply with section 9, article I of the Constitution of Montana."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1502, 17-6-303, MCA

4. Rule I. is necessary to clarify the terms used in this and related sub-chapters.

Rule II. is necessary to insure that businesses applying for use of the state financial programs may operate through financial institutions which are competent and knowledgeable of the provisions and procedures of the board's programs.

Rule III. is necessary to provide the public information suitable to determine that projects financed are in compliance with the purpose of the authorizing laws; and to protect the rights of privacy of the businesses applying for board assistance.

Rule IV. is necessary to protect the board against the inclusion of false or misleading information in application.

Rule V. is necessary to coordinate and simplify the application procedures for the board's several financial programs.

Rule VI. is necessary for the following reasons:

- a. to provide information to the administrator sufficient to make a determination as to the acceptability of the project;
- b. to notify the applicant of any necessary additional information prior to engaging in the full application process; and
- (c) in the event of a project that is not eligible for financing, to notify the applicant of the ineligibility before valuable time and resources are expended in a full application.

Rule VII. is necessary :

- a. to insure that information is received that is sufficient to make a determination of the credit-worthiness and eligibility of the project for financing; and
- (b) to clarify the application procedures to the lender and the borrower.

Rule VIII. is necessary to allow the board to collect fees adequate to pay the costs of administering its programs, and to allow flexibility in the establishment of fees.

Rule IX. is necessary to remind borrowers that they are subject to the requirements of Section 9, Article I of the Constitution of Montana which prohibits discrimination based on race, color, sex, culture, social origin or condition, or political or religious ideas.

4. Rules proposed under Sub-Chapter 4, entitled Montana In-State Investment Fund, will read as follows:

"X. BOARD IN-STATE INVESTMENT POLICY (1) As required by section 17-6-304, MCA, the objectives of the board for the investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

(2) The statement of intent of House Bill 100, Chapter 677, Montana session Laws, 1983 indicates that the permissible investments of the board should 'be based on the long-term benefit to the Montana economy.' The board has determined that investment in 'basic' economic activity will best fulfill this mandate.

(3) Basic economic activity is defined by the board as

(a) any business activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services for use or consumption outside of Montana, or;

(b) manufacturing or wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts.

This definition is intended to include but not be limited to businesses engaged in one or more of the following activities:

- (i) manufacturing;
- (ii) agricultural, fishery, or forestry production and processing;
- (iii) mineral production and processing,
- (iv) recognized nonfossil forms of energy generation as defined in 15-32-102 (5), MCA;
- (v) transportation;
- (vi) tourism.

Auth: 17-6-324, MCA Imp: 17-6-304, MCA

"XI. CRITERIA FOR DETERMINING ELIGIBILITY The board shall determine that an application for financing is eligible under this Sub-Chapter only if it finds that:

(1) The financing will be made in the Montana economy with special emphasis on new or expanding locally-owned enterprises and will further the objectives of section 17-6-304, MCA, which provides: 'Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.'

(2) The financing is permitted by state law or rule of the board.

(3) All financing except short-term certificates of deposit must be for the benefit of a business engaged in 'basic' economic activity.

(4) If a loan participation under rule XX, a financial institution approved by the board has originated the loan and is offering a participation of not more than 80% of the loan to the Montana in-state investment fund on terms such that the fund shall participate ratably in the security for the loan.

(5) The financing will not result in the borrower receiving a benefit from or incurring a debt to the Montana in-state investment fund in excess 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund; and

(6) the financing is consistent with that degree of judgement and care, under circumstances from time to time prevailing, which individuals of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the following factors:

- (a) the probable safety of their capital;

(b) the probable income to be derived, taking into consideration the preservation of purchasing power of capital during periods of sustained high monetary inflation; and
(c) the long-term benefit to the Montana economy."

Auth: 17-6-324, MCA Imp: 17-6-304, 17-6-305, 314,
MCA

"XII. PREFERENCES (1) When deciding which of several eligible investments of equal or comparable security and return to finance when sufficient funds are not available to finance all possible investments, the board shall give preference to investments that:

(a) are for locally owned enterprises that are either expanding or establishing new operations;

(b) provide jobs that will be substantially filled by current Montana residents, as opposed to jobs that will be filled by non-residents coming into the state to fill such jobs;

(c) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(d) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(e) benefit small- and medium-sized businesses."

Auth: 17-6-324, MCA Imp: 17-6-309, MCA

"XIII. APPLICATION PROCEDURES FOR THE IN-STATE INVESTMENT FUNDS (1) Interested persons should contact an approved financial institution of their choice to obtain a preliminary assessment of project feasibility and credit worthiness. A list of approved financial institutions is available from the administrator. The financial institution (as lender) may apply, by a short application as provided in Rule II, for a preliminary determination of eligibility and possible preference. A complete application for a loan participation may be filed only after the approval of a short-application and only when the lender has completed its underwriting procedures to the point that it is prepared to issue a commitment letter to originate the loan and retain at least 20% of the loan. Applications will be reviewed by the administrator and a recommendation will be made to the board as provided in Rule VII. If an application is approved by the board, mutually acceptable investment or loan documents will be prepared and executed by the board, lender and borrower."

Auth: 17-6-324, MCA Imp: 17-6-310, 312, MCA

"XIV. FEES (1) The board shall adopt and periodically establish and distribute to financial institutions a schedule

of all fees and charges and authorized interest rates as provided in rule VIII, Sub-Chapter 3.

Auth: 17-6-324, MCA Imp: 17-6-315, MCA

"XV. INVESTMENT AUTHORIZED BY RULE (1) In addition to the investments authorized as permissible investments under section 17-6-211, MCA, the board authorizes the investments and deposits established in rules XVI. through XXII."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XVI. SHORT-TERM CERTIFICATE OF DEPOSIT PROGRAM (1) Pending investment of board funds in Montana businesses, the board may deposit available funds in short-term certificates of deposit.

(2) Certificates of deposit will be placed with approved financial institutions on bid or negotiated basis.

(3) A term of no more than twelve months will be allowed.

(4) The board reserves the right to reject any or all bids under this program."

(5) Short-term certificates of deposit are subject to the collateral and pledging requirements provided in 17-6-101 through 17-6-105, MCA."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XVII. ECONOMIC DEVELOPMENT CERTIFICATES OF DEPOSIT PROGRAM (1) The board will place Economic Development Certificates of Deposits(EDCD) with approved financial institutions who contract with the board to utilize the receipts to finance long-term fixed rate loans to small and medium-sized businesses that meet the requirements of Rule X. The financial institution retains all risk on any loans financed with the proceeds of an Economic Development Certificate of Deposit.

(2) The board's buy-rate will be established periodically by vote of the board and distributed as provided in Sub-Chapter 3, Rule VIII.

(3) The maximum term for an Economic Development Certificate of Deposit is ten years.

(4) The Economic Development Certificates of Deposit funds may be used by financial institutions to make loans for working capital, interim construction, inventory, site development, machinery and equipment, buildings or other types of loans.

(5) Financial institutions desiring to participate in the Economic Development Certificates of Deposit program shall submit a short-application that shall identify the loan that

will be made with the proceeds of the Economic Development Certificate of Deposit.

(6) Economic Development Certificates of Deposit are subject to the collateral and pledging requirements provided in 17-6-101 through 17-6-105, MCA."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XVIII. FEDERALLY GUARANTEED LOAN PROGRAM (1)

Participation in fixed rate loans may be purchased by the board that are guaranteed by the United States or an agency or instrumentality of the United States, including but not limited to the Small Business Administration, the National Marine Fisheries Service, Farmers Home Administration and the Federal Aviation Administration.

(2) The board's buy-rate will be established periodically by vote of the board and distributed as provided in Sub-Chapter 3, Rule VIII."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XIX. 503 LOAN PARTICIPATIONS The board may purchase up to 80% participation in financial institution's portion of a project financing under the Small Business Administration 503 loan program."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XX. LOAN PARTICIPATIONS (1) All business loan participations must conform to section 17-6-211 (f), MCA, and the requirements of this rule.

(2) No offering of less than \$75,000.00 will be considered.

(3) Only participating offerings in which the lender retains at least 20 percent of the offering and agrees to service the entire loan will be considered.

(4) A maximum of 75 percent loan-to-value ratio using the lower of the appraised value or cost/purchase amount. The board requires an MAI approved appraiser or an appraiser acceptable by the board.

(5) The maximum amortization to be considered will be thirty years.

(6) Land-development loans will not be considered unless loans support the development of a basic industry as defined in Sub-Chapter 4, X.

(7) All offerings involving closely held corporations must include personal, as well as corporate or partnership signatures, on the loan documentation.

(8) Private mortgage insurance may be required as an additional credit guarantee.

(9) Mortgages shall contain complete amortization provisions satisfactory to the board.

(10) Mortgages shall be in the form and contain the terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, acceleration of maturity, secondary liens and other matters the board prescribes.

(11) Mortgages shall be secured as to repayment by a mortgage or other security instrument in the manner the board determines is feasible to assure timely repayment under the loan agreement.

(12) A prepayment penalty may be charged.

(13) Loans for construction financing will not be made."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XXI. GUARANTEED LOAN PROGRAM (1) The board may issue a guarantee to the lender in an amount up to 80% of the principal of a loan qualifying for board participation under these rules.

(2) The loan underwriting criteria for the guaranteed loan program will be the same as those used for the loan participations program authorized in Rule XX.

(3) The lender may exercise the guarantee only after the liquidation of all collateral securing the loan.

(4) Board guarantees are subject to the collateral and pledging requirements provided in 17-6-101 through 17-6-105, MCA.

(5) Board guarantees are subject to the investment limitations provided in 17-6-311, MCA."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XXII. PURCHASE LEASE-BACK OF LAND AND BUILDINGS (1) The board may purchase land or buildings and lease them back to the user at the option of the board.

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

"XXIII. COMMITMENT OF FUNDS (1) No commitments will be given for more than 180 days.

(2) Forward commitment rates are established every two weeks by the administrator: to obtain a commitment at the rate set last, the request and commitment fee must reach the office within the two-week period or be postmarked before the rates change.

(3) A commitment may be extended by the administrator or board upon written request of the applicant.

(4) Counter commitments are subject to a 10 day time limit. If no affirmative reply is made by the lender within

that period, the loan is rejected and the documentation and commitment fee are returned to the originator.

(5) Approved lenders may submit and receive payment for partial delivery of commitments."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

6. The board has proposed these rules to commence implementation of the Montana in-state investment program.

Rule X. is necessary to clarify that the purpose of the Montana in-state investment program is to promote economic development in the state of Montana, and to establish the board's finding that investment in "basic" economic activities will best fulfill this mandate.

Rule XI. is necessary to establish the eligibility requirements for participation in the in-state investment program by lenders or borrowers.

Rule XII. is necessary to emphasize in the rules the preferences established by statute that will be used when deciding which of several investments of equal or comparable security and return to finance when sufficient funds are not available to fund all investments.

Rule XIII. is necessary to clarify the application procedure that will be used in the operation of the in-state investment program.

Rule XIV. is necessary to establish the service charges commensurate with the costs of administering the in-state investment program.

Rule XV. is necessary to authorize the types of investments that will be allowed besides those included in section 17-6-211, MCA under the in-state investment program.

Rules XVI. through XXII. are necessary to inform interested persons of the means by which the various allowable investment programs of the board will operate.

Rule XXIII. is necessary to provide a flexible and efficient means of operating the financial programs.

7. Interested 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 Dale Harris, Assistant to the Director, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620, no later than January 26, 1984.

8. D. Patrick McKittrick, Chairman of the board will preside over and conduct the hearing.

MONTANA ECONOMIC DEVELOPMENT
BOARD

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 19, 1983
24-12/29/83 MAR Notice No. 8-97-2

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of a rule regarding certificate	)	FOR ADOPTION OF A RULE
of need review for psychiatric)	
hospitals	)	(Certificate of Need)

To: All Interested Persons

1. On January 25, 1984, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule which sets forth standards for certificate of need review for psychiatric hospitals.
2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.
3. The proposed rule provides as follows:

RULE I PSYCHIATRIC HOSPITAL SERVICES -- STANDARDS FOR CERTIFICATE OF NEED REVIEW (1) The following standards for psychiatric hospital services are based on and supplement the criteria set forth in 50-5-304, MCA, ARM 16.32.110, and the state health plan component for acute psychiatric care hospital services.

(2)(a) Through 1990 no additional long-term psychiatric hospital services will be approved.

(b) Through 1990 no intermediate stay psychiatric hospital services will be approved.

(c) Through 1990 no inpatient hospital services will be approved for psychiatric patients who are not severely disturbed.

(d) Need may be demonstrated for short-stay psychiatric hospital beds in organized psychiatric units in community hospitals or free-standing units where utilization levels of at least 2000 psychiatric patient-days per year are projected by 1990.

(3) The applicant for a certificate of need for psychiatric hospital services must demonstrate that:

(a) Adequate psychiatric and other treatment staff will be available when the services begin.

(b) Adequate aftercare programs to provide follow-up treatment are present in the community. Preferably, such aftercare should include residential, day care and outpatient services.

(c) All segments of the population in the service area will be served, regardless of method of payment.

(4) Applicants for certificate of need for new construction for psychiatric hospital beds in a service area where excess hospital bed capacity is projected for 1990 must demonstrate that:

(a) The proposed service could not be provided through the existing hospital; or

(b) Provision of the service through the existing hospital would result in a higher total cost to the service community.

(5) As used in this rule, the following definitions apply:

(a) "Short-stay psychiatric hospital services" means acute care treatment requiring a hospital stay of one to thirty days.

(b) "Intermediate-stay psychiatric hospital services" means psychiatric treatment involving a hospital stay of 30 to 60 days.

(c) "Long-term psychiatric hospital services" means treatment for chronic conditions involving hospital stays of over 60 days.

(d) "A patient who is severely disturbed" means a patient who is actively suicidal, so disorganized as to be unable to maintain even marginal functioning, consistently aggressive and paranoid, threatening to others, or whose acting out behavior is so great that it cannot be contained in an open setting.

AUTHORITY: Sec. 50-5-103, 50-5-304, MCA

IMPLEMENTING: Sec. 50-5-304, MCA

4. The Department is proposing this rule to reflect proposed changes in the psychiatric component of the State Health Plan. The new component expresses the State's policy on availability and accessibility of acute care psychiatric services. New reimbursement rules for psychiatric services can be expected to lead to an increase in certificate of need applications for such facilities. It is essential that standards for review of those applications be promulgated as rules before certificate of need decisions are made.


5. Interested 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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than February 3, 1984.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on sections 50-5-103 and 50-5-304, MCA, and the rule implements section 50-5-304, MCA.


JOHN J. DRYNAN, M.D., Director

By:


JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State December 19, 1983

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
18.7.241, Forms for	)	18.7.241, FORMS
utility occupancy of)	
highway right-of-way.)	

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On January 31, 1984, the Department of Highways proposes to amend rule 18.7.241, Forms.

2. The rule as proposed to be amended provides as follows:

18.7.241 FORMS (1) The following forms shall be utilized by the Department ~~unless otherwise provided in this rule~~ and may be obtained from the Right of Way Bureau, Utilities Section, 2701 Prospect Avenue, Helena, MT 59620.

1. RW 208 - STRUCTURE ENCROACHMENT APPLICATION AND PERMIT
2. RW 131 - UTILITY OCCUPANCY AND LOCATION AGREEMENT
3. FORM U-159 - UTILITY AGREEMENT
4. RW 155 - SUPPLEMENT AGREEMENT
5. RW 133 - COMMON USE AGREEMENT

AUTH: Sec. 60-3-101 and 60-4-402 MCA, IMP, Sec. 60-3-101 and 60-4-402 MCA

3. The department is proposing to amend the rule to delete the text of the forms because of the expense involved in adopting new rules every time the forms are revised.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Gary J. Wicks, Director, Department of Highways, 2701 Prospect Avenue, Helena, MT 59620, no later than January 30, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Gary J. Wicks, Director, Department of Highways, 2701 Prospect Avenue, Helena, MT 59620, no later than January 30, 1984.

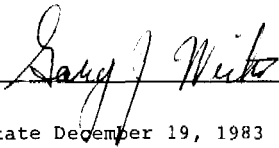
6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from 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 ten persons based on the number of private and public utilities.

7. The authority of the agency to make the proposed amendment is based on section 60-3-101, MCA, and the rule implements section 60-4-402, MCA.

Gary J. Wicks
Director of Highways

By: _____

A handwritten signature in dark ink, appearing to read "Gary J. Wicks", is written over a horizontal line.

Certified to the Secretary of State December 19, 1983

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMENDMENT OF
ment of Rule 20.7.102 which) RULE 20.7.102
sets forth the prisoner) (Prisoner Application
application procedure for the) Procedure, General Statute
supervised release program.) Requirements)
)
) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 30, 1984, the Department of Institutions proposes to amend rule 20.7.102 which sets forth the prisoner application procedure for the supervised release program.

2. The rule as proposed to be amended provides as follows:

20.7.102 PRISONER APPLICATION PROCEDURE, GENERAL STATUTE REQUIREMENTS. (1) Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make an application to participate in the supervised release program:

(a) at any time if his date of crime is prior to July 1, 1979.

(b) if he has served at least one-half of the time required to be considered for parole and his date of crime is after July 1, 1979, but prior to October 1, 1981.

(c) if he has served at least one-half of the time required to be considered for parole and not more than 15 months remain before he is eligible for parole if his date of crime is after October 1, 1981.

(2) - (6) Remain the same
AUTH: 46-23-405 MCA

IMP: 46-23-405,411 MCA


3. This amendment is necessitated by Quigg v. South, cause No. 48140, Lewis and Clark County, and the Court's opinion and Declaratory Judgment filed in this matter by District Judge Gordon R. Bennett on July 19, 1983. The Court ruled that the provisions of the Supervised Release Law cannot be applied retroactively. Therefore, in order not to prejudice other inmates in their application process for supervised release, the Department adopted an emergency rule on this matter on August 1, 1983. This notice is to adopt a permanent amended rule in this matter.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, MT 59620, no later than January 27, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, MT 59620, no later than January 27, 1984.

6. If the Department receives requests for a public hearing on the proposed amendment from either 10% or 15, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code 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 81 persons based on 741 inmates at Montana State Prison, 16 inmates at Womens Correctional Center and 54 inmates at Swan River Youth Forest Camp.

7. The authority of the agency to make the proposed amendment is based on Section 46-23-405 MCA, and the rule implements Sections 46-23-405, 411 MCA.


CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State December 19, 1983.

BEFORE THE DEPARTMENT OF STATE
LANDS AND THE BOARD OF LAND
COMMISSIONERS OF THE STATE
OF MONTANA

* * * * *

In the matter of the adoption)
of rules requiring certification)
of blasters on strip or under-)
ground coal or uranium mines)

NOTICE OF PUBLIC HEARING
ON ADOPTION OF RULES
FOR CERTIFICATION OF COAL
OR URANIUM MINE BLASTERS

* * * * *

TO: All Interested Persons.

1. On February 2, 1984, at 1:30 P.M., a public hearing will be held in the Petro East Conference Room of the Student Union Building, Eastern Montana College, Billings, Montana, to consider the adoption of rules requiring certification of blasters on strip or underground coal or uranium mines.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I REQUIREMENTS FOR THE CONDUCT OF BLASTING OPERATIONS (1) No later than twelve months after the effective date of the U.S. Department of the Interior, Office of Surface Mining's final approval of blaster certification program for Montana, each operator shall conduct each blasting operation under direction of an individual who has been certified by the department pursuant to this subchapter and who is familiar with the operation's blasting plan and site-specific blasting performance standards.

(2) A certified blaster may not delegate the direction of blasting operation to any individual who is not a certified blaster.

(3) A blaster and at least one other person with knowledge of blasting procedures must be present during the detonation of each blast.

(4) A blaster shall, upon request, immediately exhibit his certificate to any authorized representative of the department or the Office of Surface Mining upon request.

(5) Operators shall require that persons who are not certified blasters receive direction and on-the-job training by a certified blaster before those persons assist in the use of explosives.

AUTH: 82-4-204(3), 205(7), 231(3)(e) TMP: 82-4-231(3)(e) MCA

RULE II CERTIFICATION OF BLASTERS (1) Persons seeking certification as blasters shall submit to the department an application on a form provided by the department. The applicant must include a statement by a blasting instructor that the applicant has successfully completed a training course meeting the requirements of Rule III (2) and incorporating the manual prepared by the department.

(2) The department shall issue a blaster certification to each applicant who:

(a) has two years field experience in blasting;

(b) has successfully completed a blaster training course meeting the requirements of Rule III; and

(c)(i) if the department determines that the surface coal mine foreman's certificate examination administered by the department of labor and industry examines adequately, at a minimum, in the topics set forth in Rule III, achieves a grade of 80% or higher on the blasting portion of that test, or

(ii) achieves a grade of 80% on an examination administered by the department. The examination shall, at a minimum, examine in the topics set forth in Rule III. An applicant who fails may retake the examination. If the applicant fails the examination a second time, he must successfully complete a blaster training course again and reapply for certification before retaking the examination.

(3) Blaster certifications are non-transferable.

(4) Certification shall expire three years after issuance. The department shall recertify if the blaster:

(a) submits to the department, at least 60 days prior to the expiration of his certification, an application for recertification on a form provided by the department;

(b) has successfully completed 24 hours of refresher training by a qualified blasting instructor during the certification period;

(c) receives a grade of 80% or better on a recertification examination. The applicant for recertification may take the examination only once.

(5) In lieu of the provisions of (1) and (2), the department shall certify any person who has a current state or federal blaster certificate under any program approved by the Department of Interior under 30 C.F.R. Part 850. The period of the department's certification shall be coextensive with the period of certification under the other program but shall not exceed three years.

AUTH: 82-4-204(3), 205(7), 231(3)(e) IMP; 82-4-231(3)(e), MCA

RULE III BLASTER TRAINING COURSES (1) In order to qualify for certification or recertification, an applicant must successfully complete training or refresher courses meeting the requirements of (2) or (3) below.

(2) A blaster training course must provide training and discuss practical applications of:

- (a) use of explosives, including:
 - (i) selection of the type of explosive to be used;
 - (ii) determination of the properties of explosives which will produce desired results at an acceptable level of risk;
 - (iii) handling, transportation and storage;
- (b) design of blasts, including:
 - (i) geologic and topographic considerations;
 - (ii) blast hole design;
 - (iii) pattern design, field layout, and timing of blast holes;
 - (iv) field applications;
 - (c) loading of blast holes, including priming and boosting;
 - (d) use of initiation systems and blasting machines;
 - (e) effects of blasting vibrations, airblast, and flyrock, including:
 - (i) monitoring techniques;
 - (ii) methods to control adverse effects;
 - (f) use of secondary blasting;

(g) discussion of current federal and state rules applicable to the use of explosives;

(h) maintenance of blast records;

(i) determination of blasting schedules;

(j) design and use of preblasting surveys;

(k) requirements of blast plans;

(l) signs, warning signals, and site control;

(m) identification of unpredictable hazards including:

(i) lightning;

(ii) stray currents;

(iii) radio waves;

(iv) misfires; and

(n) state and federal laws governing storage, transportation, and use of explosives.

(3) A blaster refresher course must familiarize the blaster with new developments in all the topics listed in (2) above and shall refresh the blaster's knowledge in one or more of those topics.

AUTH: 82-4-204(3), 205(7), 231(3)(e) IMP: 82-4-231(3)(e), MCA

RULE IV SUSPENSION OR REVOCATION OF BLASTER CERTIFICATION (1) The following are grounds for suspension or revocation of blaster certification:

(a) noncompliance with any order of the department;

(b) conviction of criminal possession or sale of dangerous drugs;

(c) unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(d) violation of any state or federal explosives laws or regulations;

(e) providing of false information or a misrepresentation to obtain certification;

(f) failure to present blaster certification upon request of the department or Office of Surface Mining personnel;

(g) delegating responsibility to any individual who is not a certified blaster;

(h) storage, transportation, or use of explosives in a manner that could threaten life or limb or cause environmental harm.

(2) If the department finds that a certified blaster has committed one or more of the acts prohibited in (1) above, the department may, and upon a finding of willful conduct shall, suspend or revoke the certification of the blaster. The department shall determine whether to suspend or revoke and the length of suspension on the basis of determination of reasonable necessity to protect human life or limb and to prevent environmental degradation.

(3) If the department has probable cause to believe that a certified blaster has committed any of the acts prohibited in (1) above and that the blaster's certification should or must be suspended or revoked, the department shall notify the blaster in writing by certified mail at the address contained in the blaster's application for certification or at a subsequent address of which the blaster has notified the department in writing. The blaster does not defeat service by refusing to accept or failing to pick up the notice. The notice shall advise the blaster of the depart-

ment's proposed action, the alleged facts upon which the proposed action based, and the blaster's right to request a hearing. If the department determines that suspension of the blaster's certification is reasonably necessary in order to protect human life or limb or the environment, it may suspend the certification until the hearing is held; provided, however, that no such suspension may be in effect for longer than 45 days. At the close of the hearing, the hearing officer may, based on a finding that the department will probably prevail and that continued suspension is reasonably necessary, continue the suspension until a final decision is made.

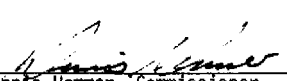
AUTH: 82-4-204(3), 205(7), 231(3)(e) IMP: 82-4-231(3)(e) MCA

4. The department is proposing the rules in order to comply with 30 C.F.R. Part 850 which requires state coal regulatory authorities to adopt blaster certification programs and, to ensure that blasting operations are conducted in a safe and environmentally protective manner.

5. Interested 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 John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59620, no later than February 3, 1984.

6. John F. North, or his designee, has been appointed to serve as hearing officer.

7. The authority to adopt the proposed rules is contained in 82-4-204(3), 82-4-205(7), and 82-4-231(3)(e), MCA. The rules implement 82-4-231(3)(e), MCA.


Dennis Hemmer, Commissioner
Department of State Lands

Certified to the Secretary of State this 19th day of December, 1983.

-1905-

BEFORE THE DEPARTMENT OF STATE
LANDS AND THE BOARD OF LAND
COMMISSIONERS OF THE STATE
OF MONTANA

* * * * *

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules for assessment and waiver	)	FOR ADOPTION OF RULES FOR
of civil penalties and amendment of	)	ASSESSMENT AND WAIVER OF
Rules 26.4.1206, 1207, 1208 and 1209	)	CIVIL PENALTIES AND PROPOSED
relating to notice and orders under	)	AMENDMENT OF RULES RELATING
the Montana Strip and Underground	)	TO NOTICES AND ORDERS
Mine Reclamation Act.)	

* * * * *

TO: All Interested Persons.

1. On February 2, 1984, at 1:30 P.M., a public hearing will be held at the Petro East Conference Room of the Student Union Building, Eastern Montana College, Billings, Montana, to consider the adoption of rules for assessment and waiver of civil penalties under the Montana Strip and Underground Mine Reclamation Act and amendment of ARM 25.4.1206, 1207, 1208, and 1209 relating to service of, procedures for, and effect of notices of non-compliance, notices of violation and proposed penalties, and cessation orders under the Montana Strip and Underground Mine Reclamation Act.

2. The rules as proposed to be adopted and amended provide as follows:

RULE I PROCEDURE FOR ASSESSMENT AND WAIVER OF CIVIL PENALTIES (1)

The department shall review each notice of noncompliance to determine whether the violation is a minor one for which a civil penalty should be waived or, if not, the amount of civil penalty.

(2) Within 30 days after issuance of the notice of noncompliance, the department shall serve a notice of violation and proposed penalty or notice of violation and waiver of penalty. Failure to serve the notice of violation and proposed penalty within 30 days is not grounds for dismissal of the penalty unless the person against whom the penalty is assessed demonstrates actual prejudice resulting from the delay and makes objection in the normal course of administrative review. If the notice of violation and proposed penalty is tendered by mail at the address of the person, as set forth in the permit in the case of a permittee, and he or she refuses to accept delivery of or to collect such mail, service is completed upon such tender. In order to contest the fact of violation or the amount of penalty, the person charged with the violation must file a written request for hearing within 20 days of service of the notice of violation and proposed penalty. If the department vacates the notice of violation, it shall also vacate the notice of noncompliance. At any time after issuance of the notice of violation and proposed penalty and before commencement of the hearing, or, if a hearing is not requested, before issuance of findings of fact, conclusions

of law, and order, the person may confer with the department regarding the proposed penalty. After the hearing or, if a hearing is not requested, after the 20 day request period has expired, the department shall issue its findings of fact, conclusions of law, and order.

(3) The department shall determine the civil penalty in accordance with the point system in Rule II (2). However, the department may waive the point system if it finds that exceptional factors make use of the point system demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver in writing. The department may not waive use of the point system or reduce the penalty on the basis that a reduction in the penalty could be used to offset the costs of abatement. If the department waives the use of the point system, it shall use the criteria listed in Rule II(1), but not the points attributable thereto, to determine the amount of penalty.

(4) The violation is minor and the civil penalty may be waived if under Rule II it receives no points for seriousness and a total of 14 points or less before reduction for good faith.

AUTH: 92-4-204(3), 205(7), 254(2) IMP: 82-4-254(2), MCA

RULE II POINT SYSTEM FOR CIVIL PENALTIES AND WAIVERS (1) The department shall assign points for each violation based upon the following criteria:

(a) History of recent similar violations. One point shall be assigned for each similar violation contained in a notice of noncompliance and five points shall be assigned for each similar violation contained in a cessation order. Violations shall be counted for five years after the notice of violation was issued. No violation for which the notice of noncompliance or cessation order has been vacated or which is subject to a pending administrative or judicial appeal shall be counted.

(b) Seriousness.

(i) Harm to public health, public safety or environment. If the violation is not a potential or actual harm to public health, public safety, or the environment, it shall receive no points under this category. If the department determines that the violation created a situation in which the public health, public safety, or environment could have been harmed, and the violated law, rule, order, or permit term or condition was designed to prevent such harm, the violation shall be assigned up to 15 points. If the violation resulted in actual harm to the public health, public safety, or environment, the violation shall be assigned 16 to 30 points, depending on significance and amount of harm.

(ii) Impairment of administration. If the department determines that the violation does not involve administrative requirements or involves administrative requirements but did not impair the department's administration of the act, rules, or permit, it shall assign no points under this category. In the case of a violation of administrative requirements which causes impairment of administration, the violation shall be assigned one to 30 points depending upon the degree of impairment. An administration requirement, such as the keeping of records and filing of reports, is one that does not directly affect public health, safety, or the environment.

(c) Negligence. If a violation has occurred through no negligence on the part of the permittee, it shall be assigned no points under this category. A violation involving ordinary negligence, which is failure to exercise legal requirement the care ordinarily exercised by a person of common prudence, shall be assigned one to 12 points depending upon the degree of negligence. If the violation occurred due to gross negligence which is gross or reckless disregard for the violated legal requirement, or intentional conduct, it shall be assigned 13 to 25 points depending upon the degree of fault.

(d) Good faith. If the person abates the violation in an adequate manner upon being notified of the violation or if the violation requires no abatement, no points shall be assigned. If the violator points out the violation to the department, is extraordinarily cooperative, or takes extraordinary measures to achieve compliance and minimize harm up to 10 points may be deducted from the total points assigned. However, reduction of points due to good faith does not allow waiver of an otherwise unwaivable penalty.

(2) Amount of penalty. The amount of civil penalty shall be assessed based on the following schedule:

Points	Dollars	Points	Dollars
10 and below	\$200	38	\$1,800
11	\$220	39	\$1,900
12	\$240	40	\$2,000
13	\$260	41	\$2,100
14	\$280	42	\$2,200
15	\$300	43	\$2,300
16	\$320	44	\$2,400
17	\$340	45	\$2,500
18	\$360	46	\$2,600
19	\$380	47	\$2,700
20	\$400	48	\$2,800
21	\$420	49	\$2,900
22	\$440	50	\$3,000
23	\$460	51	\$3,100
24	\$480	52	\$3,200
25	\$500	53	\$3,300
26	\$600	54	\$3,400
27	\$700	55	\$3,500
28	\$800	56	\$3,600
29	\$900	57	\$3,700
30	\$1,000	58	\$3,800
31	\$1,100	59	\$3,900
32	\$1,200	60	\$4,000
33	\$1,300	61	\$4,100
34	\$1,400	62	\$4,200
35	\$1,500	63	\$4,300
36	\$1,600	64	\$4,400
37	\$1,700	65	\$4,500

Points	Dollars	Points	Dollars
65	\$4,600	69	\$4,900
67	\$4,700	70 and up	\$5,000
68	\$4,800		

(3) The total civil penalty assessed under this system includes both the penalty for the violation and for one day of violation. Additional days of violation shall be assessed a penalty at the same rate as the first day of violation.

AUTH: 82-4-204(3), 205(7), 254(2) IMP: 82-4-254(2), MCA

26.4.1206 NOTICES OF VIOLATION AND CESSATION ORDERS: SERVICE A notice of violation and proposed penalty, notice of noncompliance, or cessation order shall be served upon the person to whom it is directed or his designated agent promptly after issuance by:

(1) tendering a copy at the operation to a designated agent, to the individual in charge of the operation or, if the designated agent or person in charge cannot be located at the operation, to any agent or employee at the operation;

(2) sending a copy of the notice or order by certified mail to the permittee or his designated agent; or

(3) hand delivery of a copy of the notice or order to the permittee or his designated agent. Designation of an agent other than the agent named in the application permit for service of process may be made by filing with the department a written designation signed by the former designated agent.

AUTH: 82-4-204(3), 205(7), 254(2), MCA IMP: 82-4-254(2), MCA

26.4.1207 NOTICES OF VIOLATION NONCOMPLIANCE AND CESSATION ORDERS:

INFORMAL HEARINGS (1) Except as provided in subsections (2) and (3) below, a notice of ~~violation~~ noncompliance or cessation order which requires cessation of mining or prospecting, expressly or by necessary implication, expires within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that the alleged violation may be viewed during the hearing or at any other location acceptable to the department and the person to whom the notice or order was issued. The departmental office nearest to the mine site shall be deemed to be reasonable reasonably close to the mine site unless a closer location is requested and agreed to by the department. For purposes of this rule "mining" means extracting coal from the earth or waste piles and transporting it within or from the permit area.

(2) A notice of ~~violation~~ noncompliance or cessation order shall not expire as provided in subsection (1) if the condition, practice or violation in question has been abated or if the informal public hearing has been waived.

(3) The department shall file as much advance notice as is practicable of the time, place and subject matter of the informal public hearing to:

(a) the person to whom the notice or order was issued;

(b) any person who filed a report which led to that notice or order.

(4) The department shall also post notice of the hearing at its office

closest to the mine site, and issue a news release notice, regarding the informal conference, where practicable, to a newspaper of general circulation in the area of the mine.

(5) An informal public hearing shall be conducted by a representative of the department who may accept oral or written arguments and any other relevant information from any person attending.

(6) Within 5 days after the close of the informal public hearing the department shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(a) the person to whom the notice or order was issued; and

(7) (b) any person who filed a report which led to the notice or order.

(8) (7) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 82-4-251(3), or 251(6), or 254(2). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.

AUTH: 82-4-204(3), 205(7), 254(2), MCA IMP: 82-4-254(2), MCA

26.4.1208 NOTICES OF VIOLATION NONCOMPLIANCE AND CESSATION ORDERS:

EFFECT OF INABILITY TO COMPLY No cessation order or notice of violation noncompliance may be vacated because of inability to comply. Inability to comply may not be considered in determining whether a pattern of violations exists.

AUTH: 82-4-204(3), 205(7), 254(2), MCA IMP: 82-4-254(2), MCA

26.4.1209 NOTICES OF VIOLATION NONCOMPLIANCE AND CESSATION ORDERS:

CONTINUATION OF HEALTH AND SAFETY RELATED ACTIVITIES Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

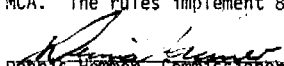
AUTH: 82-4-204(3), 205(7), 254(2), MCA IMP: 82-4-254(2), MCA

3. The department is proposing the new rules to implement and administer the procedure to waive civil penalties under Chapter 499, Laws of 1983 and to provide criteria for determining the amount of civil penalties. The department is proposing the amendments to conform the terminology in the amended rules to the terminology in the new rules and to correct several typographical errors in the rules as initially adopted.

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 John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59620, no later than February 3, 1984.

5. John F. North, or his appointee, has been appointed to serve as hearing officer.

6. The authority to adopt the proposed rules is contained in 82-4-204(3), 82-4-205(7), and 82-4-254(2), MCA. The rules implement 82-4-254(2), MCA.


Dennis Hemmer, Commissioner
Department of State Lands

Certified to the Secretary of State this 19th day of December, 1983.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of Proposed	)	NOTICE OF PUBLIC HEARING ON
Adoption of new rules for	)	PROPOSED ADOPTION OF NEW
electric and gas line	)	RULES FOR ELECTRIC AND GAS
extensions.	)	LINE EXTENSIONS

TO: All Interested Persons

1. On January 20, 1984, in the Commission Offices, Highway Building, 2701 Prospect Avenue, Helena, Montana, at 1:30 p.m., a hearing will be held to consider the proposed adoption of rules for electric and gas line extensions that will establish cost responsibility between a utility and a prospective customer for new lines required to serve new customers.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

Rule I. DEFINITIONS

(1) "Prospective customer" shall mean any individual, partnership, association, firm, public or private corporation or governmental agency who wishes to receive natural gas or electric service from a public utility.

(2) "Meter" is utility-owned equipment that measures energy flow and/or demand.

(3) "Free extension allowance" is the portion of a line extension, in terms of footage, provided by the utility with no direct cost assessed the customer.

(4) "Refund" is an amount of money that a utility must repay a line extension customer.

(5) "Electric line extension" is an extension of transmission, primary or secondary voltage beyond previously existing points of service.

(6) "Electric service drop" is secondary voltage overhead or underground wire to a customer's point of service, and includes the necessary transformer and meter.

(7) "Electric service drop" is connected to a customer's meter at the point of service and to either a transmission primary or secondary voltage wire at the other end.

(8) "Gas line extension" is an extension of a gas main beyond previously existing points of service.

(9) "Gas stub" is the service line from a gas main to the prospective customer's point of service and includes the meter.

AUTH: 69-3-103, MCA, IMP: 69-3-602, MCA

Rule II. GRANDFATHERED AGREEMENTS (1) These rules shall not affect line extension agreements signed prior to December 31, 1983.

AUTH: 69-3-103, MCA, IMP: 69-3-602, MCA

Rule III. GENERAL LINE EXTENSION POLICY (1) Any prospective customer requiring an electric or gas line extension shall be informed in writing by the individual utility of his/her option to obtain bids from and have a private contractor construct the line extension in excess of the free extension

allowance. It is the utility's responsibility to construct the free extension allowance; the free extension allowance must apply to the first section of the line extension.

(2) The jurisdictional utility shall provide the prospective customer a definitive list, in writing, of all estimated labor, capital, materials and other costs for the line extension in excess of the free extension allowance.

(3) A prospective customer shall be responsible for providing all necessary easements, routes and rights-of-way to complete a line extension.

(4) The accounting treatment for customer contributed capital shall be in accordance with the Uniform System of Accounts No. 252, "Customer Advances for Construction."

(5) A free extension allowance shall be allowed for each individual meter; an apartment complex with four units or a trailer park with four trailers, for example, shall receive a free extension allowance equal to four times the allowance for a single metered customer.

(6) Refund(s) to an initial line extension customer shall be made for each subsequent line extension or service drop (service drop if electric and stub if gas) that attaches to the initial customer's line extension. Each refund shall equal the dollar amount of the initial customer's free extension allowance. An initial customer shall not receive refunds in excess of the total costs incurred for his/her line extension.

AUTH: 69-3-103, MCA, IMP: 69-3-602, MCA

Rule IV. GAS LINE EXTENSION POLICY (1) If a gas line (main) extension is required to provide service to a prospective customer, the new customer shall receive a free extension allowance equal to 300 feet of 3 inch diameter main.

(2) If a gas line extension in excess of 300 feet is required and provided by the utility, the prospective customer requiring such extension, must reimburse the utility upon completion of construction, an amount equal to the differential between the total cost of the line extension and the cost related to the free extension allowance.

(3) In addition to the costs identified in Rule IV(2) above, the prospective customer requiring a main extension in excess of three inches in diameter shall be required to advance the differential in the cost of the larger main and the three inch main for the full length of the extension.

AUTH: 69-3-103, MCA, IMP: 69-3-602, MCA

Rule V. ELECTRIC LINE EXTENSION POLICY (1) If a line extension is required to provide service to a prospective customer, the prospective customer shall receive a free extension allowance equal to 150 feet of primary voltage (110 volt) wire.

(2) If an electric line extension in excess of 150 is required and is provided by the utility, the prospective customer must reimburse the utility upon completion of construction, an amount equal to the differential between the total cost of the line extension and the cost related to the free extension allowance.

(3) A customer requiring an underground electric line extension shall be totally responsible for the additional costs of this type of extension in excess of an overhead line extension.

AUTH: 69-3-103, MCA, IMP: 69-3-602, MCA

4. The Commission is proposing these rules to assure that all electric and gas utilities have uniform policies regarding line extension costs. The Commission also seeks by these rules to balance a utility's obligation to serve with a limitation of existing customers' contribution to new service outside the area where the utility has plant in place.

5. Interested parties may submit their data, views or arguments concerning the proposed rules at the hearing, or in writing to Eileen E. Shore, 2701 Prospect Avenue, Helena, Montana 59620, no later than January 26, 1984.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.


THOMAS J. SCHNEIDER, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 19, 1983.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL)	NOTICE OF PUBLIC HEARING on
of Rule 42.12.321 and)	the Repeal of Rules 42.12.321
42.12.322 relating to special)	and 42.12.322 relating to
permits.)	special permits.

TO: All Interested Persons:

1. On January 20, 1984, at 10:00 a.m., a public hearing will be held in the Third Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the proposed repeal of rules 42.12.321 and 42.12.322 relating to special permits.

2. The Department published notice of the proposed repeal of these rules at page 1657 of 1983 Montana Administrative Register, issue number 21.

3. The hearing is being held at the request of the Montana Tavern Association. The Montana Tavern Association has more than 25 members who will be directly affected by the proposed repeal.

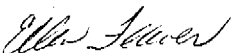
4. Interested parties may present their data, views, or arguments either orally or in writing, at the hearing. Written data may also be submitted to:

Ann Kenny
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

no later than January 26, 1984.

5. Roy Andes, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to repeal the rules is based on § 16-1-303, MCA, and the rules implement § 16-4-301, MCA.


ELLEN PEAVER, Director
Department of Revenue

Certified to Secretary of State 12/19/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-)	NOTICE OF PUBLIC HEARING on
MENT of Rule 42.12.129)	the PROPOSED AMENDMENT of
relating to the determination))	Rule 42.12.129 relating to
of proximity to a place of)	the determination of
worship or school.)	proximity to a place of
	worship or school.

TO: All Interested Persons:

1. On January 20, 1984, at 10:00 a.m., a public hearing will be held in the Third Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the amendment of rule 42.12.129 relating to the determination of proximity to a place of worship or school.

2. The rule as proposed to be amended was published at pages 1653 and 1654 of the 1983 Montana Administrative Register, issue number 21.

3. The hearing is being held at the request of the Montana Tavern Association. The Montana Tavern Association has more than 25 members who will be directly affected by the proposed repeal.

4. Interested parties may present their data, views, or arguments either orally or in writing, at the hearing. Written data may also be submitted to:

Ann Kenny
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

no later than January 26, 1984.

5. Roy Andes, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to repeal the rule is based on § 16-1-303, MCA, and the rule implements § 16-3-306, MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 12/19/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PUBLIC HEARING on
MENT of Rule 42.12.203	)	the PROPOSED AMENDMENT of
relating to the interquota	)	Rule 42.12.203 relating to
area transfers of all-	)	interquota transfers of all-
beverages licenses.	)	beverages licenses.

TO: All Interested Persons:

1. On January 20, 1984, at 10:00 a.m., a public hearing will be held in the Third Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the amendment of rule 42.12.203 relating to interquota area transfers of all-beverages licenses.

2. The rule as proposed to be amended was published at pages 1650 through 1652 of the 1983 Montana Administrative Register, issue number 21.

3. The hearing is being held at the request of the Montana Tavern Association. The Montana Tavern Association has more than 25 members who will be directly affected by the proposed repeal.

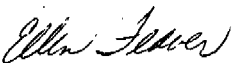
4. Interested parties may present their data, views, or arguments either orally or in writing, at the hearing. Written data may also be submitted to:

Ann Kenny
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

no later than January 26, 1984.

5. Roy Andes, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to repeal the rules is based on § 16-1-303, MCA, and the rule implements § 16-4-201, 16-4-204, and 16-4-502, MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 12/19/83

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amend-) NOTICE OF PUBLIC HEARING ON
ment of Rule 46.12.3803) THE PROPOSED AMENDMENT OF
pertaining to medical serv-) RULE 46.12.3803 PERTAINING
ices; medically needy income) TO MEDICAL SERVICES
standards)

TC: All Interested Persons

1. On January 18, 1984 at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.3803 pertaining to medical services; medically needy income standards.

2. The rule as proposed to be amended provides as follows:

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

(1) Notwithstanding the provisions found in subchapter 2, the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

<u>Family Size</u>	<u>Monthly Income Level</u>	<u>Quarterly Income Level</u>
1	\$305.00 \$314.00	6--915.00 \$ 942.00
2	375.00	1,125.00
3	400.00	1,200.00
4	425.00	1,275.00
5	501.00	1,503.00
6	564.00	1,692.00
7	624.00	1,872.00
8	685.00	2,055.00
9	744.00	2,232.00
10	804.00	2,412.00
11	864.00	2,592.00
12	923.00	2,796.00
13	983.00	2,949.00
14	1,042.00	3,126.00
15	1,102.00	3,306.00
16	1,162.00	3,486.00

(a) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in

establishing those amounts of net income protected for maintenance.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

3. This change in the Medically Needy Income Level for a one person household is being proposed because it is required by federal regulation: 42 CFR 435.812. That regulation requires the Medically Needy Income Level to be based on the Supplemental Security Income benefit amount. The Social Security Administration is required to change the Supplemental Security Income benefit amount every year when there is a cost of living adjustment. Due to the federal raise in the Supplemental Security Income benefit amount, the Medically Needy Income Level must be adjusted.

4. Interested parties 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 Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 26, 1983.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 19, 1983.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF THE
of rules implementing the	)	ADOPTION OF RULES 2.5.201
"Montana Procurement Act,"	)	THROUGH 2.5.702
Title 18, chapter 4, MCA,	)	AND THE REPEAL OF
and the repeal of rules	)	RULES 2.5.101
2.5.101 through 2.5.117 ARM,	)	THROUGH 2.5.117
regulating the state's)	
purchasing activity)	

TO: All Interested Persons.

1. On November 10, 1983, the Department of Administration published notice of a public hearing on the proposed adoption of new purchasing rules and the proposed repeal of existing purchasing rules, at page 1564 of the 1983 Montana Administrative Register, issue number 21. A public hearing was held at 9:00 a.m. on December 6, 1983.

2. The agency has repealed rules 2.5.101 through 2.5.117, found on pages 2-137 through 2-148 of the Administrative Rules of Montana. The agency has adopted the new rules with minor editorial changes but substantially as proposed, with the following more substantive changes:

2.5.202 (RULE II) DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES (1) - (7) same as proposed rule.

(8) Surplus property. The department will dispose of or supervise the disposal of all surplus supplies belonging to the state as provided in Rules XXI and XXII.

2.5.303 (RULE V) ENFORCING THE CONTRACT (1) - (2) same as proposed rule with minor editorial changes, with the following added to the end of subsection (2):

The department will investigate complaints and determine whether to apply the sanctions of Rule VII. The department will notify the complaining using agency of any action taken as a result of the complaint.

2.5.404 (RULE IX) BID PREPARATION (1) - (5) same as proposed rule.

(6) completion of delivery of all the items listed on the Purchase Order is a satisfactory condition, whichever is later.

(7) - (9) same as proposed rule.

2.5.502 (RULE XI) BID AND PERFORMANCE SECURITY. (1) Bid Security. ~~Factors to consider in determining whether to require~~ Reasons for requiring bid security for supply contracts or service contracts include: (a) - (c) same as proposed rule.

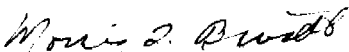
(2) - (4) same as proposed rule.

2.5.711 (RULE XXII) AUTHORITY TO DISPOSE OF SUPPLIES (1) No Agency department or legislative or judicial entity may transfer, sell, trade-in, or otherwise dispose of supplies owned by the state without written authorization of the Department. A department or legislative or judicial entity may transfer surplus supplies between the various units of that department or legislative or judicial entity.

(2) Agencies A department or legislative or judicial entity shall notify the Department of all surplus supplies on such forms and at such times as the Department may prescribe. In so doing, ~~an Agency~~ the entity may suggest a dollar value per item or per lot that it desires to receive from any transfer or disposition of the surplus supplies, but the suggestion does not constitute the minimum sale or transfer amount. The figures are not public information prior to transfer or sale.

3. No adverse comment or testimony was received by the department.

4. The authority for the new rules is Sections 18-4-221, 18-4-225, 18-4-226, and 18-4-232, MCA.



Morris L. Brusett, Director
Department of Administration

Certified to the secretary of state December 19, 1983.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF AMENDMENT OF
amendment of ARM 4.12.3402,)	RULE 4.12.3402, SEED
SEED LABORATORY INSPECTION -)	LABORATORY - REPORTS -
REPORTS - ENFORCEMENT)	ENFORCEMENT

TO: All Interested Persons:

1. On October 31, 1983, the Plant Industry Division of the Montana Department of Agriculture, published a notice of public hearing with respect to the adoption of amendment of Rule 4.12.3402. On November 17, 1983, at 1:00 p.m., in Room 220 of the Agriculture/Livestock Building, Sixth & Roberts, Helena, Montana 59620, a public hearing was held to consider the amendment.

2. At the public hearing, Donald L. Becker, a member of the Montana Seed Trade Association, Fairfield, Montana, verbally questioned the proposed cost for the barley virus test. At a later date, written comments to the same effect were received from John L. Sheldon, DBA J. L. Sheldon Seed Company, Kalispell, Montana, and Don Becker, Treasure State Seed, Inc., Fairfield, Montana. Based on documentation from the Montana State University Department of Plant & Soil Science, the cost analysis statement reflects that the charge is in fact commensurate with actual costs to administer the barley stripe mosaic virus test.

3. The Department has amended the rule exactly as proposed.

4. The authority of the Department to make the proposed amendment is based on Section 80-5-112 MCA and the amendment implements Section 80-5-108 and 80-5-110 MCA.



Keith Kelly, Director
Department of Agriculture

Certified to the Secretary of State on December 19, 1983.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the adoption) NOTICE OF ADOPTION OF RULES
of rules regarding polygraph) REGARDING LICENSURE OF
examiners licensure.) POLYGRAPH EXAMINERS, 8.47.
) 401 - 8.47.404

TO: All Interested Persons:

1. On November 10, 1983, the Department of Commerce published a notice of adoptions of the above-stated rules at pages 1589 through 1591, 1983 Montana Administrative Register, issue number 21.

2. The board has adopted the rules with the following changes: (new matter underlined, deleted matter interlined)
Proposed rule I. Licensure Requirements is not being adopted as the requirements are set out in statute.

Rule II. is being adopted as 8.47.401 and will read as follows:

(new matter underlined, deleted matter interlined)

"8.47.401 APPLICATION (1) ...

(2) Applications must be accompanied by copies of licensure from other states or agencies, fingerprint cards, proof of course completion, school records, diplomas, three statements of good moral character, a picture of the applicant. Additional information or documents may be required for any application which appears to be lacking in substantiating evidence.

(3)..."

Rule III. is being adopted as 8.47.402 and will read as follows: (new matter underlined, deleted matter interlined)

"8.47.402 EXAMINATION (1) Applicants must submit a minimum of 25 specific case polygraph exams to be reviewed and approved by a licensed polygraph examiner approved by the board, prior to application for written examination:

(2) (1) ..."

Rule IV. Fees is being adopted as 8.47.403 Fees; Rule V. is being adopted as 8.47.404 License Renewal - Date - Continuing Education

Rule VI. is being adopted as 8.47.405 and will read as follows: (new matter underlined, deleted matter interlined)

"8.47.405 FORM OF LICENSE AND DISPLAY (1) ...

(2) Pocket cards shall be printed on a 3 1/2" x 2 1/4" card and shall include the following:

(a) ...

{f} shall be signed by the licensee upon receipt of the pocket card."

The changes made are due to a letter from David Niss, attorney for the Administrative Code Committee, dated November 22, 1983 in which he questioned the authority of the department to include the deleted items.

The department is also at this time adding additional reasons for the adoption to those which were included in the original notice. The rules for applications, 8.47.401, informs the applicant where to acquire forms for licensure and where to submit the fees. It also prescribes the documents required to accompany the application that the department feels are necessary to verify the qualifications of the applicants.

Rule 8.47.402, examination, sets a minimum passing score for the examination and sets out examination procedures. The rule also provides for re-examination, and provides for a permanent record of applicants scores on the examination and establishes a retention schedule of examination papers.

The fee under section 8.47.403 sets the fees commensurate with program area costs.

The requirements of 8.47.404, sets a renewal date for the first 100 licensees. Since there are approximately 30 polygraph examiners in the state, the first 100 licensees will have the same renewal date of March 1st. It is not anticipated that there will be more than 100 licensees for several years, thus it is not efficient or cost effective to have licenses expire at various times during the year for such a small number. It takes less than half a day to process 30 licenses. The adopted continuing education required for renewal is a minimum to insure licensees maintain professional competency with up-to-date methods, new detection equipment and changes in law enforcement regulations.

Rule 8.47.405 is adopted to provide the requirements of the license and pocket card.

3. No other comments or testimony were received.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of 8.56.407 concerning renewals)	8.56.407 RENEWALS
for the board of radiologic)	
technologists)	

TO: All Interested Persons:

1. On November 10, 1983, the Department of Commerce published a notice of public hearing regarding the proposed amendment of 8.56.407 at page 1588, 1983 Montana Administrative Register, issue number 21.

The hearing was held at the same time as the hearing on amendment of rule 8.56.409 concerning the fee schedule. Although there were 5 persons in attendance at the hearing, 45 letters submitted at the hearing, 10 mailed in prior to the hearing, and 23 submitted after the deadline for comments had passed, none of the letters or comments related to the change in renewal date.

2. The department has amended the rule exactly as proposed.

3. No comments or testimony were received.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the amendments)	NOTICE OF AMENDMENTS OF 8.56.
of 8.56.402 concerning applica-)	402 APPLICATIONS and 8.56.409
tions and 8.56.409 concerning)	FEE SCHEDULE
the fee schedule)	

TO: All Interested Persons:

1. On September 29 and November 10, 1983, the Board of Radiologic Technologists published notices of amendments of the above-stated rules at pages 1284-1285, 1983 Montana Administrative Register, issue number 18 and pages 1592-1593, 1983 Montana Administrative Register, issue number 21.

The second notice contained a notice of hearing, which was duly held on December 5, 1983 in the Downstairs Conference Room of the Department of Commerce, 1430 9th Avenue, Helena, Montana. In addition to staff and board member Adrian Howe, there were 5 persons in attendance. All five persons spoke in opposition to the fee increase for which the hearing was held. There were 10 letters submitted prior to the hearing, 45 submitted at the hearing, and 23 submitted after the deadline for comments.

The letters of comment dealt with three items, request for a detailed budget statement and expenses for the previous two years and proposed budgets for the next two years; the

second comment was that the licensees who submitted letters felt the public should pay through the tax structure for protection from unnecessary radiation; and that the law should be enforced to the fullest, but through taxes rather than fees.

It was explained to those persons attending the hearing and the individuals who attended a board meeting on December 13, 1983, that the board was supported by license and examination fees, that to change to support by general revenue funding could only be accomplished through legislative change. The expense reports were available at the board meeting on December 13, 1983.

After much discussion the board determined that the fees set were those that were necessary to cover the administrative costs. However, the biennial renewal fee for the radiologic technologist of \$60.00 for two years would be prorated as current licenses expire December 31, 1984, and the Department of Commerce is changing the renewal December 19, 1983 to February 1, 1984, due to lack of funding in the earmarked revenue account as well as to avoid a large influx of license renewals at a peak period.

2. The board has amended the rules exactly as proposed.

3. No comments or testimony were received.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF COUNTY PRINTING

In the matter of the amendments)	NOTICE OF AMENDMENTS OF RULES
of rules 8.91.303 and 8.91.304)	8.91.303 OFFICIAL PUBLICA-
increasing fees and amending)	TIONS AND LEGAL ADVERTISING
the schedule of prices.)	AND 8.91.304 SCHEDULE OF
)	PRICES

TO: All Interested Persons:

1. On July 14, 1983, the Board of County Printing published a notice of public hearing on the amendments of the above-stated rules at pages 795 through 796, 1983 Montana Administrative Register, issue number 13.

The hearing was held at the Sheraton Hotel, 400 10th Avenue South, Great Falls, Montana on August 5, 1983. There were 18 persons in attendance. Six proponents testified in general that they did not think that the newspapers should subsidize county printing costs and that the costs were outdated.

Seven opponents testified that they felt the increase was a large one, that the increases came at a bad time for their budgets and they were concerned about increased costs for already financially strapped local companies.

Ten letters were received, three in opposition similar in nature to that presented at the hearing.

2. The board is amending 8.91.303 as proposed. Based on the comments at the hearing, the board is amending 8.91.304 as follows: (new matter underlined, deleted matter interlined)

8.91.304 SCHEDULE OF PRICES (1) The board is adopting for its schedule of prices, the price schedule in the Franklin Printing Catalog, less 10% of those prices printed on March 1, 1984.

(1) (2) Due to the length of the price schedule in the Franklin Printing Catalog and the fact that it affects only a limited number of Montana citizens, the board consents to the omission of the publication of the schedule in the Administrative Rules of Montana.

(3) A copy of the price schedule may be obtained is available for review through the ,free of charge by contacting the Centralized Services Division, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620.

2. The adoption of the price schedule, less 10% is a result of the concerns of individuals attending the hearing and the letters of opposition.

The deletion of the ability to obtain a copy of the Catalog free of charge, is made because the catalog is a copyrighted document and cannot be copied. The board has amended the rules as shown above.

3. No additional comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, December 19, 1983.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF THE ADOPTION
of Rules 10.59.101, 10.59.102,)	OF RULES 10.59.101, 10.59.102,
10.59.103 and 10.59.104)	10.59.103, and 10.59.104
SCHOOL FOR THE DEAF AND BLIND)	SCHOOL FOR THE DEAF AND BLIND
FOUNDATION)	FOUNDATION


TO: All Interested Persons

1. On October 27, 1983 the Board of Public Education published notice of the proposed adoption of Rules 10.59.101, 10.59.102, 10.59.103, and 10.59.104 relating to the School for the Deaf and Blind Foundation, at page 1517 of the Montana Administrative Register, issue number 20.

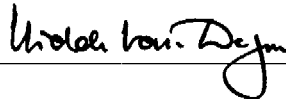
2. The agency will adopt the rules on December 30, 1983.

3. The rationale as published in the notice is supplemented with the following: "During the 1983 legislative session the legislature amended Section 20-8-111, MCA, and specified that all real and personal property made over for the use and benefit of the School for the Deaf and Blind shall be vested in the Board or its designee as trustee for the state of Montana. The Board is proposing this rule to implement 20-8-111 as amended by the legislature."

4. No other comments or testimony were received.



HARRIETT C. MELOY, CHAIRMAN
BOARD OF PUBLIC EDUCATION



Certified to the Secretary of State December 19, 1983 .

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF THE) NOTICE OF THE AMENDMENT
AMENDMENT OF RULE 12.7.101) OF RULE 12.7.101.
relating to commercial)
fishing permits.)

TO: All Interested Persons.

1. On October 13, 1983, the Fish and Game Commission published notice of a proposed amendment to Rule 12.7.101, concerning commercial fishing permits, at page 1420 of the 1983 Montana Administrative Register, issue number 19.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

4. The authorities for the rule are 87-1-201 and 87-1-301, MCA, and the rule implements 87-3-204 and 87-4-601, MCA.

By:



SPENCER S. HEGSTAD, Chairman
Montana Fish and Game Commission

Certified to the Secretary of State: December 6, 1983

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL)	NOTICE OF REPEAL OF Rule
of Rule 42.11.111 relating to)	42.11.111 relating to state
state liquor identification)	liquor identification stamps.
stamps.)	

TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed repeal of rule 42.11.111 relating to state liquor identification stamps at page 1649 of the 1983 Montana Administrative Register, issue number 21.
2. The Department has repealed the rule as proposed.
3. No comments or testimony were received.

IN THE MATTER OF THE ADOPTION)	NOTICE OF ADOPTION of Rule I
of Rule I (42.12.130))	(42.12.130) relating to the
relating to the determination)	determination of license
of license quota areas.)	quota areas.

TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed adoption of rule I (42.12.130) relating to the determination of license quota areas at pages 1655 and 1656 of the 1983 Montana Administrative Register, issue number 21.
2. The Department has adopted rule I (42.12.130) as proposed.
3. No comments or testimony were received.
4. The authority for the rule is § 16-1-303, MCA, and the rule implements §§ 16-4-105, 16-4-201, 16-4-409, and 16-4-501, MCA.

IN THE MATTER OF THE REPEAL)	NOTICE OF REPEAL of Rule
of Rule 42.13.302 relating to)	42.13.302 relating to brewer
brewer storage depots.)	storage depots.

TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed repeal of rule 42.13.302 relating to brewer storage depots at pages 1648 of the 1983 Montana Administrative Register, issue number 21.
2. The Department has repealed the rule as proposed.
3. No comments or testimony were received.

IN THE MATTER OF THE ADOPTION)
of Rules I, II, and III)
(42.27.108, 42.27.109,)
42.27.110) relating to whole-)
sale distributors, their)
obligations and to provide)
for the collection of an)
annual license fee.)

NOTICE OF ADOPTION of Rules 1,
II, and III (42.27.108,
42.27.109, 42.27.110) relating
to wholesale distributors,
their obligations, and to
provide for the collection of
an annual license fee.


TO: All Interested Persons:

1. On October 27, 1983, the Department of Revenue published notice of the proposed adoption of rules I, II, and III (42.27.108, 42.27.109, 42.27.110) relating to wholesale distributors, their obligations, and to provide for the collection of an annual license fee at pages 1521 and 1522 of the 1983 Montana Administrative Register, issue number 20.

2. The Department has adopted rules I, II, and III (42.27.108, 42.27.109, 42.27.110) as proposed.

3. No comments or testimony were received.

4. The authority for the rules is § 15-70-104, MCA, and the rules implement § 15-70-201, MCA.


ELLEN PEAVER,
Director of Revenue

Certified to Secretary of State 12/19/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF AMENDMENT of Rules
MENT of Rules 42.22.101 and	)	42.22.101 and 42.22.105 and
42.22.105 and the ADOPTION of	)	the ADOPTION of Rule I
Rule J (42.22.107) relating	)	(42.22.107) relating to the
to the assessment and taxa-	)	assessment and taxation of
tion of centrally assessed	)	centrally assessed property.
property.)	

TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed amendment of rules 42.22.101 and 42.22.105 and the adoption of rule I (42.22.107) relating to the assessment and taxation of centrally assessed property at pages 1658 and 1659 of the 1983 Montana Administrative Register, issue number 21. A public hearing was held on December 5, 1983.

2. The Department has amended rules 42.22.101 and 42.22.105 as proposed. The Department has adopted rule I (42.27.107) as proposed.

3. The Department of Revenue has received written comments regarding the proposed administrative rules from four utility companies. Each of these comments will be addressed specifically.

Puget Power and Light Company argues that there is no effective way of measuring how much power a particular company is transmitting through a line and hence, the beneficial use tax cannot be accurately computed. Contracts between the Bonneville Power Administration and the users reflect the rates and the voltage drop losses applicable to the line. In addition, the charges and the power loss calculations are reflected in the contracts. Therefore, there is adequate data available to measure use by each company.

Puget also suggests that the definition of beneficial use in 42.22.101(4), as proposed, is too narrow in that only taxable electrical energy producers are referred to for purposes of assessment. At this juncture, the Department is advised that only five electrical energy producing companies will be using the line pursuant to contract with the BPA. Accordingly, the rule fits the present users and in the event that other users should appear, the Department will develop a proper administrative rule to ensure that they are assessed.

It also suggests that the Department may not require the users to report the original cost and the accrued depreciation of the tax exempt property and the contractual relationships with the BPA. The relevant statute affords explicit authority for the Department to request that information. § 15-24-1207, MCA. Moreover, the contracts with the BPA reveal information which is essential to the assessment process and the Department must have them.

Finally, Puget suggests that users are not adequately apprised of the manner in which the property will be assessed. Section 4, the codification instruction, clearly reflects that the new law is to be codified as an integral portion of Title 15, Chapter 24, Part 1 of the Montana Code Annotated. By virtue of 15-23-111, MCA, the user is advised that the taxation of the beneficial use of tax-exempt property shall be administered pursuant to that chapter and specifically, 15-23-101, MCA. Therefore, the administrative rules which the Department has promulgated with respect to centrally assessed companies apply to the assessment of the beneficial use of tax-exempt property. 42.22.101, ARM, et seq.

Pacific Power and Light Company argues that the manner in which the Department intends to compute and allocate the value of the beneficial use of tax exempt property has not been enumerated. This concern has been addressed in the foregoing discussion of Puget's comments. Pacific is furthermore concerned about the narrow definition of beneficial use insofar as electrical energy producers are involved. This concern was addressed in the foregoing discussion of Puget's comments. Finally, Pacific objects to the proposed requirement to report cost and depreciation of the tax-exempt property. That objection is addressed in the discussion of Puget's comments hereinabove.

Portland General Electric Company objected to the reporting requirements of (1)(b) and (1)(c) of Rule I, contending that the company does not have that information in its records. Objection to the reporting requirements of (1)(b) and (1)(c) is not well founded because the Department has the clear statutory authority to solicit that information. § 15-24-1207, MCA. Finally, Portland suggests that (1)(g) of Rule I as proposed is ambiguous. That portion of the Rule merely affords the Department authority to seek other relevant matter, in the event that it would be necessary in order to complete the assessment. Accordingly, the Department will retain it in the Rule as proposed.

The Montana Power Company was likewise concerned about the narrow definition of beneficial use within the context of 42.22.101(4). That concern was addressed in the discussion of the Puget's comments hereinabove. Moreover, Montana Power suggests that it is unable to evaluate the relevance of the information which the users are required to report. A reading of the law, as codified, makes it abundantly clear that the information will be used to formulate the assessment of the tax-exempt property. See 15-23-101, 15-23-111, 15-24-1207, MCA (1983). In addition, the pertinent rules, which have been previously adopted by the Department, put affected users on notice as to the manner in which the assessment will be made.

All of the companies, except Portland General Electric, argue that the law should not be effective until 1985. That is, use during 1983 may not be the basis for formulating an assessment. However, the legislative history of the new law makes it abundantly clear that the Legislature intended that use during

1983 be the basis for the first assessment. Accordingly, the Department must implement the law as intended with use during 1983 as the basis for the 1984 assessment.

4. The authority of the Department to amend the present rules and to adopt the new rules is found in 15-1-201, 15-23-108 and 15-24-1207, MCA. The amended rule implements 15-23-101, 15-24-1203, and 15-24-1207, MCA. The new rule implements 15-24-1203 and 15-24-1207, MCA.



ELLEN PEAVER, Director
Department of Revenue

Certified to the Secretary of State 12/19/83

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the emer-) NOTICE OF EMERGENCY AMEND-
gency amendment of Rule) MENT OF RULE 46.12.3803
46.12.3803 pertaining to) PERTAINING TO MEDICAL SERV-
medical services; medically) ICES
needy income standards)

TO: All Interested Persons

1. Statement of reasons for emergency:

The Medically Needy Income Level is required to be based on the Supplemental Security Income benefit amount: 42 CFR 435.812. Recipients of Supplemental Security Income will receive a cost of living adjustment on January 1, 1984.

This change will increase the amount of income lawfully available for recipients to be eligible for Medical Assistance. Any delay in allowing this increase of income for eligibility purposes would disqualify otherwise lawfully eligible individuals from the program, thereby precluding them from obtaining medically necessary care.

2. Rule 46.12.3803 is amended effective January 1, 1984 as follows:

46.12.3803 MEDICALLY NEEDED INCOME STANDARDS

(1) Notwithstanding the provisions found in subchapter 2, the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.

MEDICALLY NEEDED INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

<u>Family Size</u>	<u>Monthly Income Level</u>	<u>Quarterly Income Level</u>
1	\$305.00	\$--915.00
	\$314.00	\$ 942.00
2	375.00	1,125.00
3	400.00	1,200.00
4	425.00	1,275.00
5	501.00	1,503.00
6	564.00	1,692.00
7	624.00	1,872.00
8	685.00	2,055.00
9	744.00	2,232.00
10	804.00	2,412.00
11	864.00	2,592.00


-1934-

12	923.00	2,796.00
13	983.00	2,949.00
14	1,042.00	3,126.00
15	1,102.00	3,306.00
16	1,162.00	3,486.00

(a) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in establishing those amounts of net income protected for maintenance.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____, December 19_____, 1983.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has 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. In addition, the Committee 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 or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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 statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|--|
| Known
Subject
Matter | 1. Consult ARM topical index, volume 16.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1983. This table includes those rules adopted during the period October 1, 1983 through December 31, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1983, 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 1983 Montana Administrative Registers.

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I-XXII Purchasing Rules, p. 1564
I-XXXI Procedures of the Office of the Workers'
Compensation Court, p. 1394, 1715
2.21.123 and other rules - Sick Leave, p. 1129, 1455

AGRICULTURE, Department of, Title 4

I-IV Grading of Certified Seed Potatoes, p. 679
I-XXI Montana Agricultural Loan Authority Rules, p. 1683
4.12.3402 Seed Laboratory Reports - Enforcement, p. 1489

STATE AUDITOR, Title 6

I Defining General Business Practices or General
Course of Business Practice, p. 1219, 1533
I-IV Registration Exemption for Regulation D Securities
Offerings and Creating Examination, Reporting and
Record Keeping Requirements for Investment
Advisors, 1582
I-V Identical Nonforfeiture Values Under an Employer
Sponsored Retirement Benefit Program, p. 1492
I-V Emergency Rules - Identical Nonforfeiture Values
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Program, p. 1527
XVI Public Adjusters, p. 1495, 1813
I-XV Public Adjusters, p. 1221, 1530

COMMERCE, Department of, Title 8

- (Board of Cosmetologists)
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8.14.1002 Applications for Electrolysis, p. 1766
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I-XIX Standards for Dentists Administering Anesthesia, p. 1768
8.16.602 Allowable Functions for Dental Auxiliaries, p. 1693
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8.20.401 Traineeship Requirements and Standards, p. 1132, 1457
(Board of Horse Racing)
8.22.303 and other rules - Filming of Pari-mutuel Events and Financial Obligations of Pari-Mutuel Licensees - Fines Levied by Jockeys - Unclaimed Tickets, p. 1775
8.22.325 Hearing Examiner, p. 1457
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8.24.405 and other rules - Examinations - Fee Schedules, p. 1695
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8.34.414 Examinations, p. 1282, 1663
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8.36.406 General Practice Requirements, p. 1410, 1717
(Physical Therapy Examiners)
8.42.401 and other rules - Applications - Examinations - Fees - Temporary Licenses - Foreign Trained Applicants, p. 1134, 1664
(Renewals)
I Renewal Date for All Barber Licenses, p. 1764
8.44.405 and other rules - License Renewal Dates for Plumbers, Professional Engineers and Land Surveyors, Optometrists, p. 1412, 1717
(Polygraph Examiners)
I-VI Licensure, p. 1589
(Private Investigators and Patrolmen)
8.50.416 License Renewal - Fee Schedule, p. 1414, 1718
(Board of Psychologists)
8.52.616 Fee Schedule, p. 1497, 1816(Radiologic Technologists)
8.56.402 and other Rule - Applications - Fee Schedule, p. 1284
8.56.407 Renewals, p. 1588
8.56.409 Fee Schedule, p. 1592
(Board of Veterinarians)
8.64.501 Application Requirements, p. 1286, 1663
(Board of Weights and Measures)
8.77.102 Fees for Testing and Certification, p.1698
(Milk Control Division)

- 8.79.101 and other rule -Transactions Involving the Purchase and Resale of Milk Within the State, p. 689, 1140, 1817
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8.86.301 Pricing Rules, p. 1142, 1459
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