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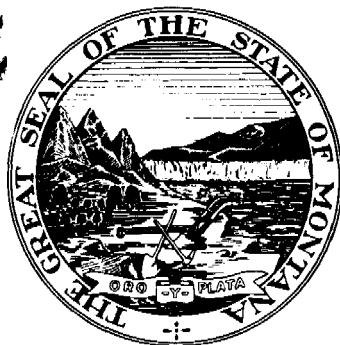
**RESERVE**

# **MONTANA ADMINISTRATIVE REGISTER**

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1996 ISSUE NO. 21  
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## 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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 BOARD OF LANDSCAPE ARCHITECTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT,  
amendment, repeal and adoption ) REPEAL AND ADOPTION OF RULES  
of rules pertaining to land ) PERTAINING TO LANDSCAPE  
scape architects ) ARCHITECTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 7, 1996, the Board of Landscape Architects proposes to amend, repeal and adopt rules pertaining to the practice of landscape architecture.

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

"8.24.403 APPLICATIONS (1) Registration: Applications received by the board shall be examined for conformity with the rules governing applications as established by the board. Applications accompanied by proper fees and in the form prescribed shall be entered in the records of the board. Applications not accompanied by proper fees or not conforming entirely to the rules shall be returned to the applicant, with instructions as to the correction thereof.

(2) Form of application: All applications for registration shall be made on printed forms provided by the board. Applications made otherwise will not be accepted. Applications must be clearly typewritten black or handprinted, suitable for photostatic copy, and all questions must be answered.

(a) The application shall be accompanied by an unmounted, recognizable, recent photograph of the applicant, (size 2 x 2 1/2 inches overall with face not less than 3/4 inches wide.)

(b) Applications shall be subscribed and sworn to before a notary public.

(3) All registrants applications and related data shall be kept in separate permanent files and maintained by the board.

(a) After 1 year has expired, a new application is required and must be made under the section of the law applicable on the date the new application is filed.

(b) A rejected applicant may request reconsideration at any time within 1 year, without additional fees, but additional or explanatory evidence bearing on the record as filed, and as of the date originally filed, must be furnished to the board.

(1) An application for license, renewal, examination or reinstatement must be made on a form provided by the board and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) The application must be typed or written in ink, signed and accompanied by the appropriate fee(s) and contain sufficient evidence that the applicant possesses the qualifications as set forth in Title 37, chapter 66, MCA, and rules promulgated thereunder.

(3) The applicant shall submit original or certified documents in support of the application. The board may permit such documents to be withdrawn upon substitution of a true copy.

(4) The applicant shall submit a recent, passport-type photograph of the applicant.

(5) The board shall review fully-completed applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(6) The applicant shall correct any deficiencies and resubmit the application as requested. Failure to re-submit the application within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

(7) The board shall notify an applicant in writing of the results of the evaluation of the application with 30 days of receipt of a complete application."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-202, 37-66-304, MCA

**REASON:** The proposed amendments attempt to incorporate the same substantive requirements as the current rule in a more concise and complete manner consistent with the style guidelines set forth in the Montana Legislative Council's Bill Drafting Manual. The requirement to sit for the exam within one year will now be found under the rule addressing examinations. The proposed amendments make clear the procedure for handling incomplete applications.

"8.24.404 SEALS AND ISSUE LICENSES (1) Seals: Upon registration by the board, the registrant will be advised that he shall secure an official seal, and will be informed of the requirements of the law with regard to the use of such seal.

(a) Seals of 2 different sizes are authorized; pocket seal, the size commercially designated as a 1 5/8 inch seal; or a desk seal, commercially designated as a 2 inch seal. The seal or rubber stamp will bear the registrant's name, registration number and the legend, "Licensed Landscape Architect", as prescribed by the board. Every registered landscape architect shall have a seal in design authorized by the board. This seal or rubber stamp with the registrant's counter signature shall appear on the title page of specifications and on every sheet of the working drawings when filed with public authorities. In case of a partnership, only

one of the registered principal partners shall be required to seal or stamp documents.

(2) ~~Certificate of registration: A certificate of registration will be issued by the board after approval of an application. The certificate shall be signed by the chairman and the secretary and shall bear the registration number of the registrant.~~

(a) ~~Applicants approved for registration as landscape architects shall receive one certificate of registration authorizing the practice of landscape architecture.~~

(1) In accordance with 37-66-308, MCA, landscape architects shall affix a seal from either a rubber stamp or a metal embosser to the appropriate documents. Either type may be used.

(2) Authorized sizes of seals include a pocket size, commercially designated as 1 5/8 inches and a desk size, commercially designated as 2 inches. In addition to the language required by 37-66-308, MCA, all seals must bear the individual's license number. Licensees may order seals through the board office in Helena.

(3) When the efforts of more than one licensed landscape architect combine to produce documents requiring a seal, only one licensed landscape architect will be required to affix a seal to the document."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-303, 37-66-308, MCA

REASON: The proposed amendments are necessary to avoid unnecessarily repeating the statute and incorporate uniform terminology with regard to licenses, avoiding use of the word certificate and registration. The substance of the current language directing appropriate size and type of seal is maintained in the proposed amendments. The proposed amendments require seals to bear the individual's license number; whereas this has not been a requirement previously. The requirement contained in the current amendments to countersign working drawings, when filed with public authorities, has been deleted as it may exceed statutory authority.

"8.24.405 EXAMINATIONS (1) ~~The application fee shall not be included in the examination fees.~~

(2) ~~Examinations will be held at such time and place as the board may designate. Applicants for whom examinations will be required, will be notified of the time and place at least 30 days in advance.~~

(3) ~~The examinee may review his examination paper in the board office within 90 days after being notified of his status. No notes are to be made nor any marks made on the examination paper.~~

(a) ~~The examination documents (test papers) will be retained in the examinee's file for a period of 2 years.~~

(4) ~~The examination required of applicants shall be the Uniform National Examination (UNE) administered by the board.~~

~~A minimum passing grade in each subject shall be determined by CLARB before registration will be issued.~~

~~(5) The board will accept proof of passage of the Uniform National Examination (UNE) in another jurisdiction as satisfactorily meeting the requirements of this section, providing the applicant for licensure submits official verification from the state in which they took the UNE, that they successfully took the UNE within the last five years from the date of application.~~

~~(1) As required by 37-66-305, MCA, all candidates must sit for a uniform national examination to be held at such time and place as the board may designate. Applications for taking the examination must be received in the board office 90 days prior to the next scheduled examination. The applicant will be notified in writing approximately 30 days prior to the examination date of whether the applicant may sit for the examination.~~

~~(2) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, as 42 U.S.C. 12101, et seq., relative to a board-administered examination, must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.~~

~~(3) Candidates shall provide a picture form of identification before being admitted to the examination.~~

~~(4) Applications of candidates who fail to sit for the examination within one year, after being notified of their eligibility, will be considered voluntarily withdrawn.~~

~~(5) The board shall notify candidates in writing of the results of the examination. No scores shall be released over the telephone or facsimile. The board shall release scores to the candidate or the candidate's legal representative only.~~

~~(6) Candidates who fail the examination and wish to review their examination must contact the testing agency directly."~~

~~Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-202; 37-66-305, 37-66-304, MCA~~

**REASON:** Subsection (1) is proposed for deletion because the distinction between the application fee and examination fee is set forth in ARM 8.24.409. Subsection (4) unnecessarily repeats the statute found at 37-66-305, MCA. Subsection (5) may engraft additional requirements on the statute, and is therefore, proposed for deletion. Otherwise the rule is being amended to comply with current contract provisions with the testing agency and to further clarify application deadlines, anti-fraud procedures and review procedures.

~~"8.24.406 RENEWALS (1) It shall be the duty of the board to notify every person registered under the act, of the date his certificate is required to be renewed for the one year period and the fee required for renewal. Such notice shall be mailed no later than June 10 of the current renewal year.~~

~~Renewal may be affected at any time during the month of June by payment of the fee.~~

~~(2) The failure on the part of any registrant to renew his certificate annually in the month of June as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of June shall be increased by 10¢ for each month or fraction of a month that payment of renewal is delayed up to six months after which the registrant must reapply as a new applicant. The board will send registrants a notice of the expiration of the renewal grace period at least 30 days prior to its termination.~~

(1) Renewal application forms will be sent to the licensee's address on file in the board office approximately 8-12 weeks prior to the renewal deadline of June 30. Failure to receive a renewal application form in no way releases the licensee from the obligation to renew prior to the expiration date of the license."

Auth: Sec. 37-1-101, 37-66-202, MCA; IMP, Sec. 37-1-101, 37-1-134, 37-66-307, MCA

**REASON:** The amendment is necessary to clarify the renewal procedure and the relative duties of the board and the licensee. Section 37-1-141, MCA, addresses when a licensee is required to pay a late fee, how long the board allows for late renewal, when the right to renew terminates, and when new application and requalification is required.

"8.24.408. ~~DUPLICATE OR LOST REPLACEMENT LICENSES~~ (1) A registrant requesting a new certificate of registration to replace a certificate shall surrender to the board if possible, the original certificate held by him and shall file with his request a sworn affidavit setting out the reason for his request so that the board records will reflect the reason for its issuance of a new certificate. Licensees shall immediately notify the board of lost, damaged or destroyed licenses and obtain a duplicate license by written request to the board, stating the reason for issuance of a duplicate and by paying the appropriate fee. Licensees who have lawfully changed their names may, in their discretion, obtain a replacement license, but shall notify the board of such change in writing."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-202, 37-66-303, MCA

**REASON:** The proposed amendment is necessary to make uniform the term license, and eliminate the use of certificate and register or registration. Further, the amendment, as proposed, clarifies the situations which may arise in regard to the need for a replacement license and notifies the licensee of the procedure to replace a license without requiring a sworn affidavit.

"8.24.409. ~~FEE SCHEDULE~~ (1) Fees shall be transmitted by money order or check payable to Montana state board of

landscape architects. The board assumes no responsibility for loss in transit of such remittances. ~~Applications not accompanied by the proper fee will be returned to the applicant.~~ All fees are non-refundable.

~~(2) In every case should the board deny the issuance of a certificate to any applicant, the fee deposited shall be retained by the board.~~

~~(3)~~ (2) The fees for landscape architects are as follows:

(a) Application ~~(not included in regular examination fees not included)~~ \$125.00

(b) Certificate License 50.00

~~(c) Examination~~ Test 1 22.00

Test 2 28.00

Test 3 77.00

Test 4 72.00

Test 5 89.00

Test 6 80.00

Test 7 42.00

(c) Examination fees are set by the testing agency and vary. Contact the board office for a current schedule of test section fees.

(d) will remain the same.

(e) Late fee 50.00

~~(e)~~ (f) Duplicate certificate license 35.00

(f) and (g) will remain the same, but will be renumbered (g) and (h).

~~(4) If, under extenuating circumstances as determined by the board, an applicant withdraws his/her examination application prior to the scheduled examination, the board may apply a portion of the examination fee paid to the subsequent examination."~~

Auth: Sec. 37-1-134, 37-66-202, MCA; IMP, Sec. 37-1-134, 37-66-301, 37-66-305, 37-66-307, 37-66-308, MCA

**REASON:** In the first subsection of the current rule, the sentence regarding incomplete applications is repeated elsewhere in the rules. Subsection (2) is being deleted because (1) already contains the language that fees are not refundable. The testing agency sets the fees for the individual sections of the exam and the fees vary every six months, therefore, it is impractical to list the individual fees in the rule. A flat rate of \$50 is proposed for the late fee to replace the incremental late fee of 10% per month which is proposed for repeal. The proposed flat fee would alleviate administration in this regard. Regardless of how many months a fee is late it costs the same to process the late application. The limitation on six months for renewal with a late fee is also being proposed for repeal. The proposed amendment allows renewal for a period of three years with payment of the late fee. Subsection (4) is proposed for deletion because, regardless of whether the individual sits for the examination, the board must pay a non-refundable fee for the examination when it is ordered.

3. The Board is proposing to repeal ARM 8.24.402 (authority 37-66-202, MCA; implementing 37-66-321, MCA); 8.24.407 (authority 37-66-202, MCA; implementing 37-66-306, MCA); 8.24.410 (authority 37-66-202, MCA; implementing 37-66-321, MCA); 8.24.411 (authority 37-66-202, MCA; implementing 37-66-323, MCA); 8.24.412 (authority 37-66-202, MCA; implementing 37-66-303, MCA) and 8.24.413 (authority 37-66-202, MCA; implementing 37-1-136, 37-66-321, 37-66-322, MCA). Text of the rules can be located at pages 8-787 through 8-792, Administrative Rules of Montana. ARM 8.24.402, 8.24.407, 8.24.410 and 8.24.412, 8.24.411 and 8.24.413 are being repealed because of the implementation of the Uniform Professional Licensing and Regulation Procedure Act mandated by the 1995 Legislature under House Bill 518. ARM 8.24.412 is being repealed because the rule unnecessarily repeats 37-66-303, MCA, and may engraft additional requirements upon the statute as it currently exists.

4. The proposed new rule will read as follows:

"I UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-316, MCA, and for the purpose of implementing Title 37, chapter 1, part 3, MCA, the board defines the following as unprofessional conduct:

- (a) failure to disclose and obtain the written permission of all interested parties when compensation for services will be accepted from more than one party on a project;
- (b) failure to disclose in writing to a client, any business association or direct or indirect financial interest which is substantial enough to influence the licensee's professional judgment in connection with the performance of services to a client;
- (c) soliciting or accepting compensation from material or equipment suppliers in return for specifying or endorsing the material or equipment;
- (d) failure to impartially interpret a building contract document as between the parties;
- (e) misrepresentation to a prospective or existing client by the licensee of the licensee's qualifications and scope of responsibility in connection with the work for which the licensed landscape architect claims credit;
- (f) failure to report to the local building inspector action of a client taken contrary to the licensee's advice that violate applicable state or municipal building laws and regulations and materially and adversely affect the safety to the public of a finished project;
- (g) failure to report to the board knowledge of a violation of the laws and rules of the board by another licensed landscape architect;
- (h) signing or attaching a seal to drawings, specifications, reports or other professional work for which the landscape architect does not have direct professional knowledge;

(i) failure to comply with the provisions of Title 37, chapter 66, MCA, or any rule promulgated thereunder."

Auth: Sec. 37-1-319, MCA; IMP, Sec. 37-66-202

**REASON:** This new rule is necessary to delete provisions which unnecessarily repeat 37-1-316, MCA, and other uniform licensing provisions found in Title 37, Chapter 1, Part 3, MCA.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoption in writing to the Board of Landscape Architects, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 5, 1996.

6. If a person who is directly affected by the proposed amendments, repeals and adoption 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 Landscape Architects, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 5, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7 based on the 71 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS  
JAMES FOLEY, CHAIRMAN

BY: \_\_\_\_\_

*Annie M. Bartos*  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

*Annie M. Bartos*  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 28, 1996.

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

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT,  
amendment, repeal and adoption ) REPEAL AND ADOPTION OF  
of rules pertaining to the ) RULES PERTAINING TO THE  
passenger tramway safety ) PASSENGER TRAMWAY SAFETY  
industry ) INDUSTRY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 7, 1996, the Board of Passenger Tramway Safety proposes to amend, repeal and adopt rules pertaining to the passenger tramway safety industry.

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

"8.63.503 ADDITIONAL DEFINITIONS The following words and phrases, when used in these rules, have the following meanings:  
(1) through (4)(d) will remain the same.

~~(5) "Certified tramway design engineer, certified tramway construction engineer, and certified tramway inspection engineer" shall mean an engineer who is currently registered or has been accepted on a temporary project limited basis, by the Montana, and who has been duly certified by the board of passenger tramway safety. Only a board certified engineer shall certify compliance with the ANSI Standard and these tramway rules.~~

(6) through (10) will remain the same, but will be renumbered (5) through (9)."

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

"8.63.504 REGISTRATION OF NEW, RELOCATED OR MAJOR MODIFICATIONS OF TRAMWAYS (1) Before the commencement of any new construction, and/or major modification and/or relocation of any existing tramway, the owner shall submit, to on a form provided by the board, an application for a construction permit accompanied by the following information:

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

(c) name, and address and license number of the Montana passenger tramway certified engineer in responsible charge of for the tramway design of tramway. If the design engineer will perform All engineering services performed within the state of Montana, he must be performed by an engineer licensed by the Montana board of professional engineers and professional land surveyors or obtain from it a temporary permit under 37-67-319, MCA.

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

(4) Prior to commencement of construction the board must be informed of the name of the ~~certified tramway~~ construction

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

(5) and (5)(a) will remain the same.

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

(c) will remain the same.

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

(6) The owner will retain an ~~certified~~ inspection engineer to inspect and supervise a comprehensive acceptance testing of all aspects of the new tramway. The engineer's report of inspection and testing shall specifically note any items which fail to comply with the standards of these rules and the applicable ANSI Standard and shall be transmitted by him directly to the board. Two copies shall be delivered to the owner.

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

(9) The board of passenger tramway safety's contracted inspection engineer shall not serve as the ~~certified~~ inspection engineer for the post construction inspection and acceptance testing of any new, relocated or major modified tramway.

(a) The board's contracted inspection engineer or other qualified designee shall observe the acceptance testing procedure as outlined by the ~~certified~~ design engineer retained by the ski area, and shall assure that the procedure meets the requirements of the Montana board of passenger tramway safety laws and rules and the ANSI B77.1 standards. The contracted inspection engineer shall, at the time of the inspection, submit a written report to the ski area liaison regarding items of non-compliance or deficiency and further report these findings to the board.

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

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-711, 23-2-712, 23-2-713, 23-2-721, 23-2-722, 23-2-723, MCA

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

(2) through (7) will remain the same."

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

"8.63.509 VARIANCE FROM STANDARDS (1) through (1)(a)(i) will remain the same.

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

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

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

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

(6) Major modifications to an existing tramway, as defined in ARM 8.63.503, will cause the existing tramway to be considered as a new tramway for the purposes of these rules, except where such modifications are in compliance with ANSI B77.1, as adopted herein, and have no adverse effect on the remainder of the tramway system as certified by a board certified qualified design engineer.

(7) through (9)(c) will remain the same."

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

"8.63.518 REGISTRATION OF EXISTING TRAMWAYS (1) and (1)(a) will remain the same.

(i) name, address and Montana registration number of the certified tramway inspection engineer performing the inspection;

(ii) will remain the same.

(b) a copy of the general inspection report performed by the certified tramway inspection engineer;

(c) will remain the same."

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

**REASON:** These rules are being proposed to delete certification of engineers by the board as they have no statutory authority to be certifying engineers. The amendments also aid in readability and understanding.

3. The Board is proposing to repeal ARM 8.63.507 (authority section 23-2-721, MCA; implementing sections 23-2-

701, 23-2-711, 23-2-712, 23-2-713, 23-2-721, 23-2-722, MCA). The text of this rule is located at pages 8-1736 and 8-1737, Administrative Rules of Montana. This rule is being repealed because the Board has determined that its rulemaking authority does not permit the Board to certify engineers. Consequently, the Board has elected to accept certification from the Montana Board of Professional Engineers and Professional Land Surveyors.

4. The proposed new rule will read as follows:

"I ENGINEER CERTIFYING STATEMENT (1) All engineers who design, construct, inspect or otherwise provide engineering services that require submission of a form or written inspection report to the board for a tramway shall provide and sign the following certifying statement: "I hereby certify and attest that I am registered with or hold a temporary practice permit with the Montana Board of Professional Engineers and Professional Land Surveyors. Furthermore, I certify and attest that I have the knowledge and expertise, either through education or experience, in the specific technical field of engineering, to design, construct or inspect the mentioned tramway and that the tramway design, construction and or inspection was done in conformance with the current edition of ANSI B77.1."

Auth: Sec. 23-2-721, 23-2-701, MCA; IMP, Sec. 37-2-722, 23-2-721, MCA

REASON: Because the Board lacks sufficient authority to certify engineers, this rule is designed to provide the Board with sufficient evidence that the engineer is qualified to perform the assigned duties. This is accomplished by requiring a certifying statement from engineers who are performing services for a tramway in Montana.

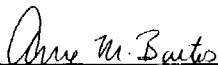
5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoption in writing to the Board of Passenger Tramway Safety, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 5, 1996.

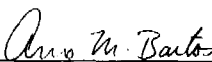
6. If a person who is directly affected by the proposed amendments, repeal and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 5, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeal and adoption 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 7 based on the 73 licensees in Montana.

BOARD OF PASSENGER TRAMWAY SAFETY  
LYLE MEEKS, CHAIRMAN

  
ANNIE M. BARTOS  
RULE REVIEWER

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

Certified to the Secretary of State, October 28, 1996.

BEFORE THE WEIGHTS AND MEASURES BUREAU  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of the rules ) OF RULES PERTAINING TO  
establishing standards for ) 8.77.302 NIST HANDBOOK 130 -  
petroleum products ) UNIFORM LAWS AND REGULATIONS

NO PUBLIC HEARING CONTEMPLATED

1. On December 7, 1996, the Weights and Measures Bureau proposes to amend the above-stated rule.

2. The Bureau is proposing to amend ARM 8.77.302. This amendment will read as follows: (new matter underlined, deleted matter interlined)

8.77.302 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS

(1) The weights and measures bureau with the advice and counsel of the national institute of standards and technology hereby adopts, except as provided in (2), the regulations concerning fuel specifications and gasoline-oxygenate blends. The regulations are published in the National Institute of Standards and Technology Handbook 130, Part IV, G. Uniform Regulation of Engine Fuels, Petroleum Products, and Automotive Lubricants, 1996 Edition. A copy of Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001.

(2) The following are the minimum antiknock index requirements for the various grades of gasoline sold in Montana and supersede the minimum requirements contained in paragraph 3.2.5, Table 1, p. 137, of Handbook 130:

<u>Term</u>	<u>Minimum Antiknock Index</u>
<u>Premium, Super, Supreme High Test</u>	91
<u>Midgrade, Plus</u>	88
<u>Regular Unleaded with Lead Substitute</u>	87
<u>Regular, Unleaded (alone)</u>	85.5

Auth: Sec. 82-15-102, MCA; IMP, Sec. 82-15-103, MCA

**REASON:** This proposed amendment is required to adjust the minimum antiknock index requirements for gasoline to reflect Montana's altitude consistent with ASTM standards. The proposed new octane standards are currently being met by gasoline sold in Montana; so the change in the administrative

rule will have no practical effect on the petroleum industry or on the price of gasoline.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Weights and Measures Bureau, 1424 Ninth Avenue, P.O. Box 200512, Helena, Montana 59620-0512, to be received no later than 5:00 p.m., December 5, 1996.

4. If a person who is directly affected by the proposed amendment 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 Weights and Measures Bureau, 1424 Ninth Avenue, P.O. Box 200512, Helena, Montana 59620-0512, to be received no later than 5:00 p.m., December 5, 1996.

5. If the Bureau receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, 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 150 based on the 1500 licensees in Montana.

WEIGHTS AND MEASURES BUREAU  
JACK KANE, BUREAU CHIEF

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 28, 1996.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
amendment of Adult	)	TO ARM 10.66.101 Requirements
Secondary Education	)	Which Must be Met
	)	in Order to Receive High School
	)	Equivalency Diplomas

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On December 7, 1996, the Board of Public Education proposes to amend ARM 10.66.101 Requirement Which Must be Met in Order to Receive High School Equivalency Diplomas.

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

10.66.101 REQUIREMENTS WHICH MUST BE MET IN ORDER TO  
RECEIVE HIGH SCHOOL EQUIVALENCY DIPLOMAS

(1) will remain the same.

(2) Applicants shall attain ~~a standard scores of 35 or above on each of the five tests and average a standard score of 45 on all five GED tests (225 points) on the GED Tests that meet or exceed the minimum score requirement established by the policy commission of the General Educational Development (GED) Testing Service, Washington, D.C.~~

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


AUTH: Sec. 20-2-121 (1), MCA IMP: Sec. 20-4-120 (1), MCA

3. The board proposes this amendment to the rule in order to meet the required change in test score minimums affecting all jurisdictions utilizing the GED Testing Program. The American Council on Education, GED Testing Service, Washington, D.C., requires all testing jurisdictions to have test scores minimums raised by January 1, 1997.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. Any comments must be received no later than December 6, 1996.

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 a written request for a hearing and submit this request along with any written comments he has to Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. A written request for hearing must be received no later than December 6, 1996.

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. 10% 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 10/18/96.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
amendment of Teacher	)	TO ARM 10.57.107 EMERGENCY
Certification	)	AUTHORIZATION OF EMPLOYMENT

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On January 9, 1997 the Board of Public Education proposes to amend ARM 10.57.107 Emergency Authorization of Employment.

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

10.57.107 EMERGENCY AUTHORIZATION OF EMPLOYMENT

(1) through (2)(c)(ii) will remain the same.

(iii) shall provide acceptable evidence of American Indian cultural expertise related to the area for which the emergency authorization of employment is being sought.

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

AUTH: Sec. 20-2-121(1), MCA IMP: Sec. 20-4-120(1), MCA

3. The board proposes this amendment to the rule in order to specifically identify the area of cultural expertise for which the rule was adopted.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. Any comments must be received no later than January 9, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT. Requests must be received no later than January 9, 1997.

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 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 10/22/96.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the )  
amendment of Teacher ) NOTICE OF PROPOSED AMENDMENT TO  
Education Programs ) ARM 10.58.505 BUSINESS EDUCATION

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On January 9, 1997 the Board of Public Education proposes to amend ARM 10.58.505 Business Education.
2. The rule as proposed to be amended provides as follows:

10.58.505 BUSINESS EDUCATION

(1) through (10) will remain the same.

~~(11) use and present a symbolic, outline, or alphabetic note taking system, and develop student note taking skills using these systems;~~

(12)(11) understand, use, and present the elements and techniques for evaluating systems of business hardware and software;

(13)(12) identify and present opportunities in marketing, merchandising, and management;

(14)(13) understand and present the basics of a free enterprise system;

(15)(14) understand the philosophy and objectives of vocational education and occupational technology, and apply them in classroom activities;

(16)(15) understand and use the process for developing, adopting, adapting, and revising vocational programs and curricula, including the use of advisory committees, business partnerships and classroom management techniques;

(17)(16) plan and administer a cooperative education program;

(18)(17) organize and advise a vocational student organization;

(19)(18) identify careers and opportunities in business and related occupational fields, and assess the interests, aptitudes, personal qualities, and other information necessary for students to make informed career choices;

(20)(19) identify and present the skills needed to successfully obtain and maintain employment;

(21)(20) conduct studies of the occupational outcomes of former students which provide current occupational information for classroom use obtained from follow-up studies;

(22)(21) complete or augment an appropriately successful related occupational experience or internship;

(23)(22) understand and present effective techniques for business problem solving; and

~~(24)~~(23) understand and present the basic concept of personal finance and consumer skills.

AUTH: Sec. 20-2-121(1), MCA IMP: Sec. 20-4-120(1), MCA

3. The board proposes this amendment to the rule in order to meet the recent developments in technology that have made the skills of symbolic, outline, or alphabetic note taking obsolete.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. Any comments must be received no later than January 9, 1997.

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 a written request for a hearing and submit this request along with any written comments he has to Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620. A written request for hearing must be received no later than January 9, 1997.

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. 10% 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 10/22/96.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC  
of rules 18.8.509 and 18.8.1101 ) HEARING ON  
concerning the Motor Carrier ) PROPOSED AMENDMENT  
Services program )

TO: All Interested Persons.

1. On December 20, 1996, at 9 a.m., a public hearing will be held in the auditorium of the Department of Transportation building, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rules 18.8.509 and 18.8.1101 concerning the Motor Carrier Services program.

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

18.8.509 GENERAL PERMIT RESTRICTIONS

(1) through (10) remain the same.

(11) The motor carrier services division administrator may, upon application in writing showing good cause and in the interests of the safety of the traveling public, allow special permits to be issued for travel at night, on Saturdays and Sundays, and on holidays.

AUTH: 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

REASON: Subsection (11) is proposed to assure that under unusual circumstances loads requiring a special permit can be transported on a day or at a time which will mitigate traffic congestion, assure safety for the traveling public and the motor carrier and provide protection for public roadways and state, county and city property.

18.8.1101 MOVEMENT OF HOUSES, BUILDINGS, EXTREMELY HEAVY MACHINERY, AND OTHER LARGE AND UNUSUAL OBJECTS (1) Movement by special permit of houses, buildings, heavy machinery and other large and unusual objects, which do not qualify under other rules and regulations of the department of transportation, shall be at the discretion of the department of transportation. Only the administrator of the motor carrier services division or his designee may impose additional requirements in addition to those specified in other rules to ensure safety of the traveling public and protect department property.

(2) through (4) remain the same.

(5) The permittee shall furnish flag vehicles, flag persons, and such signs as required by the department of transportation. Whenever a move is proposed which requires using the opposite side of an interstate highway, traveling against traffic, or using the authorized crossover on interstate highways, the mover shall establish a work zone. Signing and traffic control must comply with the requirements of the Manual on Uniform Traffic Control Devices (MUTCD), 1988 edition, which is hereby incorporated by reference. Copies are available from the Motor Carrier Services Division, Box 4639, Helena, MT 59604, (406) 444-6130.

(6) through (9) remain the same.

(10) The permittee is responsible for damage to department property. Failure to correct damage to department property could result in revocation of permit privileges. Repairs not accomplished within 48 hours of completion of the move will be repaired by the department and expenses incurred by the department will be billed to the permittee.

(11) Convoys of a maximum of two buildings will be allowed on a case-by-case basis, and an application must be submitted in writing to the administrator of the motor carrier services division.

(12) Class one dimensions and moving requirements consist of the following:

(a) Dimensions may not exceed 32 feet wide, 24 feet high, 120 feet overall length;

(b) Weight does not require bridge bureau approval;

(c) M.C.S. form 32-J will be approved in two working days;

(d) Three flag vehicles are required. Additional flag vehicles may be required if road construction, route of travel, or other conditions impose a hazard;

(e) Travel is allowed during daylight hours only from sunrise Monday until 3 p.m. Friday, and from sunrise Saturday until 12 noon on Sunday on all highways not designated on the "red route restrictions" map.

(f) Travel is allowed during daylight hours only from sunrise Monday until 3 p.m. Friday on highways indicated on the "red route restrictions" map available from the Motor Carrier Services Division, Box 4639, Helena, MT 59604, (406) 444-6130.

(13) Class two dimensions and moving requirements consist of the following:

(a) Dimensions exceed 32 feet wide, 24 feet high or if height of building and/or route requires utilities to cut power lines, 120 feet overall length;

(b) Weight requires approval of the department's bridge bureau;

(c) Route of travel requires establishment of a work zone;

(d) \$15,000 bond must be on file in the Helena motor carrier services division;

(e) M.C.S. form 32-J will be approved within a maximum of ten days;

(f) Four flag vehicles are required;

(g) Travel is allowed during daylight hours only, from sunrise Monday until Friday at 3 p.m.

AUTH: 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

REASON: Subsection (1) is amended to insure standardized, uniform requirements statewide. Subsection (5) is amended to assure safety for the traveling public through use of standard, universally recognized traffic control devices. New subsection (10) provides clarification and uniformity for the motor carrier industry while at the same time assuring protection of the taxpayer's investment in our highway system. Subsections (11) through (13) provide clarification and uniformity for movement of buildings and other extremely large, unusual objects.

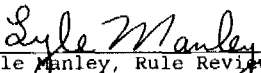
3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Dave Galt, Motor Carrier Services Division, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m. on December 20, 1996.

4. Nick A. Rotering has been designated to preside over and conduct the hearing.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director

  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State October 28, 1996.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules I through XVIII	)	ON THE PROPOSED ADOPTION
pertaining to the Montana	)	OF RULES
Telecommunications Access	)	
Program	)	

TO: All Interested Persons

1. On December 5, 1996, at 9:30 a.m., a public hearing will be held in Room 207 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of rules I through XVIII pertaining to the Montana Telecommunications Access Program.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 27, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

RULE 1 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Appropriate communication device" means the communication device which most efficiently allows access to the telephone system by a person with a telephone usage disability.

(2) "Committee" means the committee on telecommunications access services, formerly known as the committee on telecommunications access services for the handicapped, established in 2-15-2212, MCA.

(3) "Deaf" means having hearing in both ears which is impaired to the degree that the person is unable to understand speech on the telephone without the use of specialized telecommunications equipment.

(4) "Deaf-blind" means:

(a) being deaf, severely hearing impaired or hard of hearing; and

(b) being blind or visually impaired; and

(c) requiring the use of specialized telecommunications equipment to communicate effectively on the telephone.

(5) "Director" means the person employed by the committee on telecommunications services to administer the Montana Telecommunications Access Program (MTAP).

(6) "Gross income" means the total income, including earned and unearned income, before taxes or any other deductions, of the individual applying for or receiving a telecommunication device from MTAP. Gross income does not include the income of other members of the individual's household and does not include in kind income.

(7) "Hard of hearing" means having a hearing loss to the extent that the person requires specialized telecommunications equipment to communicate effectively on the telephone.

(8) "MTAP" means the Montana Telecommunications Access Program.

(9) "Local exchange company" means a telecommunications company which provides telephone access lines or wireless service to members of the public who are its customers.

(10) "Person with a telephone usage disability" means an individual who is deaf, deaf-blind, hard-of-hearing, or speech impaired and is in need of specialized telecommunications equipment.

(11) "Program" means the Montana Telecommunications Access Program.

(12) "Provider" means a telecommunications company which provides telephone access lines or wireless service to members of the public; a local exchange company.

(13) "Specialized telecommunications equipment" means any telecommunications device which enables or assists a person with a telephone usage disability to communicate with others by means of the conventional telephone network. The term includes but is not limited to telecommunications devices, puff-blow devices, electronic artificial larynx devices, amplified handsets and telebraille.

(14) "Speech impaired" means having a speech impediment which renders speech on an ordinary telephone unclear and susceptible to misunderstanding.

(15) "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information.

AUTH: 53-19-307, MCA

IMP: 53-19-305 and 53-19-307, MCA

RULE II ASSESSMENT (1) A charge of 10 cents per month shall be assessed on each telephone access line.

(2) Subscribers are not required to pay the assessment in the month they are connected to the local exchange company but must pay the assessment in the month they are disconnected.

AUTH: 53-19-307, MCA

IMP: 53-19-311, MCA

RULE III EXEMPTIONS (1) The following are exempt from

the assessment provided in [Rule II]:

(a) federal agencies and tax-exempt instrumentalities of the federal government;

(b) Indian tribes, with regard to access lines on the tribe's reservation only;

(c) enrolled members of Indian tribes, with regard to access lines on a reservation only;

(d) official station testing lines owned by a provider; and

(e) coin operated telephones owned by a provider.

(2) All other subscribers of a local exchange company must pay the assessment provided in [Rule II].

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE IV REPORTING REQUIREMENTS (1) Each provider must complete and file a quarterly reporting form on or before the last day of the month following the end of each calendar quarter.

(2) The quarterly reporting form must provide the following information:

(a) ending date of the calendar quarter covered by the return being filed;

(b) name and address of the provider;

(c) total number of exempt and nonexempt access lines for the calendar quarter;

(d) number of nonexempt access lines for the quarter;

(e) amount of fee computed by multiplying the total number of nonexempt access lines times 10 cents per month of service during the quarter;

(f) credits for uncollectible accounts, incorrect billings and other appropriate adjustments if the provider elects to take a credit;

(g) amounts collected in the quarter for any accounts reported as uncollectible in a previous quarter if the provider has elected to take a credit under (f);

(h) credits for 3/4 of 1% of the total charges billed and collected each month to cover administrative expenses if the provider elects to take a credit; and

(i) the amount remitted with the return.

AUTH: 53-19-307, MCA

IMP: 53-19-305 and 53-19-311, MCA

RULE V EXAMINATION OF RECORDS (1) An authorized agent of the committee may examine the records and other supporting data from which the quarterly returns required by [Rule III] were prepared during regular business hours with a minimum of 2 weeks prior notice.

AUTH: 53-19-307, MCA

IMP: 53-19-312, MCA

RULE VI. LOANS (1) A person who satisfies the eligibility requirements of [Rule XI] is eligible for a cost free loan of specialized telecommunications equipment.

(2) If more than one person in a single household is eligible for a loan, the household is not limited to one piece of equipment but is entitled to specialized telecommunications equipment for each eligible member of the household.

AUTH: 53-19-307, MCA

IMP: 53-19-307, MCA

RULE VII OWNERSHIP (1) All equipment loaned through MTAP will remain the property of the State of Montana. All equipment will be recorded and tracked by serial number, State of Montana identification tag, and name, address and telephone number of recipient.

AUTH: 53-19-307, MCA

IMP: 53-19-307, MCA

RULE VIII SECURITY DEPOSIT (1) Each recipient of equipment with a value of more than \$1,000 must post a security deposit of \$5.00.

(2) The director may waive payment of the security deposit provided in (1) if payment would create a financial hardship for the recipient.

(3) The deposit will be refunded to the recipient, without payment of interest, at the time the equipment is returned to the program in usable condition.

AUTH: 53-19-307, MCA

IMP: 53-19-307, MCA

RULE IX PROVISION OF INFORMATION (1) Upon request, the program will provide an application form and informational brochure describing the eligibility requirements and application process.

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE X APPLICATION PROCESS (1) A person wishing to receive a loan of specialized telecommunications equipment shall complete the application and return it to the address designated in the application form. Application may be made by the person wishing to receive equipment, by a parent or legal guardian of a person under the age of 18 years or by a person duly authorized by the person or by a court to act on the person's behalf.

(2) In the case of an unemancipated person under the age

of 18 years, a parent or legal guardian must sign the application and must assume full responsibility for the equipment and services. This is not required in the case of an emancipated person under the age of 18.

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE XI ELIGIBILITY CRITERIA (1) To be eligible for a loan of specialized telecommunications equipment, an applicant must:

(a) be a resident of Montana;  
(b) have a telephone usage disability;  
(c) be able to demonstrate that the applicant would benefit from the use of specialized telecommunications equipment;

(d) be able to demonstrate the applicant's ability to understand the nature and use of the equipment;

(e) have regular access to telephone service; and

(f) have gross annual income of \$35,000 or less.

(2) A person who is otherwise eligible shall not be eligible for a loan of equipment if:

(a) the person lives in a residential or treatment facility which directly or indirectly receives federal funding and which is required to be fully telephone accessible to all residents under the Rehabilitation Act of 1973, 29 U.S.C. 774; and

(b) is eligible for and can obtain specialized telecommunications devices through such federal provisions.

AUTH: 53-19-307, MCA

IMP: 53-19-307, MCA

RULE XII VERIFICATION REQUIREMENTS (1) The program may request from the applicant verification of the applicant's gross annual income and/or the applicant's telephone usage disability. The applicant must provide requested verification within 30 days of the date of request or the application will be denied.

AUTH: 53-19-307, MCA

IMP: 53-19-305 and 53-19-307, MCA

RULE XIII NOTICES (1) The applicant will be notified in writing whether the application is denied or approved. Notice must be given within 30 days of the date of receipt of the application if no verification is requested. If verification of income and/or telephone usage disability is requested, notice must be given within 30 days of the date of receipt of the necessary verification.

(2) If the application is approved, the notice must state the location where applicant may receive the equipment and the date, time and place of the training required under [Rule XVI].

(3) If the application is denied, the notice must state the reason for the denial and must notify the applicant of the appeal procedure provided in [Rule XVIII].

(4) If a loan of equipment is terminated due to failure to comply with any of the conditions specified in [Rule XVI] or for any other reason, the recipient must be notified in writing of the reason for the termination and of the appeal procedure provided in [Rule XVIII].

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE XIV DETERMINATION OF APPROPRIATE TELECOMMUNICATION

DEVICE (1) The program shall consult with the applicant to determine the appropriate telecommunication device. However, the program shall make the final determination, taking into consideration the needs and wishes of the applicant and available funding.

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE XV PRIORITIES (1) If program resources are not sufficient to provide equipment to all eligible applicants, equipment will be loaned on a first come, first served basis.

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE XVI REQUIRED TRAINING AND CONDITIONS OF ACCEPTANCE

(1) A person whose application for a loan has been approved must complete training as required by the program and must demonstrate the ability to use the equipment before specialized telecommunications equipment will be issued.

(2) A person who has completed the required training and has been issued equipment may be required to complete further training before being issued new or replacement equipment.

(3) Before equipment is issued, the person to receive equipment, or the person's parent or legal guardian if the person is under the age of 18 years and is not emancipated, must agree in writing to the following conditions:

(a) The equipment is for use with a telephone and for no other purpose. If a recipient no longer has regular access to telephone service, the loan will be terminated and the equipment must be returned to the program.

(b) The recipient must protect the equipment from damage. Any equipment which is damaged by deliberate abuse or misuse will not be replaced.

(c) Any equipment needing repair must be taken to a repair service authorized by the program or to the program office immediately. The recipient shall not take the equipment apart or attempt to repair it.

(d) Stolen equipment must be reported to the proper law enforcement authority within 24 hours of the discovery of the theft and a copy of the written theft report must be sent to the program within five days of the date of making the report.

(e) Lost equipment, other than that reported stolen, must be reported to the program within 5 days of loss. Lost equipment will not be replaced.

(f) Because the equipment is owned by the State of Montana, it may not be taken out-of-state for more than 90 consecutive days without written authorization in advance from the program.

(g) If the recipient's address changes within the state of Montana, recipient must notify the program of the new address within 20 days after the date of the move. If the recipient moves out of the state of Montana, the equipment must be returned prior to the move.

(h) The recipient must not sell, give away or loan the equipment to any other person or entity.

(i) The recipient will be liable to the state of Montana for any claims for damages or expenses arising from the misuse of loaned equipment by any person or entity.

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE XVII GROUND FOR APPEAL (1) In accordance with the procedures set forth in [RULE XVIII], an applicant or recipient may appeal any decision of the program regarding:

(a) eligibility for a loan;

(b) what is the appropriate communication device for the applicant or recipient;

(c) priority for distribution of communication devices; or

(d) termination of a loan.

AUTH: 53-19-307, MCA

IMP: 53-19-305, MCA

RULE XVIII APPEAL PROCEDURES (1) To appeal any program decision specified in [RULE XVII], an applicant or recipient must submit to the program a clear written statement that the applicant or recipient is dissatisfied with the decision and wishes to appeal it. The statement must be received by the program within 60 calendar days after the date notice of the decision is given to the applicant or recipient.

(a) If notice of a program decision is given by mail, the 60-day appeal period begins to run the day after the notice is mailed.

(2) Within 30 calendar days after receipt of an appeal, a representative of the program shall meet with the applicant or recipient to attempt to informally resolve the disputed matter. Within 10 calendar days after this informal meeting, the program shall prepare a written summary of the issues in dispute and the

proposed resolution and shall provide a copy to the applicant or recipient and the director.

(3) An applicant or recipient who is not satisfied with the proposed resolution of the matter after the informal meeting may request a hearing before the committee. A hearing before the committee must be held within 90 days of the date of receipt of the request for hearing. At the hearing the applicant or recipient may:

- (a) be represented by legal counsel or a lay advocate; and
- (b) may present evidence in support of the applicant or recipient's position, including but not limited to the testimony of witnesses, documents, or other written exhibits.

(4) When a recipient's loan is terminated from the program and the recipient files a timely appeal of the termination, the recipient shall be entitled to keep the equipment until the disputed matter is resolved. The matter is resolved when:

- (a) the recipient accepts the proposed resolution after the informal meeting;
- (b) the committee renders a decision after hearing; or
- (c) the recipient withdraws the appeal.

AUTH: 53-19-307, MCA  
IMP: 53-19-305, MCA

3. In 1989 the Montana Legislature passed legislation creating the Committee on Telecommunications Services for the Handicapped (the Committee) to administer a program to provide specialized telecommunications equipment and services to persons requiring such equipment and services to communicate effectively on the telephone. When the Montana Telecommunications Access Program (the Program) was established pursuant to this legislation, it was determined that the adoption of administrative rules was not necessary, as the 10¢ assessment per telephone access line to fund the Program is mandated by the statute and thus is self-executing. For this reason no rules were formally adopted in accordance with the requirements of the Montana Administrative Procedure Act. The Committee did adopt and approve internal organizational rules in March 1990 which addressed all of the issues covered in the current proposed administrative rules.


However, the Legislative Audit Division recently conducted an audit of the Program and recommended that administrative rules be adopted to address such matters as eligibility requirements, security deposit and the application and appeal process. The adoption of these rules is therefore necessary to comply with the audit recommendation.

It should be noted that at the time the statute was adopted in 1989, the term "handicapped" was commonly used to refer to individuals with disabilities. Subsequently with the passage of the Americans with Disabilities Act the term "disabled" has

replaced "handicapped" as the preferred manner of referring to individuals with any type of disability. Thus the Committee has changed its name to the Committee on Telecommunications Access Services, dropping the phrase "for the handicapped." Therefore the rules refer to the Committee by the name which it currently uses rather than the name which is given to it in the statute, while referencing its statutory title.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than December 9, 1996.

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

  
Rule Reviewer

  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 28, 1996.

BEFORE THE BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of amendment, ) NOTICE OF AMENDMENT, REPEAL  
repeal and adoption of rules ) AND ADOPTION OF RULES PER-  
pertaining to the practice of) TAINING TO THE PRACTICE OF  
speech-language pathology and) SPEECH-LANGUAGE PATHOLOGY AND  
audiology ) AUDIOLOGY

TO: All Interested Persons:

1. August 8, 1996, the Board of Speech-Language Pathologists and Audiologists published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of speech-language pathology and audiology at page 2103, 1996 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 8.62.413, 8.62.418, 8.62.701, 8.62.702 and 8.62.703; repealed ARM 8.62.419; and adopted new rules I (8.62.420), II (8.62.421), III (8.62.422) IV (8.62.423) and V (8.62.424) exactly as proposed. The Board has amended ARM 8.62.504 as proposed, but with the following changes:

- "8.62.504 NONALLOWABLE FUNCTIONS OF AIDES (1) through (3) will remain the same as proposed.
- (a) completion of 100 graduate level clinical clock hours, of which at least 25 hours were diagnostic;<sup>7,1</sup>
- (b) will remain the same as proposed, but the ending comma will be amended to a semi-colon.
- (c) a minimum requirement of 10% additional supervision of 10% (beyond the 20% required in ARM 8.52.502) while performing diagnostic and interpretive functions in the first year of nonallowable activities. The supervision may return to the 20% requirement of ARM 8.62.502 after the first year, at the discretion of the supervising speech-language pathologist or audiologist.
- (d) and (e) will remain the same as proposed."

3. The Board accepted written comment through September 5, 1996. The Board has thoroughly considered all comments and testimony received. Those comments, in summary, and the Board's responses follow:

COMMENT NO. 1: One comment was received stating ARM 8.62.504(3)(c) should be amended to insert the phrases "a minimum requirement" of an additional 10% supervision, and ... the supervision may return to the 20% requirement "at the discretion of the supervising speech pathologist or audiologist." The comment stated these changes would give the professional therapist the leeway to provide additional supervision in situations where the need was apparent, thus protecting consumers and ensuring quality services.

RESPONSE: The Board concurred with the comment and will change the rule as shown above. The Board noted that placing

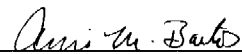
discretion in the rule makes it a stronger rule for the supervisor to go to an employer and request that more supervision would be appropriate by showing that the 10% additional supervision is a minimum requirement. The strict language in the proposed rule would not have allowed for flexibility and different amounts of supervision above the minimum as an aide may require, but the rule language changes will allow for this.

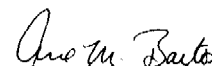
**COMMENT:** The Board commented that ARM 8.62.504(3)(a) should include the phrase "graduate level" to define the clinical clock hours being required.

**RESPONSE:** The Board always intended that the clock hours refer to graduate level only, as the Board will not allow undergraduate clock hours under this non-allowable functions rule. The phrase will therefore be inserted to clarify the Board's intention in this regard. Clinical clock hours should be current, and concurrent with an on-going graduate training program.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
LYNN HARRIS, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 28, 1996.

BEFORE THE BUSINESS DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) CORRECTED NOTICE  
of rules pertaining to the ) OF AMENDMENT  
Microbusiness Advisory Council )

TO: All Interested Persons:

1. On March 7, 1996, the Business Development Division published a notice of proposed amendment of rules pertaining to the Microbusiness Development Council at page 636, 1996 Montana Administrative Register, issue number 5. On August 8, 1996, the Board published a notice of adoption at page 2166, 1996 Montana Administrative Register, issue number 15.

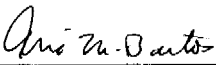
2. The Division inadvertently omitted an amendment to the existing language in ARM 8.99.505(10)(d)(ii) in the original notice and stated that it would stay the same. That subsection should have been amended as follows; (the authority and implementing section will remain as proposed.)


8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS AND COLLATERAL (1) through (10)(d)(i) will remain the same as proposed in the original notice.

(ii) Alternative collateral arrangements may be substituted for the requirements under (d)(i) and ~~(d)(i)(A)~~ above, if, in the department's sole judgment and discretion, these arrangements provide security for the development loan funds that is equivalent or superior to that required above.

3. Replacement pages for this amendment were submitted for the September 30, 1996 filing date.

BUSINESS DEVELOPMENT DIVISION

  
ANNIE M. BARTOS  
RULE REVIEWER

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

Certified to the Secretary of State, October 28, 1996.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.211 TEST FOR CERTIFICATION
Certification	)	AND 10.57.212 MINIMUM SCORES ON
	)	THE NATIONAL TEACHER EXAMINATION
	)	CORE BATTERY

To: All Interested Persons

1. On September 19, 1996, the Board of Public Education published a notice of proposed amendments concerning ARM 10.57.211 Test for Certification and 10.57.212 Minimum Scores on the National Teacher Examination Core Battery at page 2416 of the Montana Administrative Register, Issue number 18.

2. The Board has amended ARM 10.57.211 and 10.57.212 as proposed.

3. No comments were received.

  
Wayne Buchanan, Executive Secretary  
Board of Public Education

Certified to the Secretary of State on October 22, 1996.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of rules 18.8.101, 18.8.415, )  
18.8.428, 18.8.501, 18.8.502, )  
18.8.504, 18.8.509, 18.8.511A, )  
18.8.513, 18.8.514, )  
18.8.519, 18.8.601, 18.8.602, )  
18.8.801, 18.8.1002 and )  
18.8.1101 concerning the Motor )  
Carrier Services program )

CORRECTED NOTICE OF  
AMENDMENT

TO: All Interested Persons.

1. On July 18, 1996, the Department of Transportation published notice at page 1971 of the Montana Administrative Register, Issue No. 14, of the amendment and repeal of rules concerning the Motor Carrier Services program. Other rules from that notice not listed here are not affected by this corrected notice.

2. The notice of amendment and repeal failed to indicate that several of the authority and implementing statutes for some of the amended rules were deleted during the rulemaking process. In addition, ARM 18.8.101(1), 18.8.502(1) and 18.8.519(1) were not addressed in the previous notices. They remain as they currently exist. The corrected citations read as follows:

18.8.101 DEFINITIONS (1) remains the same.

(1)(a) through (f) remain the same as amended.

AUTH: 61-3-716, 61-10-121, 61-10-122, 61-10-155, MCA; IMP: Title 61, chapter 10, 61-3-711 through 61-3-733, 61-10-104, 61-10-107, 61-10-121, 61-10-124, 61-10-125 and 61-10-209, MCA

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1) through (7) remain the same as amended.

AUTH: 61-10-155 and 61-10-209, MCA; IMP: 61-3-317, 61-3-342, 61-10-201 and 61-10-209, MCA

18.8.428 FERTILIZER VEHICLES (1) through (4) remain the same as amended.

AUTH: 61-10-155, 61-10-202, 61-10-205, and 61-10-206, MCA; IMP: 61-1-104, 61-3-431, 61-10-201, 61-10-202, 61-10-205, and 61-10-206, MCA

18.8.501 SPECIAL PERMIT (DIMENSIONS OR WEIGHT - EXCEEDING STATUTORY LIMITS) (1) remains the same as amended.

AUTH: 61-10-121 61-10-155, MCA; IMP: 61-10-101 through 61-10-140, 61-10-121, 61-10-122, 61-10-124, 61-10-125 and 61-10-127, MCA

18.8.502 SINGLE TRIP (1) remains the same.

(1)(a) through (c) remain the same as amended.

AUTH: ~~61-10-121~~ 61-10-155, MCA; IMP: 61-10-121 and 61-10-124, MCA

18.8.504 DURATION OF PERMIT (1) and (2) remain the same as amended.

AUTH: ~~61-10-121~~ 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

18.8.509 GENERAL PERMIT RESTRICTIONS (1) through (10) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED (1) through (6) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

18.8.513 WIDTH (1) through (4) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-121 through 61-10-148, MCA

18.8.514 LENGTH (1) through (7) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-104, 61-10-121 through 61-10-148, MCA

18.8.519 WRECKERS AND/OR TOW VEHICLE REQUIREMENTS

(1) remains the same.

(1)(a) through (f) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-121 and 61-10-141, MCA

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS (1) through (7) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-121 through 61-10-148, MCA

18.8.602 CONDITIONS IMPOSED FOR MAXIMUM WEIGHT

(1) through (6) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-121 and 61-10-122, MCA

18.8.801 INSURANCE (1) through (3) remain the same as amended.

AUTH: ~~61-10-121, 61-10-122, and 61-10-124~~ 61-10-155, MCA; IMP: 61-10-121, 61-10-122, and 61-10-124, MCA

18.8.1002 MOBILE HOME TOWING UNIT (TOTER) REQUIREMENTS

(1) through (4) remain the same as amended.

AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

18.8.1101 MOVEMENT OF HOUSES, BUILDINGS, EXTREMELY HEAVY MACHINERY, AND OTHER LARGE AND UNUSUAL OBJECTS (1) through (10) remain the same as amended.

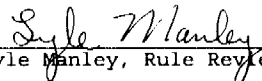
AUTH: ~~61-10-121 and 61-10-122~~ 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

3. Replacement pages for the corrected notice of amendment and repeal were submitted to the Secretary of State on September 30, 1996.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director

  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State October 28, 1996.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of rules 18.12.501 and 18.12.701 ) AND REPEAL  
and the repeal of rules )  
18.12.101 through 18.12.103, )  
18.12.201 through 18.12.203, )  
18.12.301 through 18.12.304, )  
18.12.601 through 18.12.612, )  
18.12.801 through 18.12.808, )  
18.13.101, 18.13.201 through )  
18.13.224 and 18.13.301 through )  
18.13.319 pertaining to the )  
Department of Transportation's )  
aeronautical powers and duties. )

TO: All Interested Persons.

1. On July 18, 1996, the Montana Department of Transportation published notice of the proposed amendment and repeal of rules pertaining to the Department's aeronautical powers and duties at page 1943 of the 1996 Montana Administrative Register, issue number 14.

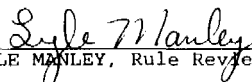
2. The Department has amended and repealed the rules as proposed.

3. No comments, testimony or requests for public hearing were received.

MONTANA DEPARTMENT OF TRANSPORTATION

By:

  
MARVIN DYE, Director

  
LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State October 28, 1996.

BEFORE THE BOARD OF CRIME CONTROL  
DEPARTMENT OF JUSTICE  
STATE OF MONTANA

In the Matter of the Amendment	)	NOTICE OF AMENDMENT OF
of Rule 23.14.401 relating to	)	RULE 23.14.401 AND THE
Montana Peace Officer Standards	)	REPEAL OF RULE 23.14.307
and Training and the repeal of	)	
Rule 23.14.307 relating to the	)	
Drug Abuse Resistance Education	)	
(DARE) Trust Fund	)	


TO: All Interested Persons:


1. On May 9, 1996, the Board of Crime Control published a notice of proposed amendment of Rule 23.14.401 relating to Montana Peace Officers Standards and Training and proposed repeal of Rule 23.14.307 relating to the DARE Trust Fund at page 1260 of the Montana Administrative Register, issue number 9.

2. The agency has amended and repealed the rules as proposed.

3. No comments were received.

BOARD OF CRIME CONTROL  
ELLIS E. KISER, Executive Director

By:   
ELLIS E. KISER, Executive Director  
BOARD OF CRIME CONTROL  
DEPARTMENT OF JUSTICE

  
ROBERT SMITH, Assistant Attorney General  
DEPARTMENT OF JUSTICE  
Rule Reviewer

Certified to the Secretary of State October 23, 1996.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF ) CORRECTED NOTICE OF THE  
RULE I (ARM 42.15.701), RULE II ) ADOPTION OF NEW RULES  
(ARM 42.15.702), RULE III (ARM )  
42.15.703), RULE IV (ARM 42.15. )  
704), RULE V (ARM 42.15.705), and )  
RULE VI (ARM 42.15.706) relating to)  
Composite Returns )

TO: All Interested Persons:

1. On October 3, 1996, the department published a notice at page 2605 of the 1996 Montana Administrative Register, Issue No. 19, of the amendment of current rules found in Chapter 15 and newly adopted rules pertaining to Composite Returns.

2. The notice of adoption incorrectly assigned numbers to the new rules which were previously assigned to other rules in this chapter. The rule numbers as shown on the notice published on October 3, 1996 are Rule I (ARM 42.15.601); Rule II (ARM 42.15.602); Rule III (ARM 42.15.603); Rule IV (ARM 42.15.604); Rule V (ARM 42.15.605); and Rule VI (ARM 42.15.606). The corrected numbers are Rule I (ARM 42.15.701); Rule II (ARM 42.15.702); Rule III (ARM 42.15.703); Rule IV (ARM 42.15.704); Rule V (ARM 42.15.705); and Rule VI (ARM 42.15.706).

3. The remaining rules which were published on page 2605 of the 1996 Montana Administrative Register, Issue No. 19 remain as published. Replacement pages when submitted to the Secretary of State on December 31, 1996 will reflect the correct rule numbers.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 28, 1996

VOLUME NO. 46

OPINION NO. 25

EMPLOYEES, PUBLIC - Employers' authority to offer "cash out" benefit for unused accumulated vacation leave;  
SCHOOL DISTRICTS - Authority to offer employees "cash out" benefit for unused accumulated vacation leave;  
ADMINISTRATIVE RULES OF MONTANA - Title 2, chapter 21, subchapter 2; sections 2.21.232, 2.21.234;  
MONTANA CODE ANNOTATED - Title 39, chapter 31; title 2, chapter 18, part 6; sections 2-18-604, -617, 39-31-102;  
MONTANA LAWS OF 1993 - Chapter 115;  
OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 2 (1995), 45 Op. Att'y Gen. No. 21 (1995).

HELD: Montana law does not permit a public employer to offer a "cash out" benefit to employees whereby the unused accumulated vacation leave credits of a public employee who is not terminating employment are "bought back" by the employer.

October 17, 1996

Mr. Robert Slomski  
Sanders County Attorney  
P.O. Box 519  
Thompson Falls, MT 59873-0519

Dear Mr. Slomski:

You have requested my opinion on the following question:

Does Montana law allow a public employer to offer a "cash out" benefit to employees, whereby public employees who are not terminating their employment are entitled to cash compensation for accumulated but unused vacation leave each year?

You state that this question arises out of a dispute between the Thompson Falls School District and the Thompson Falls Classified Employees Association. That dispute is over a provision in the collective bargaining agreement (CBA) that allows nonteaching employees to "cash out" their accumulated annual leave credits annually.

Preliminary questions have been raised as to whether your question actually represents the factual situation in Thompson Falls that prompted your request. I must note here that the range of issues on which I am authorized to offer my opinion is limited. Your letter of inquiry correctly notes that an Opinion of the Attorney General may not construe the language of a collective bargaining agreement. 45 Op. Att'y Gen. No. 21 (1993). However, there is a limiting rule of law: "[W]hen a particular employment condition for public employees has been legislatively set, it may not be modified through collective

bargaining without statutory authorization." 46 Op. Att'y Gen. No. 2 (1995). Having reviewed the matter and discussed this with you, I conclude that your question is appropriately framed. The issue you present is a legal one: whether under Montana law public employees can be paid for accumulated vacation leave without terminating employment and without scheduling actual vacation leave during scheduled working hours.

For purposes of this opinion, I assume that the employees in question work under a contract which requires their presence on the job during the school year--that is, during those times when students are present, but which does not necessarily schedule the employees to work at other times, i.e., during student vacation periods. The employees remain employed by the district during these periods when no work is scheduled, but since they are required to do no work during that period they are not paid. This opinion is thus limited to a factual situation in which the employees are granted by contract the right, without terminating their employment, to cash out their unused vacation leave credits during periods when they otherwise were not scheduled to work. I express no opinion here as to whether the school district and the employees could agree to a different arrangement under which the employees' work period is extended beyond the end of the school term to allow the employees to schedule paid vacation time, nor do I express any opinion about whether the current collective bargaining agreement for these employees could actually be construed so to provide.

The accumulation of leave by public employees is addressed in Mont. Code Ann. § 2-18-617. My analysis begins with an examination of this statute to determine whether the ability to cash out accumulated vacation leave has been legislatively addressed:

(1)(a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the

employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

Mont. Code Ann. § 2-18-617. Summarizing the statute, subsection (1)(a) sets the maximum amount of annual vacation leave that may be accumulated before forfeiture; subsection (1)(b) sets out the state's policy on the use of accumulated vacation leave when forfeiture is imminent; subsection (2) sets out the state's policy regarding the unused vacation leave of employees who terminate employment; and subsection (3) sets out the state's policy regarding the unused vacation leave of employees who transfer between agencies of the same jurisdiction.

The question is, then: Does section 2-18-617 establish the exclusive conditions under which a public employee may cash out his or her accumulated unused vacation leave or does it merely set standards for public employees' vacation leave in the four situations specified above? It is clear to me that in passing what is now section 2-18-617, the legislature did not see that statute alone as the final word on the subject of annual leave. Mont. Code Ann. § 2-18-604. As is apparent from the various amendments made to section 2-18-617, the legislature from time to time also has sought to address difficult situations and refine the language of the statute. See also Bitney v. School District No. 44, 167 Mont. 129, 136, 535 P.2d 1273, 1277 (1975). This is well illustrated by the most recent amendment to the statute, 1993 Montana Laws, chapter 115.

House Bill 289, which became chapter 115, added the language that is now Mont. Code Ann. § 2-18-617(1)(b). The implication of that subsection of the statute is clear: If excess annual leave is accumulated, it must be used according to the conditions established in the statute or it is forfeited. The use of the phrase "use rather than forfeit" in the first sentence of subsection (1)(b) signals a legislative intent that these two were the only options. This point is well illustrated by asking the following question: Assuming that public

employees will cash out rather than forfeit accumulated vacation leave, if the legislature had intended to permit employees to cash out unused vacation leave on an annual basis, would it have established the elaborate conditions for the forfeiture of excess leave? This question must be answered in the negative, as permitting an annual cash-out would have the practical effect of rendering the forfeiture provisions of the law superfluous, and the legislature does not engage in superfluous acts. Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1981).

Also, subsection (2) of the statute gives certain employees who are terminating employment the right to cash compensation for unused vacation leave. The negative implication is that all other public employees are denied that right. State v. Henry, 271 Mont. 491, 498, 898 P.2d 1195, 1199 (1995).

This legislative understanding is also clearly illustrated by the legislative history of HB 289. The bill as introduced contained the following language:

If an employee makes a written request to use excess vacation leave before the excess vacation leave must be forfeited and the employing agency denies the employee the use of the excess vacation leave, the employee is entitled to cash compensation for the unused, excess vacation leave.

1993 Mont. Legis., HB 289, sec. 1 (Introduced Bill). Before the hearing on this bill, the sponsor had requested a Fiscal Note, and the Fiscal Note came back stating in part, "If all forfeited leave in FY92 were compensated, total cash compensation [for state government alone] would have been \$255,000." The unanticipated magnitude of this figure necessitated the immediate drafting of an amendment by the sponsor, and caused some comment at the hearings. Mins., House Committee on State Admin., Feb. 1, 1993, at 1-4 and Ex. 1; Mins., Senate Committee on State Admin., Mar. 3, 1993 at 4, 5. The sponsor's amendment struck the requirement of cash compensation and substituted the requirement of additional time for the employee to use the excess vacation leave, which is now the final sentence of Mont. Code Ann. § 2-18-617(1)(b). Thus, it is clear the legislature intended that public employees not have the option of cashing out their accumulated but unused vacation leave.

In addition, the Personnel Division of the Department of Administration is the agency that administers this provision of law for the state. Mont. Code Ann. § 2-18-102. It has long interpreted Mont. Code Ann. § 2-18-617 to specifically limit the circumstances under which a cash-out is permissible. Mont. Admin. R. 2.21.232, 2.21.234; Montana Operations Manual 3-0305. That agency's construction of the statute is entitled to great deference:

An administrative agency's interpretation of a statute under its domain is presumed to be controlling. In fact, the construction of a statute by the agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong.

Christenot v. State, 272 Mont. 396, 401, 901 P.2d 545, 548 (1995) (citations omitted). The Personnel Division's construction of the statute is consistent with what I have concluded was the legislature's intent.

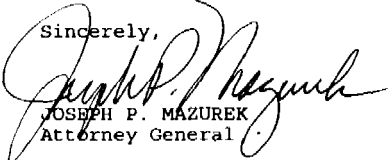
On the other hand, Montana Code Annotated title 39, chapter 31 (the collective bargaining for public employees law) makes it clear that both teaching and nonteaching employees of a school district have the right to bargain collectively over the conditions of employment. Also, nonteaching employees of a school district are covered by Montana Code Annotated title 2, chapter 18, part 6, which deals with leave time for public employees. Teamsters Local No. 45 v. Cascade County School Dist. No. 1, 162 Mont. 277, 280-81, 511 P.2d 339, 341 (1973). However, I conclude in this instance that the state's general policy encouraging collective bargaining between public employees and their employers is not sufficient to overcome the clear indications of legislative intent discussed above. Mont. Code Ann. § 39-31-102.

Recognizing that it is beyond my authority to construe a provision of a collective bargaining agreement, I must emphasize that I have studied the language at issue in the Thompson Falls Collective Bargaining Agreement, and I make no pronouncement on its meaning or legality. I believe the legislature has limited the cashing out of vacation leave to specific situations, and I find no statutory authorization for the modification of this condition of public employment through collective bargaining.

THEREFORE, IT IS MY OPINION:

Montana law does not permit a public employer to offer a "cash out" benefit to employees whereby the unused accumulated vacation leave credits of a public employee who is not terminating employment are "bought back" by the employer.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/rfs/brf

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE  
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

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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, 1996. This table includes those rules adopted during the period July 1, 1996 through September 30, 1996 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, 1996, 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 1995 and 1996 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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