RESERVE

MONTANA ADMINISTRATIVE REGISTER

1980 ISSUE NO. 17
PAGES 2528-2612

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The 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 Joint Resolution directing an agency to adopt, amend, or repeal 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 existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

INFORMATION REGARDING THE RECODIFICATION OF THE ADMINISTRATIVE RULES OF MONTANA

The recodification of the administrative rules is complete as of July 1, 1980. The complete reprint and distribution of the newly recodified set of the Administrative Rules of Montana (ARM) should be accomplished by September, 1980. The provisions of the law relating to recodification are found in Title 2, Chapter 4, MCA - the Montana Administrative Procedure Act. This act will be included in Volume 1, Title 1, Chapter 7, of the ARM.

Title Assignments - All title assignments remain the same with the exception of Title 10 - Education. This title has been expanded to include: Superintendent of Public Instruction, Board of Public Education, State Library Commission and the Montana Arts Council. Each of the above named agencies is assigned separate chapters in Title 10. Title 48, originally assigned to the Superintendent of Public Instruction and the Board of Public Education, is deleted.

New Numbering System - A new three-part numbering system was adopted during recodification (Example - 44.1.1101). The number to the far left designates the title number assigned to a department, the number between the periods designates the chapter number, and the number to the far right indicates the subchapter number with the last two numbers indicating the individual rule number.

New Rules or Rule Changes Published in the Montana Administrative Register (MAR) During Transition Period - During the transition period from July 1, 1980, until the distribution of

the newly recodified set of ARM, users will not have ready access to the language of the recodified rules. During this period, rulemaking agencies will publish in the MAR the entire language of a proposed new rule either in the notice or adoption stage, with the exception of an adoption by reference.

The proposed amendment of a recodified rule will contain the entire language of the rule with interlining and underlining to indicate the changes made to the rule. If the language of a recodified rule appears in the Montana Administrative Register, then the issue and page number where the rule is found will be listed. In this case, only the amended language may be published. The new three-part number will be listed.

In the case of a proposed repeal of a recodified rule, the agency will list the new three-part number followed in parenthesis by the old rule number assigned before recodification, and the page number in the ARM where the rule can be found. If substantive changes were made to the rule during the period that replacement pages were not furnished to the ARM, then the page number in the MAR will also be listed where the changes can be found.

Please direct questions relating to recodified rules to the affected agency or to the Administrative Rules Bureau, Secretary of State's office, Room 202, Capitol Building, Helena, Montana 59601.

NOTICE: The July 1977 through June 1980 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana 59601.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the REPEAL OF RULES relating to the administration of sick leave and maternity leave.	)))))	NOTICE OF PROPOSED REPEAL OF RULES RELATING TO SICK LEAVE AND MATERNITY LEAVE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 11, 1980, the Department of Administration proposes to repeal rules ARM 2.21.101 through 2.21.120 (ARM 2-2.14(20)-S14250 through 2-2.14(20)-S14460 and 2-2.14(28)-S14520 through 2-2.14(28)-S14550), which pertain to sick leave and maternity leave.

2. The rules proposed to repealed are on pages 2-555 through 2-566 (pages 2-28.28 through 2-28.36 and 2-28.43 through 2-28.47) of the Administrative Rules of Montana.

3. The department proposes to repeal these rules because the department has proposed the adoption of new rules in the matter. The proposed new rules are found at pages 2305 through 2311 of the 1980 Montana Administrative Register, issue number 15.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing no later than October 9, 1980, to:

Patricia Moore, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59601

5. If a person who is directly affected by the proposed repeal of rules ARM 2.21.101 through 2.21.120 (ARM 2-2.14(20)-S14250 through 2-2.14(20)-S14460 and 2-2.14(28)-S14520 through 2-2.14(28)-S14550) 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 that request along with any written comments he has to: Patricia Moore, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59601 no later than October 9, 1980.

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 directly affected, 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 25.

7. The authority of the agency to make the proposed repeal of these rules is based on section 2-18-604, MCA, and the section implements section 2-18-604, MCA.

Dave Lewis, Director
Department of Administration

Certified to the Secretary of State September 2, 1980.

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

In the matter of the repeal of rules 16.14.590, 16.14.591, 16.14.592, 16.14.593, 16.14.594, and 16.14.595 and the adoption of new rules relating to hazardous waste	NOTICE SUPPLEMENTING NOTICE OF PUBLIC HEARING FOR REPEAL OF ARM 16.14.590 through 16.14.595 and ADOPTION OF NEW RULES RELATING TO HAZARDOUS WASTE [MAR NOTICE NO. 16-2-152]

TO: All Interested Persons

1. On August 28, 1980, MAR Notice No. 16-2-152 was published in Issue No. 16, Montana Administrative Register, on pages 2446 through 2477. Due to clerical error, page 2470 was erroneously included in the notice and should be ignored.

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

Certified to the Secretary of State September 2, 1980

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

In the matter of the amendment of ARM 16-2.12(3)-S12303 [16.40.303], exemptions--radioactive material other than source material	NOTICE OF PROPOSED AMENDMENT OF RULE 16-2.12(3)-S12303 [16.40.303] (Exemptions-Radioactive Material other than Source Material) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 13, 1980, the Department of Health and Environmental Sciences proposes to amend rule 16-2.12(3)-S12303 (16.40.303) which governs exemptions of non-source radioactive material from licensure.

2. The rule is proposed to be amended as follows (full text of rule at page 183 of the 1980 MAR, issue no. 2, published January 31, 1980):

16.40.303 EXEMPTIONS--RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL (1)(a) Except as provided in subsection (1)(b) of this rule, any person is exempt from this sub-chapter to the extent that such person receives, possesses, uses, transfers, or acquires products or materials containing radioaftive material in concentrations not in excess of those listed in Schedule A of this sub-chapter, with the exception of Radium 226 for which the exempt concentration is 5 x 10^{-6} mCi/ml (u Ci/gm).

(b) Same as existing rule.

(2) through (6) Same as existing rule.

3. The rule is proposed to be amended to remove from the requirements of licensure small quantities of Radium. The department had intended for the rule not to regulate these quantities when the rule was adopted this spring, but through an oversight Radium 226 was inadvertently omitted from Schedule A at that time.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, 59601, no later than October 11, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, Montana, 59601, which must be received not later than 5:00 p.m. on October 11, 1980.

6. If the department receives requests for a public hearing on the proposed amendment from 10% or 25, whichever is less, of the persons who are directly affected by the

proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based upon the population of the state of Montana as the group of persons directly affected.

7. The authority of the department to make the proposed amendment is based on section 75-3-202, MCA; implementing sections 75-3-104, 75-3-202, MCA.

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

Certified to the Secretary of State September 2, 1980

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

In the matter of the amendment of rules 16.20.905, 16.20.912, (processing and public notice requirements for MPDES permits) and 16.8.1107 (public review of air quality permit applications)	NOTICE OF PUBLIC HEARING OF RULE 16.20.905, MPDES Permit Processing Procedure, RULE 16.20.912, Public Notice of MPDES Permit Applications, AND RULE 16.8.1107 Public Review of Air Quality Permit Application

TO: All Interested Persons

1. On October 11, 1980, at 9:00 a.m., a public hearing will be held in the auditorium of the Highway Department Building, 2701 Prospect, Helena, Montana, to consider the amendment of rules 16.20.905, 16.20.912, and 16.8.1107.

2. The proposed amendments replace present rules 16.20.905, 16.20.912, and 16.8.1107 found in the Administrative Rules of Montana. The proposed amendments would except Major Facility Siting Act applications from the time and procedural requirements of the air and MPDES permit rules.

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

16.20.905 PROCESSING PROCEDURE (1) No application will be processed by the department until all the requested information is supplied and the application is complete.

(2) Upon receipt of a completed MPDES permit application and requested supplemental information, the department shall make a tentative determination with respect to issuance or denial of an MPDES permit. The tentative determination shall be made based on apparent compliance or noncompliance with all of the following whenever applicable:

(a) Effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards.

(b) Water quality standards established pursuant to section 75-5-301, MCA.

(c) Prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(d) Prohibition of any discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation.

(e) Prohibition of any discharges to which the regional administrator has objected in writing.

(f) Prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the act.

(g) Any additional requirements that the department determines are necessary to carry out the provisions of section 75-5-101 et seq., MCA.

(3) After making the tentative determination, the department shall take the following action:

(a) If the determination is to deny an MPDES permit, the department shall give written notice of its action to the applicant.

(b) If the determination is to issue an MPDES permit, the department shall prepare a draft MPDES permit, which shall include the following:

(i) Proposed effluent standards.

(ii) Necessary schedules of compliance, including interim dates and requirements for meeting proposed effluent standards.

(iii) A brief description of any other proposed special condition which will have a significant impact upon the discharge described in the MPDES permit application.

(4) Unless (11) below applies, A a public notice of every completed MPDES permit application shall be circulated by the department in accordance with the procedures described in ARM 16.20.912 to inform interested and potentially interested persons of the proposed discharge and of the tentative determination. The contents of the public notice shall include the equivalent of information contained in the EPA example published in 40 CFR 124, Appendix A, or any subsequent revisions.

(5) Prior to issuance of public notice for every discharge which has a total volume of more than 500,000 gallons on any one day of the year, or where the department shall determine a need, the department shall prepare a fact sheet. In cases where fact sheets have been prepared, the public notice shall so state. The contents of such fact sheets shall include the equivalent of the information contained in the EPA example published in 40 CFR 124, Appendix B, or any subsequent revisions.

(6) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the MDPES application.

(7) The applicant, any affected state, any affected interstate agency, any affected country, the regional administrator, or any interested agency, person or group of per-

sons may request or petition for a public hearing with respect to the MPDES application.

(a) Any such request or petition for public hearing shall be filed within the period prescribed in subsection (6) above and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted.

(b) The department shall hold a hearing if there is significant public interest, including the filing of requests or petitions for such hearings, in holding such a hearing. Instances of doubt shall be resolved in favor of holding the hearing.

(c) Any hearing pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the discretion of the department and may, as appropriate, consider related groups of permit applications.

(d) Public notice of any hearing held pursuant to this sub-chapter, unless (11) below applies, shall be in accordance with procedures described in ARM 16.20.912. The contents of the public notice shall include the equivalent of the information contained in the EPA example published in 40 CFR 124, Appendix C, or any subsequent revisions.

(8) If a public hearing is not held pursuant to subsection (7) above and following the comment period provided for in subsection (6) above, the department shall make a final determination on issuance and denial of an MPDES permit. All written comments submitted during the 30-day comment period shall be retained by the department and considered in the formation of the final determinations.

(9) If a public hearing is held pursuant to subsection (7) above, the department shall make a final determination on issuance or denial of an MPDES permit following review of the information presented at the hearing. All written comments submitted during the comment period and all comments received at the public hearing shall be recorded and retained by the department and considered in the formation of the final determinations.

(10) Any state whose waters may be affected by the issuance of an MPDES permit shall be afforded a period of thirty days as described in subsection (6) above in which to submit written recommendations to the department. The department shall either incorporate these recommendations into the subject permit or provide the affected state and the regional administrator with a written explanation of the reasons for failing to do so.

(11) If the MPDES application is also an application under the Major Facility Siting Act, (Rules I through III, appearing on page 1663 of the June 26, 1980, issue of the

Montana Administrative Register,) apply.
[The authority of the board to make the proposed amendments is based on sections 75-5-401 and 75-20-216(3), MCA, and the amendment implements section 75-20-216(3), MCA.]

16.20.912 PUBLIC NOTICE (1) Public notice of every completed MPDES application shall be mailed to any person upon request and shall be circulated within the geographical area of the proposed discharge. Such circulation may include any or all of the following:

(a) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the discharge is located;

(b) Posting near the entrance to the applicant's premises and in nearby places; and

(c) Publishing in local newspapers and periodicals, or if appropriate, in a daily newspaper of general circulation.

(2) Public notice of any public hearing held pursuant to this sub-chapter shall be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MPDES application. Such circulation shall include at least the following:

(a) Publication of notice in at least one newspaper of general circulation;

(b) Distribution of notice to all persons and agencies receiving a copy of the notice or fact sheet for the MPDES application.

(c) Distribution to any person or group upon request.

(3) If an MPDES applicationis also an application under the Major Facility Siting Act, public review is pursuant to (Rules I through III, appearing on page 1663 of the June 26, 1980, issue of the 1980 Montana Administrative Register) rather than this rule.
[The authority of the board to make the proposed amendment is based on sections 75-5-401 and 75-20-216(3), MCA, and the amendment implements section 75-20-216(3), MCA.]

16.8.1107 PUBLIC REVIEW OF PERMIT APPLICATIONS (1) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the procedures for public review shall be those required by the Montana Environmental Policy Act and the rules adopted by the board and department to implement the act, ARM 16.2.601 through 16.2.706.

(2) With the exception of those permit applications subjected to subsection (4) below, ~~Where~~ where the application for a permit does not require the compilation of an environmental impact statement, an application shall be

deemed to be complete and filed on the date the department received it unless the department notifies the applicant in writing within 30 days thereafter that it is incomplete. The notice shall list the reasons why the application is considered incomplete and shall specify the date by which any additional information requested shall be submitted. If the information is not submitted as required, the application shall be considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete and filed on the date the required additional information is received.

(a) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for permit. The notice shall be made not sooner than 10 days prior to submittal of an application nor later than 10 days after submittal of an application. Form of the notice shall be provided by the department.

(b) Within 40 days after receiving a complete and filed application for a permit, the department shall make a preliminary determination whether the permit should be issued, issued with conditions or denied; and

(c) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by subsection (2)(a) of this rule and the applicant of the department's preliminary determination. The notice shall specify that comments may be submitted on the information submitted by the applicant and the department's preliminary determination to issue, issue with conditions or deny the permit. The notice shall also specify the following:

(i) Where a complete copy of the application and the department's analysis of the applicant can be reviewed. One copy of this material shall be made available for inspection by the public in the air quality control region where the source or stack is located.

(ii) A date by which all comments on the department's preliminary determination must be submitted in writing within 15 days after notice is mailed.

(iii) Notwithstanding the opportunity for public comment, a final decision must be made within 60 days after a completed and filed application is submitted to the department as required by Section 75-2-211, MCA. The notice shall specify the date upon which the 60 day period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's decision.

(3) If a prevention of significant deterioration (PSD) rule has been adopted by the Board the following additional review requirements shall apply to any source or stack which is subject to the PSD rule:

(a) The Department shall advertise in a newspaper of general circulation in the air quality control region affected by the proposed source or stack that an application has been received, the preliminary determination made by the Department, the degree of increment consumption that is expected from the source or stack, how written comments may be submitted, and how the final determination of the Department may be appealed to the Board; and

(b) The Department shall send a copy of the notice of public comment to the applicant, the Region VIII Administrator of the Environmental Protection Agency and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the governing body of the city and county where the source or stack would be located; any comprehensive regional land use planning agency, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or stack.

(4) If an application for an air quality permit is also an application for certification under the terms of the Major Facility Siting Act, public review is governed by the terms of (Rules I through III, appearing at page 1663 of the June 26, 1980, issue of the 1980 Montana Administrative Register).

[The authority of the board to make the proposed amendments is based on sections 75-2-111 and 75-20-216(3), MCA, and the amendments implement section 75-20-216(3), MCA.]

4. The board is proposing to amend the air quality and MPDES permit rules to allow substitution of a special public review and hearing procedure in the event that such permits are requested as part of an application under the Major Facility Siting Act.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to C. W. Leaphart, 1 Last Chance Gulch, Helena, Montana, 59601, no later than October 10, 1980.

6. C. W. Leaphart, 1 North Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the board to make the proposed amendments and the sections of the law that they implement are separately stated above following each rule.

JOHN F. McGREGOR, M.D., Chairman

By: RITA ANN SHEEHY

Certified to the Secretary of State September 2, 1980

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

IN THE MATTER of Proposed Adoption of the Public Utility Regulatory Policies Act Standard Respecting Advertising Expenses.	NOTICE OF PUBLIC HEARING ON THE APPROPRIATENESS OF THE PROPOSED ADOPTION OF THE PUBLIC UTILITY REGULATORY POLICIES ACT STANDARD RESPECTING ADVERTISING EXPENSES

TO: All Interested Persons

1. On October 23, 1980, in the Senate Chambers, State Capitol Building, Helena, Montana, at 10:00 a.m., a public hearing will be held to consider the appropriateness of adopting the Public Utility Regulatory Policies Act ("PURPA," 16 U.S.C. §§ 2623 and 2625) Standard Respecting Advertising Expenses (PURPA Sections 113(b)(5) and 115(h).)

2. The PURPA Standard Respecting Advertising Expenses, if adopted as a rule, would not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

Rule I. DEFINITIONS (1) For the purposes of these rules:

(a) "Advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric customers.

(b) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance.

(c) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of these rules, the terms "political advertising" and "promotional advertising" do not include:

(a) Advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy;

(b) Advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act;

(c) Advertising regarding service interruptions, safety measures, or emergency conditions;

(d) Advertising concerning employment opportunities with such utility;

(e) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

Rule II. RECOVERY OF PROMOTIONAL OR POLITICAL ADVERTISING EXPENDITURES PROHIBITED (1) No electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in Rule I.

4. Under Section 113 of PURPA, this Commission must, no later than November 1, 1980, provide public notice and conduct a hearing respecting this advertising standard and, on the basis of that hearing, adopt the standard "...if, and to the extent, [the Commission]...determines that such adoption is appropriate to carry out the purposes of [the Act], is otherwise appropriate and is consistent with otherwise applicable state law...."

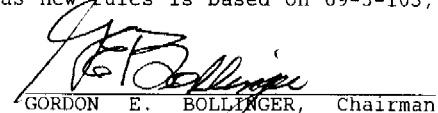
The Montana Code Annotated ("MCA"), Section 69-3-307, prohibits the inclusion in the rates charged to electric and other utility customers certain advertising costs. It provides:

> Cost or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the Public Service Commission in setting or regulating rates which may be charged by the public utilities pursuant to this chapter. This section shall not apply to advertising which encourages the conservation of energy or product safety or informs the public of the availability of alternate forms of energy or recommends use at times of lower rates or lower demand... Montana Code Annotated (MCA) § 69-3-307.

5. Interested persons may submit their data, views, or arguments concerning the appropriateness and consistency with state law of the PURPA Regulatory Standard Respecting Advertising Expenses at the hearing above noticed or in writing to Eileen E. Shore, 1227 11th Avenue, Helena, Montana 59601, no later than October 23, 1980.

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

7. Authority for the Commission to make and adopt the PURPA Advertising Standard as new rules is based on 69-3-103, MCA, IMP, 69-3-102, MCA.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 2, 1980.

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

IN THE MATTER of Proposed Adoption of New Rules Governing Purchases and Sales Between Public Utilities and Qualifying Cogeneration and Small Power Production Facilities.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF COGENERATION AND SMALL POWER PRODUCTION RULES

TO: All Interested Persons

1. On October 23, 1980, immediately following the hearing on utility advertising expenses at 10:00 a.m., a public hearing will be held in the Senate Chambers, State Capitol Building, Helena, Montana, to consider the adoption of rules which would implement Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978.

2. The proposed 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. DEFINITIONS (1) For purposes of these rules, the following definitions apply:

(a) "Utility" means any public electric utility regulated by the Montana Public Service Commission.

(b) "Commission" means the Montana Public Service Commission.

(c) "Qualifying facility" or "facility" means:

(i) A congeneration facility which meets the operating, efficiency, and ownership standards established by the Federal Energy Regulatory Commission for such facilities; or

(ii) A small power production facility which meets the production capacity, energy source, and ownership criteria established by the Federal Energy Regulatory Commission for such facilities.

(d) "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy such as heat or steam, used for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

(e) "Small power production facility" means a facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity, and which depends upon biomass, waste, or renewable resources for its primary source of energy. At least 50 percent of the equity interest in a small power production facility must be owned by a person not primarily engaged in the generation or sale of electric energy. The provisions of FERC regulation Section 292.204, 18 CFR Part 292, respecting site location and primary energy sources are incorporated by reference in this definition.

(f) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric

utility.

(g) "Sale" means the purchase of electric energy or capacity or both by an electric utility to a qualifying facility.

(h) "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(i) "Rate" means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification and any contract pertaining to the sale or purchase of electric energy or capacity.

(j) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source, and which are approved by the Commission.

(k) "Standard rates" means those rates calculated by a means approved by the Commission which:

(i) In the case of purchases, are based on avoided costs to the utility, are computed quarterly by the utility and made available to the public, are reviewed annually by the Commission, and are applicable to all contracts with qualifying facilities which do not choose to negotiate a different rate; or

(ii) In the case of sales, are the utility's tariff schedules currently in effect for members of the same class as the qualifying facility.

(l) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administration costs incurred by the utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources.

(m) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

(n) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(o) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

Rule II. GENERAL PROVISIONS (1) Any cogeneration or small power production facility in Montana, which is a qualifying facility under the criteria for size, fuel-use, and ownership established by the Federal Energy Regulatory Commission, is a qualifying facility eligible to participate, under these rules, in arrangements for purchases and sales of electric power with electric utilities regulated by the Commission.

(2) Any qualifying facility in Montana which produces electric energy or capacity, or both, available for purchase by any public utility regulated by the Commission, shall not be considered a public utility within the meaning of 69-3-101, MCA, and shall be exempt from regulation by the Commission as a public utility, except insofar as these rules or any other Commission order, tariff, requirement, or rule governing the activities of public utilities may affect the facility in its dealings with such regulated utilities. Nothing in these rules is to be construed to limit the full powers of regulation, supervision, and control of public utilities vested by law in the Commission.

(3) Nothing in these rules shall exempt any qualifying facility from the applicable licensing or permit requirements which may by imposed on facilities by Montana laws and regulations governing water use, land use, community development and planning, zoning, air quality, environmental protection, or any other existing pertinent law or regulation administered by state agencies other than the Commission.

(4) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties. The contract shall specify:

(a) The nature of the purchases and sales;

(b) The applicable rates for the purchases and sales;

(c) The amount and manner of payment of interconnection costs;

(d) The means for measurement of the energy or capacity purchased or sold by the utility;

(e) The method of payment by the utility for purchases, and the method of payment by the facility for utility sales;

(f) Installation and performance incentives to be provided by the utility to the qualifying facility;

(g) The services to be provided or discontinued by either party during system emergencies;

(h) The term of the contract;

(i) Applicable operating safety and reliability standards with which the qualifying facility must comply;

(j) Appropriate indemnity and liability provisions.

Rule III. OBLIGATIONS OF UTILITIES TO QUALIFYING FACILITIES (1) Each utility shall purchase any energy and capacity made available by a qualifying facility, except that a utility is not obligated to make purchases from an interconnected qualifying facility during system emergencies, if such purchase would contribute to the emergency, or as stipulated in

the contract between the utility and the qualifying facility.

(2) Except as provided in Rule III(1), each utility shall purchase any energy and capacity made available by a qualifying facility:

(a) At a standard rate for such purchases which is based on avoided costs to the utility as approved by the Commission; or

(b) If the qualifying facility agrees, at a rate which is a negotiated term of the contract between the utility and the facility, different from the standard rate, and not to exceed avoided cost to the utility.

(3) Each utility shall sell to any qualifying facility any energy and capacity requested by the facility, which may include back-up, maintenance, and interruptible power, or any of them, at rates comparable to those applied to the utility's other customers having similar load or other cost-related characteristics, except that:

(a) The utility shall not be obligated to make sales to an interconnected qualifying facility during system emergencies, and shall so stipulate in the contract; and

(b) The utility shall not be obligated to make sales of certain types of power, provided that, after notice and opportunity for public comment, the Commission waives the sales requirement respecting back-up, maintenance, or interruptible power upon a showing by the utility that such a sale would:

(i) Impair the utility's ability to give adequate service to its customers; or

(ii) Impose an undue burden on the utility.

(4) Within 30 days of any determination by the Commission of standard rates applicable to a utility's purchases and sales to qualifying facilities, each utility shall:

(a) Publish its standard rates for purchases of electric power from qualifying facilities based on the avoided cost calculations deemed appropriate by the Commission, such information to be published quarterly thereafter and made available at any time upon the request of any person; and

(b) Publish the applicable standard rates for sales of electric power to qualifying facilities, such information to be published quarterly thereafter and made available at any time upon request of any person.

(5) Each utility shall make such interconnections with a qualifying facility as may be necessary to accomplish the purchase and sales transactions undertaken in the contract between the utility and the facility.

(6) Each utility shall offer to operate in parallel with a qualifying facility, provided that the facility assures compliance with reasonable operating safety and reliability standards.

(7) Any utility may, if the affected qualifying facility agrees, transmit energy or capacity purchased from the facility to any other electric utility regulated by the Commission.

(8) Each utility shall, if required by the Commission,

include installation and performance incentive provisions in any contract with a qualifying facility. Such provisions shall offer a maximum dollar amount per kw per month for any month in which the facility's energy output meets or exceeds specified levels of performance.

Rule IV. OBLIGATIONS OF QUALIFYING FACILITIES TO UTILITIES (1) A qualifying facility shall specify in its contract with a utility the nature of the purchases undertaken in the contract, including:

(a) The technology used in the production of energy or capacity by the qualifying facility;

(b) The facility's best estimates of the supply characteristics of the energy or capacity produced by the qualifying facility, including availability during system daily and seasonal peak periods and during system emergencies; and

(c) The type of purchase authorized by the qualifying facility, either purchase "as available" or purchase in a certain quantity over the term specified in the contract. The rate paid by the utility for any purchase shall not exceed the avoided costs to the utility, calculated:

(i) At the time of delivery of the facility's energy or capacity, for "as available" purchases; or

(ii) At either the time of delivery or the time the obligation is incurred, at the facility's option, for purchases of firm power over the term of the contract.

(2) A qualifying facility shall specify in its contract with any utility the nature of the sales undertaken in the contract. Such sales may include sales of back-up, maintenance, or interruptible power.

(3) A qualifying facility shall be fully responsible for interconnection costs and shall:

(a) Submit equipment specifications and detailed plans to the utility for the installation of its interconnection facilities, control and protective devices, and facilities to accommodate utility meter(s) for written approval prior to actual installation;

(b) Provide and install necessary meter socket and enclosure equipment at or near the point of interconnection, unless the utility has agreed to install the equipment and the facility has agreed to pay for this service;

(c) Reimburse the utility for special or additional interconnection facilities, including control or protective devices, time of delivery metering, and reinforcement of the utility's system to receive or continue to recieve the power delivered under the contract. Such reimbursement may be accomplished by means of amortization over a reasonable period of time within the term of the contract.

(4) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent specified in the contract between the facility and the utility, unless the qualifying facility is able to supply additional power and agrees to do so.

Rule V. RATES FOR PURCHASES (1) Each utility shall submit to the Commission by November 1, 1980, and every year thereafter, the following cost data for use by the Commission in determining avoided costs and standard rates therefrom.

(a) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next five years;

(b) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten years; and

(c) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

(2) Each utility shall purchase available power from any qualifying facility at either the standard rate determined by the Commission to be appropriate for the utility, and published quarterly by the utility, or at a rate which is a negotiated term of the contract between the utility and the qualifying facility.

(3) The standard rate for purchases from a qualifying facility shall be that rate calculated on the basis of avoided costs to the utility which is determined by the Commission to be appropriate for the particular utility after consideration of:

(a) The avoided cost data submitted by the utility to the Commission;

(b) The availability of capacity or energy from qualifying facilities during system daily and seasonal peak periods;

(c) The expected or demonstrated reliability of qualifying facilities;

(d) The relationship of the availability of energy or capacity from qualifying facilities to the ability of the utility to avoid cost;

(e) The costs or savings resulting from variations in line losses due to purchases from qualifying facilities.

(4) If a qualifying facility has provided in its contract with a utility that measurement of facility energy input to the utility system and measurement of facility load will be accomplished with one meter, the qualifying facility shall be subject to a net billing system, whereby the utility shall pay

the standard rate or the negotiated rate for purchases only for the facility's input to the system which is in excess of the facility's load.

(5) If the qualifying facility has agreed in its contract with a utility that measurement of facility input to the utility system shall be accomplished by metering separate from that measuring the facility load, the qualifying facility may receive payment for all of the energy it supplies to the utility according to the applicable schedule of standard rates for purchases. Unless the qualifying facility has contracted for a different rate, the standard rate is applicable regardless of whether the qualifying facility is simultaneously served by the utility for the facility's load, and regardless of the rate charged by the utility for such simultaneous sales.

(6) The utility shall pay the qualifying facility for purchases of energy based on the metering arrangements specified in the contract and at the time specified in the contract. In the case of net billing arrangements, payments may be made in conjunction with the utility's usual billing times.

(7) Each utility shall pay any qualifying facility with which it has a contract for purchases of capacity in accordance with the terms of such contract.

Rule VI. RATES FOR SALES (1) Each utility shall sell power delivered to a qualifying facility under the terms of the contract at the same rate applicable to the utility's non-generating customers belonging to the same class as the qualifying facility or having similar load or other cost-related characteristics, except that rates for the sale of back-up, maintenance, or interruptible power to a qualifying facility may be adjusted to correspond to savings to the utility or demonstrable additional burden to the utility resulting from such sales.

(a) The rate for the sale of interruptible power which represents a savings in capacity to the utility shall be lower than the rate for sales of firm service.

(b) The rates for sales of back-up and maintenance power to a qualifying facility whose scheduled outages can be usefully coordinated with scheduled outages of the utility may be adjusted to reflect savings to the utility made possible by that coordination.

(c) The rates for sales of back-up and maintenance power shall not be based on an assumption that forced outages or other reductions in output by all qualifying facilities on a utility's system will occur at the same time, or during the system peak, or both.

(2) Subject to the provisions of Rule VI(1), the standard rates for sales of power to interconnected qualifying facilities shall be each utility's current applicable tariff schedules approved by the Commission.

(3) Each utility shall bill any interconnected qualifying facility for sales of power in the manner and at the times

stated in the contract, based on the metering arrangements in effect under the terms of the contract.

Rule VII. OPERATING SAFETY PROVISIONS (1) Each qualifying facility shall, in the design, installation, interconnection, maintenance, and operation of the facility, comply with the requirements of the national electrical safety code.

(2) Each qualifying facility seeking parallel operation with any utility shall provide such control and protective devices as required by the utility for such operation.

(3) Each utility shall have the right:

(a) To enter the premises of the qualifying facility at reasonable times for inspection of the facility's protective devices, and

(b) To disconnect without notice if a hazardous condition exists in the generation or other equipment of the qualifying facility, and such immediate action is necessary to protect persons, utility facilities or other customers' facilities from damage or interference imminently likely to result from the hazardous condition.

(4) The Commission shall have the same power to investigate accidents occuring in the operation of any qualifying facility which result in death or serious injury to any person as it has under Section 69-3-107, MCA, with respect to public utilities.

4. The Department is proposing these rules to establish the conditions under which purchases and sales of electric power between public utilities and cogenerators or small power producers shall be undertaken; to encourage energy conservation and efficiency; and to implement Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978.

5. Interested persons may submit their data, views or arguments concerning the appropriateness of these proposed rules at the hearing above noticed or in writing to Eileen E. Shore, 1227 11th Avenue, Helena, Montana 59601, no later than October 23, 1980.

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

7. Authority for the Department to make and adopt the proposed rules is based on 69-3-103, MCA, IMP, 69-3-102, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 2, 1980.

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

IN THE MATTER of Proposed Adoption of Rules Prohibiting the Use of Automatic Adjustment Clauses in Utility Rate Schedules.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PROHIBITING USE OF AUTOMATIC ADJUSTMENT CLAUSES IN UTILITY RATE SCHEDULES.

TO: All Interested Persons

1. On October 23, 1980, immediately following the hearing on utility advertising expenses at 10:00 a.m., a public hearing will be held in the Senate Chambers, State Capitol Building, Helena, Montana, to consider the adoption of rules which would prohibit the use of automatic adjustment clauses, as defined in the Public Utility Regulatory Policies Act of 1978.

2. The proposed 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. DEFINITION (1) As defined in the Public Utility Regulatory Policies Act of 1978, and for purposes of this rule:

(a) "Automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

Rule II. AUTOMATIC ADJUSTMENT CLAUSES PROHIBITED

(1) Section 69-3-303, MCA, which requires notice and public hearing before the Commission may approve increases in utility rates of general applicability, prohibits the use of automatic adjustment clauses.

(2) It is the policy of the Montana Public Service Commission to preserve the hearing process demanded by Section 69-3-307, MCA, and by the Montana Administrative Procedures Act, and on that ground to deny the use of automatic adjustment clauses in utility rate schedules of general applicability.

4. The Department is proposing this rule to clarify the applicability of Section 69-3-303, MCA, to the use of automatic adjustment clauses as defined in the Public Utility Regulatory Policies Act of 1978. The Department intends this rule-making to constitute its determination of the appropriateness of the Automatic Adjustment Clause standard delineated in Sections 113(b)(2) and 115(e) of PURPA.

5. Interested persons may present their data, views, or arguments at the above noticed hearing or in writing to Eileen E. Shore, 1227 Eleventh Avenue, Helena, Montana, no later than October 23, 1980.

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

matter.

7. Authority for the Department to make and adopt the proposed rules is based on 69-3-103, MCA, IMP, 69-3-102, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 2, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

IN THE MATTER of the Proposed amendment of rules 40.52.402 concerning examinations; 40.52.403 concerning out-of-state candidates for examination; 40.52.404 concerning examination credit for out-of-state candidates; 40.52.405 concerning consecutive examination requirements; 40.52.407 concerning qualifications for registration as licensed public accountants; 40.52.408 concerning equivalent education; 40.52.409 concerning accounting experience requirements; 40.52.410 fee schedule; 40.52.411 concerning annual licenses to practice; proposed repeal of ARM 40.52.412 concerning registration of office/partnerships and professional corporations and 40.52.413 rules of professional conduct; and adoption of new rules concerning committees; reciprocity; previous applications in effect; rules of professional conduct; and rules for continuing education.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 40.52.402 EXAMINATIONS; 40.52.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION; 40.52.404 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES; 40.52.405 CONSECUTIVE EXAMINATION REQUIREMENTS; 40.52.407 QUALIFICATIONS FOR REGISTRATION AS LICENSED PUBLIC ACCOUNTANT; 40.52.408 EQUIVALENT EDUCATION; 40.52.409 ACCOUNTING EXPERIENCE REQUIREMENTS; 40.52.410 FEE SCHEDULE; 40.52.411 ANNUAL LICENSES TO PRACTICE; PROPOSED REPEAL OF 40.52.412 REGISTRATION OF OFFICE/PARTNERSHIPS AND PROFESSIONAL CORPORATIONS; 40.52.413 RULES OF PROFESSIONAL CONDUCT; and PROPOSED ADOPTIONS OF RULES CONCERNING COMMITTEES; RECIPROCITY; PREVIOUS APPLICATIONS IN EFFECT; PROFESSIONAL CONDUCT AND CONTINUING EDUCATION.

TO: All Interested Persons:

1. On Monday, November 3, 1980, a public hearing will be held in the Senate Chambers of the Capitol Building, Helena, Montana to consider the amendments, adoptions and repeals referred to above.

2. The proposed amendment of ARM 40.52.402 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.402 EXAMINATIONS (1) The chairman shall appoint a three member committee of board members to administer the certified public accountants examination.

(2) All applicants prior to being issued a certificate as a certified public accountant or registered as a licensed public accountant (except applicants being registered as licensed public accountants under section 37-50-304 MCA) shall pass an open book ethics examination.

(3) ~~Applications for the May examination must be filed by March 15, and for the November examination by September 15. An application will not be considered to be~~

~~filed until all required supporting documents have been received. Candidates will be informed of the time and place of the examination at least 15 days prior to the examination.~~ The board hereby adopts the use and grading services of the American Institute of Certified Public Accountants and its examination schedule. Applications for the examination must be filed on the 15th day of the second month prior to each scheduled examination.

(a) ~~Candidates who have filed applications for the examination and who~~ Those applicants who wish to defer the examination until a later date shall notify the board prior to the date of the examination for which they are scheduled."

(The authority of the board to make the proposed changes is based on sections 37-50-201, and 308 MCA and implements section 37-50-308 MCA.)

3. The proposed amendment of ARM 40.52.403 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION

(1) A Montana resident who moves out of the state will remain a Montana resident until he establishes or meets residency requirements in another state for purposes of establishing qualifications to sit for the C.P.A. examination.

(2) A candidate, whose application to sit for the C.P.A. examination as a Montana resident has been approved, and who subsequently moves out of the state, will be ~~carried~~ considered ~~as~~ a Montana resident until he affirmatively establishes residency in another state, and the board will request the state board of the state to which the candidate has moved to proctor the examination for Montana for timely payment of the required fees to Montana for:

(a) Six consecutive examinations on the original application ~~including extension for military service~~, or

(b) Five consecutive examinations after the candidate has been "conditioned: in accordance with regulations under section 37-50-204 MCA, including extensions. ~~(i) including extension for military service.~~

(3) An out-of-state student will be considered a resident of his home state."

(the authority of the board to make the proposed amendment is based on section 27-50-201 and 308 MCA, and implements section 37-50-308 MCA.)

4. The proposed amendment of 40.52.404 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.404 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES

(1) The board will recognize as credits any parts

of the uniform certified public accountants examination passed in other states and jurisdictions, provided such credits meet the requirements of section 37-50-204 MCA and the rules thereunder and were earned in a situation compatible with those of Montana."

(The authority of the board to make the proposed amendment is based on section 37-50-309 MCA and implements the same.)

5. The proposed amendment to 40.52.405 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.405 CONSECUTIVE EXAMINATIONS AND RE-EXAMINATION REQUIREMENTS (1) An approved application to sit for the C.P.A. examination shall entitle the candidate to sit for the 6 consecutive examinations on the application beginning with the first examination after the approved date of said application if the required fees are paid timely except as follows:

(a) A candidate who passes 2 or more parts of the uniform certified public accountants examination may be re-examined in the remaining subjects for the 5 consecutive examinations following the examination in which he establishes a condition, with credit being given for the parts successfully passed. Accounting practice will be considered 2 parts.

(b) If the candidate does not successfully pass the remaining parts of the examination within the 5 consecutive examinations (6 consecutive examinations beginning with the examination wherein a "condition", passing 2 parts was obtained) the candidate loses his credits or "condition".

~~(c) A candidate who misses one or more consecutive examinations because of service in the Armed Forces of the United States will be given an extension upon discharge from the Armed Services equivalent to the number of consecutive examinations missed because of said military service.~~

~~(d)~~ A candidate who misses one or more consecutive examinations because of special hardships may apply to the board for an extension of the provisions of rule ARM 40.52.405 (1)(b) of section 37-50-204 MCA. Extension may be granted at the board's discretion on an individual basis.

(2) Candidates who fail to pass or condition the uniformed certified public accountants examination under an approved original application may apply to the board for re-examination for the next 6 consecutive examinations.

(3) The board, upon receiving the application, shall accept or reject the application.

(a) The application shall be rejected if the average score from the previous two examinations is below 50.

(b) Any applicant who has been rejected by the board for re-examination may reapply for the next

regularly scheduled examination by submitting with his application for re-examination evidence of further educational preparation for the uniform certified public accountants examination. The evidence considered by the board shall consist of;

(i) enrollment in courses of an accredited college or university,

(ii) enrollment in a specified correspondence course specifically designed to aid an applicant in passage of the examination,

(iii) participation in a continuing education program sanctioned by the board."

(The authority of the board to make the proposed amendment is based on section 37-50-204 MCA and implements the same.)

6. The proposed amendment of ARM 40.52.407 will read as follows" (new matter underlined, deleted matter interlined)

"40.52.407 QUALIFICATIONS FOR REGISTRATION AS LICENSED PUBLIC ACCOUNTANT (1) Candidates sitting for the uniform certified public accountants examination or making application to sit for said examination shall not be required to elect or to declare their intention of applying for registration as a licensed public accountant. A sitting for the uniform certified public accountant examination will qualify for registration if:

(a) requirements under section 37-50-303 and 37-50-304 (2) MCA ~~and~~ are otherwise met; and

(b) ~~provided~~ an applicant makes application to the board for registration as a licensed public accountant."

(The authority of the board to make the proposed amendment is based on section 37-50-203 MCA and implements section 37-50-303 MCA.)

7. The proposed amendment to ARM 40.52.408 will read as follows: (new matter underlined, deleted matter interlined)

" ~~EQUIVALENT~~ EDUCATION REQUIREMENTS ~~(1) The board will accept as an "equivalent education" for 2 years of study in a college or university accredited to offer a baccalaureate degree that work which would be acceptable for transfer credit to any of the units of the Montana University System, as determed by the registrar at any unit of the Montana system.~~

~~(2) The board will accept as an "equivalent education" for graduation from a college or university accredited to offer a baccalaureate degree that work which would be acceptable for transfer credit to any of the units of the Montana University System, as determined by the registrar at any unit of the Montana system.~~

A candidate for certification or registration must

have graduated from an accredited college or university with a baccalaureate degree, with a concentration in accounting.

(2) The board may recognize as accredited any school in any state recognized as accredited by the state's board of public accountants or similar regulating body, or by comparison of academic standards to those of the university systems schools of business.

(3) A candidate for certification or registration with a baccalaureate degree with a concentration other than accounting if supplemented by related courses in areas of business administration the board may determine that an equivalent education has been achieved.

(4) Education equivalency determined by comparison of academic standards to those of the university system schools of business includes, but is not limited to:

(a) minimum number of accounting credits required;

(b) subjects of courses allowed as supplementary business related courses;

(c) total number of credits required in business administration."

(The authority of the board to make the proposed amendment is based on section 37-50-203 MCA and implements section 37-50-305 MCA.)

8. The proposed amendment of ARM 40.52.409 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.409 ACCOUNTING EXPERIENCE REQUIREMENTS

(1) Accounting experience will be considered adequate by the board if satisfactory evidence is presented of having performed for at least 12 calendar months, accounting functions ordinarily required at levels described in any of the following fields of accounting:

(a) Public accounting - ~~as a semi-senior, job duties equivalent to those described in (b) below,~~ on the staff of a certified public accountant or a partnership ~~of certified public accountants,~~ or association of certified public accountants, or licensed public accountants or a partnership or association of licensed public accountants, engaged in the full time practice of public accountancy, or

(b) Private accounting - ~~posting and balancing general ledger, reconciling cash accounts, property accounts and subsidiary ledgers and preparing and posting adjusting and closing entries to general ledger, or~~ compilation of financial data, internal auditing, preparation of financial data,

(c) Governmental accounting - similar to duties encompassed in (a) and (b) above

~~(i)--As-an-employee-of-the-internal-revenue-service as-a-revenue-agent-with-a-GS-II-rating-or-as-a-special--agent-in-the-intelligence-division-with-a-GS-II-rating,--or---~~

~~-(ii)--As-an-employee-of-any-local,-state-or-federal governmental-agency-whose-job-classification-requires--accounting-skills-at-least-as-competent-as-those--required-in-(2)(e)(i)-above.~~

(d) Educator, researcher, publisher, or military serviceman - areas of concentration encompassed by (a) and (b) above.

~~(2)--Accounting-experience-will-be-considered-adequate by-the-board-if-satisfactory-evidence-is-presented-of-having-performed,-for-at-least-12-calendar-months, accounting--functions-as-described-and-defined-in section-37-50-203-(2)(f)-MCA.~~"

(The authority of the board to make the proposed amendment is based on section 37-50-203 MCA and implements the same.)

9. The proposed amendment of ARM 40.52.410 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.410 FEE SCHEDULE

(1)	Certified public accountant application for uniform C.P.A. examination -- All original Montana applications	$50.00
(2)	Certified public accountant application by reciprocity	$50.00
(3)	Re-examination fee -- for each separate part to be re-examined (Accounting Practice I and II are two parts	$10.00
(4)	Annual license -- C.P.A.	$50.00~~-$25.00~~
(5)	Annual license -- L.P.A.	$50.00~~-$25.00~~
(6)	Cancellation and request for refund fee -- C.P.A./L.P.A.	$10.00

(The authority of the board to make the proposed amendment is based on sections 37-50-204 and 314 MCA and implements the same.)

10. The proposed amendment of ARM 40.52.411 will read as follows: (new matter underlined, deleted matter interlined)

"40.52.411 ~~ANNUAL-LICENSES-TO-PRACTICE~~ EXPIRATION - RENEWAL - GRACE PERIOD (1) ~~Under-section-37-50-314--MCA-a-licensee-may-maintain-his-right-to-renew without-expiration-of-his-license-if-he-shall-apply-for-an-annual-license-to-practice-within-3-years from-the-expiration-date-(December-31)-of-the-annual license-to-practice-last-obtained-or-renewed,-3-years-from-the-date-on-which-the-certificate-holder-or--licensee-was-granted-his-certificate-or-license.~~ Pursuant to section 37-50-314 MCA, all certified public

accountants and licensed public accountants certificates and licenses expire on December 31st of each year.

(2) ~~Provided, however, that no licensee shall hold himself out to the public as an accountant during any intervening year or years within a 3 year period in which he should choose not to pay a renewal fee. Any licensee who does not wish to pay the renewal fee for any one or all of the intervening 3 years shall return his certificate to the board on or before the commencement of the year or years in which he chooses not to renew. At such time as he pays the renewal fee, his certificate or license shall be returned to him.~~ Renewal licenses and certificates will be issued by the board to all certified public accountants and licensed public accountants in good standing upon payment of the established license fee.

(3) After the expiration of the annual license on December 31 of each license year ~~a grace period will be allowed within which time a licensee may renew his license without penalty. The expiration of this grace period will be on~~ and prior to February 28 of the ~~following~~ year following the license year, the board shall, in writing, request the surrender of the license or certificate of all persons failing to renew the same. ~~If renewal is not made on or before February 28, then any renewal thereafter shall be assessed in addition to the annual renewal fee 100% of the amount of the annual license to practice.~~

(4) Annual certificates and license renewals shall be subject to the continuing education requirements set forth in these rules."

(The authority of the board to make the proposed amendment is based on section 37-50-201 and implements section 37-50-314 MCA.)

11. The proposed repeal of ARM 40.52.412 reads as follows: (deleted matter interlined)

~~"40.52.412 REGISTRATION OF OFFICE/PARTNERSHIPS AND PROFESSIONAL CORPORATIONS (1) A certified public accountant partnership shall include an unincorporated association.~~

~~(2) A licensed public accountant partnership shall include an unincorporated association.~~

~~(3) Whereas section 37 50 332 MCA allows certified public accountants to incorporate and register with the board as a professional service corporation, this section shall also permit, by this rule, the same practice for licensed public accountants.~~

~~(4) Thus, wherever the words "certified public accountants" appear in that section there shall also be considered to appear the words "licensed public accountants"~~

~~following-in-conjunction-therewith-and-immediately thereafter.~~"

(The authority of the board to make the proposed repeal is based on section 37-50-203 MCA and implements sections 37-50-331, 332, 333, 334 MCA.)

12. The proposed repeal of ARM 40.52.413 repeals the present rules of professional conduct. They will be replaced with new rules of professional conduct. The present rules are located as ARM 40-3.94(6)-S9420 pages 40-376 through 40-380 and ARM 40-3.94(6)-S9440 page 40-381. The recodified page numbers where the rules can be located are 40-874 through 40-877. Copies are also available at the board office, Lalonde Building, Helena, Montana 59601. The authority of the board to make the proposed repeal is based on section 37-50-203 MCA and implements sections 37-50-203 and 321 MCA.

13. The proposed new rule on committees will read as follows: (new matter underlined)

"I. COMMITTEES (1) The board may request and appoint committees of outside representatives to assist them in carrying out their duties."

(The authority of the board to make the proposed adoption is based on section 37-50-201 MCA and implements the same.

14. The proposed new rules on reciprocity will read as follows:

"I. RECIPROCITY -- OTHER STATES (1) The board may waive the requirement of examination for those holders of certificates or licenses, then in full force and effect issued under the laws of another state and issue a certificate or license upon:

(a) meeting the requirements established under section 37-50-302 and 303 MCA and regulations established thereunder.

(b) meeting the requirements established under section 37-50-203 (f) MCA and the regulations established thereunder.

(c) meeting the requirements established under section 37-50-314 (3) MCA and the regulations established thereunder.

II. RECIPROCITY -- OTHER NATIONS (1) An applicant for registration in Montana who is the holder of a certificate, license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country may be registered by the board only if:

(a) evaluation of the education of the applicant is undertaken and proven comparable to that required under section 37-50-305 MCA by the American Institute of Certified Public Accountants.

(b) the examination of the applicant is evaluated for equivalency to the uniform certified public accountants

examination by the American Institute of Certified Public Accountants."

(The authority of the board to make the proposed adoptions is based on section 37-50-203 MCA and implements sections 37-50-311 and 312 MCA.

15. The proposed new rule on previous applications in effect will read as follows:

"I. PREVIOUS APPLICATIONS IN EFFECT (1) Applications in effect for approved applicants sitting for the uniform certified public accounting examination under regulations heretofore promuglated by the board will be allowed to continue sitting for the examination covered under that application. Any subsequent application must conform to the requirements then in effect."

(The authority of the board to make the proposed adoption is based on section 37-50-203 MCA and implements sections 37-50-311, 312 MCA.)

16. The proposed new rules on professional conduct will read as follows: (Authority & implementation section 37-5-203 MCA)

"I. PREAMBLE (1) This code of professional conduct is promulgated under the authority granted by 37-50-203 MCA, which delegates to the Montana board of public accountants the power and duty to prescribe rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy.

(2) The rules of conduct set out below rest upon the premises that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, and imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action, to strive continuously to improve one's professional skills, to observe where applicable generally accepted accounting principles and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accountancy profession, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

(3) Acceptance of licensure to engage in the practice of public accountancy, or to use titles which imply a particular competence so to engaged, involves

acceptance by the licensee of such obligations, and accordingly of a duty to abide by the rules of conduct.

(4) The rules of conduct are intended to have application to all kinds of professional services performed in the practice of public accountancy, including tax and management advisory services, and to apply as well to all licensees, whether or not engaged in the practice of public accountancy, except where the wording or a rule clearly indicates that the applicability is more limited.

(5) A licensee who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the rules, so long as his conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which he is practicing. However, even in such a case, if a licensee's name is associated with financial statements in such manner as to imply that he is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices are followed, he will be expected to comply with rules IX and X.

(6) In the interpretation and enforcement of the rules of conduct, the board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions, and by appropriately authorized committees on ethics of professional organization.

II. DEFINITIONS (1) For the purposes of these rules the following terms have the meanings indicated:

(a) Client. The person or entity which retains or employs a licensee for the performance of professional services.

(b) Enterprise. Any person or entity, whether organized for profit or not, with respect to which a licensee performs professional services.

(c) Firm. A proprietorship, partnership or professional corporation engaged in the practice of public accountancy.

(d) Financial statements. Statements and footnotes related thereto that purport to show financial position which relate to a period of time, including statements which use a cash or other incomplete basis of accounting. The term includes balance sheets, statements of income, statements of retained earnings, statements of changes in financial position and statements of changes in owners' equity, but does not include incidental financial data included in management advisory services

reports to support recommendations to a client, nor does it include tax returns and supporting schedules.

(e) Licensee. A person holding a certificate issued by the board, pursuant to 37-50-302 MCA, or registered with the board pursuant to section 37-50-335 MCA. The term includes each firm of which a licensee is a partner, officer or shareholder, and each partner, officer or shareholder of a firm which is a licensee.

(f) Practice of public accounting. Offering to perform or performing for compensation for a client, potential client, or employer by an individual issued a certificate or license to practice, any service normally performed in public accounting, including, but not limited to, auditing, reporting of financial information on which third parties may rely, preparation of tax returns, furnishing of advice on tax matters, consulting, and other accounting services.

(g) Professional services. Any services performed or offered to be performed by a licensee for a client or an employer in the course of the practice of public accountancy.

(h) Public communication. A communication made in identical form to multiple persons or to the world at large, as by television, radio, motion picture, newspaper, pamphlet, mass mailing, letterhead, business card, or directory.

III. INDEPENDENCE (1) A licensee shall not express an opinion on financial statements of an enterprise in such a manner as to imply that he is acting as an independent public accountant with respect thereto unless he is independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

(a) During the period of his professional engagement, or at the time of expressing his opinion, the licensee;

(i) had or was committed to acquire any direct or material indirect financial interest in the enterprise; or

(ii) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or

(iii) had any joint closely-held business investment with the enterprise or any officer, director or principal stockholder thereof which was material in relation to the net worth of either the licensee or the enterprise; or

(iv) had any loan to or from the enterprise or any officer, director or principal stockholder thereof other than loans of the following kinds made by a

financial institution under normal lending procedures, terms and requirements:

(A) loans obtained by the licensee which are not material in relation to the net worth of the borrower; and

(B) home mortgages; and

(C) other secured loans, except those secured solely by a guarantee of the licensee.

(b) during the period covered by the financial statements, during the period of the professional engagements, or at the time of expressing an opinion, the licensee

(i) was connected with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

(ii) was a trustee for any pension or profitsharing trust of the enterprise.

(2) The foregoing examples are not intended to be all inclusive.

IV. INTEGRITY AND OBJECTIVITY (1) A licensee shall not in the performance of professional services knowingly misrepresent facts, nor subordinate his judgment to another. In tax practice, however, a licensee may resolve doubt in favor of his client as long as there is a reasonable support for his position.

V. COMMISSIONS (1) A licensee shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others. This rule does not prohibit payments for the purchase of all, or a material part, of an accounting practice of public accountancy, or payments to the heirs or estates of such persons.

VI. CONTINGENT FEES (1) A licensee shall not offer or perform professional services for a fee which is contingent upon the findings or results of such services; provided however, that this rule does not apply to professional services involving federal, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee, nor does it apply to professional services for which are therefore indeterminate in amount at the time the professional services are undertaken.

VII. INCOMPATIBLE OCCUPATIONS (1) A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs his independence or objectivity in rendering professional services.

VIII. COMPETENCE (1) A licensee shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance where applicable, with rules IX and X.

IX. AUDITING STANDARDS (1) A licensee shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant with respect to such financial statements unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures therefrom must be justified by those who do not follow them.

X. ACCOUNTING PRINCIPLES (1) A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this rule generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

XI. FORECASTS (1) A licensee shall not in the performance of professional services permit his name to be used in conjunction with any forecast of future transactions in a manner which may reasonably lead to the belief that the licensee vouches for the achievability of the forecast.

XII. CONFIDENTIAL CLIENT INFORMATION (1) A licensee shall not without the consent of his client disclose any confidential information pertaining to his client obtained in the course of performing professional services.

(2) This rules does not

(a) relieve a licensee of any obligations under

rules IX. and X, or

(b) affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court, or

(c) prohibit disclosures in the course of a quality review of a licensee's professional services, or

(d) preclude a licensee from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board.

(3) Members of the board and professional practice reviewers shall not disclose any confidential client information which comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body of the kind referred to above.

XIII. RECORDS (1) A licensee shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(a) a copy of a tax return of the client; and

(b) a copy of any report, or other document, issued by the licensee to or for such client; and

(c) any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of such documents when they form the basis for work done by him; and

(d) a copy of the licensee's working papers, to the extent that such working papers include records which would ordinarily consitute part of the client's books and records and are not otherwise available to the client.

XIV. DISCREDITABLE ACTS (1) A licensee shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy.

XV. ACTING THROUGH OTHERS (1) A licensee shall not permit others to carry out on his behalf, either with or without compensation, acts which if carried out by the licensee, would place him in violation of the rules of conduct.

XVI. ADVERTISING (1) A licensee shall not use or participate in the use of any form of public communication having reference to his professional services which contains a false, fraudulent, misleading, deceptive or unfair statement or claim. A false, fraudulent, misleading, deceptive or unfair statement or claim includes, but is not limited to, a statement

or claim which:

(a) contains a misrepresentation of fact; or

(b) is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

(c) contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality; or

(d) is intended or likely to create false or unjustified expectations of favorable results; or

(e) implies educational or professional attainments or licensing recognition not supported in fact; or

(f) states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case; or

(g) represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charges; or

(h) contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived."

(As stated in parentheses at the beginning of the rules, the authority of the board to make the proposed adoption is based on section 37-50-203 MCA and implements 37-50-203 and 321 MCA.)

17. The proposed new rules on continuing education will read as follows: (Authority - 37-50-201, 203 MCA; Implementation - 37-50-203, 314 MCA)

"I. INTRODUCTION (1) Pursuant to section 37-50-314 MCA, the board prescribes the following regulations establishing requirements of continuing education to be met from time to time by certified public accountants and licensed public accountants in order to maintain their professional knowledge and competence, as a condition to practicing public accounting. These regulations shall become effective on July 1, 1981.

II. BASIC REQUIREMENT (1) During the three-year period, ending the June 30th immediately preceding the license year of January 1 through December 31, applicants for certificate or license renewal must complete 120 hours of acceptable continuing education credit, except as otherwise provided under section 37-50-314 (4) & (5) MCA, explained in ARM V, VI,

VII, of these rules.

(2) At least 24 hours of the aforementioned 120 hours of acceptable continuing education credit must consist of accounting related and/or auditing related subjects.

III. WHO MUST COMPLY - GENERAL (1) All persons who are issued a certificate or license to practice must comply with the continuing education requirements unless they have been excepted as provided by rules ARM V, VI, and VII of these rules.

IV. NON-RESIDENT HOLDERS OF A CERTIFICATE OR LICENSE TO PRACTICE COMPLIANCE (1) Holders of a certificate or license to practice who are out-of-state residents are required to comply with the continuing education requirements if they wish to maintain the right to practice public accounting in Montana. The requirements also apply to non-resident holders of a certificate or license to practice who are personally engaged in this state and who are partners or managers of public accounting partnerships or stockholders or managers of professional accountancy corporations that are registered by the board to do business in this state.

V. EXCEPTIONS - NOT PRACTICING PUBLIC ACCOUNTING (1) The board has authority to make a written exception from the continuing education requirements for those persons who certify they do not intend to practice public accounting in Montana. Applicants for certificate or license renewal must certify their intention to the board on a form prescribed by the board. The board defines "practice of public accounting" as offering to perform or performing for compensation for a client, potential client, or employer by an individual issued a certificate or license to practice, any service normally performed in public accounting, including, but not limited to, auditing, reporting of financial information on which third parties may rely, preparation of tax returns, furnishing of advice on tax matters, consulting, and other accounting services.

VI. HARDSHIP EXCEPTION (1) The board has authority to make a written exception for reasons of individual hardship including health, military service, foreign residence, retirement, inaccessibility to programs or interference with an interstate practice.

VII. OTHER EXCEPTIONS (1) The board has authority to prescribe an amplified program or schedule of continuing education for an individual on an annual case-by-case basis should the board decide such amplification in the basic requirement and/or programs

which qualify are in the public's best interest.

VIII. GENERAL EFFECTIVE DATE (1) The implementation date of the continuing education requirement is June 30, 1984, three years after the effective date of these rules (7/1/81), or three years from the June 30th following an individual's initial registration, whichever is later.

IX. RECIPROCITY EFFECTIVE DATE (1) An individual, who holds a valid and unrevoked certified public accountant certificate or public accountant license issued by any other state or political subdivision of the United States, or comparable certificate, license, or degree issued by any foreign country, and who also holds a valid and unrevoked license to practice public accounting if one is issued by such other jurisdiction, and who makes application under the appropriate provisions of the statutes for a certificate or license to practice in this state, and who was actively engaged in the practice of public accounting in such other jurisdiction immediately prior to filing an application for a certificate or license to practice in this state shall be considered to have met the continuing education requirement until the June 30th following the date of application, at which time the individual must complete the full basic continuing education requirement. Except that, for transitional purposes, until the June 30th following the date of application and the effective date of these regulations, the minimum basic continuing education requirement for purposes of this reciprocity section is 40 hours (of which at least 8 will be accounting related and/or auditing related subjects) for the year ending June 30, 1982, 80 hours (of which at least 16 will be accounting related and/or auditing related subjects) for the two years ending June 30, 1983. Except that such individual's basic continuing education requirement for purposes of this reciprocity section be no greater than if the individual's initial registration in such other jurisdiction was made in this state as explained in ARM VIII. The practice of public accounting will be allowed by the board in writing until the license year following the aforementioned June 30.

(2) An individual who meets the qualifications in ARM IX. except for holding a valid and unrevoked license to practice public accounting if one is issued by such other jurisdiction and/or being actively engaged in the practice of public accounting in such jurisdiction immediately prior to filing an application for a certificate or license to practice in this state, shall be required to comply with the full

basic continuing education requirement before being issued a certificate or license to practice in this state. The full basic continuing education requirement will be completed so that the courses will properly qualify the individual on the June 30th following the certificate or license to practice application date subject to the two transitional effective date exceptions detailed in the preceding paragraph. Except that such individual's basic continuing education requirement for purposes of this reciprocity section be no greater than if the individual's initial registration in such other jurisdiction was made in this state as explained in ARM VIII. The practice of public accounting may be conditionally allowed by the board in writing until the license year following the aforementioned June 30.

X. REENTRY (1) An individual who has been excepted from provisions of the continuing education requirement as provided under section 37-50-314 (4) and (5) MCA and explained in rules ARM V, VI, and VII shall notify the board upon desiring reentry to public accounting (as herein defined in rules ARM V, VI, and VII), and will be required to comply with the continuing education full basic requirement on the June 30 following his reentry application. The board may grant the applicant conditional permission to practice public accounting until the license year following the aforementioned June 30.

(2) An individual formerly the holder of a certified public accounting certificate or public accountant license and no longer the holder because of revocation, suspension, or refusal to renew certificate or license as described in section 37-50-321 MCA, or because of failure to properly pay the annual renewal fee as described in section 37-50-314 MCA, or because of failure to meet the continuing education requirement shall otherwise apply to the board for reinstatement of certificate or license as described in section 37-50-322 MCA and, if reentering public accounting (as defined in rules ARM V, VI, VII), must comply with the continuing education full basic requirement on the June 30th following his reentry. The board may grant the applicant permission to practice public accounting until the license year following the aforementioned June 30.

XI. PROGRAMS WHICH QUALIFY (1) A specific program qualifies as acceptable continuing education if it is a formal program of learning which contributes directly to the professional competence of an individual

certified or licensed to practice public accounting and such program meets the minimum standards of quality of development and presentation and of measurement and reporting of credits set forth in the Statement on Standards for Formal Continuing Education Programs published by the National Association of State Boards of Accountancy, (rules ARM XXIII. through XXVII.) or such other educational standards as may be established from time to time by the board.

(2) The board anticipates that individuals will maintain the high standards of the profession in selecting quality programs.

XII. CONTROLS AND REPORTING (1) Applicants for certificate or license renewal must provide a signed statement on forms prescribed by the board of the continuing education programs which they claim to be acceptable showing:

(a) sponsoring organization,
(b) location of program,
(c) title of program or description of content,
(d) dates attended,
(e) hours claimed.

XIII. ACCEPTABLE SUBJECT MATTER FOR QUALIFYING PROGRAMS (1) The following general subject matters are acceptable so long as they contribute to the basic professional knowledge and competence of the individual and meet the minimum standards of quality of development and presentation and of measurement and reporting of credits set forth in the Statement on Standards for Formal Continuing Education Programs published by the National Association of State Boards of Accountancy (rules ARM XXIII. through XXVII.):

(a) accounting and auditing
(b) taxation
(c) management
(d) computer science
(e) communication arts
(f) mathematics, statistics, probability and quantitative applications in business
(g) economics
(h) business law
(i) functional fields of business -
finance
production
marketing
personnel relations
business management and organization
(j) specialized areas of industry (e.g., film industry, real estate, farming, etc.)
(k) administrative practice (e.g., engagement letters, personnel, etc.)

(2) Areas other than those listed above may be acceptable if the individual can demonstrate that they contribute to their professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the individual.

XIV. ACCEPTABLE PROGRAMS (1) The following group programs qualify for credit if they meet the standards specified in the preceding rule. (ARM XIII)

(a) Professional education and development of programs of national, state, and local accounting organizations.

(b) Technical sessions at meetings of national, state, and local accounting organizations and their chapters.

(c) University or college courses (both credit and non-credit courses.)

(d) Formal in-firm education programs.

(e) Programs of other organizations (accounting, industrial, professional, etc.)

(f) Committee meetings of professional societies which are structured as formal educational programs.

(g) Dinner, luncheon and breakfast meetings which are structured as formal educational programs.

(h) Firm meetings for staff and/or management groups which are structured as formal education programs. Portions of such meetings devoted to the communication and application of general professional policy or procedure may qualify. However, portions devoted to firm administrative, financial, and operating matters generally would not qualify.

XV. CREDIT HOURS GRANTED - GENERAL (1) Continuing education credit will be given for whole hours only, with a minimum of 50 minutes constituting one hour. As an example, 100 minutes of continuous instruction would count for two hours. However, more than 50 minutes but less than 100 minutes of continuous instruction would count only for one hour. Only contact hours are allowed. For university or college courses, each semester unit of credit shall equal 15 hours toward the requirement. A quarter unit of credit shall equal 10 hours.

XVI. CREDIT FOR FORMAL INDIVIDUAL STUDY PROGRAMS (1) The amount of credit to be allowed for correspondence and formal individual study programs (including taped study programs), is to be recommended by the program sponsor based upon one-half the average completion time under appropriate "field tests". Individuals claiming credit for such correspondence

or formal individual study courses are required to obtain evidence of satisfactory completion of the course from the program sponsor. Credit will be allowed in the renewal period in which the course is completed.

XVII. CREDIT FOR SERVICE AS LECTURER, DISCUSSION LEADER, OR SPEAKER (1) Instructors, discussion leaders, and speakers may claim continuing education credit for both preparation and presentation time. Credit may be claimed for actual preparation time up to two times the class contact hours for the first time the class is presented. Credit as an instructor, discussion leader, or speaker may be claimed provided that the session is one which would meet the continuing education requirements of those attending. The maximum credit for such preparation and teaching shall not exceed 50% of the renewal period requirement.

XVIII. CREDIT FOR PUBLISHED ARTICLES, BOOKS, ETC. (1) Credit may be claimed for published articles and books. The amount of credit so awarded will be determined by the board. Credit may be allowed for published articles and books provided they contribute to the professional competence of the individual. Credit for preparation of such publications may be claimed on a self-declaration basis up to 25% of the renewal period requirement. In exceptional circumstances an article(s) or book(s) may be provided to the board with an explanation of the circumstances which would justify a greater credit.

XIX. EVIDENCE OF COMPLETION - RETENTION (1) Primary responsibility for documenting the requirements rests with the individual and evidence to support fulfillment of those requirements should be retained for a period of five years after the completion of educational courses.

(2) Satisfaction of the documentation requirements, including the retention of attendance records and written outlines, may be accomplished as follows:

(a) The individual must retain a copy of the course outline prepared by the course sponsor along with the following information:

(i) name of sponsoring organization
(ii) location of program
(iii) title of program or description of content
(iv) dates attended
(v) hours claimed

(b) For courses taken for scholastic credit in accredited universities and colleges (state, community or private), evidence of satisfactory completion

of the course will be sufficient; for non-credit courses taken, a statement of the hours of attendance, signed by the instructor, must be obtained by the individual.

(c) For formal individual study programs, written evidence of completion must be obtained by the individual.

XX. VERIFICATION (1) The board will verify on a test or complete basis, information submitted by individuals. If an application for certificate or license to practice renewal is not approved, the applicant will be so notified in writing and may be granted a period of time by the board in which to correct the deficiencies noted.

XXI. RENEWAL OF CERTIFICATE OR LICENSE TO PRACTICE (1) To renew an unexpired certificate or license to practice after June 30, 1984, the applicant shall on or before the July 31 prior to the time at which the certificate or license to practice would otherwise expire, (December 31) give evidence to the board that the continuing education provisions have been met for the reporting period ending the June 30 prior to the certificate or license to practice renewal date.

XXII. ADVISORY COMMITTEE (1) The board may select an Advisory Committee on continuing education whose purpose will be to assist the board in implementing continuing education regulations. The committee shall be composed of not less than 5 holders of a Montana certificate or license to practice, each of whom shall be competent by reason of training or experience and will include CPAS and LPAS on the proportion of CPAS certified and LPAS licensed to practice but not less than one LPA. The committee may:

(a) evaluate and recommend to the board either prospectively or retrospectively, whether specific courses, programs, education and training qualify as formal programs of learning which contribute directly to professional competency of an individual certified or licensed to practice engaged in public accounting, and the credit to be granted therefore. In considering qualifications, any course, program, education or training not commensurate with professional status will not qualify;

(b) recommend to the board in individual cases whether professional knowledge and competency have been re-established by virtue of the completion of such program;

(c) verify the continuing education records on a test or complete basis from time to time;

(d) perform any other duties as requested by the

board as they relate to these regulations.

XXIII. STATEMENT ON STANDARDS FOR FORMAL CONTINUING EDUCATION PROGRAMS (1) To help ensure that practitioners receive quality continuing professional education, appropriate standards are needed. With appropriate standards, programs are less likely to vary in quality of development and presentation and in measurement and reporting of credits.

(2) Moreover, the large number of programs available throughout the United States, the varying backgrounds of credentials of sponsoring organizations, and the mobility of participants in these programs create measuring and reporting problems that suggest the need for nationally uniform standards. The purpose of this statement is to provide such uniform criteria.

(3) Throughout these rules the term "programs" refers to both formal group and formal self-study programs. A group program is an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants. When a group program complies with the standards in these rules it becomes a "formal" group program. All other group programs are informal. A self-study program is an educational process designed to permit a participant to learn a given subject without major interaction with an instructor. For a self-study program to be "formal",

(a) the sponsor of it must provide a certificate upon evidence of satisfactory completion, such as a completed workbook or examination, and

(b) it must comply with the standards in these rules.

"Sponsors" are the organizations responsible for presenting programs and are not necessarily program developers. However, it is their responsibility to see that their programs comply with all the standards of these rules. (ARM XIV. through XVII.)

XXIV. STANDARDS FOR CPE PROGRAM DEVELOPMENT (1) The program should contribute to the professional competence of participants.

(a) The fundamental purpose of continuing education is to increase the practitioners professional competence. A professional person is one characterized as conforming to the technical and ethical standards of his profession. This characterization reflects the expectation that a person holding himself out to perform services of a professional quality needs to be knowledgeable within a broad range of related skills. Thus, the concept of professional competence is to be broadly interpreted. It includes, but is not restricted to, accounting, auditing, taxation,

and management advisory services. Accordingly, programs contributing to the development and maintenance of other professional skills also should be recognized as acceptable continuing education programs. Such programs might include, but not be restricted to the areas of communication, ethics, quantitative methods, behavioral sciences, statistics, and practice management.

(2) The stated program objectives should specify the level of the knowledge the participant should have attained or the level of competency he should be able to demonstrate upon completing the program.

(a) Program developers should clearly disclose that level of knowledge and/or skill is expected to be imparted under a particular program. Such levels may be expressed in a variety of ways, all of which should be informative to potential participants. As an illustration, a program may be described as having the objective of imparting technical knowledge at such levels as basic, intermediate, advanced, or overview, which might be defined as follows:

(i) A basic level program teaches fundamental principles or skills to participants having no prior exposures to the subject area.

(ii) An intermediate level program builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications.

(iii) An advanced level program teaches participants to deal with complex situations.

(iv) An overview program enables participants to develop a perspective as to how a subject area relates to the broader aspects of accounting or brings participants up to date on new developments in the subject area.

(3) The education and/or experience prerequisites for the program should be stated.

(a) All programs should clearly identify what prerequisites are necessary for enrollment. If no prerequisite is necessary, a statement to this effect should be made. Prerequisites should be specified in precise language so potential participants can readily ascertain whether they qualify for the program or whether the program is above or below their level of knowledge or skill.

(4) Programs should be developed by individual(s) qualified in the subject matter and in instructional design.

(a) This standard is not intended to require that any individual program developer be both technically

competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in a program's development, whether one or more persons are involved in that development. Mastery of the technical knowledge or skill in instructional design may be demonstrated by appropriate experience or educational credentials.

(b) "Instructional design" is a teaching plan that considers the organization and interaction of the materials as well as the method of presentation such as lecture, seminar, workshop, or programmed instruction.

(5) Program content should be current.

(a) The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. However, between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.

(6) Programs should be reviewed by a qualified person(s) other than the preparer(s) to ensure compliance with the above standards.

(a) In order to ensure that programs meet the standard for program development, they should be reviewed by one or more individuals in the subject area and in the instructional design. Any one reviewer need not be competent in both the program subject matter and in instructional design, but both aspects of a program should be reviewed. However, it may be impractical to review certain programs, such as a short lecture given only once; in these cases, more reliance must be placed on the competence of the presenter.

XXV. STANDARDS FOR CPE PROGRAM PRESENTATION (1) Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended contact hours credit.

(a) In order for potential participants to most effectively plan their continuing education, the salient features of any program should be disclosed.

Accordingly, brochures or other announcements should be available well in advance of each program and should contain clear statements concerning objectives, prerequisites (if any), experience level, program content, the nature and extent of advance preparation, the teaching method(s) to be used, and the amount of credit the program is designed to qualify for.

(2) Instructors should be qualified both with respect to program content and teaching methods used.

(a) The instructor is a key ingredient in the learning process in any group program. Therefore, it is imperative that sponsors exercise great care in selecting qualified instructors for all group programs. A qualified instructor is one who is capable, through background, training, education, and/or experience, of providing an environment conducive to learning. He should be competent in the subject matter and skilled in the use of the appropriate teaching method(s). Although instructors are selected with great care, sponsors should evaluate their performance at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

(3) Program sponsors should encourage participation only by individuals with appropriate education and/or experience.

(a) So that participants can expect programs to increase their professional competence, this standard encourages sponsors to urge only those who have the appropriate education and/or experience to participate. The term "education and/or experience" in the standard also implies that participants will be expected to complete any advance preparation. An essential step in encouraging advance preparation is timely distribution of program materials. Although implementing this standard may be difficult, sponsors should make a significant effort to comply with the spirit of the standard by encouraging

(i) enrollment only by eligible participants,

(ii) timely distribution of materials, and

(iii) completion of any advance preparation.

(4) The number of participants and physical facilities should be consistent with the teaching method(s) specified.

(a) The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented

discussion program, for example, should be considerably less than for a lecture program. The seating arrangement is also very important. For a discussion presentation, learning is enhanced if seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities should be available to encourage communications within a small group. In effect, class size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled.

(5) All programs should include some means for evaluating quality.

(a) Evaluations should be solicited from both participants and instructors. The objective of evaluations is to encourage sponsors to strive for increased program effectiveness. Programs should be evaluated to determine whether:

(i) objectives have been met,
(ii) prerequisites were necessary or desirable,
(iii) facilities were satisfactory,
(iv) the instructor was effective,
(v) advance preparation materials were satisfactory,
(vi) the program content was timely and effective.

Evaluations might take the form of pre-tests for advance preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback to the instructor or sponsor, and so forth. Instructors should be informed of their performance, and sponsors should systematically review the evaluation process to ensure its effectiveness.

XXVI. STANDARDS FOR CPE PROGRAM MEASUREMENT (1) All programs should be measured in terms of 50-minute contact hours. The shortest recognized program should consist of one contact hour.

(a) The purpose of this standard is to develop uniformity in the measurement of continuing education activity. A contact hour is 50 minutes of continuous participation in a group program. Under this standard, credit is granted only for full contact hours. For example, a group program lasting 100 minutes would count for 2 hours. However, one lasting between 50 and 100 minutes would count only for 1 hour. For continuous conferences and conventions, when individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as

3 contact hours. For university or college courses, each semester hour credit should equal 15 hours toward the requirement. A quarter hours credit should equal 10 hours.

(b) Sponsors are encouraged to monitor group programs in order to accurately assign the appropriate number of credit hours for participants who arrive late or leave before a program in completed.

(c) Since credit is not allowed for preparation time for group programs, it should not be granted for the equivalent time in self-study programs. Self-study programs should be pre-tested to determine average completion time. One-half of the average completion time is the recommended credit to be allowed. For example, a self-study program that takes an average of 800 minutes to complete is recommended for 8 "contact hours" of credit.

(2) When an instructor or discussion leader serves at a program for which participants receive credit and at a level that contributes to his or her professional competence, credit should be given for preparation and presentation time measured in terms of contact hours.

(a) Instructors and discussion leaders should receive credit for both preparation and presentation. For the first time they present a program, they should receive contact hour credit for actual preparation hours up to two times the class contact hours. If a course is rated at 8 contact hours, the instructor could receive up to 24 contact hours of credit (16 hours for preparation and 8 hours for presentation). For repetitious presentations the instructor should receive no credit unless he can demonstrate that the subject matter involved was changed sufficiently to require significant additional study or research.

(b) In addition, the maximum credit for preparation and presentation should not exceed 50 percent of the total credit an instructor or discussion leader accumulates in a reporting period. For example, if a discussion leader's state required 40 hours of continuing education yearly, and he actually taught 16 hours and took 30 hours to prepare, the most credit he could claim would be 20 hours.

XVII. STANDARDS FOR CPE REPORTING (1) Participants in group or self-study programs should document their participation including:

(a) sponsor,

(b) title and/or description of content,

(c) date(s),

(d) location, and

(e) number of contact hours.
Documentation should be retained for an appropriate period.

(f) This standard is designed to encourage participants to document their attendance at a group program or participation in a self-study program. State laws or regulations may dictate the length of time to retain documentation. In the absence of legal specifications, a reasonable policy would be to retain documentation for five years from the date the program is completed. For self-study programs evidence of completion would normally be the certificate supplied by the sponsor.

(2) In order to support the reports that may be required of participants, the sponsor of group or self-study programs should retain for an appropriate period:

(a) record of participation,
(b) outline of the course (or equivalent),
(c) date(s),
(d) location,
(e) intructor(s), and
(f) number of contact hours.

(g) Because participants may come from any state or jurisdiction, the appropriate time for the sponsor to retain this information is not dependent solely on the location of the program or sponsor. To satisfy the detailed requirements of all jurisdictions, a retention period of five years from the date the program is completed is appropriate. The record of attendance should reflect the contact hours earned by each participant, including those who arrive late or leave early."

(As stated at the beginning of the rules, the authority of the board to make the proposed adoption is based on section 37-50-201,203 MCA and implements sections 37-50-203 and 314 MCA.

18. The rules are proposed to be amended, repealed and adopted to implement the changes in the public accountancy act which were adopted by the Montana legislature in 1979. (Chapter 684, Session Laws of 1979) The changes relate primarily to annual license and certificate renewal and mandatory continuing professional education. Other changes in the statutes necessitated amendments in many of the current rules. The changes are designed to enable the board to more effectively regulate the profession and to implement mandatory continuing education.

The annual license fee is being increased from $25 to $50. This increase, along with the other fees from examinations,

etc. should provide a total of approximately $117,000 annually to fund the board's activities. Increased funding is needed to institute mandatory continuing professional education, which is estimated to cost $34,000 annually. Approximately $23,000 is needed to meet inflationary costs and to more vigorously fulfill other requirements that the board regulate licensees.

19. Interested parties may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601, no later than October 17, 1980.

20. The board or its designee will preside over and conduct the hearing.

21. The authority of the board to make the proposed amendments, repeals and adoptions is stated at the end of each proposed change, as are the implementing sections.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CHAIRMAN

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

Certified to the Secretary of State, September 2, 1980.

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

In the matter of the amendment of Rule ARM 46.10.404 (46-2.6(2)-S681) pertaining to Special Needs, Title IV-A Day Care for Recipients in Training	))))	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 46.10.404 PERTAINING TO TITLE IV-A DAY CARE. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 21, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule ARM 46.10.404, which pertains to Title IV-A Day Care for recipients in training, rate increases.

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

46.10.404 SPECIAL NEEDS, TITLE IV-A DAY CARE FOR RECIPIENTS IN TRAINING Unless otherwise provided; in addition to the basic AFDC grant, day care payment will be included for children of recipients who are attending employment-related training. AFDC recipients who attend WIN training shall be referred for WIN-related day care. AFDC recipients who are employed shall be referred to Title XX for payment of day care services.

(1) Limitations to special needs day care:

(a) Title IV-A day care payments are made for children of parents who are AFDC recipients in training on a full- or part-time basis. Training is, but not limited to: vocational-technical schools, business colleges, junior colleges, university students, or special classes which may be classified as "employment-related training." Students who are working to support their education are included under this rule.

(b) Day care needs will be taken into consideration for eligibility determination of an applicant. If an applicant requires special need day care, this need will be considered in addition to the AFDC grant amount to determine eligibility.

(c) Day care payment shall be added to the AFDC grant amount, and in no cases will Title IV-A day care be paid in the form of vendor payment.

(d) Day care payment will be paid upon evidence of need. Evidence of need includes verification from the provider of day care services. Verification includes the signature of the individual provider or his designee, the month of service, and names of children served.

(e) Day care payment shall not exceed ~~$143~~ $154 per month, or $7 per day or $3.50 per half day per child for children in licensed day care centers meeting federal guide-

lines, and ~~$121~~ $132 per month, or $6 per day, or $3 per half day per child for children in licensed day care centers~~,~~. ~~$121 per month per child for children in licensed day care homes meeting federal guidelines and $99 per month, per child for in-home day care or in day care homes.~~ The ~~recipient shall choose his day care provider.~~

(f) Day care payment shall not exceed $132 per month or $6 per day or $3 per half day per child for children in licensed day care homes meeting federal guidelines and $110 per month, or $5 per day or $2.50 per half day per child for in-home day care or in day care homes.

(g) These rate increases shall be paid retroactive to August 1, 1980.

(h) The recipient shall choose his day care provider.

3. The rule is proposed to be amended to give day care homes and centers the increase in rates anticipated and appropriated for by the 1979 Legislature. The proposed rates will be paid retroactive to August 1, 1980.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than October 10, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than October 10, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 28 persons based on a department budget analysis that shows a total of 280 day care recipients in training.

7. The authority of the agency to make the proposed amendment is based on Section 53-4-212 MCA, and the rule implements Sections 53-4-211 and 53-4-513 MCA.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 2, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of Rules 4.2.070, 4.2.080, 4.2.090, 4.2.100, 4.2.110, 4.2.120, 4.2.140, 4.2.150 pertaining to the implementation of the Montana Environmental Policy Act; and the adoption of new rules implementing MEPA.	NOTICE OF THE REPEAL OF THE PRESENT RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT; AND ADOPTION OF REVISED RULES IMPLEMENTING MEPA

TO: All Interested Persons.

1. On May 15, 1980, the Department of Agriculture published notice of a proposed repeal of rules 4.2.070, 4.2.080, 4.2.090, 4.2.100, 4.2.110, 4.2.120, 4.2.140, 4.2.150 and the adoption of rules 4.2.301 thru 4.2.310 concerning the Repeal of the present Rules implementing the Montana Environmental Policy Act; and Adoption of Revised Rules implementing MEPA, at page 1292 of the 1980 Montana Administrative Register, issue number 9.

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

3. No public comments or testimony were received. However a comment was received from the Legislative Council stating that an additional citation of authority, namely 2-15-112 MCA, needed to be included. Also the Legislative Council suggested that these two authorities are only adequate if the purpose of these rules is to govern the internal activities and considerations of the department.

W. Gordon McOmber, Director
Department of Agriculture

Certified to the Secretary of State August 25, 1980

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

In the matter of the amendment of rules 16.24.402 and 16.24.403 (16-2.18(6)-S1830), setting standards for certification of day care centers	NOTICE OF THE AMENDMENT OF RULES 16.24.402 and 16.24.403 (Day Care Centers)

TO: All Interested Persons

1. On July 31, 1980, the Department of Health and Environmental Sciences published notice of a proposed amendment to rules 16.24.402 and 16.24.403 concerning day care center physical facility requirements for certification at page 2225 of the 1980 Montana Administrative Register, issue number 14. The recodified rules (16.24.402 and 16.24.403) appear at pages 16-1142 and 16-1144, respectively, of the recodified Administrative Rules of Montana, and the original rule (16-2.18(6)-S1830), as it appears in the notice, appears at page 16-406 of the unrecodified Administrative Rules of Montana.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

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

Certified to the Secretary of State September 2, 1980

BEFORE THE COAL BOARD

OF THE STATE OF MONTANA

In the matter of the adoption) of rules specifying submittal) deadlines and defining eligi-) ble state agencies.)	NOTICE OF THE ADOPTION OF RULES REGARDING APPLICATION REQUIREMENTS. RULES 22.14.305; 22.14.306

TO: All Interested Persons

1. On June 12, 1980, the Coal Board published notice of a proposed adoption of rules regarding submittal deadlines and defining eligible state agencies at pages 1562 and 1564 of the 1980 Montana Administrative Register, issue no. 11.

2. The Board has adopted the rules as proposed. The following numbers are assigned: RULE I--22.14.305; RULE II --22.14.306.

3. No comments or testimony were received.

William F. Meisburger,
Chairman

Certified to the Secretary of State 8-29, 1980.

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

In the matter of the Amendment of ARM 40.6.402 concerning licensing requirements	NOTICE OF AMENDMENT OF ARM 40.6.402 LICENSING REQUIREMENTS

TO: All Interested Persons:

1. On July 31, 1980, the Board of Athletics published a notice of proposed amendment of ARM 40.6.402 concerning licensing requirements at pages 2228 through 2230, Administrative Register, issue number 14.

2. The board received 5 letters in favor of the proposed rule from Elmer Boyce, Manager of Marvin Camel; Peter Jovanonich, Promoter; Helen Boyce, Promoter; Harry Atchison, Montana AAU Boxing Chairman; and Marvin Camel, Boxer. The board has amended the rule exactly as proposed.

3. No other comments or testimony were received. The board makes the amendment for those reasons as stated in the rule.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the proposed amendments of ARM 40.32.414 concerning examinations and 40.32.417 concerning reciprocity licenses	NOTICE OF AMENDMENT OF ARM 40.32.417 RECIPROCITY LICENSES

TO: All Interested Persons:

1. On July 31, 1980 the Board of Nursing Home Administrators published a notice of proposed amendment of ARM 40.32.414 concerning examinations and 40.32.417 concerning reciprocity licenses at pages 2231 through 2233, 1980 Montana Administrative Register, issue number 14.

2. The board received a letter of objection to the proposed amendment of ARM 40.32.414. Because of the objections raised, the board is not amending the rule as proposed, at this time. After the board considers the objections raised, a new notice will be filed, which will include the objections.

The board is amending ARM 40.32.417 exactly as proposed.

3. No other comments or testimony were received. The board makes the amendment to ARM 40.32.417 Reciprocity Licenses for the reasons as stated in the notice.

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

Certified to the Secretary of State, September 2, 1980.

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

In the matter of the amendment of ARM 40-3.38(6)-S3875 (re-codified rule ARM 40.16.406) Apprentice Registration	NOTICE OF AMENDMENT OF ARM 40-3.38(6)-S3875 (RECODIFIED ARM 40.16.406) APPRENTICE REGISTRATION

TO: All Interested Persons:

1. On June 26, 1980, the State Electrical Board published a notice of public hearing on the amendment of ARM 40-3.38(6)-S3875 (recodified rule number ARM 40.16.406) Apprentice Registration at pages 1690 through 1692, Montana Administrative Register, issue number 12.

2. Twelve individuals appeared at the hearing. Five had no comment or testimony to make. Three spoke in favor of the proposed amendment. Bob Scott, State Director of the Bureau of Apprenticeship and Training, United Stated Department of Labor testified neither for or against the rule. However, he stated he would like a warning that registration with the State Electrical Board does not meet the requirements for certification on projects covered under the Davis Bacon Act.

C. W. Chamberlin, Executive Director of the Montana Chapter of Associated Builders and Contractors questioned why the board recognized a legal need for an alternate to the Apprenticeship Bureau program. Mr. Meloy, Hearing Officer for the board, stated that the statutes do not make registration with the Aprenticeship Bureau mandatory. Because registration is not mandatory, the board in the past had made several attempts at implementing rules for regulating apprentices. Under the existing rules, virtually any person or any employer could list a person as an apprentice by filing his name with the board and submitting a quarterly report. No training standards were imposed under that rule and determinations as to the quality and extent of the apprentice's training are not made until the apprentice applies for journeyman licensure. The proposed amendment would correct this problem.

Ron Callantine, electrical and plumbing contractor, and representative of the Montana Independent Electrical Crafts Association and the Associated Builders and Contractors, stated he basically agreed with the rule. He questioned whether the rule would mean that registration with the board meant the individual had to meet the same ratio and compensation standards of the Apprenticeship Bureau. The board responded that this was correct.

He also questioned what consideration would be given to an individual with previous experience when he registers with the Apprenticeship Bureau. This will have to be worked out with the Apprenticeship Bureau.

Several individuals questioned the need for two registration agencies.

No one testifying had any real objections to the proposed amendment. No other comments or testimony were received. The board therefore amends the rules exactly as proposed.

3. The reasons for the amendment of the rule are those stated in the notice and in paragraph 2 above.

STATE ELECTICAL BOARD
RALPH HERRIOTT, PRESIDENT

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

Certified to the Secretary of State, September 2, 1980.

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

In the matter of the amendment of Rule 46.5.905 (46-2.6(2)-S684) pertaining to establishing day care rates	))))	NOTICE OF THE AMENDMENT OF RULE 46.5.905 PERTAINING TO ESTABLISHING DAY CARE RATES

TO: All Interested Persons

1. On July 31, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.5.905 establishing day care rates at page 2244 of the Montana Administrative Register, issue number 14.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment of Rule 46.9.101 (46-2.10(1)-S10051) describing organization of Economic Assistance Division	))))	NOTICE OF THE AMENDMENT OF RULE 46.9.101 DESCRIBING ORGANIZATION OF ECONOMIC ASSISTANCE DIVISION

TO: All Interested Persons

1. On July 31, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.9.101 describing organization of Economic Assistance Division at page 2239 of the Montana Administrative Register, issue number 14.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment of Rule 46.11.101 (46-2.10(22)-S11751)) and the repeal of Rules 46.11.102 (46-2.10(22)-S11760), 46.11.103 (46-2.10(22)-S11770), and 46.11.104) (46-2.10(22)-S11780) pertaining to the food stamp program	))))))	NOTICE OF THE AMENDMENT OF RULE 46.11.101 AND THE REPEAL OF RULES 46.11.102, 46.11.103, and 46.11.104 PERTAINING TO FOOD STAMPS

TO: All Interested Persons

1. On July 31, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.11.101 and the repeal of Rules 46.11.102, 46.11.103, and 46.11.104 pertaining to the food stamp program at page 2246 of the Montana Administrative Register, issue number 14.

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

3. No comments or testimony were received.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 2, 1980.

VOLUME NO. 38 OPINION NO. 98

COUNTY COMMISSIONERS - Appeal from zoning Board of Adjustment;
LAND USE - Appeal from zoning Board of Adjustment;
LOCAL GOVERNMENT - Appeal from zoning Board of Adjustment;
MONTANA CODE ANNOTATED - Sections 7-1-101, 7-1-114, 76-2-321, and 76-2-327;
MONTANA CONSTITUTION - Article XI, section 6;
OPINIONS OF THE ATTORNEY GENERAL - 37 OP. ATT'Y GEN. NOS. 68 and 70 (1977).

HELD: Section 7-1-114, MCA, prohibits a local legislative body from providing for an optional appeal of decisions from the local zoning Board of Adjustment to the legislative body.

19 August 1980

John G. Winston, Esq.
Butte-Silver Bow County Attorney
155 West Granite Street
Butte, Montana 59701

Dear Mr. Winston:

You have asked for my opinion on the following question:

> May a local legislative body provide for an optional appeal of decisions from the local zoning Board of Adjustment to the legislative body?

Your letter explains that the Butte-Silver Bow council of commissioners has passed an ordinance providing for such an appeal procedure, and that the validity of that portion of the ordinance is being questioned.

My understanding is that Butte-Silver Bow is a local government unit with self-government powers, as provided in Article XI, section 6 of the Montana Constitution and section 7-1-101, MCA. Under those provisions, Butte-Silver Bow may exercise any power not prohibited by the constitution, law, or charter. See generally 37 OP. ATT'Y GEN. NOS. 68 and 70 (1977). The question presented, then, is whether any law prohibits Butte-Silver Bow from adopting the ordinance. Section 7-1-114, MCA, provides:

> (1) A local government with self-government powers is subject to the following provisions:
>
> ***
>
> (e) All laws which require or regulate planning or zoning;
>
> ***
>
> (2) These provisions are a prohibition on the self-government unit acting other than as provided.

This statute applies to procedural laws concerning zoning as well as substantive laws. The State Commission on Local Government explained the law as follows:

> This subsection limits the land use control and zoning power of self-government local units. These limits are justified both on the basis that exercise of the powers may involve substantial impacts on individuals affected by them, and on the basis that the development of regional and state wide planning makes uniform procedures desirable.

(Emphasis added.) 2 Local Gov't. Rev. Bull. No. 5, at 115 (1975). Whether the zoning ordinance in question is invalid depends on whether its provisions are "other than as provided" by the Legislature.

The ordinance provides:

> RIGHT OF APPEAL: Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer or any officer, department, board or bureau of the local government, may present to the Council of Commissioners or the District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Council of Commissioners or the District Court within thirty (30) days after the filing of the decision in the office of the Board. When the decision of the Board is appealed to the Council, the Clerk and Recorder shall forthwith place the appeal on the agenda of the next regular meeting of the Council at which meeting the Council shall schedule a public hearing on the appeal within twenty-two

> (22) days. The appeal to the Council of Commissioners will stay proceedings. ... Upon hearing the appeal, the Council of Commissioners will consider the record and such additional evidence as may be presented and thereupon affirm, revise, or modify the decision in whole and substitute such other determination as it may find warranted under this Ordinance. The final decision by the Council of Commissioners shall be transcribed by the Clerk and Recorder forthwith and a copy thereof served promptly on the appellant and the Board.
>
> Any person aggrieved by the decision of the Council of Commissioners, or any taxpayer, or any office, board or bureau of the local government may appeal such decision to the District Court in the same manner as herein provided for direct court appeal from decision of the Board.

(Emphasis added.)

Section 76-2-327(1), MCA provides:

> Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(Emphasis added.) A comparison of these two provisions indicates clearly that the optional appeal to the council of commissioners as provided in the ordinance is "other than as provided" in the statute.

However, you have cited another statutory provision as providing the authority for the optional appeal procedure. Section 76-2-321, MCA, provides in part:

> (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment

> may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.
>
> (2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(Emphasis added.) Subsection (2) was first adopted in 1975, Laws of Montana (1975), chapter 13, section 1, and my research has revealed no previous attorney general's opinion nor any decision of the Montana Supreme Court interpreting that provision. With respect to the question you have asked, however, this law is not ambiguous and therefore requires no interpretation. See Dunphy v. Anaconda Company, 151 Mont. 76, 80, 438 P.2 660, 662 (1968). It is my opinion that section 76-2-321 (2), MCA, authorizes the local legislative body to act instead of the Board of Adjustments in certain cases, not in addition to the board as the Butte-Silver Bow ordinance provides. Thus, the body serving the adjustment function may vary according to the terms of an ordinance, but the appeal procedure from that body's decision must follow section 76-2-327, MCA, supra.

THEREFORE, IT IS MY OPINION:

> Section 7-1-114, MCA, prohibits a local legislative body from providing for an optional appeal of decisions from the local zoning Board of Adjustment to the legislative body.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 99

DISTRICTING AND APPORTIONMENT COMMISSION - Report due to 47th Legislative Assembly;
ELECTIONS - Reapportionment of congressional and legislative districts;
LEGISLATURE - Receipt of report from districting and apportionment commission;
LEGISLATURE - Reapportionment of congressional and legislative districts;
MONTANA CONSTITUTION - Article V, section 14(3).

HELD: 1. The districting and apportionment commission is required to submit its plan to the 47th Legislature if census data is available in December 1980.

2. The Legislature may recess and reconvene at a later date to receive and make recommendations on the commission's plan.

25 August 1980

Gene Mahoney, Chairman
Districting & Apportionment Committee
c/o Robert B. Person
Legislative Counsel
State Capitol
Helena, Montana 59601

Dear Mr. Mahoney:

You have requested my opinion as to whether the districting and apportionment commission is required to submit its plan to the 47th Legislature if census data is available in December 1980.

Perhaps the most significant line of cases that have come from the United States Supreme Court in the last two decades has been the court's decisions concerning redistricting and reapportionment, commonly known as the "one-man - one-vote" line of cases. These cases require state legislatures to continually update, through redistricting and reapportionment, the boundaries of electoral districts within each state to insure that one person's vote will not have more weight than another person's vote. The watershed case is Baker v. Carr, 369 U.S. 186 (1961), where the Court held that federal courts had authority under the equal protection

clause of the United States Constitution to examine the apportionment formulas for electing representatives in the various states. In Reynolds v. Simms, 377 U.S. 533, 555 (1964), the court stated:

> The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of the citizens vote just as effectively as by wholly prohibiting the free exercise of the franchise.

In Gray v. Sanders, 372 U.S. 368 (1962), the court commented:

> The idea that every voter is equal to every other voter in a state, when he casts his ballot in favor of several competing candidates, underlies many of our decisions. 372 U.S. 368 at 380.

And the Court held:

> The concepts of political equality from the Declaration of Independence, to Lincoln's Gettysburg's Address, to the fifteenth, seventeenth, and nineteenth amendments can mean only one thing - one person, one vote. 372 U.S. at 381.

See also Wesberry v. Sanders, 376 U.S. 1 (1963).

Montana, like most states, has chosen to formally redistrict and reapportion electoral boundaries every ten years following the federal census. The census figures concerning the population of each electoral district are evaluated and the boundaries are redrawn in accordance with the new population figures.

Montana's redistricting and reapportionment scheme is provided in Article V, section 14, Montana Constitution. The Constitution provides that in each legislative session immediately prior to the federal census a commission be appointed by the leadership of the Legislature to prepare a plan for redistricting and reapportionment. Article V, § 14(3) provides:

> The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendation. Within 30 days thereafter, the commission shall file its plan with the secretary of state and it shall become law. The commission is then dissolved.

Your question concerns interpretation of that constitutional provision.

The first regular session after the commission's appointment will be the 47th Legislature, which commences in January of 1981. If the census figures are available in December 1980, then the 47th Legislature will also be the first regular session following the date the census figures are available. The constitutional language is clear and unambiguous. The commission must submit its plan to the first regular session after its appointment or at the first regular session after the census figures are available. Where the constitutional language is clear and unambiguous, the plain meaning must be adopted. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1969); Keller v. Smith, 170 Mont. 399, 404, 53 P.2d 1002 (1976). Thus, the commission must submit its plan to the 47th Legislature.

You have also requested my opinion as to whether the legislature could recess and reconvene at a later time to receive and make recommendations on the commission's plan. The Montana Constitution, Article V, section 6 provides:

> The legislature shall meet each odd-numbered year in regular session of not more than ninety legislative days.

Article V, section 10(5) provides:

> Neither house shall, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the 2 houses are sitting.

It is implicit in the language of the two sections quoted above that the Legislature may recess, with consent of both houses, and reconvene at any time within the odd-numbered year. If the session does not meet in excess of ninety days

it would still be considered to be a regular session. As long as the commission submits the plan to the Legislature in regular session, the provision of the Constitution will be satisfied.

You have also asked whether there are any federal statutes that require Congressional redistricting to be completed within a certain time period. Congressional redistricting is a task to be done by the states. But 2 U.S.C. § 2(a) provides that within one week after the commencement of the regular congressional session following the diecennial census, the President must submit a statement to the Congress, based on the census results, as to the number of representatives that will represent each state. This section establishes a formula for electing representatives to the Congress until the state has completed the redistricting process. Generally, under the formula, the representatives will be elected at large if there is a change in the number of representatives the state is entitled to in the next Congress.

THEREFORE, IT IS MY OPINION:

1. The districting and apportionment commission is required to submit its plan to the 47th Legislature if census data is available in December 1980.

2. The Legislature may recess and reconvene at a later date to receive and make recommendations on the commission's plan.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 100

FIREFIGHTERS - Rural volunteer fire crews, immunities from suit, benefits and pensions;
FIREFIGHTERS - Rural volunteer fire crews, firefighting on federal lands or lands within an incorporated city or an adjacent county;
COUNTIES - Rural volunteer fire crews, immunities from suit, benefits and pensions;
MONTANA CODE ANNOTATED - Sections 7-33-2201 et seq., 19-12-101 et seq.

HELD: When a rural fire crew organized pursuant to 7-33-2201 et seq., MCA, responds to a request to suppress fires on property managed by a federal agency within the county, or on property within an incorporated city or town within the county or in an adjacent county,
1) The immunities of 7-33-2208, MCA, are applicable, and
2) The benefits of 19-12-101 et seq., MCA, are applicable.

26 August 1980

Larry Juelfs, Esq.
Teton County Attorney
P.O. Box 507
Choteau, Montana 59422

Dear Mr. Juelfs:

You have requested my opinion on the following question:

> If a rural fire crew organized pursuant to 7-33-2201 et seq., MCA, responds to a request to suppress fires on property managed by a federal agency, or on property within an incorporated city or town, or in an adjacent county,
> (1) are the firefighters, the chiefs and the county immune from suit for injury to persons or property resulting from actions taken to suppress the fire;
> (2) Are the firefighters covered by the Volunteer Firefighters Compensation Act, section 19-12-101 et seq., MCA?

Section 7-33-2201 et seq., MCA, empowers a county governing body to organize volunteer rural fire crews, and to appoint a rural fire chief and such district rural fire chiefs as are necessary. The governing body is required by 7-33-2202(3), MCA, to "protect the range, farm, and forest lands within the county from fire in cooperation with federal, state and other fire protection agencies, including governing bodies of adjoining counties." This duty, however, must be carried out "within the limitations of 7-33-2205 through 7-33-2209." Sections 7-33-2205 and 2206 provide for establishment of fire seasons and for penalties for violations. Voluntary urban crews, organized to assist the rural crews, are authorized by 7-33-2207. A limitation on liability is provided by 7-33-2208:

> Fire control powers--liability. (1) Any county rural fire chief or district rural fire chief or his deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.
>
> (2) A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this section.

Finally, 7-33-2209 provides for the funding of the rural volunteer fire crews. The Volunteer Firefighters Compensation Act establishes a number of benefits for volunteer firemen. Payments are made to volunteer fire companies to offset the costs of group insurance (19-12-103). Additionally, pension benefits (19-12-401 through 407) and disability and death benefits (19-12-501 through 506) are established.

Your letter states that from time to time federal agencies such as the Forest Service request that county rural volunteer fire crews assist in extinguishing fires on federal lands. Incorporated cities and towns within the county, and even adjacent counties, make the same requests. Your concern is whether the immunities of 7-33-2208 and the benefits of 19-12-101 et seq., apply in these situations. The answer depends upon whether the volunteer crews are acting within the scope of their authority when responding to these requests.

It is clear that whenever the fire is within the exterior boundaries of the county the fire crew is acting entirely within its authority in responding to such requests. The governing statutes contain no limitations on firefighting authority based upon the ownership or control of the lands involved. Section 7-3-2201 provides that the purpose of the act is the "protection and conservation of range, farm and forest resources and the prevention of soil erosion..." Section 7-33-2202(3) requires the protection of "range, farm, and forest lands within the county from fire..." Therefore, whenever the fire being fought is within the county, the immunity of 7-33-2208 applies and the benefits of 19-12-101 et seq. may be enjoyed.

The same is true when the fire being fought is in an adjoining county. Section 7-33-2202(3) directs the county to cooperate with other fire control agencies "including governing bodies of adjacent counties." Since fires, especially range and forest fires, know no county boundaries, it could not only frustrate the purposes of 7-33-2201 et seq., but also needlessly endanger life and property if a fire crew were required to wait until a fire crossed the county boundary before suppression actions were taken. Cooperation is often the essence of controlling rural fires. Cooperation is required of citizens who join the volunteer fire crews as well as cooperation among the crews and other fire fighting agencies. This is expressly recognized by 7-33-2202(3).

THEREFORE, IT IS MY OPINION:

When a rural fire crew organized pursuant to 7-33-2201 et seq., MCA, responds to a request to suppress fires on property managed by a federal agency within the county, or on property within an incorporated city or town within the county or in an adjacent county,

1. The immunities of 7-33-2208, MCA, are applicable, and

2. The benefits of 19-12-101 et seq., MCA, are applicable.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 101

CONTRACTS - County vehicle lease: lease with purchase option; bid requirements;
COUNTIES - Contract for lease of county vehicles: lease with purchase option; bid requirements;
PURCHASING - County vehicle lease: lease with purchase option, bids for.
MONTANA CODE ANNOTATED - Sections 7-5-2301, 7-5-2307, and 7-7-2101.

HELD: A county lease contract with no purchase option is not subject to the bidding requirements of section 7-5-2301, MCA. A lease contract with a purchase option is subject to such requirements if the total amount of the lease payments, together with the purchase option price, exceeds $10,000.

27 August 1980

George W. Wells, Chairman
Sanders County Board of Commissioners
Courthouse Building
Thompson Falls, Montana 59873

Dear Mr. Wells:

You have requested my opinion on the following question:

> Whether a lease contract relating to sheriff's department vehicles is subject to the bidding requirements of section 7-5-2301, MCA, where the lease payments would total over $10,000 per year.

Section 7-5-2301, MCA, provides:

> (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind for which must be paid a sum in excess of $10,000 or for the construction of any building, road, or bridge for which must be paid a sum in excess of $10,000 shall be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published in the official newspaper of the county at least once a week for 3 consecutive weeks before the date fixed therein for receiving bids.

(3) Every such contract shall be let to the lowest and best responsible bidder.

By its terms section 7-5-2301, MCA, deals with "contract[s] for the purchase of any vehicle...." I cannot conclude that a contract for the lease of a vehicle is necessarily covered by section 7-5-2301. First, legislative intent governs the interpretation of the statute and, if possible, that intent must be determined from the plain meaning of the words used. Haker v. Southwestern Ry. Co., ___ Mont. ___, 578 P.2d 724, 727 (1978). "Purchase" and "lease" have different meanings and there is nothing in the statute indicative of a legislative intent to include "lease" within the meaning of "purchase."

In addition, while the Montana Supreme Court has not squarely addressed the issue, other courts have found a controlling distinction between purchase and lease contracts where statutes analagous to section 7-5-2301, MCA, are involved. See, Scott v. Town of Bloomfield (N.J. 1967) 229 A.2d 667, Compare, Holtz v.Babcock, 143 Mont. 341, 390 P.2d 801 (1963).

Finally, a separate statute in county contract law deals specifically with one type of lease contract. That provision, section 7-5-2307, MCA, states:

> Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this part shall apply thereto and govern and control the same.

If possible, the above provision should be interpreted to insure coordination with section 7-5-2301, MCA. Hostetter v. Inland Development Corp. of Montana, 172 Mont. 167, 171,

561 P.2d 1323 (1977). Read together, sections 7-5-2301 and 7-5-2307 have the effect of bringing leases with purchase options, but not other leases, within the category of county contracts that may be subject to advertised bidding requirements.

It is clear that the total amount involved in the lease contract, rather than the amount to be paid each year must be considered in determining whether the advertised bidding requirements apply. Section 7-5-2301, MCA, speaks in terms of the total sum to be paid by the county, and sets $10,000 as the sum which triggers bidding requirements. If the applicable statutes are to be given effect, in my opinion the amount that is stated in the purchase option must also be considered. For example, if a contract calls for lease payments of $3,000 per year for three years and includes a purchase option that may be exercised upon payment of a sum in excess of $1,000, the total sum involved would be more than $10,000. That type of contract would be subject to the bidding requirements of section 7-5-2301.

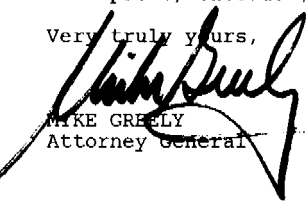
Your attention should also be drawn to section 7-7-2101(2), MCA, which requires voter approval before a county may incur an indebtedness to an amount exceeding $40,000 for any single purpose. In 38 OP. ATT'Y GEN. NO. 56 (1979), I concluded that section 7-7-2101(2) applies: (1) whether annual lease payments do or do not exceed $40,000, so long as the total indebtedness exceeds that amount; (2) where the county has an option to purchase for a payment of less than $40,000, if an indebtedness in excess of $40,000 will nevertheless be incurred; and (3) whether or not the contract includes an option to cancel at any time. If the contract in question would obligate the county to incure an indebtedness in excess of $40,000, the requirement of section 7-7-2101 must be met.

THEREFORE, IT IS MY OPINION:

A county lease contract with no purchase option is not subject to the bidding requirements of section 7-5-2301, MCA. A lease contract with a purchase option is

subject to such requirements if the total amount of the lease payments, together with the purchase option price, exceeds $10,000.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 102

FEDERAL FUNDING - State law vs. federal law;
LEGISLATURE - Appropriations; limits on federal funds;
STATE AGENCIES - Appropriations; limits on federal funds;
STATE AGENCIES - Budget amendment; use of federal funds;
U.S. CONSTITUTION - Article VI, clause 2;
LAWS OF MONTANA (1979) - H.B. 483.

HELD: The expenditure authorized by budget amendment No. 0534 does not violate the provisions of the general appropriation bill for the Department of Health.

29 August 1980

John W. Bartlett
Deputy Director
Department of Health and
Environmental Sciences
Cogswell Building
Helena, Montana 59601

Dear Mr. Bartlett:

You have requested my opinion as to whether the expenditure of $54,325, authorized by budget amendment No. 0534, violates the provisions of House Bill 483, Laws of Montana (1979).

House Bill 483, the general appropriation bill for the Department of Health, provides in relevant part:

> DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
>
> 2,527,946 14,903,883 2,568,719 14,836,348
>
> Other appropriated funds include $118,000 each year received under authority of P.L. 93-641, which may be expended only if granted or contracted to local health departments.

P.L. 93-641 (42 U.S.C. § 300k et seq.), commonly known as the National Health Planning and Resources Development Act of 1974, was passed by Congress to assure the development

of a national health policy that insures effective state health regulatory programs and area health planning programs. See 1974 U.S. Code Cong. and Admin. News, at 7842, et seq. The operational plan (OP-17) of fiscal year 1980 for the Health Planning Bureau within the department contemplated the use of $369,115 of P.L. 93-641 funds. As noted above, House Bill 483 designated $118,000 of those funds to be used for local health departments.

Federal regulations promulgated under P.L. 93-641 prohibit the Health Planning Bureau from contracting for the use of those funds with any third party without prior approval from the HEW regional office in Denver. See Public Health Services Grant Administration Manual, chapter 1-430-15(B); see also 42 C.F.R., part 123(c). By letter dated December 17, 1979, the chief of the health planning branch for the HEW regional office in Denver advised the department that the regional office would no longer approve the use of P.L. 93-641 funds for local health program purposes. (Copy is attached to your request.) Consequently, only $30,000 of the $118,000 appropriation for local health programs has been spent. By letter dated March 11, 1980, the department notified the HEW regional office that it was returning to the federal government the remaining $88,000, as provisions of state law (House Bill 483) precluded the state from spending those funds under the policy announced by the regional office.

Following the adoption of House Bill 483, the federal government promulgated final rules for the uncompensated services and community service programs. 42 C.F.R. part 124 was amended by new subparts (F) and (G). The new rules allow states to use P.L. 93-641 money to help with administration of the uncompensated care program under the Hill-Burton Act. In a letter dated February 27, 1980, the HEW region VIII office authorized the department to use up to $54,325 for administration of that program. This agreement was formalized on April 17, 1980. The department requested a budget amendment and on May 9, 1980 a budget amendment authorized the department to spend the $54,325.

Your question is whether the above series of events violated the provisions of House Bill 483, requiring $118,000 to be spent for local health programs. It is my opinion that the procedure did not violate the provisions of House Bill 483.

The legislature authorized the health planning bureau to spend $369,115 of P.L. 93-641 funds. Of that amount $118,000 was to be spent for local health planning programs. However, pursuant to the federal regulations listed above, the HEW regional office refused to approve the expenditure of $88,000 of that money for local programs. Where federal laws and regulations expressly conflict with the provisions of state law, the federal law prevails by operation of the supremacy clause of the United States Constitution. (Article VI, Clause 2, U.S. Constitution). See Perez v. Campbell, 42 U.S. 637 (1971); Jones v. Rath Packing Company, 430 U.S. 519 (1977).

The provisions of this particular act requiring the state to follow certain procedures, irrespective of state law, were specifically upheld in State of North Carolina ex rel. Morrow v. Califano, 445 F.Supp. 532, affirmed 435 U.S. 962 (1977). Since federal law prohibits the state from spending those P.L. 93-641 funds for local health programs without regional approval from HEW, the department's reversion of the $88,000 to the federal government was entirely proper and required by federal law.

The availability of federal funds for the uncompensated care program was not contemplated by the legislature in its consideration of House Bill 483. That program was a new program, the regulations not having been adopted until after passage and approval of House Bill 483. Section 17-3-108, MCA, requires an approved budget amendment before a state agency may expend federal assistance funds. The power to approve budget amendments for newly available federal funds rests with the executive. State ex rel. Judge v. Leg. Finance Comm., 168 Mont. 470, 477, 543 P.2d 1317 (1975). In this case the executive branch authorized the budget amendment.

Had the department been allowed to spend all $118,000 of the P.L. 93-641 funds for local programs and then also applied for a budget amendment to spend the newly authorized funds under the uncompensated care program, there would be no question as to the propriety of the budget amendment. The fact that the department was forced to revert $88,000 in unspent P.L. 93-641 funds does not change the legal nature of the budget amendment and does not violate the provisions of House Bill 483.

THEREFORE, IT IS MY OPINION:

The expenditure authorized by budget amendment No. 0534 does not violate the provisions of the general appropriation bill for the Department of Health.

Very truly yours,

MIKE GREELY
Attorney General