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MONTANA ADMINISTRATIVE REGISTER

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1995 ISSUE NO. 21
NOVEMBER 9, 1995
PAGES 2311-2443



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the pro-)	NOTICE OF PROPOSED REPEAL
posed repeal of ARM	)	OF ARM 2.21.4906 THROUGH
2.21.4906 through	)	2.21.4909, 2.21.4911,
2.21.4909, 2.21.4911,	)	2.21.4914 THROUGH
2.21.4914 through	)	2.21.4916 AND 2.21.4922,
2.21.4916 and 2.21.4922,	)	THE MOVING AND RELOCATION
the moving and relocation		EXPENSES POLICY
expenses policy		
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons.

1. On December 12, 1995, the department of administration proposes to repeal ARM 2.21.4906 through 2.21.4909, 2.21.4911, 2.21.4914 through 2.21.4916 and 2.21.4922, the moving and relocation expenses policy.

2. The rules proposed for repeal are found on pages 2-1259 through 2-1265 of the Administrative Rules of Montana. The department's authority to repeal these rules is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

3. Repeal of these rules is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions. The proposed repeal of these rules should not be interpreted to disallow the practice of providing moving and relocation expenses by state agencies. Department directors may continue to approve the practice and may rely on the former administrative rules for guidance.

4. Interested parties may submit data, views or arguments concerning the proposed repeal in writing to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Any comments must be received no later than December 11, 1995.

5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. A written request for hearing must be received no later than December 11, 1995.

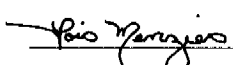
6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association

having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be at least 25 persons.

7. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Gale Kuglin, State Personnel Division, Box 200127, Helena, Montana 59620-0127; telephone: (406)-444-3984. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY: 

Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State October 30, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the pro-	)	NOTICE OF PROPOSED
posed amendment of ARM	)	AMENDMENT OF ARM 2.21.507
2.21.507 related to jury	)	RELATED TO JURY DUTY AND
duty and witness leave	)	WITNESS LEAVE

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On December 12, 1995, the department of administration proposes to amend ARM 2.21.507 related to jury duty and witness leave.

2. The proposed amendment provides as follows:

2.21.507 CLOSING (1) Remains the same.

~~(2) Examples of the forms mentioned follow: (Next page)~~

The examples of leave request and record forms which appear on ARM pages 2-661 and 2-662 will be deleted.

(Auth. 2-18-102, 2-18-604 MCA; Imp. 2-18-619 MCA)

3. Amendment of this rule is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions and reduce the number of pages of rules. The department finds inclusion of the leave forms as part of the administrative rule is unnecessary.

4. Interested parties may submit data, views or arguments concerning the proposed amendment in writing to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Any comments must be received no later than December 11, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. A written request for hearing must be received no later than December 11, 1995.

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

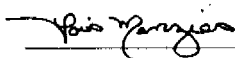
directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be at least 25 persons.

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BY:



Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State October 30, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the pro-	)	NOTICE OF PROPOSED REPEAL
posed repeal of ARM	)	OF ARM 2.21.3901 THROUGH
2.21.3901 through	)	2.21.3904, 2.21.3911,
2.21.3904, 2.21.3911,	)	2.21.3916, and 2.21.3921,
2.21.3916, and 2.21.3921,	)	THE EMPLOYEE EXCHANGE/LOAN
the employee	)	POLICY
exchange/loan policy		

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On December 12, 1995, the department of administration proposes to repeal ARM 2.21.3901 through 2.21.3904, 2.21.3911, 2.21.3916 and 2.21.3921, the employee exchange/loan policy.

2. The rules proposed for repeal are found on pages 2-1151 through 2-1165 of the Administrative Rules of Montana. The department's authority to repeal these rules is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

3. Repeal of these rules is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions. The proposed repeal of these rules should not be interpreted to disallow the practice of exchange or loan of employees by state agencies. Department directors may continue to approve the practice as internal policy and may rely on the former administrative rules for guidance.

4. Interested parties may submit data, views or arguments concerning the proposed repeal in writing to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Any comments must be received no later than December 11, 1995.


5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. A written request for hearing must be received no later than December 11, 1995.

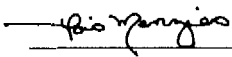
6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be at least 25 persons.

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BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State October 30, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the pro-	)	NOTICE OF PROPOSED REPEAL
posed repeal of ARM	)	OF ARM 2.21.1101 THROUGH
2.21.1101 through	)	2.21.1106 AND 2.21.1111, The
2.21.1106 and 2.21.1111,	)	THE EDUCATION AND TRAINING
the education and	)	POLICY
training policy)	

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On December 12, 1995, the department of administration proposes to repeal ARM 2.21.1101 through 2.21.1106 and 2.21.1111, the education and training policy.

2. The rules proposed for repeal are found on pages 2-751 through 2-755 of the Administrative Rules of Montana. The department's authority to repeal these rules is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

3. Repeal of these rules is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions. The proposed repeal of these rules should not be interpreted to disallow the practice of providing education and training by state agencies. Department directors may continue to approve the practice and may rely on the former administrative rules for guidance.

4. Interested parties may submit data, views or arguments concerning the proposed repeal in writing to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Any comments must be received no later than December 11, 1995.

5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. A written request for hearing must be received no later than December 11, 1995.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten

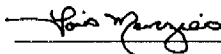
percent of the persons directly affected has been determined to be at least 25 persons.

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BY:



Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State October 30, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the pro-	)	NOTICE OF PROPOSED
posed amendment of ARM	)	AMENDMENT OF ARM 2.21.3006
2.21.3006 related to	)	RELATED TO DECEDENT'S
decedent's warrants	)	WARRANTS

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On December 12, 1995, the department of administration proposes to amend ARM 2.21.3006 related to decedent's warrants.

2. The proposed amendment provides as follows:

2.21.3006 CLOSING (1) -(2) Remain the same.

~~(3) Example of form mentioned follows: (Next page)~~

The example of the decedent's warrants form which appears on ARM page 2-999 will be deleted.

(Auth. 2-18-102 MCA; Imp. 2-18-412 MCA)

3. Amendment of this rule is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions and reduce the number of pages of rules. The department finds inclusion of the decedent's warrants form as part of the administrative rule is unnecessary.

4. Interested parties may submit data, views or arguments concerning the proposed amendment in writing to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Any comments must be received no later than December 11, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. A written request for hearing must be received no later than December 11, 1995.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental subdivision or agency; or

from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be at least 25 persons.

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BY: 

Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State October 30, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the pro-	)	NOTICE OF PROPOSED REPEAL
posed repeal of ARM	)	OF ARM 2.21.1601 THROUGH
2.21.1601 through	)	2.21.1606 AND 2.21.1611,
2.21.1606 and 2.21.1611,	)	THE ALTERNATE WORK
the alternate work	)	SCHEDULES POLICY
schedules policy)	

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On December 12, 1995, the department of administration proposes to repeal ARM 2.21.1601 through 2.21.1606 and 2.21.1611, the alternate work schedules policy.

2. The rules proposed for repeal are found on pages 2-807 through 2-811 of the Administrative Rules of Montana. The department's authority to repeal these rules is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

3. Repeal of these rules is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions. The proposed repeal of these rules should not be interpreted to disallow the practice of alternate work schedules by state agencies. Department directors may continue to approve the practice of alternate work schedules as internal policy and may rely on the former administrative rules for guidance.

4. Interested parties may submit data, views or arguments concerning the proposed repeal in writing to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Any comments must be received no later than December 11, 1995.


5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. A written request for hearing must be received no later than December 11, 1995.

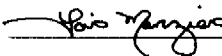
6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association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

be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be at least 25 persons.

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BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State October 30, 1995

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

In the matter of the proposed)
repeal of ARM 2.43.411, 2.43.412,) NOTICE OF PROPOSED REPEAL
2.43.413, 2.43.414, and 2.43.415)
pertaining to service in the)
National Guard; 2.43.419 pertaining) NO PUBLIC HEARING
to job sharing; and 2.43.439,) CONTEMPLATED
2.43.450, and 2.43.453 pertaining)
to the RIP program.)

TO: All Interested Persons.

1. On January 25, 1996, the Public Employees' Retirement Board proposes to repeal the following rules: ARM 2.43.411, 2.43.412, 2.43.413, 2.43.414, and 2.43.415 pertaining to service in the National Guard; ARM 2.43.419 pertaining to job sharing; and 2.43.439, 2.43.450, and 2.43.453 pertaining to the Retirement Incentive Program.

2. The rules proposed to be repealed are as follows:

ARM 2.43.411 and 2.43.414 are on pages 2-3134 and 2-3135 of the Administrative Rules of Montana.

AUTH: 19-2-403, MCA

IMP: 19-3-402, MCA

ARM 2.43.412 and 2.43.413 are on pages 2-3134 and 2-3135 of the Administrative Rules of Montana.

AUTH: 19-2-403, MCA

IMP: 19-3-402 and Title 19, Ch. 3, part 5, MCA

ARM 2.43.415 is on page 2-3135 of the Administrative Rules of Montana.

AUTH: 19-2-403, MCA

IMP: 19-3-402, 19-3-406, 19-3-703, and 19-3-901, MCA

ARM 2.43.419 is on page 2-3137 of the Administrative Rules of Montana.

AUTH: 19-2-403, MCA

IMP: Title 19, Chs. 3, 6, 7, and 8, part 3, and Chs. 9 and 13, part 4, MCA

ARM 2.43.439, 2.43.450, and 2.43.453 are on pages 2-3148, 2-3149, and 2-3152, respectively.

AUTH: 19-2-403 and 19-3-908, MCA

IMP: 19-3-908, MCA

3. The repeal of rules 2.43.411 through 2.43.415 is necessary because statutory changes since enactment of the rules prohibit National Guard members from electing membership in the Public Employees' Retirement System.

The repeal of rule 2.43.419 is necessary because other rules regulate part-time employment, making this rule obsolete and redundant.

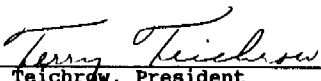
The repeal of rules 2.43.439, 2.43.450, and 2.43.453 is necessary because these rules applied to portions of the Retirement Incentive Program which ended on December 31, 1994. The rules have no future effect and are no longer necessary.

4. Interested persons may present their data, views, or arguments concerning the proposed repeals in writing no later than December 30, 1995 to:

Linda King, Administrator
Public Employees' Retirement Division
P.O. Box 200131
Helena, Montana 59620-0131

5. If a person who is directly affected by the proposed repeals wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the above address. A written request for hearing must be received no later than December 8, 1995.

6. If the agency receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4,214 persons based on October 1995 payroll reports of active and retired members.


Terry Teichrow, President
Public Employees' Retirement Board


Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on October 30, 1995.

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of Rules 6.6.4102) HEARING
and 6.6.4202 pertaining to)
insurance licensee continuing)
education fees and)
continuing education program)
administrative rule)
definitions)

TO: All Interested Persons.

1. On November 30, 1995, at 1:30 p.m., a public hearing will be held in the conference room of the State Auditor's Office, Room 270, Mitchell Building, 126 North Sanders, Helena, Montana, to consider the amendment of rules 6.6.4102 and 6.6.4202.

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

6.6.4102 CONTINUING EDUCATION FEES

(1) Licensees:

(a) Filing annual certification of course completion \$ 25-00 10.00

(b) Late renewal fee \$ 50-00 20.00

(c) The late renewal fee is separate and distinct from the annual certification of course completion fee. Licensees required to pay the late renewal fee in a given year must also pay the annual certification of course completion fee for that year.

(2) through (4) remain the same.

AUTH: Sections 33-1-313, ~~33-2-708~~, and 33-17-1206, MCA
IMP: Sections 33-2-708, ~~33-17-1204~~, ~~33-17-1205~~, and
~~33-17-1207~~, MCA

6.6.4202 DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) through (3) remain the same.

(4) "Classroom setting" means a course format in which a body of students meets to study the same course materials under the direction of the same approved instructor.

(5) through (10) remain the same.

~~(11) "Selling of credit life and disability insurance incidental to other noninsurance activities" means, for the purposes of determining which licensee must complete continuing education requirements, cumulative annual premiums for a calendar year sold in an amount less than \$5000-00.~~

~~(12)~~ (11) Text remains the same.

~~(13)~~ (12) "Sponsoring organization" means any group(s) or organization(s) and their agent(s) that submits courses for

department review and offers or provides approved courses for continuing education credit to allow licensees to meet the requirements of 33-17-1203 and 33-17-1204, MCA, and is responsible for those course offerings.

AUTH: Sections 33-1-313 and 33-17-1206, MCA
IMP: Section 33-17-1203, and 33-17-1204, MCA

3. Rule 6.6.4102 is being amended because Section 33-17-1207, MCA, requires that funds generated from operation of the continuing education program may be used only to defray the expenses incurred by the state auditor's office in discharging its duties as prescribed by the Insurance Producer and Consultant Continuing Education Act, subject to applicable state fund appropriation laws and other considerations. The fee levels must be adjusted in order to comply with this directive. Rule 6.6.4202 is being amended because the exemption for individuals selling only credit life and disability insurance incidental to other non-insurance activities was removed by the 1995 Montana Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Gary Spaeth, 126 North Sanders, Helena, Montana 59624 or P.O. Box 4009, Helena, Montana 59604-4009, and must be received no later than December 7, 1995.

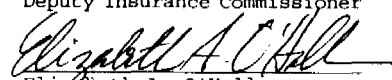
5. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., November 23, 1995, to advise us of the nature of the accommodation needed. Please contact the State Auditor's Office, attn: Ms. Mary Arnold, P.O. Box 4009, Helena, MT 59604-4009; telephone (406) 444-2040; fax (406) 444-3497; TDD (406) 444-3246.

6. Gary Spaeth has been designated to preside over and conduct the hearing.

Mark O'Keefe
State Auditor and Commissioner
of Insurance

By: 

Frank Cote
Deputy Insurance Commissioner


Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 30th day of October, 1995.

21-11/9/95

MAR Notice No. 6-62

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) PROPOSED AMENDMENT OF RULES
to the outfitting industry) PERTAINING TO THE OUTFITTING
INDUSTRY

TO: All Interested Persons:

1. On December 11, 1995, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau conference room, Lower Level, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed amendment of ARM 8.39.202, 8.39.502, 8.39.505, 8.39.508, 8.39.514, 8.39.515, 8.39.518, 8.39.703 and 8.39.704; the repeal of ARM 8.39.504, 8.39.509, 8.39.511, 8.39.701, 8.39.702 and 8.39.705 through 8.39.708; and the adoption of new rules.

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

"8.39.202 PUBLIC PARTICIPATION RULES (1) and (2) will remain the same.

(3) Communications to the board of outfitters may be made to: Board of Outfitters, Department of Commerce, State of Montana, ~~1424 9th Avenue,~~ 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513.

(4) will remain the same."

Auth: Sec. 2-3-103, ~~37-47-201,~~ MCA; IMP, Sec. 2-3-103, ~~37-47-201,~~ MCA

REASON: This amendment is necessary to provide the licensees and the public with a correct address for the board.

"8.39.502 LICENSURE--OUTFITTER QUALIFICATIONS (1) will remain the same.

(a) have ~~three seasons~~ 100 days of verified experience as a licensed outfitter in another state or a licensed guide or professional guide working for a licensed outfitter in a ~~similar service and resource area; this state, guiding clients in pursuing the types of game and using methods for which~~ license is sought by the applicant and,

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

~~(3) One season of experience shall mean experience, for a hunting or small game hunting outfitter applicant, of not less than six weeks hunting as a licensed outfitter or licensed professional guide and, for a fishing outfitter applicant, of not less than eight weeks fishing as a licensed outfitter or licensed professional guide, except:~~

~~(a) if it is not possible for an applicant to obtain the required experience for the particular type of game that an applicant intends to provide services for, the board may determine other appropriate experience qualifications;~~

~~(b) (3) one season~~ Three days of experience may be waived by the board for an applicant ~~for every day of who has completed training completed by the applicant in the category of licensure applied for (fishing or hunting), subject to a maximum waiver of 30 days,~~ at an outfitter or guide school licensed by a state and approved by the board; ~~and,~~

~~(c) under circumstances where the hunting season for any species is less than six weeks long, the board may determine that a season of experience is equal to the length of that hunting season.~~

~~(4) An applicant may accumulate only one season of experience for hunting and one season of experience for fishing in one calendar year.~~

~~(5) (4)~~ The board may waive 50 days of the experience requirement of an applicant for an outfitter license provided that:

(a) the applicant submits and receives pre-approval from the board for a plan documenting how and in what capacity the applicant will work with the licensed outfitter from whom the business was obtained;

(a) (b) the applicant owns an outfitting business that constitutes the entire operation of an existing licensed outfitter;

(b) (c) the business has previously had an approved operations plan on file with the board; and

(c) (d) the applicant has worked with a properly the licensed outfitter from whom the business was obtained in operating the business now owned by the applicant, pursuant to the plan approved by the board, for not less than twelve months following advance approval of the plan from the board."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

REASON: The proposed amendment is necessary to provide a more objective unit of measurement for experience for licensure as an outfitter. The amendment is further necessary to ensure that applicants for licensure meet the same standards. Under the current rule, there is some ambiguity as to what constitutes a "season" of experience. The board seeks to eliminate this ambiguity through use of an objective unit of measurement.

"8.39.505. LICENSURE--OUTFITTER APPLICATION (1) through (2) (a) will remain the same.

(b) an operations plan application form which shall require information the board needs in order to determine the functions of an outfitter an applicant can perform with the equipment listed, number of clients that can be served with equipment listed, compatibility with the area utilized, and verification of permission to utilize public or private lands, be considered under the guidelines of (new rule 1).

(3) An Applicants applicant passing the examination shall have one year to complete an approved operations plan before commencing operations or will then be treated as a new applicant. However, the board may, upon written request and good cause shown, extend this period who receives approval of

his or her proposed operation plan and license application may then take, and must pass, the licensing examination prior to licensure."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-304, 37-47-307, MCA

REASON: The proposed rule seeks to correct a deficient and cumbersome application process that previously allowed an applicant to sit for the examination without having completed the experience requirements or having an approved operations plan. The effect was a lengthy application process that created difficulty for administrative staff to track the progress of applicants. The proposed procedure more appropriately places the examination as the last qualifying step to approval of an application.

"8.39.508 LICENSURE--RENEWAL (1) License renewal applications for outfitters, guides, and professional guides shall be made on forms provided by the board and shall be accompanied by:

(a) the required fee (outfitters, guides and professional guides);

(b) a copy of the licensee's current basic first aid or cardiopulmonary resuscitation card (outfitters, guides and professional guides);

(c) a copy of the licensee's current insurance policy (outfitters only);

(d) complete client report logs (outfitters only); and

(e) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year (outfitter only).

(2) If an outfitter, guide or professional guide does not renew submit a completed application with the required fee in accordance with (1) his or her license by January 1 on or before December 31 of the new each license year, the license will be deemed to have lapsed, and he or she shall then be treated as a new applicant for all purposes he or she shall immediately cease practice until a renewal application is submitted and approved by the board.

(3) For good cause the time for lapse of license shall be extended for 30 days, subject to payment of the renewal fee and a late penalty fee. Upon submission of a completed application for late renewal, payment of a renewal fee in accordance with (1) and late fee, an outfitter may renew his or her license until April 1 of the new license year. An outfitter license for which a renewal application has not been filed on or before April 1 of the new license year may not be renewed. The individual previously holding such license shall thereafter be treated as a new applicant for purposes of establishing the qualifications for licensure and payment of licensing fees.

(4) By January 1 of the new license year, or 30 days thereafter for good cause shown, an outfitter license may be placed on inactive status for a period not to exceed one license year, by written request and payment of the required fee. A guide or professional guide who fails to submit an application for renewal prior to December 31 of each license

year shall pay a late renewal fee in addition to the license fee, both specified in ARM 8.39.518, the first time the guide or professional guide seeks relicensure after the date of expiration of the previous license."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-302, 37-47-303, 37-47-304, 37-47-306, 37-47-307, 37-47-312, MCA

REASON: The proposed amendment clearly sets forth the requisites for renewal of a license and the consequences of failing to submit a renewal application on time. Previously, the rules set forth a "good cause" 30 day grace period. Due to difficulty in administering, the "good cause" requirement has been eliminated and the grace period extended to 90 days. Inactive status will be addressed in a separate rule. The new rule proposes a renewal for guides and professional guides rather than requiring annual reapplication. This amendment is necessary to allow the board to better track the licensure of guides in the state of Montana.

"8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

(1) The An applicant may apply for a or employing outfitter must submit the completed guide or professional guide license application, on forms provided by the board, accompanied by the required fee.

(2) It shall be the responsibility of the employing outfitter to confirm that the professional guide meets all the qualifications of a professional guide. A new, first time applicant who has not previously been licensed with the Montana board of outfitters must submit proof of current basic first aid or cardiopulmonary resuscitation certification no later than 90 days after the date of application.

(3) On the day after the postmarked date of the application the license applied for will be considered valid and will remain so until the actual license is issued or the board denies the application. A new applicant who has previously been licensed with the Montana board of outfitters must submit proof of current basic first aid or cardiopulmonary resuscitation certification with his or her application.

(4) When issued, the license shall be mailed to the employing outfitter retaining or employing the guide. After receipt of the license, the employing endorsing outfitter shall confirm that the guide or professional guide meets all the qualifications of a guide or professional guide. If the outfitter determines, after inquiry, that the guide or professional guide meets all qualifications, the outfitter may endorse and date the guide or professional guide license and shall immediately deliver the license to the guide or professional guide."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-301, 37-47-307, 37-47-309, MCA

REASON: This rule sets forth the application procedure for guides and professional guides and recognizes the need, on an emergency basis, to hire replacement guides who may not possess current first aid/CPR certification. The rule provides 90 days

after the date of application for guides who have not been previously licensed with the board to provide such proof. A guide who has previously been licensed with the board will not qualify for this waiver.

"8.39.515 LICENSURE - GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS (1) In addition to the requirements contained in section 37-47-303, MCA, for guide or professional guide's qualifications, an applicant for a guide or professional guide license shall have:

(a) not less than one season of experience of hunting or fishing for the type of game for which ~~he~~ the applicant will be guiding guide, or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide or professional guides;

(b) and (c) will remain the same.

(2) An applicant for a professional guide's license shall meet the following qualifications in addition to the qualifications in (1):

(a) have held a guide license in the state of Montana for at least three years;

(b) have not had disciplinary action taken against the applicant's guide license in this or any other state; and

(c) have spent at least 300 days guiding clients in the field as evidenced by:

(i) employment records or

(ii) client report logs of endorsing outfitters.

(d) The applicant shall produce reference letters setting forth relevant dates and experiences from:

(i) three clients the guide has guided and

(ii) three currently licensed guides.

(e) A professional guide shall present evidence of 15 hours of training or education obtained in the year previous to application in addition to guiding experience, in topics relevant to guiding as approved by the board.

(2) (3) An outfitter whose license is currently suspended or revoked shall not be qualified for a guide or professional guide license."

Auth: Sec. 37-1-131, 37-47-101, 37-47-201, MCA; IMP, 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: This amendment is necessary to establish the qualifications of a professional guide, a new classification of guide created by House Bill 196 of the 1995 Legislature. The experience endorsement and training are necessary to make the new classification meaningful and distinct from the base guide level.

"8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, AND GUIDE OR PROFESSIONAL GUIDE (1) Fees for outfitters, operations plan, guide and professional guides shall be as follows:

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

(iv) ~~annual~~ license..... 200

- (b) through (e) will remain the same.
- | | | | |
|------------------|---|----------------|-----|
| (i) | review and processing..... | 100 | 400 |
| (ii) | equipment inspection..... | 300 | |
| (f) | new guide or professional guide license | | |
| (i) | processing renewal..... | 75 | |
| (ii) | late renewal penalty..... | 25 | |
| (iii) | first-time guide application | | |
| | processing..... | 75 | |
- (2) New applicants for an outfitter license shall include, with application for license, payment in the amount of \$900 (this does not include fees related to operation plan), which shall be nonrefundable, ~~except:~~
- (a) ~~an applicant failing to meet the qualifications to take the examination shall be refunded the entire amount less the application processing fee; and,~~
- (b) ~~an applicant failing to pass the examination shall be refunded the entire amount less the application processing fee and the examination fee.~~
- (3) Applicants for amendment to license shall include, with application for amendment, payment in the amount of \$150, ~~\$75 of which shall be refunded if examination is not necessary for the amendment.~~
- (4) Applicants for amendment to operations plan shall include, with application for amendment, payment in the amount of \$400, \$300 of which shall be refunded if ~~inspection of equipment is not necessary for the amendment the board determines that the application does not propose an increase in the outfitter's net client hunting use.~~
- (5) ~~Operations plans submitted for approval by the board requiring no inspection, such as in the case of an outfitter presently licensed submitting an operations plan to comply with this chapter, shall be accompanied by the review and processing fee only.~~
- (6) ~~Minor amendments to license or operations plan, not involving change to type of license or operation or area of operation, shall not require a fee.~~
- Auth: Sec. 37-1-131, 37-1-134, ~~37-47-201, 37-47-304, 37-47-306, MCA; IMP, Sec. 37-1-134, 37-47-304, 37-47-306, 37-47-307, MCA~~

REASON: The amendment is necessary to bring the fees commensurate with program area costs. All fees assessed reflect the cost to process applications. Under the existing rule, however, refund provisions potentially undermine the matching of fees to the costs. The new guide license processing fee is proposed to accurately reflect the time spent in processing a first-time guide. With other amendments providing for renewal of guides, the fee for renewal will remain at \$75.

"8.39.703 OUTFITTER RECORDS ~~(1) Outfitters shall maintain current, true, complete, and accurate records at all times, submit the records to the board with application to renew license, and make the records available at all times at the outfitter's main base camp or business office to~~

~~enforcement or investigative personnel authorized or appointed by the board.~~

(2) will remain the same, but will be renumbered (1).

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

~~(3) (2) Submitted outfitter records shall be maintained as confidential information and client report logs shall not be released to any person or organization without approval of the board screening panel, after an analyses of the public's right to know and the outfitter's right of privacy written permission of the outfitter, subpoena or order of a court, or written request of a state or federal agency for the purpose of furthering investigation of criminal activities."~~

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-301, MCA

REASON: The elimination of (1) is necessary because it now will appear under the new rule on unprofessional conduct. The proposed amendment of (2) is necessary to provide for a review mechanism for release of records that is consistent with the Montana Constitution.

"8.39.704 SAFETY PROVISIONS (1) Outfitters and guides are required to hold a current basic first aid or cardiopulmonary resuscitation card within thirty (30) days of licensure at all times licensed.

(2) Except for the one-time, 90-day exemption provided for new, first time applicants in 8.39.514(2), guides and professional guides are required to hold a current basic first aid or cardiopulmonary resuscitation card at all times licensed.

(2) through (4) will remain the same, but will be renumbered (3) through (5)."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

REASON: The proposed amendment is necessary to bring the rule consistent with the changes enacted by House Bill 196 with respect to licensing of guides. Section 37-47-309, MCA, is scheduled for repeal on October 1, 1995. This section previously authorized a guide applicant to immediately start providing services upon submission of an application. The requirement for outfitters to have CPR or first aid at all times licensed is necessary to ensure the outfitter's qualifications throughout the licensure year.

3. The Board is proposing to repeal ARM 8.39.504, 8.39.509, 8.39.511, 8.39.701, 8.39.702, 8.39.705, 8.39.706, 8.39.707, and 8.39.708 located at pages 8-1122, 8-1123, 8-1123.5 through 8-1123.9, Administrative Rules of Montana. The authority sections are 37-1-131, 37-47-201, MCA and the implementing sections are 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-304, 37-47-307, 37-47-308, 37-47-310, 37-47-341, 37-47-402, and 37-47-404, MCA. The proposed repeals are necessary to maintain consistency between the rules and changes enacted by House Bill 196. The repeal of these rules is further necessary to comply with House Joint Resolution 5 of

the 1995 Legislature, and to promote clarity and understanding of the rules.

4. The proposed new rules will read as follows:

"I LICENSURE - INACTIVE (1) An outfitter may submit a written request to have his or her license placed on inactive status at the time of renewal. Such request must be submitted with a completed application for renewal and renewal fee.

(2) An outfitter may have his license placed on inactive status for a period not exceeding the remainder of the license year in which the request is made, and may not remain inactive for more than one consecutive licensure year at a time.

(3) Outfitters on inactive status may not book or serve clients, and are subject to all requirements applicable to outfitters licensed on active status, other than those relating to insurance."

Auth: Sec. 37-1-319, MCA; IMP, Sec. 37-1-319, MCA

REASON: This new rule is necessary to provide licensees with adequate guidelines for when inactive status will be allowed by the Board.

"II INSURANCE FOR OUTFITTERS (1) An outfitter, other than an outfitter licensed on inactive status, shall have liability insurance in effect at all times during the license year, and shall submit proof of such insurance with his or her application for renewal. Minimum amounts of liability insurance shall be \$10,000 for property damage, \$100,000 for personal injury to one person, and a total of \$300,000 for personal injury to more than one person."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

REASON: This rule was previously found at ARM 8.39.702. The change between 8.39.702 and this rule, from requiring liability insurance "when providing services" under the old rule to now requiring proof of insurance at all times during the license year, is necessary to ensure that a liability policy exists throughout the licensure year.

"III INSPECTION (1) Inspections of outfitter, guide and professional guide operations may be made by a representative of the board at all reasonable times. The purpose of the inspection is to periodically examine the premises, equipment, and/or procedures of a licensed individual to determine whether the individual's practice is being conducted in a manner consistent with the laws and rules of the board, and the public health, safety, and welfare."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-301, 37-47-302, MCA.

REASON: This rule is necessary to adequately define the scope of an inspection authorized by 37-47-302, MCA. The rule is further necessary to adequately inform licensees as to the purpose of such inspections.

"IV. STANDARDS FOR OUTFITTERS, GUIDES, AND PROFESSIONAL GUIDES - UNPROFESSIONAL CONDUCT AND MISCONDUCT" (1) A violation of (1)(a) through (p) or (3)(a) through (o) by an outfitter, or (2)(a) through (d) or (3)(a) through (o) by a guide or professional guide is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA. An outfitter shall:

- (a) not violate any law, rule, or policy of the department of fish, wildlife and parks concerning the certification of nonresidents for procuring hunting licenses;
- (b) not conduct any services or allow services to be conducted by a supervised guide or professional guide on private or public land, except legal transportation across such lands, without first having obtained written permission from the landowner or written authorization from the agency administering public land, unless the landowner or agency does not require such permission;
- (c) not provide services or allow services to be conducted by a supervised guide or professional guide to clients outside the boundaries of his or her approved operations plan;
- (d) not endorse a guide or professional guide license until the outfitter has made reasonable inquiry and determined that the guide or professional guide is qualified for licensure;
- (e) not interfere, by solicitation or otherwise, with a contract between another outfitter and client, including certifications for game license or permits, when it is known or reasonably should be known that a contract to provide services exists between that other outfitter and a client;
- (f) furnish each client with a current and complete rate schedule, which shall include all charges and the mode of payment acceptable, a deposit policy, and deposit refund policy, all in writing, for services offered;
- (g) when offering services to a nonresident hunting client, shall specify, in writing, the monetary consequences with respect to the prospective client's deposit, of failure by the prospective client to draw a license required to participate in the service offered;
- (h) not change the rates and/or policies from those published without the written consent of the client after the outfitter receives and accepts the deposit from the client;
- (i) be responsible for making all agreements with clients concerning monetary consideration or services offered;
- (j) personally collect, or designate an agent to collect, all fees from clients. The outfitter is solely responsible for complying with his or her deposit and deposit refund policy;
- (k) maintain current, true, complete and accurate records at all times;
- (l) make all records available at all times at the outfitter's main base camp or business office to enforcement or investigative personnel authorized or appointed by the board;

(m) obtain and maintain a reasonable degree of supervision over the guide or professional guide to insure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) not employ or retain a new, first time licensed guide or professional guide after the 90th day following the date of the guide's or professional guide's application for licensure without first confirming that the guide or professional guide has current basic first aid or cardiopulmonary resuscitation certification;

(o) not employ or retain a previously licensed guide or professional guide without first confirming that the guide or professional guide has current basic first aid or cardiopulmonary resuscitation certification; or

(p) properly endorse an application for a guide or professional guide license in accordance with the laws and rules of the board.

(2) A guide and professional guide shall:

(a) not advertise outfitting services, unless the guide or professional guide owns an outfitting business. In cases where the guide or professional guide owns the outfitting business, he or she must identify the endorsing and supervising outfitter in any advertisement for the business;

(b) not make agreements with clients concerning monetary consideration or services offered, or collect fees from clients, without the express consent of the supervising outfitter;

(c) not provide services to clients who have not been specifically referred to the guide or professional guide from the endorsing outfitter;

(d) when advertising guiding services, shall clearly designate the license number of the guide, and the name, address and telephone number of the endorsing outfitter.

(3) All licensees shall:

(a) not shoot, kill, or take any game animal, other than a game bird, while providing services for clients;

(b) make every effort to operate with respect for the rights of others, private and public property, and provide for the health, safety and well being of their clients, employees and the general public;

(c) provide services on public land in a manner such that they do not interfere with the general public access to public land or waterways or access to wildlife on public land;

(d) provide their services in such a manner as not to be detrimental to the wildlife or the environment where they operate;

(e) report to the board office, at their earliest opportunity, any violation of fish and game laws or outfitter and guide laws of which they have knowledge;

(f) not use any narcotic drug, alcohol, or any other drug or substance, to the extent that the use impairs the user physically or mentally, while engaged by a client;

(g) not charge any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license;

(h) not conduct a licensed function that is not authorized and listed on his or her license;

(i) not harass, assault or abuse clients, employees, outfitters, guides or professional guides, or members of the general public, verbally or otherwise;

(j) not abuse livestock;

(k) produce their current license at the demand of a representative of the board;

(l) clearly designate who the responsible outfitter is in any advertisement of outfitting, guiding or professional guiding services;

(m) carry his or her current license at all times when providing services;

(n) not have hunting or fishing privileges suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction; or

(o) not act beyond the scope of activities for which the individual is licensed."

Auth: Sec. 37-1-319, 37-47-201, 37-47-341, MCA; IMP, Sec. 37-1-312, 37-47-341, MCA

REASON: The proposed rule is necessary to consolidate misconduct and unprofessional conduct for outfitters and guides that was previously found throughout the rules. The consolidation is necessary to reduce rules in accordance with House Joint Resolution 5 and to give the licensees a single source of conduct rules to guide them in their practice.

"V. OUTFITTER ACTING AS GUIDE (1) Any person holding a current and valid outfitter's license may act as a guide without a guide's license if he or she possesses the qualifications of a guide under these rules."

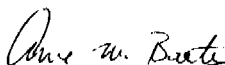
Auth: Sec. 37-1-319, 37-47-201, MCA; IMP, Sec. 37-47-301, 37-47-302, 37-47-303, MCA

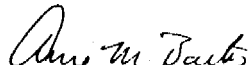
REASON: This proposed rule is necessary in order to allow an outfitter to act as a guide. All of the qualifications needed for a guide's license are included within the qualifications needed for an outfitter's license. Without this rule, an outfitter would have to pay for a separate license. The board is sensitive to the finances of its licensees and wants to avoid requiring an unnecessary fee.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than the close of hearing on December 11, 1995.

6. Colleen A. Graham, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 30, 1995.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO OUT-
to out-of-state mail service) OF-STATE MAIL SERVICE
pharmacies) PHARMACIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 9, 1995, the Board of Pharmacy proposes to amend ARM 8.40.1601 through 8.40.1607.

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

"8.40.1601. ~~LICENSE~~ REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES (1) No out-of-state pharmacy shall ship, mail, or deliver prescription drugs and/or devices to a patient in this state unless ~~licensed~~ registered by the Montana board of pharmacy."

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. ~~37-7-703~~, MCA

"8.40.1602. AGENT OF RECORD (1) and (2) will remain the same.

(3) A copy of any such service of process shall be mailed to the out-of-state mail service pharmacy by the complaining party by certified mail, return receipt requested, postage prepaid, at the address of such out-of-state mail service pharmacy as designated on the pharmacy's application for ~~license~~ registration in this state.

(4) If any such pharmacy is not ~~licensed~~ registered in this state, service on the secretary of state of Montana only shall be sufficient service."

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. ~~37-7-703~~, MCA

"8.40.1603. ~~LICENSE~~ REGISTRATION (1) As conditions of ~~license~~ registration, the out-of-state mail service pharmacy must comply with the following:

(a) will remain the same.

(b) be ~~licensed~~ registered and in good standing in the state of Montana;

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

(f) provide toll-free telephone communication consultation between a Montana patient and a pharmacist at the pharmacy who has access to the patient's records, and ensure that said telephone number(s) will be placed upon the label affixed to each legend drug container. A toll-free telephone number shall also be provided to the board to allow for compliance with all information requests by the board.

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. 2-18-704, 37-7-701, 37-7-702, ~~37-7-703~~, 37-7-704, 37-7-706, MCA

"8.40.1604 COMPLIANCE (1) through (d) will remain the same."

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. 37-7-701, 37-7-703, MCA

"8.40.1605 DISCIPLINARY ACTION (1) Except in emergencies that constitute an immediate threat to public health and require prompt action by the board, the Montana board of pharmacy shall file a complaint against any out-of-state mail service pharmacy that violates any statute or regulation of Montana with the board in which the out-of-state mail service pharmacy is located. If the board in the state in which the out-of-state mail service pharmacy is based fails to resolve the violation complained of within a reasonable time, ~~(not less than 100 working days from the date that the complaint is filed)~~, disciplinary proceedings may be instituted in Montana before the board."

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. ~~37-7-703~~, 37-7-704, 37-7-711, MCA

"8.40.1606 REGISTRATION IDENTIFICATION OF PHARMACIST IN CHARGE OF DISPENSING TO MONTANA (1) through (e) will remain the same."

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. ~~37-7-703~~, MCA

"8.40.1607. USE OF PHARMACY TECHNICIANS BY OUT-OF-STATE MAIL SERVICE PHARMACIES (1) Any application for out-of-state mail service pharmacy ~~licensure~~ registration from a facility located in a state which does not regulate the use of pharmacy technicians ~~shall not be required to include information on supervisor to technicians ratios, or submit a pharmacy technicians utilization plan for approval by the Montana board~~ may not allow a pharmacist to supervise more than one supportive person at any one time in the compounding or dispensing of prescription drugs, unless approved by the board.

(2) Any application for out-of-state mail service pharmacy licensure from a facility located in a state which does regulate the use of pharmacy technicians shall provide information on the supervisor to technician ratio allowed in the resident state, and ~~submit a utilization plan for the employment of pharmacy technicians.~~

~~(a) if the ratio is greater than the maximum ratio allowed for in state retail pharmacies (2:1 if engaged in intravenous admixture and other sterile product preparation, filling of unit dose cassettes, prepackaging, or bulk compounding), provide a copy of the pharmacy technician utilization plan for board approval; or~~

~~(b) if the ratio is not greater than the maximum ratio allowed for in state retail pharmacies, provide verification of the facility's use of this ratio."~~

Auth: Sec. ~~37-7-201~~ 37-7-712, MCA; IMP, Sec. ~~37-7-703~~, MCA

REASON: The proposed amendments are necessary to allow the Board to begin registration of mail service pharmacies as rule-making authority was previously lacking. The proposed amendments will also implement changes in the program such as registration rather than licensure, as mandated by the 1995 Legislature. The authority MCA citations are proposed for change, as a new authority section was added by the 1995 legislature.

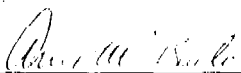
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacy, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 7, 1995.

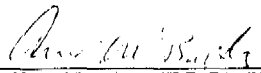
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Pharmacy, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 7, 1995.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, 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 117 based on the 1166 licensees in Montana.

BOARD OF PHARMACY
ED HARRINGTON, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 1995.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) THE PROPOSED AMENDMENT,
of rules pertaining to building) REPEAL AND ADOPTION OF RULES
codes) PERTAINING TO BUILDING CODES

TO: All Interested Persons:

1. On December 1, 1995, at 9:00 a.m., a public hearing will be held in the director's conference room of the Department of Environmental Quality, 1520 East Sixth, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to building codes.

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, ~~1991~~ 1994 Edition, together with the Appendix Chapter 7 4 (Division II - Aviation Control Towers, Division III - Regulations Governing Fallout Shelters), Appendix Chapter 10 3 (Division I - Detention and Correctional Facilities), ~~Appendix Chapter 11 (Division II - Agricultural Buildings), Appendix Chapter 12 (Division III - Requirements for Group R, Division 3 Occupancies), Appendix Chapter 23 16 (Division I - Snow Load Design, Division III - Earthquake Regulations for Seismic-Isolated Structures), Division IV - Flood-Resistant Construction), Appendix Chapter 24 21 (Prescriptive Masonry Construction in High-Wind Areas), Appendix Chapter 25 23 (Conventional Light-Frame Construction in High-Wind Areas), Appendix Chapter 29 18 (Waterproofing and Damp-Proofing Foundations), Appendix Chapter 31 11 (Division II - Accessibility for Existing Buildings), Appendix Chapter 32 15 (Re-Roofing), Appendix Chapter 49 31 (Division I - Flood Resistant Construction, Division II - Membrane Structures, Division III - Patio Covers), and Appendix Chapter 53 13 (Energy Conservation in New Building Construction), as amended by ARM 8.70.104, ~~Appendix Chapter 55 (Membrane Structures), and Appendix Chapter 57 (Regulations Governing Fallout Shelters),~~ with the following amendments thereto:~~

(a) Add a new paragraph to section ~~304 107~~ of the Uniform Building Code to read, "~~(g) 107.7~~ Requested Inspection Fee - \$45, provided that such service is not in excess of 1 hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items."

(b) Section ~~304 105~~ of the code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The bureau and state of Montana, however, will use the applicable

provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 204 105.

(c) Section 205 103 of the code will be left as is for use by local governments (i.e., municipalities and counties). The bureau and the state of Montana will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 205 103. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the bureau, the bureau, as authorized by 50-60-109, MCA, will bring civil action to enjoin him from constructing or using the building.

(d) Subsections ~~(b)~~ 107.2 and ~~(c)~~ 107.3 of section 304 107 of the Uniform Building Code, 1991 1994 Edition, are amended to read as follows:

~~Sec. 304. (b)~~ Subsection 107.2 Permit fees. The fee for each permit shall be as set forth in Table No. 31-A.

~~Sec. 304. (c)~~ Subsection 107.3 Plan review fees. When a ~~plan or other data submittal documents~~ are required ~~to be submitted by subsection (b) 106.3.2 of section 302~~, a plan review fee shall be paid. Said plan review fee shall be 25 percent of the building permit fee as set forth in Table No. 31-A. When only plan review services are provided, the plan review fee shall be 65% of the building permit fee as set forth in Table No. 31-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is ~~in~~ the state of Montana, acting through the department of commerce, building codes bureau, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the international conference of building officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. The building codes bureau may, for public buildings or projects that exceed \$25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building Valuation Data" table when such bids include all construction work associated with the building as described earlier in this section and the bidding process is determined as having been open and competitive. Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this section, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will

be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. For purposes of calculation of fees, the building valuation shall be rounded off to the nearest \$1,000 and any calculated building and plan review fees shall be rounded off to the nearest \$1. As provided in ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation. During the period ~~commencing with the date upon which this amendment is effective~~ and ending on June 30, 1996, the building permit fee above shall be reduced to a sum equal to 85% of the sum calculated above and no plan review fee shall be applied, except where plan review services only are provided the plan review fee shall remain 65% of the building permit fee as set forth in Table No. 31-A.

(e) ~~Section 3305(h) Openings.~~ 1. Subsection 1005.8.1 Doors. The requirements of the Uniform Building Code, of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in ~~section 50-5-101, Montana Code Annotated (MCA).~~ Section 50-5-101, MCA, defines "health care facility" as any building used to provide health services, medical treatment, nursing, rehabilitative, or preventive care to persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, out-patient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

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

(4) ~~Subsection (d) of section 2305 1605.4~~ of the Uniform Building Code, ~~1991 1994~~ 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 be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke/Civil & Agricultural Engineering/Montana State University August 1989. The minimum design roof snow load after allowed reductions shall be 30 psf. Figure No. A-5-A ~~16-1~~ of Appendix Chapter ~~23 16~~ 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 1806.1~~ of the Uniform Building Code, ~~1991 1994~~ 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 properly designed so-called monolithic slabs for single story storage and similar use buildings. At its sole discretion, the building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA.

(6) ~~Sections 305(b)~~ Subsections 108.2 and ~~(e)~~ 108.5 of the Uniform Building Code, ~~1991~~ 1994 Edition, are deleted for the bureau, but left unamended for use by local governments.

(7) ~~Section 305(d)~~ Subsection 108.4 of the Uniform Building Code, ~~1991~~ 1994 Edition, is amended for the bureau by deletion of the first paragraph. The section is left unamended for use by local governments.

(8) ~~Section 308(e)~~ Subsection 109.3 of the Uniform Building Code, ~~1991~~ 1994 Edition, is amended for the bureau to read: "~~(e)~~ 109.3 Certificate Issued. After the building official or his agent inspects the building or structure and finds substantial compliance with the intent of this code, the building official shall issue a certificate of occupancy which shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.
5. A statement that the described portion of the building has been inspected for substantial compliance with this code for the group and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official."

(a) Since the bureau has insufficient staff to conduct all of the key inspections identified in ~~section 305(e)~~ subsection 108.5 of this code at the proper times, the issued certificate of occupancy is not a certification or guarantee of total compliance with this code.

(b) will remain the same.

(9) ~~Section 302(b)~~ Subsection 106.3.2 of the Uniform Building Code, ~~1991~~ 1994 Edition, is amended for the bureau by the addition of the following: "Plans, computations and specifications for buildings or structures with a calculated valuation of \$100,000 or more, or when located in seismic zones 3 or 4, with a calculated valuation of \$50,000 or more, shall be stamped and designed by an engineer or architect licensed to practice in the state of Montana."

(10) will remain the same.

(11) The first sentence of the second paragraph of ~~section 303(a)~~ subsection 106.4.1 of the Uniform Building Code, 1991 1994 Edition, is deleted and replaced with the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the plans and specifications, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

(12) will remain the same.

(13) Section 50-60-102(a), MCA, exempts certain buildings from application of the state building codes. Provisions of the Uniform Building Code shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, area separation walls as described in ~~section 505(f)~~ subsection 504.6.1 of the Uniform Building Code, 1991 1994 Edition, shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102(a), MCA.

(14) through (16) will remain the same.

(17) At its sole discretion, the building official may accept high quality log construction as being equal and an alternative to graded and stamped dimension lumber. Typically, nine inch or greater nominal diameter log wall construction is considered to be equivalent to one-hour fire resistive construction provided the minimum dimension is five inches or more. Uniform Building Code Standard No. 43-9 7-7, Part IV VI, is used to determine the fire resistive capacity of log walls.

(18) Exception 4 5 of ~~section 303(a)~~ subsection 1003.1 of the Uniform Building Code, 1991 1994 Edition, is amended by addition of the following sentence: "Basements exceeding 500 square feet in area are considered to be used for more than only service of the building and must be provided with a minimum of two exits unless specifically approved by the building official on an individual case basis."

(a) will remain the same.

(19) ~~Section 3002(f)(2)~~ Subsection 904.2.5.2 of the Uniform Building Code, 1991 1994 Edition, is amended for the bureau by addition of the following sentence: "Group H, Division 4. Occupancies having more than 3,000 square feet but less than 5,100 square feet need not be required to install an automatic fire-extinguishing system, provided the building is one-hour fire resistive construction throughout, has yards of 40 feet or more in width on three sides and provides a minimum of three exits, all properly signed and illuminated."

(20) In ~~section 5301(b)~~ subsection 1302.2, Appendix Chapter 53 13, change wording of the first paragraph as follows: "In order to comply with the purpose of this appendix, buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the international conference of building officials (ICBO), the southern building code congress international (SBCCI), the building officials and code administrators international (BOCA), and the national conference of states on building codes and standards (NCSBCS), latest edition adopted by the bureau in ARM 8.70.104."

(21) will remain the same.

(22) The Uniform Building Code, 1991 1994 Edition, adopted by reference in ~~subsection~~ (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code, 1991 1994 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 the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(23) will remain the same.

(24) In section ~~1222~~ 332, Appendix Chapter ~~12~~ 3, Division III, 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 ARM 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."

(25) will remain the same.

(26) ~~Section 3305(h)~~ Subsection 1005.8.1 of the Uniform Building Code, 1991 1994 Edition, is amended for the bureau by addition of ~~section 111(e)~~ subsection 3407.3 of Appendix Chapter ~~1~~ 34, Division I for application to upgrading of corridors in existing E occupancies.

(27) Subsection 1105.1 of the Uniform Building Code is amended for the bureau by addition of the following sentence: "On a case-by-case basis, at the discretion of the building official, a person or entity may not be required to meet fully the accessibility requirements for buildings, where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building."

(28) Subsection 1005.2 of the Uniform Building Code is amended for the bureau by addition of the following sentence: "Except for establishments where food or beverages are to be consumed on the premises, on a case-by-case basis, at the discretion of the building official, a person or entity may not be required to meet fully the accessibility requirements for toilet facilities, where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building."

(29) Subsection 3004 of the Uniform Building Code is amended by striking the sentence "Vents shall be capable of manual operation only," and inserting the following wording: "EXCEPTION: When energy conservation requires that the vents be normally closed, automatic venting by actuation of an elevator lobby detector or power failure may be accepted. When hoistway pressurization is used, venting upon power failure may be accepted. In either case, a manual override shall be provided."

~~(27)~~ (30) Appendix Chapter ~~1~~ 34 (Division I - Life Safety Requirements for Existing Buildings other than High-rise

Buildings), Appendix Chapter ~~1~~ 34 (Division II - Life Safety Requirements for Existing High-rise Buildings), Appendix Chapter ~~12~~ 3 (Division ~~II~~ IV - Requirements for Group R Division 4 Occupancies), Appendix Chapter ~~23~~ 16 (Division II - Earthquake Recording Instrumentation), Appendix Chapter ~~26~~ 19 (Protection of Residential Concrete Exposed to Freezing and Thawing), Appendix Chapter ~~31~~ 11 (Division I - Site Accessibility), Appendix Chapter ~~35~~ 12 (Division II - Sound Transmission Control), Appendix Chapter ~~38~~ 2 (Basement Pipe Inlets), Appendix Chapter ~~40~~ 33 (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, 50-60-201, 50-60-203, 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 Uniform Building Code and to clarify applicability of certain code requirements.

"8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Housing Code, ~~1991~~ 1994 Edition, with the following amendments thereto:

(a) Section 203 of the code will be left in as is 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~~ 105 of the Uniform Building Code, ~~1991~~ 1994 Edition to serve as the housing advisory and appeals board. The bureau and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 203.

(b) will remain the same.

(c) ~~Section 1001(b)~~ Subsection 1001.2, item 9 shall have the following sentence added to it: "At the sole discretion of the building official, minimum room heights in habitable space of less than 7 feet 6 inches may be considered adequate on a case by case basis provided the space has been lawfully used as a residential occupancy."

(2) will remain the same.

(3) The Uniform Housing Code, ~~1991~~ 1994 Edition, is a nationally recognized model code setting forth minimum standards and requirements for maintenance of residential buildings. A copy of the Uniform Housing Code, ~~1991~~ 1994 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, Sec. 50-60-203, 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 Uniform Housing Code.

"8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Code for the Abatement of Dangerous Buildings, ~~1991~~ 1994 Edition, with the following amendments thereto:

(a) will remain the same.

(b) Section 205 of the code will be left in as is 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~~ 105 of the Uniform Building Code, ~~1991~~ 1994 Edition, to serve as the board of appeals. The bureau and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 205.

(2) will remain the same.

(3) The Uniform Code for the Abatement of Dangerous Buildings, ~~1991~~ 1994 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, ~~1991~~ 1994 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~~, Sec. 50-60-203, 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 Uniform Code for the Abatement of Dangerous Buildings.

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Model Energy Code, ~~1992~~ 1993 Edition with the following amendments thereto:

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

(3) The Model Energy Code, ~~1992~~ 1993 Edition, is a nationally recognized model code for energy efficient construction of buildings. A copy of the Model Energy Code, ~~1992~~ 1993 Edition can 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 to CABO, 5203 Leesburg Pike, Falls Church, Virginia 22041."

Auth: Sec. 50-60-201, 50-60-203, MCA; ~~IMP~~, Sec. 50-60-201, 50-60-203, 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 Model Energy Code.

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the international conference of building officials' Uniform Mechanical Code, ~~1991~~ 1994 Edition, as amended, with the following amendments thereto:

(a) The fees contained in section ~~304~~ 115 and Table 1-A shall be deleted and replaced with the following:

- requested inspection fee - \$30, provided that such service is not in excess of 1 hour in duration, and then \$15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items.

MECHANICAL PERMIT FEES

The mechanical cost shall be the cost to the owner of all labor charges and all mechanical materials and equipment installed as part of the mechanical system. The cost of the plumbing system, which is covered by the Uniform International Plumbing Code, is not to be included.

Cost of Mechanical System	Mechanical Permit Fee
0 - \$1,000	\$30
\$1,001 - \$10,000	\$30 for first \$1,000 plus \$10 for each additional \$1,000 or fraction thereof, to and including \$10,000
\$10,001 - \$50,000	\$120 for first \$10,000 plus \$5 for each additional \$1,000 or fraction thereof, to and including \$50,000+
\$50,001	\$320 for first \$50,000 plus \$3 for each additional \$1,000 or fraction thereof

(b) Section ~~203~~ 110 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by ~~section~~ 50-60-303, MCA, must provide an appeal procedure. Local governments may use the board of appeals created in accordance with section ~~204~~ 105 of the Uniform Building Code, ~~1988~~ 1994 Edition, to serve as the board of appeals. The bureau and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of section ~~203~~ 110.

(c) Section ~~204~~ 111 of the code will be left as is for use by local governments (i.e., municipalities and counties). The bureau and state of Montana will use ~~sections~~ 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of

section ~~204~~ 111. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the bureau, the bureau will, as authorized by ~~section~~ 50-60-109, MCA, enjoin him from constructing or using the building.

(d) The following will be added to section ~~504(f)~~ 304.6 LPG Appliances. LPG appliances may be installed in single family dwellings notwithstanding the prohibition on the installation of such appliances by the UMC and the UFG provided:

(i) through (vi) will remain the same.

(e) Chapter ~~21~~ 10, Appendix B, 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~~ 1002 change the wording of the ~~first paragraph entire section~~ to read: "The requirements of this chapter apply to the construction, and 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, 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 under the control of the 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 as required by 50-74-101, MCA, except as provided for in the ASME publications referenced and incorporated in ARM (new rule III).

(ii) ~~Eliminate~~ Delete sections ~~2124, 2125~~ 1023, 1024, 1025, and ~~2126~~ 1026 entirely.

(f) Chapter ~~22~~ 13, Appendix B, titled "Fuel-Gas Piping" shall be adopted as part of the Uniform Mechanical Code except as follows:

(i) will remain the same.

(g) Chapter ~~23~~ 12, Appendix B, titled "Hydronic Panel Heating Systems" shall be adopted as part of the Uniform Mechanical Code.

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

~~(6) Chapter 16, Part III - Recognized Standards - Tank, Piping and Valves for Oil-Burning Appliances - Change NFPA-31-1978 to NFPA-31-1992.~~

~~(6) (7) The Uniform Mechanical Code, 1991 1994 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the Uniform Mechanical Code, 1991 1994 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 Association of Plumbing and~~

~~Mechanical Officials, 20001 South Walnut Drive, Walnut, California 91789, or the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.~~

Auth: Sec. 50-60-104, 50-60-201, 50-60-203, 50-60-508, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-201, 50-60-203, 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 Uniform Mechanical Code now authored by the International Conference of Building Officials and to delete references to boilers now covered in the bureau's new boiler rules (new rules I through XVI contained in this notice).

"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, ~~1989~~ 1995 Edition, with the following amendments thereto:

(a) ~~Delete Part IV Mechanical, Part V Plumbing, Part VI Electrical, and Part VII Energy Conservation chapters 11 through 46 inclusive.~~

(2) will remain the same.

(3) FIGURE 301.2b, SEISMIC RISK MAP, of the CABO One & Two Family Dwelling Code is deleted and replaced by FIGURE 16-2, SEISMIC ZONE MAP OF THE UNITED STATES, of the Uniform Building Code.

~~(3)~~ (4) The CABO One & Two Family Dwelling Code, ~~1989~~ 1995 Edition 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 & Two Family Dwelling Code, ~~1989~~ 1995 Edition, 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 and to eliminate a conflict on seismic maps.

"8.70.110 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, ~~1991~~ 1994 Edition, with the following amendments thereto:

(a) will remain the same.

(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~~ 105 of the Uniform Building Code, ~~1991~~ 1994 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) will remain the same.

(3) The Uniform Code for Building Conservation, ~~1991~~ 1994 Edition, 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, ~~1991~~ 1994 Edition, 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 these amendments to the rules to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Code for Building Conservation.

"8.70.208 FUNDING OF CODE ENFORCEMENT PROGRAM (1) The establishment of permit fees shall be left to local governments. A list of permit fees must be submitted to the division bureau. In addition, all permit fees collected must be deposited in a separate account used for funding the code enforcement and all payments from the account for the costs of code enforcement in the jurisdiction shall be accounted for separately and there shall be an audit route for expenditures charged against the account."

Auth: Sec. 50-60-302, MCA; IMP, Sec. 50-60-302, MCA

REASON: The bureau is proposing these amendments to clarify that permit fees collected should be placed in a separate account and spent only on the code enforcement program.

"8.70.211. EXTENSION OF MUNICIPAL JURISDICTIONAL AREA

(1) Section 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to 4 1/4 miles from their corporate limits upon written request and upon approval by the bureau. The written request must include a statement as to how the additional work-load will be handled, discussion of why the municipality wants an extended jurisdictional area and why approval would be in the best interest of affected land owners and/or the municipality, evidence that the municipality has made a reasonable effort to notify all landowners in the affected area of the ramifications of approval and that interested persons may comment to the bureau on the proposed extension. Once the city municipality is granted authority to inspect within the 4 1/4 mile jurisdictional area, the county may

not inspect in that area unless the city municipality relinquishes its right or as otherwise provided in subsection (4) of this rule.

(2) Upon receipt of the written request from the city municipality to extend the jurisdictional area (see necessary written request elements above), the bureau will use the following procedure in considering the extension:

(a) will remain the same.

(b) The bureau will issue a press release to the newspaper of general circulation in the area to be affected and describe in the press release obvious ramifications for affected landowners, reasons for the request, procedures for commenting on the request and how a decision will be made on holding a public hearing on the request.

(b) through (d) will remain the same, but will be renumbered (c) through (e).

(3) and (4) will remain the same."

Auth: Sec. 50-60-302, MCA; IMP, Sec. 50-60-101, 50-60-302, MCA

REASON: The bureau is proposing these amendments to clarify the procedures to be followed for municipalities and the bureau in approval of extended jurisdictional areas.

9.70.302 INCORPORATION BY REFERENCE OF UNIFORM INTERNATIONAL PLUMBING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform International Plumbing Code, 1994 1995 Edition, as amended by this rule. The Uniform International Plumbing Code, 1994 1995 Edition, is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform International Plumbing Code, 1994 1995 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 Association Conference of Plumbing and Mechanical Building Officials, 20001 South Walnut Drive, Walnut 5360 Workman Mill Road, Whittier, California 91789 20601. The Uniform International Plumbing Code, 1994 1995 Edition, adopted herein by reference, is amended as follows:

(a) The following amendments are listed according to section of the Uniform International Plumbing Code:

(i) Delete sections 20.3, 30.1, 30.2, 30.3, 30.4, 30.5 and 30.6. These sections are replaced with Sections 103, 104, 105, 106, 107, 108 and 109 of this code will be left as is for use by local governments (i.e., municipalities and counties). The bureau and the state of Montana will use the provisions of Title 50, chapter 60, MCA. "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is

subject to the permit provisions of this part. Factory-built buildings covered by an insignia issued by the building standards section bureau need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on site work, as provided for in these rules."

(ii) Delete Table No. 3 - Appendix A - PLUMBING PERMIT FEES and replace with the following schedule:

--for issuing each permit	\$ 15.00*
--for each plumbing fixture	6.00
--water service - domestic or commercial	6.00
--for each building sewer and each trailer park sewer	10.00
--storm drains and storm drainage	6.00
--for each water heater	6.00
--for each gas piping system of one to four outlets	6.00
--for each gas piping system of five or more per outlet	2.00
--for each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	7.00
--for installation, alteration, or repair of water piping and/or water treatment equipment	6.00
--for repair or alteration of drainage or vent piping	6.00
--for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	6.00
--for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping--one to four	6.00
--five or more, each	2.00
--requested plumbing inspection fee provided that such service is not in excess of 1 hour in duration, and then \$25.00 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items.	45.00
--reinspection (provided the \$30 does not exceed the original permit fee, in which case the original fee will be charged)	30.00
*except for replacement of water heaters	

(iii) ~~Sec. 203 (a), Use of Copper Tubing. Delete "DWV" and substitute "L".~~

(iv) ~~Sec. 203 (d), Use of Copper Tubing. Delete "or underground outside of structures." ending the sentence with "building."~~

(v) ~~Sec. 406 (a), Cleanouts. Line 4 shall be changed to read as follows: "... shall be provided with a cleanout for each 50 feet . . . , rather than " . . . 100 feet. . . ."~~
 Also add: "Lines 6 inches in size and larger shall be

provided with a cleanout for each 100 feet, or fraction thereof, in length of such piping."

(vi) ~~Sec. 407, Grade of Horizontal Drainage Piping. Change "four (4) inch" to "2 inch," and delete "When first approved by the Administrative Authority."~~

(vii) ~~Sec. 409 (a), Drainage of Fixtures Located Below the Next Upstream and Manhole or Below the Main Sewer Level. Lines 3 4, amend to read as follows: "the public sewer serving such drainage piping may be protected from backflow."~~

(viii) ~~Sec. 506 (a) and (c), Vent Termination. Change "six inches" to "12 inches."~~

(ix) ~~Sec. 506 (f), Frost or Snow Closure. Change diameter from "two (2) inches" to "three (3) inches" and change termination height from "ten (10) inches" to "twelve (12) inches."~~

(x) ~~Sec. 1003, Cross Connection Control General Requirements. Delete subsection (b).~~

(xi) ~~Sec. 1004 (a), Materials, amend to read as follows: "Sec. 1004 Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials. Asbestos cement, CPVC, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building, provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. CPVC water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."~~

(xii) ~~Sec. 1008, Installation, Inspection and Testing, after subsection (c) add the following new subsection (f): "(f) Disinfection. (1) When required by the administrative authority having jurisdiction, potable water systems or any part thereof installed or repaired shall be disinfected in accordance with one of the following methods:~~

~~- by filling the system or any part thereof with a solution containing 50 parts per million of available chlorine and allowing it to stand for a minimum period of 6 hours before flushing.~~

~~- by filling the system or any part thereof with a solution containing 100 parts per million of available chlorine and allowing it to stand for a minimum period of 2 hours before flushing.~~

~~- In the case of a potable water storage tank where it is not possible to disinfect by one of the above methods, the entire interior of the tank shall be swabbed with a solution containing 200 parts per million of available chlorine and allowing to stand 2 hours before flushing.~~

~~- In the case of potable water filters or similar equipment, the mixture shall be determined by the administrative authority having jurisdiction."~~

- ~~(xiii) Sec. 1009 (h), Size of Potable Water Piping. Amend the second paragraph to read: "No building supply pipe shall be less than 3/4 inch in inside diameter."~~
- ~~(xiv) Sec. 1106, Grade, Support and Protection of Building Sewers. Amend line 7 to read: "pipe or piping three (3) inches (76.2mm) or larger may have a slope of".~~
- ~~(xv) Add the following to Sec. 1215(e): LPG Appliances may be installed in single family dwellings notwithstanding the prohibition on the installation of such appliances by the UMC and the UPC provided:~~
- ~~(A) All LPG piping is pressure tested to insure it is gas tight and not installed in concealed locations. Concealed LPG piping means all piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. Piping may be installed in an attic, under floor area, including basement or crawl space, provided this area is adequately ventilated from at least two exposed sides of the building. Each ventilation opening shall be a minimum of 36 square inches.~~
- ~~(B) The appliance is a vented type, approved by a nationally recognized testing organization, and installed in accordance with the manufacturer's recommendations.~~
- ~~(C) Automatically controlled LPG appliances shall be of the complete shut off type. Complete (100%) shut off means the gas to both the pilot light and the main gas burner(s) will shut off in the event of pilot outage.~~
- ~~(D) A readily accessible and identified shut off valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection to the service piping or supply connection of the LPG tank. The container service valve may be used for this purpose.~~
- ~~(E) The installer shall promptly report any accident/incident where LPG may have been a factor, or could become a contributing factor, to the building codes bureau by phone. If death or serious personal injury occurs or if property damage in excess of \$500.00 results from any such accident/incident, a written report shall be prepared by the installer and presented to the bureau within 15 days of the accident/incident.~~
- ~~(F) A LPG detection/shut off valve system shall be installed that sounds an alarm and shuts off the main gas supply in the event of the detection of LPG. The valve shall be a solenoid type shut off valve, held open when powered, and shall be located outside the building foundation.~~
- ~~(xvi) Add the following to Sec. 1215(f): Refer to 1215(e) for installations in single family dwellings.~~
- ~~(xvii) Appendix B, Mobile Home Parks. Delete.~~
- ~~(xviii) Appendix C, Minimum Plumbing Facilities. Delete. ARM 8-70.303 will be used in lieu of Appendix C.~~
- ~~(xix) Appendix I, Private Sewage Disposal Systems. Delete.~~
- (iii) Subsection 306.6, freezing, is amended to delete "deep nor less than 6 inches (152 mm)," ending the sentence with "... not less than 12 inches (305 mm) below frost line".

(iv) Subsection 306.6.1, sewer depth, is amended by inserting "12" in the spaces denoted [NUMBER].

(v) Subsection 404.1 minimum number of fixtures, is amended to read "... shown in ARM 8.70.303 ..." rather than "... Table 404.1 ..." Delete Table 404.1.

(vi) Subsection 404.2, separate facilities, exception no. 2 and no. 3 are amended to read as follows: "... in which 4 or less people ..." rather than "... 15 people ..."

(vii) Subsection 406.3.1, water closets, lavatories and bidets, is amended to read as follows: "... at least 24 inches (610 mm) ..." rather than "... 18 inches (457 mm) ..."

(viii) Subsection 503.1, general, is amended to delete "or gas code," ending the sentence with "mechanical code." This section is amended by addition of the following: "LPG appliances may be installed in single family dwellings notwithstanding the prohibition on the installation of such appliances by the UMC provided:

(A) All LPG piping is pressure tested to insure it is gas tight and not installed in concealed locations. Concealed LPG piping means all piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. Piping may be installed in an attic, under floor area, including basement or crawl space, provided this area is adequately ventilated from at least two exposed sides of the building. Each ventilation opening shall be a minimum of 36 square inches.

(B) The appliance is a vented-type, approved by a nationally recognized testing organization, and installed in accordance with the manufacturer's recommendations.

(C) Automatically controlled LPG appliance shall be of the complete shut-off type. Complete (100%) shut-off means the gas to both the pilot light and the main gas burner(s) will shut off in the event of pilot outage.

(D) A readily accessible and identified shut-off valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection to the service piping or supply connection of the LPG tank. The container service valve may be used for this purpose.

(E) The installer shall promptly report any accident/incident where LPG may have been a factor, or could become a contributing factor, to the building codes bureau by phone. If death or serious personal injury occurs or if property damage in excess of \$500.00 results from any such accident/incident, a written report shall be prepared by the installer and presented to the bureau within 15 days of the accident/incident.

(F) A LPG detection/shut-off valve system shall be installed that sounds an alarm and shuts off the main gas supply in the event of the detection of LPG. The valve shall be a solenoid type shut-off valve, held open when powered, and shall be located outside the building foundation."

(ix) Subsection 604.1, size of water service pipe, is amended to read as follows: "The minimum inside diameter of water service pipe shall be 3/4 inch (19 mm)."

(x) Subsection 701.4, sewage backflow, is amended to read as follows: "A backwater valve may be installed ..."

(xi) Subsection 905.1. roof extension. is amended to read as follows: "... at least 12 inches (305 mm) above the roof ..." rather than "... 6 inches (152 mm) ..."

(xii) Subsection 906.1. Delete the exception.

(xiii) Subsection 917.1. size of stack vents and vent stacks. is amended by addition of the following sentence: "In addition, the drainage piping of each building and each connection to a public sewer or a private sewage disposal system shall be vented by means of one or more vent pipes, the aggregate cross-sectional area of which shall not be less than that of the largest required building sewer, as determined from Table 713.1(1)."

(xiv) Section 918. Delete.

(xv) Subsection 1004.5. interceptors required. is amended to read as follows: "An interceptor or grease trap shall be required ..."

(xvi) Subsection 1201.2. fuel piping system. is amended to delete "or gas," ending the sentence with "... mechanical code."

(xvii) Subsection 1301.1. scope. is amended by addition of the following: "The following publications are incorporated as reference material only. It is recommended that installers of the following systems contact the administrative authority having jurisdiction concerning permit, inspection and certification requirements. Copies of NFPA Publications may be obtained by writing to the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269."

(xviii) Appendix A. Plumbing Permit Fee Schedule. Deleted. Refer to ARM 8.70.302(1)(a)(ii).

(xix) Appendix B. Rates of Rainfall for Various Cities. Adopted.

(xx) Appendix C. Gray Water Recycling Systems. Deleted.

(xxi) Appendix D. Degree Day and Design Temperature Table. Adopted.

(xxii) Appendix E. Sizing of Water Piping System. Adopted.

(xxiii) Appendix F. Structural Safety. Adopted.

(2) will remain the same."

Auth: Sec. 50-60-201, 50-60-203, 50-60-501, 50-60-504, 50-60-508, MCA; IMP, Sec. 50-60-203, 50-60-504, 50-60-508, MCA

REASON: The bureau is proposing these amendments in order to adopt the International Plumbing Code (IPC) which will have national applicability, agrees in format and reference to the state's building and mechanical codes, and provides more flexibility with respect to plumbing materials and methods. The proposed amendments to the IPC are necessary because of Montana weather conditions, correlation with other state codes and state law.

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 FIXTURES 177

Occupancy	Water	Clearance	Units	Living	Outstanding
	Male	Female	Male	Female/Persons	Living/Person of Building
Group A-1, A-2, A-2.1, A-3 A-4, A-5, A-6, A-7, A-8, A-9, A-10 Office, Store, Service Building, Public Building Food Service Facility Assembly Buildings	1-1-150	1-1-100	1-1-200 ³	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group B-1 Hotel, Apartment, Motel, Convent, and Monastery	2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100	2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100 2-1-100	2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100 2-1-150 2-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10 Day Care	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10 Warehouse	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group E-1, E-2, E-3, E-4, E-5, E-6, E-7, E-8, E-9, E-10 Hotel, Apartment, Motel, Convent, and Monastery	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-10 Warehouse	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group G-1 Hotel, Apartment, Motel, Convent, and Monastery	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group H-1 Hotel, Apartment, Motel, Convent, and Monastery	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group I-1, I-2, I-3, I-4, I-5, I-6, I-7, I-8, I-9, I-10 Warehouse	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group J-1, J-2, J-3, J-4, J-5, J-6, J-7, J-8, J-9, J-10 Warehouse	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group K-1, K-2, K-3, K-4, K-5, K-6, K-7, K-8, K-9, K-10 Warehouse	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code
Group L-1, L-2, L-3, L-4, L-5, L-6, L-7, L-8, L-9, L-10 Warehouse	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100 1-1-100	1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100 1-1-150 1-1-100	Use Section 406 of the Uniform Building Code	Use Section 406 of the Uniform Building Code

MINIMUM NUMBER OF PLUMBING FACILITIES
Fixtures (Number of fixtures per number of occupants)
(see Sections 404.2 and 404.3)

Occupancy		Water Closets (Urinals see Section 420.2)		Lavatories	Bathrooms/ showers	Drinking fountains (see Section 411.1)	
		Male	Female				
A S E R L Y	Theaters Nightclubs ^{B,h} Restaurants ^{B,h} Halls, museums, Coliseum, arenas, Stadium, pools, etc. Churches ^b Business ^{l,j,l} (see Sec. 404.2, 404.4 & 404.5)	1 per 125 1 per 40 1 per 75 1 per 125 1 per 150 1 per 25	1 per 65 1 per 40 1 per 75 1 per 65 1 per 75	USE SECTION 2902, UBC		1 per 1,000 1 per 500 1 per 500 1 per 1,000 1 per 1,000 1 per 100	
Educational		SEE SECTION 2902.4, UBC					
Factory and industrial		1 per 100			1 per 100	(see Sec. 412.0)	1 per 400
High hazard (see Sec. 404.2 & 404.4)		1 per 100			1 per 100	(see Sec. 412.0)	1 per 1,000
Residential care		1 per 10			1 per 10	1 per 8	1 per 100
I M S T U I M A L	Hospitals, ambulatory nursing home patients ^a Day nurseries ^k , sanitariums nonambulatory nursing home patients, etc. Employees, other than residential care ^g Visitors, other than residential care Prisons ^c Asylums, reformatories, etc. ^c	1 per room ^a 1 per 15 1 per 25 1 per 75 1 per cell 1 per 15	1 per room ^a 1 per 15 1 per 35 1 per 100 1 per cell 1 per 15		1 per room ^a 1 per 15 1 per 35 1 per 100 1 per cell 1 per 15	1 per 15 1 per 15 ^f 1 per 15 1 per 15 1 per 15	1 per 100 1 per 100 1 per 100 1 per 500 1 per 100 1 per 100
Mercantile (see Sec. 404.2, 404.4 & 404.5)		1 per 500		1 per 750		1 per 1,000	
R E S I E H Y I L	Hotels, motels Lodges Multiple family Dormitories One and two-family dwelling ^d	1 per guestroom 1 per 10 1 per dwelling unit 1 per 10 1 per dwelling unit	1 per guestroom 1 per 10 1 per dwelling unit 1 per 10 1 per dwelling unit	1 per guestroom 1 per 10 1 per dwelling unit 1 per 8 1 per dwelling unit	1 per guestroom 1 per 8 1 per dwelling unit 1 per 8 1 per dwelling unit		

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the building code.
- b. Fixtures located in adjacent buildings under the ownership or control of the church shall be made available during periods the church is occupied.
- c. Toilet facilities for employees shall be separate from facilities of inmates or patients.
- d. For attached one- and two-family dwellings, one automatic clothes washer connection shall be required per 20 dwelling units.
- e. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient rooms shall be permitted where such room is provided with direct access from each patient room and with provisions for privacy.
- f. For day nurseries, a maximum of one bathtub shall be required.
- g. Food service establishments or any establishment that sells alcoholic beverages for on-site consumption requires one urinal for occupancy loads of 1 to 50.
- h. Contact the department of public health and human services for additional requirements for food service establishments.
- i. At the discretion of the building official, certain non-assembly buildings where food and beverages are not consumed on the premises, may be allowed to furnish only one public toilet provided it is designed for male and female use and it is suitable for use by handicapped persons.
- k. If the total number of students plus staff exceeds 20, must provide separate male and female toilets.
- l. Keyed toilets under employee control of the type available at service stations are permitted.

Auth: Sec. 50-60-203, 50-60-501, 50-60-504, MCA; IMP, Sec. 50-60-203, 50-60-504, MCA

REASON: The bureau is proposing these amendments to address the issue of water closet parity between the sexes and to establish more reasonable numbers of fixtures required for certain occupancies.

"8.70.405 COVER (ROUGH-IN) INSPECTIONS (1) and (2) will remain the same.

(3) The permittee of record, whether an electrical contractor or a homeowner, shall notify the area electrical inspector when the electrical installation is ready for cover (rough-in) inspection, whether or not an inspection is subsequently performed."

Auth: Sec. 50-60-203, 50-60-604, MCA; IMP, Sec. 50-60-203, 50-60-604, MCA

REASON: The bureau is proposing the amendments to clarify that the permittee is required to call for inspection, thereby allowing the bureau to fulfill its statutory inspection responsibilities in a timely fashion.

"8.70.406 FINAL INSPECTION (1) will remain the same.

(2) The permittee of record, whether an electrical contractor or a homeowner, shall notify the area electrical inspector when the electrical installation is ready for final inspection, whether or not an inspection is subsequently performed."

Auth: Sec. 50-60-203, 50-60-604, MCA; IMP, Sec. 50-60-203, 50-60-604, MCA

REASON: The bureau is proposing the amendments to clarify that the permittee is required to call for inspection, thereby allowing the bureau to fulfill its statutory inspection responsibilities in a timely fashion.

8.70.502 APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) through (2)(b) will remain the same.

(c) the latest adopted edition of the Uniform International Plumbing Code and Uniform Mechanical Code as drafted by the international association conference of plumbing and mechanical building officials.

(3) and (4) will remain the same.

(5) The requirement listed in 50-60-402(1), MCA, for new factory-built buildings applies to all new units, whether offered for sale, lease or rent, which are first utilized in the state of Montana, regardless of the unit's point of origin or route of delivery. A person cannot arrange to accept delivery of a new unit in an out-of-state location in order to avoid the need for a state of Montana insignia on the unit."

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 clarify the intent of the statute, thereby prohibiting dealers from

attempting to accept delivery of a FBB unit(s) in other states to avoid the program's requirements.

"8.70.505 USE OF MOBILE HOMES AND RECREATIONAL VEHICLES FOR COMMERCIAL OR BUSINESS OCCUPANCY PROHIBITED -- EXCEPTION

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

(4) Units used as temporary offices by manufactured (mobile) home dealers, on the premises (lot) where said units are sold, would not fall into this category provided the unit utilized as an office:

(a) is not used for a period exceeding two years;

(b) is offered for sale;

(c) is not used to store flammable materials;

(d) is not altered to accommodate office space;

(e) meets the existing sign requirements imposed by Section 1013, Uniform Building Code;

(f) is provided with a handicap accessible entrance pursuant to the requirements imposed by Section 1103.2, Uniform Building Code."

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

REASON: The bureau is proposing these amendments to allow use of floor-planned manufactured homes as temporary offices of manufactured home dealer lots.

"8.70.506 INCORPORATION BY REFERENCE OF ANSI A119.5 AMERICAN NATIONAL STANDARD FOR PARK TRAILERS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the ANSI A119.5 National Standard for Park Trailers, 1988 1993 Edition. The ANSI A119.5 American National Standard for Park Trailers, 1988 1993 Edition, is a nationally recognized model code for construction of park trailers, which are travel trailers with gross area of greater than 320 sq. ft. and are not covered by the National Mobile Home Construction and Safety Standards Act of 1974 and subsequent federal rules and regulations. A copy of ANSI A119.5 American National Standard for Park Trailers, 1988 1993 Edition, may be obtained from the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the Recreational Park Vehicle Industry Association, P.O. Box 2999, Reston, Virginia 22090 16119 Ancroft Court, Tampa, Florida 33647.

(2) will remain the same."

Auth: Sec. 50-60-401, MCA; IMP, Sec. 50-60-401, 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 ANSI American National Standard for Park Trailers.

"8.70.513 THIRD PARTY INSPECTIONS TO BE MONITORED

(1) will remain the same.

(2) Third-party inspection agencies who fail to meet the reporting requirements for quarterly reports, set forth in ARM

8.70.503(16)(d), shall cause the manufacturer's file and subsequent submittals to be placed in pending status until such time as the aforementioned requirements are met."

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 assure proper reporting of third-party inspection agencies that inspect RV manufacturing plants.

"8.70.557 APPLICATION FOR INSIGNIA PURSUANT TO PLAN REVIEW (1) through (5) will remain the same.

(6) An insignia obtained pursuant to the provisions provided by ARM 8.70.557(2) shall be utilized within 12 months of the date of issuance. An insignia which is not utilized within said period, shall be deemed void and shall be promptly returned to the bureau. No refund or credit for an insignia fee shall be issued for a void insignia.

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

REASON: The bureau is proposing these amendments to assure use of insignia within a reasonable amount of time.

"8.70.563 EFFECT OF INSIGNIA (1) will remain the same.

(2) Any new unit delivered to the state of Montana, either to a sales lot or placed on location, that does not bear a bureau insignia, pursuant to ARM 8.70.556(1), shall be posted with a prohibited sales notice and shall not be sold and/or occupied until such time as it bears said insignia."

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

REASON: The bureau is proposing these amendments to clarify that units without State of Montana insignias cannot be sold until proper insignias are secured and attached.

"8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ASME A17.1 - 1990 1993- AND ASME A17.1a - 1991- ADDENDA (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Safety Code for Elevators and Escalators, ASME A17.1 - 1990 1993 Edition and ASME A17.1a - 1991- Addenda. A copy of the Safety Code for Elevators and Escalators ASME A17.1 - 1990 1993 and ASME A17.1a - 1991- Addenda can be obtained from The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

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

Auth: Sec. 50-60-203, 50-60-701, 50-60-702, MCA; IMP, Sec. 50-60-203, 50-60-701, 50-60-702, 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 ASME Safety Code for Elevators and Escalators.

3. The Building Codes Bureau is proposing to repeal ARM 8.70.701 through 8.70.703. The text of these rules is located at page 8-2185, Administrative Rules of Montana. The authority section is 50-64-103, MCA, and the implementing sections are 50-64-101, 50-64-104, 50-64-105, MCA. These rules are proposed for repeal because they are out-dated and conflict with other currently enforced laws and rules regarding handling and disposal of asbestos materials. The Building Codes Bureau is also proposing to repeal ARM 8.70.801 through 8.70.849. The text of these rules is located at pages 8-2167 through 8-2181.3, Administrative Rules of Montana. The authority sections are 50-71-311, 50-74-101, MCA, and the implementing sections are 50-71-311, 50-74-101, 50-74-103, 50-74-216, MCA. The rules are being repealed because the 1995 Legislature transferred the boiler safety and inspection program from the Department of Labor and Industry to the Department of Commerce and established a fee schedule for inspections. The proposed new rules implement the fee schedule, adopt the current ASME publications, clarify administrative procedures, and correlates the boiler program with other Building Codes Bureau programs.

4. The proposed new rules will read as follows:

"I SCOPE OF RULES (1) This subchapter is promulgated in order to provide rules and definitions, as required by 50-74-101, MCA, for the safe construction, installation, operation, inspection and repair of equipment covered to Title 50, chapter 74, MCA.

(2) Title 50, chapter 74, MCA, does not give the department of commerce jurisdiction over unfired pressure vessels, therefore the provisions contained herein are not applicable to unfired pressure vessels."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-101, MCA

REASON: The bureau is proposing this rule to clarify the scope of the boiler safety and inspection program and to clarify that the program does not encompass unfired pressure vessels.

"II INCORPORATION BY REFERENCE OF CERTAIN ASME PUBLICATIONS (1) As required by 50-74-101, MCA, the building codes bureau, department of commerce, adopts and incorporates by reference herein the following publications:

(a) ASME boiler and pressure vessel code, 1995 edition, but only the following sections:

- (i) Section I, power boilers;
- (ii) Section II, parts a, b, c and d, material specifications;
- (iii) Section IV, heating boilers, except part HLW, lined water heaters;
- (iv) Section V, nondestructive examination;
- (v) Section VI, guidelines for care and operation of heating boilers;
- (vi) Section VII, rules for care of power boilers; and
- (vii) Section IX, welding and brazing qualifications.

(b) ASME CSD-1, 1995 Edition Controls and Safety Devices for Automatically Fired Boilers.

(c) Copies of ASME documents are available from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-101, MCA

REASON: The bureau is proposing this rule to specify which ASME publications will be utilized by the boiler safety program for construction, installation, operation, inspection and repair of boilers.

"III DEFINITIONS For the purposes of this subchapter, the following definitions shall apply:

(1) "Alteration" means any change in an item described on the original manufacturer's data report which affects the pressure containing capability of the boiler.

(2) "ASME" means the American Society of Mechanical Engineers.

(3) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is super-heated or any combination thereof, under pressure or vacuum, for use external to itself, by the direct application of heat from combustible fuels or electricity. The term boiler includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and complete within themselves.

(4) "Certificate of inspection" means the boiler inspection report issued by either the department or an insurance company following a boiler inspection.

(5) "Degrees" means Fahrenheit or equivalent Celsius.

(6) "External inspection" means an inspection of the external portions of a boiler, preferably made when the boiler is in operation.

(7) "High temperature water boiler" (power hot water) means a water boiler intended for operation at pressures exceeding 160 psig and/or temperatures exceeding 250 degrees F.

(8) "Hot water heating boiler" means a boiler operating at pressures not exceeding 160 psig and/or temperatures not exceeding 250 degrees F., at or near the boiler outlet, designed to heat water for circulation through an external heating system.

(9) "Hot water supply boiler" means a boiler, completely filled with water, intended for operation at pressures not exceeding 160 psig and/or temperatures exceeding 250 degrees F., measured at or near the boiler outlet, that furnishes hot water to be used external to itself for purposes other than potable use.

(10) "Inspector" means a state inspector or special boiler inspector.

(11) "Internal inspection" means as complete an examination as can reasonably be made of the internal and external surfaces of a boiler while it is shut down, when such manhole plates, handhole plates or other inspection opening closures are opened or removed as required by the department.

(12) "National board" means the national board of boiler and pressure vessel inspectors.

(13) "National board certificate" means a national board of boiler and pressure vessel inspectors' commission.

(14) "Operating certificate" means a certificate issued by the department which authorizes the owner or user to allow the boiler to be operated.

(15) "Owner" means any person, firm, corporation, state, county, municipality or other entity owning or possessing for operation any boiler within the state of Montana.

(16) "Potable water" means water which is utilized for drinking, culinary and domestic purposes.

(17) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.

(18) "Pressure vessel" means an unfired closed container in which pressure is obtained from an external source, the application of heat from an indirect source or from a direct source other than a boiler.

(19) "PSIG" means pounds per square inch gauge or equivalent metric units.

(20) "Repair" means the work necessary to restore a boiler to a safe and satisfactory operating condition.

(21) "Special boiler inspector" means a person, other than a state inspector, authorized by the department to perform boiler inspections.

(22) "Standard boiler" means a boiler that bears a state of Montana stamp, the stamp of another state which has adopted equivalent boiler construction standards, an ASME stamp, a national board stamp or other approved stamp acceptable to the department.

(23) "State boiler inspector" means a person employed by the department for the purpose of inspecting boilers.

(24) "State special boiler" means a boiler that is not a standard boiler, which must be granted a special operating certificate by the department prior to being operated.

(25) "Steam heating boiler" means a steam or vapor boiler operated at pressures not exceeding 15 psig.

(26) "Temporary boiler" means a boiler, such as a portable rental boiler, which is intended to be utilized at a temporary location and such usage permits it to be readily moved from one location to another.

(27) "Traction engine" means a historic model, historic power boiler, portable steam engine or steam traction engine utilized primarily for exhibition purposes.

(28) "User" means any person, firm, corporation, state, county, municipality or other entity operating any boiler within the state of Montana.

(29) "Water heater or water heating system" means a closed vessel or combination of appliances and/or apparatus, consisting of corrosion resistant elements, operating at pressures not exceeding 150 psig and/or temperatures not exceeding 210 degrees F., which supplies potable hot water as regulated by the state plumbing code."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-101, MCA

REASON: The bureau is proposing this rule to establish definitions of boiler terms which are utilized in the statutes, rules and requirements of this subchapter.

"IV PURCHASER OF BOILER TO NOTIFY THE DEPARTMENT

(1) Section 50-74-105, MCA, requires any person purchasing a boiler, not exempt from the rules of this subchapter, to give notification to the department, within 10 days of purchase, as to the boiler's intended location and the timetable for installation.

(2) Notification to the department of the boiler purchase shall be in writing or via telephone call."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-105, MCA

REASON: The Bureau is proposing this rule to clarify and establish the procedure to be utilized by persons to notify the bureau of a boiler installation.

"V OPERATING CERTIFICATE (1) Boilers shall not be placed into operation, prior to the issuance of an operating certificate by the department, as required by 50-74-206, MCA, unless otherwise exempted by the rules of this subchapter or permission to operate the boiler on a temporary basis is obtained from the department.

(2) Operating certificates for boilers inspected by the department will be issued following the boiler inspection(s), proper notification to the department of correction of all deficiencies found during inspection, submission of the boiler inspection report/invoice and payment of the fee(s) imposed by 50-74-219, MCA.

(3) Operating certificates for boilers inspected by insurance companies may be issued following submission of boiler inspection reports, approved by the insurance company's special boiler inspector, to the department and payment of the operating certificate fee, by the owner or user, as required by 50-74-219, MCA. Owners and/or users will receive notification for payment of the operating certificate fee from the department.

(4) Operating certificates are valid for 12 months from the date of issuance, unless the expiration date is extended by the department, pursuant to the longer inspection intervals authorized by 50-74-209, MCA.

(5) Operating certificates issued for a boiler inspected by a special boiler inspector, shall be valid only if the boiler continues to be insured by an authorized insurance company or until the expiration date.

(6) When an accident occurs which renders a boiler inoperative, the owner or user shall notify the department as soon as it is practical."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-206, 50-74-208, MCA

REASON: The bureau is proposing this rule to establish the procedure for obtaining a boiler operating certificate.

"VI FEES (1) Prior to the department issuing an operating certificate for a boiler, the applicant shall make payment to the department the applicable fee(s) as required by 50-74-219, MCA. The fees established are as follows:

- | | |
|----------------------------------|------------------------------|
| (a) operating certificate | \$20 |
| (b) internal inspection | 40 |
| (c) external inspection: | |
| (i) hot water heating and supply | 15 |
| (ii) steam heating | 20 |
| (iii) power boiler | 30 |
| (d) special inspection | 50 per hour
plus expenses |

(2) The owner and/or user of a boiler, inspected by a special boiler inspector and insured by an insurance company, shall, within 10 days of receipt of notification from the department, remit the operating certificate fee, as outlined in (1)(a) above, to obtain a boiler operating certificate from the department.

(3) The term "inspection certificate" in 50-74-219, MCA, shall mean the boiler operating certificate issued by the department.

(4) Refunds or credit for fees remitted in error or based on false or incorrect information will be at the discretion of the department.

(5) The fee schedule established in (1) above is repeated from 50-74-219, MCA, for the convenience of boiler owners and users."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-219, MCA

REASON: The bureau is proposing this rule to clarify the procedure for obtaining a boiler operating certificate, and to repeat for the convenience of the user, the fees established in the statutes.

"VII BOILERS EXEMPTED (1) The rules in this subchapter do not apply to:

- (a) boilers under federal control;
- (b) steam heating boilers operated at not over 15 psig in private residences or apartments of six or less families;
- (c) hot water heating or supply boilers operated at not over 50 psig and temperatures not over 250 degrees F. when in private residences or apartments of six or less families;
- (d) unfired pressure vessels; or
- (e) water heaters or water heating systems operating at pressures not exceeding 150 psig and/or temperatures not exceeding 210 degrees F. which are utilized to supply potable hot water as regulated by the state plumbing code. Maximum operating pressures and temperatures shall be determined by the listing(s) on the manufacturer's data plate. Examples of exempted water heaters and water heating systems include, but are not limited to, lined potable water heaters, hot water supply boilers of corrosion resistant elements utilized in conjunction with lined potable storage vessels, instantaneous type boilers or water heaters designed to deliver potable hot water without storage, water heating systems which utilize an

approved heat exchanger to heat potable water and other similar systems."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-103, MCA

REASON: The bureau is proposing this rule to clarify which boilers and equipment are exempted from the annual safety inspection requirements and to distinguish the differences between a boiler and a hot water heater.

"VIII. SPECIAL BOILER INSPECTOR CERTIFICATION AND IDENTIFICATION CARD (1) Application for certification as a special boiler inspector shall be made to the department on forms provided by the department, as required by 50-74-202, MCA.

(2) The applicant for special boiler inspector certification shall submit documentation with his/her application that indicates the applicant holds a current national board commission.

(3) Special boiler inspector certification and identification cards are issued for employment with a specific insurance company and are not valid when the special boiler inspector is no longer employed by said company.

(4) Insurance companies shall notify the department of changes in the employment status of its special boiler inspectors and shall furnish to the department, upon request, a roster of its inspectors.

(5) Upon the effective date of these rules, special boiler inspectors, presently employed by insurance companies to inspect boilers in this state and whose names appear on the insurance company's initial roster, submitted to the department, will receive the credentials from the department, as outlined in 50-74-202, MCA, without application."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-202, MCA

REASON: The bureau is proposing this rule to establish the procedure for special boiler inspectors (insurance inspectors) to receive credentials from the bureau.

"IX. INSURANCE COMPANY TO PROVIDE WRITTEN NOTIFICATION TO THE DEPARTMENT OF CHANGE IN BOILER STATUS (1) To meet the requirements of 50-74-202, MCA, insurance companies shall notify the department, in writing, of any change in the status of the boilers it insures, including but not limited to the following:

- (a) new boiler insured;
- (b) boiler with insurance canceled;
- (c) boiler with insurance not renewed;
- (d) boiler with insurance suspended;
- (e) boiler refused for insurance.

(2) The written notification of boiler status, referenced in (1) above, shall be filed with the department within 30 days of the change in boiler status and shall include all applicable boiler information (boiler identification number or stamp, owner, location, operating certificate number, etc.).

(3) If a special boiler inspector, upon inspection of a boiler, finds that the boiler or any of its parts are of such condition that the inspector's company refuses or suspends insurance, the company shall immediately notify the department."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-202, MCA

REASON: The bureau is proposing this rule to clarify when an insurance company must contact the bureau regarding the status of a boiler.

"X BOILER INSPECTIONS (1) The requirements imposed by 50-74-206 and 50-74-209, MCA, regarding the requirements for boiler inspections, shall be as follows:

(a) All boilers not exempted from the rules of this subchapter are to be inspected prior to being placed into operation, unless authorization is obtained from the department to operate the boiler on a temporary basis.

(b) Upon notification to the department, in writing or via telephone, new boilers may be placed into operation prior to inspection, when scheduled for inspection within 90 days after being placed into operation.

(c) All boilers are to be inspected at least once in every year except, upon written application and approval by the department, longer inspection intervals may be authorized by the department based on boiler maintenance records and/or actual service conditions.

(d) Agricultural class boilers, such as those operated during the harvest by mint and honey producers, will be considered for longer inspection intervals on a case-by-case basis, in regard to the provisions contained in (c) above.

(e) Smaller automatically fired package boilers, such as those normally operated in the residential market, which are operated in public or commercial buildings, will be considered for longer inspection intervals on a case-by-case basis, in regard to the provisions contained in (c) above.

(f) The department may accept boiler inspection reports from insurance companies, which employ special boiler inspectors, subject to the following:

(i) Boiler inspection reports shall be filed with the department within 30 days after inspection on forms acceptable to the department. Such report shall indicate the boiler has been approved for operation by the special boiler inspector employed by the insurance company that insures the boiler.

(ii) The department may inspect any boiler which is also inspected by a special boiler inspector employed by an insurance company. Whenever the department inspection confirms that the insurance company inspection report is substantially and materially incomplete, invalid or unacceptable, the department may assess the insurance company the fee for a special inspection as imposed by (new rule VI (1)(d))."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-206, 50-74-209, MCA

REASON: The bureau is proposing this rule to clarify the requirements for inspection intervals regarding various types of boilers.

"XI ASSIGNMENT OF STATE IDENTIFICATION NUMBER (1) At the time of the initial boiler inspection, the state boiler inspector or special boiler inspector will assign and apply to the boiler a state identification number as directed by the department.

(2) Each steel boiler will be stamped by the inspector, utilizing letters and figures not less than 5/16" in height and arranged as follows: MTB 00000.

(3) Each cast iron boiler will be marked with a permanent marker in two locations and arranged as follows: MTB 00000.

(4) State identification numbers applied to boilers shall be maintained so as to be legible. When a boiler's state identification number becomes indistinct, the department will require the original number to be re-applied."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-102, 50-74-206, MCA

REASON: The bureau is proposing this rule to establish the procedure for marking boilers with a state boiler number.

"XII MINIMUM CONSTRUCTION STANDARDS FOR BOILERS

(1) All new boilers, unless otherwise exempt, to be operated in this state, shall be designed and constructed in accordance with the ASME code(s) adopted and incorporated in (new rule II).

(2) The department, at its discretion, may require documentation to verify new boilers are in compliance with the minimum construction standards imposed by the ASME code(s). Documentation may include the manufacturer's data report, national board registration number, inspection reports or other documentation acceptable to the department.

(3) Boilers not designed or constructed in accordance with the ASME code(s) or boilers which do not have documentation for approval as a standard boiler may, at the discretion of the department, be considered for classification as a state special boiler and receive a special operating certificate."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-102, 50-74-206, 50-74-209, MCA

REASON: The bureau is proposing this rule to establish the criteria for which boilers may achieve state special boiler status.

"XIII BOILER SAFETY APPLIANCES (1) All boiler safety appliances shall be maintained in good working order or replaced with appliances which meet the standards and requirements imposed by the ASME code(s).

(2) Repair of safety appliances shall be made in accordance with established standards and procedures. The department, at its discretion, may require documentation which verifies compliance with said standards and procedures.

Documentation may include manufacturer's repair records, national board "VR" stamp certification, company repair records or other documentation acceptable to the department."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-102, 50-74-108, 50-74-217, MCA

REASON: The bureau is proposing this rule to establish the requirements and procedures regarding the repair of safety appliances.

"XIV. BOILER REPAIRS (1) Boiler repairs shall be made in accordance with established standards, procedures and the ASME code(s) adopted and incorporated in (new rule II).

(2) The department, at its discretion, may require documentation which verifies repairs were completed in compliance with established standards, procedures and the ASME code(s). Documentation may include welding certifications, weld records, certification by a design professional, national board "R" symbol stamp or other verifiable documentation acceptable to the department.

(3) Weld repairs to boilers shall not be initiated without authorization of the department or special boiler inspector if the boiler is insured by an authorized insurance company. Other repairs to boilers shall be reported to the department, by the party performing the work, within 30 days of completion of the work.

(4) Failure to report boiler repairs to the department, within 30 days of completion of the work, or to provide documentation as required in (2) above, may cause the department to deny issuance of the boiler operating certificate until such time as the imposed requirements are met."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-60-209, 50-74-102, 50-74-207, 50-74-215, 50-74-218, MCA

REASON: The bureau is proposing this rule to establish the requirements and procedures regarding boiler repairs.

"XV. BOILER ALTERATIONS (1) Alterations to boilers shall be made in accordance with the established standards, procedures and the ASME code(s) adopted and incorporated in (new rule II).

(2) Alterations to boilers shall not be initiated without authorization of the department or special boiler inspector if the boiler is insured by an authorized insurance company.

(3) The department, at its discretion, may require documentation which verifies the proposed alteration(s) will be completed in compliance with established standards, procedures and the ASME code(s). Documentation may include welding certifications, certification by a design professional, national board "R" symbol stamp or other verifiable documentation acceptable to the department.

(4) Failure to comply with the requirements contained in (1), (2) and (3) above, may cause the department to deny issuance of the boiler operating certificate until such time as the imposed requirements are met."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-60-209, 50-74-102, 50-74-207, 50-74-215, 50-74-218, MCA

REASON: The bureau is proposing this rule to establish the requirements and procedures regarding boiler alterations.

"XVI TRACTION ENGINES (1) Traction engines shall not be placed into operation, prior to the issuance of an operating certificate by the department, unless permission is obtained from the department to operate the traction engine on a temporary basis.

(2) Every traction engine shall have a log book, maintained by the owner or user, which indicates operational hours, repairs, defects, adverse operating conditions or other information related to the boiler.

(3) Traction engines, except historic models, which are utilized to operate belt driven equipment and machinery shall be roped off or barricaded to prevent public access within six feet of a moving part of the equipment and machinery.

(4) At least 30 days prior to a public gathering or show of traction engines, the show promoter, manager, fair board or other responsible party shall report to the department all traction engines that are intended to be operated in the show."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-101, 50-74-104, MCA

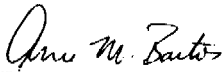
REASON: The bureau is proposing this rule to establish procedures for the operation of traction engines and to establish safety requirements for public shows.

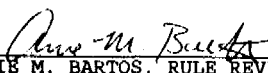
5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, to be received no later than 5:00 p.m., December 7, 1995.

6. Pat Trammelle, attorney, has been designated to preside over and conduct this hearing.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Teacher	)	AMENDMENT OF ARM 10.57.405
Certification	)	CLASS 5 PROVISIONAL CERTIFICATE

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On January 18, 1996 the Board of Public Education proposes to amend ARM 10.57.405 Class 5 Provisional Certificate.

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

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1) through (6) remain the same.

(7) Administrative certificate:

(a) Superintendent endorsement: Class 5 certification with a plan of professional intent leading to a class 3 (administrative) certificate with a superintendent endorsement may be issued to applicants who meet the following minimum requirements:

(i) Eligibility for a class 1, 2, or 5 teaching certificate,

(ii) Verification of a minimum of three years of successful experience as an appropriately certified and assigned teacher,

(iii) One year of administrative experience as an appropriately certified and assigned administrator (superintendent or assistant, principal or assistant, or supervisor) or one year of college supervised administrative internship,

(iv) Master's degree in school administration, or the equivalent, from an institution accredited for administrative preparation, to include:

~~(A) at least 8 graduate semester (12 graduate quarter) credits in elementary education to include elementary administration and elementary curriculum if the applicant does not qualify for elementary endorsement on the class 1 or 2 teaching certificate; or~~

~~(B) at least 8 graduate semester (12 graduate quarter) credits in secondary education to include secondary administration and secondary curriculum if the applicant does not qualify for secondary endorsement on the class 1 or 2 teaching certificate.~~

(v) The plan of professional intent leading to regular certification (or existing transcripts) must include 8 graduate semester (12 graduate quarter) credits in administration beyond the master's degree.

(vi) The following courses and/or content must be verified within the graduate program completed or made a part of a plan of professional intent:

- (A) through (H) remain the same.
- (I) school negotiation (human resource management), and
- (J) public relations- , and
- (K) at least 8 graduate semester (12 quarter) credits in elementary education to include elementary administration and elementary curriculum if the applicant does not qualify for elementary endorsement on the class 1 or 2 teaching certificate; or, at least 8 graduate semester (12 quarter) credits in secondary education to include secondary administration and secondary curriculum if the applicant does not qualify for secondary endorsement on the class 1 or 2 teaching certificate.
- (b) Principal endorsement: Class 5 certification with a plan of professional intent leading to a class 3 (administrative) certificate with principal endorsement may be issued to applicants who meet the following minimum requirements, and have a minimum of three years of successful experience as an appropriately certified and assigned teacher:
 - (i) Eligibility for a class 1, 2 or 5 teaching certificate at the appropriate level (elementary K-8, or secondary 7-12 or 5-12,
 - (ii) Master's degree in a field offered for certification in Montana school administration, or the equivalent, or hold a current out-of-state administrative certificate. and
 - (iii) through (iv) remain the same.
- (c) remains the same.
- (8) through (10) remain the same.

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-106, 20-4-106(1)(e) MCA

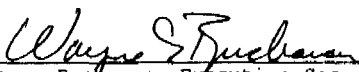
3. The board proposes this amendment to the rule in order to correct language to assure that the preparation of future administrators will conform to higher standards as recommended by both professional organizations and the accrediting body.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. Any comments must be received no later than December 18, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express his data, view and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. A written request for hearing must be received no later than December 18, 1995.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from

an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 51 as there are 511 active school districts in Montana.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 10/26/95.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC
and adoption of subsequent	)	HEARING
amendments to federal rules)	
presently incorporated by)	
reference in rules 23.5.101)	
and 23.5.102, the amendment of)	
rule 23.5.105 and the repeal)	
of rules 23.5.103, 23.5.104,)	
and 23.5.106 through 23.5.111)	
pertaining to motor carrier)	
and commercial motor vehicle)	
safety standard regulations.)	

TO: All Interested Persons.

1. On December 1, 1995, at 10:00 a.m., a public hearing will be held in the main floor auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the amendment of rules 23.5.101, 23.3.102 and 23.5.105 and the repeal of rules 23.5.103, 23.5.104, and 23.5.106 through 23.5.111.

2. The rules proposed to be repealed are as follows:

ARM 23.5.103, AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 69-12-201(1)(c), MCA, at p. 23-344, Administrative Rules of Montana;

ARM 23.5.104, AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 69-12-201(2), MCA, at p. 23-344, Administrative Rules of Montana;

ARM 23.5.106, AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 69-12-201(1), MCA, at p. 23-345, Administrative Rules of Montana;

ARM 23.5.107, AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 69-12-201(1), MCA, at pp. 23-345 and 23-346, Administrative Rules of Montana;

ARM 23.5.108, AUTH: Sec. 44-1-1005(1), MCA IMP: 69-12-201(1), (2), MCA, at p. 23-346, Administrative Rules of Montana;

ARM 23.5.109, AUTH: Sec. 44-1-1005(1), MCA IMP: 69-12-201(1), (2), MCA, at p. 23-347, Administrative Rules of Montana;

ARM 23.5.110, AUTH: Sec. 44-1-1005(1), MCA IMP: 69-12-201(1), (2), MCA, at p. 23-347, Administrative Rules of Montana; and

ARM 23.5.111, AUTH: Sec. 44-1-1005, MCA IMP: Sec. 69-12-201(1), MCA, at p. 23-347, Administrative Rules of Montana.

3. The rules proposed to be amended provide as follows (new material underlined or excised material interlined):

23.5.101 TRANSPORTATION OF HAZARDOUS MATERIALS

(1) All commercial motor vehicles, as defined in 61-1-134, MCA, and that are subject to regulation by the department under 44-1-1005, MCA, shall comply with and the department does hereby

adopt, by reference, the following federal regulations of the department of transportation which concern the transportation of hazardous materials. The regulations adopted by reference are 49 C.F.R. Part 107, 49 C.F.R. Part 171, 49 C.F.R. Part 172, 49 C.F.R. Part 173, 49 C.F.R. Part 177, 49 C.F.R. Part 178, and 49 C.F.R. Part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C (1992), updated through the effective date of this rule; they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 44-1-1005(1), MCA.

23.5.102 DEPARTMENT OF TRANSPORTATION AND I.C.C. RULES
FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS

(1) All motor carriers and other motor vehicles operating within the state of Montana which are All commercial motor vehicles, as defined in 61-1-134, MCA, that are subject to regulation by the department under section 44-1-1005, MCA, shall comply with and the department does hereby adopt, by reference, the following portions of the federal motor carrier safety regulations of the department of transportation, subject to the provisions of (2) with the exception of those regulations specifically excluded below. The regulations adopted are 49 C.F.R. Part 385, 49 C.F.R. Part 387, 49 C.F.R. Parts 390 through 399 (excluding subpart H of Part 391) and Appendix G to subchapter B of chapter III, Title 49 of may be found in the Code of Federal Regulations, (1995) updated through the effective date of this rule, they. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. 49 C.F.R. Part 391 is subject to the exceptions contained in ARM 23.3.503 to ARM 23.3.507. 49 C.F.R. § 392.10 and 49 C.F.R. § 393.42 apply only to vehicles subject to regulation which are engaged in interstate commerce as defined in 49 C.F.R. § 390.5. Those regulations specifically excluded are found in 49 C.F.R. Part 383, Commercial Driver's License Standards, 49 C.F.R. Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, 49 C.F.R. Part 391, Subpart H, Controlled Substance Testing, and 49 C.F.R. Part 394, Notification and Reporting of Accidents.

(2) The federal regulations incorporated herein by reference are subject to the following modifications:

(a) For purposes of intrastate motor carriers, subsection (a) of the definition of "commercial motor vehicle" in 49 C.F.R. § 390.5 shall be restricted to those vehicles with a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more.

(b) For purposes of Part 385 and Parts 390 through 399, the definition of "commercial motor vehicles" in § 390.3, shall include vehicles used in either interstate commerce or intrastate commerce.

(c) For purposes of Part 385 as applied to intrastate carriers, the "compliance review," as defined in § 390.3, will be referred to as a "safety fitness review."

(d) With respect to 49 C.F.R. § 385.21, a "Motor Vehicle Inspection Application" prescribed by the department shall be used by all intrastate carriers instead of a "Motor Carrier Identification Report, Form MCS-150"; this report may be obtained from the Montana Highway Patrol/Motor Vehicle Inspection Bureau, 303 North Roberts, Helena, MT 59620.

(e) Part 391 is subject to the age and physical qualification provisions of ARM 23.3.505 and 23.3.506, for those individuals operating under a type 2 commercial vehicle operator's endorsement and not engaged in "interstate commerce", as defined in 49 C.F.R. part 391.

(f) 49 C.F.R. § 392.10 and 49 C.F.R. § 393.42 apply only to vehicles that are engaged in interstate commerce as defined in 49 C.F.R. § 390.5.

(g) Any reference to the Federal Highway Administration, Administrator or FHWA staff or special agents shall be considered to be a reference to the department as applied to commercial motor vehicles operating intrastate, and where appropriate to the context, to commercial motor vehicles operating interstate.

AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 44-1-1005(1).

23.5.105 SAFETY INSPECTION PROGRAM; PURPOSE AND OUT-OF-SERVICE CRITERIA (1) in order to enforce the federal motor carrier safety regulations of the department of transportation adopted by reference in ARM 23.5.102, the The safety inspection program implemented by the department of justice has implemented a safety inspection program. The department's safety inspection program is intended to focus on those driver-related and mechanical factors most often blamed for accidents involving trucks, passenger carriers, and hazardous material transporters. The safety inspection program is and is designed to remove potentially unsafe drivers and imminently hazardous vehicles from Montana's highways.

(2) In addition to the federal regulations adopted in ARM 23.5.102, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), Memorandum of Understanding, Appendix A, North American Uniform Out-of-Service Criteria (Rev. 4/1/95), incorporated herein by reference. A copy of the North America Uniform Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814 or directly from the department.

(3) For purposes of this program, inspection may be waived for any vehicle subject to inspection and bearing a CVSA inspection decal issued by state or province using CVSA out-of-service criteria within the preceding 90 days, as identified by color code and corner trimming.

AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 44-1-1005(1).

4. RATIONALE: The Department proposes the repeal of the rules because they do not reflect the appropriate jurisdiction

of the department, as compared to that of the Public Service Commission, under whose authority the rules proposed for repeal were originally written, and because the rules contain material that is either non-substantive or out-dated. In addition, the Department proposes the amendment of the rules in order to bring the rules concerning the appropriate safety standards for motor carriers and other commercial motor vehicles subject to regulation under Sec. 44-1-1005, MCA, into compliance with state law and the most recent version of applicable federal regulations, and thus, to ensure minimum duplication and maximum coordination of enforcement effort with the federal authorities and comply with program requirements for continued federal funding. Finally, the amendments are intended to achieve, to the extent practicable, consistency in safety standards between interstate and intrastate carriers and vehicles, and to consolidate existing rules.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Curt Rissman, Montana Highway Patrol/Motor Vehicle Inspection Bureau, Scott Hart Building, 303 N. Roberts, Helena, Montana 59620, no later than December 7, 1995.

6. Brenda Nordlund, Assistant Attorney General, Legal Services Division, Appellate Legal Services Bureau, Justice Building, 215 N. Sanders, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

By:


JOSEPH P. MAZUREK, Attorney General


Rule Reviewer

Certified to the Secretary of State, October 30, 1995

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE PROPOSED
amendment of rule 16.10.702A	)	AMENDMENT OF RULE
pertaining to the reduction	)	16.10.702A PERTAINING TO
of the required height of	)	THE REDUCTION OF THE
water risers in trailer	)	REQUIRED HEIGHT OF WATER
courts	)	RISERS IN TRAILER COURTS
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 9, 1995, the Department of Public Health and Human Services proposes to amend rule 16.10.702A pertaining to the reduction of the required height of water risers in trailer courts.

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

16.10.702A LAYOUT PLAN--WATER SUPPLY REQUIREMENTS

(1)(a) through (d)(i) remain the same.

(ii) A water riser for a campground must extend at least 24 inches above ground elevation, and a water riser for a manufactured home court must extend at least 4 inches above ground elevation. ~~Surface~~ ~~surface~~ water must be directed away from the riser-, and the pipe size must be at least 3/4 of an inch.

(1)(d)(iii) through (6) remain the same.

AUTH: Sec. 50-52-102 MCA

IMP: Sec. 50-52-102 MCA

3. The department is proposing this amendment to the rule because, since placement of a trailer over a two foot vertical pipe without breaking it is difficult, the reduction in height of a water riser is necessary to alleviate that difficulty while still preventing contamination of the pipe. The amendment restores the height requirement in effect prior to April 28, 1995 and will be applied retroactively to that date.

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 Keith Bell, Department of Public Health and Human Services, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than December 7, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Keith Bell, Department of Public Health and Human Services, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than December 7, 1995.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed amendment 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 are 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 directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering the reduction of the required height of water risers in trailer courts.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 1995.

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

In the matter of the adoption of a) NOTICE OF ADOPTION
rule pertaining to inactive vested)
members who purchase service in the)
retirement systems administered by)
the Board)

TO: All Interested Persons.

1. On September 14, 1995, the Public Employees' Retirement Board published notice to adopt Rule I pertaining to inactive vested members who purchase service in the retirement systems administered by the Board on page 1721 of the 1995 Montana Administrative Register, issue no. 17.

2. The Board has adopted Rule I (2.43.440) with the following changes:

RULE I SERVICE PURCHASES BY INACTIVE VESTED MEMBERS

(1) An inactive vested member may purchase any additional service for which the member is eligible any time prior to retirement. The appropriate statutes and rules will be followed to calculate the cost to purchase the service except the inactive member's last termination date will be considered the purchase request date. Interest at an effective annual rate of 8% per year, compounded monthly, will be charged for each year, or portion of a year, from when the member last terminated to when the member either pays the cost of the purchase or begins installment payments completes payment for the cost of the purchase.

AUTH: 19-2-403, MCA

IMP: 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301,
19-9-301, 19-13-301, MCA

3. The Board accepted written and oral comment through 14 October, 1995. Oral and written comments were received from the Public Employees' Retirement Division staff and are summarized as follows, along with the Board's responses:

COMMENT 1: It would be clearer to specify if the intent is to require only simple interest or interest compounded at specified time periods.

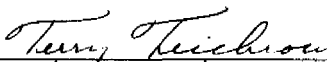
RESPONSE: Language was added to indicate interest will be at an effective annual rate of 8% and compounded monthly.

COMMENT 2: The language of the last sentence of the proposed rule inadvertently suggests that interest will not be paid by the inactive member purchasing on an installment plan

once installment payments commence. It would be clearer to say: "Interest at the rate of 8% per year will be charged on the outstanding balance from when the member last terminated to when the member completes payment for the cost of the purchase."

RESPONSE: The last sentence was modified to clarify that the effective annual interest rate will be charged until the cost of the purchase is paid in full.

By:


Terry Teichrow, President
Public Employees' Retirement Board



Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on October 30, 1995.

In the matter of the amendment) NOTICE OF AMENDMENT OF RULES
and adoption of rules pertain-) PERTAINING TO FEES AND
ing to the outfitting industry) ADOPTION OF NEW RULES ON
) MORATORIUM AND OPERATIONS
) PLAN REVIEW

1. On September 14, 1995, the Board of Outfitters published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the outfitting industry, at page 1761, 1995 Montana Administrative Register, issue number 17.

3. The board has thoroughly considered all comments and testimony received. Those comments and the board's responses thereto follow:

SUMMARY OF WRITTEN COMMENTS RECEIVED

RESPONSE: See response to Comment 4.

RESPONSE: See response to Comment 4.

RESPONSE: See response to Comment 4.

21-11/9/95

RESPONSE: The board through this response intends to address all fee-related comments. The board recognizes that outfitting businesses are affected by fire, weather, and disease, but has no control over these things. Similarly, the board has no control over the issuance of hunting licenses and the drawing of licenses as this is under the jurisdiction of Fish, Wildlife, and Parks.

In general, other comments focused on whether the fee increases will benefit outfitters, whether the board needs the employees it has, and whether the board needs to spend all of the money budgeted to it by the Legislature.

The board is required to carry out the duties set forth by §37-47-201, MCA, including the publication of a pamphlet of outfitters, enforcing outfitter laws, establishing qualifications for applicants, reviewing applications, issuing licenses, promulgating rules to protect the health, safety, and welfare of the public, and now administering a highly controversial moratorium on the issuance of outfitter licenses. Section 37-1-134, MCA, authorizes all licensing boards to set fees that are reasonably related to program costs. In 1993, legislation was passed to create the position of executive director to assist the Board of Outfitters in carrying out its duties. Regulating the outfitting industry requires cooperation with a complex web of federal, state, and local law enforcement agencies. Due to the remote locations in which the industry operates, it also requires a significant amount of manpower to be dedicated to investigation and enforcement. In the past, Fish, Wildlife, and Parks has provided the main vehicle for investigating and prosecuting unlicensed practice cases, despite the task belonging more appropriately to the Board of Outfitters. Now, the board has the investigators to carry out this function with designation as ex officio warden to assist in the enforcement of fish and game violations.

The executive director duties are to process and investigate applications, conduct investigations, coordinate activities of investigators both in-house and with other local, state, and federal agencies. For FY 93-94 the board's budget was approximately \$322,000. In 1995, legislation was passed to create 3.25 full-time equivalent employees to assist the board in its investigative and administrative functions. For FY 95-96, the board's budget was legislatively approved at \$374,000. However, the board has expressed its intent to hold its expenditures to \$326,000. The amount of the proposed fee increase was selected to meet this \$326,000 figure rather than the approved budgetary amount. In other words, the board will attempt to provide more services with less money. Finally, the board notes that at \$235 for annual renewal, Montana outfitters pay less than do their neighbors in Idaho and Wyoming.

COMMENT 5: Gerald Good opposes the fee increase and comments that the board of outfitters has moved from a "licensing board" to "license, regulate, and be law enforcement." He comments that existing game wardens and other government officials can adequately address outfitter regulation.

RESPONSE: See response to Comment 4.

COMMENT 6: LaMonte J. Schnur, of Monte's Guiding & Mountain Outfitters requested that a sunset be placed on the \$235.00 fee for outfitters and that "alternatives to this exorbitant license fee be explored."

RESPONSE: See response to Comment 4.

COMMENT 7: Richard Watkins, Trophies Plus Outfitters supports the fee increase.

RESPONSE: The board acknowledges the comment.

COMMENT 8: Jean Johnson, Executive Director of MOGA supports the fee increase.

RESPONSE: The board acknowledges the comment.

COMMENT 9: Robin Cunningham, Executive Director of Fishing Outfitters Association of Montana, states that part of the justification for the proposed rule amendments concerning the fee increase in relation to the board's operating without a surplus cash balance is incorrect based on calculations that the fee increase of \$85 per outfitter will maintain a surplus cash balance of approximately \$55,000. He states that "if the MBO seeks only to generate sufficient funds to meet projected expenditures, then a much smaller increase is required," and suggests \$5.00 per outfitter. He continues that "[i]f the MBO requires a surplus cash balance, this should have been indicated" on the notice. "Realizing that a cash surplus may be desirable for future contingencies and successful operation of the MBO, FOAM requests that information supporting the need for a cash balance be made available to both outfitter associations as soon as possible. With such information, these groups may more comfortably support a fee increase."

RESPONSE: The board notes that Mr. Cunningham retracts the comment as submitted in error.

SUMMARY OF ORAL TESTIMONY FROM OCTOBER 4, 1995 HEARING

COMMENTS: Larry Lahren opposed the fee increase and Jean Johnson of MOGA supported the fee increase. Robin Cunningham of FOAM presented the same testimony reflected in his written comment.

RESPONSE: See response to Comments 4 and 9.

COMMENTS REGARDING RULE II "MORATORIUM" AND RULE III "APPLICANT CATEGORIES - CONDITIONS AND PRIORITIES"

SUMMARY OF WRITTEN COMMENTS RECEIVED

COMMENT 1: Randy Higgins, of Musselshell Outfitters supports the idea of a moratorium on the number of hunting outfitters, but thinks that this alone will be enough to help the situation. He also questions whether the board should issue another license to replace outfitters who go out of business as it is his contention that outfitters who operate on private land have nothing to sell other than equipment.

RESPONSE: The moratorium, as passed by the 1995 Legislature, included a cap on the number of outfitters as well as a method for controlling lateral expansion among the existing outfitters and therefore mandates the board to develop rules accordingly. Section 37-47-201, MCA, further contemplates that there will be transfer of licenses in the instance of the sale of a business.

COMMENT 2: John & Sandy Rose, of Skalkaho Lodge fully support not issuing more outfitters licenses, but question whether a government agency can dictate whether they can expand their operations and thereby dictate how much revenue they can generate. They state that regulating the number of hunters they are able to take hunting each year will force them to raise their fees and price themselves out of the market. Their letter states that the intent behind the statement to "encourage the continuance of a viable outfitting industry ..." cannot be accomplished under the proposed rules.

RESPONSE: See response to comment 1.

COMMENT 3: Jean Johnson, Executive Director of MOGA states that 37-47-202(5)(d) cited in new rule III is incorrect and should be 37-47-201(5)(b).

RESPONSE: The board has tabled the adoption of new rule III for further discussion. However, the board accepts the comment and will amend the rule accordingly.

COMMENT 4: Allen Schallenberger, Experience Montana, comments that the applicant categories rule is "verbose and repetitious."

RESPONSE: The board rejects the comment and notes that the concepts described by the rule are complex and that there is no unnecessary repetition.

COMMENTS REGARDING RULE IV "REVIEW AND APPROVAL OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN INVOLVING HUNTING USE"

SUMMARY OF WRITTEN COMMENTS RECEIVED

COMMENT 1: Richard Watkins, Trophies Plus Outfitters comments that method of determination of net client use assumes that outfitters have been serving all the clients they can, but that outfitters who have been in business for less than five years and are building their clientele are disadvantaged under the proposal. He states that the intent behind the legislation was to allow the price of licenses to be the limiting factor on the growth of the industry--not the number of clients served.

RESPONSE: As a result of the comments received in regard to proposed new rule IV, the board voted to delay taking action on proposed new rule IV for further consideration of the comments and proposed language.

COMMENT 2: C.S. Schearer, Central Montana Outfitters, comments that the proposed method of controlling expansion discriminates against new outfitters and gives an unfair

advantage to someone with a large client base, to someone selling or retiring from a business, or to someone who can afford to buy a large business. He requests that the board give new outfitters 3 to 5 years to allow them an opportunity to establish a "highest number" of clients. He further asks whether the term "expansion" means the "total number of increased client hunting days" or whether it "pertains to the expansion of more acreage of land." His final question is whether, if the private and public land approved on his operations plan will handle more clients than listed on his 1996 season client log (his only season in operation), he needs board approval to take more clients.

RESPONSE: See response to Comment 1.

COMMENT 3: John Lane of Lane Ranch and Matthew Holmes of Lepley Creek Outfitters wrote to express their concern regarding the proposed "Limit of Hunter Use Days," stating that prior to 1994, the Lane Ranch had an outfitter with a clientele of 40 to 50 hunters per year and that in 1994, under the Devil's Kitchen Management Team, they submitted to a voluntary quota limiting the number of bulls harvested, thereby decreasing the number of hunters outfitted. Therefore, they feel it unfair to use 1994 or 1995's numbers as it is not a true representation of past use and would penalize them for voluntarily working for the betterment of this elk herd.

RESPONSE: See response to Comment 1.

COMMENT 4: Randy Higgins, of Musselshell Outfitters, writes to ask whether, under the proposed rule on net client use, he would be expected to cancel hunts with clients from whom he has already collected deposits?

RESPONSE: See response to Comment 1.

COMMENT 5: John & Sandy Rose, of Skalkaho Lodge, write to oppose the "new operations and proposed expansion of net client hunting use" rule.

RESPONSE: See response to Comment 1.

COMMENT 6: Shane & Bridgitt Erickson suggest the following ideas to implement rules that carry out the intent of the legislature and afford some protection to the outfitting industry as well. They take issue with the time period 1988 - 1995 as the period selected to determine "net client hunting use" because of the forest fires of 1988. The time period places the "burned out" outfitters who may desire to sell their businesses at a serious disadvantage since only their "post-disaster" client use may be transferred to a new licensee. The Ericksons propose a ten-year period with "a cut-off at the 1995 season" to prevent outfitters from attempting to artificially expand their client bases in 1996 to obtain a higher number.

They take issue with subsection (2) of proposed rule IV as it "limits net client use by taking into account the number of guides working for the outfitter during the same period" and that this is not a good indicator of appropriate hunting use, particularly if it is argued that a 3 hunter to 1 guide ratio is not always appropriate.

They suggest, in implementing subsection (5), that public notice in the "Legal Notices" section of classified ads in the relevant local newspaper, would suffice and be less time-consuming than publishing the proposals in the Montana Administrative Register.

They further stated their belief that requiring new licensees to disclose their operations plans under the proposed review process while allowing pre-1995 licensees to maintain them as confidential violates the Equal Protection Clause.

They propose that subsection (5) more clearly state that the review process is required only with regard to public lands and not private lands.

They propose that a private landowner's desire to lease his or her property to an outfitter for hunting use be added in subsection (7) to the criteria considered by the board in its review of proposed new use. They point out that private landowners cannot be forced to open up private land for public hunting use despite the legislature's intent that this occur.

They further note that if the intent of the legislature was to restrict lateral growth of the outfitting industry in the interest of public benefit, that lateral expansions onto private property be subject to filing with the Board of Outfitters and Fish, Wildlife & Parks, ongoing permission for game wardens to patrol private areas for game violations. The Ericksons contend that a recent Montana Supreme Court decision has the effect of insulating anyone hunting on private land from being subject to outfitter or fish and game laws due to its holding that wardens may not enter private land without the landowner's permission or a warrant.

They suggest that subsection (8) be amended to state that the board shall approve the proposal unless it finds that the proposed use presents a threat to the public health, safety, and welfare. Without this amendment, the Ericksons contend there is no safeguard against arbitrary disapproval of expansion plans.

RESPONSE: See response to Comment 1.

COMMENT 7: Jean Johnson, Executive Director of MOGA states that 37-47-202(5)(d) cited in new rule IV is incorrect and should be 37-47-201(5)(b). In general, MOGA supports the proposed rule on the moratorium, but proposes that the board add as subsection (1), the language "For the purposes of [Rule IV] and determining net client hunting use, only big game hunters shall be counted" under proposed rule III. Ms. Johnson stated MOGA's concerns that the rule as proposed would provide an opportunity for fishing outfitters who incidentally offer bird hunting to become big game hunters, given the so called "guaranteed" hunting license.

MOGA comments with regard to the number of years allowed to determine highest net client hunting use, that language be added to provide relief to an outfitter who was negatively impacted through circumstances beyond the outfitter's control between 1988 and 1995. Additionally, MOGA suggests that the board change the words "until 1995" to "through 1995," as the intent was to include the year 1995 in the period for calculating net client hunting use.

MOGA further comments that subsection (5) providing for notice by publication in the MAR be repealed as being unnecessarily restrictive and costly. MOGA comments that other methods would provide ample opportunity for interested members of the public to become informed. In subsection (6), MOGA comments that 60 days is too long and proposes that the language be amended to read "The hearing shall be scheduled no earlier than 30 days after the mailing of notices stipulated in (5)(a) through (e)."

RESPONSE: The board accepts the comment with regard to the incorrect citation. With regard to the remainder, see response to Comment 1.

COMMENT 8: LaMonte J. Schnur, of Monte's Guiding & Mountain Outfitting comments that the operations plan rules need to be refined, stating "[i]t is not clear whether the exact same number of hunters for each species must be taken every year, or whether there is some room to shuffle from one category to another. For example, if an outfitter had ten elk hunters and eight deer hunters listed on his base year, must he always take ten elk hunters, or can he take eight, or twelve, so long as the balance of total hunters is eighteen?" He urges that the board consider amending the rule to allow every outfitter two more clients than the base year. He argues that the board should allow an outfitter whose base number is, for example, seventeen, to book an even number party to make eighteen so as not to turn away the seventeenth client "because he can't take the partner, who would be eighteenth." Finally, he urges the board to "grandfather" some outfitters' uses prior to 1988 due to the fires. He argues that similar to other land managing agencies, the board should recognize historic use, as in the example regarding limitations on cow or branch bull seasons.

RESPONSE: See response to Comment 1.

COMMENT 9: Robert E. Miller, of Miller Outfitters comments that the limit on the number of hunters allowed per season for each outfitter should not go past October 1, 1995, because the outfitters on forest service and state land permits are already limited by "use days." He states that outfitters on private land may be tempted to give away hunts just to build up their hunter base. Mr. Miller suggest that going back ten years prior to October 1, 1995 "would give a complete and fair history of the outfitter's hunter base."

RESPONSE: See response to Comment 1.

COMMENT 10: Daniel Shannon, on behalf of Miller Outfitters, states that "if an arbitrary year must be chosen as a starting point to look at the historic number of hunters outfitted . . . 1987 would be an appropriate starting point so as not to punish those outfitters who suffered due to the Canyon Creek fires of 1988."

RESPONSE: See response to Comment 1.

COMMENT 11: Ken Graber comments that the number of hunters in the net client hunter use should be figured on an individual, case-by-case basis. He states that he has "been in the business for 37 years," but cites personal illness during two recent years which has adversely affected his business and the number of clients he could show. He states that he makes a "hunt schedule out each year," which is an accurate reflection of the number of hunters he takes and will continue to want to take.

RESPONSE: See response to Comment 1.

COMMENT 12: Gerald W. Good comments that the proposed amendments are contrary to the current trend to downsize government and that existing government offices can handle the offenses the board wants to regulate.

RESPONSE: See response to Comment 1.

COMMENT 13: Allen Schallenberger, Experience Montana, comments that bird hunters have erroneously been grouped with permit hunters and points out that subsection (7)(e), in requiring Fish, Wildlife, and Parks data on the availability of game animals to be unreliable because data is collected and analyzed by large hunting districts and not by local drainages. Additionally, specific population data are unavailable for many species, and it is unclear whether game birds and waterfowl are included here and that the review of operations plans introduces unnecessary cost and time to the process.

RESPONSE: See response to Comment 1.

COMMENT 14: Mark Story, Z-J Outfitters, supports the proposed rules and adds that a moratorium should be placed on fishing outfitters as well.

RESPONSE: See response to Comment 1.

Two comments were received after the 5:00 p.m. October 12, 1995 deadline and will not be considered by the board.

SUMMARY OF ORAL TESTIMONY FROM OCTOBER 4, 1995 HEARING

COMMENT 1: Robert Miller described circumstances that adversely affected his business during the years 1988 through 1995 and suggested that in defining net client hunting use, the board use the year wherein the largest number of clients were served since an outfitter has been in business, including 1996.

RESPONSE: See response to Comment 1.

COMMENT 2: Larry Lahren suggested that the method of determining net client use is too "heavy-handed," and proposes that the board determine this number on a case-by-case basis. He expressed concern that the client logs are unreliable sources to determine highest number of clients, and subject to exaggeration by dishonest people who list their friends and relatives. Mr. Lahren commented that the effect of these rules will not meet the intent of the legislature to promote the viability of the industry. He opposes the fee increase.

RESPONSE: See response to Comment 1.

COMMENT 3: Bridgett Erickson cited similar problems with the 1988 to 1995 time period and suggested that buyers of outfitting businesses be allowed to assume the highest use of the predecessor, be that over a 20-year period or a 2-year period. She commented that SB231 requires an agency to complete an environmental review if the agency's actions impact private property, and questioned whether the proposed rules meet this requirement.

RESPONSE: See response to Comment 1.

COMMENT 4: Bob Griffith commented that the time period for conducting the review of new use or expansion of existing use is too long.

RESPONSE: See response to Comment 1.

COMMENT 5: Edwin Johnson stated that the proposed rules need major revision, questioned whether the board could or should tell outfitters how many clients they can serve. He commented on the advantage older, established outfitters have in relation to new outfitters in determining number of clients.

RESPONSE: See response to Comment 1.

COMMENT 6: Jean Johnson of MOGA in regard to the moratorium rules, expressed concern that past bird hunting client use can be transferred to give credit toward big-game hunting client use.

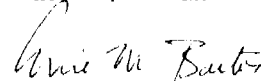
RESPONSE: See response to Comment 1.

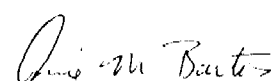
COMMENT 7: Shane Erickson expressed a "government over-regulation" sentiment and noted that notification by the outfitter of increase in clientele and subsequent review by the board as being violative of his constitutional rights. Finally, he stated that it was "preposterous" for the board to hold this hearing during hunting season.

RESPONSE: See response to Comment 1.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 1995.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) NOTICE OF AMENDMENT, REPEAL,
repeal and adoption of rules) AND ADOPTION OF RULES PER-
pertaining to realty regulation) TAINING TO REALTY REGULATION

TO: All Interested Persons:

1. On August 24, 1995, the Board of Realty Regulation published a notice of proposed amendment, repeal and adoption of rules at page 1609, 1995 Montana Administrative Register, issue number 16.

2. The Board has amended ARM 8.58.415B, 8.58.702, 8.58.707 and 8.58.710, and repealed ARM 8.58.409 exactly as proposed. The Board has amended ARM 8.58.406A, 8.58.406C, 8.58.412, 8.58.414, 8.58.415A, 8.58.415C, 8.58.419, 8.58.423, 8.58.709, 8.58.711, 8.58.712 and 8.58.714; and adopted new rule I (8.58.425) as proposed but with the following changes (authority and implementing sections will remain the same as proposed). The Board voted not to adopt the proposed amendment of ARM 8.58.413.

"8.58.406A APPLICATION FOR LICENSE--SALESPERSON AND BROKER (1) through (5) will remain the same as proposed.

(6) For salesperson applications, the board will require a recent credit rating, supervising broker certification, and references attesting to good repute, honesty, trustworthiness, and competency. The board may utilize the content of the credit report in its assessment of the salesperson's qualifications, only to the extent that such report discloses judgements or similar items in which the applicant has been found liable for mismanagement, fraud, conversion, or conduct of a similar nature. ~~The board may require that all deficient credit be paid or arrangements made with the creditor to do so. Those arrangements must be satisfactory to the board.~~ WHEN THE BOARD FINDS THAT AN APPLICANT'S CREDIT PROBLEMS COULD POSSIBLY BE A POTENTIAL RISK TO THE GENERAL PUBLIC, THE BOARD CAN REQUIRE AN APPLICANT TO MAKE ARRANGEMENTS SATISFACTORY TO THE BOARD TO ELIMINATE THE PROBLEM.

(7) For broker applicants, the board will require a recent credit rating, and references attesting to good repute, honesty, trustworthiness, and competence. The board may utilize the content of the credit report in its assessment of the broker's qualifications, only to the extent that such report discloses judgments or similar items in which the applicant has been found liable for mismanagement, fraud, conversion, or conduct of similar nature. ~~The board may require that all deficient credit be paid or arrangements made with the creditor to do so. Those arrangements must be satisfactory to the board.~~ WHEN THE BOARD FINDS THAT AN APPLICANT'S CREDIT PROBLEMS COULD POSSIBLY BE A POTENTIAL RISK TO THE GENERAL PUBLIC, THE BOARD CAN REQUIRE AN APPLICANT TO MAKE ARRANGEMENTS SATISFACTORY TO THE BOARD TO ELIMINATE THE PROBLEM.

(8) will remain the same as proposed.

(a) 30 real estate property transactions in two years. No more than 10 properties can be bare, non-agricultural land. A minimum number of five listings and five sales must be obtained. ~~The minimum number of real estate transactions will increase by five transactions each year of licensing after the initial two year requirement; or~~

(b) 10 farm and ranch, agricultural and/or commercial real estate property transactions in two years. A minimum of two listings and two sales must be obtained. ~~The minimum number of real estate transactions will increase by two transactions each year of licensing after the initial two year requirement.~~ NO MORE THAN TWO COMMERCIAL LEASE TRANSACTIONS MAY BE USED. Land will be considered farm and ranch OR AGRICULTURAL only if it contains a minimum of 80 acres.

(9) This experience in (8)(a) and (b) above may be obtained while licensed within the state, or licensed in another state. This subsection is advisory only, but may be a correct interpretation of the law. ~~Dual agency transactions will count for two transactions. All other transactions will count as one transaction for the licensing applicant.~~ APPLICANT MUST PROVIDE ADEQUATE DOCUMENTATION FOR EACH SIDE OF THE TRANSACTION FOR WHICH THEY ARE SEEKING CREDIT.

(10) and (11) will remain the same as proposed."

"8.58.406C APPLICATION FOR EQUIVALENCY--BROKER

(1) will remain the same as proposed.

(2) A SALESPERSON MUST HAVE A minimum of a college degree with an emphasis in real estate and one year of current licensing as a real estate salesperson and activity equal to that required to obtain a broker license as found in ARM 8.58.406A(8).

(3) will remain the same as proposed."

"8.58.412 INACTIVE LICENSES (1) through (1)(d) will remain the same as proposed.

(2) Inactive licensees must pay the renewal fee, MUST ANNUALLY COMPLETE THE REQUIRED EDUCATION and provide verification of the necessary education ~~annually~~ to maintain licensed status."

"8.58.414 TRUST ACCOUNT REQUIREMENTS (1) through (19)(b) will remain the same as proposed.

(c) instruct the title company that the earnest money is to be immediately deposited in the title company's trust account; and

~~(d) obtain and file with the board an agreement signed by the title company authorizing the board to audit the title company's trust account."~~

"8.58.415A CONTINUING REAL ESTATE EDUCATION (1) and (2) will remain the same as proposed.

(3) By October 1 of each year, the board shall prescribe topics in which the 12 hours of education must be obtained. A minimum of ~~seven~~ THREE hours must come from mandatory topics determined by the board and ~~five~~ NINE hours may come from elective topics approved by the board.

(4) ~~No hours in excess shall carry over to any other year MORE THAN SIX HOURS OF ELECTIVE TOPICS MAY BE CARRIED OVER. NO MANDATORY HOURS MAY BE CARRIED OVER TO ANY OTHER YEAR.~~

(5) through (7) will remain the same as proposed.

(8) Course and instructor evaluation forms, approved by the board, must be provided and MAY BE collected by a board representative and forwarded to the board office. ~~No evaluation will be collected by the instructor.~~

(9) through (11) will remain the same as proposed."

"8.58.415C CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL (1) through (3) will remain the same as proposed.

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of real estate ~~and~~ OR current experience approved by the board; or

(b) through (4) will remain the same as proposed."

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(b) will remain the same as proposed.

(c) Licensees will advise their client PRINCIPAL AND ANY OTHER PARTY TO THE TRANSACTION WITH WHOM THE LICENSEE IS DIRECTLY WORKING, that outside professional services should be secured when appropriate. ~~Statutory brokers or dual agents should so advise both parties in the transaction. STATUTORY BROKERS SHOULD INFORM ALL PARTIES NOT OTHERWISE REPRESENTED.~~

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

(m) Licensees shall make a reasonable attempt to advise ~~all~~ THEIR principals to OBTAIN all agreements, financial obligations and recommendations regarding all real estate transactions in writing.

(n) will remain the same as proposed.

(o) Licensees shall not disclose the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers, except that this shall not prohibit disclosing the existence of an offer. A buyer's broker may disclose this data to his/her ~~clients~~ PRINCIPALS. If a buyer broker has ~~clients~~ PRINCIPALS making competitive offers on the same property, the buyer broker cannot disclose the terms of competing offers TO THEIR OTHER PRINCIPALS.

(p) The licensee shall inform the ~~his/her~~ principal at the time an offer is prepared or presented of the ESTIMATED costs and fees associated with that offer. A statutory broker and a dual agent will inform both parties to the transaction. A STATUTORY BROKER WILL INFORM ALL PARTIES NOT OTHERWISE REPRESENTED.

(q) through (aa) will remain the same as proposed.

(ab) Licensees may not negotiate a sale, exchange, or lease of real property directly with a seller or buyer if the ~~broker or salesperson~~ LICENSEE knows that the ~~owner~~ SELLER/BUYER has a written, outstanding contract in connection with the property granting an exclusive agency to another broker.

(ac) will remain the same as proposed.

(ad) Licensees ~~may not fail voluntarily to~~ SHALL furnish a copy of a written instrument to a party executing it at the time of its execution.

(ae) Licensees may not pay a commission in connection to a real estate sale or transaction to a person who is not licensed as a real estate broker; OR real estate salesperson ~~or property manager~~ under this chapter; however, payment to the principal or reducing THE commission owed by the principal is not considered payment of a commission to an unlicensed person.

(af) and (4) will remain the same as proposed."

"8.58.423 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

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

(5) The supervising broker is responsible for all real estate actions of the ~~licensees~~ SALESPERSONS under his/HER supervision.

(6) The supervising broker or managing broker must provide ~~continuous~~ ON-GOING training in the area of real estate activity to all ~~licensees~~ SALESPERSONS under his/HER supervision.

(7) will remain the same as proposed.

(8) ~~The supervising broker or managing broker is required to review, sign and date each item of the final agreement and all disclosure documents to the purchase and sales agreement or offers to lease within 10 business days of finalization. THE SUPERVISING BROKER OR MANAGING BROKER HAS THE RESPONSIBILITY TO EXERCISE ADEQUATE SUPERVISION TO ASSURE THAT ALL DOCUMENTS FOR A REAL ESTATE TRANSACTION PREPARED BY A SALESPERSON UNDER HIS/HER SUPERVISION ARE APPROPRIATELY PREPARED AND EXECUTED.~~

(9) and (10) will remain the same as proposed."

"8.58.709 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each property management licensee is required to complete a minimum of ~~6~~ SIX hours of board-approved continuing property management education every year. A minimum of ~~three~~ TWO hours must come from mandatory topics determined by the board and ~~three~~ FOUR hours may come from elective topics approved by the board.

(2) ~~No hours in excess will carry over to any other two-year period. NO MORE THAN THREE HOURS OF ELECTIVE TOPICS MAY BE CARRIED OVER. NO MANDATORY HOURS MAY BE CARRIED OVER TO ANY OTHER YEAR.~~

(3) through (7) will remain the same as proposed."

"8.58.711 CONTINUING PROPERTY MANAGEMENT EDUCATION -- INSTRUCTOR APPROVAL (1) through (3) will remain the same as proposed.

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of property management and OR current experience approved by the board; or

(b) through (4) will remain the same as proposed."

"8.58.712 TRUST ACCOUNT REQUIREMENTS (1) through (4) will remain the same as proposed.

(5) ~~All security deposits and other trust account money received by the property manager must be deposited in the~~

~~property management trust account within three business days of receipt of the trust funds. ALL SECURITY DEPOSITS FOR RESIDENTIAL RENTAL TRANSACTIONS AND OTHER TRUST ACCOUNT MONEY MUST BE DEPOSITED IN THE PROPERTY MANAGER'S TRUST ACCOUNT WITHIN THREE BUSINESS DAYS OF THE RECEIPT OF THE TRUST FUNDS. ALL OTHER SECURITY DEPOSITS AND TRUST ACCOUNT MONEY MUST BE DEPOSITED INTO THE PROPERTY MANAGER'S TRUST ACCOUNT WITHIN THREE BUSINESS DAYS, UNLESS OTHERWISE PROVIDED IN THE LEASE AGREEMENT OR RENTAL AGREEMENT.~~

(6) through (12) will remain the same as proposed."

"8.58.714 GROUNDS FOR DISCIPLINE OF PROPERTY MANAGEMENT LICENSEES - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

(1) will remain the same as proposed.

(2) If the board determines that a licensee has committed an act that violates a statute or the rules administered by the board ~~has been violated~~, such act shall be deemed an act against the interest of the public for which the board may take disciplinary action permitted by law against the licensee.

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

(o) Licensees shall disclose to all customers and clients their agency CONTRACTUAL relationship.

(p) through (s) will remain the same as proposed.

(t) Licensees must ~~first~~ obtain a written management agreement with the owner or owner's agent ~~before~~ WITHIN 10 DAYS OF conducting any property management activity.

(4) will remain the same as proposed."

"8.58.425 PRE-LICENSING EDUCATION - SALES AND BROKERS

(1) No more than ~~8~~ EIGHT hours of instruction may be offered per day, ~~exclusive of examination time.~~ EXAMINATION TIME DOES NOT COUNT AS HOURS OF INSTRUCTION.

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

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto follow:

8.58.406A

COMMENT: Participants commented that the board should not get into the business of being a credit counseling agency for license applicants with bad credit and that enforcement of the rule could lead to a violation of the Bankruptcy Act.

RESPONSE: The board voted to revise the language to require the applicant to make arrangements to satisfy outstanding debts if the board believes a problem exists. This would satisfy the concern regarding the bankruptcy act as the board would not mandate anything in regard to a discharged bankruptcy. It addresses the issue of the counseling agency since the board would merely be referring license applicants to those services.

COMMENT: A question arose as to what constitutes a certified license history.

RESPONSE: It is a generally accepted term for a license status report from another licensing jurisdiction that would indicate any disciplinary action against a licensee.

COMMENT: The board received comment that the new transaction requirements for obtaining a broker license were excessive, especially in rural areas.

RESPONSE: The rule allows for an alternative that permits licensure as a broker with a reduced number of listings and sales of agricultural, farm and ranch, or commercial properties that provides relief to rural areas especially.

COMMENT: Comment was received that the transaction requirement exceeded the statutory authority of the board.

RESPONSE: The board is exercising its authority to promulgate rules pursuant to statute and especially 37-51-203, 37-51-302, and 37-1-307.

COMMENT: The clause increasing the number of transactions required by five per year was unduly burdensome.

RESPONSE: The board agreed and withdrew the clause because the experience was limited to the past 3 years.

COMMENT: Comment was received on whether leases were considered transactions in meeting the required transactions to obtain a broker license.

RESPONSE: The board considered this comment and amended the broker licensing requirement to allow for no more than two commercial leases in the commercial, agricultural and farm & ranch option of qualifying for a broker license.

COMMENT: It was suggested that the reference to credit for two transactions provided to dual agents be expanded to also include statutory brokers.

RESPONSE: The board amended that portion of the rule to allow the applicant to receive credit for any side of the transaction for which the applicant can provide adequate documentation to substantiate his or her claim.

8.58.406C

COMMENT: Comment was received as to the availability of meeting the equivalency requirements as proposed as no college or university system in Montana offered a college emphasis or minor in real estate.

RESPONSE: The board agreed with the comments and dropped that portion of the requirement as proposed.

COMMENT: Comment was received that 8.58.406C(2) was an incomplete sentence.

RESPONSE: The board agreed and changed the sentence structure.

COMMENT: Comment was received that defining the minimum number of transactions violated 37-51-302(1)(c).

RESPONSE: The board determined that it was promulgating regulations pursuant to 37-51-203, 37-51-302 and 37-1-307, MCA.

COMMENT: The comment was received that the minimum number of transactions was unduly high.

RESPONSE: The board determined that an alternate method of qualifying exists that permits licensure after a reduced number of listings and sales in commercial, agricultural, farm and ranch and commercial leasing activity.

8.58.412

COMMENT: Comments were received questioning whether continuing education would be required every year or would some catch up for past requirements to reactivate be allowed.

RESPONSE: The Board intended that all such education would be conducted timely every year, and made the appropriate amendment to clarify its position.

COMMENT: Comments were received that suggested that inactive licensees attempting to reactivate should be required to meet only the last two years of continuing education requirements.

RESPONSE: The board rejected this comment as it was determined that a person not active and maintaining his or her license needed those additional hours to update on the various areas of real estate.

8.58.413

COMMENT: Comment was received concerning what means would be available for an inactive licensee to meet past continuing education requirements in order to reactivate his or her license.

RESPONSE: This proposal was withdrawn and no action was taken.

8.58.414

COMMENT: Comment was received seeking a definition of who is the broker-owner in a commercial setting such as Montana Power Company. The suggestion was made to use a term such as "managing broker".

RESPONSE: The board appreciated and fully considered the comment but elected to stay with broker-owner. That term is set forth in statute.

COMMENT: Comment was received to further clarify that interest from the trust account could be payable to the broker for the maintenance and operation of the trust account.

RESPONSE: It was determined that this comment was outside the purview of the rule notice.

COMMENT: It was commented that title companies should be deleted from audits by the board as the board has no authority over title companies. That regulation is with the State Auditor's Office.

RESPONSE: The board concurred and deleted subparagraph (d) of paragraph (19). The board will allow such accounts.

COMMENT: Comment was received regarding the difficulty in creating a trust account for a corporation.

RESPONSE: The board appreciated the comment but elected to retain this requirement.

8.58.415

COMMENT: Comments supported the change from 15 hours of continuing education every 2 years to 12 hours of education per year but encouraged carryover of one year of credit in exchange.

RESPONSE: The board decided to allow 6 hours of elective credits to be carried over. Mandatory credits may not be carried over.

COMMENT: Comments encouraged the approval of video courses for as much as 1/3 of the number of required hours of continuing education.

RESPONSE: The board appreciated the comment but rejected this request as there is no means to ensure course completion.

COMMENT: Comments were received to eliminate the mandatory topic requirement if 12 hours per year was required.

RESPONSE: The board discussed the comment and amended the proposal, allowing 9 hours of elective topics and requiring 3 hours of mandatory topics.

COMMENT: Comment was received that more than 8 hours of continuing education each year is burdensome.

RESPONSE: The board appreciated the comments but chose to set the requirement at 12 hours per year.

COMMENT: Comment was received that mandatory topics did not recognize specialization in the real estate industry.

RESPONSE: The board agreed to allow 9 hours of elective education topics and 3 hours of mandatory topics each year.

COMMENT: Comment was received that it would prove burdensome and expensive for only a board representative to collect and submit evaluation forms on continuing education courses.

RESPONSE: The board amended the rule so that the instructor must provide an evaluation form and will return such forms in all instances where a board representative is not present.

8.58.415B

COMMENT: Comment was received stating opposition to denial of continuing education courses approved in other jurisdictions regardless of the topic.

RESPONSE: The board appreciated and considered the comment but maintained the need for approval of continuing education topics and rejected the comment.

8.58.415C

COMMENT: Comment was received that the requirements for an instructor should be either education in a real estate related field or current experience.

RESPONSE: The board agreed and made the requirement education or experience.

COMMENT: Comment was made that it was not necessary to approve instructors, as the marketplace would weed out the poor instructors.

RESPONSE: The board rejected this comment as it is necessary to provide criteria for approval of instructors.

8.58.419

COMMENT: Comment was received that the term "generally accepted standards of practice" should be deleted as it is a negligence standard, and replace it with "act of unprofessional conduct."

RESPONSE: The term "generally accepted standards of practice" is statutorily authorized in 37-1-316(18), the codification of House Bill 518.

COMMENT: Comment was received that "generally accepted standard of practice" is vague and open to interpretation.

RESPONSE: This rule is intended to set the parameters of such standards of practice.

COMMENT: Comment was received that in sections (c) and (o) the term client should be changed to principal as the current reading in (o) would prevent a buyer agent from disclosing the terms of an offer to the seller or the listing agent.

RESPONSE: The board agreed and made the appropriate changes.

COMMENT: Comment was received that (m) requires a licensee to advise all principals in a transaction. The statutory broker has no principal. Does the licensee owe this responsibility to an individual not represented in the transaction?

RESPONSE: The board amended the proposed rule to clarify that the licensee is responsible only to their principal.

COMMENT: Comment was received that it was unnecessary to include rules (u), (v) and (w) because they were duplications and that the Americans with Disabilities Act would be better addressed in court.

RESPONSE: The board appreciated the comments but believes these subsections are important and clearly put licensees on notice that these laws must be followed.

COMMENT: Comments were received that suggested that subsections (n) and (z) were somewhat in conflict.

RESPONSE: The board appreciated the comments but believes (n) and (z) address different aspects of the profession and the board chose to leave the rule as proposed.

COMMENT: It was suggested that changes in the wording in subsections (ab), (ad) & (ae) be made to clarify the intent of the proposed rules.

RESPONSE: The board agreed and made the suggested changes.

COMMENT: Comment was received that subsection (af) was excessive in its regulation and puts the licensee at a disadvantage.

RESPONSE: The board determined that the rule was proper for those licensees doing property management and left as proposed.

COMMENT: There was concern expressed regarding the requirement in subsection (p) to disclose the closing costs and would the licensee be held liable if they changed.

RESPONSE: The board changed the requirement to disclosure of estimated closing costs.

COMMENT: It was commented that a statutory broker has no contractual arrangement with a principal so that the requirement to disclose estimated closing costs should not apply to statutory brokers.

RESPONSE: The board revised the working of the proposed rule so that the statutory broker is responsible only to parties without other representation.

8.58.423

COMMENT: Comments were received concerning the inappropriateness of a broker owner being held responsible for the actions of another broker.

RESPONSE: The board amended the proposal to state that the broker owner is responsible for the actions of his or her salespeople.

COMMENT: Comment was received that it was burdensome to require a broker to sign each item of the final agreement. Does that mean each paragraph, each sentence, each page? Does that make the broker a party to the contract? When is the contract final?

RESPONSE: The board amended section (8) of the proposal to more clearly reflect the intent of the proposal and address the concerns stated in the comments.

8.58.709

COMMENT: Comment was received that due to the narrower scope of the license and the fewer number of licensees, fewer property management courses existed and the number of mandatory topic hour for continuing education should be reduced or eliminated.

RESPONSE: The board reduced the number of mandatory continuing education hours and allowed for elective courses with up to 3 hours of elective hours to carry over per year.

COMMENT: Comment was received questioning the necessity of the board to audit the continuing education classes.

RESPONSE: The board appreciated the comment but determined that it is necessary to allow auditing of the classes to insure compliance with course curriculum and insure that the course meets the time requirements.

8.58.710

COMMENT: Comment was received that approved out-of-state courses should be approved regardless of the topic.

RESPONSE: The board appreciated and considered the comment but maintains the need for approval of continuing education topic and rejected the comment.

8.58.711

COMMENT: Comment was received to relax the criteria for instructor approval and use education or experience instead of requiring both criteria.

RESPONSE: The board agreed with the comment and revised the proposal.

COMMENT: It was commented that no need exists to approve instructors as the marketplace would eliminate poor instructors.

RESPONSE: The board appreciated the comment but rejected it as it is necessary to establish criteria for approval of instructors.

8.58.712

COMMENT: Comment was received regarding the mandate that security deposits be held by the licensed property manager rather than held by the owner of the property.

RESPONSE: The board responded that it was its intent to require all security deposits be placed in trust to protect the consumer. The Board clarified that one of the reasons for the proposed amendment was to protect consumers by requiring that security deposits on rentals be placed in trust rather than

transferred to the landlord. The Board adopts the rule, but with an amendment pertaining to commercial transactions.

8.58.714

COMMENT: Section (2) needs to be reworded for clarity's sake.

RESPONSE: The board agreed and amended the proposal.

COMMENT: The comment was received that new subsection (k), (l), and (m) are already violations of the landlord tenant law and best to leave these matters to the civil court.

RESPONSE: The board considered the comments but chose to disregard them as these rules were not noticed for amendment.

COMMENT: Comment was received regarding subsection (o) and the concern about the term "agency relationship" which may not always exist.

RESPONSE: The board agreed and amended the proposal to "contractual relationship."

COMMENT: Comments questioned whether this rule, subsection (p), would prohibit one property management firm from referring a potential tenant to another property manager.

RESPONSE: The board considered the comments and determined that referring individuals to another licensee is not considered openly advertising property.

COMMENT: Comment was received that the requirement in subsection (q) would increase the cost of advertising.

RESPONSE: The board considered the comment but kept the proposal so that members of the public know they are calling a licensee.

COMMENT: Comment was received that in some emergency cases, subsection (t) would not be in the best interest of the property owner or the property manager. Comments suggested a 30 day grace period to get all paperwork in order.

RESPONSE: The board did recognize the need for a grace period and did amend the proposal to set it at 10 days.

New Rule I (8.58.425)

COMMENT: Comment was received regarding section (1) and whether the 8 hour limitation on instruction per day would include any exam or quiz time.

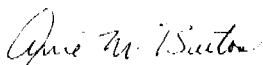
RESPONSE: The board clarified the proposal to state that exam and quiz time is not considered part of the instruction time.

COMMENT: Comments remarked that the minimum of 70% to pass the final course examination was unrealistic because the actual licensing exam required an 80% passing score.

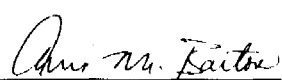
RESPONSE: The board appreciated the comment but kept the 70% requirement as proposed.

BOARD OF REALTY REGULATION
STEVE CUMMINGS, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)
rules 16.8.701, 16.8.945, and)
16.8.1701 amending volatile organic)
compounds definitions.)

NOTICE OF
AMENDMENT OF RULES

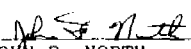
(Air Quality)

To: All Interested Persons

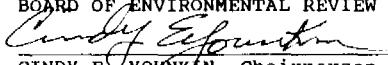
1. On August 24, 1995, the board published notice of proposed amendment of rules at page 1645 of the 1995 Montana Administrative Register, Issue No. 16, to consider the amendment of the above-captioned rules.

2. The rules were amended as proposed with no changes.

3. No comments were received.


JOHN F. NORTH,
Rule Reviewer

BOARD OF ENVIRONMENTAL REVIEW


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State October 30, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
rules 16.8.705 and 16.8.1102)	AMENDMENT OF RULES
concerning replacing equipment)	
due to malfunctions.)	

(Air Quality)

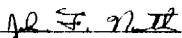
To: All Interested Persons

1. On August 24, 1995, the board published notice of proposed amendment of rules at page 1640 of the 1995 Montana Administrative Register, Issue No. 16, to consider the amendment of the above-captioned rules.

2. The rules were amended as proposed with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State October 30, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF
rules 16.8.1301 and 16.8.1303) AMENDMENT OF RULES
concerning open burning in)
eastern Montana.)
(Air Quality)

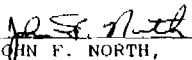
To: All Interested Persons

1. On August 24, 1995, the board published notice of proposed amendment of rules at page 1634 of the 1995 Montana Administrative Register, Issue No. 16, to consider the amendment of the above-captioned rules.

2. The rules were amended as proposed with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State October 30, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA


In the matter of the amendment of)	NOTICE OF
rules 16.8.1402 and 16.8.1403)	AMENDMENT OF RULES
concerning particulate emission)	
limits for fuel burning equipment)	
and industrial processes.)	(Air Quality)

To: All Interested Persons

1. On August 24, 1995, the board published notice of proposed amendment of rules at page 1636 of the 1995 Montana Administrative Register, Issue No. 16, to consider the amendment of the above-captioned rules.
2. The rules were amended as proposed with no changes.
3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State October 30, 1995.

NOTICE OF REPEAL
OF ARM 16.8.1414

To: All Interested Persons

2. The rule was repealed as proposed.
3. No comments were received.

J.F. North
JOHN F. NORTH,
Rule Reviewer

Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State October 30, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
16.8.1903, regarding air quality)	AMENDMENT OF RULES
operation fees, and 16.8.1905,)	
regarding air quality permit)	
application fees.)	

(Air Quality)

To: All Interested Persons

1. On August 24, 1995, the board published notice of proposed amendment of rules at page 1648 of the 1995 Montana Administrative Register, Issue No. 16, to consider the amendment of the above-captioned rules.

2. The rules were amended as proposed with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

John F. North
JOHN F. NORTH,
Rule Reviewer

Cindy E. Youngkin
CINDY E. YOUNGKIN, Chairperson

Certified to the Secretary of State October 30, 1995.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the transfer of) NOTICE OF TRANSFER
rules 16.44.101 through 16.44.1112,))
pertaining to hazardous waste))
management with the exception of))
the repealed rules.))

(Hazardous Waste)

To: All Interested Persons

1. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, hazardous waste management programs are transferred from the Department of Health and Environmental Sciences to the Department of Environmental Quality. In order to implement that legislation, ARM 16.44.101 through 16.44.1112, inclusive, with the exception of the repealed rules, are transferred to the Department of Environmental Quality, ARM 17.54.101 through 17.54.1119.

2. The Department of Environmental Quality has determined that the transferred rules will be numbered as follows:

OLD	NEW	
16.44.101	<u>17.54.101</u>	Purpose of Rules
16.44.102	<u>17.54.102</u>	Incorporations by Reference
16.44.103	<u>17.54.105</u>	Scope of Permit Requirements
16.44.104	<u>17.54.106</u>	Permitting Requirements: Existing and New HWM Facilities
16.44.105	<u>17.54.107</u>	Temporary Permits (Interim Status)
16.44.106	<u>17.54.108</u>	Application for Permit
16.44.107	<u>17.54.109</u>	Validity of Federal HWM Permits
16.44.108	<u>17.54.110</u>	Signatories to Permit Applications
16.44.109	<u>17.54.111</u>	Conditions of Permits
16.44.110	<u>17.54.112</u>	Establishing Permit Conditions
16.44.111	<u>17.54.113</u>	Duration of Permits
16.44.112	<u>17.54.118</u>	Schedules of Compliance
16.44.113	<u>17.54.119</u>	Requirements for Recording and Reporting
16.44.114	<u>17.54.120</u>	Effect of a Permit
16.44.115	<u>17.54.125</u>	Transfer of Permits
16.44.116	<u>17.54.126</u>	Modification or Revocation and Reissuance
16.44.117	<u>17.54.127</u>	Termination of Permits
16.44.118	<u>17.54.128</u>	Minor Modifications of Permits
16.44.119	<u>17.54.130</u>	Contents of Part A of the Permit Application
16.44.120	<u>17.54.131</u>	Contents of Part B
16.44.121	<u>17.54.132</u>	Permits by Rule
16.44.122	<u>17.54.133</u>	Emergency Permits
16.44.123	<u>17.54.136</u>	Permits for Hazardous Waste Incinerators
16.44.124	<u>17.54.137</u>	Permits for Land Treatment Demonstrations

16.44.125	<u>17.54.138</u>	Facility Permit Fees: Application, Renewal, Modification, and Maintenance Fees
16.44.126	<u>17.54.140</u>	Research, Development, and Demonstration Permits
16.44.127	<u>17.54.145</u>	Permit Denial
16.44.128	<u>17.54.146</u>	Permits for Boilers and Industrial Furnaces Burning Hazardous Waste
16.44.129	<u>17.54.150</u>	Restrictions on the Land Disposal of Hazardous Wastes
16.44.130	<u>17.54.155</u>	Administrative Penalty
16.44.202	<u>17.54.201</u>	Definitions
16.44.301	<u>17.54.301</u>	Policy
16.44.302	<u>17.54.302</u>	Definition of Waste
16.44.303	<u>17.54.303</u>	Definition of Hazardous Waste
16.44.304	<u>17.54.307</u>	Exclusions
16.44.305	<u>17.54.308</u>	Special Requirements for Counting Hazardous Wastes
16.44.306	<u>17.54.309</u>	Requirements for Recyclable Materials
16.44.307	<u>17.54.310</u>	Residues of Hazardous Waste in Empty Containers
16.44.308	<u>17.54.312</u>	Polychlorinated Biphenyl (PCB) Wastes Regulated Under Federal Law
16.44.310	<u>17.54.315</u>	Criteria for Identifying the Characteristics of Hazardous Waste
16.44.311	<u>17.54.316</u>	Criteria for Listing Hazardous Waste
16.44.320	<u>17.54.320</u>	Characteristics of Hazardous Waste--General
16.44.321	<u>17.54.321</u>	Characteristic of Ignitability
16.44.322	<u>17.54.322</u>	Characteristic of Corrosivity
16.44.323	<u>17.54.323</u>	Characteristic of Reactivity
16.44.324	<u>17.54.324</u>	Toxicity Characteristic
16.44.325	<u>17.54.325</u>	Reclassification to a Material other than a Waste
16.44.326	<u>17.54.326</u>	Standards and Criteria for Reclassification to a Material other than a Waste
16.44.327	<u>17.54.327</u>	Reclassification as a Boiler
16.44.328	<u>17.54.328</u>	Procedures for Reclassification
16.44.330	<u>17.54.330</u>	Lists of Hazardous Wastes--General
16.44.331	<u>17.54.331</u>	Hazardous Waste from Nonspecific Sources
16.44.332	<u>17.54.332</u>	Hazardous Waste from Specific Sources
16.44.333	<u>17.54.333</u>	Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof
16.44.334	<u>17.54.334</u>	Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis
16.44.335	<u>17.54.335</u>	Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities
16.44.350	<u>17.54.350</u>	Deletion of Certain Hazardous Waste

		Codes Following Equipment Cleaning and Replacement
16.44.351	<u>17.54.351</u>	Representative Sampling Methods; Toxicity Characteristic Leaching Procedure; Chemical Analysis Test Methods; and Testing Methods
16.44.352	<u>17.54.352</u>	Basis for Listing--Hazardous Constituents
16.44.401	<u>17.54.401</u>	General Provisions
16.44.402	<u>17.54.402</u>	Hazardous Waste Determination; Applicability of Rules to Generator Categories; Special Requirements for Conditionally Exempt Small Quantity Generators
16.44.403	<u>17.54.403</u>	Registration and EPA Identification Numbers
16.44.404	<u>17.54.404</u>	Maintenance of Registration and Registration Fees
16.44.405	<u>17.54.408</u>	Manifest General Requirements
16.44.406	<u>17.54.409</u>	Acquisition of Manifest Forms
16.44.407	<u>17.54.410</u>	Manifest Copies
16.44.408	<u>17.54.411</u>	Use of Manifest
16.44.410	<u>17.54.415</u>	Packaging
16.44.411	<u>17.54.416</u>	Labeling
16.44.412	<u>17.54.417</u>	Marking
16.44.413	<u>17.54.418</u>	Placarding
16.44.415	<u>17.54.421</u>	Requirements for Accumulation of Wastes and Accumulation in Satellite Locations
16.44.416	<u>17.54.425</u>	Recordkeeping
16.44.417	<u>17.54.426</u>	Annual Reporting
16.44.418	<u>17.54.427</u>	Exception Reporting
16.44.425	<u>17.54.435</u>	International Shipments
16.44.430	<u>17.54.440</u>	Farmers
16.44.501	<u>17.54.501</u>	General Provisions
16.44.502	<u>17.54.502</u>	EPA Identification Number
16.44.503	<u>17.54.503</u>	Transporter Registration
16.44.504	<u>17.54.504</u>	Applicability of Facility Requirements
16.44.505	<u>17.54.505</u>	Manifest System
16.44.506	<u>17.54.506</u>	Compliance with Manifest
16.44.508	<u>17.54.508</u>	Recordkeeping
16.44.511	<u>17.54.511</u>	Hazardous Waste Discharges--Immediate Action
16.44.512	<u>17.54.512</u>	Discharge Clean Up
16.44.524	<u>17.54.524</u>	Training of Transfer Facility Personnel
16.44.525	<u>17.54.525</u>	Transfer Facility Security Requirements
16.44.526	<u>17.54.526</u>	Emergency Preparedness, Prevention, and Response at Transfer Facilities
16.44.527	<u>17.54.527</u>	Transfer Facility Container Handling Requirements
16.44.528	<u>17.54.528</u>	Commercial Transfer Facility Annual

		Report
16.44.601	<u>17.54.601</u>	Purpose; Applicability
16.44.602	<u>17.54.602</u>	Prohibitions
16.44.603	<u>17.54.603</u>	Restrictions on Certain Hazardous Wastes
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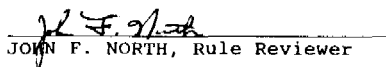
3. The transfer of rules 16.44.101 through 16.44.1112 is necessary because the Department of Health and Environmental Sciences was eliminated by Chapter 418, Laws of Montana 1995.

4. The transfer is effective July 1, 1995.


MARK A. SIMONICH, Director

Certified to the Secretary of State October 30, 1995.

Reviewed by:


JOHN F. NORTH, Rule Reviewer

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION OF
rules regarding staggered) NEW RULES I THROUGH VI
registration of motor carriers) (18.8.203 through 18.8.208)
with multiple fleets of vehicles)

TO: All Interested Persons.


1. On September 14, 1995, the Department of Transportation published notice of the proposed adoption of new rules concerning the registration of motor carriers with multiple fleets of vehicles, at page 1773 of the 1995 Montana Administrative Register, issue number 17.


2. The Department conducted a public hearing on October 5, 1995, which was presided over by W. D. Hutchison of the Agency Legal Services Bureau, Department of Justice. The Department received no written or oral comments.

3. The Department has adopted the new rules as proposed. They will become effective on January 1, 1996.

MONTANA DEPARTMENT OF TRANSPORTATION

By:


MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State October 26, 1995.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment)
of Rules 36.24.101 through)
36.24.104 and 36.24.106) NOTICE OF AMENDMENT
through 36.24.110 pertaining to)
wastewater treatment revolving)
fund act.)

To: All Interested Persons.

1. On September 14, 1995, the Department of Natural Resources and Conservation published a notice at pages 1778-1787 of the Montana Administrative Register, Issue No. 17, of the proposed amendment of rules 36.24.101 through 36.24.104 and 36.24.106 through 36.24.110, pertaining to the wastewater treatment revolving fund act.

2. The Department has amended rules 36.24.101, 36.24.103, 36.24.104, 36.24.106, and 36.24.108 through 36.24.110 exactly as proposed.

3. The Department has amended rules 36.24.102, 36.24.107 as proposed with the following changes:

36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES Subsections (1) through (26) remain the same.

(27) "Municipality" means ~~a city, town, county, water and sewer district, solid waste district or other local government unit or any combination thereof having authority to own and operate a water, sewage, wastewater, storm sewer or storm drainage, or solid waste management system, or wastewater treatment work.~~ municipality as defined in 75-5-1102(5), MCA, and Municipality may include a county, a county water and sewer district, or a solid waste district.

(28) remains the same.

(29) "Non-point source" means ~~a diffuse source of pollutants resulting from the activities of man over a relative large area, the effects of which normally must be addressed or controlled by a management or conservation practice. Non-point source pollutants are not traceable to discrete, identifiable origin, but generally result from land runoff, precipitation, drainage, or seepage. the source of pollutants which originates from~~ diffuse runoff, seepage, drainage or infiltration.

Subsections (30) through (48) remain the same.

36.24.107 FEES Subsection (1) remains the same.

AUTH: ~~75-5-105, MCA~~ 75-5-1105, MCA

IMP: ~~75-5-1113, MCA~~

4. The Department accepted written and oral comments through October 16, 1995. Written comments were received from the staff of the Administrative Code Committee and one state agency and

are summarized as follows, along with the responses of the Department:

Comment: The Department's statement that the purpose of the rules is to "expand the eligible water pollution control projects for which direct loans can be made to municipalities to include solid waste management systems as an approved non-point source project" provides a description of what the amendment will do, but does not provide a statement as to why the amendments are reasonably necessary at this time as required by 2-4-305(6)(b), MCA.

Response: Expanding the financing to non-point source control pollution projects has happened for several reasons. First, at the program's inception in 1991 the demand for wastewater project financing was anticipated to be so great that there would not be any funds left for non-point source projects. The experience of the program demonstrates that there are funds available for non-point source projects. Second, the E.P.A. has changed the requirements for operating non-point source projects such as landfills. These changes have increased the cost of improving operations and constructing landfills. This program allows non-point source projects to acquire low cost financing.

Comment: In its proposed amendment of rule 36.24.107, the Department cited 75-5-105, MCA, as its rulemaking authority. Since 75-5-105 pertains to confidentiality of records, the ACC staff believes this cite was a typographical error and suggests that the Department correct it in its adoption notice.

Response: The Department has checked that reference and the reference should be to 75-5-1105, MCA. The requested change has been made.

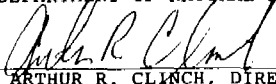
Comment: The Department has been asked to amend the definition for municipality so that the statute will not be unnecessarily repeated.

Response: The Department concurs and has made the requested change in the definition of municipality.

Comment: The Department has been asked to amend the definition for non-point source.

Response: The Department concurs and has made the requested change in the definition of non-point source.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State on October 31, 1995.

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

In the Matter of Amendment	)	NOTICE OF THE
and Adoption of Rules Per-	)	AMENDMENT OF RULES
taining to Pipeline Safety,	)	38.5.2202, 38.5.2301 AND
Including Drug and Alcohol	)	38.5.2311, AND ADOPTION
Testing.	)	OF NEW RULES I AND II

TO: All Interested Persons

1. On August 24, 1995 the Department of Public Service Regulation published notice of public hearing on the proposals identified in the above title at pages 1631-1633, issue number 16 of the 1995 Montana Administrative Register.

2. The Commission has adopted the following rules as proposed:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS

RULE II. 38.5.2327 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- ALCOHOL MISUSE PREVENTION PROGRAM

3. The Commission has adopted these rules as proposed, but with the following changes:

38.5.2301 SCOPE AND COMPLIANCE (1) Remains the same.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of § 39-2-304, MCA, as amended by Ch. 440 445, L. 1995.

(3) and (4) Remain the same. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2311 DRUG TESTS REQUIRED: PRE-EMPLOYMENT, POST-ACCIDENT, REASONABLE CAUSE AND RETURN TO DUTY (1)(a) and (b) Remain the same.

(c) Each operator ~~shall~~ may drug test each employee involved in a ~~work related accident that causes death or personal injury or property damage in excess of \$500 an "incident" as defined in ARM 38.5.2220, however, for events judged significant by the operator under ARM 38.5.2220(b)(ii), property damage must be in excess of \$1,500.~~

(d) Remains the same. AUTH 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE I. 38.5.2325 SCOPE AND COMPLIANCE -- ALCOHOL MISUSE PREVENTION PROGRAM (1) Remains the same.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions

and requirements of section 39-2-304, MCA, as amended by Ch. 440 445, L. 1995. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

4. Comments received and responses by the Commission:

GENERAL: For clarification in codification the PSC adds "Alcohol Misuse Prevention Program" to the heading of Rule I "Scope and Compliance." For correction the PSC notes that the proposed rules' references to "Ch. 448, L. 1995" are incorrect. The correct reference, "Ch. 445, L. 1995," has been inserted.

COMMENT: The ACLU of Montana and the Montana State AFL-CIO comment that recent legislation permits drug testing of employees believed to have contributed to an accident causing property damage exceeding \$1,500, not the \$500 as proposed in the rules.

RESPONSE: The PSC agrees and has amended the rule.

COMMENT: The Montana State AFL-CIO also comments that Section 39-2-304, MCA, permits drug testing as a condition of continued employment under the identified circumstances, but does not mandate it. It suggests that the PSC's proposed 38.5.2311(c) also be made permissive by striking "shall" and inserting "may."

RESPONSE: The PSC agrees and has amended the rule.

COMMENT: Montana-Dakota Utilities (MDU) comments that the PSC's proposed 38.5.2311(c)'s use of the terminology "work-related accident" mandates employee drug testing under circumstances not contemplated by federal or state law. It suggests that the language be changed to "incident as defined in ARM 38.5.2220."

RESPONSE: Without necessarily agreeing with all of MDU's expressed rationale, the PSC agrees with the problem identified and has amended the rule.


NANCY MCCAFFREE, Chair

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 30, 1995.


Reviewed By Robin A. McHugh

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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1995. This table includes those rules adopted during the period July 1, 1995 through September 30, 1995 and any proposed rule action that was 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, 1995, 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 1994 and 1995 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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