MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 2
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.26(1)-S2600 relating to public use regulations	NOTICE OF PROPOSED AMENDMENT OF RULE 12-2.26(1)-S2600 RELATING TO PUBLIC USE REGULATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after February 26, 1979, the commission proposes to amend the following rule.

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

12-2.26(1)-S2600 PUBLIC USE REGULATIONS

(1) The following regulations, as amended, shall govern the use of all lands or waters under the control, administration, and jurisdiction of the Montana Department of Fish and Game ~~Commission~~, hereinafter referred to as "designated recreation areas". Rules and regulations governing each specific area will be posted in that area. Lands and waters controlled or administered by the department may be used for recreational or other purposes subject to the prohibitions as set forth in these or other applicable rules, or otherwise provided by law.

(a) No person ~~shall~~ may discharge any firearm, fireworks, air or gas weapon, or arrow from a bow, on or over either land or water, from April 1 to the opening date of archery season each year, unless the designated area is otherwise posted. Other areas, or parts thereof, may be closed to shooting when the director determines there is undue hazard to human life or property.

(b) No person may permit a pet animal to run at large in a designated public recreation area. Persons in possession of pet animals must restrain them and keep them under control on a leash in a manner which does not cause or permit a nuisance or any annoyance or danger to others. The leash may not exceed ~~fifteen-(15)~~ 15 feet in length and must be in hand or anchored at all times. Pet animals may not be kept in or permitted to enter areas or portions of areas posted to exclude them. Persons in possession of pet animals who cause or permit said animals to create a nuisance or an annoyance to others or who do not restrain pet animals properly may be expelled from the area in addition to being subject to any other penalty provided. Animals

owned or possessed by persons who are not staying in an area will be captured and will not be returned to the owner or possessor until the costs of capture and holding the animal are reimbursed to the department. This rule applies from April 1 through September 15 of each year unless the area is otherwise posted.

(c) No motor vehicle ~~shall~~ may be driven at a speed greater than the posted speed.

(d) No motor vehicle ~~shall~~ may be driven off authorized roads, except onto parking areas provided.

(e) No person ~~shall~~ may park any vehicle, trailer, camper, or other vehicle except in designated parking areas, nor shall any person pitch a tent or otherwise set up camp other than in designated camping areas.

(f) No person or persons ~~shall be permitted to~~ may maintain occupancy of camping facilities or space in any one designated recreation area for a period longer than ~~fourteen (14)~~ 14 days during any ~~thirty (30)~~ 30 day period~~,~~ unless the designated recreation area is otherwise posted. In areas so posted, said occupancy will be limited to 7 days during any 30 day period. Such ~~thirty (30)~~ 30 day periods shall run consecutively during the year commencing with the first day each person camps in a designated recreation area each year. No person may leave a set up camp, trailer, camper, or other vehicle unattended for more than ~~forty-eight (48)~~ 48 hours unless the area is otherwise posted.

(g) No person ~~shall~~ may camp overnight in any ~~state~~ department ~~owned~~ administered shelter building~~,~~ unless the shelter is posted as a camp shelter.

(h) No person ~~shall~~ may build or maintain a fire in any designated recreation area, except in established fireplaces and fire rings maintained for such purposes, or in portable camp stoves. Exception: Certain areas may be posted allowing fires to be built in other than the above mentioned places.

(i) No person ~~shall~~ may leave a camping area without completely extinguishing all fires started or maintained by such person.

(j) No person ~~shall~~ may destroy, deface, injure, remove, or otherwise damage any natural or improved property or ~~shall~~ willfully or negligently cut, destroy, or mutilate any tree, shrub, or plant, or any geological, historical, or archaeological feature, but this shall not be interpreted to include flowers, berries, cones, or dead wood.

(k) No person ~~shall~~ may disturb or remove the top soil cover or permit the disturbance or removal

of top soil cover. This prohibits digging for worms, burying of garbage, and allowing pets to dig holes.

(l) No person ~~shall~~ may permit livestock to graze in any area properly fenced to restrict the passage of livestock, unless the area is specifically leased to the owner of the livestock for grazing.

(m) No person ~~shall~~ may enter upon any portion of any area that is posted as restricted to public passage.

(n) No person ~~shall~~ may dump dead fish or animals,or parts thereof, human excrement, refuse, rubbish, or wash water (except in receptacles provided for this purpose) nor pollute or litter in any other manner a public recreational area. Sewage wastes from self-contained trailers, campers, or other portable toilets shall be disposed of only in posted sanitary trailer dump stations. Wash water may be disposed of in sealed vault latrines. No household or commercial garbage or trash brought in as such from other property shall be disposed of in any designated public recreation area.

(o) No commercial or political signs ~~shall~~ may be posted.

(p) No boats ~~shall~~ may be launched from any boat trailer, car, truck, or other conveyance except at an established launching area if such a facility is provided. Boats, boat trailers, trucks, or other conveyances may not be kept at a designated area unless the owner or possessor thereof is authorized to use the area under the provisions of these rules.

(q) No person ~~shall~~ may use these lands for any commercial purpose without first securing permission from the ~~commission~~ department.

(r) Disorderly conduct such as drunkenness, use of vile or profane language, fighting, indecent exposure, or operation of a motor vehicle in a manner as to create a nuisance or annoyance or danger to others or loud or noisy behavior is prohibited; and in addition to any other penalty provided, the participant may be expelled from the area.

(s) Swimming areas when designated are limited by white and orange buoys. No person ~~shall~~ may swim from such designated swimming area to any area beyond that which is so marked or limited. No person ~~shall~~ may disturb, deface, remove, or relocate such buoys unless authorized by the ~~State Fish and Game Director~~ director or his agent.

(t) No power boat ~~shall~~ may be operated or beached within a designated swimming area, nor shall

it be operated with its motor in operation so that any portion of such boat approaches closer than ~~twenty (20)~~ 20 feet to any swimmer in the water. The term "swimmer" as used herein shall not mean any water skier, then engaged in water skiing and using said boat as a use of towing power. This regulation is applicable only in water areas which are within ~~one hundred (100)~~ 100 feet or the nearest shoreline and shall not apply to emergency or life-saving situations.

(u) No operator of a power boat ~~shall~~ may tow any water skier so that such water skier is caused to approach within ~~twenty (20)~~ 20 feet of any swimmer in the water. No water skier, while afloat on his water skis, ~~shall~~ may approach any swimmer in the water within ~~twenty (20)~~ 20 feet or water ski within the bounds of any designated swimming area.

(v) No group of more than ~~fifty (50)~~ 30 persons ~~shall~~ may use a ~~state~~ department administered recreation area except with the prior permission by the director or his agent. Groups may be assessed user fees as determined by the commission and may be required to surrender a deposit to defray additional or unusual department expenses caused by their use of recreation areas.

(w) No person ~~shall~~ may operate over-the-snow equipment in any area which is specifically posted against such operation.

(x) No person ~~shall~~ may camp overnight in a ~~state~~ department administered recreation area without obtaining ~~an~~ a single use overnight camping permit or ~~having in his possession~~ having permanently and properly affixed to his vehicle a seasonal camping permit or Montana State Golden Years Pass issued by the director or under his authority, when such area has been signed and posted as a fee camping area. The basic amount of fees for ~~such~~ single use overnight camping permits or seasonal camping permits shall be as determined by the commission and posted by the director or his duly authorized agent.

(y) Public recreation areas as posted will be closed nightly, except for emergency ingress and egress.

(2) All fee camping areas shall be prominently signed and posted as such together with a statement as to the amount of fee charged.

(3) From and after the effective date of this rule, regulations relating to establishment of fees for recreational use of lands and waters owned and

controlled by the State of Montana acting by and through the ~~State~~ Fish and Game Commission, will be adopted on an annual and seasonal basis and, therefore, will not be considered or processed as subject to the Montana Administrative Procedure Act.

3. The rule is proposed to be amended to strengthen the "pet animal" rule; to permit charging for group use activities in some cases; to limit the length of stay in special problem areas from 14 to 7 days, and to make small housekeeping changes.

NOTE: When published in the Administrative Rules of Montana, the juxtaposition of these regulations will be revised for clarity by grouping regulations which address related topics.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than February 23, 1979.

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 Dr. Wambach at the above-stated address no later than February 23, 1979.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the commission to make the proposed amendment is based on Sections 26-103.1, 26-104.9, and 62-306, R.C.M. 1947.

Spencer S. Hegstad, Vice-Chairman
Montana Fish & Game Commission

Certified to Secretary of State January 5, 1979

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

In the matter of the repeal of rule ARM 16-2.14(2)-S14210 and the adoption of rule ARM 16-2.14(2)-S_____, a rule for regulating food service establishments	NOTICE OF PUBLIC HEARING FOR REPEAL OF RULE ARM 16-2.14(2)-S14210 AND FOR THE ADOPTION OF A RULE REGULATING FOOD SERVICE ESTABLISHMENTS

1. On or about February 26, 1979, at 9:00 a.m., or as soon thereafter as practicable, a public hearing will be held in Rooms 142-143, conference room of the Cogswell Building, Capitol Complex, corner of Roberts Street and Lockey Avenue, Helena, Montana, 59601, to consider the repeal of the present rule governing food service establishments and the adoption of a new rule governing food service establishments.

2. The proposed new rule replaces the present rule regulating food service establishments. The present rule, ARM 16-2.14(2)-S14210, will be repealed if the new rule is adopted.

3. The proposed rule provides in summary for the regulation of food service establishments including, but not limited to:

(a) the care of food supplies;
(b) food protection;
(c) food storage;
(d) food preparation;
(e) food display and service;
(f) food transportation;
(g) personnel;
(h) equipment and utensils materials;
(i) equipment and utensils design and fabrication;
(j) equipment installation and location;
(k) equipment and utensil cleaning and sanitization;
(l) equipment and utensil storage;
(m) water supply;
(n) sewage;
(o) plumbing;
(p) toilet facilities;
(q) lavatory facilities;
(r) garbage and refuse;
(s) insect and rodent control;
(t) floor construction and maintenance;
(u) wall and ceiling construction and maintenance;
(v) cleaning of physical facilities;
(w) lighting;
(x) ventilation;
(y) dressing rooms and locker areas;
(z) poisonous and toxic materials;
(aa) premises;
(ab) mobile food services;
(ac) commissaries;

(ad) mobile food service establishment servicing areas;
(ae) temporary food service establishments;
(af) licensing;
(ag) inspections;
(ah) examination and condemnation of food;
(ai) review of proposed construction plans;
(aj) procedures for action when employees are suspected of transmitting communicable diseases.

A copy of the entire proposed rule may be obtained by contacting the Food and Consumer Safety Bureau, Montana State Department of Health and Environmental Sciences, Board of Health Building, Capitol Complex, Helena, MOntana, 59601, phone: (406) 449-2408.

4. The Department's Food and Consumer Safety Bureau is proposing to repeal the present rule and adopt a new rule in order to deal with regulatory problems encountered in the administration of the present rule and to implement changes recommended by the 1976 Federal Model Food Service Sanitation Ordinance.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Persons desiring to submit written comments prior to the hearing should send them to the hearing officer.

6. Robert Solomon, Montana Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, Montana, 59601, has been designated by the Director to preside over and conduct the hearing.

7. The Department's authority to act on these rules is based on Sections 27-620 and 27-621, R.C.M. 1947.

A. C. Knight

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State January 16, 1979

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

In the matter of the amendment of ARM 16-2.14(2)-S14200, a rule adopting federal regulations, Food, Drug and Cosmetic Act) NOTICE OF PROPOSED AMENDMENT OF ARM 16-2.14(2)-S14200, (Food, Drug and Cosmetic Act) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 26, 1979, the Department of Health and Environmental Sciences proposes to amend rule 16-2.14(2)-S14200 which establishes reasonable definitions and standards for food and food labeling as required by the Montana Food, Drug and Cosmetic Act, Sections 27-701, et seq.

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

16-2.14(2)-S14200 FOOD, DRUG AND COSMETIC ACT, FEDERAL REGULATIONS ADOPTED FOR FOOD STANDARDS

~~(1) Under authority of the Montana Food, Drug and Cosmetic Act, Section 27-709, R.C.M. 1947, the following regulations of the Federal Food and Drug Administration were adopted by the board:~~

~~PDA Part 8, Title 21 ..... Color Additive Regulations~~
~~10 ..... Food Standards~~
~~11~~
~~12~~
~~13~~
~~14 ..... Cacao Standards~~
~~15 ..... Cereal Flours~~
~~16 ..... Macaroni and Noodle~~
~~17 ..... Bakery Products~~
~~18 ..... Milk and Cream~~
~~19 ..... Cheese and Cheese Products~~
~~20 ..... Frozen Desserts~~
~~21~~
~~22 ..... Food Flavoring~~
~~23~~
~~24~~
~~25 ..... Food Dressings~~
~~26~~
~~27 ..... Canned Fruits and Juices~~
~~28 ..... Fruit Pies~~
~~29 ..... Fruit Butters, Jellies and Preserves~~
~~30~~
~~31 ..... Non-alcoholic Beverages~~
~~32~~
~~33~~

~~FDA Part 34, Title 21~~

~~35~~
~~36 Shellfish~~
~~37 Fish~~
~~38~~
~~39~~
~~40~~
~~41~~
~~42 Eggs~~
~~43~~
~~44~~
~~45 Oleomargarine~~
~~46 Nut Products~~
~~47~~
~~48~~
~~49~~
~~50~~
~~51 Canned Vegetables and Vegetable Products~~
~~52~~
~~53 Tomato Products~~
~~120 Pesticide Chemical Regulations~~
~~121 Food Additive Regulations~~
~~125 Special Dietary Use Regulations~~

~~(2) A drug bearing a name recognized in the United States Pharmacopoeia or National Formulary, without any further statement respecting its character shall be required to conform in strength, quality and purity to the standards prescribed or indicated for a drug of the same name recognized in the United States Pharmacopoeia or National Formulary official at the time.~~

~~A drug bearing a name recognized in the United States Pharmacopoeia or National Formulary, and branded to show a different standard or strength, quality or purity shall not be regarded as adulterated if it conforms to its declared standard.~~

~~(3) Under authority of the Montana Food, Drug, and Cosmetic Act, Section 27-721, R.C.M. 1947, the board hereby adopts by reference all definitions, standards and their amendments for labeling of foods, drugs, and cosmetics now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act as amended (Title 21, U.S.C. 301 et seq.). Labeling regulations, Part 1, Title 21 of the code of federal regulations prescribes conditions of labeling for foods, drugs and cosmetics.~~

(1) Food definitions and standards. The department adopts by reference the following federal regulations establishing food definitions and standards and all subsequent revisions thereto promulgated by the United States Federal

Drug Administration which are found in the corresponding parts of Title 21 of the Code of Federal Regulations (CFR):

(a)	Color additives	21 CFR 70
(b)	Color additive petitions	21 CFR 71
(c)	Listing of color additives exempt from certification	21 CFR 73
(d)	Listing of color additives subject to certification	21 CFR 74
(e)	Color additive certification	21 CFR 80
(f)	General specifications and general restrictions for provisional color additives for use in foods, drugs and cosmetics	21 CFR 81
(g)	Listing of certified provisionally listed colors and specifications	21 CFR 82
(h)	General (food for human consumption)	21 CFR 100
(i)	Food labeling	21 CFR 101
(j)	Common or usual name for non-standardized foods	21 CFR 102
(k)	Quality standards for foods with no identity standards	21 CFR 103
(l)	Nutritional quality guidelines for foods	21 CFR 104
(m)	Foods for special dietary use	21 CFR 105
(n)	Unavoidable contaminants in food and food packaging material	21 CFR 109
(o)	Thermally processed low-acid foods packaged in hermetically sealed containers	21 CFR 113
(p)	Cacao products and confectionery	21 CFR 118
(q)	Smoked and smoke-flavored fish	21 CFR 122
(r)	Frozen raw breaded shrimp	21 CFR 123
(s)	Processing and bottling of bottled drinking water	21 CFR 129
(t)	Food standards: general	21 CFR 130
(u)	Milk and Cream	21 CFR 131
(v)	Cheeses and related cheese products	21 CFR 133
(w)	Frozen desserts	21 CFR 135
(x)	Bakery products	21 CFR 136
(y)	Cereal flours and related flours	21 CFR 137
(z)	Macaroni and Noodle products	21 CFR 139
(aa)	Canned fruits	21 CFR 145

(ab) Canned fruit juices	21 CFR 146
(ac) Fruit butters, jellies, preserves, and related products	21 CFR 150
(ad) Fruit pies	21 CFR 152
(ae) Canned vegetables	21 CFR 155
(af) Vegetable juices	21 CFR 156
(ag) Frozen vegetables	21 CFR 158
(ah) Eggs and egg products	21 CFR 160
(ai) Fish and shellfish	21 CFR 161
(aj) Cacao products	21 CFR 163
(ak) Tree nut and peanut products	21 CFR 164
(al) Nonalcoholic beverages	21 CFR 165
(am) Margarine	21 CFR 166
(an) Sweeteners and table syrups	21 CFR 168
(ao) Food dressings and flavorings	21 CFR 169
(ap) Food additives	21 CFR 170
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(ar) Food additives permitted for direct addition to food for human consumption	21 CFR 172
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(at) Indirect food additives: general	21 CFR 174
(au) Indirect food additives: adhesive coatings and components	21 CFR 175
(av) Indirect food additives: paper and cardboard components	21 CFR 176
(aw) Indirect food additives: polymers	21 CFR 177
(ax) Indirect food additives: adjuvants, production aids and sanitizers	21 CFR 178
(ay) Irradiation in the production, processing and handling of food	21 CFR 179
(az) Food additives permitted in food on an interim basis or in contact with food pending additional study	21 CFR 180
(ba) Prior-sanctioned food ingredients	21 CFR 181
(bb) Substances generally recognized as safe	21 CFR 182
(bc) Direct food substances generally recognized as safe	21 CFR 184

(bd) Indirect food substances affirmed as generally recognized as safe	21 CFR 186
(be) Substances prohibited from use in human food	21 CFR 189
(bf) Tolerances for pesticides in food administered by the Environmental Protection Agency	21 CFR 193

(2) Copies of the federal regulations which were adopted and incorporated by reference under subsection (1) may be obtained upon payment of copying costs from the Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences, Capitol Station, Helena, Montana, 59601, phone: (406) 449-2408.

3. The rule is proposed to be amended to incorporate by reference federal regulations pertaining to food quality and labeling standards which have been adopted or revised since this rule was last amended. Subsection (2) is proposed to be deleted due to the fact that it unnecessarily repeats statutory language found in Section 27-714, R.C.M. 1947. Subsection (3) is proposed to be deleted because revised subsection (1) will specifically enumerate which labeling regulations have been incorporated by reference.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Douglas B. Olson, Legal Division, Department of Health and Environmental Sciences, Suite 1, 1400 11th Avenue, Helena, Montana, 59601, no later than February 25, 1979.

5. No hearing is required for adoption by reference of those regulations adopted under the federal Act (Federal Food, Drug and Cosmetic Act, as amended, Title 21, U.S.C. 301 et seq.) and the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) Section 27-721, R.C.M. 1947.

6. The authority of the department to make the proposed amendments is based on sections 27-709, 27-713(b) and 27-721, R.C.M. 1947.

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State January 16, 1979

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

In the matter of the amendment of rule ARM 16-2.14(1)-S14041, a rule establishing procedures for hearings on proposed ambient air quality standards.	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF A RULE ESTABLISHING PROCEDURES FOR HEARINGS ON PROPOSED AMBIENT AIR QUALITY STANDARDS.

TO: All interested persons:

1. On or about Friday, March 9, 1979, at 9:00 a.m., or as soon thereafter as practicable, a public hearing before the Board of Health and Environmental Sciences will be held in Rooms 142-143 of the Cogswell Building, Capitol Complex, Helena, Montana, to consider the amendment of rule ARM 16-2.14(1)-S14041.

2. The proposed amendments are to change the dates for prefiled testimony in the present rule, to add a requirement for a summary to accompany written testimony, and to add clarifying language. The text of present rule 16-2.14(1)-S14041 is found in the published notice of proposed adoption at p. 1459 of the 1978 Montana Administrative Register, Issue No. 14, and the notice of adoption found in the Rule Section of this issue of the Montana Administrative Register.

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

"16-2.14(1)-S14041 Procedures for hearings on proposed Ambient Air Quality Standards. The following procedures shall be followed with respect to the hearings before the Board of Health and Environmental Sciences and its presiding officer for the establishment of ambient air quality standards in the State of Montana:

(1) The testimony of interested parties shall be prefiled on or before ~~April 18~~ May 7, 1979, with copies going to all parties on the service list. Thereafter, within ~~forty-seven (47)~~ forty-nine (49) days or before ~~June 4~~ June 25, 1979, all responses thereto shall be prefiled with the Board or its presiding officer. The prefiling of direct testimony and response testimony applies to both expert witnesses and policy witnesses, if any.

The opening statements of the direct testimony or responses thereto must contain a description of the witnesses' qualifications. The description of qualifications shall include but not be limited to the following:

(a) Educational background and experience;

(b) Description of any post-graduate training and professional career since graduation;

(c) Identification of all publications authored by the witness; and

(d) A disclosure of group representation, if any.

(2)-(10) same as present rule.

(11) Written testimony shall be accompanied by a

summary of its subject matter, approximately 100 words in length.

4. The Board is proposing to amend this rule in order to give those testifying on the ambient air quality standards an additional two weeks to submit written testimony, because the publication of the draft EIS on those standards has been delayed two weeks, and the testimony will be based in part on the contents of the EIS. In addition, the requirement of a summary was considered an aid to the Board in its deliberations. The addition of the word "testimony" in paragraph 1 is not substantive and is intended only to clarify what "direct" referred to.

5. Interested persons may present their data, views or arguments orally or in writing either at the hearing or prior to it to the hearing officer, named below.

6. C. W. Leaphart, 1 No. Last Chance Gulch, Helena, Montana 59601 (phone: 442-4930) has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 72-2-111 and 75-2-202, MCA (section 69-3909, R.C.M. 1947).

John D Bartlett

Certified to the Secretary of State January 16, 1979

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

IN THE MATTER of Proposed Adoption of Rules Determining the "Prevailing Average Interest Rate for Home Improvement Loans" as that Term is Used in Sec. 84-7405, R.C.M. 1947 [MCA, Sec. 15-32-107].	NOTICE OF PUBLIC HEARING OF NEW RULES DETERMINING THE PREVAILING AVERAGE INTEREST RATE FOR HOME IMPROVEMENT LOANS

TO: All Interested Persons

1. On March 1, 1979, in the Conference Room of the Public Service Commission, 1227 11th Avenue, Helena, Montana at 1:30 p.m., a public hearing will be held to consider the proposed adoption of rules determining the "prevailing average interest rate for home improvement loans" as that term is used in Sec. 84-7405, R.C.M. 1947, [MCA, Sec. 15-32-107].

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

3. The proposed rules provide as follows:

Rule I. PREVAILING INTEREST RATE (1) The term "prevailing average interest rate for home improvement loans" as used in Sec. 84-7405, R.C.M. 1947, (MCA, Sec. 15-32-107) means and is determined to be 12.50 percent per annum.

Rule II. MODIFICATIONS OF PREVAILING INTEREST RATE (1) The rate stated in the preceding section will be modified, as necessary, to reflect changes in the interest rate for home improvement loans made by lending institutions in Montana. The procedure for modification shall be that prescribed by the Administrative Procedure Act (Sec. 82-4204, R.C.M. 1947, [MCA, Sec. 2-4-305]; and Sec. 82-4207, R.C.M. 1947 [MCA, Sec. 2-4-315]).

4. Sec. 84-7405, R.C.M. 1947 (MCA, Sec. 15-32-107) provides for a tax credit, available to electric and natural gas utilities, equal to the difference between the interest the utility actually receives on loans to consumers used for the installation of energy conservation materials and the amount which would have been received at the prevailing average interest rate for home improvement loans.

This Rule is being proposed at this time as the result of a Petition by The Montana Power Company. The Company alleges that the Rule is necessary to the implementation of a no-interest loan program that it proposes to implement with respect to residential dwellings receiving space heating service directly from the Company's electric and natural gas utilities.

5. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Eileen Shore, 1227 11th Avenue, Helena, Montana 59601, no later than March 1, 1979.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771), is available and may be contacted to represent consumer interests in this matter.

7. The authority for the Commission to make this rule is based on Section 84-7405, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE January 16, 1979.

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

IN THE MATTER of Proposed Adoption of a rule Defining "Energy Conservation Materials" as that Term is Used in Sec. 84-7405, R.C.M. 1947 [MCA, Sec. 15-32-107].	NOTICE OF PUBLIC HEARING OF A NEW RULE DEFINING ENERGY CONSERVATION MATERIALS

TO: All Interested Persons

1. On March 1, 1979, in the Conference Room of the Public Service Commission, 1227 11th Avenue, Helena, Montana at 1:30 p.m., a public hearing will be held to consider the proposed adoption of a rule defining "energy conservation materials" as that term is used in Sec. 84-7405, R.C.M. 1947 (MCA, Sec. 15-32-107).

2. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule is as follows:

Rule I. DEFINITION (1) The term "energy conservation materials" as used in Sec. 84-7405, R.C.M. 1947 (MCA, Sec. 15-32-107) includes the following materials:

(a) Caulking and weatherstripping of doors and windows;

(b) Furnace efficiency modifications including:

(1) Replacement burners, furnaces or boilers of any combination thereof which, as determined by the Secretary of Energy of the United States, substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system; and

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(c) Clock thermostats;

(d) Ceiling, attic, wall and floor insulation;

(e) Water heater insulation;

(f) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed windows, door materials and window replacement; and

(g) Devices to utilize solar energy for assisting in the heating of domestic hot water.

4. Sec. 84-7405, R.C.M. 1947 (MCA, Sec. 15-32-107) provides for a tax credit, available to electric and natural gas utilities, for the amount of interest foregone by utilities lending money for or installing "energy conservation materials" in dwellings.

This Rule is being proposed at this time as the result of a Petition by The Montana Power Company. The Company alleges that the Rule is necessary to the implementation of a no-interest loan program that it proposes to implement with respect to residential dwellings receiving space heating service directly from the Company's electric and natural gas utilities.

5. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Eileen

Shore, 1227 11th Avenue, Helena, Montana 59601, no later than March 1, 1979.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771), is available and may be contacted to represent consumer interests in this matter.

7. The authority for the Commission to make this rule is based on Section 84-7405, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE January 16, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE STATE ELECTRICAL BOARD

IN THE MATTER of the Proposed) Amendment of ARM 40-3.38(6)-) S3875 Apprentice Registration)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.38(6)-S3875 APPRENTICE REGISTRATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 24, 1979, the State Electrical Board proposes to amend ARM 40-3.38(6)-S3875 concerning apprentice registration.

2. The amendment as proposed will delete existing subsections (1) through (5) in their entirety and in lieu thereof will impose the following sub-sections:

"(1) All persons employing individuals to work as apprentice electricians and all individuals intending to work as apprentice electricians shall first file their names and addresses with the State Electrical Board.

(2) All employers of apprentice electricians shall file a quarterly report with the Board indicating approximate total hours of employment and the general nature of their job training and experience. If the apprentice's employment is terminated, such report shall indicate the date of termination and the hours up to that point.

(3) The determination of the nature and scope of training shall be made by the employer. However, apprentices must at all times be under the direct supervision of a Montana licensed electrician working with the apprentice at the work site. At such time as the apprentice applies for his journeyman license,he will be required to have the type of training and experience defined under and required by sections 66-2803, 2807 and 2817 R.C.M. 1947.

(4) Compliance with Federal and State law administered by the Department of Labor and Industry, Labor Standards Division, where such compliance is applicable shall be a condition to registering apprentices with the State Electrical Board."

3. The Board has proposed revision of this rule after considering objections from the electrical industry, the Labor Standards Division, Apprenticeship Bureau, and from the Montana Administrative Code Committee. The Board understands that registration with the Apprenticeship Bureau is not and cannot be made mandatory under existing Federal and State law relating to that Bureau. As far as specifying the nature and scope of apprentice training is concerned and as far as specifying a supervisory ratio of licensed electricians over apprentices, the Board feels this should be the prerogative of the employer. However,

because section 66-2817 R.C.M. 1947 requires that apprentices work with a licensed electrician, the Board feels it is reasonable to impose such requirement on site. The Board feels that giving the employer such training prerogatives, imposes upon him the responsibility of assuring that the training will meet the requirements of sections 66-2803 and 2807 R.C.M. 1947.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment of the rule in writing to the State Electrical Board, Lalonde Building, Helena, Montana 59601. Written comments in order to be considered must be received no later that February 22, 1979.

5. If the State Electrical Board receives requests for a public hearing from 25 or more persons directly affected, the Board will rule on the propriety and availability of a hearing and notify the requesting parties of its decision. As a prime consideration for making such a ruling, the Board will consider the fact that a hearing was held prior to the adoption of the rule which this notice proposes to amend and that all issues involved in this notice were given opportunity to be aired at that time.

6. The authority of the State Electrical Board to make the proposed amendment is based on section 66-2817 R.C.M. 1947.

STATE ELECTRICAL BOARD
CHARLES S. POWELL, PRESIDENT

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, January 16, 1979.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules concerning discipline handling of State employees	NOTICE OF ADOPTION OF RULES ARM 2-2.14(40)-S14650 THROUGH 2-2.14(40)-S14680 PERTAINING TO DISCIPLINE HANDLING

TO: All Interested Persons

1. On November 17, 1978, the Department of Administration published notice of the proposed adoption of rules concerning discipline handling of State employees at pages 1509-1511 of the 1978 Montana Administrative Register, issue number 15.

2. The agency has adopted the rule with the following changes: 2-2.14(40)-S14660 (Rule II) Definitions (f) will read as follows: Just cause means that taking disciplinary action is for substantial reasons related to the employee's job duties, job performance, or working relationships and is appropriate. Just cause is determined if the alleged act were an actual violation of an established agency standard, legitimate order, policy, labor agreement, failure to meet applicable professional standards, or a series of lesser violations, and if the employee would reasonably be expected to have knowledge of the aforementioned. 2-2.14(40)-S14680 (Rule IV) Conclusion (a) will read as follows: All State agencies shall adopt internal rules and procedures to implement this Rule unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

The agency has numbered the Rule ARM 2-2.14(40)-S14650 through 2-2.14(40)-S14680.

3. Comments from F. Woodside Wright, staff attorney with the Department of Fish and Game, concerning specific Fish and Game preferences and statutory languange on that department's employee relations authorities were considered. Most of the suggested changes are compatible with the proposed rule and minimum guidelines which can be specifically adopted to that agency's needs administratively. Therefore, the changes made to the rule were the addition of "failure to meet applicable professional standards" in the definition of just cause in Rule II and "or specific statutes" after "negotiated labor contracts" in Rule IV.

In the matter of the adoption of rules concerning procedures to apply for leave due to emergencies.	NOTICE OF ADOPTION OF RULES ARM 2-2.14(44)-S14690 THROUGH 2-2.14(44)-S14720 PERTAINING TO LEAVE DUE TO EMERGENCIES

TO: All Interested Persons

1. On November 17, 1978, the Department of Administration published notice of the proposed adoption of rules concerning leave due to emergencies at pages 1511-1513 of the 1978 Montana Administrative Register, issue number 15.

2. The agency has adopted the rules with the following changes: 2-2.14(44)-S14710 (Rule III) Guidelines, Section (a) first sentence will read as follows: Necessary absences due to emergencies ~~shall be charged to compensatory time, vacation leave, leave without pay, or if the agency deems it feasible, time lost from work may be made up within the work week~~ may be excused. The fourth sentence will read as follows: For a State employee actively participating as an emergency service volunteer, leave time may be charged ~~as provided above~~ to compensatory time, vacation leave, leave without pay; or if the agency deems it feasible, time lost from work may be made up within the work week. Section (b) second sentence will read as follows: If an employee is working in a geographical location declared either a disaster area or ~~under~~ an emergency situation by the Governor, and the employee cannot report for work, the agency shall grant this as paid time off.

The agency has numbered the Rule ARM 2-2.14(44)-S14690 through 2-2.14(44)-S14720.

3. One suggestion was received from representatives of the Lewis and Clark Search and Rescue Association concerning administrative leave for the emergency service volunteer. Since neither current statute nor policy grant any type of administrative leave, this suggestion was not implemented.

4. To improve clarity the appropriate leave languange of Rule III has been reworded and included in the final rule.

In the matter of the adoption of rules concerning employee record keeping.	NOTICE OF ADOPTION OF RULES ARM 2-2.14(48)-S14730 THROUGH 2-2.14(48)-S14760 PERTAINING TO EMPLOYEE RECORD KEEPING

TO: All Interested Persons

1. On November 17, 1978, the Department of Administration published notice of the proposed adoption of rules concerning employee record keeping at pages 1514-1516 of the 1978 Montana Administrative Register, issue number 15.

2. The agency has adopted the rule with the following changes: 2-2.14(48)-S14750 (Rule III) Policy, Section e(v) will read as follows: The Office of the Legislative Auditor may

have access to personnel records pursuant to 5-13-309, MCA, for purposes of auditing state agencies~~, except employee confidential information~~. 2-2.14(48)-S14750 Policy Section e(vi) will read as follows: For all others, permission to look at an employee's personnel record shall be ~~secured~~ obtained in writing from immediate supervisor or other designated authority with knowledge and/or permission of the employee or by written request of the employee alone.

The agency has numbered the Rule ARM 2-2.14(48)-S14730 through 2-2.14(48)-S14760.

3. One suggestion was received from Morris L. Brusett, Legislative Auditor, to delete the phrase "except employee confidential information." This suggestion was accepted and included in the final rules.

A suggestion was made by Fletcher E. Newby of the Department of Fish and Game to require written permission in the "access to personnel records" - "for all others" section. This suggestion was accepted and included in the final rules.

David M Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State JANUARY 12, 1979

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

In the matter of the amendment of rule ARM 16-2.14(1)-S14041, a rule establishing procedures for hearings on proposed ambient air quality standards	))))	NOTICE OF THE ADOPTION OF A RULE ESTABLISHING PROCEDURES FOR HEARINGS ON PROPOSED AMBIENT AIR QUALITY STANDARDS

TO: All interested persons:

1. On October 26, 1978, the Board of Health and Environmental Sciences published notice of a proposed adoption of rule ARM 16-2.14(1)-S14041 concerning procedures for hearings on proposed ambient air quality standards at page 1459 of the 1978 Montana Administrative Register, issue no. 14.

2. The agency has adopted the rule with the following changes:

16-2.14(1)-S14041 PROCEDURES FOR HEARINGS ON PROPOSED AMBIENT AIR QUALITY STANDARDS. The following procedures shall be followed with respect to the hearings before the Board of Health and Environmental Sciences and its presiding officer for the establishment of ambient air quality standards in the State of Montana:

(1) The testimony of interested parties shall be prefiled on or before ~~February 15,~~ April 18, 1979, with copies going to all parties on the service list. Thereafter, within ~~forty-five (45)~~ forty-seven (47) days or before ~~April 3,~~ June 4, 1979, all responses thereto shall be prefiled with the Board or its presiding officer. The prefiling of direct testimony and response testimony applies to both expert witnesses and policy witnesses, if any.

The opening statements of the direct or responses thereto must contain a description of the witnesses' qualifications. The description of qualifications shall include but not be limited to the following:

(a) Educational background and experience;

(b) Description of any post graduate training and professional career since graduation;

(c) Identification of all publications authored by the witness; and

(d) A disclosure of group representation, if any.

(2) - (10) Same as proposed rule.

3. At the public hearing, representatives of industries to be affected by the ambient standards requested that direct testimony not be required until at least three months after the text of the ambient standards rule was available. In particular, the representative of Cenex requested a period of 3-4 months after notice of the ambient standards were published in the Montana Administrative Register before direct testimony could be filed. The Board, on advice of the hearing officer, decided that sufficient notice of the terms of the standards

was given through issuance of the EIS, which would occur approximately four months prior to the first date for pre-filed testimony and which would contain the text of the ambient standards rule. The decision was also based on the fact that a substantial delay between the appearance of the rule in the Register and the filing of direct testimony was impossible because it would prevent the Board from taking action within six months of publication, as required by the Administrative Procedure Act.

Industry representatives also requested the right of cross-examination of witnesses. The Board, on advice of its hearing officer, decided that paragraph 4 of the proposed rule adequately balanced any need for cross-examination against the need to control the length of the hearings, in that parties may submit requests for cross-examiantion to the hearing officer or a Board member, who will in turn conduct the cross-examination if they judge it beneficial to the proceedings.

There was also a request to make closing statements. The Board, on advice of its hearing officer, felt such statements would unnecessarily prolong the hearings, while contributing little or nothing not already submitted in direct, response and rebuttal testimony.

The representative of Montana Power felt that rebuttal testimony was not sufficiently defined, which might result in new testimony being introduced late in the proceedings. He therefore requested the right to rebut or to strike any such new testimony. The Board, on advice of its hearing officer, declined to further detail any limits on rebuttal testimony, on grounds that such problems could be dealt with when they came up pursuant to the authority of the hearing officer and that the rule was not intended to cover every procedural problem.

4. Notice of proposed amendment of the above rule appears in the notice section of this issue of the Montana Administrative Register. The amendment would change the dates of April 18 and June 4 in paragraph (1) of the adopted rule, noted above, to May 7 and June 25, respectively.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State January 16, 1979

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

In the matter of the adoption of a rule setting standards for haulers of water for human consumption	NOTICE OF THE ADOPTION OF RULE ARM 16-2.14(10)-S14382 Water Haulers for Cisterns

TO: All Interested Persons

1. On July 27, 1978, the Board of Health and Environmental Sciences published notice of a proposed adoption of a rule concerning water haulers for cisterns, at page 1006 of the 1978 Montana Administrative Register, issue number 8.

2. The agency has adopted the rule as proposed.

3. Public Comment: A written comment opposing the rule was received from D. P. Cubbage of Cubbage Water Hauling, Box 107, Great Falls, Montana, 59403. Mr. Cubbage argued that the requirements of the rule would impose an increased burden on water haulers, and specifically, would cause water haulers to raise their rates for their services.

The argument of Mr. Cubbage has been over-ruled. First, the Public Water Supply Act applies to water haulers for cisterns since the definition of "Public water supply" as contained in 75-6-102(9), MCA 1979, [69-4902(6), R.C.M. 1947] includes water haulers for cisterns. Second, the purpose of the rule is to protect the water while in transit from the city water mains until it is placed into the cistern.

In the matter of the repeal rule ARM 16-2.14(10)-S14510(2)) regarding disposal of garbage not fed to stock	NOTICE OF THE REPEAL OF RULE 16-2.14(10)-S14510(2) concerning garbage disposal

TO: All Interested Persons

1. On October 26, 1978, the Board of Health and Environmental Sciences published notice of proposed repeal of rule ARM 16-2.14(10)-S14510(2), concerning disposal of garbage not fed to stock at page 1462 of the 1978 Montana Administrative Register, issue number 14.

2. The agency has repealed the rule as proposed.

3. Public Comment: No comments or testimony were received. The agency has repealed subsection (2) of the rule because the Board of Health and Environmental Sciences has rules of similar import for solid waste management (see rule ARM 16-2.14(8)-S14315). Rule 16-2.14(10)-S14510(2) is thus superfluous to the extent it is consistent with the Board's solid waste management rule and confusing to the public to the extent it is inconsistent.

JOHN BARTLETT, Chairman

Certified to the Secretary of State January 16, 1979

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HORSE RACING

In the matter of the Proposed Amendments of ARM 40-3.46(6)-S4660 Definitions, sub-section (1); ARM 40-3.46(6)-S4690 Racing Officials, sub-section (d)(ii) and sub-section (i); ARM 40-3.46(6)-S46000 Occupational Licenses, sub-sections (h) and (z)(al); ARM 40-3.46(6)-S46010 General Conduct of Racing, sub-sections (30), (56) and (59); ARM 40-3.46(6)-S46020 Medication, sub-section (12)(d), (e) and (f); ARM 40-3.46(6)-S46040 Pari-Mutuel Operations, sub-section (18)(b) and sub-section (21)(a).	NOTICE OF AMENDMENTS OF ARM 40-3.46(6)-S4660 DEFINITIONS; ARM 40-3.46(6)-S4690 RACING OFFICIALS; ARM 40-3.46(6)-S46000 OCCUPATIONAL LICENSES; ARM 40-3.46(6)-S46010 GENERAL CONDUCT OF RACING; ARM 40-3.46(6)-S46020 MEDICATION; ARM 40-3.46(6)-S46040 PARI-MUTUEL OPERATIONS

TO: All Interested Persons:

1. On December 14, 1978, the Board of Horse Racing published a notice of proposed amendments to rules ARM 40-3.46(6)-S4660 concerning definitions, sub-section (1); ARM 40-3.46(6)-S4690 concerning racing officials, sub-sections (d)(ii) and (i); ARM 40-3.46(6)-S46000 sub-sections (h) and (z)(al) concerning occupational licenses; ARM 40-3.46(6)-S46010, sub-sections (30), (56) and (59) concerning general conduct of racing; ARM 40-3.46(6)-S46020, sub-sections (12)(d), (e) and (f) concerning medication; and ARM 40-3.46(6)-S46040, sub-sections (18)(b) and (21)(a) concerning pari-mutuel operations at pages 1586 through 1589 of the 1978 Montana Administrative Register, issue number 17.

2. The Board has amended the rules as proposed with two corrections. In paragraph 12., proposed amendment of ARM 40-3.46(6)-S46020, in the rule which was proposed the section was cited as "66-508, R.C.M. 1947". This should have read section "62-508 R.C.M. 1947", as chapter 62 deals with horse racing. Paragraph 14. proposed an amendment to ARM 40-3.46(6)-S4660, which should have been ARM 40-3.46(6)-S46040. The proposed wording of the amendment was correct, but the wrong rule number was cited. ARM 40-3.46(6)-S46040 was cited correctly in the notice headings.

3. The Board did receive a phone call from the Administrative Code Committee citing the above corrections. No other comments or testimony were received. The Board's reasons for the amendments are as stated in the notice.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, January 16, 1979.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HORSE RACING

In the Matter of the Proposed Adoption of a new rule setting Annual Fees	NOTICE OF ADOPTION OF ARM 40-3.46(6)-S4685 ANNUAL FEES

TO: All Interested Persons:

1. On December 14, 1978, the Board of Horse Racing published a notice of proposed adoption of a rule setting annual fees at pages 1583 through 1585 of the 1978 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received. The Board proposed the adoption to comply with the interpretation of the hearing examiner in the case of W.E. Cashmore, M.D., before the Board of Medical Examiners and to implement the authority granted the Board in section 62-505 R.C.M. 1947.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of a rule setting recertification fees for basic Emergency Medical Technicians and adoption of a rule setting Annual license fees for physicians	NOTICE OF AMENDMENT OF ARM 40-3.54(18)-S54100 EMERGENCY MEDICAL TECHNICIAN - BASIC; AND ADOPTION OF ARM 40-3.54(6)-S54013 ANNUAL LICENSE FEES FOR PHYSICIANS

TO: All Interested Persons:

1. On December 14, 1978, the Board of Medical Examiners published notice of proposed adoption of a rule setting recertification fees for basic emergency medical technicians and adoption of a rule setting annual license fees for physicians at pages 1590 and 1591 of the 1978 Montana Administrative Register, issue number 17.

2. The rules have been adopted as proposed. However, since publication of the notice, the Board has determined that the rule relating to emergency medical technicians would be better located as an amendment to an existing rule, rather than as a new rule. The Board therefore, makes this adoption an amendment to ARM 40-3.54(18)-S541000 sub-section (6)(d) which will read as follows: (By making this an amendment, it in no way changes the intent or meaning from the original notice.)

"(6)(d) Pay a fee sufficient to cover recertification costs <u>of $15</u> ~~not to exceed $25~~."

3. No comments or testimony were received. The reason for the adoption and amendment is to comply with the interpretation of the hearing examiner in the case of W.E. Cashmore, M.D.

before the Board of Medical Examiners and to implement the authority granted the Board in section 66-1042 R.C.M. 1947.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PLUMBERS

In the Matter of the Proposed Amendment of ARM 40-3.82(6)-S8280 Examination, Sub-section (c) and ARM 40-3.82(6)-S8290 Renewals	NOTICE OF AMENDMENT OF ARM 40-3.82(6)-S8280 EXAMINATIONS AND ARM 40-3.82(6)-S8290 RENEWALS

TO: All Interested Persons:

1. On December 14, 1978, the Board of Plumbers published a notice of proposed amendment of ARM 40-3.82(6)-S8280 concerning examinations and ARM 40-3.82(6)-S8290 to provide for an annual renewal fee at pages 1592 and 1593 of the 1978 Montana Administrative Register, issue number 17.

2. The rules have been amended exactly as proposed.

3. No comments or testimony were received. The reasons for the amendments are as stated in the notice.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PODIATRY EXAMINERS

In the Matter of the Proposed Adoption of a new rule setting An Annual Renewal Fee	NOTICE OF ADOPTION OF ARM 40-3.22(6)-S2230 ANNUAL RENEWAL FEE

TO: All Interested Persons:

1. On December 14, 1978, the Board of Podiatry Examiners published a notice of proposed adoption of a rule setting an annual renewal fee at page 1582 of the 1978 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received. The Board proposed the adoption to comply with the interpretation of the hearing examiner in the case of W.E. Cashmore, M.D., before the Board of Medical Examiners and to implement the authority granted the Board in section 66-605 R.C.M. 1947.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, January 16, 1979.

46-2.10(18)-S11450 SOCIAL AND REHABILITATION SERVICES

ADOPTION OF EMERGENCY RULES

Statement of reasons for emergency.

On March 24, 1978, the Department adopted an interim set of nursing home reimbursement rules intended to meet the minimum federal requirements for the Medicaid Program. Those rules were intended to be in effect until more satisfactory and comprehensive rules governing reimbursement for skilled and intermediate care could be adopted. By their terms, the rules were initially effective until July 1, 1978. These rules were then amended in June, 1978, and in October, 1978, to keep the rules in effect until January 28, 1979. Subsequently, the Department published Notice of Public Hearing on the Adoption of Six Rules Pertaining to Reimbursement for Skilled Nursing and Intermediate Care Services at page 1594 of the 1978 Montana Administrative Register Issue No. 17. Pursuant to that Notice the Department held a public hearing on January 11, 1979, and the new proposed rules will come into effect on April 1, 1979.

In order to continue to receive Federal Financial Participation in the Montana Medicaid Program, and to fulfill the Department's statutory and contractual duties to Montana's providers and recipients of Medicaid services for the interim period until the new rules are adopted, the Department must have in effect rules governing reimbursement for those services. In the absence of such rules, the Department would be unable to provide for the needs of Medicaid-eligible persons in the state thus endangering their health, safety and welfare.

Therefore, having determined that the welfare of Medicaid-eligible persons is in imminent peril, the Department is adopting the existing rules as published in the 1978 Montana Administrative Register Issue No. 13 page 1428 through 1438, as emergency rules for the interim period until the new rules are adopted.

CERTIFIED TO THE
SECRETARY OF STATE January 15, 1979

ineffective April 15, 1979

46-94.7H

VOLUME NO. 38 OPINION NO. 1

AGRICULTURE - Public disclosure of pesticide applicator and dealer records;
CONSTITUTIONS, RIGHT TO KNOW - Public disclosure of pesticide applicator and dealer records;
DEPARTMENT OF AGRICULTURE - Public disclosure of pesticide applicator and dealer records;
PESTICIDES - Applicator and dealer records, public disclosure of;
PRIVACY - Confidentiality of pesticide applicator and dealer records;
CONSTITUTION OF MONTANA - Article II, Section 9; Article II, Section 10;
SECTIONS - 27-215, 27-234 and 27-239, R.C.M. 1947.

HELD: Pesticide applicator and dealer records held by the Department of Agriculture are subject to public disclosure upon a finding by the Department that the public's right to know outweighs the individual applicator's or dealer's right to privacy. Non-disclosure of such records is appropriate only where the Department has determined that a matter of privacy is involved, has weighed the demands of that privacy and the merits of publicly disclosing the records, and has found that the demand of individual privacy clearly outweighs the demand of public disclosure.

4 January 1978

Mr. Gordon McOmber, Director
Montana Department of Agriculture
Sixth and Roberts
Helena, Montana 59601

Dear Mr. McOmber:

You have requested my opinion on the following question:

> Are pesticide applicator and dealer records of the Montana Department of Agriculture subject to public disclosure?

The Montana Pesticides Act, Sections 27-213 through 27-245, R.C.M. 1947, was enacted in 1971 to protect man and his essential needs from potentially dangerous pesticides. The Act provides for the control of the distribution, sale, application, disposal and transportation of pesticides.

The Montana Department of Agriculture is charged with the administration of the Pesticides Act. Section 27-215, R.C.M. 1947. The Department is empowered to adopt necessary rules and regulations, including rules which prescribe methods of:

> Licensing commercial applicators and operators, dealers, establishing methods of record keeping for applicators, operators, and dealers, and providing for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request ***.

Section 27-234(2)(d), R.C.M. 1947.

Administrative regulations adopted by the Department include detailed provisions for record keeping by pesticide applicators, M.A.R. 4.10.160, and by pesticide dealers, M.A.R. 4.10.330. Both applicators and dealers must open their records to inspection by Department employees and submit them in whole or in part upon the written request of the Department. M.A.R. 4.10.160(3) and 4.10.330(3), respectively. Public disclosure of individual applicator records is limited by M.A.R. 4.10.160(5), which provides:

> Individual applicator records shall not be public records except in those cases established and set forth by a district court. Provided that the department may summarize records for publication for groups of or classifications of applicators.

The regulations do not limit the public disclosure of pesticide dealer records.

In your letter you indicate the pesticide applicator and dealer records are used for investigative and enforcement as well as informational and operational purposes. You also state that the department's current policy is to maintain the confidentiality of applicator and dealer records held by the Department. Public review of those records occurs only when the records are disclosed during administrative or judicial proceedings or, in some instances, when the Department's proceedings against an applicator are completed.

The propriety of this disclosure policy turns on constitutional principles which govern public disclosure in general and on the language of the Pesticides Act.

Montanans are guaranteed the right to know by Article II, section 9, Constitution of Montana 1977, which states:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

By its terms this provision mandates the consideration of two distinct and often competing interests when a state agency is asked to disclose information in its possession; the public's interest in open government and the individual's interest in privacy.

The public's right to know is not absolute. It may give way where an individual's privacy is threatened by public disclosure of information held by a government agency. The Montana Constitutional Convention Bill of Rights proposal on the Right to Know, No. VIII, p. 23, states in part:

> The right of individual privacy is to be fully respected in any statutory embellishment of the [Right to Know] provision as well as the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply.

The right of privacy is guaranteed by Article II, Section 10, Constitution of Montana 1972, which states:

> The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest.

The Montana Supreme Court has not construed the above right to know or privacy provisions to either allow or prohibit any particular disclosure policy. The court has stated that constitutional provisons bearing on the same subject matter are to receive appropriate attention and to be construed together. Board of Regents v. Judge, 168 Mont. 433, 444, 543 P.2d 1323 (1975).

Public disclosure and individual privacy were discussed in 37 OP. ATT'Y GEN. NO. 107. That opinion specifically concerns practices and policies of the Board of Real Estate, but it applies in general to other agencies as well. The opinion states that to properly balance the interests of public disclosure and individual privacy, the agency must determine: (1) whether a matter of individual privacy is involved; (2) the demands of that privacy and the merits of publicly disclosing the information at issue; and (3) whether the demand of individual privacy clearly outweighs the demand of public disclosure.

There are no set guidelines for the determination of whether a matter of individual privacy is involved. Information which reveals facts concerning personal aspects of an individual's life necessarily involve individual privacy. Information concerning commercial matters may or may not constitute private information, depending in part on the nature of that information.

The Montana Supreme Court has not defined the scope of our constitutional right of privacy, but it has indicated in criminal case decisions that an individual has a protected right of privacy when he "justifiably relies" on an expectation of privacy. State v. Brackman, ___ Mont. ___, 33 St. Rptr. 1103, 1110, 582 P.2d 1216 (1978); State v. Charvat, ___ Mont. ___, 35 St. Rptr. 41, 44, 573 P.2d 660 (1978). Similar reasoning has prevailed in federal courts which have construed Fourth Amendment privacy "emanations." Katz v. United States, 389 U.S. 347 (1967); compare, United States v. Miller, 425 U.S. 435 (1976).

The second part of the test requires that the degree of infringement on an individual's privacy and the extent of the interest in favor of disclosure be determined. As the degree of infringement increases, so does the extent of the interest in public disclosure that is necessary to overcome the privacy interest. The recording of personal information such as one's attitudes, beliefs, or medical history, for example, would substantially infringe on one's privacy and therefore such information would be subject to disclosure if at all, only upon a strong showing of public interest in its disclosure.

The final step is to balance the merits of public disclosure and the demands of individual privacy. The Department must recognize that as a general rule its records are open to the public. Nevertheless, a legislative statement of policy

declaring the superiority of the right of privacy in certain information would require the Department, if not a court, to refuse public disclosure of that information.

Section 27-239, R.C.M. 1947, provides that the department cannot disclose a person's operations of selling, production, or use of pesticides in information the Department publishes. On its face, this provision does not apply to the kind of disclosure at issue here. M.A.R. 4.10.160(5), which prohibits the disclosure of applicator records, does apply.

That regulation forecloses consideration of the public's interest in access to pesticide applicator records, an interest embodied in the right to know provision. Additionally, nothing in the Pesticides Act authorizes the Department to preclude public access to its applicator records and, unless the legislature expressly states that such confidentiality is to be maintained, it is doubtful that the Department can reasonably interpret its mandate to require confidentiality.

The Montana Supreme Court has held that a regulation which is inconsistent with the statute it implements is void as an unreasonable exercise of delegated power. Vita Rich Dairy, Inc. v. Department of Business Regulation, 170 Mont. 341, 349, 553 P.2d 980 (1976); State ex rel. Swart v. Casne, ___ Mont. ___, 34 St. Rptr. 394, 399, 564 P.2d 983 (1977).

Pesticide applicator and dealer records involve essentially commercial information concerning materials which can have a profound effect on man and his environment. While public access to such information is within the Department's discretion, the Department must apply the balancing test previously discussed rather than precluding access automatically.

The Department also must require that all requests for applicator and dealer records be in writing and be specific. Any grants or denials of access by the Department must be in writing and specifically state the reasons therefor.

THEREFORE, IT IS MY OPINION:

> Pesticide applicator and dealer records held by the Department of Agriculture are subject to public disclosure upon a finding by the Department that the public's right to know outweighs the

individual applicator's or dealer's right to privacy. Non-disclosure of such records is appropriate only where the Department has determined that a matter of privacy is involved, has weighed the demands of that privacy and the merits of publicly disclosing the records, and has found that the demand of individual privacy clearly outweighs the demand of public disclosure.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO.2

LICENSES - Dealers' licenses for motor vehicle leasing companies;
MOTOR VEHICLES - Leasing companies, requirement of dealers' licenses for;
REVISED CODES OF MONTANA 1947 - Sections 53-114(6)(b), 53-118, 53-112.

HELD: Automobile leasing companies which sell automobiles must either be licensed as motor vehicle dealers pursuant to Section 53-118, R.C.M. 1947, or registered as branch establishments of licensed motor vehicle dealers pursuant to Section 53-122, R.C.M. 1947.

5 January 1978

Larry G. Majerus, Administrator
Motor Vehicle Division
Department of Justice
Scott Hart Building
Helena, Montana 59601

Dear Mr. Majerus:

You have requested my opinion on the following question:

> Are automobile leasing companies which sell automobiles required to obtain dealers' licenses as provided by section 53-118, R.C.M. 1947?

According to your inquiry, certain automobile leasing companies in Montana receive motor vehicles from licensed new motor vehicle dealers for subsequent sale. In some instances, the statements of origin for these vehicles are held in blank by the leasing operators, with no showing of transfer to the lessors by the licensed dealers. Upon sale the statements are completed by the leasing companies for new vehicle registration and licensing. In other instances, the leasing operators merely hold the vehicles for sale, the transfer documents are completed by the originating dealers upon completion of the sale, again with no indication on the documents of the intervening possession or action by the leasing operators.

Section 53-118(1), R.C.M. 1947, provides, in pertinent part:

> Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, ... shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required.

The statute requires the posting of bonds and filing of fees by new and used vehicle dealers in Montana.

Though leasing companies which sell automobiles are not mentioned by name in section 53-118, it is clear that all persons and firms selling motor vehicles, under any arrangements, fall within the ambit of the statute. The manifest legislative intent is that the business of buying and selling new or used automobiles be engaged in only by those who are duly licensed and registered with the State.

The question remains, however, as to what licenses leasing companies must obtain. Under one of the above described practices, the leasing operator merely holds the vehicle for sale and the transfer papers are later completed by the licensed dealer. The leasing operator in these circumstances is actually serving as an agent of the dealer with whom the automobiles originate. Section 53-122, R.C.M. 1947, specifically states: "A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment." Therefore, those dealers who make use of leasing companies for the sale of their new motor vehicles must register those leasing companies as branch establishments in order to bring their current practices into compliance with statutory requirements.

Under the other circumstances described above, the leasing companies hold both the vehicles and the blank transfer documents until sale. It is my opinion, under current Montana statutes, that the leasing operators must obtain licenses as used vehicle dealers, pursuant to section 53-118(1)(b), R.C.M. 1947. Section 53-114(6)(b) provides:

> No [wholly new and unused] motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

Leasing companies which are not licensed under section 53-118(1)(a) as new vehicle dealers cannot sell vehicles for registration as new vehicles under the above-quoted section if they have themselves exercised acts of ownership over those vehicles. When automobiles delivered to leasing companies by licensed dealers are held for sale and sold by the lease operators, the leasing companies have exercised direct control and ownership of the automobiles involved. The statements of origin of the sold vehicles cannot be completed for registration as new motor vehicles -- without reference to the intervening ownership by the leasing companies. Because the motor vehicles cannot be sold as new automobiles, the leasing operators involved may be licensed under present statutes only as used vehicle dealers.

Under either of the practices described above, it is clear automobile leasing companies are at present engaged in the business of selling motor vehicles and they must be registered or licensed as motor vehicle dealers with the State. To bring their current practices into compliance with statutory requirements, they must either be registered as agents or branch establishments of the licensed new motor vehicle dealers from whom they obtain automobiles for subsequent sale or be licensed themselves as used motor vehicle dealers.

THEREFORE, IT IS MY OPINION:

> Automobile leasing companies which sell automobiles must either be licensed as motor vehicle dealers pursuant to section 53-118, R.C.M. 1947, or registered as branch establishments of licensed motor vehicle dealers pursuant to section 53-122, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General
Montana Administrative Register

2-1/25/79

VOLUME NO.38 OPINION NO.3

DEPARTMENT OF ADMINISTRATION - Extent of authority to enforce state building codes;
PUBLIC BUILDINGS - Definition of "public" for purposes of determining whether a place is a "public place" under section 69-2107.
SECTIONS 69-2105, 69-2107, 69-2111, R.C.M. 1947.

HELD: State building codes may be enforced in public buildings regardless of location and in non-public buildings located within "municipalities and their jurisdictional area", as defined in section 69-2105(12).

Employees present in a building in the course of their employment are not "the public" for purposes of determining whether a building is a "public place" under section 69-2105(13).

8 January 1979

Mr. J. Michael Young
Department of Administration
Legal and Insurance Division
Capitol Station
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion regarding the extent of the Department of Administration's authority to inspect buildings and enforce the state building code. Your letter informs me that Montana Power Company has challenged the Department's authority to enforce the state elevator code at the power plants in Billings and Colstrip, contending that the building code applies only to "public places." My office has reviewed a letter from the Montana Grain Elevator Association expressing similar concerns regarding the inspection of grain elevators. These letters pose two questions:

May state building codes be enforced in a non-public building within a municipality and its jurisdictional area?

> Does the presence of employees constitute occupation by the public for purposes of determining whether a building is a "public place" under section 69-2105(13)?

Section 69-2111 defines the authority of the Department to enact building codes, providing:

> Section 69-2111 - Adoption of rules by department. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. *** The rules, when adopted as provided in this chapter, constitute the "state building code" and are acceptable for the buildings to which they are applicable. (Emphasis added)

The Department has the power and duty under section 69-2109 to inspect buildings and issue orders "necessary to effectuate the purposes of [the] act."

The only modification of the inclusive language of section 69-2111 appears in section 69-2107(1), which provides in part:

> 69-2107(1). Applicable to public places outside municipalities ***. (1) Outside municipalities and their jurisdictional area as defined by section 69-2105(13) of this act, this act applies to "public places" as defined in section 69-2105, subsection (13).

Reading sections 69-2111 and 69-2107 together, it is apparent that the legislature intended that the regulatory jurisdiction of the department extend to all buildings, whether public or not, which are located within a municipality and its jurisdictional area. The general statutory language of section 69-2111 applies to "all buildings" without qualification. More significantly, the exception in section 69-2107 which limits the departments jurisdiction in areas outside of municipalities implies that areas within a municipality are subject to the unlimited jurisdiction of the department. See 2A Sutherland, Statutes and Statutory Construction, §47.11 (9th ed 1973), and cases there cited.

The extent of the "jurisdictional area" of a municipality is clear from the definition found in section 69-2105(12), which states:

> "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of the municipality. Upon request the council may approve extension of the jurisdictional area to include: (a) all or part of the area within 4 1/2 miles of the corporate limits of a municipality; (b) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limit of a municipality; and (c) all of any zoning district adopted pursuant to Title 16, chapter 41 or 47, which is partially within 4 1/2 miles of the corporate limits of a municipality. ***

Reading this definition together with section 69-2107, it is apparent that non-public buildings are within the regulatory jurisdiction of the department (1) when they are located within the corporate boundaries of a municipality; or (2) if their location has been included in the "municipal jurisdictional area" at the request of the municipality.

The answer to your second question depends upon the proper construction of the definition of "public places" set forth in section 69-2105(13). The statute defines a "public place" as "any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be." Although seemingly clear, the statute leaves room for construction since the term "public" is undefined. Your letter suggests that if employees are considered members of the public, then grain elevators and power plants are "public places", and therefore are subject to the state building code.

In my opinion, employees who are present in a structure in the course of their employment are not to be considered the "public" for purposes of determining whether the structure is a "public place" under section 69-2105(13). Any other construction would demean the plain and ordinary meaning of the words used by the legislature, and would render the statutory distinction between public and private places a nullity. The popularly understood definition of "public", used in its noun form to describe a particular group of people, includes "[t]he people collectively, or in general ...." 2 Funk & Wagnalls New Standard Dictionary (1941) at

2003. See 36 OP. ATT'Y GEN. NO. 52. An employee who occupies a structure in the course of his employment does not do so as a member of the "people collectively", nor do the "people collectively" have an inherent right to go everywhere an employee may go.

Further, any construction which equates an employee with the "public" would effectively read the definition of "public places" out of the act, since virtually all structures will at some point be occupied, however fleetingly, by persons working there. I therefore conclude that buildings which are occupied only by employees present in the course of their employment are not "public places" within the meaning of section 69-2105(13).

THEREFORE, IT IS MY OPINION:

State building codes may be enforced in public buildings regardless of location and in non-public buildings located within "municipalities and their jurisdictional area", as defined in section 69-2105(12).

Employees present in a building in the course of their employment are not "the public" for purposes of determining whether a building is a "public place" under section 69-2105(13).

Very truly yours,

MIKE GREELY
Attorney General

MG/CT/dc

VOLUME NO. 38 OPINION NO. 4

FIRE DEPARTMENTS - Commencement of longevity for determining minimum wage for firefighters;
FIRE DEPARTMENT RELIEF ASSOCIATIONS - Computation of time in service for service pension eligibility;
MINIMUM WAGES - Firefighters, commencement of longevity for;
MUNICIPAL CORPORATIONS - Calculation of longevity in determining minimum wage for firefighters;
REVISED CODES OF MONTANA 1947 - Sections 11-1922(1), 11-1925, 11-1925.1, 41-2303.1.

HELD: 1. Longevity for purposes of determining the minimum wage for a firefighter in a city of the second class in Montana under section 41-2303.1, R.C.M. 1947, begins at the date of confirmation as a member of the fire department.

2. Eligibility for a service pension from a fire department relief association under sections 11-1925 and 11-1925.1, R.C.M. 1947, is calculated on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation.

10 January 1979

Mr. Theodore P. Cowan
City Attorney
City of Lewistown
312 4th Avenue South
Lewistown, Montana 59457

Dear Mr. Cowan:

You have requested my opinion on the following questions:

1. At what point does longevity begin under section 41-2303.1, R.C.M. 1947, for a firefighter employed by a city of the second class in Montana?

2. At what point does a firefighter's service in the fire department commence for purposes of determining his eligibility for a service pension from a fire department relief association under sections 11-1925 and 11-1925.1, R.C.M. 1947?

As stated in your inquiry, certain firefighters in your city contend that their longevity for purposes of calculating their minimum wage under section 41-2303.1, R.C.M. 1947, should be determined from the date of their initial entry into the Lewistown Fire Department as trainees under the Emergency Employment Act. Neither of the firefighters in question was appointed or confirmed as a full-paid member of the Department until a later date.

Section 41-2303.1, R.C.M. 1947, provides:

> From and after July 1, 1975, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours of work of at least seven hundred dollars ($700) per month for the first year of service, and thereafter of at least seven hundred dollars ($700) minimum per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours of work of at least seven hundred fifty dollars ($750) per month for the first year of service, and thereafter of at least seven hundred fifty dollars ($750) per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. (Emphasis added.)

The statute by its own terms is addressed exclusively to the firefighter's period of employment in a full-time, confirmed status; no provision is made for time spent on probation or in training. See 36 OP. ATT'Y GEN. NO. 30 at 364 (1975). The "first year of service" clearly refers to the first year of full-time employment as an appointed and confirmed member of the fire department. Likewise, "each additional year of service" for longevity calculations refers only to years served as a confirmed firefighter after the first year of qualifying service. Therefore, under the facts presented by your inquiry, the city of Lewistown is required by section 41-2303.1, R.C.M. 1947, to commence longevity computations for the firemen in question only from the date of confirmation by the city council.

Your second inquiry involves the applicable time period for figuring eligibility for service pension benefits under sections 11-1925 and 11-1925.1, R.C.M. 1947. Specifically, your question concerns a firefighter who served with the Lewistown Fire Department as a trainee under the Emergency Employment Act prior to his actual appointment and confirmation.

According to section 11-1922(1), R.C.M. 1947, a firefighter may be a member of a fire department relief association only if he is a confirmed member of the department. Firefighters in training or on probation are therefore ineligible for membership. Furthermore, trainees and probationers may not be required to make contributions to the association and may not voluntarily contribute. 36 OP. ATT'Y GEN. NO. 30 at 363-64 (1975).

Unlike the requirements for membership in the association, eligibility for service pensions under sections 11-1925 and 11-1925.1, R.C.M. 1947, depends solely upon a member's length of fully paid "active duty" with the fire department.

The period of active duty does not refer to the firefighter's status, but to the time of actual participation in the business of the fire department. Thus, in a former Attorney General opinion, it was specifically held that the calculation of service pension eligibility for a probationary fireman begins on the date he is hired. 33 OP. ATT'Y GEN. NO. 11 at 30 (1969). Similarly, the time spent by a fireman in training should figure in the computation of "active duty" under sections 11-1925 and 11-1925.1, R.C.M. 1947, as long as the trainee was fully paid and was actually engaged in the business of the fire department.

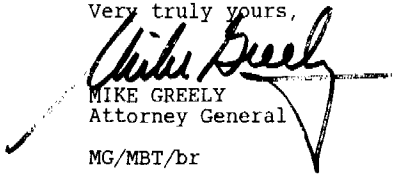
THEREFORE, IT IS MY OPINION:

1. Longevity for purposes of determining the minimum wage for a firefighter in a city of the second class in Montana under section 41-2303.1, R.C.M. 1947, begins at the date of confirmation as a member of the fire department.

2. Eligibility for a service pension from a fire department relief association under sections 11-1925 and 11-1925.1, R.C.M. 1947, is calculated on the basis of years of active duty as a fully paid firefighter and is

not dependent upon the date of appointment or confirmation.

Very truly yours,



MIKE GREELY
Attorney General

MG/MBT/br