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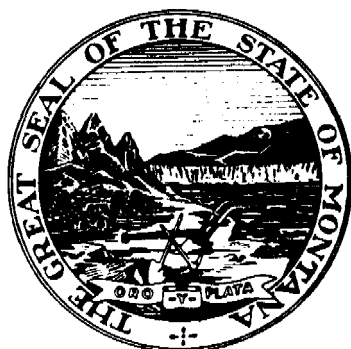
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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1990 ISSUE NO. 14
JULY 26, 1990
PAGES 1417-1499



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OF MONTANA MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON THE
adoption of a rule relating to	)	PROPOSED ADOPTION OF A RULE
Reduction in Work Force and on the	)	RELATING TO REDUCTION IN WORK
amendment of ARM 2.21.3712,	)	FORCE AND ON THE AMENDMENT
relating to Recruitment and	)	OF ARM 2.21.3712, RELATING TO
Selection.	)	RECRUITMENT AND SELECTION.

TO: All Interested Persons.

1. On August 16, 1990, at 12:15 p.m., in Room 136, Mitchell Building, Helena, Montana, 59620, a public hearing will be held to consider the proposed adoption of a rule relating to Reduction in Work Force and the amendment of ARM 2.21.3712, relating to Recruitment and Selection.

2. The proposed rule changes provide as follows:

Rule 1 VETERAN'S PREFERENCE IN RETENTION (1) During a reduction in work force, an agency must retain in employment a veteran, disabled veteran, or an eligible relative, as provided in 39-29-111, MCA, and under conditions established in ARM 2.21.3623.

(Auth. 2-18-102, MCA and 39-29-112, MCA; Imp. 39-29-111, MCA.)

2.21.3712 INTERNAL RECRUITMENT (1) An agency may use internal recruitment. During internal recruitment, external applications will not be accepted.

~~(2) Temporary employees may be excluded from the internal applicant pool.~~

~~(3) Temporary employees may be included in the internal applicant pool, when:~~

~~(a) the agency has established a policy in compliance with ARM 2.21.1203 allowing temporary employees to apply for internal promotion;~~

~~(b) the recruitment process used to fill the temporary position was conducted in accordance with ARM 2.21.3708 and ARM 2.21.3709 and;~~

~~(c) the temporary appointment was based on merit and job related qualifications.~~

~~(4) When temporary employees are included in the applicant pool, employment preference must be applied in accordance with ARM 2.21.1422(5).~~

(5) (2) Internal vacancy announcements shall be posted according to agency policy. It is recommended that internal vacancy announcements contain information similar to that required in ARM 2.21.3709.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. The enactment of the Veteran's Preference Act, 39-29-101 et seq., MCA, makes it reasonably necessary to adopt a new rule in the Reduction in Work Force policy and to amend a rule in the Recruitment and Selection policy.


The preference act requires agencies to take veteran's preference into consideration when making lay-off decisions. The proposed new rule would be adopted into the Reduction in Work Force (RIF) policy, ARM 2.21.5005 et seq., as a means of making agencies aware that preference now is a factor in a RIF. The proposed rule refers to ARM 2.21.3623 in the Veteran's Preference policy, which details specific requirements for considering preference in a RIF.

The provisions on temporary positions in ARM 2.21.3712, Internal Recruitment, were adopted because the old veteran's preference act found at 39-30-101 et seq., MCA, did not cover appointments to temporary positions. With the enactment of the new preference law, temporary positions are now covered. It is necessary to amend the rule to reflect that change in the statute.

4. Interested parties may submit their data, views, or arguments concerning adoption and amendment in writing to: Laurie Ekanger, Administrator, State Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than August 23, 1990.

5. Jim Edgcomb, Personnel Policy Coordinator, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing. This hearing will be held on August 16, 1990, at 12:15 p.m., in Room 136, Mitchell Building, Helena, Montana 59620.

6. The authority of the agency to adopt the proposed new rule is based on 2-18-102, MCA and 39-29-112, MCA, and the proposed rule implements 39-29-111, MCA. The authority of the agency to amend ARM 2.21.3712 is based on 2-18-102, MCA, and the proposed amendment implements 2-18-102, MCA.


Dave Ashley, Acting Director
Department of Administration

Certified to the Secretary of State July 16, 1990.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

IN THE MATTER OF PROPOSED	)	NOTICE OF PUBLIC HEARING ON
AMENDMENT OF Rules 2.5.118;	)	PROPOSED AMENDMENT, ADOPTION
2.5.201; 2.5.202; 2.5.301 -	)	AND REPEAL OF RULES CONCERN-
2.5.303; 2.5.401 - 2.5.405;	)	ING PROCURING SUPPLIES AND
2.5.501 - 2.5.503; 2.5.601--	)	SERVICES.
2.5.607; 2.5.701, 2.5.702;)	
ADOPTION of Rule I; and)	
REPEAL of 2.5.506 CONCERNING)	
PROCURING SUPPLIES AND)	
SERVICES.)	

TO: All Interested Persons.

1. On August 15, 1990, at 1:00 p.m., in Room 160, Mitchell Building, Helena, Montana, a public hearing will be held to consider the proposed amendment of Rules 2.5.118, 2.5.201, 2.5.202, 2.5.301 through 2.5.303, 2.5.401, 2.5.402, 2.5.404, 2.5.405, 2.5.501 through 2.5.503, 2.5.601 through 2.5.605, 2.5.701, 2.5.702 and adoption of RULE I, concerning procuring supplies and services, and repeal of Rule 2.5.506.

1. The proposed amendments provide as follows:

2.5.118 MONTANA SMALL BUSINESS PURCHASING ACT

- (1) Remains the same.
- (2) Where used in these regulations, the following terms are defined as follows, unless clearly indicated otherwise:
 - (a) "Department" means the department of administration.
 - (b) "State Agency" means and includes every state department, commission, board, institution, or state officer, an agency, bureau, commission, committee, council, department, government corporation, institution, legislative body, or other entity, instrumentality, or official of the executive, legislative or judicial branch of the state, including the board of regents and the Montana university system.
 - (c) - (e) Remain the same.
 - ~~(f) -- "Small-business-bidders-list" means a list of those bidders who are eligible to bid on a small-business set-aside.~~
 - ~~(g)~~ (f) Remains the same but is renumbered.
 - (3) - (5) Remain the same.
 - (6) If the set-aside designation is withdrawn, the bidders shall be notified of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall be reissued under the Small Business Purchasing Act without the designation of small business set-aside.
 - (7) - (10) Remain the same. AUTH: 18-4-221, 18-4-223, 18-5-304, and 18-5-308, MCA; IMP: Title 18, chapter 5, part 3, MCA.

RULE I STUDENT ASSOCIATION PROCUREMENT EXEMPTION
Student associations of the university system are exempt from state laws relating to procurement of supplies and services and disposal or sale of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system. This includes private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations. AUTH: 18-4-221, MCA; IMP: 18-4-132, MCA.

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Agency" means an agency, bureau, commission, committee, council, department, government corporation, institution, legislative body, or other entity, instrumentality, or official of the executive, legislative or judicial branch of the state, including the board of regents and the Montana university system.

(2) "Advantageous" means a judgmental assessment of what is in the state's best interest.

~~(3)~~ (3) Remains the same but is renumbered.

~~(4)~~ (4) "Bidders list" means a list maintained by the department division giving listing the names and addresses of suppliers of various goods and services from whom bids, or proposals, and quotations can be solicited.

~~(5)~~ (5) Remains the same but is renumbered.

~~(6)~~ (6) "Central stores" or "property and supply bureau" means enterprise the proprietary program operated by the department division which develops standard specifications, procures, warehouses and delivers certain common use supplies for using state agencies. The bureau also operates the state and federal surplus programs for eligible donees.

~~(7)~~ (7) Remains the same but is renumbered.

~~(8)~~ (8) "Controlled items" means those supplies and services identified by the department division as commonly used items which, when consolidated for purchasing purposes, result in a volume adequate to obtain discounted prices.

~~(9)~~ (9) Remains the same but is renumbered.

(10) "Department" means the department of administration.

~~(11)~~ (11) Remains the same but is renumbered.

(12) "Division" means the procurement and printing division of the department of administration.

(13) "FOB or f.o.b." means free on board; a term used in conjunction with an identified physical location to determine: (a) the responsibility and basis for payment of freight charges and; (b) the point at which title for the shipment passes from seller to buyer. Deliveries are usually fob destination which means a shipment is to be delivered to the destination designated by the buyers.

- (9) - (11) Remain the same but are renumbered.
- ~~{12}~~(17) "Office supply" means an item included under the office supply commodity class codes maintained by the department division. Specifically these class codes include:
- (a) - (c) Remain the same.
- ~~{13}~~(18) "Publications and graphics division bureau" means that division bureau of the department-of-administration division responsible for supervising and attending to all public printing of the state.
- ~~{14}~~(19) "Purchase order" means a document used to formalize a purchase contract with a vendor.
- ~~{15}~~(20) "Purchasing division bureau" means that division bureau of the department-of-administration division responsible for procuring or supervising the procurement of all supplies and services needed by the state excluding those services procured by the property and supply bureau and publications and graphics bureau.
- ~~{16}~~-"Repair-or-maintenance"-means-these-procedures related-to-the-repair-and-maintenance-of-a-building-as-defined in-the-building-construction-codes.
- ~~{17}~~(21) Remains the same but is renumbered.
- ~~{18}~~(22) "Requisition time schedule" means a schedule issued by the purchasing division bureau each year which designates the dates by which certain categories of controlled items must be requested from the department bureau.
- ~~{19}~~(23) "Resident bidder" means any person, firm, partnership, or corporation whose domicile or offered materials, supplies, or equipment a bidder that meets the requirements of 18-1-103, MCA.
- ~~{20}~~(24) Remains the same but is renumbered.
- ~~{21}~~(25) "Solicitation" means an invitation for bid, a request for proposal, a request for quotation, or any other document issued by the state for the purpose of soliciting bids or proposals to perform enter into a state contract.
- ~~{22}~~(26) Remains the same but is renumbered.
- ~~(27)~~ "Surplus Supplies" are supplies no longer needed by an agency for its use in the discharge of its duties and responsibilities, excluding books.
- ~~{23}~~(28) "Term contract" means a contract in which supplies or services are purchased offered at a predetermined unit price for a specific period of time.
- (24) - (27) remain the same but is renumbered.

AUTH: 18-1-114, 18-4-221, and 18-4-223, MCA; IMP: 18-4-221, MCA.

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

- (1) Remains the same.
- (2) ~~Bidders list~~. The department's procurement and printing division will establish a central-state bidders list, determine eligibility for residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, and 2.5.403.

(3) Purchasing-for-agencies- The department's procurement and printing division {purchasing-division} shall process requisitions for using agencies, for items not delegated, in accordance with ARM 2.5.302.

(4) Controlled-items- The department will identify and purchase for the state-controlled-items. Controlled-items will be purchased by:

----(a)---term contract, NOTE--controlled-items-in-commodity class-codes-6107-6157-and-620-need-not-be-secured-through term-contracts-when-all-of-the-following-conditions-are-met and-documented-by-the-procuring-agency.

----(i)---The item(s)-must-be-secured-from-a-Montana supplier.

----(ii)---The suppliers-price-is:

----(A)---Available-to-the-public-and-is-publicly-advertised or-listed-in-an-established-catalog.

----(B)---On-file-in-the-offices-of-the-property-and-supply bureau-prior-to-mailing-of-the-invitation-for-bid-for-the items-in-the-referenced-commodity-codes.

----(C)---Less-than-the-price-for-which-the-items-is-available from-the-property-and-supply-bureau.

----(D)---Meets-or-exceeds-the-specifications, terms, and delivery-requirements-of-the-item(s)-through-the-property-and supply-bureau.

Except as indicated in ARM 2.5.301 the department's procurement and printing division will identify and purchase all controlled items {b}requisition-time-schedules, {and {c}central-stores. NOTE--Controlled-items-in-commodity-class codes-6107-6157-and-620-need-not-be-secured-through-central stores-when-all-of-the-following-conditions-are-met-and documented-by-the-procuring-agency.

{5}--Printing--The department-{publications-and-graphics} is-responsible-for-all-printing.

{6}{5} Approvals. The department is responsible for coordinating-certain-functions-within-state-government--Part of-the-coordination-process-is the review and approval of certain the following equipment or service procurements. Approval-prior-to-purchase-is-required-for-the-following supplies-or-services regardless of delegated authority:

(a) duplicating, printing, bindery, and graphic arts and photocopy equipment--approval by publications and graphics division bureau is required.

(b) remains the same.

(c) remains the same.

{7}{6} Delegation of authority.

(a) Except for controlled items, authority is hereby delegated to all agencies for the procurement of supplies and services under \$2,000.

(b) The department's procurement and printing division may delegate to agencies, authority to purchase supplies and services equal to or greater than \$2,000. The division may also revoke this authority. Factors to be considered in making the decision to delegate include:

~~{a}--The department may delegate authority and may revoke authority it has delegated.--Factors to be considered in making the decision to delegate include:~~

~~(i)-(iv) remain the same.~~

~~{b}--The department may delegate authority to any department of the executive branch, to legislative entities, and judicial entities of this state.--Such delegation shall be written into a delegation agreement and shall specify:~~

~~(c) Delegation equal to or greater than \$2,000 will be given through a written delegation agreement with the purchasing bureau. The written delegation shall specify:~~

~~(i)-(iv) remain the same.~~

~~{c}(d) The department's procurement and printing division will provide training to using agencies on purchasing in accordance with delegated responsibilities.~~

~~{d}(e) The department's procurement and printing division will may perform reviews of using agency purchasing procedures to insure compliance with the delegation agreement, these rules and Title 18, chapter 4, MCA.~~

~~{f}--Surplus property--(7) The department's property and supply bureau will dispose of or supervise the disposal of all surplus supplies belonging to the state as provided in ARM 2.5.701 and 2.5.702. AUTH: 18-4-221 and 18-4-223, MCA; IMP: 18-4-221 and 18-4-222, MCA.~~

2.5.301 DELEGATION OF PURCHASING AUTHORITY ~~{i}--State agencies shall exercise delegated purchasing authority in accordance with the written delegation agreement described in ARM-2.5.202, with the Montana Procurement Act, and with these rules.--Purchases may only be made within the limits of the delegation authority for non-controlled items or as "exigency" purchases according to these rules.--Agencies are hereby delegated authority to purchase up to \$1999.00 for non-controlled items and to make "exigency" purchases according to these rules.~~

(1) Agencies shall exercise authority to purchase non-controlled items under \$2,000. Agencies shall exercise delegated purchasing authority equal to or greater than \$2,000 and for exigency purchases in accordance with written delegation agreements described in ARM 2.5.202, with the Montana Procurement Act and with these rules.

(2) To initiate development of a delegation agreement with the department, a state an agency should submit a written request to the department purchasing bureau.

(3) Unless specifically addressed in a delegation agreement, state agencies must buy controlled items through the requisition-time-schedule, term-contracts, and central stores division except office supply items (as defined in 2.5.201(15)) supplied by central stores or purchased through term contracts. These items may be purchased directly from

vendors if the supplier's price is a publicly advertised listing or established catalog price and is less than the price available from the central stores program or a term contract and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program. Controlled-items-purchased-through-term-contracts and-central-stores-in-commodity-class-codes-6107-6157-and-620 need-not-be-procured-through-the-term-contract-of-central stores-when-all-of-the-following-conditions-are-met-and documented-by-the-procuring-agency:

----- (a) ---The item(s) must be procured from a Montana supplier.

----- (b) ---The suppliers price is:

----- (i) ---Available to the public and is publicly advertised or listed in an established catalog.

----- (ii) ---On file in the offices of the property and supply bureau prior to mailing of the invitation for bid for the items in the referenced commodity codes.

----- (iii) ---Less than the price for which the item is available from the property and supply bureau.

----- (iv) ---Meets or exceeds the specifications, terms, and delivery requirements of the item(s) through the property and supply bureau.

----- (v) ---The term contract has specific language excluding purchases made under conditions ARM-2-5.301(3)(a). State agencies can procure noncontrolled items and controlled items not available from the above sources by the procedures established in these rules. Sole source purchases over the agency delegation shall be forwarded to the department as described in ARM-2-5.604.

(4) Delegation is not necessary for the following purchases: salaries; fees for consulting services described in 18-8-101, MCA, et seq. or those services exempted by 18-8-101, MCA; professional services; travel and per diem; telegrams and other message services; insurance including industrial accident, boiler, safety and scale inspections; retirement and social security payments; freight; landfill charges; licenses; dues to associations; supplies or services whose prices are regulated by the public service commission or other governmental authority; legal ads; public utilities (water, natural gas, electricity); postage and U.S. post office services; subscriptions, publications and text books copyrighted by private publishers; and fresh fruits and vegetables any other commodities exempted by law. AUTH: 18-4-221 and 18-4-223, MCA; IMP: 18-4-221, 18-4-222, and 18-4-302, MCA.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DEPARTMENT DIVISION

(1) All using agencies of state government must complete the department's division's requisitions form when a state purchase order is required from the department division (See 2.5.301). The requisition must be signed by an authorized using agency official. Only quantities of items of a like

nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for coarse paper, computer paper, computer software supported by information systems division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the property and supply bureau; requisitions for printing shall be forwarded to publications and graphics bureau. Completed requisitions for supplies and services (not listed above) shall be forwarded to the purchasing bureau. Completed requisitions for printing shall be forwarded to the publications and graphics division.

(2) Using agencies must obtain written approval as required for equipment described in ARM 2.5.202(6). Written approval must accompany the requisition.

(3) Upon receipt of a requisition, the department division will decide when the procurement will be initiated and the time for response to and schedule the solicitation. The department division will send a copy of the solicitation to the requesting using agency for review prior to bid opening.

(4) The department division may return/cancel a requisition to the requesting using agency without processing, if deemed appropriate by the department, for reasons such as, but not limited to, the following. The requisition:

(a) and (b) remain the same.

(c) is within the using agency's delegated authority;

(d) and (e) remain the same.

(5) Requisitions for supplies and services to be purchased with funds from a given fiscal year must be submitted to the purchasing procurement and printing division by May 1 of that fiscal year. AUTH: 18-4-221 and 18-4-223, MCA; IMP: 18-4-221, MCA.

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's central stores program, using agencies are responsible for receiving supplies and services procured on their behalf by the department. Receiving means inspecting the supply or service and checking it against the contract to insure that it is acceptable, complete and in compliance with the terms of the contract.

(2) Using agencies should seek to resolve problems with vendors directly. If such efforts are not successful, using agencies must/should submit written formal complaints about vendor performance to the department division. The department division will investigate complaints and attempt to resolve the problem to the agency's satisfaction determine whether to apply the sanctions of ARM 2-5-402. The department division will notify the complaining using agency of any action taken as a result of the complaint.

(3) The state of Montana reserves the right to assess liquidated damages for failing to comply with delivery

requirements indicated in the bid proposal. This sum may be deducted from vendor payment for failure to deliver when specified. Liquidated damages should not be punitive and should only be used where it is difficult to determine actual damages at the time of contracting. No premium will be awarded to the vendor for delivery in advance of the specified time. AUTH: 18-4-221, 18-4-223 and 18-4-224, MCA; IMP: 18-4-221 and 18-4-224, MCA.

2.5.401 BIDDERS LIST (1) The state-purchasing division procurement and printing division maintains a central state bidders list for all supply and service commodities except printing which list is maintained by the publications and graphics division. Names and addresses on bidders lists shall be available for public inspection but these lists shall not be used for private promotional, commercial or market purposes.

(2) To get on the central-state bidders list, a vendor must submit an affidavit on a form supplied by the division completed as appropriate, including information sufficient to identify and proper commodity(ies) on which the vendor wishes to bid. Affidavits forms are available from Purchasing Division, 165-Mitchell-Bldg., Helena, Montana-59620, the procurement and printing division. AUTH: 18-4-221, MCA; IMP: 18-4-221, MCA.

2.5.402 SUSPENSION OR REMOVAL FROM BIDDERS LIST (1) The department division has the authority to suspend or remove a vendor from the bidders list if the department division determines the vendor is:

(a) non-responsible-as-defined-in has falsely submitted an affidavit for preference 18-1-113, MCA; or

(b) non-responsible-as-defined-in is not a responsible or responsive bidder as defined in 18-4-301, MCA; or

~~----- (c) --non-responsive-as-defined-in-18-4-301, MCA.~~

(2) Suspension from bidders list:

(a) The department division may suspend a vendor from the state bidders list upon written determination by the department division that probable cause exists for removal suspension under 18-1-113 and 18-4-241, MCA. A notice of suspension, including a copy of the determination, shall be sent to the affected vendor. The notice must state that:

(i) - (iii) remain the same.

(b) Suspension is effective upon the notice of suspension and, unless the suspension is terminated by the department division or a court, it will remain in effect until its expiration date or until a removal decision takes effect.

(3) Removal from bidders list:

(a) For cause:

(i) the department division may remove a vendor from the state bidders list upon written determination by the department division that cause exists under 18-1-113 and 18-4-241, MCA.

(ii) the department division shall prepare a written decision regarding a removal and send a copy to the affected vendor. The decision shall: recite the facts relied upon; indicate the term of the removal, ~~not to exceed five years~~; indicate the reasons for the action, and to what extent affiliates are affected.

(iii) remains the same.

(b) For failure to respond:

(i) the department division may remove a vendors from the bidders list for ~~particular items~~, for failure to respond to invitation for bids or proposals on three (3) consecutive procurements solicitations of those items. Prospective bidders may be reinstated on such lists as described in ARM 2.5.401 ~~after completion of the removal~~.

(4) ~~Maintenance of list of removed-for-cause or suspended vendors~~. The department shall maintain an updated list of vendors removed or suspended from the bidders list as ~~described in (3)-(a)-above~~. The list shall be available to all state agencies and the public upon request. AUTH: 18-4-221, MCA; IMP: 18-1-113, 18-4-221 and 18-4-308, MCA.

2.5.403 BIDDING PREFERENCES (1)--~~The department determines eligibility of vendors for bidding preferences authorized by 18-1-101 through 18-1-114, MCA.~~

(1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and services and for construction, repair, and public works of all kinds, a public agency shall apply the preferences required by 18-1-102 and 18-1-112, MCA.

(2) To assess eligibility, the department requires vendors to apply for preference by completing the applicable sections of the bidder affidavit form described in 18-1-113, MCA. The affidavit must be on file with the department division at the time of bid or proposal opening, or be submitted with the bid or proposal to be considered for preference eligibility. Vendors who knowingly submit inaccurate information on this form may be deemed nonresponsible and subject to the provisions of ARM 2.5.402.

~~(3)--The applicable preference percentage shall be added to the nonpreferred bid, which shall then be compared to preferred bids bid, according to the following procedures:--(a)--If Montana-made products are bid regardless of residency of vendor, add 5% to non-resident, non-Montana-made product bids; if no Montana-made products are involved, see (c) following;~~

~~(b)--Add 3% to Montana-resident with non-Montana-made products as defined in 18-1-102 (1)-(a)-(ii)-(c);~~

~~(c)--For bids with Montana-made products disregard 5% preference penalty added in (a) above if bids with Montana-made products are over 5% of non-resident, non-Montana-made product bids;~~

(d) -- Disregard 5% preference penalty added in (a) above for bids with Montana-made products if over 3% of resident bids with non-Montana-made product bids;

(e) -- If no bids for Montana-made products remain, disregard preference in (a) and (b) above and add 3% resident preference to non-resident bids;

(4) -- "Montana-made" means manufactured or produced in this state and made with the use of parts, material, or supplies of which 50% or more were manufactured or produced in this state, or employment of persons of whom 50% or more are bona-fide residents of Montana as defined in 18-2-401, MCA; "Non-resident bidder" means a bidder whose residence is not in this state as determined under 18-1-103. AUTH: 18-1-114 and 18-4-221, MCA; IMP: 18-1-102, 18-1-112 and 18-4-221, MCA.

2.5.404 BID PREPARATION (1) Bids shall be prepared in ink or by typewriter. All bids must be signed in ink by an authorized person.

(2) - (6) (a) remain the same.

(b) completion of ~~upon~~ delivery of the merchandise ~~at~~ the items listed on the purchase order in a satisfactory condition, whichever is later.

(7) and (8) remain the same.

(9) Unless otherwise specified in the invitation for bids or request for proposals, all bids and proposals shall show the delivered price FOB destination to the using agency, including all transportation and handling charges. AUTH: 18-4-221, MCA; IMP: 18-4-221, MCA.

2.5.405 BLIND VENDORS' BIDDING PREFERENCE (1) A blind person wishing to claim the vending facility preference must complete the determination form provided by the purchasing bureau with the bid document. ~~The determination form is available from department of administration, purchasing division.~~ The form must be completed by an ophthalmologist, physician skilled in diseases of the eye or a state of Montana, department of social and rehabilitation services, visual services counselor.

(2) remains the same. AUTH: 18-5-504, MCA; IMP: 18-5-502, MCA.

2.5.501 SPECIFICATIONS (1) remains the same.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of the criteria ~~an using agency shall endeavor attempt~~ to include as a part of ~~its~~ their purchase requisitions the principal functional or performance needs to be met and any compatibility requirements.

(3) remains the same.

(4) Brand name items or descriptions may be used to indicate standards of quality, performance and/or use desired. ~~More than one acceptable brand name must be indicated, to the extent practicable.~~

(5) Restrictive specifications shall not be used unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(6) through (7)(c) remain the same.

(i) ~~Is each~~ Each item of the description should ~~necessary to fulfill a functional or physical requirement of the State?~~

(ii) If brand names are necessary to indicate quality levels, list three an acceptable brand names.

(iii) ~~If a single brand is necessary, is justification provided and attached?~~ Justification shall be provided and attached if a single brand is necessary.

(iv) ~~If the commodity is a sole source, is justification provided and attached?~~ Justification shall be provided and attached if the commodity is to be a sole source purchase.

~~{v}---If a catalogue item is referenced, is a complete catalogue reference (catalogue name, date, page number) provided and attached?~~

(d) through (h) remain the same.

(i) Receiving procedures (if testing, sampling or other evaluation will be performed when commodity is delivered to determine acceptability) ~~please~~ must be described. AUTH: 18-4-221 and 18-4-232, MCA; IMP: 18-4-231, 18-4-232, 18-4-233 18-4-234 and 18-4-312, MCA.

2.5.502 BID AND CONTRACT PERFORMANCE SECURITY

(1) through (4)(a) remain the same.

(b) If certificates of deposit or money market certificates are determined to be acceptable they shall be issued in the name of the ~~vender and the~~ state of Montana from any bank or savings and loan association licensed to do business in Montana. The certificate shall be in the amount of the required security plus the certificate of deposit early withdrawal penalty.

(c) If irrevocable letters of credit are determined to be acceptable, they shall be issued from any bank or savings and loan association licensed to do business in Montana ~~on a form reviewed and approved by the department.~~ Irrevocable letters of credit in excess of \$100,000 may not be accepted as security for contracts ~~in excess of \$100,000.~~

(5) through (8) remain the same. AUTH: 18-4-221, MCA; IMP: 18-1-201 and 18-4-312, MCA.

2.5.503 PUBLIC NOTICE

(1) through (3) remain the same.

(4) The state may determine that bids and proposals should be solicited through advertising to secure adequate competition. If so, the advertisement shall be made in at least three newspapers (one of which must be a daily) of general circulation printed within the state, once each week for 2 consecutive weeks. The advertisement shall identify the supply or service solicited, the time, date and location where

bids and or proposals will be received and where to obtain copies of the invitation for bid or request for proposal.

(5) remains the same. AUTH: 18-4-221, MCA; IMP: 18-4-303 and 18-4-304, MCA.

~~2.5.506--ANTICOMPETITIVE PRACTICES--(1)--Every solicitation must provide that by submitting a bid or offer, the bidder or offerer certifies that the price submitted was independently arrived at without collusion.~~

~~(2)--A Procurement Officer who suspects that an anti-competitive practice has occurred or may be occurring shall notify the department which shall notify the Attorney General of the State and shall consider action which may be appropriate under Title 18, Chapter 47, MCA and these rules. Auth: 18-4-221, MCA; IMP 18-4-314.~~

2.5.601. COMPETITIVE SEALED BIDS (1) "Sealed bid" is the preferred method of competitive procurement for state supply contracts and service contracts over \$2,000. Sealed bids shall be solicited with an invitation for Bid.

(2) The invitation for bid shall include the following:

(a) and (b) remain the same.

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) remains the same.

(4) ~~Amendments shall~~ Addenda, if any, will be sent to all vendors who received an invitation for bid.

~~(5)--The invitation for bid shall be on a form prescribed or approved by the department.~~

~~(6)(5)~~ Upon receipt of a bid, an employee of the agency other than the procurement officer will cause it to be time-stamped and stored in a secure place, ~~unopened,~~ until the time and date set for bid opening.

~~(7)(6)~~ Bids shall be opened publicly at the time, date and place designated in the invitation for bid. The name of each bidder, the bid price, and such other information as is deemed appropriate by the procurement officer, ~~shall be read aloud or otherwise made available.~~ ~~A record of this information shall be available for public inspection as indicated in ARM-2.5.503.~~

~~(8)(7)~~ The department ~~division~~ may ~~require~~ request state agencies to perform any tests or to provide technical expertise to determine product or service acceptability on bids received.

~~(9)(8)~~ Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation for bids and the preference provisions described in ARM 2.5.403. ~~Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the lowest bidder.~~ Examples of such criteria include, but are not limited to, transportation cost, and ownership or life cycle cost formulas. Evaluation factors

need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

(a) and (b) remain the same.

Multiple award contracts are allowable if determined to be in the best interest of the state.

~~{10}(9)~~ Nothing in this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the invitation for bid if such bidder is not also the lowest bidder as determined under subsection (8). ~~Further, this rule does not permit negotiations with any bidder.~~

~~{11}(10)~~ If low tie bids are received which are not resolved by the provisions of section 18-1-111, MCA, award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the department division or the head of a purchasing agency, will be used to resolve tie bids not resolved by the provisions of Section 18-1-111. MCA awards will be made in any permissible manner that will discourage tie bids. If no permissible methods will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots. If collusion is suspected records shall be made of all invitations for bid on which tie bids are received showing the following information:

(a) and (b) remain the same.

(c) a listing of all the bidders and the prices submitted. A copy of such records shall be sent to the attorney general's office if collusion is suspected.

~~{12}(11)~~ Invitation for bids for "office supplies".--A Montana supplier's currently advertised or established catalog price, which is available to the public, may be registered as their bid if:

-----{a}-----It is designated as such with an explanatory letter.

-----{b}-----The items advertised or listed meet or exceed the specifications, terms, and delivery requirements of the invitation for bid.

-----{c}-----It is available for inspection to all prospective bidders in the office of the agency issuing the invitation for bid.

-----{d}-----It is received in the office of the property and supply bureau prior to the mailing of the invitation for bid and has been certified as to the exact time and date received by the bureau. A supplier's currently advertised or established catalog price, which is available to the public may be accepted as a bid subject to the following conditions:

(a) The advertised or established catalog price must be received and time stamped by the procurement officer authorized to enter into contracts prior to or at the bid opening. In no event will catalog or advertised prices be accepted after a bid opening.

(i) A copy of the catalog or advertised price and specifications may be attached to the requisition received by the purchasing official; or

(ii) The purchasing official or the requesting agency may locate catalog or advertised prices; or

(iii) A vendor may submit catalog or advertised prices as a bid.

(b) The catalog or advertised price must meet or exceed the specifications, terms and conditions and be the lowest bid.

(12) The currently advertised or established catalog price is tabulated and recorded as a bid from the supplier for the inspection of all bidders.

(13) Only the procurement official of the division or purchasing agency can make the final determination of acceptance or rejection of the bids or publicly advertised or established catalog prices. AUTH: 18-4-221, MCA; IMP: 18-4-302, MCA.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) "Practicable" means what may be reasonably accomplished or put into practical application:

-----{a}--Competitive sealed bidding is practicable if the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery, or performance schedule, and all other terms and conditions of the invitation for bid. "Competitive sealed proposal" is a procurement option allowing the award to be based upon stated criteria or evaluation factors; cost will not be the only consideration. {b} Competitive sealed bidding is not practicable when one or more of the following conditions exist:

{i}{a} through (e) remain the same but are renumbered.

{2}--"Advantageous" means a judgmental assessment of what is in the state's best interest.

{3}{2} The officer who made the determination that sealed bidding is not practicable or advantageous to the state may modify or revoke it at any time, and the determination should be reviewed for current applicability from time to time.

{4}{3} The request for proposals must be prepared in accordance with subsections (1) through {6}{5} of ARM 2.5.601 and must also include:

(a) a statement that discussions may be conducted with offerers who submit proposals but that proposals may be accepted and a contract issued without such discussions; and

{b}--all evaluation factors, including price, to be used and their relative importance. (b) the relative importance of price and other evaluation factors.

{5}{4} Proposals shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. Proposals and modifications shall be shown only to procurement officials having a legitimate interest in them. After the date

established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals the name of each offerer, the number of modifications received, if any, and a description sufficient to identify the supply or service offered. The register of proposals shall be open to public inspection only after award of the contract. ~~Proposals and modifications shall be shown only to state personnel having a legitimate interest in them.~~ Proposal documents, such as financial information and trade secrets, that are identified, justified by the proposer or offerer, and agreed to by the department as requiring confidentiality will remain confidential after award.

(6)(5) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposal shall not be considered. Multiple award contracts are allowable if determined to be in the best interest of the State.

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

~~(10)-Competitive sealed proposals for "office supplies"-A-Montana-supplier's-currently-advertised-or-established-catalog-price,-which-is-available-to-the-public,-may-be-registered-as-their-proposal-if:~~

~~(a)--It-is-designated-as-such-with-an-explanatory-letter-~~

~~(b)--The-items-advertised-or-listed-meet-or-exceed-the-specifications,-terms,-and-delivery-requirements-of-the-invitation-for-bid-~~

~~(c)--It-is-available-for-inspection-to-all-prospective-bidders-in-the-office-of-the-agency-issuing-the-invitation-for-bid-~~

~~(d)--It-is-received-in-the-office-of-the-property-and-supply-bureau-prior-to-the-mailing-of-the-invitation-for-bid-and-has-been-certified-as-to-the-exact-time-and-date-received-by-the-bureau.~~ AUTH: 18-4-221, MCA; IMP: 18-4-304, MCA.

2.5.603 SMALL PURCHASES OF SUPPLIES AND SERVICES

(1) The department division or state agency may procure supplies or services costing less than \$2,000 under this rule. The procurement officer may choose a purchase technique that best meets the agency's needs. The purchasing bureau suggests that agencies follow good purchasing practices and receive competitive telephone or written quotations where practicable.

(2) This rule does not apply to ~~controlled items as defined in ARM-2.5.201 and items described in ARM-2.5.202 subsections (4), (5) and (6)~~ controlled items for the state purchased through term contracts, requisition time schedules, the central stores program or the publications and graphics bureau; however, if a using state agency's annual aggregate total procurements of an item on the department division's requisition time schedule is reasonably anticipated to be less than ~~\$300~~ \$500, the state agency may purchase the item according to the provisions of this rule.

~~{3}--If a supply or service is available from only one vendor, the sole source procurement methods set forth in ARM 2.5.604 shall be used even if the procurement is a small purchase as specified in subsection (1);~~

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

~~{5}---For small purchases of supplies or services over \$500 and under \$2,000, the procurement officer shall solicit no less than three (3) vendors to submit written quotations, and shall record the quotations and place them in the procurement file. The procurement officer shall award a contract to the vendor offering the lowest acceptable quotation. The names of the vendors submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.~~

~~{6}--For small purchases of supplies or services over \$300 and up to \$500, the procurement officer shall solicit a minimum of three vendors to provide telephone quotations, and shall record the quotations and place them in the procurement file. The procurement officer shall make the award to the vendor offering the lowest acceptable quotation.~~

~~{7}--The department may require state agencies to perform any tests or to provide technical expertise to determine product or service acceptability on bids received.~~

~~{8}--Small purchases of supplies and services for "office supplies"---A Montana supplier's currently advertised or established catalog price, which is available in the public, may be registered as their bid if:~~

~~(a)---it is designated as such with an explanatory letter.~~

~~(b)---The items advertised or listed meet or exceed the specifications, terms, and delivery requirements of the invitation for bid.~~

~~(c)---It is available for inspection to all prospective bidders in the office of the agency issuing the invitation for bid.~~

~~(d)---It is received in the office of the property and supply bureau prior to the mailing of the invitation for bid and has been certified as to the exact time and date received by the bureau.~~

~~{9}--For small purchases of supplies and services of \$300 and under, the procurement officer may choose a purchase technique, including cash purchase, that best meets the needs of the agency. AUTH: 18-4-221, MCA; IMP: 18-4-205, MCA.~~

2.5.604 SOLE SOURCE PROCUREMENT

(1) The provisions of this rule apply to all sole source procurements of \$2,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) remains the same.

(3) The determination as to whether a procurement shall be made as a sole source shall be made by the department division or as delegated by a written delegation agreement. The determination and the basis therefore must be in writing. In cases of reasonable doubt, competition should be solicited.

A request by a state agency that a procurement be restricted to one vendor must be accompanied by ~~an explanation as to why no other will be suitable or acceptable to meet the need~~ a written justification.

(4) through (5)(d) remain the same. AUTH: 18-4-221, MCA; IMP: 18-4-305, MCA.

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of \$2,000 or greater shall be limited to those supplies or services necessary to meet the exigency.

(2) The determination as to whether a procurement shall be made as an exigency procurement shall be made by the using agency. The determination must be in writing and must state the basis for an exigency procurement and for the selection of the a particular contractor vendor.

(3) The procedure used shall be selected to assure that the required supplies or services are procured in time to meet the exigency. However, such competition as is practicable shall be obtained.

(4) A record of each exigency procurement shall be made as soon as practicable and shall set forth:

(a) the ~~contractor's~~ vendor's name;

(b) through (d) remain the same. AUTH: 18-4-133 and 18-4-221, MCA; IMP: 18-4-133, MCA.

2.5.606 PROCUREMENT OF USED EQUIPMENT

(1) remains the same.

(2) Unless justified as sole source or exigency, the award of the contract will be made by identifying the requirements and proceeding with the competitive bidding or proposal process.

(3) ~~The determination that purchase of used equipment is in the best interest of the state must be in writing.~~

Criteria to consider in making this determination include:

(a) through (f) remain the same. AUTH: 18-4-221, MCA; IMP: 18-4-221, MCA.

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS

(1) remains the same.

(2) The department division will maintain a list of certified sheltered workshops or work activity centers, as defined in 18-5-101 MCA, located in the state. The list will include the products and services provided by each. The list will be available to user agencies and will be updated annually in January.

(3) Sheltered workshops and work activity centers will submit to the department division by June 30 and December 31 of each year an updated listing of products and services offered. AUTH: 18-5-102, MCA; IMP: 18-5-102 and 18-5-103, MCA.

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) No Department or legislative or judicial entity State agencies may not transfer, sell, trade, or otherwise dispose of

supplies owned by the State without written authorization of the department property and supply bureau. A Department or legislative or judicial entity may transfer surplus supplies between the various units of that Department or legislative or judicial entity.

(2) ~~A Department or legislative or judicial entity State agencies shall notify the department division's property and supply bureau of all surplus supplies on such forms and at such times as the Department may prescribe. In so doing, available at the bureau. 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.~~ AUTH: 18-4-226, MCA; IMP: 18-4-226, MCA.

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) ~~Insofar as feasible and practical, the Department division's property and supply bureau shall transfer surplus supplies to other State agencies and other units of government.~~

(2) Surplus supplies must be offered to the public through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the department division may employ such other means, including appraisal, if the department division makes a written determination that such procedure is advantageous to the State. On sales greater than \$300, only United States Postal Money Orders, certified checks, cashier's checks or business checks may be accepted for sales of surplus property; except cash or a personal check may be accepted for petty cash sales of less than \$100.

(3) Competitive Sealed Bidding:

(a) If a sale is ~~to be~~ made by competitive sealed bidding, notice of the sale must be given at least ten (10) days before the date set for opening bids by:

(i) mailing a ~~R~~request for ~~S~~sale ~~B~~bids to prospective bidders, including those bidders on lists maintained at the property and supply bureau for this purpose; and

(ii) newspaper advertisement may also be used.

(b) The ~~R~~request for ~~S~~sale ~~B~~bids must list the supplies offered for sale; designate their location and how they may be inspected; and state the terms and conditions for bid opening. Bids shall be opened publicly.

(c) Award must be made in accordance with the provisions of the ~~R~~request for ~~S~~sale ~~B~~bids to the highest responsive and responsible bidder, if the price offered by such bidder is acceptable to the Department division. If the price is not acceptable, the department division may:

(i) remains the same.

(ii) ~~such officer may resolicit bids.~~

(4) Auctions: Supplies may be sold at auction. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate, at-a-minimum, all the terms and conditions of any sale, including, but not limited to:

~~(a)--that-a-deposit-may-be-required-in-order-to-participate-in-the-bidding;~~

~~(b)--that-the-purchaser-must-remove-within-a-stated-time-all-surplus-supplies-purchased;~~

~~(c)--that-the-State-retains-the-right-to-reject-any-and-all-bids;-and~~

~~(d)--if-a-minimum-bid-is-set,-that-bids-below-a-minimum-bid-set-by-the-State-in-advance-will-be-rejected-~~

(5) remains the same.

(6) Posted Prices: Surplus supplies may be sold at posted prices as determined by the Department division when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the Department division.

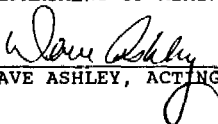
(7) Trade-Ins: Surplus supplies may be traded-in only if the Department division determines the trade-in value is expected to equal or exceed the value estimated to be obtained through the sale or other disposition of the supplies. AUTH: 18-4-226, MCA; IMP: 18-4-226, MCA.

2. These changes are being proposed to update and clarify existing procurement rules and procedures.

3. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to Marvin Eicholtz, Administrator, Procurement and Printing Division, Room 165, Mitchell Building, Helena, MT 59620-0135, no later than 5 p.m., August 23, 1990.

4. Marvin Eicholtz, Administrator of the Department of Administration, Procurement and Printing Division, or his designate will preside over and conduct the meeting.

DEPARTMENT OF ADMINISTRATION


DAVE ASHLEY, ACTING DIRECTOR

Certified to the Secretary of State July 16, 1990.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
transfer, amendment, repeal	)	PROPOSED TRANSFER, AMENDMENT,
and adoption of rules pertain-	)	REPEAL AND ADOPTION OF RULES
ing to passenger tramway	)	PERTAINING TO THE ORGANIZATION
safety	)	OF THE BOARD OF PASSENGER
	)	TRAMWAY SAFETY

TO: All Interested Persons:

1. On August 15, 1990, at 1:00, p.m., a public hearing will be held at the Arcade Building, 111 North Jackson, Helena, Montana, to consider the transfer, amendment and adoption of rules pertaining to the organization of the Board of Passenger Tramway Safety.

2. The existing rules will be transferred to Chapter 63 and are proposed for amendment and repeal as follows:

"8.72.101 ADOPTION OF THE ANSI STANDARDS (1) As permitted by statute, the department of commerce, in cooperation with the board of passenger tramway advisory council safety, hereby adopts and incorporates by reference the "American National Standards safety Requirements for Aerial Passenger Tramways - Aerial Tramways and Lifts, Surface Lifts, and Tows - Safety Requirements" (referred to herein as ANSI Standards) promulgated by the American national standards institute, incorporated, on July 16, 1982 (publication number ANSI B77.1-1982) amended December 2, 1985 (ANSI B77.1a-1986), amended March 14, 1988 (ANSI B77.1b-1988), and as amended from time to time, to the extent that said standards do not conflict with Montana statutory laws or these regulations. The ANSI Standards establish safety requirements for the passenger transportation systems that use of cables or ropes in the passenger transportation systems, for power transmission, including reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows. Copies of the ANSI Standards test text may be obtained from the Department of Commerce, Building Codes Professional and Occupational Licensing Bureau, Board of Passenger Tramway Safety, 1218 East Sixth Avenue Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, upon request at cost.

(2) The department of commerce board of passenger tramway safety reserves the right to modify, add, or delete provisions included in the above referenced ANSI Standards."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-721, MCA

REASON: Adoption of ANSI Standards is mandated by 23-2-721, MCA. The amendments are needed to incorporate the most recent amendments thereto. Other amendments are needed for clarification.

"8.72.102 REGULATIONS APPLICABLE TO ADJOINING STATES

(1) All rules and statutory laws applicable to passenger tramways operated solely within the boundaries of the state of Montana are equally applicable to any passenger tramway which crosses over or touches the boundaries of the state of Montana."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-721, MCA

REASON: To clarify that the board will assert jurisdiction over any passenger tramway or operator that operates any part of a passenger tramway within the boundaries of the state of Montana regardless whether a part of the facility lies in another state or country.

"8.72.103 ADDITIONAL TERMS DEFINITIONS The

~~following terms are words and phrases, when used in the language applicable to the regulation of passenger tramways and serve to supplement those found in 23-2-702, MCA; these rules have the following meanings.~~

(1) "Authority having jurisdiction" shall mean the state of Montana through the ~~department of commerce, building codes bureau, in cooperation with the~~ board of passenger tramway advisory council safety.

(2) "~~Council Board~~" shall mean the board of passenger tramway advisory council which has been administratively created safety.

(3) "Bureau" shall mean the building codes professional and occupational licensing bureau of the department of commerce unless otherwise specified.

(4) ~~"Major tramway failure" shall mean a tramway failure or malfunction where the safety of the tramway becomes open to question, such as a chair comes off, a cable derails, etc., but not resulting in death or injury.~~

(4) "Major Modification" shall mean any substantial change in the original alteration of the current design or location of a passenger the tramway which results in:

(a) a change in design speed or design capacity of the system;

(b) a change in the path of the rope;

(c) a change in structural design;

(d) any change in the type of mechanical components.

~~(6) -- "Passenger Accident" shall mean an accident resulting in either death or an injury requiring medical attention to one or more passengers on the tramway, but which did not involve a mechanical, structural, or electrical failure or malfunction of the tramway.~~

(5) "Qualified tramway design engineer, qualified tramway construction engineer, and qualified tramway inspection engineer" shall mean an engineer who is currently registered or has been accepted on a temporary project limited basis, by the Montana board of registration for professional engineers to practice professional engineering in the state of Montana, and who has been duly qualified by the ~~department of commerce in cooperation with the council~~ board of passenger tramway safety. Only a board qualified engineer shall certify

compliance with the ANSI Standards and these tramway rules.

(6) "Major tramway failure" shall mean a significant tramway failure or malfunction caused by physical damage or a mechanical, structural, or electrical failure.

(8) --"Seal" shall mean the seal heretofore adopted by the department of commerce in cooperation with the council.

(9) --"Signs" shall mean regulatory signs authorized by the department of commerce in cooperation with the council with seal affixed, and does not include the operational signs required by the ANSI Standards.

(7) "Tramway accident" shall mean an accident involving a mechanical, structural, or electrical failure or malfunction of a tramway caused by a major tramway failure resulting in either in death or injury to one or more passengers or persons on or near the tramway at the time of the failure.

(8) "Passenger accident" shall mean an accident resulting in either death or an injury requiring treatment by a medical doctor to one or more passengers on the tramway, but which did not involve a major tramway failure.

(9) "Tramway incident" shall mean any stoppage of the tramway for more than thirty minutes, or any stoppage necessitating an evacuation other than with an auxiliary power unit.

(10) "Owner" shall mean the person, corporation, or other organization in overall control of a tramway by virtue of ownership. If the owner is not an individual person, it must delegate operating and maintenance control of its tramways to a "tramway supervisor." Such delegation shall not relieve the owner of a tramway of the obligations imposed by these rules, the ANSI Standards, and the laws of Montana. The board shall always be kept currently informed of the identity of the "owner" and "tramway supervisor".

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-721, MCA

REASON: These amendments are needed for clarification purposes to define words and phrases used for the first time in these rule revisions.

"8.72.104 REGULATION REGISTRATION OF NEW, CONSTRUCTION INCLUDING RELOCATIONED, OF OR EXISTING FACILITIES AND CERTAIN MAJOR MODIFICATIONS OF TRAMWAYS (1) Before the construction commencement of any new passenger construction, and/or major modification and/or relocation of any existing tramway, is commenced, the operator thereof must owner shall submit to the bureau board an written certification by a qualified tramway design engineer that the design plans, and specifications for such application for a construction has been prepared by or under his direction, and that the tramway design conforms to all rules adopted by the bureau, permit accompanied by the following information:

(a) location and owner's designation of the tramway;
(b) classification of tramway and a brief description of the operating system;

(c) name and address, of the Montana passenger tramway qualified engineer in responsible charge of the design of the

tramway. If the design engineer will perform engineering services within the state of Montana, he must be licensed by the Montana board of professional engineers and professional land surveyors or obtain from it a temporary permit under section 37-67-319, MCA.

(d) tabulation of basic design data, including detailed topographic profile indicating slope length and vertical rise, rated uphill and/or downhill continuous duty capacity, rated maximum and/or minimum continuous duty design speed and loading limitations, if any;

(e) one preliminary set of design calculations, drawings and specifications prepared for the design, fabrication and installation of the tramway, with an index of the data submitted. Each and every sheet of the submitted data shall be certified by the design engineer. Additions, deletions, or modifications to the above referenced data shall be certified by the design engineer and be submitted to the board prior to the construction of that component.

(f) a certifying statement signed by the tramway design engineer, which provides substantially as follows: "I hereby certify that the design for this tramway is in complete compliance with the most recent version of ANSI Standards B77, and that I accept responsibility for all engineering designs, calculations, drawings, and specifications for this tramway."

(2) After construction of any new passenger tramway is completed, and before operation is commenced, the operator thereof must submit to the bureau a written certification by a qualified tramway construction engineer that such construction and installation has been completed in accordance with the design plans, and specifications for such work. If the design is not in complete compliance with ANSI Standards, a request for a variance, with description, and reasons for the variance, must be submitted to the board. If the variance is not granted, no construction permit shall be issued.

(3) Prior to the operation of any new passenger tramway, a certificate shall be submitted to the bureau by a qualified tramway inspection engineer stating that the tests as specified in the ANSI Standards have been carried out successfully. In no case shall the state tramway inspection engineer be the same person or persons as the design engineer or the manufacturer. When satisfied that the proposed tramway will meet the safety standards of these rules, including the ANSI Standards, as adopted herein, the board will issue a construction permit for construction of the tramway according to the design, plans, and specifications submitted and/or approved as modified. Any special requirements which the board may insert in the construction permit shall be adhered to during construction. The construction permit and a current set of plans and specifications shall be kept at the construction site at all times during the construction and inspection period.

(4) A passenger tramway moved to a new location is considered a new installation and shall meet the requirements of the above subsections (1), (2), and (3). Prior to commencement of construction the board must be informed of the name of the qualified tramway construction engineer retained

for installation of the tramway. Any objection of the board shall be promptly brought to the attention of the owner or tramway supervisor.

(5) Any modifications made to passenger tramways affecting their safety shall be considered to be a new tramway and must be designed by a qualified tramway design engineer and reported to the inspector at the time of the annual inspection. A post construction inspection and acceptance testing permit application shall be submitted by the owner and shall include the following information:

(a) location of tramway, the owner's designation, and the board's identification number;

(b) name, address, and Montana registration number of the qualified tramway construction engineer;

(c) one complete set of as built design calculations, drawings and specifications prepared for the design, fabrication and installation of the tramway, which shall be so annotated by the construction engineer as to show any departures from original design, with an index of the data submitted;

(d) a certifying statement, signed by the qualified tramway construction engineer, which provides substantially as follows: "I hereby certify that all excavations, placement of reinforcing steel and anchoring components, quality and placement of concrete in all footings and concrete structures were carried out in accordance with the board of passenger tramway approved plans and specifications (except as annotated by me on 'as built' plans and specifications). Original design bearing values will be attained, and all field fabrication and assembly of tramway components have been accomplished in compliance with the original (or annotated 'as built' plans and specifications) design drawings and specifications issued for this tramway by the tramway design engineer and the requirements of the construction permit issued by the board of passenger tramway safety [dated]. None of the annotated 'as built' departures from original design compromise compliance with the current ANSI Standards B77 or other rules adopted by the board."

(6) The owner will retain a qualified inspection engineer to inspect and supervise a comprehensive acceptance testing of all aspects of the new tramway. In no case shall the qualified tramway inspection engineer conducting the acceptance testing be the same person or persons as the design engineer or the manufacturer. The engineer's report of inspection and testing shall specifically note any items which fail to comply with the standards of these rules and the applicable ANSI Standards and shall be transmitted by him directly to the board. Two copies shall be delivered to the owner.

(7) Upon satisfactory completion of acceptance testing, the owner seeking certification shall submit to the board an application for certification of the new tramway. The application shall be supported by a copy of the inspection and testing report and the owner's certification of correction of all deficiencies noted in the inspection report.

(8) When satisfied that the new tramway meets the

requirements of these rules and applicable ANSI Standards, the board will issue a new certificate for passenger service until due for recertification as an existing tramway on or before October 1st of the next following year."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-711, 23-2-712, 23-2-713, 23-2-721, 23-2-722, MCA

REASON: This rule is needed to establish and clarify procedures for registration of new or relocated tramways and those with major modifications.

"8.72.105. INSPECTION REGULATIONS (1) The purpose of engineering inspection of passenger tramways is to ensure that such tramways are in good condition and can be safely operated if proper operation and maintenance procedures are followed. Inspections shall be conducted by engineers qualified by the bureau board and designated as qualified tramway inspection engineers.

(2) Prior to commencement of any engineering inspection, the qualified tramway inspection engineer shall have access to the tramway logs and/or manuals for each lift tramway to be inspected and shall annually be given one copy of a certified statement signed by the operator owner that he or his supervisor has inspected the whole length of each rope on each tramway and that, in the operator's owner's opinion, the rope shows no signs of damage, excessive wear, or deterioration and is safe for another year's operation. The inspection engineer shall then check the splice and spot-check the rope to verify the operator's owner's inspection.

(3) The annual-operational general inspection of each passenger tramway shall be a visual and audio inspection of all components of the tramway. ~~including, but no restricted to, terminal structures, line structures, wire-rope and parts, accessories, and assemblies pertaining thereto.~~

(4) If, in the opinion of the inspector, a particular tramway cannot be safely operated until such time as repairs, modifications, or replacements have been accomplished, the inspector shall notify the area operator owner or tramway supervisor and the bureau board, in writing, to this effect at the time of the inspection.

(5) The bureau board ~~shall~~ must receive a general inspection report from the applicable inspector ~~by December 1 each year prior to operation of any passenger tramway.~~ Such reports shall state the name of the tramway, and the items board's identification number, and the items that are not in compliance with applicable rules and shall contain the inspector's recommendations concerning compliance.

(6) Certificates for each tramway shall be issued by the bureau board only after such time as all of the following items have been accomplished:

(a) All applications and fees are received from from the area operator owner;

(b) ~~The~~ inspector's report has been received and evaluated;

(c) ~~The letter~~ annual general inspection certification of compliance from the area operator owner or tramway

supervisor has been received. ~~A letter of compliance is a letter signed by the area operator stating that all deficiencies in the inspection report have been corrected.~~

~~(d) the owner shall certify~~ has certified in writing that an evacuation procedure drill has been accomplished.

~~(7) No lift-at-any-area-is-allowed-tramway in this state may open to be open to the public until the registration certificate has been received from the board and posted by the area operator from the bureau owner or tramway supervisor.~~ Such certificates are valid from the date of issue until the following September 30th."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-722, 23-2-723, MCA

REASON: A rule is needed to assure that every existing passenger tramway is inspected prior to operation during every ski season. The amendments to the existing rule are needed for clarification and to delete redundant provisions.

"8.72.106 BILLING AND PAYMENT OF INSPECTION FEES

~~(1) The annual general and the acceptance testing inspection fees provided for in 23-2-722, MCA, shall be billed by the inspecting engineer, and the cost of same shall be borne by the applicable passenger tramway operator owner."~~

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-722, MCA

REASON: These amendments are needed to clarify that the passenger tramway owner is responsible for inspection fees.

"8.72.108 -QUALIFICATIONS CERTIFICATION OF ENGINEERS

~~(1) An engineer desiring certification as a tramway design engineer, tramway construction engineer, and/or a tramway inspection engineer in the state of Montana must be registered, or hold a temporary permit issued, by the Montana board of registration for professional engineers to practice in the state of Montana and shall:~~

~~(a) when requesting certification as a tramway design engineer, furnish evidence to the bureau board that he has been in responsible charge of the design of not less than two passenger tramways;~~

~~(b) when requesting certification as a tramway construction engineer, furnish evidence to the bureau board that he has been in responsible charge of the construction of similar works;~~

~~(c) when requesting certification as a tramway inspection engineer, furnish evidence to the bureau board that he has performed not less than two detailed and acceptable inspections of passenger tramways or similar works. Evidence may be in the form of a letter of recommendation by a certified inspection engineer attesting to apprenticeship under that engineer's supervision.~~

~~(2) The bureau board may approve qualifications based on experience gained by an applicant through special training and/or work done under direct supervision of a professional engineer recognized by the bureau board as either a qualified designer, contractor construction engineer, or inspector of~~

tramways, whichever is applicable.

(3) Certification by the bureau board shall be limited to the experience of the applicant as disclosed by his application. Accordingly, the bureau board shall designate ~~if whether~~ the engineer is limited to work on:

- (a) ~~-rope tows and surface lifts;~~
- (b) ~~-J-bars, T-bars, and platter-pulls fixed grip lifts;~~
- (c) ~~-chair-lifts, gondolas, or cabin-tramways detachable and reversible lifts;~~ or
- (d) any combination of (a), (b) or (c) above.

(4) The division board shall maintain a list of qualified engineers which shall state the qualifications of each engineer certified ~~to-date~~ each year through the renewal process. ~~The aforementioned~~ This list shall be open to inspection by the public."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-711, 23-2-712, 23-2-713, 23-2-721, 23-2-722, MCA

REASON: These amendments are needed to provide owners and operators more flexibility in obtaining engineering assistance. They recognize that the Montana Board of Registration for Professional Engineers grants temporary permits to nonresident practitioners. Other amendments are needed to update archaic language.

"8.72.109 REPORTS AND INVESTIGATIONS OF TRAMWAY ACCIDENTS, PASSENGER ACCIDENTS, AND MAJOR TRAMWAY FAILURES AND TRAMWAY INCIDENTS (1) Each operator owner or tramway supervisor shall report by mail on forms provided by the bureau any notify the board within 12 hours of a major tramway failure, tramway accident, or passenger accident. The A report on forms provided by the board must be transmitted to the bureau board within a 48-hour period following the occurrence of the event, as evidenced by the postmark on the envelope transmitting the subject report. Tramway incidents shall be reported in writing within 48 hours.

(2) The chairman of the board will have discretion to determine which accidents will require on-site investigations and provide for the same.

(3) The investigation team shall take such steps as are reasonable and necessary to preserve evidence. The results of the investigation shall be reported to the board."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-721, 23-2-722 23-2-723, MCA

REASON: These amendments are needed to give the board more flexibility and timeliness in reporting and investigation of tramway accidents.

"8.72.110--DEPARTURE VARIANCE FROM RULES STANDARDS

(1) Proposals to deviate for variance from the rules established herein will be entertained by the bureau--Upon receipt of written application from an involved party, in cooperation with the passenger tramway advisory council, a resolution to the proposed deviation will be sought. standards adopted by the board shall be in accordance with the following

procedures:

(a) in the event that the initial application for certificate of registration reveals, or the annual general inspection indicates, that the tramway does not conform in all respects to the requirements set forth by the ANSI Standards and these rules, the board may issue a certificate of registration with a variance. The nature and extent of the variance requested shall be specified in the application.

(b) in order to qualify for a certificate of registration with a variance, the application for certificate of registration shall contain the following information:

(1) a statement by the owner that the tramway has been operated in its present configuration safely and without any major tramway failures for at least (2) years prior to the date of application; and

(ii) a certificate from a certified tramway design or inspection engineer attesting that the tramway is so designed and equipped that its operation is as free from danger to the persons using it as it would be if it met the requirements of the ANSI Standards and these tramway rules.

(2) The issuance of a certificate of registration with a variance for a tramway in any one year shall not bind the board to issue, for said tramway, such a variance in subsequent years, nor to issue such a certificate for another tramway of same or similar design.

(3) In cases where doubt exists as to the safety of a tramway, the board may require special tests be performed by the owner or tramway supervisor with appropriate engineering assistance to ascertain that the tramway is as free from danger to persons using it as it would be if it met the requirements of the ANSI Standards and these rules."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-721, MCA

REASON: Rules are needed which recognize that some passenger tramways may be safe, even though they don't conform to ANSI Standards in all respects. These rules should still protect public safety. The proposed amendments are needed for clarification and to delete archaic language.

3. ARM 8.72.107 FILING OF INSPECTION REPORTS is being proposed for repeal. Full text of the rule is located at page 8-2194, Administrative Rules of Montana. The authority section is 23-2-721, MCA and the implementing sections are 23-2-722 and 23-2-723, MCA. The reason for the repeal is the rule is being superceded by amendments made in ARM 8.72.105.

4. The proposed new rules will read as follows:

"I. ADOPTION OF RULES (1) The board hereby adopts these internal procedures, operating rules and technical rules."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 2-4-201, MCA

REASON: Section 23-2-721, MCA, requires adoption for operation of the program.

"II. BOARD ORGANIZATION (1) The board of passenger

tramway safety hereby adopts and incorporates the organizational rules of the department of commerce as listed in chapter 1 of this Title."

Auth: Sec. 2-4-201 and 23-2-721, MCA; IMP, Sec. 2-4-201, MCA

REASON: This rule is mandated by section 2-4-201, MCA.

"III PROCEDURAL RULES (1) The board of passenger tramway safety hereby adopts and incorporates the procedural rules of the department of commerce as listed in chapter 2 of this Title."

Auth: Sec. 2-4-201, 23-2-721, MCA; IMP, Sec. 2-4-201, MCA

REASON: This rule is mandated by section 2-4-201, MCA.

"IV PUBLIC PARTICIPATION (1) The board of passenger tramway safety hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in chapter 2 of this Title."

Auth: Sec. 2-3-203, 2-4-201, MCA; IMP, Sec. 2-3-103, 2-3-203, MCA

REASON: This rule is mandated by section 2-4-201, MCA.

"V ORGANIZATION (1) Unless the governor of Montana otherwise designates, the board shall each year elect a chairman who shall preside over and maintain order during meetings of the board. The board may elect a vice-chairman to preside during the absence or disqualification of the chairman.

(2) The chairman and vice-chairman may vote as members of the board on all matters other than those as to which they have been disqualified.

(3) Parliamentary procedure shall be observed during the course of the meetings of the board. The chair shall recognize any board member who wishes to speak to any motion and may, at the conclusion of debate by the members of the board, invite comment from any member of the public who may be in attendance upon the meeting as an observer. The chairman shall, thereafter, recognize any board member who may choose to speak to the remarks of any public observer.

(4) Upon the agenda for each board meeting there shall be placed an occasion when any public observer may address the board upon any topic of mutual interest to the observer and the board.

(5) Upon request of any member, affirmed by unanimous vote of the board, a secret ballot may be employed. Otherwise all votes of board members for or against any motion shall be open and oral or, upon any member's call for a division, a show of hands. If conscience requires, any member may abstain from any vote.

(6) In all cases not provided for in these rules, Robert's Rules of Order shall be the guide to the procedure governing meetings of the board."

Auth: Sec. 2-4-201, MCA; IMP, Sec. 2-3-201, 2-3-203, 2-4-201, MCA

REASON: This rule is mandated by section 2-4-201, MCA. It is needed to provide the public more detailed information how it can participate in board operations.

"VI MEETINGS (1) The board shall assemble and meet as often as required to do necessary business. No meeting shall be adjourned without setting a time and place for the next regular meeting. For emergency matters or for single routine but urgent matters meetings may be conducted by long distance conference calls. For all meetings of any nature, advance notice to the public shall be given.

(2) Minutes of the proceedings during all board meetings shall be kept and shall fairly reflect the substance of all remarks, motions, comments, and votes."

Auth: Sec. 2-4-201, MCA; IMP, Sec. 2-3-201, 2-3-202, 2-3-203, 2-3-212, MCA

REASON: This rule is mandated by section 2-4-201, MCA. It is needed to protect the public's right to participate in telephone conference meetings and to assure that minutes of such meetings are kept.

"VII ENFORCEMENT (1) If a safety hazard in the continued operation of a passenger tramway exists, and after such verification of the facts as is practical under the circumstances reveals that public safety so requires, the chairman may request a recommendation from the consulting engineer, and, if supported by a majority of the board, shall cause a written and dated (with the hour noted) emergency order to be issued requiring the owner or tramway supervisor of said tramway to forthwith cease using the same for the transportation of passengers not yet loaded upon the tramway. The order shall be signed by the board chairman, a board member, or the engineer, indicating the name of the concurring board members. The order shall be called to the attention of the owner or tramway supervisor by the fastest available means of communication and shall take effect immediately upon receipt. A copy of the order shall be delivered to the owner or tramway supervisor or person in physical charge of the tramway as rapidly as possible. No emergency shutdown shall continue for more than 72 hours, during which time the board shall entertain recommendations from the owner or tramway supervisor, its consulting engineer and others who may appear to the board to be necessary parties. Based thereon the board will determine what, if any, further action is appropriate.

(2) Other than as provided in subsection (1) above, enforcement of these rules and title 23, chapter 2, part 7, MCA, shall be a function of a quorum of the full board at a convened regular or special meeting called upon 48 hours notice to board members and to the effected owner or tramway supervisor."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-721, 23-2-722 and 23-2-723, MCA

REASON: This rule is mandated by section 23-2-721, MCA. It is needed to provide a procedure for quick response to emergency situations which endanger life and safety of persons on or near an operating passenger tramway.

"VIII. REGULATION OF TRAMWAYS (1) In order to ensure that all passenger tramways conform with the requirements set forth by Title 23, chapter 2, part 7, MCA, and these rules, all passenger tramways operating in the state of Montana shall be registered annually with the board. No passenger tramway shall be operated for passengers without a valid certificate of registration.

(2) Passenger tramways shall be registered annually starting October 1st of each year. Each registration will expire on September 30th next following date of issue.

(3) Any passenger tramway which shall be opened for the first time for passenger operation shall, during its first calendar year of operation, be considered a new tramway for purposes of these rules.

(4) Any passenger tramway which shall have operated for passengers in excess of one calendar year, shall be considered an existing tramway for purposes of these rules.

(5) Any passenger tramway moved to a new location shall be considered a new tramway for the purposes of these rules with the exception that those expressly designed to be portable, shall not be considered new tramways when moved to different locations but remaining under the ownership of the same operator.

(6) Major modifications to an existing tramway, as defined in ARM 8.72.103(4), will cause the existing tramway to be considered as a new tramway for the purposes of these rules, except where such modifications are in compliance with ANSI B77.1, as adopted herein, and have no adverse effect on the remainder of the tramway system as certified by a board qualified design engineer.

(7) Upon receipt of the first application for a certificate of registration, the board shall assign each tramway an identification number, which shall remain as a permanent identification number for the life of the tramway. All correspondence with the board pertaining to any tramway shall refer to the identification number assigned by the board to that tramway.

(8) All applications for registration of new or existing tramways shall be submitted in accordance with the requirements of these rules. The application shall be made in writing and addressed to:

Board of Passenger Tramway Safety
Department of Commerce
Arcade Building, 111 North Jackson
Helena, MT 59620-0407

(9) In addition to supporting documents listed in ARM 8.72.104 or (New Rule IX), each application shall contain the following information:

(a) name, address and telephone number of the owner and the tramway supervisor.

(b) location and owner's designation of the tramway.

(c) identification number, as assigned by the board for the tramway."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-711, 23-2-712, 23-2-721 and 23-2-722, MCA.

REASON: A new rule is need to clarify the procedure for applying for registration of new or existing passenger tramways.

"IX REGISTRATION OF EXISTING TRAMWAYS (1) Prior to October 1 of each year, or before any tramway is placed in operation, every owner or tramway supervisor of any existing tramway who intends to operate the tramway during the ensuing 12-month period, shall apply to the board for a certificate of registration. The application shall be submitted in accordance with these rules and shall be accompanied by the following supporting documents:

(a) an annual general inspection certification shall be submitted by the owner and shall contain the following information:

(i) name, address and Montana registration number of the qualified tramway inspection engineer.

(ii) location of the tramway, owner's designation, and the board's identification number.

(b) a copy of the general inspection report performed by the qualified tramway inspection engineer.

(c) a certified statement signed by the tramway owner or tramway supervisor - which provides substantially as follows: "I certify that the deficiencies under the ANSI Standards noted in the inspection report [dated] have been corrected and that, at the time of the inspection, all visible and audible operations of this tramway were found to be satisfactory, except as noted. The structural conditions of the towers and terminals were observed and no apparent defects were noted. All noted deficiencies have been corrected, with the exception of those listed on the request for variance attached to this application."

Auth: Sec. 23-2-721, MCA; IMP; Sec. 23-2-701, 23-2-711, 23-2-712, 23-2-713, 23-2-721, 23-2-722, MCA

REASON: This rule is needed to establish and clarify procedure for registering existing tramways.

"X FEE AND ASSESSMENT SCHEDULE

- (1) Original Registration and Annual Registration for
J-Bars, T-Bars, Platterpulls, Rope Tows \$ 25.00
Skimobiles and Chair Lifts \$ 50.00
Two-car Aerials and Multicar Aerials \$100.00
- (2) The assessment shall be 1/4 of 1% on the gross receipts of all passenger tramways operated in Montana with minimum of \$100.00 per passenger tramway facility."

Auth: Sec. 23-2-714, 23-2-715, 23-2-721, MCA; IMP, Sec. 23-2-714, 23-2-715, 23-2-721, MCA

REASON: This rule is needed to set forth in one place, for the convenience of the public, the nature, extent and amount


of fees imposed and levies assessed under the Board.

5. Chapter 483, Laws of 1989 created the Board of Passenger Tramway Safety. The overall purpose of this notice is to establish administrative rules of the Board by transferring and amending existing rules and noticing new rules.

6. Interested persons may submit their data, views and arguments, either orally or in writing, at the hearing. Written data, views and arguments may also be submitted to the Board of Passenger Tramway Safety, 111 North Jackson, Helena, Montana 59620-0407, no later than August 23, 1990.

7. Robert P. Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF PASSENGER TRAMWAY
SAFETY
TIMOTHY PRATHER, CHAIRMAN

By: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 16, 1990.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF AMENDMENT OF RULE
amendment of rules pertaining) 4.12.1012
to the Grain Fee Schedule for)
the State Grain Laboratory)

TO: All Interested Persons

1. On June 14, 1990 the Montana Department of Agriculture proposed to amend the rules stated in the above entitled matter at page 1056 of Issue No. 11 of the Montana Administrative Register.
2. The department has amended the rule as proposed
3. No comments or testimony were received.
4. The authority for the amendment is 80-4-721 MCA.
5. This amendment will be effective August 1, 1990.

DEPARTMENT OF AGRICULTURE
E. M. Snortland, Director

By: Sandra Luchau
Sandra Luchau, Administrator
Centralized Services Division

Certified to the Secretary of State July 16, 1990

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF NEW
of new rules pertaining to) RULES PERTAINING TO
applications, minimum require-) IMPAIRMENT EVALUATORS
ments for certification,)
approval of training programs,)
recertification and fees of)
impairment evaluators)

TO: All Interested Persons:

1. On March 15, 1990, the Board of Chiropractors published a notice of public hearing on the proposed adoption of new rules pertaining to impairment evaluators at page 399, 1990 Montana Administrative Register, issue number 5.

2. The Board adopted new rule IV (8.12.904) exactly as proposed and adopted new rules I, II, III and V as proposed but with the following changes:

"I (8.12.901) APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT EVALUATORS (1) will remain the same as proposed.

(2) Applicants must shall have been in active clinical practice in Montana for a minimum of three-(3) years; with-at least-fifty-(50)-percent-of-the-applicant's-practice-devoted to-patient-management one year.

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

(b) successfully completing an educational and training program relating to chiropractic orthopedics, impairment ratings or similar course work at from a council on chiropractic education (CCE) status chiropractic college or any other college or university approved by the board; or

(c) by being in practice for more than five (5) years and successfully demonstrating to the board that he has completed a certified program equal to that recommended by the board.

(4) Diplomats of the American chiropractic board of orthopedists (DABCO) will-not-be-required-to-take-the-12-hours-of-the-chiropractic-orthopedics-section-of-the-training program in practice more than five (5) years are exempt from the educational and training requirements.

(5) Applicants must shall take and pass an examination prescribed and given approved by the board with a minimum passing grade of 75% on all questions asked.

(6) Applications shall be accompanied by official transcripts, diplomas or similar certificates evidencing successful completion of one of the types of education and training programs approved by the board. Successful completion is deemed to-mean-obtaining-a-rav-score-overall-of 75%-on-a-comprehensive-examination-covering-the-entire education-and-training-program written certification by the course provider."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

"II (8.12.902) MINIMUM REQUIREMENTS FOR BOARD-APPROVED PROGRAMS TO QUALIFY FOR CERTIFICATION AS EVALUATORS (1) In order to qualify for board approval, programs for education and training of prospective chiropractic impairment evaluators must require completion shall include of a minimum of 36 hours of classroom course work to the following extent on comprised of the following subject areas;

(a) 12 24 hours of chiropractic-orthopedics education in impairment rating from a college certified by the council on chiropractic education; and

(b) 12 hours of educational material specifically prepared by a medical doctor who specializes in impairment rating; and.

(c) 12 hours of instruction from plaintiffs' advocate attorneys; defendants' advocate attorneys and claims examiners experienced in handling of worker's compensation cases."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

"III (8.12.903) APPROVAL OF TRAINING PROGRAMS (1) through (3) will remain the same as proposed.

(4) When the training program is approved, the board will issue a letter of approval for the training program for a period of two (2) years.

(5) will remain the same as proposed."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

3. Proposed new rule V is being adopted as subsections (7), (8) and (9) of existing ARM 8.12.615 but with the following changes:

"8.12.615 FEE SCHEDULE

(7) Application fee for impairment evaluators \$125.00

(8) Certificate fee for impairment evaluators 75.00

(9) Renewal of certification fee for impairedment evaluators 50.00"

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-1-134, 37-12-201, MCA

5. The board has thoroughly considered the comments received. Rep. Bernie Smith and Senator Eleanor Vaughn presented letters in support of the rules for certification of impairment evaluators. Fifteen letters were received from licensees in full support of the proposed rules. Robert Dahl, D.C., stated he was personally opposed to the proposed rules. Three letters were received from licensees completely objecting to the proposed rules. Those comments and the board's responses thereto are as follows:

COMMENTS REGARDING ARM 8.12.901(2): Dr. Gregory Pisk; Dr. Robert Dahl; and Bonnie Tippy of the Montana Chiropractic Association, objected to the three years of experience as unfair. The Montana Chiropractic Association suggested lowering this requirement to one year and eliminating the 50% practice devoted to patient management. Dr. Dahl felt the 50% practice was restraint of trade.

Seven letters were received from licensees that felt the 3 years of experience was unfair or discriminatory.

RESPONSE: The Board concurred with the comments and amended the rule to require one year of experience as suggested by the Montana Chiropractic Association and deleted reference to 50% practice devoted to patient management. The Board received responses from 6 chiropractic colleges stating that impairment courses were not taught at the undergraduate level and felt one year of experience would be required for licensees to acquire the necessary knowledge and training in postgraduate courses to qualify as an evaluator.

George Wood, Montana Self-Insurers Association submitted a letter in support of the rules and offered comments relating to wording and grammar in (2) as follows: strike the word "must" and insert the word "shall."

RESPONSE: The Board concurred with Mr. Wood's suggestion and amended the language to include the word "shall."

COMMENTS REGARDING ARM 8.12.901(3) AND (4): Dr. Dahl and Ms. Tippy offered three suggestions on experience and training:

1. Three years plus of experience and no extra required courses.
2. Less than three years experience and completion of 36 hour course.
3. Diplomats of the American Board of Chiropractic Orthopedists (DABCO's) not required to take the course.

Six letters were received requesting Diplomats of the American Board of Chiropractic Orthopedists (DABCO's) be exempt from the 36 hours of required course work.

RESPONSE: The board generally agreed with the comments received and granted DABCO's exemption with 5 years of experience in (4) and added (3)(c) to allow applicants with more than five years experience and have successfully completed a certified program equal to that recommended by the board to qualify for examination for certification as an impairment evaluator.

George Wood saw a need to clarify "CCE" by writing in the words for which the initials represent.

RESPONSE: The board concurred and spelled out the words Council on Chiropractic Education.

COMMENTS REGARDING ARM 8.12.901(5) AND (6): Dr. Dahl objected to 85% of all questions asked and suggested changing the amount to 75% of the questions pertaining to the material submitted.

Ms. Tippy submitted testimony that this language could be

interpreted to mean that licensees will have to take two examinations, one administered by the course provider and one by the board. The Association stated it would simplify the rule if the course provider could have their examination pre-approved by the board as well as the course content, and the provider then administer the test and submit the testing results and course completion documentation to the board, eliminating costs and hassles for the board.

RESPONSE: The Board concurred and amended the rule as shown above.

COMMENTS REGARDING ARM 8.12.902: Dr. Dahl and Ms. Tippy questioned the need for course work by a medical doctor, advocate attorneys or claims examiners referring to testimony given during hearings on HB 33 on the expertise and abilities of chiropractors. They stated it was inconsistent to insist that medical doctors have knowledge or abilities which require their expertise in training chiropractors to do evaluations. They felt the education should be done only by chiropractic orthopedists, and the medical doctor, attorneys and claims examinations should be deleted.

Tom Fullerton, D.C., stated that the current law places chiropractors on a parity with medical doctors and questioned the need for 12 hours of course work prepared by a medical doctor.

Two letters were received that were in general support of the rules including 36 hours of course work, but opposed the requirement of 12 hours of course work prepared by a medical doctor, attorneys or claims examiners.

RESPONSE: The board concurred with the recommendations on course work by attorneys or claims examiners and deleted (c) but retained course work by a medical doctor. The board feels that course work prepared by a medical doctor would be based on the Journal of the American Medical Association guide to impairment evaluations, current edition, which is prepared by numerous medical doctors.

Pat Pardis, D.C., submitted a letter requesting 60 hours of course work rather than the proposed 36 hours.

RESPONSE: The board retained the minimum requirement of 36 hours as most licensees responding felt 36 hours was either adequate or too much.

George Wood submitted suggested language and grammar changes as follows: (1) strike the word "must" and insert "shall;" (1)(a) strike the (s) in orthopedics and insert "education;" (1)(b) strike "educational material" and insert "education."

RESPONSE: The Board concurred and made the amendments as shown above.

COMMENTS REGARDING ARM 8.12.903: George Wood suggested (4) and (5) be combined and rewritten.

RESPONSE: The Board amended (4) to state a period of two (2) years and retained (5) as originally proposed since no objections were received from licensees in these areas.

COMMENTS REGARDING ARM 8.12.904: Dr. Dahl and Ms. Tippy presented testimony suggesting recertification every 5 years with a comprehensive examination in lieu of continuing education.

Two letters were received from licensees in general support but requesting examination be required for recertification.

RESPONSE: The board retained the rule as proposed as it did not feel examination was necessary for recertification as proof of course work would be sufficient documentation and felt the expense for reexamination that would be borne by the licensees would be excessive.

COMMENTS REGARDING ARM 8.12.614: Dr. Dahl and Ms. Tippy suggested the application fee of \$125.00 could be eliminated if the changes regarding testing were implemented and also suggested reducing the certificate fee to \$50.00 and payment of the renewal fee every 5 years instead of 2 years.

Dr. Gary Blom submitted a letter asking the board to reduce the fees in half in all categories.

RESPONSE: The board is required under section 37-1-134, MCA, to set fees commensurate with program area costs and therefore retained the fees as proposed based on cost factors in setting up this certification program. The board realizes that in the future the fees may be lowered as costs of running the certification program are reduced.

5. No other comments or testimony were received.

BOARD OF CHIROPRACTORS
ROGER COMBS, D.C., CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR

Certified to the Secretary of State, July 16, 1990.

**STATE OF MONTANA
BEFORE THE MONTANA ARTS COUNCIL**

In the matter of the proposed	)	NOTICE OF AMENDMENT OF
amendment of rules pertaining	)	RULES 10.111.701,
to Cultural and Aesthetic	)	10.111.702, 10.111.704
Project Grant Proposals	)	THROUGH 10.111.706 AND
	)	10.111.708

TO: All Interested Persons:

1. On April 26, 1990, the Montana Arts Council published notice of the proposed amendment of Rules 10.111.701, 10.111.702, 10.111.704 through 10.111.706 and 10.111.708 pertaining to Cultural and Aesthetic Project Grant proposals at page 789 of the 1990 Montana Administrative Register, issue number 8.

2. The Council has amended Rule 10.111.701, 10.111.702, 10.111.705, 10.111.706 and 10.111.708.

3. The Council has amended the following rules with the following changes.

"10.111.704 ELIGIBLE PROJECTS (1)(a) through (1)(b)(v)(C) remain the same (vi) For ~~organizations applying applications for of \$20,000 or more in operational support, submission of a current audit of the benefitting organization is requested required.~~ If none exists, an unaudited financial review signed by an independent accountant will suffice. WHERE THE BENEFITTING ORGANIZATION IS AN AGENCY OF STATE OR LOCAL GOVERNMENT AND THE AUDIT PERFORMED INCLUDES THE ENTIRE AGENCY, A COPY OF SUCH AUDIT WILL SUFFICE.

(1)(b)(vi)(A) through (1)(d) remain the same"

Auth: Sec. 22-2-303 MCA; IMP, Sec. 22-2-303 MCA & 22-2-308 MCA;

"10.111.705 CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT (1) through (3)(e)(iii) remain the same

(f) Trustees will have and other authorized endowment holders shall observe the powers and duties as specified in MONTANA Trustees' Powers Act (72-21-101 through 72-21-104 and 72-21-201 through 72-21-206, MCA): MANAGEMENT OF INSTITUTIONAL FUNDS ACT (72-30-206, MCA),

(g) through (3)(d)(xiii) remain the same"

Auth: Sec. 22-2-303 MCA; IMP, 22-2-301, AND 22-2-308 AND 22-2-309 MCA;

4. REASON: It was necessary to change "applicant" to "benefitting organization" because the language of the original rules was confusing about the roles of the applicant or governing unit and the benefitting organization which most often carries out the project.

COMMENT: Brian Spellman, Administrator Officer of the School of Fine Arts at the University of Montana commented that the requirement for applicants requesting \$20,000 or more in General Support might be difficult to meet for departments of the University which did not have a separate audit. He stated it was difficult for him to obtain copies of the overall University audit.

RESPONSE: The Legislative Auditor was contacted regarding the auditing of individual University departments. It was determined that while every transaction of every department was not audited, spot checks of each University department did occur. Copies of the entire University audit was deemed readily available from the office of the Legislative Auditor. The rules were amended to allow state and local governments to submit their entire audit if a separate department audit was not available.

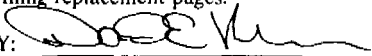
COMMENT: The Legislative Council requested that the Implementation for Rule 10.111.706 include 22-2-309.

RESPONSE: The agency will comply when filing replacement pages.

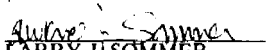
COMMENT: The Legislative Council requested that in the authority for investment of endowment funds in Rule 10.111.705 (3)(f) "Montana Management of Institutional Funds Act" be deleted.

RESPONSE: The agency will comply when filing replacement pages.

BY:


DAVID E. NELSON
EXECUTIVE DIRECTOR
MONTANA ARTS COUNCIL

BY:


LARRY J. SOMMER
DIRECTOR
MONTANA HISTORICAL SOCIETY

Certified to the Secretary of State, July 16, 1990.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of Rule 12.6.901 pertaining)	OF RULE 12.6.901
to water safety regulations)	CLOSING CERTAIN WATERS

TO: All interested persons

1. On May 31, 1990 the Fish and Game Commission gave notice of proposed amendment to Rule 12.6.901 establishing a no-wake restriction below Canyon Ferry Dam on page 983 of the Montana Administrative Register, issue number 10.

2. No public hearing was held nor was one requested. The Commission has received no written or oral comments concerning these rules.

3. Based on the foregoing, the Commission hereby amends the rule as proposed.


K.L. Cool, Secretary
Fish and Game Commission

Certified to the Secretary of State July 16, 1990.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF
of new rules for a River) ARM 12.7.1101 THROUGH
Restoration Program) 12.7.1112 (RULES I - XII)

TO: All interested persons

1. On April 26, 1990 the Department of Fish, Wildlife, and Parks published notice of a proposed adoption of ARM 12.7.1101 through ARM 12.7.1112 (RULES I through XII) at page 795 of the 1990 Montana Administrative Register, issue number 8.

2. Oral comment was taken at a public hearing May 23, 1990 and written comments were received through May 28, 1990.

3. The Department has adopted the rules as proposed with the following changes:

12.7.1101 (RULE I) PURPOSE (1) To preserve rivers and streams ~~for~~ of recreational and economic importance to Montana by providing financial assistance for design, planning and construction of projects to restore streambeds, banks and associated adjacent lands to conserve and enhance fish and wildlife habitat.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1102 (RULE II) DEFINITIONS received no comments and is adopted as proposed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1103 (RULE III) ELIGIBILITY (1) Participants eligible for program funding include individuals, private, conservation district, city, county, state, tribal and federal organizations and land occupiers as defined by the Conservation District Act.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1104 (RULE IV) PROJECT APPLICATION (1) through (4) are adopted as proposed.

(5) Applicants proposing projects on lands other than their own must include written consent of the landowner and/or lessee for the project, including an agreement for any maintenance and evaluation activities that may be necessary.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1105 (RULE V) PROJECTS (1) Program funding may be provided for costs of design, planning and construction of projects which will conserve and enhance fish and wildlife habitat. Potential projects may include but are not restricted to the following:

(a) through (h) are adopted as proposed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1106 (RULE VI) PROJECT REVIEW AND ASSESSMENT (1)

Applications for program funding will be reviewed in March and September of each year. A program committee of three department personnel will review, evaluate and approve projects for funding. The fisheries division administrator will give the final approval for project funding.

(2) Copies of completed applications received by the Department will be sent to the appropriate conservation district for their review and comments. In order to have their comments considered the conservation district must return its comments within 10 days after its monthly meeting following receipt of the application to the Department Fisheries Division, Habitat Protection Bureau Chief, 1420 East Sixth Avenue, Helena, Montana 59620.

(3) The following criteria will be used for evaluating restoration projects:

(a) is adopted as proposed.

(b) The degree to which the project promotes benefits to other river resources, such as water quality, water quantity, wildlife habitat, non-fishing recreational values, property values, and aesthetic values the beneficial public use and productivity of other river resources;

(c) through (h) are adopted as proposed.

(4) ~~(2)~~ All applicants will receive written notification of action taken on their project proposal within 60 days after the submittal deadline.

(5) ~~(3)~~ Projects will be approved for funding only if account money is available as requested to complete the project. There is no dollar limit on projects.

(6) ~~(4)~~ Projects will be funded up to at 100 percent of cost, except that installation of permanent irrigation diversions will be limited to 50 percent of the total cost. The project applicant's share may consist of "in-kind" services, other funding sources or both.

(7) ~~(5)~~ When deemed necessary, the department will solicit outside technical design review of projects.

(8) ~~(6)~~ No project conducted under the program may restrict or interfere with the exercise of any water right.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1107 (RULE VII) PERMITS received no comments and is adopted as proposed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1108 (RULE VIII) INSPECTION AND PAYMENT BY DEPARTMENT

(1) Funds granted from the account shall be used only for purposes described in the application. Accurate records must be kept by the project applicant or sponsor. An itemized invoice of expenses and receipts approved by the applicant must be submitted to the department for payment.

(2) is adopted as proposed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1109 (RULE IX) PROJECT MAINTENANCE (1) Projects funded under the program such as fences, bridges, culverts, irrigation diversions, bank rock rip-rap or other channel stabilization measures will become the property of the landowner. Fish habitat improvement projects such as spawning channel development, fish barrier removal or modification and structural cover development must be maintained for the useful life of the project by the applicant. A memorandum of understanding shall be prepared by the department and the landowner as necessary to allow for any maintenance or monitoring activities of projects funded by the program.

(2) Projects with demonstrated benefits to public fisheries and conservation of rivers may be eligible for maintenance funding under this program. Maintenance funding may be requested by submitting a completed program application form to the department. These requests will ~~compete with other projects for funding~~ be evaluated by the program committee when they are received and funding may be granted after all factors are considered.

(3) is adopted as proposed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1110 (RULE X) EVALUATION (1) Restoration projects involving devices to improve fish habitat, such as digger logs, K-dams, wing deflectors, trash collectors, boulder placement, bank cover, gablons, jetties, or any variations thereof, shall be evaluated subject to evaluation by the applicant. A tentative An evaluation plan shall be submitted along with the program application form in order to be considered for project funding. The evaluation plan must involve one year of pre-project data including fish population information and channel morphology measurements. Post-project evaluation must be conducted at least twice in the following five year period. The applicant shall submit a report to the Department following each post-project evaluation activity. The report must summarize the findings of the evaluation. The applicant shall submit an annual report to the department of evaluation and/or monitoring activities for three years after project completion.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1111 (RULE XI) RECORDS received no comments and is adopted as proposed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

12.7.1112 (RULE XII) EFFECT OF RULE VIOLATIONS (1) Any person or organization falsifying financial statements or using river restoration funds for purposes other than the intended project found in violation of any of the river restoration program rules will be disqualified from further participation in the program and will be required to reimburse the department for any compensation received.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

4. The department has considered the comments received and responds as follows:

COMMENTS ON NEW RULE I (ARM 12.7.1101): George Ochenski, representing himself, suggested removing the words "design, planning and construction" from the purpose statement because projects should be well planned before applying for funds. This commentor thought funding for surveys, sampling, classification and on-going administrative costs would deplete the funds.

Lorents Grosfield, representing the Montana Association of Conservation Districts, recommended a wording change to the rule so it would read, (1) To preserve rivers and streams ~~for~~ of recreational and economic importance to Montana

RESPONSE: We expect projects to be planned out prior to applying for River Restoration Program funding. There are no provisions in the program for funding surveys, sampling, classification and on-going administrative costs. Such costs will have to be borne by other programs or by the applicant and could serve as in-kind or cost sharing services to help fund a project. In some instances, a meaningful project may need planning and design built into the cost. Such costs would act as a catalyst to obtain funding from other programs to complete the project. In those cases where the department believes outside technical design review of a project is needed (12.7.1106 (Rule VI(7))), payment for such review will be encumbered from a separate contract account. For these reasons, the rule has not been changed from its proposed form except the word "of" was substituted for the word "for."

COMMENT ON NEW RULE III (ARM 12.7.1103): George Ochenski recommended adding "individuals" to those eligible for program funding and also suggested eliminating the reference to "conservation districts" as eligible, since conservation districts are state organizations and state organizations are listed in the eligibility rule. Lorents Grosfield recommended the reference to "Soil Conservation Act" be changed to "Conservation District Act", since the Conservation District Act defines land occupiers applicable to Montana.

RESPONSE: Conservation districts are specifically mentioned in the River Restoration Act under 87-1-257(3), MCA, along with state organizations. The word "individuals" is also written into the Act. To make the rule consistent, Rule III has been changed to include "individuals" and the reference to conservation districts has been left in. The Soil Conservation Act was changed to Conservation District Act.

COMMENT ON NEW RULE IV (ARM 12.7.1104): Lorents Grosfield commented that additional language was needed under Rule IV(5) (ARM 12.7.1104(5)) to allow for maintenance or evaluation activities of projects by the project applicant lands on other than their own.

RESPONSE: Additional wording has been adopted to reflect this concern.

COMMENT ON NEW RULE V (ARM 12.7.1105): Stan Bradshaw, representing the Montana Council of Trout Unlimited, and George Ochenski recommended more specific language stating that projects must be specifically for fish habitat enhancement. Peggy Robles, representing the Montana Association of Conservation Districts, recommended including education programs as projects. Joe DosSantos, representing the Montana Chapter of the American Fisheries Society, recommended less emphasis on structural projects and more emphasis on land use projects that would enhance fisheries.

RESPONSE: Rule I (ARM 12.7.1101) states the purpose of the river restoration program, which is to conserve and enhance fish and wildlife habitat by preserving rivers and streams. Adding a similar phrase to Rule V (ARM 12.7.1105), although redundant, reminds applicants that projects must enhance fisheries. The projects listed under this rule are suggested examples and all imply enhancement or improvement of fish habitat. The proposed rule was changed to reflect the concerns.

Several state and federal agencies already have education programs dealing with riparian, water quality, land use practices and permitting, while there is a paucity of programs specifically for river restoration work; therefore, the suggestion regarding educational programs was not adopted.

The comment suggesting less emphasis on structural projects and more on land use management to protect fish habitat reflects a valid concern. Items (c) and (f) in Rule V (ARM 12.7.1105) suggest land use management projects as restoration measures. Therefore, the department concluded there was no need to add further language on the subject.

COMMENTS ON NEW RULE VI (ARM 12.7.1106): Peggy Robles and Kim Enkerud, representing the Montana Stockgrowers Association, commented that conservation districts should have more involvement in the River Restoration Program, since the districts would have knowledge of the area and are able to provide information about proposed projects. The commentators cited the law where it reads, "the department shall present projects to local conservation districts for their review and recommendations and obtain any applicable permits." George Ochenski and Lorents Grosfield stated that the meaning of the phrase "other river resources" in paragraph (1)(b) was unclear and suggested a clearer statement or examples of "other river resources". Peggy Robles stated a review committee of various interests should evaluate and approve projects for funding, rather than a department committee. She based this recommendation on the passage in the law that states the department shall work cooperatively with individuals, conservation districts and various governmental agencies to achieve the goals of the program. Al Wipperman, hearing officer, proposed one amendment to Rule VI(4) (ARM 12.7.1106 (4)) prior to hearing public testimony. He proposed a wording change so that section (4) reads: "Projects will be funded at up to 100 percent . . .

RESPONSE: The proposed rule has been changed so that the appropriate conservation district has the opportunity to review and comment on proposed projects.

The department intended "other river resources" to mean water quality and quantity, wildlife habitat, non-fishing recreational values, property values and aesthetic values. The proposed rule was changed to reflect that understanding.

In response to the all entity review committee, the department believes that a river restoration committee of three fishery professionals will be able to adequately judge projects carefully and efficiently. Therefore, no change in this rule was made.

The department adopts the suggested wording change in section (4) of the rule.

COMMENT ON NEW RULE VIII (ARM 12.7.1108): George Ochenski suggested adding the words "and receipts" to section (1) of this rule.

RESPONSE: The words "and receipts" were added to the rule.

COMMENT ON NEW RULE IX (ARM 12.7.1109): Stan Bradshaw and Kim Enkerud both commented that funding for maintenance should be a part of the initial project grant. Stan Bradshaw was concerned that granting unconditional ownership of projects to landowners may prevent maintenance work by the applicant if for some reason the landowner chose to deny permission to do improvement work. He was also concerned that there was no language to insure that a landowner abides by terms and conditions of projects from which he has benefited.

RESPONSE: Rule IV (ARM 12.7.1104(5)) was amended to require an applicant to obtain written agreement with the landowner and/or lessee to allow for maintenance or evaluation activities. Rule IX was amended to reflect maintenance and monitoring activities for projects funded under the program.

COMMENT ON NEW RULE X (ARM 12.7.1110): Comments from Joe DosSantos and Stan Bradshaw suggested expanding this rule to spell out what kind of monitoring and evaluation will be expected of the applicant.

RESPONSE: The rule has been changed to reflect the suggestions.

COMMENT ON NEW RULE XII (ARM 12.7.1112): Stan Bradshaw questioned what constituted a violation and stated that the rule should leave some leeway for minor violations. As written, the rule is too inflexible.

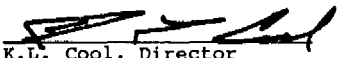
RESPONSE: The proposed rule has been changed to reflect these concerns.

GENERAL COMMENTS: George Ochenski suggested adding a priorities section to clearly define what the program is about. He suggested priorities for projects that have the greatest benefit to public fisheries and where cost share or financial participation from other sources would generate funding for the

greatest public benefit. Steve Pilcher commented that projects selected by the Water Quality Bureau as priorities under the State's Nonpoint Source Pollution Control program should be given some consideration during the river restoration program review process, although this need not be stated as a specific criteria in the proposed rules.

RESPONSE: Mr. Ochenski's and Mr. Pilcher's comments were similar in that they stated projects generating funding from other programs and greatly benefiting fisheries should receive priority or additional consideration for evaluation. The need for a priority section in the rules is redundant to the criteria for evaluating projects as covered under Rule VI (ARM 12.7.1106(3)). For this reason, the department concluded there was no need to add further language on the subject.

5. No other comments or testimony were received.


K.L. Cool, Director
Montana Department of Fish,
Wildlife, and Parks

Certified to the Secretary of State July 16, 1990.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION
rules I through X relating to	)	OF NEW RULES
procedures and criteria regarding	)	RELATING TO
the wastewater treatment works	)	THE WASTEWATER TREATMENT
revolving fund	)	WORKS REVOLVING FUND

(Water Quality)

To: All Interested Persons

1. On April 26, 1990, the Board published notice at page 799 of the Montana Administrative Register, issue No. 8, to consider the adoption of the above-captioned rules I through X relating to procedures and criteria regarding the wastewater treatment works revolving fund. On May 17, 1990, the Board published notice of date change for public hearing on the proposed adoption at page 879 of the Montana Administrative Register, issue No. 9.

2. After consideration of the comments received on the proposed rules, the Board has adopted the rules as proposed with the following changes:

RULE I (16.18.301) PURPOSE Remains the same.

RULE II (16.18.302) DEFINITIONS Remains the same.

RULE III (16.18.303) USE OF THE FUND -- ELIGIBLE ACTIVITIES FOR FUND ASSISTANCE Remains the same.

RULE IV (16.18.304) TYPES OF FINANCIAL ASSISTANCE
Remains the same.

RULE V (16.18.305) CRITERIA FOR FINANCIAL ASSISTANCE TO MUNICIPALITIES (1) Remains the same.

(2) All projects funded with financial assistance from the revolving fund must be listed on the Montana project priority list and intended use plan as described in Rule VIII and Rule IX, respectively.

RULE VI (16.18.306) CRITERIA FOR LOANS TO PRIVATE CONCERNS Remains the same.

RULE VII (16.18.307) APPLICATION PROCEDURES (1) A complete application package must be submitted to the department no later than October 1 to be considered for the ~~subsequent fiscal year~~ current federal fiscal year (October 1 - September 30).

(2)(a) through (e) Remain the same.

(f) other information needed for evaluating the project, as determined by the department or required pursuant to administrative rules issued by the department of natural

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resources and conservation.

(3) through (4) Remain the same.

RULE VIII (16.18.308) MONTANA PROJECT PRIORITY LIST

(1) through (3) Remain the same.

~~(3)~~(4) The priority list must be revised at least annually to consider new projects and changes in project status, and to allocate available revenues from the fund for eligible uses.

RULE IX (16.18.309) INTENDED USE PLAN -- RANKING FOR FUNDING PURPOSES (1) The department shall prepare an intended use plan (IUP) that describes the projects being considered for fund financial assistance for the upcoming federal fiscal year and establishes a preliminary project ranking.

(2) through (3) Remain the same.

RULE X (16.18.310) PUBLIC PARTICIPATION Remains the same.

3. Following is the one comment received on the rules and the department's response:

COMMENT: The commenter stated, under Rule IV (a)(i), why should the state not be able to charge an interest rate plus an additional amount on the interest to cover the cost of managing the loan?

RESPONSE: While not addressed in the MDHES rules, we fully intend to pass administrative costs for managing the program on to loan recipients. This aspect will be covered in the administrative rules currently under development at DNRC. DNRC is charged with this aspect of program management.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

By


DONALD E. PIZZINI, Director

Certified to the Secretary of State July 16, 1990.

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

In the matter of the adoption of)
new Rules I through III regarding)
investigation of complaints re-) NOTICE OF
garding effects of hard rock) ADOPTION OF RULES
blasting operations.)

TO: All Interested Persons

1. On March 15, 1990, the Department of State Lands and Board of Land Commissioners published notice of public hearing on proposed adoption of rules concerning the types and methods of investigation of complaints that hard rock blasting operations have caused property damage or a safety hazard and specifying the methods of cooperation by the operator in the investigation, on page 458 of the Montana Administrative Register, Issue No. 5.

2. The rules have been adopted with the following minor grammatical and numbering changes that are not shown below and with substantive changes:

RULE I (26.4.141) COMPLAINT PROCEDURE (1) Same as proposed.

(a) Complaints must be filed in writing with the Department's hHard rRock bBureau.

(b) Same as proposed.

(i) name, mailing address, street address and phone number of the person or persons filing complaint;

(1)(b)(ii) through (1)(b)(vii) Same as proposed.

(c) The department shall respond to all complaints by notifying each person who files a complaint whether the department considers the complaint to be credible. A credible complaint is a complaint addressing all requirements listed in subsection (b) above in a manner that is not false or without basis on its face.

(2) Same as proposed.

(a) immediately providing the operator with a copy of a credible complaint;

Subsections (a) through (e) remain the same as the proposed rule, but are renumbered to (b) through (f).

(3) Same as proposed.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-356, MCA.

RULE II (26.4.142) PARTICIPATION AND COOPERATION OF PERSONS USING EXPLOSIVES

(1) through (3)(a)(ii)(C) Same as proposed.

(b) A survey prepared under (a)(ii)(C) must be conducted by a recognized expert on the forces created by blasting and must document the condition of the structure, any blasting damage, any causes for the damage other than blasting, and whether blasting by the operator exceeded the standards

contained in Rule III~~(6)(a)(2)(f)(i), (11)(a)(k)(i) and (15)(e)(o)(iii)~~. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems must be limited to surface condition and readily available data. Special attention must be given to the condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3)(c) through (3)(c)(ii) Same as proposed.

(d) The department shall require that a written report of the survey be prepared and signed by the person who conducted the survey. If the report finds that the standards were exceeded or that the blasting caused damage or safety hazard, the report must ~~may~~ include recommendations of any special conditions or proposed adjustments to the blasting procedure that should be incorporated into the blasting plan to prevent damage or hazard. The department shall provide a copy of the report to the complainant and the operator.

(4)~~(a)~~ If the third party investigation demonstrates that the operator exceeded the standards contained in Rule III~~(6)(a)(2)(f)(i), (11)(a)(k)(i) or (15)(e)(o)(iii)~~ or that the damages or a hazard resulted from blasting by the operator, the operator shall reimburse the department for all reasonable fees and expenses it has paid to the third-party consultant.

(b) The operator may file a response, including proposed mitigation measures, to the written report submitted pursuant to (3)(d) within 15 days from receipt of the report.

(c) The department shall respond to the operator in a timely manner with directives and fees for all reasonable expenses incurred in the third-party investigations.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-356, MCA.

RULE III (26.4.143) ORDERS OF THE DEPARTMENT (1) If it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by blasting associated with exploration or mining activities by an operator, the department shall issue an order. In the event the order is not complied with, the department shall implement noncompliance procedures. The order must impose requirements reasonably necessary to prevent property damage or safety hazards.

(2) The department may require as many of the following requirements as are reasonably necessary for this purpose:

(1) through (3)(b) remain the same but are renumbered to (a) through (c)(ii).

~~(e)(iii)~~ name, signature, and if applicable license number and appropriate certification program name of blaster-in-charge;

Subsection (3)(d) through (6)(a) remain the same, but are renumbered (c)(iv) through (f)(i).

~~(b)(ii)~~ In all cases, except the C-weighted, slow-response system, the measuring systems used must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted system must be measured with a Type 1 sound level meter that meets the standard American national standards institute (ANSI) S1.4-1971 specifications. These specifications are hereby incorporated by reference. Copies of this publication are on

file with the Department of State Lands, Capitol Station, Helena, Montana 59620.

~~(4)(iii)~~ The operator may satisfy the provisions of this subsection by meeting any of the four specifications in the chart in ~~subsection paragraph (6)(a)(f)(i)~~ above.

~~(4)(iv)~~ The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements, except as noted in ~~(4)(f)(i)~~ above.

~~(7)(g)~~ Whenever the standards contained in ~~(11)(a)(k)(i)~~ and ~~(15)(c)(o)(iii)~~ have been exceeded, or whenever, based upon the consultant's report, it has been determined to be necessary to protect public safety or property, the department may require modification of blasting activities to protect:

~~(a)(i)~~ public, private or institution building, including any dwelling, school, church, hospital, or nursing facility; and Subsection (b) remains the same, but is renumbered to (ii).

~~(9)(h)~~ A blast design, including measures to protect the facilities in subsection (7)(g) must be submitted to the department prior to continued blasting.

~~(9)(i)~~ Flyrock, including blasted material traveling along the ground, must not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under subsection (5)(e) of this rule.

(10) remains the same, but is renumbered (j).

~~(11)(k)~~ ~~(a)(i)~~ In all blasting operations, except as otherwise authorized in this subsection, the maximum peak particle velocity must not exceed the following limits at the location of any dwelling, public building, school, church, or commercial, public, or institutional structure:

Distance (D) from the blasting site, site, in feet	Maximum allowable peak particle velocity (V max) for ground vibra- tion, in inches/ second	Scaled-distance factor to be applied without seismic monitoring (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

Subsection (b) and (c) remain the same, but are renumbered (ii) and (iii)

~~(12)(l)~~ If blasting is conducted in such a manner as to avoid adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection (11)(k) does not apply at the following locations:

Subsections (a) and (b) remain the same, but are renumbered (i) and (ii).

~~(13)(m)~~ An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in subsection (14)(n) of this rule. If the blasting is conducted in accordance with this equation, the peak particle velocity is deemed to be within the limits specified in subsection (11)(k) above.

~~(14)(n)~~ The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W = (D/D_s)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period; D = the distance, in feet, from the blast to the nearest public building or structure, dwelling, school, church, or commercial or institutional building or structure, except as noted in subsection (12)(l) above; and D_s = the scaled distance factor, using the values identified in subsection (11)(k) above.

~~(15)(o)~~ ~~(a)(i)~~ Whenever a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limits of subsection (11)(k) are not exceeded, the equation in subsection (14)(n) need not be used. If that equation is not used by the operator, a seismograph record must be obtained for each shot.

~~(b)(ii)~~ The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. The department may not approve the use of a modified equation if the peak particle velocity for the limits specified in subsection (11)(k) are exceeded, meeting a 95% statistical confidence level.

~~(c)(iii)~~ The operator may use the ground vibration limits in Figure 1 (30 CFR 816.67(d)(4)) as an alternative to subparagraphs (a)(i) and ~~(b)(ii)~~ above, upon approval by the department.

Figure 1: Blasting Level Chart Same as proposed.

Subsection (d) remains the same, but is renumbered (iv).

3. The following persons submitted comments on the proposed rules:

<u>NAME</u>	<u>REPRESENTING</u>
Esme LaBreche	Self
Harley Moody	Self
Paul Kunze	N. A. Degerstrom, Inc.
Stephen Walsh	Montana Resources
Jim Shea	Self
T. A. Jensen	Golden Sunlight Mines, Inc.
Donald Greenlief	Self
Glen Yaut	School District #1
Dennis Sullivan	CASJ
Joe Quillici	House District #71

Joe Ivanich
Kathy Lubke

District #4 and Self
Administrative Rules Bureau
Secretary of State's Office

Florence Ore
Florence Ore
Thomas Malloy

Northern Plains Resource Council
Concerned Citizens of Pony
New Butte Mining, Inc.

Montana Resources, Inc., Northern Plains Resource Council, and the Concerned Citizens of Pony recommended adoption with no amendments. The following is a summary of other comments received and the agency's responses to those comments:

GENERAL COMMENTS

1. COMMENT: A number of commenters gave testimony relating to damage to their or others' property and stated that this damage was caused by blasting operations. (LaBreche, Greenlief, Yaut, Shea, Quilici). One commenter stated that there is no way to avoid property and geologic damage in the area near blasting operations. (Moody). Other commenters stated that no damage is occurring from hard rock blasting operations and that there is no need for the rules or the legislation that authorized adoption of the rules. (MRI, Degerstrom).

RESPONSE: This testimony is relevant to the need or lack of need for the rules and the legislation on which the rules are based. The 1989 Montana Legislature considered this issue and determined that the legislation and implementing rules are necessary. The Department's goals in adopting these rules is to implement the legislation to provide investigation of credible complaints that is both complete and efficient.

2. COMMENT: Is there a difference in coal and hard rock blasting powder, or the type of rock, or some other factor which would explain the type of problems we are having with blasting here [in Butte]? (Greenlief).

RESPONSE: The U. S. Bureau of Mines performed studies on various types of structures that apply to hard rock mining operations. Based on these studies, the Department believes that a seismic wave traveling through rock shows similar characteristics whether it is in sandstone or granite. Although the frequency and amplitude of the waves will vary with the type of rock, the limitations in the rules restrict the vibration allowed. The same protection should therefore result, no matter what type of rock the blasting occurs in.

3. COMMENT: There are no penalties in the rules. Therefore they are very weak. There needs to be more protection here for the public. (Shea).

RESPONSE: Section 82-4-361, MCA, provides civil penalties for violation of the Hard Rock Act or any order adopted pursuant to the Act. This section would provide penalties for violation of

an order issued pursuant to these rules. It is not necessary to reiterate these penalty procedures in the rules.

4. COMMENT: The last page of rules is so technical that lay people cannot understand the information here. Rules must be able to be understood by the lay person. (Quilici).

RESPONSE: Although some of the specifications in these rules contain technical language difficult for laymen to understand, the meaning of the language is accepted throughout the blasting and mining industries. Use of this language will therefore minimize confusion as to these requirements. This is essential in regulatory language. Department personnel are available to answer questions from lay persons regarding the meaning of technical terms.

RULE I

5. COMMENT: The term "Department's Hard Rock Bureau" in (1)(a) should not be capitalized. (Secretary of State).

RESPONSE: The capitalization has been removed.

6. COMMENT: The affected operator should be immediately notified of a complaint and supplied a copy of the actual complaint. This will allow the operator to promptly conduct an internal investigation of blasting procedures prior to moving on to Rule II and/or Rule III. Should it be necessary to involve Rule II and/or III, the operator would have a better understanding of the issue which would help expedite the procedures. (Golden Sunlight).

RESPONSE: The Department has made the proposed change in Rule I (2).

7. COMMENT: The rules need to define key terminology such as "credible complaint" and other terms as appropriate and explain how the DSL will differentiate between "credible complaints" and "non-credible complaints." (Degerstrom; New Butte Mining; Sullivan; Quilici).

RESPONSE: A definition of "credible complaint" has been added to (1)(c). The Department has not identified other terms that require definition.

8. COMMENT: The information required under Rule I(1)(b)(i) must be reasonable and moderate. There is no sense in a husband and wife having to submit duplicate information. (Ivanich).

RESPONSE: A husband and wife can file a single complaint. The Department has added to (1)(b)(i) language clarifying that this is allowed.

9. COMMENT: Perhaps a time frame should be placed in (3) on the Department of State Lands' response to allegations. (Golden Sunlight).

RESPONSE: The Department is obligated to conduct a responsible investigation and will do whatever is necessary to obtain complete and accurate results in a timely fashion. However,

because the Department currently has no experience in monitoring blasting and because blasting occurs at different intervals at various operations, the Department has no basis for establishing a deadline for completion of investigations.

10. COMMENT: If a complaint is not credible what is the response back to the individual? (Ivanich).

RESPONSE: The Department has added to (1)(c) a requirement to advise the complainant of the Department's credibility determination.

RULE II

11. COMMENT: Section (1) should be amended to provide that DSL notify the operator immediately upon receiving any complaint, credible or not, so that the operator has an opportunity to immediately initiate its own investigative action and take any corrective actions as may be appropriate. (New Butte Mining).

RESPONSE: The Department will notify the operator when it receives a credible complaint. Complaints which do not meet the criteria would not be forwarded because they will not result in an investigation.

12. COMMENT: In (3)(a)(i), if there is no scientific evidence to support claims of damage, it will be difficult to inform residents. This may tempt the agencies to put the burden of the decision onto a consultant. (Degerstrom).

RESPONSE: The Department intends to comply with the proposed rule by conducting complete and impartial investigations and reporting the results of those investigations.

13. COMMENT: The "recognized expert" brought in as a third-party consultant in (3)(c) should be a person mutually agreed upon between the Department of State Lands and the operator. (Golden Sunlight).

RESPONSE: The criteria listed in (3)(c) are adequate to provide for the hiring of a competent blasting expert. Mutual agreement on experts, which is commonly used in arbitration proceedings, is less appropriate for regulatory investigations.

14. COMMENT: The consultant criteria in (3)(c) can not be so stringent as to be too expensive to hire one. (Quilici).

RESPONSE: In order for the Department's finding to be sustainable, it is necessary that the consultant be recognized as a specialist having the proper credentials. The Department believes that the qualifications given in the rules provide a basis to pick the best consultant for the job. Under 18-8-105, MCA, if it appears that the fee will be more than \$5,000, the Department will engage in a bidding process.

15. COMMENT: In the second sentence of (3)(d), the word "may" should be changed to "should". This will provide a guideline for yielding acceptable results. Without these recommendations,

the consultant's report would be nebulous with respect to appropriate correction procedures. (Golden Sunlight).

RESPONSE: The Department has changed the word "may" to "must" to implement this comment.

16. COMMENT: To avoid repetitive, perhaps petty complaints that may waste valuable Department of State Lands' time and to install a sense of responsibility to the complainant, the complainant should possibly be required in (4)(a) to share the financial burden of the consultant with the Department if the operator is found to be innocent of the allegations. It seems to me a mechanism to head off the potential problem of agencies hiring consultants to inform people that there is no scientific evidence to support allegations of damage could be developed. A method of charging the complainant some costs associated with a losing nuisance complaint could be developed. Another mechanism would be to leave the phrase "credible complaint" alone and not soften it. (Degerstrom).

RESPONSE: The Department will first conduct a preliminary investigation of its own to determine if it is possible that damage occurred as a result of blasting. If the Department determines that blasting is not the cause of damage, it will not hire a consultant. A consultant will be hired only if the Department cannot determine whether damage occurred as a result of blasting or if it appears that damage has occurred as a result of blasting. Thus, to require the complainant to pay in this situation would place an unreasonable financial burden on the complainant because it would require payment in certain instances in which the complainant and the Department have probable cause to believe that blasting caused damage. The suggested change has therefore not been adopted.

17. COMMENT: If the complaint is credible, the Department should include DSL expenses with those third-party consultant expenses charged to the operator pursuant to (4). (Ivanich).

RESPONSE: If the consultant's report finds the operator at fault, the Department will require reimbursement of all fees accrued by the third party consultant. Other costs to the Department should not be extensive and may not justify the additional workload that separate accounting would necessitate.

18. COMMENT: When it comes to third-party consultants, it must be clearly understood that homeowners do not have the money to foot the bill. (Quilici).

RESPONSE: Homeowners are not required to pay any fees under the rules.

RULE III

19. COMMENT: Rule III should be renumbered by placing a "(1)" at the beginning of the rule and renumbering as appropriate. (Secretary of State).

RESPONSE: The suggested change has been made.

20. COMMENT: Subsection (3)(c) states that the blaster-in-charge will put down his certification number. Who or what certification is referred to here? (Degerstrom).

RESPONSE: Rule III(3)(c) has been modified to make the rule more applicable to the hard rock mining industry. Blaster certification is applicable to coal mining, not hard rock mining.

21. COMMENT: Although perhaps trivial, the requirement in (3)(r) to detail the number of people on the blasting crew seems irrelevant. Golden Sunlight already maintains the other requested items in (3)(r). (Golden Sunlight).

RESPONSE: This information may help in the investigation. For example, a blasting record showing fewer people in the crew at dates and times where complaints have been generated may be an indication of inadequate loading practices. Therefore, the Department has not removed this requirement.

22. COMMENT: Is the intention in (6)(b) to incorporate the ANSI standards by reference? (Secretary of State).

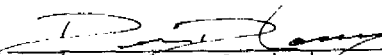
RESPONSE: Yes. Language to reflect this intent has been added.

23. COMMENT: After the third-party's decision has been reached, a time-frame of at least two weeks should be provided in (8) to the operator to prepare a response, submit it, and to allow the Department of State Lands opportunity to review the modifications. (Golden Sunlight).

RESPONSE: The Department has incorporated language in Rule II(4) to implement this comment.

24. COMMENT: Could the Department of State Lands provide a clarification of what is meant in (11) by "...velocities must be recorded in three mutually perpendicular directions.?" (Golden Sunlight).

RESPONSE: Seismic wave propagation can effect surface structures in three ways: 1) compression-tension displacement (P-wave), 2) vertical shear displacement (SV-wave), and 3) horizontal shear (SH wave) displacement. As the magnitudes of the displacements vary at any given point, the three "mutually perpendicular" components of the seismic wave must be recorded, as any one could exceed the vibration threshold (measured as peak particle velocity). Modern blast vibration monitors are equipped with individual sensors capable of recording ground vibrations along the x-axis, y-axis and z-axis. Therefore, only one seismograph is needed to perform the necessary monitoring. The Department will review the seismograph records to see if the limitations have been exceeded in any of the three directions.


Dennis D. Casey, Commissioner

Certified to the Secretary of State July 16, 1990.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.522, 46.12.527,
46.12.522, 46.12.527,	)	46.12.537, 46.12.547,
46.12.537, 46.12.547,	)	46.12.573, 46.12.582,
46.12.573, 46.12.582,	)	46.12.589, 46.12.605,
46.12.589, 46.12.605,	)	46.12.905, 46.12.915,
46.12.905, 46.12.915,	)	46.12.1015 and 46.12.1025
46.12.1015 and 46.12.1025	)	PERTAINING TO A TWO PER
pertaining to a two per	)	CENT (2%) INCREASE IN
cent (2%) increase in	)	MEDICAID FEES FOR PROVIDER
medicaid fees for provider	)	SERVICES
services		

TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.522, 46.12.527, 46.12.537, 46.12.547, 46.12.573, 46.12.582, 46.12.589, 46.12.605, 46.12.905, 46.12.915, 46.12.1015 and 46.12.1025 pertaining to a two per cent (2%) increase in medicaid fees for provider services at page 923 of the 1990 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.522, 46.12.527, 46.12.537, 46.12.547, 46.12.605, 46.12.905, 46.12.915, 46.12.1015 and 46.12.1025 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.573 CLINIC SERVICES, REIMBURSEMENT Subsections (1) through (4)(a) remain as proposed.
(i) individual therapy - ~~\$14.30~~ 14.528;
Subsection (4)(a)(ii) remains as proposed.
(iii) group therapy and family therapy - ~~\$3.50~~ 3.656;
and Subsections (4)(a)(iv) through (5)(c) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.582 PSYCHOLOGICAL SERVICES, REIMBURSEMENT Subsections (1) through (3) remain as proposed.
(4) ~~\$12.66~~ 12.926 per hour and one half session for group psychological services.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.589 LICENSED CLINICAL SOCIAL WORK SERVICES, REIM-
BURSEMENT Subsections (1) through (3)(a) remain as
proposed.

(b) ~~\$10.14~~ 10.348 per hour and one half session for
group counseling; or

Subsection (3)(c) remains as proposed.

AUTH: Sec. 53-6-113 MCA

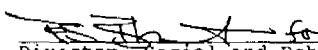
IMP: Sec. 53-6-101 MCA

4. The Department has thoroughly considered all
commentary received:

COMMENT: It was recommended that ARM 46.12.1025 be amended to
include Advanced Life Support (ALS) services which include the
use of endotracheal tub, establishment of an intravenous
device, administration of medications other than instant
glucose, use of electrocardiographic monitoring, of defibril-
lation and/or cardioversion. ALS services should be reim-
bursed at 65.2% of the usual and customary fees.

RESPONSE: Although the Department is aware that the past
legislature revised the ambulance laws including new criteria
for ALS, the department is restricted by HB100 from expanding
Medicaid services. The department is currently considering
the adoption of ALS and preparing the necessary information
for the next legislative session. The addition of ALS
services will require legislative action.

5. These rules will be applied retroactively to July 1,
1990.



Director, Social and Rehabilita-
tion Services

Certified to the Secretary of State July 5, 1990.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule	)	RULE 46.12.703 PERTAINING
46.12.703 pertaining to	)	TO REIMBURSEMENT FOR
reimbursement for	)	OUTPATIENT DRUGS
outpatient drugs)	


TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.703 pertaining to reimbursement for outpatient drugs at page 906 of the 1990 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.703 as proposed.

3. No written comments or testimony were received.

4. This rule will be applied retroactively to July 1, 1990.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State _____ July 5, 1990.

VOLUME NO. 43

OPINION NO. 64

INSTITUTIONS, DEPARTMENT OF - State-controlled funding for regional mental health centers;
MENTAL HEALTH - Duty to inform detainee subject to involuntary commitment petition of rights;
MENTAL HEALTH - State-controlled funding for regional mental health centers;
PEACE OFFICERS - Duty to inform detainee subject to involuntary commitment petition of rights;
MONTANA CODE ANNOTATED - Sections 53-21-106, 53-21-114, 53-21-115, 53-21-129, 53-21-202 to 53-21-204, 53-21-206;
ADMINISTRATIVE RULES OF MONTANA - Sections 20.14.501 to 20.14.512
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 5 (1989).

- HELD: 1. The Department of Institutions may allocate state general fund appropriations to purchase services for certain priority populations from regional mental health centers.
2. Pursuant to section 53-21-114, MCA, the mental health professional examining a person under a petition for involuntary commitment must determine whether the person has been informed of his rights and, if not, inform him of them.

July 11, 1990

Lee R. Kerr
Treasure County Attorney
P.O. Box 72
Hysham MT 59038

Dear Mr. Kerr:

You have requested my opinion on the following questions:

1. May the Department of Institutions allocate state general fund appropriations for mental health centers to certain priority populations based on age, diagnosis, and severity of disorder considering section 53-21-206, MCA, which provides that mental health services are available without discrimination on the basis of race, color, creed, religion or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964?
2. Pursuant to section 53-21-114, MCA, must the mental health professional examining a person under a petition for involuntary commitment inform that person of his rights?

The Department of Institutions has broad responsibility for the administration of the state mental health program and mental health centers. The duties of the Department require it to:

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this part[;]

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

....

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services[;]

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients to the Montana state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state[.]

§ 53-21-202, MCA. The State is divided into mental health regions and each region is authorized to incorporate as a nonprofit community mental health center. § 53-21-204, MCA. The Department and each center are authorized by sections 53-21-203 and 53-21-204(2), MCA, to enter into contracts in order to carry out the Department's plan for prevention, diagnosis and treatment of mental illness.

Information gathered from the Department of Institutions indicates there are five regional mental health centers in the state. Funds disbursed by the Department to the centers include state general fund appropriations and federal grants. After targeting some of these funds for certain essential services, the Department utilizes a formula for dividing the majority of the funds among the regional centers. The formula is based on an estimate of the number of seriously mentally ill adults, the

number of emotionally disturbed children identified by public schools, the number of service units provided to children and adolescents, and the number of admissions to Montana State Hospital. Each center "bills" the Department for services rendered and is reimbursed by the Department for the services provided to patients. The Department provides approximately 42 percent of the funding for the centers. The remainder of the centers' funding is provided by patient fees (17 percent), Medicaid, Medicare and state medical benefits (25 percent), other agencies (5 percent), counties (7 percent), and other miscellaneous sources (4 percent). The Department contracts with the centers for services it will purchase and the centers use the remainder of their funds as they see fit.

Your first question is whether this allocation of funds controlled by the Department constitutes discrimination in violation of section 53-21-206, MCA. That section and the federal law it cites require that the services of the Department and the centers be available without discrimination on the basis of race, color, creed, religion or ability to pay. Based upon the documents which you submitted with your opinion request and which describe the Department's formula for allocating funds, it appears that the Department's procedures for allocating funds to the centers do not relate in any way to a patient's race, color, creed, religion or ability to pay. The procedures do not, in fact, determine a person's eligibility for mental health services. The Department, which has the statutory duty to develop a comprehensive plan for the development of public mental health services in the state, merely contracts to "spend" state-controlled funds in a manner calculated to promote services for those individuals the Department has determined are in greatest need of those services. The centers may utilize resources obtained from other sources as they choose, and no showing has been made that any class of persons is being denied services. I therefore conclude, based upon the information submitted to me, that the Department's use of funds it controls is not a violation of section 53-21-206, MCA.

Your second question concerns application of section 53-21-114, MCA, which states in part:

(1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention or examination be informed of his constitutional rights and his rights under this part. Within 3 days of such detention or examination, he must also be informed in writing by the county attorney of such rights.

You suggest that mental health professionals should not be required to so inform a person, and suggest that the statute be interpreted to require peace officers to inform the detainee of his rights when involuntarily detained and remove the burden from the mental health professional. The statute is silent regarding who must inform. However, the statutes contemplate much more training, knowledge and involvement concerning the

mental health statutes and the commitment process by the mental health professional than by a peace officer. In In the Matter of the Mental Health of E.P., 47 St. Rptr. 297, ___ P.2d ___ (1990), the Court admonished the Mental Health Center, the county attorney, and the Department of Family Services for failure to comply with the statutory due process rights of the patient. The peripheral involvement of the peace officer who took E.P. into custody and promptly delivered E.P. to the center ended when she was delivered to the professional person. 47 St. Rptr. at 301. See also In re M.C., 43 St. Rptr. 508, 512, 716 P.2d 203, 206-07 (1986) (section 53-21-129, MCA, concerning emergency detentions, merely permits a peace officer to take a person into custody for an evaluation; it does not give the officer authority to decide whether the person should be placed in emergency detention. The professional person makes that determination). 43 Op. Att'y Gen. No. 5 (1989).

In order to be certified as a "professional person" under the mental health laws, the mental health professional must demonstrate proficiency and knowledge of the mental health laws. § 53-21-106, MCA; §§ 20.14.501 to 20.14.512, ARM. Section 53-21-115, MCA, of the mental health laws sets forth the procedural rights of a person detained or examined pursuant to a petition for involuntary commitment. Thus, a certified professional person has access to and knowledge of a detainee's rights and the law requiring notice of those rights. I therefore conclude that the professional person must determine whether a person has been informed of his rights and if he has not been so informed, to inform the person of them.

THEREFORE, IT IS MY OPINION:

1. The Department of Institutions may allocate state general fund appropriations to purchase services for certain priority populations from regional mental health centers.
2. Pursuant to section 53-21-114, MCA, the mental health professional examining a person under a petition for involuntary commitment must determine whether the person has been informed of his rights and, if not, inform him of them.

Sincerely,



MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------|---|
| Known | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | 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 March 31, 1990. This table includes those rules adopted during the period April 1, 1990 through June 30, 1990 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 March 31, 1990, this table and the table of contents of this issue of the MAR.

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