

RESERVE
KFM
9035
1973
.A245a

RESERVE

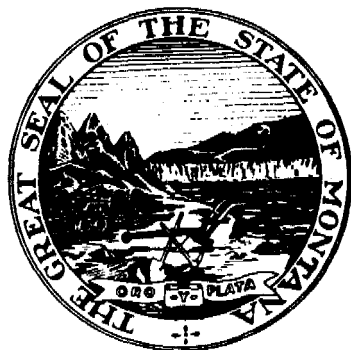
LIBRARY

SEP 14 1990

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1990 ISSUE NO. 17
SEPTEMBER 13, 1990
PAGES 1748-1805



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17 **STATE LAW LIBRARY**

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repeated 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 or repeals 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.

TABLE OF CONTENTS. Page Number

NOTICE SECTION

COMMERCE, Department of, Title 8

8-36-16 (Board of Optometrists) Notice of Proposed Amendment, Adoption and Repeal - Meetings - Examinations - Reciprocity - Practice Requirements - Continuing Education Requirements - Approved Courses and Examinations and Approved Drugs for Diagnostic and Therapeutic Pharmaceutical Agents - Definitions - Unprofessional Conduct and Continuing Education - Unprofessional Conduct. No Public Hearing Contemplated. 1748-1755

8-70-5 (Building Codes Bureau) Notice of Public Hearing on Proposed Amendment and Adoption - Incorporation by Reference of Codes, Standards. 1756-1764

8-127-7 (Montana Lottery) Notice of Proposed Amendment - Instant Ticket Price. No Public Hearing Contemplated. 1765

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-625 Notice of Public Hearing on Proposed Amendment - Refugee Cash Assistance. 1766-1769

RULE SECTION

ADMINISTRATION, Department of, Title 2

NEW Contracting for Services and Supplies. 1770-1771
AMD

COMMERCE, Department of, Title 8

AMD REP NEW	(Board of Private Security Patrolmen and Investigators) Definitions - Temporary Employment - Applications - Examinations - Insurance - Applicant Fingerprint Check - Fees - Probationary Private Investigators, Firearms Safety Tests - Unprofessional Conduct Standards - Record Keeping - Code of Ethics - Powers of Arrest - Disciplinary Actions.	1772-1773
TRANS AMD REP NEW	(Board of Passenger Tramway Safety) Organization of the Board of Passenger Tramway Safety.	1774-1781
NEW	(Board of Investments) Incorporation by Reference - Implementing the MEPA - Implementing Montana Environmental Policy Act.	1782
AMD NEW	(Board of Housing) Organization - Qualified Lending Institutions - Qualified Loan Servicers - Definitions - Officers Certification - False or Misleading Statements - Reverse Annuity Mortgage Loan Provisions.	1783

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD NEW	(Petroleum Tank Release Compensation Board) Definitions - Release Discovered on or After April 13, 1989 Construed.	1784-1785
------------	--	-----------

PUBLIC SERVICE REGULATION, Department of, Title 38

EMERG AMD	Motor Carrier Insurance.	1786-1787
--------------	--------------------------	-----------

INTERPRETATION SECTION

Declaratory Ruling.

Public Service Regulation. In the matter of the Petition of Dean Wayne Halse for a Declaratory Ruling on the Application of PSC Motor Carrier Laws to Transportation Aspects of a Mail Processing Business.	1788-1793
--	-----------

Page Number

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	1794
How to Use ARM and MAR.	1795
Accumulative Table.	1796-1805

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT,
amendment of rules pertaining	)	REPEAL AND ADOPTION OF RULES
to meetings, examinations,	)	PERTAINING TO THE PRACTICE OF
reciprocity, practice require-	)	OPTOMETRY
ments, fees, continuing educa-)	
tion requirements, approved)	
courses and examinations and)	
permissible drugs for diagnos-)	
tic pharmaceutical agents,)	
approved course and examina-)	
tion and approved drugs for)	
therapeutic pharmaceutical)	
agents; repeal of rules per-)	
taining to definitions, unpro-)	
fessional conduct and continu-)	
ing education; and adoption of)	
a new rule pertaining to)	
unprofessional conduct)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 14, 1990, the Board of Optometrists proposes to amend, repeal and adopt rules pertaining to the practice of optometry.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.36.401. BOARD MEETINGS (1) The board may convene at any time or place for purposes of transacting any business other than giving examinations. The president shall call such meeting and name the time and place, and give notice by ~~letter, telephone, or telegraph~~ to each member as much in advance of the meeting as possible.

(2) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-201, MCA

REASON: The proposed amendment is necessary to delete archaic language. It is not necessary to identify the means of notification to the board members. The notification itself is what is important, not the method used.

"8.36.404. EXAMINATIONS (1) and (1)(a) will remain the same.

~~(1)--The board may, at its discretion, and upon written request from an applicant, give a written examination composed by the board of optometrists.~~

(b) and (2) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-302, MCA

REASON: The Board is not equipped with the expertise to compose a written examination in lieu of the exam administered by the National Board of Examiners in Optometry. The Board wants to eliminate this option to an applicant to avoid any misleading availability of such an exam.

"8.36.405 RECIPROCITY (1) will remain the same.
(2) ~~--Applicants must have been in active ethical practice for at least 5 years prior to the date of application--~~
(3) (2) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-303, MCA

REASON: This amendment is needed to remove from the rule a requirement not provided for in statute, namely 5 years of ethical practice.

"8.36.406 GENERAL PRACTICE REQUIREMENTS (1) through (1)(f) will remain the same."
(2) Each registered optometrist must file and have on record with the board annually, the location of each and every office wherein the practice of optometry is conducted by him or her.
(3) Each registered optometrist must maintain accurate patient records for not less than five years from the last time the patient was treated."

Auth: 37-10-202, MCA; IMP, Sec. 37-10-202, MCA

REASON: The amendment of subsection (2) is needed to clarify the annual reporting requirement of the practice location. The addition of subsection (3) is needed to clarify the necessity to maintain accurate patient records and to maintain those records for a specific period of time. This requirement is both for the protection of the optometrist and the protection and convenience of the consumer. Availability of accurate patient records is critical in matters of license discipline investigation, malpractice or patient transfers.

"8.36.409 FEE SCHEDULE

(1) will remain the same.		
(2) Annual renewal	125-00	<u>100.00</u>
(3) Penalty for late renewal	125-00	<u>100.00</u>
(4) and (5) will remain the same.		
(6) <u>Copies of documents per page</u>	15-00	<u>.25</u>
(7) will remain the same.		
(8) <u>List of licensees</u>		<u>20.00"</u>

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-1-134, 37-10-302, 37-10-303, 37-10-307, MCA

REASON: The reduction in renewal and late fees charged by the board is necessary to make the fees commensurate with program area costs. Subsection (8) is being added to cover the cost charged to the board for all lists of licensees printed by computer services.

"8.36.601 REQUIREMENTS (1) through (1)(b) will remain

the same.

(2) The board will accept up to 2 four hours of practice management continuing education credit every two years per licensing year of practice management courses.

(3) through (5) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-308, MCA

REASON: Amendments in the practice management requirement reflect the changes occurring in the practice of optometry. Nationally known practice management courses are offered, but seldom reflect the restriction of 2 hours time. The board has agreed that these courses are valuable to the practitioner, but should not detract from other areas of continuing education. They have opted to accept a 2 year practice management requirement in one year, but only accept it every other year.

"8.36.701 APPROVED COURSES AND EXAMINATIONS (1) through (2)(a) will remain the same.

(b) That a passing score on the test will be such score determined as passing by the teaching staff 75%."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This amendment is necessary to clarify the passing requirement of the DPA examination and to clarify to a potential licensee the expectations and requirements of the board. The arbitrary statement of "such score determined as passing by the teaching staff" eliminates the board in determining minimum qualifications for DPA certification.

"8.36.704 PERMISSIBLE DRUGS (1) Upon licensure or certification, the permissible drugs and their concentrations are as follows:

(a)	Mydriatics	
(i)	Phenylephrine Hydrochloride	2-5%
(ii)	Hydroxyamphetamine Hydrobromide	1-0%
(b)	Cycloplegics	
(i)	Tropicamide	1-0%
(ii)	Cyclopentolate	1-0%
(iii)	Homatropine Hydrobromide	5%
(iv)	Atropine Sulfate	5%
(c)	Topical Anesthetics	
(i)	Proparacaine Hydrochloride	5%
(ii)	Benzoxinate Hydrochloride	4%
(iii)	Piperocaine Hydrochloride	2-0%
(d)	Miotic, only in the event of an emergency and after consultation with physician	
(i)	Pilocarpine Hydrochloride	1-0%

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: The elimination of the specific concentrations for DPA drugs is to eliminate the inability to use updated concentrations of the approved drugs. This will allow a smooth transition for licensees in using new approved concentrations of approved drugs without requiring a rule amendment.

"8.36.803 APPROVED COURSE AND EXAMINATION

(1) An approved course, as referred to in section 37-10-304(2)(a)(ii), shall be a therapeutic pharmaceutical agents course approved by the board which consists of at least 76 hours a minimum of 100 hours of didactic classroom instruction and 24 hours of clinical instruction.

(a) The test for competency will be given either by staff conducting the course, or the IAB. The IAB exam referred to in this section is the exam on ocular therapeutics. A passing score will be an average of 75% or higher on all subjects tested."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: Subsection (1) proved to be restrictive when evaluating course approval. The board received several requests for approval of courses that did not conform to the specific 76 hour and 24 hour division of time, but were good courses that should have been recognized. This amendment will give the board some discretion in reviewing and approving courses. The amendment of subsection (1)(a) is necessary to eliminate confusion as to what courses and examination are required to qualify for a TPA certificate.

"8.36.804 APPROVED DRUGS

(1) through (2)(a)(iii) will remain the same.

(iv) Dihydrocodeinonee"

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This amendment is necessary to correct a misspelled drug.

2. ARM 8.36.402, 8.36.407 and 8.36.703 (located at pages 8-1071, 1073, 1074 and 1083, Administrative Rules of Montana) are being proposed for repeal. ARM 8.36.402 is outdated and of little use in determining gross ignorance or inefficiency. The equipment mentioned is not necessary to perform all duties of an optometrist and is not used in a number of situations. This definition proved too limiting in scope when evaluating today's practice of optometry. ARM 8.36.407 is being repealed because the practice of optometry has expanded the past several years to include drug prescriptions. The new unprofessional conduct rule as shown below will put the licensees on notice that these particular acts are specific violations of the optometric practice act. ARM 8.36.703 is being repealed because the 12 hour requirement restricted to DPA continuing education is beyond the board's rulemaking authority and is overly restrictive of subject matter.

Auth and IMP: Sec. 37-10-301, 37-10-308 and 37-10-311, MCA

3. The proposed new rule will read as follows:

"I. UNPROFESSIONAL CONDUCT Unprofessional conduct includes, but is not limited to, the following items or combination thereof:

(1) Fraud or misrepresentation in applying for or procuring an optometric license or in connection with applying for or procuring periodic renewal of an optometric license.

(2) Cheating on or attempting to subvert the optometric licensing examination(s).

(3) The commission or conviction of a gross misdemeanor or a felony in this state or any other jurisdiction, or the entry of a guilty or nolo contendere plea to a gross misdemeanor or a felony charge, directly or indirectly relating to the practice of optometry.

(4) The commission or conviction of a gross misdemeanor or a felony as defined by federal law, or the entry of a guilty or nolo contendere plea to a gross misdemeanor or a felony charge, directly or indirectly relating to the practice of optometry.

(5) Conduct likely to deceive, defraud, or harm the public.

(6) Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, device, treatment, or remedy prescribed by him or her or used at his or her direction in the treatment of any disease or other condition.

(7) Willfully or negligently violating the confidentiality between doctor and patient, except as required by law.

(8) Negligence in the practice of optometry as determined by the board.

(9) Gross incompetence in the practice of optometry as determined by the board.

(10) Being found mentally incompetent or insane by any court of competent jurisdiction.

(11) A pattern of practice or other behavior that demonstrates a willful rendering of substandard care, either individually or as part of a third party reimbursement agreement or any other agreement.

(12) The use of any false, fraudulent, deceptive or misleading statement in any document connected with the practice of optometry.

(13) Aiding or abetting the practice of optometry by an unlicensed, incompetent, or impaired person.

(14) Commission of any act of sexual abuse, misconduct, or exploitation related to the licensee's practice of optometry.

(15) Being addicted or habituated to a drug or intoxicant.

(16) Prescribing, selling, administering, distributing, or giving any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes.

(17) Except as otherwise permitted by law, prescribing, procuring an optometric license or in connection with applying for or procuring periodic renewal of an optometric license.

(18) Prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or as an addictive or dangerous drug to a family member or to himself or herself.

(19) Violating any state or federal law or regulation relating to a drug legally classified as a controlled substance.

(20) Obtaining any fee by fraud, deceit, or misrepresentation.

(21) Disciplinary action of another state or jurisdiction against a licensee or other authorization to practice optometry based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this act, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof.

(22) Sanctions or disciplinary actions taken by a peer review body, a hospital or other health care institution, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in the act.

(23) Failure to report to the board any adverse action taken against him or her by another licensing jurisdiction by any peer review body, by any health care institution, by any professional society or association, by any governmental agency, by any law enforcement agency, or by any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in the act.

(24) Surrender of a license or authorization to practice optometry in another state or jurisdiction, or surrender of membership on any staff or in any professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this act.

(25) Failure to report to the board surrender of a license or authorization to practice optometry in another state or jurisdiction, or surrender of membership on any staff or in any professional association or society while under disciplinary investigation by any of those authorities or bodies for acts of conduct similar to acts or conduct that would constitute grounds for action as defined in this act.

(26) Any adverse judgement, award, or settlement against the licensee resulting from a professional liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this act.

(27) Failure to report to the board any adverse judgment, settlement, or award arising from a professional liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in the act.

(28) Failure to report to the board the relocation of his or her office, in or out of the jurisdiction.

(29) Failure to furnish the board, its investigators or representatives, information legally requested by the board.

(30) Violation of any provision(s) of the Optometry Practice Act or the rules and regulations of the board or of an action, stipulation, or agreement of the board.

(31) Failure to practice the profession with proper diligence.

(32) Advertising in a manner that tends to deceive,

mislead or defraud the public.

(33) The designation of any person licensed under this act other than by the terms "optometrists", "doctor of optometry" or "O.D."

(34) For any person to do or perform any act constituting the practice of optometry without first obtaining a license in accord with this act and the regulation of the board.

(35) For a licensee to knowingly submit or cause to be submitted any misleading, deceptive or fraudulent representation on a claim form, bill or statement.

(36) If any person practices or attempts to practice optometry while his or her license is suspended, the license may be permanently revoked.

(37) For any person to sell, or offer to sell, any eyeglasses or lenses for the correction of refractive error except on prescription of a licensed optometrist or licensed physician.

(38) Providing ophthalmic lenses and materials that do not meet federally established impact resistance standards.

(39) Persistently maintaining, in the practice of optometry, unsanitary offices, practices or techniques.

(40) Contracting communicable, contagious or infectious diseases that endanger patients' health."

Auth: 37-10-202, MCA; IMP, 37-10-301, 37-10-311, MCA

REASON: See reason for repeal of 8.36.407 above.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoption in writing to the Board of Optometrists, 111 N. Jackson, Helena, Montana 59620, no later than October 12, 1990.

5. If a person who is directly affected by the proposed amendments, repeals and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Optometrists, 111 N. Jackson, Helena, Montana 59620, no later than October 12, 1990.

6. If the board receives requests for a public hearing on the proposed amendments, repeals and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons

directly affected has been determined to be 23 based on the 230 licensees in Montana.

BOARD OF OPTOMETRISTS
P. L. KATHREIN, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1990.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendments of rules pertaining) PROPOSED AMENDMENTS OF 8.70.
to incorporation by reference) 101, 8.70.103, 8.70.105, 8.
of codes, standards, and) 70.108, 8.70.303, 8.70.401,
adoption of new rules) 8.70.502, 8.70.602 AND
) ADOPTION OF NEW RULE I.
) PERTAINING TO BUILDING CODES

TO: All Interested Persons:

1. On October 10, 1990, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider amendments of the above-stated rules and adoption of the above referenced rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Building Code, 1988 Edition, together with the Appendix Chapter 7 (~~Part I, Covered Mall Buildings~~)-(Part II, Aviation Control Towers), Appendix Chapter 12 (~~Division I - Requirements for Group R, Division 3 Occupancies~~) as amended by ARM-8-70-100, Appendix Chapter 23 (Division I - Alternate Snow Load Design), Appendix Chapter 32 (Re-Roofing), Appendix Chapter 49 (Patio Covers), Appendix Chapter 53 (Energy Conservation in New Building Construction), as amended by 8.70.104, and Appendix Chapter 55 (Membrane Structures, and Appendix Chapter 57 (Regulations Governing Fallout Shelters)) with the following amendments thereto:

(a) through (e) will remain the same.

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

(4) Subsection (d) of section 2305 of the Uniform Building Code, 1985 ~~1988~~ Edition, requires that snow loads be determined by the building official. In areas of the state outside of certified local government jurisdictions, the design snow load shall ~~meet or exceed the snow load calculated be based on the ground snow loads developed in "Recommended Snow Loads for Montana Structures", March, 1978, authored by department of civil engineering/engineering mechanics "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke/Civil & Agricultural Engineering/Montana State University. The minimum design roof snow load after allowed reductions shall be 30 psf. Figure No. A-5-A of Appendix Chapter 23 is hereby amended to provide that the building official is to establish the ground snow load for the entire state of Montana. For purposes of plan review, a snow exposure coefficient (Ce) of 0.9 and an Occupancy Importance Factor (I) of 1.0 (1.15 for essential~~

facilities and A-1.2 and 2.1 occupancies) will be used unless other coefficients and factors can be justified by a Montana licensed design professional to the satisfaction of the building official.

(5) Subsection (a) of section 2907 of the Uniform Building Code, 1985 1988 Edition, requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be 3.0 ft. for single story wood and metal frame buildings and 4.0 ft. for multi-story and masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for so-called monolithic slabs properly designed and stamped by a Montana registered structural engineer.

(6) through (8) will remain the same.

(9) In Section 1222, Appendix Chapter 12, Division I, change wording of first paragraph as follows: "Buildings regulated by this division shall be designed and constructed to comply with the requirements of the One and Two Family Dwelling Code, latest edition adopted by the bureau in Section 8.70.108, Administrative Rules of Montana, promulgated jointly by the international conference of building officials; the building officials and code administrators international, inc., and the southern building code congress international, inc."

(10) Section 50-60-102(1), MCA, exempts any private garage or private storage structure used only for the owner's own use from application of the state building codes. A private garage is a building or a portion of a building, not more than 1,000 square feet in area, in which only motor vehicles used by the tenants of the building or buildings on the premises are stored or kept. A building in which vehicles are repaired or stored as part of a commercial enterprise or business, even if on the premises of a dwelling, is not a private garage. A private storage structure used only for the owner's own use is a building used for storage of personal effects of the owner and not used for storage of equipment, vehicles, materials, supplies or products used in a commercial enterprise or business.

(*) (11) Appendix Chapter 1 (Division I - Life Safety Requirements for Existing Buildings other than High-rise Buildings), Appendix Chapter 1 (Division II - Life Safety Requirements for Existing High-rise Buildings), Appendix Chapter 11 (Agricultural Buildings), Appendix Chapter 12 (Division II - Requirements for Group R Division 4 Occupancies), Appendix Chapter 23 (Division II - Earthquake Instrumentation), Appendix Chapter 26 (Protection of Residential Concrete Exposed to Freezing and Thawing), Appendix Chapter 35 (Sound Transmission Control), Appendix Chapter 38 (Basement Pipe Inlets), Appendix Chapter 57 (Regulations Governing Fallout Shelters), Appendix Chapter 70 (Excavation and Grading) are adopted for use by local

governments specifically adopting them. However, the department will not be enforcing them."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-203, MCA

REASON: The bureau is proposing these amendments to keep the state standard current with modern technology by adopting certain uniform building code appendix chapters, by correction of typographical errors and by clarifying certain structural design standards.

"8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) and (2) will remain the same.

(3) The Uniform Code for the Abatement of Dangerous Buildings, 1985 1988 Edition, is a nationally recognized model code setting forth minimum standards and requirements for dangerous buildings. A copy of the Uniform Code for the Abatement of Dangerous Buildings, 1985 1988 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth Sec. 50-60-203, MCA; IMP, Section 50-60-203, MCA

REASON: The bureau is proposing these amendments to correct a previous typographical error.

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1)(a) through (1)(c) will remain the same.

(d) Chapter 21, Appendix B, ~~pages 297-315~~ titled "Steam and Hot-water Boilers, Steam and Hot-water Piping (Hydronics)" shall be adopted as part of the Uniform Mechanical Code except as follows:

(i) In section 2102 change the wording of the first paragraph to read: "The requirements of this chapter apply to the construction, installation, repair, and alteration of steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families, or to hot water heating or supply boilers operated at not over 50 pounds per square inch gauge pressure and temperatures not over 250°F when in private residences or apartments of six or less families, and to all other systems or portions of systems not all other systems are under the control of the ~~bureau of safety and health, division of workers' compensation,~~ department of labor and industry, state of Montana. Generally, the department of labor and industry program covers only the boilers themselves and attached controls and safety valves but not clearances, venting, combustion air, steam, hot water, and gas piping. In addition, the department of labor and industry program covers hot water supply boilers only if they exceed 400,000 BTU per hour heat input, water temperatures of 210°F and capacity of 120 gallons.

(ii) will remain the same.

(e) Chapter 22, Appendix B, titled "Fuel-Gas Piping" shall be adopted as part of the Uniform Mechanical Code except as follows:

(i) Add to definition of LIQUIFIED PETROLEUM GAS FACILITIES: Gas piping shall be considered a portion of liquified petroleum gas facilities.

(f) Chapter 23, Appendix B, titled "Hydronic Panel Heating Systems" shall be adopted as part of the Uniform Mechanical Code.

(2) through (5) will remain the same."

Auth: 50-60-104, 203 and 508; IMP: 50-60-103, 104, and 203, MCA

REASON: The bureau is proposing these amendments to clarify application of the uniform mechanical code for boiler systems and to specifically adopt certain appendix chapters requiring specific adoption for applicability.

"8.70.108. INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the CABO One & Two Family Dwelling Code, 1986 1989 Edition together with the 1987-1988 amendments, with the following amendments thereto:

(a) Delete Part IV - Mechanical, Part V - Plumbing, Part VI - Electrical, and Part VII - Energy Conservation.

(2) The purpose of this code is to provide minimum standards for the protection of life, limb, health, property, environment and for the safety and welfare of the consumer, general public and the owners and occupants of residential buildings regulated therein.

(3) The CABO One & Two Family Dwelling Code, 1986 1989 Edition together with the 1987-1988 amendments, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for the construction, prefabrication, alteration, repair, use, occupancy and maintenance of detached one or two family dwellings not more than three stories in height, and their accessory structures. A copy of the CABO One and Two Family Dwelling Code, 1986 1989 Edition together with the 1987-1988 amendments, may be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-103, 50-60-402, MCA

REASON: The bureau is proposing these amendments to the rules to keep the state standard current with modern technology by adopting the latest available edition of the CABO One and Two Family Dwelling Code.

"8.70.303. MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

MINIMUM REQUIRED PLUMBING FIXTURE 1, 7

Occupancy	Water Closets ^{1, 10}		Urinals	Lavatories ³	Drinking Fountains
	Male	Female	Male Fountains/Fountains	Fountains/Fountains	Fountains/Fountains or Building
Groups A-1, A-2, A-2.1, A-3 A-4, B-1, B-2, B-3, B-4 Office, Stores, Service Stations, Public Buildings Food Service Facilities ^{8, 9, 10} Assembly Buildings ¹⁰	1 1-150 1 1-100 2 151-200 2 101-150 3 201-400 3 151-400 4 401-600 4 401-600 Add 1 fixture for each additional 500 males and 1 for each 300 females		1 51-200 ⁵ 2 201-400 3 401-600 Over 600 add 1 for each additional 300 males	Use Section 605 of the Uniform Building Code	Use Section 605 of the Uniform Building Code
Groups E-1, E-2 & E-3, Schools Colleges & Universities Day Care	For elementary and secondary school plumbing fixtures use Section 805 of the Uniform Building Code 1:100 1:60 1:20 1:20 They combine male and female unless fixture requirement exceeds 2		1:100 Over 201 any sub- fixtures for 1/2 number of toilets required	1:200 1:60	Use Section 605 of the Uniform Building Code 1/100 or Building 1/100 or Building plus 1:100
Groups I-1, I-2, I-3 Jails, Prisons, Detention Units Hospitals and Nursing Homes Nurseries	One water closet and one lavatory for each cell. One additional water closet and lavatory for every eight in multiple occupancy cells. One fixture for every fifteen. See Title 16, Chapter 12, Administrative Rules of Montana. See Section 1205 of the Uniform Building Code.				1/100 or Building
Groups H-1, H-2, H-3, H-4, H-5, H-6, H-7, Hazardous Occupancies	Use Section 905 of the Uniform Building Code for employees. Toilet facilities for the public are to be provided as noted for Groups A and B and shopping centers.				
Groups R-1 Hotels, Apartments, Motels, Convents and Monasteries	Use Section 1205 of the Uniform Building Code				
Group R-3 Dwelling and Lodging Houses	Use Section 1205 of the Uniform Building Code				

- 1 Required plumbing fixtures may be provided as separated employee and public toilets or as public toilets with employee accessibility.
- 2 Keyed toilets under employee control of the type available at service stations are permitted.
- 3 Hot and Cold Water required.
- 4 Contact the Department of Health and Environmental Sciences for additional requirements for food service establishments.
- 5 Food service establishments require one urinal for occupancy loads of 1 to 50.
- 6 Unless alternate provisions of Department of Health and Environmental Sciences are used.
- 7 When calculating number of male and female occupants, the occupant load of the building shall be considered half male and half female, and the occupant load shall be calculated in accordance with Sec. 3301(d) of the Uniform Building Code.
- 8 Where alcoholic beverages are sold for on-site consumption, add to the fixture requirements 1 extra urinal for males from 1-100; 2 from 101-300; 3 from 301-600; 1 per 300 over 600 and 1 extra water closet for females from 51-150; 2 extra from 150-400 and 1 per 150 over 400. Handwashing sinks are required in all food preparation areas. For a occupancy use Section 705 of the Uniform Building Code for employees.
- 9 At the discretion of the building official, for small (less than 1,200 sq.ft. in floor area) convenience stores (typically gasoline sales plus convenience items and beverages) located to serve primarily neighborhood areas instead of major highways, only one public toilet is needed, provided it is designated for both male and female use and it is suitable for use by handicapped persons.
- 10 At the discretion of the building official, certain non-assembly buildings in the B and H occupancy groups, where food and/or beverages are not consumed on the premises, may be allowed to furnish only one public toilet provided it is designed for both male and female use and it is suitable for use by handicapped persons.

Auth: Sec. 50-60-203 and 504, MCA; IMP: Sec. 50-60-203 and 504, MCA

REASON: The bureau is proposing these amendments to the rules to correct a typographical error, to provide for new occupancy groups and to add flexibility with regard to determining the required minimum plumbing fixtures for certain occupancies.

"8.70.401 NATIONAL ELECTRICAL CODE (1) The department of commerce, building codes bureau, hereby adopts and incorporates herein by reference the standards adopted by the national fire protection association for electrical installations ~~on May 21, 1986~~ appearing in Pamphlet NFPA 70 ~~(1987)~~ (1990), under the title of National Electrical Code 1987 1990. The National Electrical Code 1987 (1990) is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code 1987 1990 may be obtained from the ~~Department of Commerce, Montana Chapter of IAEL, c/o Electrical Safety Section Supervisor,~~ Building Codes Bureau, Capitol Station, Helena, Montana 59620, ~~at cost plus postage and handling.~~ A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269."

Auth: Sec. 50-60-203, 50-60-603, MCA; IMP, Sec. 50-60-203, 50-60-601, 50-60-603, MCA

REASON: The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the National Electrical Code.

"8.70.501 INCORPORATION BY REFERENCE OF NFPA 501C/ANSI A119.2 STANDARD FOR RECREATIONAL VEHICLES (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the NFPA 501C/ANSI A119.2, Standard for Recreational Vehicles, 1987 1990 Edition. The NFPA 501C/ANSI A119.2, Standard for Recreational Vehicles, 1987 1990 edition, is a nationally recognized model code for the construction of travel trailers, camping trailers, truck campers, and motor homes. A copy of the NFPA 501C/ANSI A119.2 Standard for Recreational Vehicles, 1987 1990 edition may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) The purpose of this standard is to provide a uniform standard covering the installation of plumbing, heating, and electrical systems for travel trailers, camping trailers, truck campers, and motor homes."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

REASON: The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Standard for Recreational Vehicles.

"8.70.602 UNITS COVERED BY ELEVATOR INSPECTION PROGRAM (1) The units included in the elevator inspection

program shall include passenger elevators, escalators, and moving walks in public places ~~as defined in 50-60-101, MCA~~. Elevators that do not carry passengers do not need to be inspected by the bureau."

Auth: Sec. 50-60-203, 50-60-702, MCA; IMP, Sec. 50-60-203, 50-60-701, 50-60-702, MCA

REASON: The bureau is proposing this amendment to delete an archaic statutory reference.

3. The proposed new rule will read as follows:

"I. INCORPORATION BY REFERENCE OF THE UNIFORM CODE FOR BUILDING CONSERVATION (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Code for Building Conservation, Copyrighted 1987, with the following amendments thereto:

(a) Delete Chapter 4 - Minimum Standards for Existing Buildings, Chapter 5 - Minimum Provisions for Change of Occupancy and Chapter 7 - Requirements for Group R Occupancies, except as Chapters 4, 5 and 7 are referenced by Chapter 6 - Historic Structures.

(b) Section 207 of the code will be left in for use by local governments (i.e., municipalities and counties) who by 50-60-303, MCA, must provide an appeal procedure. Local governments may use the Board of Appeals created in accordance with section 204 of the Uniform Building Code 1988 Edition to serve on the Board of Appeals. The bureau and state of Montana, however, will use all applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 207.

(2) The purpose of this code is to encourage the continued use or reuse of legally existing historic buildings and structures.

(3) The Uniform Code for Building Conservation, copyrighted 1987, is a nationally recognized model code setting forth minimum standards and requirements for conservation of existing buildings. A copy of the Uniform Code for Building Conservation, copyrighted 1987, may be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: Sec. 50-60-203, 50-60-301, MCA; IMP, Sec. 50-60-203, 50-60-301, MCA

REASON: The bureau is proposing adoption of this code as provided for treatment of historic buildings in a manner which emphasizes use of conservation of such buildings without significantly adversely affecting the historic character and value of the buildings.

4. 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

Building Codes Bureau, Capitol Station, Helena, Montana
59620, no later than October 12, 1990.

5. Raymond W. Brault, attorney, has been designated to
preside over and conduct the hearing.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1990.

BEFORE THE MONTANA LOTTERY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.127.1002 INSTANT TICKET
to instant tickets) PRICE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 14, 1990, the Montana Lottery proposes to amend the above-stated rule.

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

"8.127.1002 INSTANT TICKET PRICE (1) The price of an instant ticket is \$1.00 will be determined by the lottery commission. A retailer may not sell a ticket for more than \$1.00 the price printed on the ticket. A retailer may give away tickets."


Auth: Sec. 23-5-1007, MCA; IMP, Sec. 23-5-1007, 23-5-1017, MCA

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Lottery, 2525 North Montana, Helena, Montana 59620, no later than October 12, 1990.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Montana Lottery, 2525 North Montana, Helena, Montana 59620, no later than October 12, 1990.

5. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

MONTANA LOTTERY
PAT DEVRIES, CHAIRPERSON

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule	)	THE PROPOSED AMENDMENT OF
46.15.102 pertaining to	)	RULE 46.15.102 PERTAINING
refugee cash assistance	)	TO REFUGEE CASH ASSISTANCE

10: All Interested Persons

1. On October 4, 1990, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.15.102 pertaining to refugee cash assistance.

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

46.15.102. REFUGEE CASH ASSISTANCE (1) Refugee cash assistance (RCA) shall be provided to eligible refugees, a refugee who:

~~(a) An otherwise eligible recipient of RCA is eligible to receive assistance for 18 months from the date of entry into the United States or from the date the individual was first issued documentation by the immigration and naturalization service.~~

~~(i) Date of entry is the date that the individual entered the United States as certified by the immigration and naturalization service on INS form I-94.~~

~~(2) To be non-financially eligible for cash assistance, a refugee must meet the citizenship, residence and other non-financial criteria as described in this rule.~~

~~(a) A refugee must:~~

~~(i) have parole, voluntary departure or conditional entry status as verified by INS form I-94; or~~

~~(ii) have been admitted to the United States with permanent residence status on or after April 8, 1975, as verified by INS form I-151 or I-551; or~~

~~(iii) be a dependent of a repatriated United States citizen and have been in the United States ninety (90) days and otherwise qualify as a refugee.~~

~~(b) A refugee must be a resident of Montana as defined in ARM 46.10.107.~~

~~(c) A recipient of RCA employed part-time must be enrolled in English language or skill training, if appropriate and available; a RCA recipient employed full-time may be enrolled in English language or skill training.~~

~~(d) A recipient of RCA must register for work with the employment office.~~

~~(i) Refusal to accept or continue employment or training will result in sanctions;~~

~~(A) the grant will be reduced by the amount included for the individual who failed to meet the employment requirement;~~

~~(B) assistance will be provided without interruption when employment is accepted within 30 days after refusal;~~

~~(C) reapplication for assistance can be made 30 days after termination of assistance.~~

~~(3) To be financially eligible for cash assistance, a refugee must meet all income and resource criteria of the AFDC program except that the \$30 plus 1/3 disregard to earned income is not allowed. These AFDC criteria are found in ARM 46.10.401 through 404 and ARM 46.10.505 through 514.~~

~~(a) Title IV A funded day care is not allowed;~~

~~(a) is not eligible for other cash assistance programs such as AFDC, SSI, OAA, AB, APTD and AABD;~~

~~(b) meets the following immigration status and identification requirements;~~

~~(i) has parole as a refugee or asylee status;~~

~~(ii) has been admitted as a conditional entrant;~~

~~(iii) has been admitted as a refugee under section 207 of the Act;~~

~~(iv) has been granted asylum under section 208 of the Refugee Act of 1980;~~

~~(v) has been admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the director;~~

~~(vi) is a dependent child of and part of the same filing unit as individuals who meet immigration status requirements; or~~

~~(vii) has been admitted for permanent residence provided the individual previously held one of the statuses identified above.~~

~~(c) provides the name of the resettlement agency which resettled him;~~

~~(d) is not a full-time student in a college or university except where such enrollment is approved as part of an individual's state-approved employability plan; or~~

~~(e) meets all income and resource criteria of the AFDC program except that the \$30 plus 1/3 disregard and the \$30 disregard to earned income is not allowed. Refer to ARM 46.10.401 through 404 and ARM 46.10.505 through 514.~~

~~(2) RCA may be provided to eligible refugees during the twelve (12) month period beginning with the month of entry to the United States.~~

~~(a) Date of entry is the date the individual entered the United States as certified by the immigration and naturalization services on INS form I-94 or INS form I-551.~~

~~(3) An exempt RCA recipient may volunteer to participate in employment services.~~

~~(4) A recipient of RCA who is not exempt under 45 CFR 400.76 must, except for good cause shown follow all require-~~

ments as in 45 CFR 400.75 "General Requirements".

(a) Good cause may exist for refusal to participate in employability services, accept employment, or voluntarily quit a job if:

(i) The assignments were not within the scope of the individual's employability plan.

(ii) the individual does not have the capabilities to perform the task on a regular basis. If claim is based on physical or mental impairment, verification by a physician or designee must be submitted.

(iii) The total daily commuting time normally exceeded two (2) hours, not including transporting of a child to and from a child care facility.

(iv) Suitable child care is not available.

(v) Working conditions are poor. Risks to health safety exist.

(vi) Assignments are discriminatory in terms of age, sex, race, creed, color or national origin.

(vii) Wages offered are less than the state minimum wage or the daily hours of work exceed those customary to the occupation.

(viii) The job offered is vacant due to a strike, lock-out, or other bona fide labor dispute or is in conflict with the conditions of existing union membership.

(5) An employable RCA recipient may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of the agency's employment services. (45 CFR 400.75(a)).

(a) Mandatory participants will be terminated from assistance for failure or refusal to participate. (45 CFR 400.82.)

(b) Voluntary participants will be deregistered for 90 days. (45 CFR 400.82)

(c) A conciliation period to the imposition of sanctions must be provided. (45 CFR 400.83(b)(3)(iii))

(6) Other AFDC requirements applicable to RCA recipients are stated in 45 CFR 233.31 through 233.37, and 235.10. The department adopts and incorporates by reference 45 CFR 233.31 through 233.37, and 235.10 (1989 edition).

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-3-302 MCA

3. The Refugee Act of 1980 amended the Immigration and Nationality Act to revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance and services to refugees in the United States regardless of their country of origin. Previously, refugees in the U.S. had been aided under separate programs. These programs were regarded temporary, and, therefore, the issuance of program instructions to the states through Action transmittals, rather than regulations, was considered appropriate. With the enactment of comprehensive authority in 1980, the

Department began the issuance of formal regulations at 45 CFR Part 400, the first of which was published on September 9, 1980 (45 FR 59323), covering state plan and reporting requirements. Subsequent regulations covered cash and medical assistance and federal funding, published March 12, 1982 (47 FR 10841). Regulations covering grants to states, child welfare services (including services to unaccompanied minors), and federal funding for state expenditures were published January 30, 1986 (51 FR 3904).


This current regulation restates some current policies and modifies or augments others. The changes in policy which are made here have one central aim: To aid refugees in achieving earlier employment as a step toward self-support.

Throughout the nation there is a wide variation in the extent to which, and rapidity with which, refugees find employment. In some states, this occurs relatively quickly; in others, a substantial portion of the refugee population may spend its first 24 months in the U.S. receiving fully federally funded welfare assistance, usually financed by a combination of federal and state funds and sometimes by local funds as well.

This regulation attempts to address this problem by including more specific requirements for the way in which the RRP is to be carried out by states which have relatively high dependency rates, by allowing greater flexibility than current policy in states which have lower than average dependency rates, and by placing additional employment-related requirements on refugees who are receiving refugee cash assistance (RCA).

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than October 12, 1990.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 4, 1990.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULE I -
and amendment of rules) 2.5.119; AMENDMENT OF RULES
concerning contracting for) 2.5.118, 2.5.201, 2.5.202,
services and supplies) 2.5.301 - 2.5.303, 2.5.401 -
2.5.405, 2.5.501 - 2.5.503,
2.5.601 - 2.5.607, 2.5.701,
2.5.702 AND REPEAL OF 2.5.506
PERTAINING TO CONTRACTING FOR
SUPPLIES AND SERVICES.

TO: All Interested Persons.

1. On July 26, 1990 the Procurement and Printing Division published notice of public hearing concerning the amendment of its administrative rules pertaining to contracting for services and supplies, page 1419 of the Montana Administrative Register, issue number 14.

2. A public hearing was conducted on August 15, 1990 in room 160 of the Mitchell building, Helena, Montana. No written or verbal input was received.

3. The division received written comment from Ronald Hehn of Montana State University concerning the amendment of ARM 2.5.604. It also received comments from the Legislative Council.

COMMENT: Mr. Hehn observed that the noticed amendment to this rule appeared to restrict the statutory capacity of a procuring agency from determining the appropriateness of any sole source procurement.

RESPONSE: The division agrees. It is not the intent of the division to restrict such authority. It will leave this portion of that rule intact.

COMMENT: The legislative council requested further explanation of the rationale for the proposed amendments.

RESPONSE: These rules are amended to respond to substantive changes in law. Section 1, chapter 329 Session Laws of 1989 amended 18-4-302(3) MCA. The corresponding rule, ARM 2.5.603 formally mandated procedures for documenting purchases under \$2,000. However, since agency delegation agreements in excess of that amount are entered into, the division felt that, while these procedures are advisable, it is inappropriate to mandate them. ARM 2.5.119 was proposed in response to section 1, chapter 548 Session Laws of 1989 which amended 18-4-132, MCA, removing certain activities of

university student organizations from the procurement laws and rules. The division recognizes that all those who are in charge of such procurements may not be totally advised of state law and it is advantageous to have this exemption enunciated in the administrative rules. The division also desires to implement administration directives to streamline the rules with concise, readable and relevant language making them easier to comply with and administer. The division feels that its rules should be grammatically correct, relevant and relate to the current status of the law and modern purchasing practices and it has noticed that some rules were outdated, unnecessary and not useful since they did not identify or accurately interpret current law or reflect current procurement practices within and without the division.

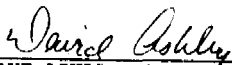
4. The rules are adopted, amended and repealed as proposed except for ARM 2.5.604 which is corrected as follows:

2.5.604 SOLE SOURCE PROCUREMENT

- (1) Remains the same.
- (2) Remains the same.
- (3) The determination as to whether a procurement shall be made as a sole sources shall be made by the department division or as delegated by a written delegation agreement.
- (4) through (5) (d) remain the same.

The rationale for this change has been rescinded in number 3 above.

DEPARTMENT OF ADMINISTRATION



DAVE ASHLEY, DIRECTOR

Certified to Secretary of State September 4, 1990

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

In the matter of the amendment of rules pertaining to definitions, temporary employment, applications, examinations, insurance, applicant fingerprint check, fees, probationary private investigators, firearms safety tests, and unprofessional conduct standards; repeal of rules pertaining to record keeping, code of ethics for licensees, code of ethics for employees, powers of arrest and initial procedures; and adoption of new rule pertaining to disciplinary actions) NOTICE OF ADOPTION OF ARM 8.50.805; AMENDMENT OF ARM 8.50.423, 8.50.424, 8.50.427, 8.50.429, 8.50.431, 8.50.435, 8.50.437, 8.50.438, 8.50.501, 8.50.801 and REPEAL OF ARM 8.50.434, 8.50.802 through 8.50.804 and 8.50.902
--	--

TO: All Interested Persons:

1. On April 26, 1990, the Board of Private Security Patrolmen and Investigators published a notice of public hearing on the proposed amendment, repeal and adoption of rules at page 776, 1990 Montana Administrative Register, issue number 8.

2. The Board amended, repealed and adopted the rules exactly as proposed.

3. The Board thoroughly considered all comments received. Those comments and the board's responses thereto are as follows:

COMMENT: Seven written comments were received in opposition to the proposed amendment of 8.50.423(7). Two of the comments were received from the Big Sky Paralegal Association and the National Federation of Paralegal Association. A summary of the opposition comments is that the Board is trying to limit the legal profession by requiring paralegal to be licensed as investigators if employed by more than one firm.

COMMENT: Two written comments were received in support of the proposed amendment of 8.50.423(7). One of these comments came from the Montana Association of Private Investigators and Security Operators. In summary, the proponents feel that it is a correct interpretation of the law and within the definition of private investigators under Chapter 60.

COMMENT: Four oral comments were received at the public hearing in opposition to the proposed amendment of 8.50.423(7). The reason for the comments is the same as stated in the written comments received above.

COMMENT: One oral comment was received in support of the proposed amendment of 8.50.423(7).

RESPONSE: The Board has deemed the proposed amendment of ARM 8.50.423(7) to be within its statutory authority and is a correct interpretation of the law.

COMMENT: One written comment was received in opposition to 8.50.423(4). The opponent submitted for the Board's consideration that there are numerous misdemeanors contained in Title 45 which do not involve or require a lack of moral turpitude in order for the offense to be committed.

RESPONSE: The Board redefined the definition of moral turpitude and unprofessional conduct. The Board feels the interpretation is within its statutory authority and is a correct interpretation of the law.

COMMENT: One written comment was received in opposition to 8.50.437. The opponent stated that a reduction of fees would be the downfall of the profession. His reason was that undesirable persons would apply for licensure.

RESPONSE: The amendment of the fees makes the fees commensurate with program area costs. A letter to this extent was mailed to the opponent of the amendment.

4. No other comments or testimony were received.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS

BY:


JACK F. SAMSON, ACTING CHAIRMAN

Certified to the Secretary of State, September 4, 1990.

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

In the matter of the transfer,)	NOTICE OF TRANSFER, AMEND-
amendment, repeal and adoption)	MENT, REPEAL AND ADOPTION
of rules pertaining to)	OF RULES PERTAINING TO THE
passenger tramway safety)	ORGANIZATION OF THE BOARD
)	OF PASSENGER TRAMWAY SAFETY

TO: All Interested Persons:

1. On July 16, 1990, the Board of Passenger Tramway Safety published a notice of public hearing on the proposed transfer, amendment, repeal and adoption of rules pertaining to the organization of the Board of Passenger Tramway Safety, at page 1438, 1990 Montana Administrative Register, issue number 14.

2. The new and existing rules will be numbered as follows under Chapter 63 (new rule designations in parentheses): I (8.63.101), II (8.63.201), III (8.63.202), IV (8.63.203), V (8.63.301), VI (8.63.302), 8.72.101 (8.63.501), 8.72.102 (8.63.502), 8.72.103 (8.63.503), 8.72.104 (8.63.504), 8.72.105 (8.63.505), 8.72.106 (8.63.506), 8.72.108 (8.63.507), 8.72.109 (8.63.508), 8.72.110 (8.63.509), VII (8.63.516), VIII (8.63.517), IX (8.63.518), and X (8.63.519).

3. The Board amended ARM 8.63.502, 8.63.506 and 8.63.508, repealed ARM 8.72.107 (8.63.510), and adopted new rules 8.63.101, 8.63.201 through 8.63.203, 8.63.301, 8.63.302, 8.63.516 and 8.63.519 exactly as proposed. The Board amended ARM 8.63.501, 8.63.503, 8.63.504, 8.63.505, 8.63.507 and 8.63.509 and adopted new rules 8.63.517 and 8.63.518 as proposed but with the following changes:

"8.63.501 ADOPTION OF THE ANSI STANDARDS (1) The board of passenger tramway safety hereby adopts and incorporates by reference the "American national standards for 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~~ES not conflict with Montana statutory laws or these regulations. The ANSI Standards ~~establish~~ES safety requirements for the passenger use of cables or ropes in passenger transportation systems, including reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows. Copies of the ANSI Standards text may be obtained from the Department of Commerce, Professional and Occupational Licensing Bureau, Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, upon request at cost.

(2) The 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

"8.63.503 ADDITIONAL DEFINITIONS The following words and phrases, when used in these rules, have the following meanings:-

(1) through (4)(d) will remain the same as proposed.

(5) "qualified CERTIFIED tramway, design engineer, qualified CERTIFIED tramway construction engineer, and qualified CERTIFIED 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 CERTIFIED by the board of passenger tramway safety. Only a board qualified CERTIFIED engineer shall certify compliance with the ANSI standards and these tramway rules.

(6) through (10) will remain the same as proposed."

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

"8.63.504 REGISTRATION OF NEW, RELOCATED, OR MAJOR MODIFICATIONS OF TRAMWAYS (1) through (1)(b) will remain the same as proposed.

(c) name and address, of the Montana passenger tramway qualified CERTIFIED 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) and (e) will remain the same as proposed.

(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) 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) 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) Prior to commencement of construction the board must be informed of the name of the qualified CERTIFIED 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) and (5)(a) will remain the same as proposed.

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

(c) will remain the same as proposed.

(d) a certifying statement, signed by the qualified CERTIFIED 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 CERTIFIED inspection engineer to inspect and supervise a comprehensive acceptance testing of all aspects of the new tramway. In no case shall the qualified CERTIFIED 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) will remain the same as proposed.

(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

"8.63.505 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 board and designated as qualified CERTIFIED tramway inspection engineers.

(2) Prior to commencement of any engineering inspection, the qualified CERTIFIED tramway inspection engineer shall have access to the tramway logs and manuals for each tramway to be inspected and shall annually be given one copy of a certified statement signed by the owner that he or his supervisor has

inspected the whole length of each rope on each tramway and that, in the owner's opinion, the rope shows no sign 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 owner's inspection.

(3) through (7) will remain the same as proposed."
Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-722, MCA

"8.63.507 CERTIFICATION OF ENGINEERS (1) through (1)(c) will remain the same as proposed.

(2) The 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 board as either a qualified CERTIFIED designer, construction engineer, or inspector of tramways, whichever is applicable.

(3) through (3)(c) will remain the same as proposed.

(4) The board shall maintain a list of qualified CERTIFIED engineers which shall state the qualifications of each engineer certified each year through the renewal process. 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

"8.63.509 VARIANCE FROM STANDARDS (1) will remain the same as proposed.

(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) and (i) will remain the same as proposed.

(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) will remain the same as proposed.

(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

"8.63.517 REGULATION OF TRAMWAYS (1) through (5) will remain the same as proposed.

(6) Major modifications to an existing tramway, as defined in ARM ~~8-72-103(4)~~ 8.63.503(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~~ **CERTIFIED** design engineer.

(7) and (8) will remain the same as proposed.

(9) In addition to supporting documents listed in ARM ~~8-72-104~~ **8.63.504** or ARM 8.63.518, each application shall contain the following information:

(9)(a) through (c) will remain the same as proposed."

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

"8.63.518 REGISTRATION OF EXISTING TRAMWAYS (1) and

(1)(a) will remain the same as proposed.

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

(ii) will remain the same as proposed.

(b) a copy of the general inspection report performed by the ~~qualified~~ **CERTIFIED** 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

4. The board has thoroughly considered all comments received. Those commenting at the hearing were George Willett representing Showdown Ski Area, Terry Abelin representing Bridger Bowl, and Bill Plummer from Great Falls. In addition written comments were received from Frank Muchmore, a member of the board; Tony R. Sowder, representing Riblet Tramway Co. of Spokane, Washington; the Administrative Code Committee; and LeRoy W. Schultz, representing Kendall Insurance. The comments and the board's responses thereto are as follows:

COMMENTS REGARDING 8.63.501: Frank Muchmore, member of the Board of Passenger Tramway Safety, moved that the word "Standards" in "American National Standards Institute" be changed to "Standard" to accurately reflect the name of the institute.

RESPONSE: The Board concurred with the suggestion and the term "standards" has been amended throughout the proposed rules to "standard" where it referred specifically to ANSI.

LeRoy W. Schultz, an engineer for Kendall Insurance, suggested that the language adopting the ANSI guidelines "as amended from time to time" inferred that the Board intended to automatically adopt future ANSI guidelines without notice or opportunity for a hearing.

RESPONSE: The Board concurred with Mr. Schultz's comment in this regard and amended the proposed rule to delete the language "as amended from time to time" in hopes of clarifying its responsibility to notice all proposed rule changes and conduct public hearings on them.

COMMENTS REGARDING 8.63.503: Board member Frank Muchmore noted that subsection (5) referred to "qualified" tramway design, construction, and inspection engineers, while the remainder of the rules alternated between the designation of "qualified" engineers and "certified" engineers. Likewise, the Administrative Code Committee had noted that some definitions were not used consistently throughout the entirety of the rules.

RESPONSE: The Board concurred with Muchmore's motion to delete "qualified" from subsection (5) and insert in its place "certified" and to use the phrases "certified design engineer", "certified construction engineer" and "certified inspection engineer" consistently throughout the remainder of the rules.

LeRoy Schultz, in written comments delivered to the Board office, suggested that subsection (5) be further amended to delete the restriction that limits qualified engineers to those licensed by the Montana Board of Professional Engineers. He argued it would be more convenient and economical if the ANSI standard, which would allow any engineer licensed in any state to seek certification, were adopted.

RESPONSE: The Board retained the language as proposed because it considered the Board of Professional Engineers to be the proper authority to determine who is competent to perform engineering functions and because the rule as proposed expressly allows those not licensed in Montana to seek a temporary permit.

LeRoy Schultz also recommended in his written comments that subsection (4) defining "major modifications" be amended so as to adopt ANSI language and thus maintain uniformity among the various states.

RESPONSE: The Board elected to retain the rule language as proposed. It felt that the language adequately reflected the same contingencies as the ANSI language would but is not as limiting as the ANSI language.

COMMENTS REGARDING 8.63.504: LeRoy Schultz advised the Board that this section implies to him that modifications to an existing lift would be treated as if it constituted a new lift and he argued that this represents an unbearable burden to the ski area, the design engineer, and the Board.

RESPONSE: The Board rejected the suggestion because it feels that the proposed language is clear enough. The rule intends

that new lifts and relocated lifts be treated as new lifts.

As regards subsection (6), Tony R. Sowder, an engineer for Riblet Tramway Co. Inc. and LeRoy Schultz, both in written statements, and Kevin Taylor, a Board member speaking to the Board, expressed concern that the design engineer is precluded from performing the final inspection including the load test. They suggested that the rule be amended so as to allow the design engineer to conduct the final inspection. Also, LeRoy Schultz urged that the terminology "as built survey" be added to conform with ANSI and to insure that the completed work is properly installed.

RESPONSE: The Board rejected the requests to allow the design engineer to be the inspection engineer because this rule was expressly constructed to provide that the inspection engineer would bring to his review of the project the objectivity and independence that a designing engineer might not possess. Furthermore, it was felt this rule does not preclude the design engineer from being present when the inspection is conducted; it merely requires that an independent engineer's signature will certify the tramway. The suggestion regarding the "as built survey" was also rejected by the Board as being duplicative of what already was provided for.

COMMENTS REGARDING 8.63.505: With regard to subsection (2), LeRoy Schultz urges that this portion of the rule requires the owner of a tramway to inspect the rope and Mr. Schultz suggests that most owners are not qualified for such an inspection. He suggests that ANSI language, requiring a wire rope specialist, including an employee if qualified, do the initial inspection, be adopted.

RESPONSE: The Board rejected the suggestion as duplicative and redundant of the entire inspection scheme contemplated by these rules.

LeRoy Schultz also commented that because the 1990 version of ANSI requires that all practice evacuations be documented in the logs, there was no reason for subsection (6)(d).

RESPONSE: The Board noted that pursuant to 8.63.501, the 1990 version of ANSI is not incorporated in these rules and that the 1988 version does not contain a similar requirement that practice evacuations be documented. It determined therefore that this section of the rule was not duplicative and chose to retain it.

COMMENTS REGARDING 8.63.509: In regard to subsection (1)(b)(ii), LeRoy Schultz protested the language that would allow inspection engineers to attest that a tramway is so equipped or designed that its operation is as safe as if it met the requirements of ANSI and the tramway rules and thus should be afforded a variance. He claimed that most such cases would require the evaluation of a design engineer.

RESPONSE: The Board rejected the comment. It felt that those engineers certified as inspection engineers should be sufficiently competent to recognize potential variations that do not satisfy ANSI and these rules. In addition, the Board has the further safeguard of having the discretion not to approve variances if it feels they will not protect the public health.

6. No other comments or testimony were received.

BOARD OF PASSENGER TRAMWAY
SAFETY
TIMOTHY PRATHER, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1990.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION AND
and incorporation by reference)	INCORPORATION BY REFERENCE
of rules implementing the)	OF RULES IMPLEMENTING THE
Montana Environmental Policy)	MONTANA ENVIRONMENTAL POLICY
Act and the adoption of a new)	ACT AND THE ADOPTION OF A
rule implementing the Montana)	NEW RULE IMPLEMENTING THE
Environmental Policy Act)	MONTANA ENVIRONMENTAL
)	POLICY ACT - 8.97.2101, 2102

TO: All Interested Persons:

1. On June 28, 1990, the Montana Board of Investments published a notice of public hearing on the proposed adoption and incorporation by reference of rules implementing the Montana Environmental Policy Act (MEPA), at page 1222, 1990 Montana Administrative Register, issue number 12. The hearing was held on August 1, 1990, in the conference room of the Board of Investments.

2. The Board has adopted the rules exactly as proposed.

3. Comments on the proposed rules were submitted to the Board by the Environmental Quality Council and jointly by the Environmental Information Center and Trout Unlimited. None of the comments proposed any changes to the proposed rules, but rather indicated their support of the Board's rulemaking activity under MEPA. No other comments or testimony were received.

BOARD OF INVESTMENTS
WARREN F. VAUGHAN, CHAIRMAN

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1990.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF 8.
of rules pertaining to organi-	)	111.101 ORGANIZATIONAL
zation, qualified lending	)	RULE, 8.111.305 QUALIFIED
institutions, qualified loan	)	LENDING INSTITUTIONS, 8.
servicers, and the adoption of	)	111.305A, QUALIFIED LOAN
new rules pertaining to defini-	)	SERVICERS AND THE ADOPTION
tions, officers certification,	)	OF NEW RULES PERTAINING TO
false or misleading statements	)	DEFINITIONS, OFFICERS
and the reverse annuity mort-	)	CERTIFICATION, FALSE OR
gage loan provisions	)	MISLEADING STATEMENTS AND
	)	THE REVERSE ANNUITY
	)	MORTGAGE ACT

TO: All Interested Persons:

1. On July 12, 1990, the Board of Housing published a notice of proposed amendment and adoption of the above-stated rules at page 1306, 1990 Montana Administrative Register, issue number 13.


2. The new rules will be numbered as follows: I (8.111.305B), II (8.111.305C), III (8.111.305D), IV (8.111.401), V (8.111.402), VI (8.111.403), VII (8.111.404), VIII (8.111.405), IX (8.111.406), X (8.111.407), XI (8.111.408), and XII (8.111.409).

3. The Board has amended and adopted the rules exactly as proposed.

4. No comments or testimony were received.

BOARD OF HOUSING
TOM MATHER, CHAIRMAN

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1990.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT OF
rule 16.47.311 and the adoption of) RULE 16.47.311 AND THE
new rule I) ADOPTION OF RULE I

(Petroleum Tank Release Board)

To: All Interested Persons

1. On July 12, 1990, the Petroleum Tank Release Compensation Board published a notice of public hearing on the proposed amendment of ARM 16.47.311 and on the proposed adoption of rule I at page 1313 of the Montana Administrative Register, issue No. 13.

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

16.47.311 DEFINITIONS Remains the same.

RULE I (16.47.314) RELEASE DISCOVERED ON OR AFTER APRIL 13, 1989 CONSTRUED (1) A tank owner or operator may be eligible for reimbursement for eligible costs caused by an accidental release from a petroleum storage tank if the release was discovered on or after April 13, 1989, even though the tank was out of service on the date of discovery or is presently out of service.

3. No one spoke in opposition to either proposed action. Following are the comments received and the Board's response:

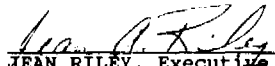
COMMENT: Does the new rule imply that the board will cover the cost of cleaning up contaminated sites from which petroleum storage tanks were removed some years ago?

RESPONSE: No. The Act (Chap. 528, L. 1989) covered tanks which "contain" petroleum or petroleum products as of its effective date, April 13, 1989. While the present tense of the verb "contain" will include the future tense (per section 1-2-105(1), MCA), the board does not construe the present tense to include the past tense. A tank which may have been installed since April 13, 1989 and used to hold petroleum products is covered, but a tank which was pulled out and no longer contained any petroleum products on the effective date is not covered.

COMMENT: Rule I (ARM 16.47.314) should be phrased in terms like "on or after April 13" or "after April 12" to reflect the actual effective date (April 13, 1989) and to be

consistent with other rules of the board (e.g., ARM 16.47.323).

RESPONSE: The board agrees and has revised proposed Rule I (ARM 16.47.314) to read in terms of "on or after" April 13.


JEAN RILEY, Executive Director
Petroleum Tank Release
Compensation Board

Certified to the Secretary of State September 4, 1990.

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

IN THE MATTER of the Emergency	)	NOTICE OF EMERGENCY
Amendment of Existing Rule	)	ADOPTION OF AMENDMENT
Pertaining to Motor Carrier	)	TO RULE 38.3.706
Insurance.)	

TO: All Interested Persons

1. The Department of Public Service Regulation finds that there is imminent peril affecting the health, safety, and welfare of the public justifying this emergency adoption. Its reasoning is as follows. On June 28, 1990 it published notice of adoption of rules pertaining to insurance and made the effective date September 1, 1990. Comments preceding the adoption include extensive opposition to proposed rates applying to taxis. The comments were accepted by the Department and resulted in significant changes in the proposed rates. Although no comments were received from the class of carriers identified as pickup and delivery, they are similarly affected, are in the same relevant class, the same logic applies to them, and there is a potential constitutional equal protection problem in treating them differently (the minimum insurance amounts are significantly higher). In and of itself, the constitutional problem is important but not of the status imminent peril. However, the potential results of the problem may cause curtailment of pickup and delivery service or operation of pickup and delivery services without insurance. Both do constitute an imminent peril to the health, safety and welfare of the public.

2. The Department of Public Service Regulation has adopted an amendment as follows:

38.3.706 ENDORSEMENTS (1) All insurance policies issued by the insurance company to the carrier must include, at time of issuance, the terms, conditions and requirements set forth in this rule and repeated on endorsement forms approved by the commission and identified as "Endorsement MV4" and "Endorsement MV2" available from the office of the commission.

(2) The following terms, conditions and requirements are hereby deemed a substantive part of all policies issued, and are hereby incorporated therein:

(a) Cargo insurance (Endorsement MV2) shall be issued in an amount no less than:

(i) \$1,000 for cargo transported in a vehicle designed, equipped, and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

(ii) \$10,000 for all other vehicles.

(b) Casualty (liability) insurance (Endorsement MV4) shall be issued in an amount no less than:

(i) \$100,000 for 7 passengers or less;

(ii) \$500,000 for 8 to 15 passengers;

(iii) \$750,000 for 16 to 30 passengers;
(iv) \$1,000,000 for 31 passengers or more;
(v) except any motor carrier, other than as provided in (i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of \$500,000 insurance regardless of size of vehicle used;

(vi) \$100,000 for transportation of nonhazardous freight in a vehicle designed, equipped and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

~~(vii)~~ (vii) \$500,000 for transportation of nonhazardous freight for all other vehicles;

~~(viii)~~ (viii) the federal department of transportation minimum insurance limits for hazardous materials freight, as hazardous materials is defined by that department.

(3) These endorsements must be executed, countersigned and attached to the original policy when issued.

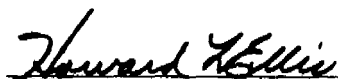
(4) This rule shall become effective September 1, 1990.

AUTH: Sec. 69-12-201, MCA, IMP: Sec. 69-12-402, MCA

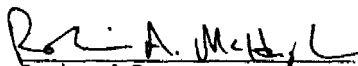
Rationale: This amendment is necessary to equalize minimum insurance requirements for equal classes of carriers and to correct any equal protection problem that might arise from discrimination between equal classes. It is further necessary and justified as stated in paragraph 1 above.

3. This amendment shall be effective September 1, 1990 and remains effective for a period of 120 days.

4. The Department of Public Service Regulation will commence proposed rulemaking under nonemergency procedures, by future notice, to obtain public comment on matters including permanence of the above amendment.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 31, 1990.


Reviewed By

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

IN THE MATTER of the Petition of)	
DEAN WAYNE HALSE for a Declaratory)	TRANSPORTATION DIVISION
Ruling on the Application of PSC)	
Motor Carrier Laws to Transporta-)	DOCKET NO. T-9565
tion Aspects of a Mail Processing)	
Business.)	DECLARATORY RULING

TO: All Interested Persons

INTRODUCTION

1. On March 29, 1990 the Montana Public Service Commission (PSC) received a Petition for Declaratory Ruling from Dean Wayne Halse (Halse), doing business as Executive Services Mailing Division in Bozeman, Montana.

2. On June 7, 1990 the PSC issued a Notice of Petition for Declaratory Ruling, referencing the procedure applicable, setting forth the facts, identifying the issue of law and establishing a comment period.

3. The facts upon which a ruling will be made are as follows. Halse engages in a business of processing mail for customers. He processes approximately 5,000 pieces of mail per day. Processing includes collecting, sorting, counting, metering, bundling and delivering to a post office for mailing. He is paid by customers at a rate per each piece processed. The collected customer mail occasionally contains pieces to which postage is already affixed. Halse views this postage-paid mail as being incidental or commingled. It may constitute 50-100 pieces daily. Halse delivers this mail to a post office with the processed mail, but does not consider it for billing purposes.

4. The question of law upon which a ruling will be made is as follows. Whether Halse becomes a "motor carrier" for which PSC authority is required when he transports the postage-paid mail. This question primarily involves the application of Section 69-12-101(6), MCA, and related provisions.

5. Written comments were received from Security Armored Express, Inc. (Security Armored), La Courier and Halse. Security Armored argues that the transportation of postage-paid mail is neither occasional nor a small amount, that mere difficulty or impracticability in sorting the postage-paid mail is not grounds for exemption, and that the assertion of no compensation is unpersuasive because transportation would not occur without compensation for other services. La Courier argues that the transportation of the postage-paid mail is part of a package deal -- inferring that the total services, however described or defined in terms of compensation for the transportation of postage-paid mail remains for hire. Halse argues that transportation of the postage-paid mail is not done for hire and is merely incidental and in furtherance of his mail processing business.

ANALYSIS

6. Halse is engaged in a mail processing business. Insofar as transportation of the mail to be processed is concerned -- to collect, process and deliver -- it appears to be excluded from PSC regulation as it is in furtherance of a primary nontransportation business and is therefore considered private carriage. No question on this is presently before the PSC.

7. However, during the course of collecting mail to be processed, Halse finds certain postage-paid mail commingled. This postage-paid mail requires no processing by Halse.

8. If Halse were to engage in the business of transporting postage-paid mail by itself for others, PSC authority would be required as such act clearly falls within the definition of motor carrier in Section 69-12-101(6), MCA, and related provisions, and is not subject to any recognized exemption including those found in Section 69-12-102, MCA. The question then is whether the nature of transporting postage-paid mail in connection with the mail processing business changes this requirement.

9. To begin analysis in general, the PSC is charged with administering certain laws applicable to motor carriers. See generally, Section 69-1-102, MCA; see also, Section 69-12-201, MCA. Primarily, these laws concern the granting of authority to operate as a motor carrier (certificates of public convenience and necessity) and regulation of the practices and operations of authorized motor carriers in their dealings with shippers and the public. See generally, Title 69, chapter 12, MCA.

10. In administering the laws the PSC necessarily construes and applies the laws. In doing so the PSC views its function as a judicial function or quasi judicial function, similar, if not identical to the function of a court -- to effect the intent of the legislature. See generally, Thiel v. Taurus Drilling Ltd., 218 Mont. 201, 205, 42 St. Rptr. 1520, 1522, 710 P.2d 33, 35 (1985).

11. Properly effecting the intent of the legislature requires application of rules of construction. These rules are provided both by statute, see, Title 1, chapter 2, MCA, and by case law. There may be specific rules of construction applicable to specific instances. These will be referenced herein if applied. However, the basic rules are set forth in the following paragraphs. These basic rules may be applied without further reference.

12. In constructing legislative intent, statutes must be read and considered in their entirety and legislative intent may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole. Vita-Rich Dairy, Inc. v. Department of Business Regulation, 170 Mont. 341, 348, 33 St. Rptr. 760, 765, 553 P.2d 980, 984 (1976). In construction, the office of the judge is simply to ascertain and declare what is in terms or substance contained in a statute, not to insert what has been omitted or to omit what has been inserted. Section 1-2-101, MCA; Blake v.

State, 226 Mont. 193, 198, 44 St. Rptr. 580, 584, 735 P.2d 262, 265 (1987). If the language of a statute is clear and unambiguous, the statute speaks for itself and there is nothing for the court to construe. Yearout v. Rainbow Painting, 222 Mont. 65, 67-68, 43 St. Rptr. 1063, 1065, 719 P.2d 1258, 1259 (1986). If the intent of the legislature can be determined from the plain meaning of the words utilized in the statute, courts will not go further and apply any other means of interpretation. Phelps v. Hillhaven Corp., 231 Mont. 245, 251, 45 St. Rptr. 582, 586, 752 P.2d 737, 741 (1988).

13. Additionally, although technically not rules of construction, certain standards of judicial review may be considered in construction by administrative agencies. Although courts need not "rubber stamp" all interpretations that agencies give statutes, Bay v. State Department of Administration, 212 Mont. 258, 265, 41 St. Rptr. 1725, 1729, 688 P.2d 1, 4 (1984), great deference must be shown to the interpretation given to a statute by the agency charged with its administration, Montana Power Co. v. Cremer, 182 Mont. 277, 280, 36 St. Rptr. 1158, 1160, 596 P.2d 483, 485 (1979), so long as the interpretation is reasonable so as to avoid absurd results and is not contrary to legislative intent. Montana Tavern Association v. State Department of Revenue, 224 Mont. 258, 265, 43 St. Rptr. 2180, 2185, 729 P.2d 1310, 1316 (1986). Also, the persuasiveness of administrative construction depends on the thoroughness evident in its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements. State Department of Highways v. Midland Materials Co., 204 Mont. 65, 71, 40 St. Rptr. 666, 670 P.2d 1322, 1325 (1983).

14. Furthermore, it has long been held that regulation of motor carriers for the protection of the public is a legitimate and wise exercise of the police power of the state -- including protection from abusive use of the roads and evils incident to unregulated competition. See, Board of Railroad Commissioners v. Reed, 102 Mont. 382, 385, 59 P.2d 271, 272 (1936), and cases cited therein. Legislation enacted to promote protection of the public is entitled to liberal construction and is to have liberal construction. See, State ex rel. Florence-Carlton School District v. Board of County Commissioners, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978). Accordingly, exemptions and exceptions are generally given narrow interpretation. Id., 590 P.2d at 605. The PSC views this as allowing, if not requiring, it to apply the definition of motor carrier broadly and apply the exemptions and exclusions narrowly. The PSC is mindful, however, that clear legislative intent and reasonableness could not be abrogated under the guise of broad or narrow construction.

15. Turning to Halse's arguments, the PSC identifies two general ones as to why his activities with the postage-paid mail do not constitute him a motor carrier. One is that, because he does not consider the postage-paid mail for billing purposes, his activities are not for hire and are also merely accommodative transportation. Two is that, because the post-

age-paid mail is only a small percentage of the mail processed and is commingled, it is merely incidental. These arguments intertwine and have details that will be expressed and considered in the following paragraphs.

16. It is a fact that Halse does not consider the postage-paid mail for billing purposes. However, it does not necessarily follow that Halse is not acting "for hire." "For hire" as that term is statutorily defined includes the receipt of "remuneration of any kind, paid or promised, either directly or indirectly." Section 69-12-101(5), MCA. Even if Halse's intention were that he render the services pertaining to postage-paid mail gratuitously, voluntarily, without expectation of some form of payment, it is inescapable that Halse's activities pertaining to postage-paid mail exist, and are allowed to exist, by dependence upon other activities which are considered for billing purposes -- mail processing. Halse's postage-paid mail activities are sustained by the mail processing activities. The remuneration received by Halse is imputed to the postage-paid mail activities as the receipt of indirect "remuneration of any kind."

17. Additionally, whether by design or not, Halse's services in regard to postage-paid mail would, as a matter of course, make his overall services more attractive to his customers. It follows that this would lead to more business or more value in the services offered and likely result in some increase or benefit to Halse. This increase is properly categorized as the receipt of indirect "remuneration of any kind."

18. Furthermore, in the case that the element of receiving payment is a prerequisite to invoking regulation, as it is in motor carrier regulation, mere accounting or billing practices which in form might demonstrate no receipt of payment for what would otherwise be a regulated activity, cannot be permitted to override the substance of what is occurring. This would especially be the case when regulation of the activity is to protect the public and the activities are closely associated and interdependent. Halse's mail processing and postage-paid mail activities are closely associated, in fact intertwined. Halse's postage-paid mail activities are dependent on his mail processing activities. Such activities cannot be severable for receipt of payment purposes when the result is to exclude from regulation. Halse's billing practices are mere form. Whether by design to avoid regulation or not, the form cannot override the substance. The substance of Halse's activities is that he provides a total service for which he receives remuneration. Postage-paid mail activities are included in Halse's total service.

19. It is also a fact that postage-paid mail constitutes 50 to 100 pieces daily out of the 5,000 pieces processed by Halse. This calculates to 1 or 2 percent of mail processed. Halse argues that this minuscule or small amount is incidental. However, it makes no difference how the amount is categorized because a review of the applicable laws discloses no exception from regulation on the basis that what would otherwise be regulated is done in a small amount or is incidental.

20. Also, in motor carrier regulation, the term "incidental" arises only in the context of defining the transportation element of a primary business. If the transportation merely furthers the nontransportation primary business it is incidental and qualifies as private carriage under the primary business test. The term has no legal connotation in regard to categorizing other nontransportation aspects of the primary business so as to render transportation regarding them private carriage.

21. Halse references Thorneycroft v. Emery Air Freight Corporation, 122 Ariz. 408, 595 P.2d 200 (Ariz. App. 1979), as support that incidental aspects of a primary business may be considered as in furtherance of the primary business. In Thorneycroft the Arizona court held that a limited pickup and delivery service provided only to customers of the primary business, air freight forwarding, was in furtherance of the primary business and exempt from regulation. The PSC recognizes the holding, but finds it unpersuasive. The Arizona court, at 595 P.2d at 202, analyzes the pickup and delivery service as if it could be incidental to the primary business. This is not proper in Montana for two reasons. First, the primary business in Montana must be a nontransportation business. Pickup and delivery is purely transportation. Second, the incidental applies only to the transportation element of a nontransportation primary business, not elements of the business itself.

22. Halse also argues that his postage-paid mail activities are accommodative transportation and not for hire pursuant to Section 69-12-105, MCA. Accommodative transportation, however, applies only to a narrow setting. It does not extend to any transportation movement by a person in the transportation business. See, Section 69-12-105, MCA. It is not an exemption from regulation for a transportation business, it does not permit one in the transportation business to "accommodate" another. Halse is in the transportation business as determined by the foregoing paragraphs and the provision does not apply. Furthermore, the meaning of accommodative is to do a favor for, to be helpful, to oblige. See generally, Webster's Third New International Dictionary, p. 12 (G. and C. Merriam Co. 1979). Accommodation implies no consideration. See, Black's Law Dictionary, p. 15 (rev. 5th ed. 1979). Although Section 69-12-105, MCA, permits the person being accommodated to "share in the cost or pay for the movement," to interpret this as allowing anything more than mere reimbursement or allowing the same to be done on a commercial basis where profit or livelihood is involved, would create an ambiguity in the provision on accommodative transportation and also would conflict with the definition of motor carrier in general.

DECLARATORY RULING

23. Based on the foregoing reasons and analysis, it is hereby ruled that Dean Wayne Halse becomes a motor carrier for which Montana Public Service Commission authority is required

when he transports any mail, to which postage is already affixed, for others, even though such mail may constitute a small amount of, or may be merely incidental or co-mingled with, the mail to be processed and is not considered for billing purposes.

24. All motions not otherwise disposed of by this ruling are denied.

Done and Dated this 4th day of September, 1990 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


HOWARD L. ELLIS, Chairman

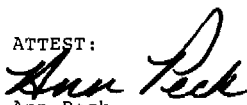

DANNY OBER, Vice Chairman


JOHN DRISCOLL, Commissioner


REX MANUEL, Commissioner


WALLACE "WALLY" W. Mercer, Commissioner

ATTEST:


Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1990. This table includes those rules adopted during the period July 1, 1990 through September 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 June 30, 1990, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1990 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

- I-XIII and other rules - Veteran's Employment Preference - Veteran's and Handicapped Person's Employment Preference, p. 1361, 478
- 2.5.118 and other rules - Procuring Supplies and Services, p. 1419
- 2.13.102 Use of the State Telecommunication Systems, p. 397, 928
- 2.21.3712 and other rule - Recruitment and Selection - Reduction in Force, p. 1417
- 2.21.8017 and other rule - Grievances, p. 1997, 377
(Public Employees' Retirement Board)
- 2.43.302 and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999, 994A, 1250

AGRICULTURE, Department of, Title 4

- I-LV Montana Agricultural Chemical Ground Water Protection Act, p. 1199
- 4.12.1012 Grain Fee Schedule, p. 1056, 1452
- 4.12.1202 and other rules - Alfalfa Leafcutting Bees, p. 1, 378, 704

STATE AUDITOR. Title 6

- I-VII Establishment and Operations of a Prelicensing Education Program, p. 8, 487
6.6.505 and other rules - Medicare Supplement Insurance Minimum Standards, p. 1285, 1688

COMMERCE. Department of. Title 8

(Board of Architects)

- 8.6.406 and other rules - Reciprocity - Qualification Required for Branch Office - Examinations - Individual Seal - Renewals - Standards of Professional Conduct - Fee Schedule - Architect Partnerships to File Statement with Board Office - Board Meetings - Seal - Governor's Report - Financial Records and Other Records - Grant and Issue Licenses - Duplicate License - Public Participation, p. 250, 583

(Board of Athletics)

- 8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Boxing Contestants - Physical Examination - Ring - Equipment - Disciplinary Actions - Relationship of Managers and Boxers, p. 765, 1143

(Board of Chiropractors)

- I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification and Fees of Impairment Evaluators, p. 255

- I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification - Fees of Impairment Evaluators, p. 399, 1453

- 8.12.601 and other rules - License Applications - Educational Standards for Licensure - License Examinations - Temporary Permits - Renewals - Unprofessional Conduct Standards - Reinstatement of Licenses - Disciplinary Actions - Recordation of License - Definitions, p. 258, 995

- 8.12.601 and other rules - Applications - Renewal Fees - Consolidating Board Fees Into One Central Rule, p. 769, 1144, 1251

(Board of Cosmetologists)

- 8.14.401 and other rules - Practice of Cosmetology - Booth Rentals, p. 658, 1145

- 8.14.605 and other rule - Curriculum for Students - Fees, p. 1644

(Board of Hearing Aid Dispensers)

- 8.20.401 Traineeship Requirements and Standards, p. 771, 1698

(Board of Horse Racing)

- 8.22.304 and other rules - Rules of Procedure - General Rules - Occupational Licenses - General Conduct of Racing -

- Medication - Corrupt Practices and Penalties -
Trifecta Wagering, p. 1500
(Board of Landscape Architects)
8.24.409 Fee Schedule, p. 1062, 1699
(Board of Medical Examiners)
8.28.402 and other rules - Definitions - Reinstatement -
Hearings and Proceedings - Temporary Certificate -
Annual Registration and Fees - Approval of Schools -
Requirements for Licensure - Application for
Licensure - Fees - Supervision of Licensees -
Application for Examination - Reciprocity, p. 867,
1700
(Board of Professional Engineers and Land Surveyors)
8.48.902 and other rules - Statements of Competency - Land
Surveyor Nonresident Practice in Montana - Avoidance
of Improper Solicitation of Professional Employment,
p. 773, 1701
(Board of Private Security Patrolmen and Investigators)
8.50.423 and other rules - Definitions - Temporary Employment
- Applications - Examinations - Insurance - Applicant
Fingerprint Check - Fees - Probationary Private
Investigators - Firearms Safety Tests -
Unprofessional Standards - Record Keeping - Code of
Ethics for Licensees - Code of Ethics for Employees -
Powers of Arrest and Initial Procedures -
Disciplinary Action, p. 776
(Board of Public Accountants)
8.54.204 and other rules - Licensing of Public Accountants,
p. 1870, 584
8.54.817 and other rules - Credit for Service as Report
Reviewer - Definitions - Filing of Reports -
Alternatives and Exemptions Reviews and Enforcement,
p. 1866, 586
(Board of Radiologic Technologists)
8.56.602 and other rules - Permit Applications - Course
Requirements - Permit Examinations - Temporary
Permits - Permit Restrictions, p. 402, 1321
(Board of Realty Regulation)
8.58.401 and other rules - Administration, Licensing and
Conduct of Real Estate Licensees - Registration and
Sales of Subdivisions, p. 405, 1156
8.58.412 Inactive Licenses - Reactivation of Licenses -
Continuing Education, p. 467, 1339
(Board of Social Work Examiners and Professional Counselors)
8.61.404 and other rule - Fees, p. 424, 1171
(Board of Passenger Tramway Safety)
8.72.101 and other rules - Organization of the Board of
Passenger Tramway Safety, p. 1438
(Milk Control Bureau)
8.79.301 Licensee Assessments, p. 426, 820

(Financial Division)

I-III Application Procedure for Authorization to Engage In the Escrow Business - Change of Ownership in Escrow Businesses - Examination of Escrow Business, p. 2015, 929

8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 981

(Board of Milk Control)

8.86.301 Class I Price Formula and Wholesale Prices - Class III Producer Price, p. 1646

8.86.301 Class I Price Formula - Class I Wholesale Prices, p. 2101, 821

8.86.501 Statewide Pooling and Quota Plan, p. 1656

8.86.505 Quota Rules for Producers Supplying Meadow Gold Dairies, Inc., p. 2099, 502

8.86.506 and other rules - Statewide Pooling Arrangements as it Pertains to Producer Payments, p. 2109, 705, 931

(Local Government Assistance Division)

I Administration of the 1990 Federal Community Development Block Grant (CDBG) Program, p. 682, 997

(Board of Investments)

I-II Incorporation by Reference of Rules Implementing the Montana Environmental Policy Act, p. 1222

8.97.802 and other rules - Montana Capital Company Act - Investments by the Montana Board of Investments, p. 1881, 503, 716

8.97.1101 and other rule - Names and Addresses of Board Members - Conventional Loan Program - Purpose and Loan Restrictions, p. 182, 589

8.97.1302 and other rules - Seller/services Approval Procedures Forward Commitment Fees, p. 786, 1703

(Board of Housing)

8.111.101 and other rules - Organization - Qualified Lending Institutions - Qualified Loan Servicers - Definitions - Officers Certification - False or Misleading Statements - Reverse Annuity Mortgage Loan Provisions, p. 1306

(Board of Science and Technology Development)

I-XX and other rules - Loans Made by the Montana Board of Science and Technology Development, p. 428, 1000

EDUCATION. Title 10

(Superintendent of Public Instruction)

I-IV Spending and Reserve Limits, p. 24, 508

I-V Guaranteed Tax Base, p. 15, 507

I-VI Special Education Cooperatives, p. 872, 1252

I-VII Permissive Amount, Voted Amount and School Levies, p. 29, 510, 723

I-XVII Special Education Due Process Matters, p. 440, 934

- I-XXII and other Rules - Tuition and Accounting Practices, p. 330, 717
- 10.6.101 and other rules - All School Controversy Contested Cases Before County Superintendents of the State of Montana, p. 436, 933
- 10.13.101 and other rules - State Equalization, p. 184, 505 (Board of Public Education)
- 10.57.107 and other rules - Emergency Authorization of Employment - Test for Certification, p. 875, 1547
- 10.57.301 and other rule - Endorsement Information - Endorsement of Computer Science Teachers, p. 2116, 1064
- 10.57.401 Class I Professional Teaching Certificate, p. 1640, 725
- 10.57.403 Class 3 Administrative Certificates, p. 1227
- 10.57.601 Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action, p. 690
- 10.65.101 and other rule - Policy Governing Pupil Instruction-Related Days Approved for Foundation Program Calculations - Program of Approved Pupil Instruction-Related Days, p. 2118, 725
- 10.67.101 and other rules - State Aid Distribution Schedule - Reporting Requirements - Notice and Opportunity for Hearing - Hearing in Contested Cases - After Hearing, p. 684, 1254 (Montana Arts Council)
- 10.111.701 and other rules - Cultural and Aesthetic Project Grant Proposals, p. 789, 1458

FAMILY SERVICES. Department of. Title 11

- 11.5.605 Access to Department Records, p. 693, 1001
- 11.7.402 and other rules - Composition of and Criteria for Approving Recommendations of Youth Placement Committees - Composition of Foster Care Review Committees, p. 265, 728
- 11.12.104 and other rule - Licensure of Youth Care Facilities, p. 263, 590

FISH, WILDLIFE AND PARKS. Department of. Title 12

- I Restricting Public Access and Fishing Near Montana Power Company Dams - Specifically Hebgen Dam, p. 878, 1548
- I-XII River Restoration Program, p. 795, 1461
- 12.6.801 and other rule - Restricting Public Access and Fishing Near Montana Power Company Dams - Boating Closures, p. 449, 1003
- 12.6.901 Establishing A No-Wake Restriction Below Canyon Ferry Dam, p. 983, 1460

- 12.6.901 Water Safety Regulations, p. 452, 1002
- 12.6.901 Water Safety Regulations - Closing Certain Waters, p. 35, 514
- 12.9.205 Manhattan Game Preserve, p. 985, 1704
- 12.9.210 Warm Springs Game Preserve, p. 38, 515

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-VIII Emergency Adoption - Underground Storage Tanks - Licensing of Underground Tank Installers - Permitting of Underground Tank Installations and Closures, p. 731
- I-X Water Quality - Procedures and Criteria Regarding Wastewater Treatment Works Revolving Fund, p. 799, 879, 1468
- I-XI Handicapped Children's Services Program - Eligibility for the Handicapped Children's Program - Payment for Services - Covered Conditions - Record-Keeping - Application Procedure - Advisory Committee - Fair Hearings, p. 881, 1256
- I-XVI Emergency Adoption - Underground Storage Tanks - Licensing of Underground Tank Installers - Permitting of Underground Tank Installations and Closures, p. 1549
- I-XXIV Petroleum Tank Release Compensation Program, p. 40, 516
- I-XL Underground Storage Tanks - Licensing of Underground Tank Installers and Inspectors - Permitting of Underground Tank Installations and Closures and Repeal of Emergency Rules I - XVI, p. 1512
- 16.8.921 and other rules - Air Quality - Definitions - Ambient Air Increments - Air Quality Limitations - Exclusions from Increment Consumption - Class I Variances - General, p. 805, 880, 1322
- 16.32.308 and other rule - Retention of Medical Records by Health Care Facilities, p. 891, 1259
- 16.44.202 and other rules - Solid and Hazardous Waste - Mining Waste Exclusion, p. 1536
- (Petroleum Tank Release Compensation Board)
- 16.47.311 and other rule - Definitions - Release Discovered After April 13, 1989 Construed, p. 1314

HIGHWAYS, Department of, Title 18

- 18.8.510B and other rules - Convoy Moves of Oversize Vehicles - Flag Vehicle Requirements, p. 2027, 591
- 18.8.1101 Movement of Houses, Buildings and Other Large Objects, p. 578, 1260

INSTITUTIONS, Department of, Title 20

- 20.3.202 and other rules - Definitions - Clients' Rights - Outpatient Component Requirements - Certification System for Chemical Dependency Personnel - Chemical Dependency Education Course Requirements - ACT, p. 2121, 737
- 20.7.1101 Conditions on Probation or Parole, p. 695, 1560

JUSTICE, Department of, Title 23

- I-XIV Admission - Attendance - Conduct - Evaluations and Requirements for Graduation from the Montana Law Enforcement Academy, p. 809, 1261
- 8.124.101 and other rules - Gambling, p. 2127, 828, 1172

LABOR AND INDUSTRY, Department of, Title 24

- I Travel Expense Reimbursement, p. 816, 1564
- I-II Establishing Montana's Minimum Hourly Wage Rate, p. 454, 852
(Workers' Compensation Judge)
- 24.5.101 and other rules - Procedural Rules of the Court, p. 349, 847
(Human Rights Commission)
- 24.9.212 Confidentiality - Procedure on Finding of Lack of Reasonable Cause - Contested Case Record - Exceptions to Proposed Orders, p. 2157, 525
- 24.9.225 and other rules - Procedure on Finding of Lack of Reasonable Cause - Issuance of Right to Sue Letter When Requested by a Party - Effect of Issuance of Right to Sue Letter, p. 1065, 1561
- 24.16.9007 Amendment of Prevailing Wage Rates, p. 986, 1707
(Workers' Compensation)
- 24.29.1415 Impairment Rating Dispute Procedure, p. 456, 1004

STATE LANDS, Department of, Title 26

- I-III and other rules - Sale of Cabinsites and Homesites on State Trust Lands, p. 1660
- I-III Investigation of Complaints Regarding Effects of Hard Rock Blasting Operations, p. 458, 1470
- I-VII Authorizing Permitting and Requiring Reclamation of Hard Rock Mills and Operations that Reprocess Tailings and Waste Rock from Previous Operations, p. 267, 1008
- I-XII and other rules - Disposal of Underground Coal Mine Waste - Individual Civil Penalties - Restrictions on Financial Interests of Multiple Interest Advisory Boards, p. 1309, 366A, 936

- 26.4.724 and other rules - Revegetation of Land Disturbed by Coal and Uranium Mining Operations, p. 1885, 964

LIVESTOCK, Department of, Title 32

- 32.18.101 Hot Iron Brands Required, p. 1315

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Reject or Modify Permit Applications for Consumptive Uses and to Condition Permits for Nonconsumptive Uses in Walker Creek Basin, p. 893
36.12.1010 and other rules - Definitions - Grant Creek and Rock Creek Basin Closures, p. 1542
(Board of Water Well Contractors)
I Mandatory Training, p. 896, 1568
I Abandonment of Monitoring Wells, p. 273, 739
(Board of Oil and Gas Conservation)
I Incorporating by Reference Rules Pertaining to the Montana Environmental Policy Act, p. 2164, 531

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-III and other rules - Motor Carrier Status - Class C Contracts - Class C Pickups and Delivery - Contract and Common Carrier Distinction - Insurance - Transfer of Authority - Carrier Rate Increases - Vehicle Identification, p. 467, 1263
38.5.2202 and other rule - Federal Pipeline Safety Regulations Including Drug-Testing Requirements, p. 275, 698
38.5.3332 Customer Billing, p. 192, 593

REVENUE, Department of, Title 42

- I Gasoline From Refineries, p. 1071, 1717
I-II Local Government Severance Tax Distribution Procedure, p. 1664
I-III Property Tax - Reappraisal of Real Property Dealing With Statistical Procedures and Results, p. 198, 596
I-V Property Tax - Reappraisal of Real Property, p. 54, 202, 367, 596
42.5.101 and other rules - Bad Debt Collection, p. 1080, 1712
42.11.401 and other rules - Liquor Bailment, p. 1229
42.12.205 and other rule - Requirements When Licensing Is Subject to Lien, p. 194, 1266
42.17.105 Computation of Withholding Taxes, p. 1803, 121
42.18.101 and other rules - Property Tax - Reappraisal Plan, p. 2031, 594
42.19.301 Clarification of Exception to Tax Levy Limit, p. 1070, 1713

- 42.20.102 Applications for Property Tax Exemptions, p. 1240, 1714
- 42.20.401 and other rules - Property Tax - Sales Assessment Ratio, p. 2039, 596
- 42.20.420 and other rules - Sales Assessment Ratio Study, p. 818, 1270
- 42.20.438 Sales Assessment Ratio Study, p. 700, 1271
- 42.22.1311 Updating Trend Factors for Industrial Machinery and Equipment, p. 1074
- 42.23.413 Carryover of Net Operating Losses - Corporation License Tax, p. 2166, 645
- 42.24.101 and other rules - Subchapter S Elections for Corporations, p. 1082, 1715
- 42.27.604 Payment of Alcohol Tax Incentive, p. 1072, 1718
- 42.28.321 Required Records - Audits - Motor Fuels Tax, p. 580, 1174
- 42.28.405 Special Fuel Dealers Tax Returns, p. 1667

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)

- 44.10.331 Limitations on Receipts From Political Committees to Legislative Candidates, p. 203, 532

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I and other rules - Orthodontia and Dentures, p. 917, 1331
- I-II Transitional Child Care, p. 207, 533
- I-III Freestanding Dialysis Clinics, p. 1086, 1607
- I-IV Rural Health Clinics, p. 1544
- I-VIII Skilled Nursing and Intermediate Care Services In Institutions for Mental Diseases, p. 278, 1175
- I-LXV and other rules - Child Support Enforcement Procedures and Administration, p. 74, 375, 1337
- 46.8.901 and other rule - Developmental Disabilities Standards, p. 1317
- 46.10.403 AFDC Standards of Assistance, p. 1245, 1570
- 46.10.409 Sliding Fee Scale For Transitional Child Care, p. 1685
- 46.10.701 and other rules - Montana JOBS Program, p. 1122, 1571
- 46.12.303 Medicaid Billing - Reimbursement - Claims Processing and Payment, p. 901, 1586
- 46.12.304 Third Party Liability, p. 912
- 46.12.505 Diagnosis Related Groups (DRGs), p. 904, 1588
- 46.12.522 and other rules - Two Percent (2%) Increase in Medicaid Fees for Provider Services, p. 923, 1479
- 46.12.532 Reimbursement for Speech Therapy Services, p. 596, 876

- 46.12.541 and other rule - Hearing Aid Services, p. 898, 1326
- 46.12.545 and other rules - Occupational Therapy Services, p. 370, 582
- 46.12.552 Reimbursement for Home Health Services, p. 474, 1042
- 46.12.571 and other rules - Coverage Requirements and Reimbursement for Clinic Services - Psychological Services - Clinical Social Work Services, p. 71, 534, 740
- 46.12.590 and other rules - Inpatient Psychiatric Services, p. 1117, 1589
- 46.12.703 Reimbursement for Outpatient Drugs, p. 906, 1481
- 46.12.802 Prosthetic Devices, Durable Medical Equipment and Medical Supplies, p. 987
- 46.12.1201 and other rules - Payment Rate for Skilled Nursing and Intermediate Care Services, p. 1107, 1598
- 46.12.1401 and other rules - Medicaid Home and Community Based Program for Elderly and Physically Disabled Persons, p. 1090
- 46.12.1823 and other rule - Hospice Services, p. 205, 539
- 46.12.2003 Reimbursement for Physicians Services, p. 1243, 1608
- 46.12.2003 Reimbursement for Obstetrical Services, p. 702, 1179
- 46.12.2013 Reimbursement for Certified Registered Nurse Anesthetists, p. 214, 540
- 46.12.3206 and other rule - Third Party Attorney Fees - Assignment of Benefits, p. 1088, 1609
- 46.12.3401 Transitional Medicaid Coverage, p. 210, 541
- 46.12.3401 Medicaid Coverage for Pregnant Women and Children up to Age Six, p. 212, 542
- 46.12.3803 Medically Needy Income Levels, p. 908, 1334
- 46.12.3804 Medically Needy Income Levels, p. 368, 853
- 46.12.4002 and other rules - Group Eligibility Requirements for Inpatient Psychiatric Services, p. 1104
- 46.12.4008 Earned Income Disregards for Institutionalized Individuals, p. 216, 543
- 46.12.4101 Qualified Medicare Beneficiaries Eligibility for Medicaid, p. 910, 1336
- 46.13.106 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1678
- 46.14.402 Low Income Weatherization Assistance Program, p. 1669

**DOES NOT
CIRCULATE**