MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the amendment of procedural rules.	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 2.52.208 (No Public Hearing Contemplated)

TO: All Interested Persons

1. On July 19, 1982, the Workers' Compensation Court proposes to amend the procedural rules of the Court.

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

2.52.208 TIME AND PLACE OF TRIAL GENERALLY (1) For the purpose of setting trials, the Court ~~uses the fiscal year of July 1 to June 30, and~~ has divided the year into four terms of three months each, designated as the ~~July~~ June term, ~~October~~ September term, ~~January~~ December term and ~~April~~ March term.

(2) The Court has divided the state into nine geographic areas (subsection (5) of this rule). Except for emergency trials (ARM 2.52.209) or upon stipulation of all parties and consent of the Court to hold trials elsewhere, trials will be held at the time and in the place designated in subsections (3) and (4) of this rule.

(3) Court will be in session at the call of the Court. The Court will not convene in an area where no petition has been filed. Cases will be heard beginning the first full week during the ~~October~~ September and ~~April~~ March terms in the area cities ~~(except as indicated)~~ at the following times, subject to any exceptions the Court may make:

(a) ~~Kalispell~~ Butte area, ~~the~~ first and second weeks

(b) ~~Missoula~~ Miles City area, ~~the second~~ third week

(c) ~~Butte~~ Billings area, ~~the third~~ fourth and fifth weeks

(d) ~~Bozeman~~ Glasgow area ~~(in Helena)~~, ~~the fourth~~ sixth week

(e) ~~Billings~~ Great Falls area, ~~the fifth~~ seventh and eighth weeks

(f) ~~Miles City~~ Bozeman area ~~(in Billings)~~, ~~the sixth~~ ninth week

(g) ~~Glasgow~~ Missoula area, ~~the seventh~~ tenth and eleventh weeks

(h) ~~Great Falls~~ Helena area ~~(in Helena)~~, ~~the eighth~~ twelfth week

(i) ~~Helena~~ Kalispell area, ~~the ninth~~ thirteenth week

During the ~~January~~ December and ~~July~~ June terms ~~all~~ trials ~~will~~ may be held in Helena, subject to any exceptions the Court may make. ~~The same weekly schedule listed above will apply for setting the trials which will be heard in Helena, e.g., Kalispell area cases will be heard during the first week of the term, Missoula area cases will be heard during the second week, etc.~~

(4) Court ~~will normally convene at 9:30 a.m. It~~ will be in session or recess at the convenience of the Court. If all matters before the Court are not completed on the first day scheduled for trials, the Court will reconvene on the following and as many days thereafter as is necessary to complete the docket.

(5) Remains the same.

(6) Upon receipt of a petition meeting the requirements of these rules, the Court will set a trial in the area where the accident occurred and ~~date~~ at the time and in the place designated in subsections (3) and (4) of this rule and at a time that will allow ~~30~~ 60 days notice to be given of the trial. The Court may, for good cause, hold a trial over to the next regular trial date in or for the area.

(AUTH. and IMP. Sect. 2-4-201 MCA)

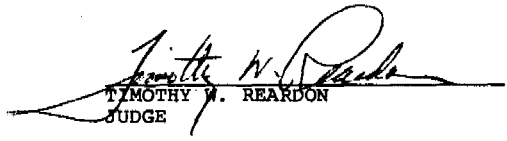
3. The rationale for amending this rule is to meet the demand for additional days in which to hear matters in those areas where the case load has increased and to lengthen the time between the filing of a petition and the date of trial to enable the parties to complete discovery, especially deposition work, prior to the trial date.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to Clarice V. Beck, Hearing Examiner, Workers' Compensation Court, 1422 Cedar-Airport Way, P.O. Box 4127, Helena Montana 59604 by July 15, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Clarice V. Beck, address above, no later than July 15, 1982.

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. The rule will affect each individual in the state. Notice of a hearing will be published in the Montana Administrative Register.

5. The authority of the Court to make the proposed changes in the rules is based on and implements §2-4-201 MCA.



TIMOTHY W. REARDON
JUDGE

CERTIFIED TO THE SECRETARY OF STATE: June 7, 1982
Date

BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the repeal of rule 2.23.504, the amendment of rules 2.23.304 and 2.23.920, and the adoption of a new rule 2.23.1306	)))))	NOTICE OF THE REPEAL OF RULE 2.23.504, THE AMENDMENT OF RULES 2.23.304 AND 2.23.920, AND THE ADOPTION OF A NEW RULES 2.23.1306

To: All Interested Persons.

1. On July 17, 1982 the Montana Merit System proposes to repeal Rule ARM 2.23.504, to amend Rules 2.23.304 and 2.23.920, and to adopt a new Rule 2.23.1306 which pertain to the operation of the Montana Merit System.

2. The rule proposed to be repealed is on page 2-2209, the rules proposed to be amended are on pages 2-2165 and 2-2285, and the new rule proposed to be adopted is on page 2-2388 of the Administrative Rules of Montana.

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

2.23.304 MERIT SYSTEM COUNCIL MEETINGS (1) The Council will meet at least four times annually. Public notice of merit system council meetings will be issued 7 days prior to the meeting date. Every 2 years the council will elect a ~~chairman~~ chairperson from its membership. ~~The council will assign its executive officer or a member of the executive officer's staff~~ The administrator of the Personnel Division shall assign a staff member the responsibility of making and keeping a record of the proceedings of all meetings. The assignment of a staff member by the administrator of the Personnel Division will be subject to the merit system council approval. Merit system council meetings will be called by the ~~chairman~~ chairperson of the council, giving due consideration for special meetings at the request of the executive officer of any participating agency. Participating agencies will be furnished a copy of the agenda for each meeting and will have the right to be represented at meetings without voting power, except in cases related to ARM 2.23.402.

(2) Two council members shall constitute a quorum for the transaction of business.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.920 TRANSFER AND RECLASSIFICATION (1) Intra-agency transfers without change in title or salary may be made at any time. Transfers of non-Merit System employees into Merit System positions may be made after

successful completion of an appropriate qualifying examination.
(AUTH. and IMP. Sect. 2-18-105 MCA)

4. The new rule which is proposed to be adopted provides as follows:

2.23.1306 PROMOTIONS WITHIN AGENCIES NOT UNDER COMPLETE MERIT SYSTEM COVERAGE (1) In situations where Merit System coverage within an agency is limited to specific positions, Merit System and non-Merit employees within the agency may be given first consideration for the vacant Merit System position(s) through a competitive promotion process.
(AUTH. and IMP. Sect. 2-18-105 MCA)

5. The participating agencies and the Merit System Council are proposing these amendments and adoption of a new rule governing the operation of the Montana Merit System as a result of budget reductions caused by federal spending cuts.

6. Interested persons may present their data, views or arguments concerning the proposed repeal, amendments, and adoption of the rules in writing no later than July 15, 1982 to:

Charles Seifert, Chairperson
Montana Merit System Council
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

7. If a person who is directly affected by the proposed repeal of Rule ARM 2.23.504, the amendment of rules 2.23.304 and 2.23.920, and the adoption of new rule 2.23.1306 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: Charles Seifert, Chairman, Montana Merit System Council, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than July 15, 1982.

8. If the agency receives requests for a public hearing on the proposed repeal and amendment 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 persons.

9. The authority of the council to make the proposed rules is based on section 2-18-105, MCA, and the rules implement section 2-18-105, MCA.

Charles Seifert, Chairman
Merit System Council

Certified to the Secretary of State June 7, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

IN THE MATTER of the Proposed amendments of ARM 8.6.405 concerning reciprocity; 8.6.410 concerning renewals and 8.6.411 concerning duplicate licenses and proposed adoption of a new rule setting a fee schedule.	NOTICE OF PROPOSED AMENDMENT OF ARM 8.6.405 RECIPROCITY; 8.6.410 RENEWALS; 8.6.411 DUPLICATE LICENSES and PROPOSED ADOPTION OF A NEW RULE SETTING A FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested persons:

1. On July 18, 1982 the Board of Architects proposes to amend rules ARM 8.6.405 concerning reciprocity, 8.6.410 concerning renewals and 8.6.411 concerning duplicate licenses and also proposes to adopt a new rule 8.6.413 setting a fee schedule.

2. The proposed amendment of ARM 8.6.405 will read as follows: (new matter underlined, deleted matter interlined)

"8.6.405 RECIPROCITY (1) No license to practice architecture in Montana by reciprocity from another state shall be granted unless the applicant making such application for reciprocity is the holder a certificate issued by the National Council of Architectural Registration Boards (N.C.A.R.B.). All such applications shall be sent to the N.C.A.R.B. for processing.

(a) The address of the office of the N.C.A.R.B. is:
N.C.A.R. Boards
1735 New York Avenue, ~~Northwest~~ North West
Suite 700
Washington, D.C. 20006

~~(2) The application fee for licensure by reciprocity shall be $40.00.~~

~~(3)~~ (2) All applicants for licensure by reciprocity who were licensed in their respective jurisdiction prior to 1964 shall submit evidence of having successfully completed a N.C.A.R.B. approved seminar on seismic forces."

3. The board is proposing the change so that all fees can be included in one fee schedule. The authority of the board to make the proposed change is based on section 37-65-305 and 37-1-134, MCA and implements section 37-65-305, MCA.

4. The proposed amendment of ARM 8.6.410 will read as follows: (new matter underlined, deleted matter interlined)

"8.6.410 RENEWALS (1) Annual renewal receipt cards shall be issued by the board, upon receipt of annual renewal fee. Notice of renewal shall be mailed each licensed architect before the first day of July each year. The notice shall be returned with the renewal fee or late renewal fee to the board office ~~of the department~~.

(2) ~~The annual license fee shall be $20.00.~~ The beginning of the fiscal year is July 1 and all licenses bear this date. The ~~license~~ renewal fee shall be due beginning on July 1. However, a 1 month grace period thereafter is provided by statute. ~~Therefore, license fees~~

~~must be paid no later than July 31~~. A late renewal fee will be imposed upon ~~A~~any license which has not been renewed by ~~that date will expire by operation of statute~~ July 31. The holder of an expired license ~~must~~ may be required to make reapplication to the state board or national board."

5. The board is proposing the changes to place all fees within one fee schedule and to clarify the rule. The authority of the board to make the proposed change is based on section 37-1-134, MCA and implements sections 37-65-306, MCA.

6. The proposed amendment of ARM 8.6.411 will read as follows: (new matter underlined, deleted matter interlined)

"8.6.411 DUPLICATE LICENSES (1) When a license previously issued has been lost or destroyed, a charge ~~of $10.00~~ for a duplicate shall be made to cover the expense of issuing such duplicate license."

7. The board is proposing the amendment to place all fees within one fee schedule. The authority of the board to make the proposed change is based on section 37-1-134, MCA and implements section 37-65-303 (2), MCA.

8. The proposed new rule will read as follows:

8.6.413 FEE SCHEDULE

(1)	Examination and re-examination:	
(a)	Professional Examination Section A	$ 90.00
(b)	Professional Examination Section B (when taking all four parts)	100.00
(c)	Professional Examination Section B (when taking only one part)	25.00
(d)	Qualifying Test (when taking all four parts)	60.00
(e)	Qualifying Test (if taking less than four parts)	15.00 per part
(2)	Reciprocity	50.00
(3)	Renewal (if paid by July 31st)	20.00
(4)	Late renewal (if paid after July 31st)	50.00
(5)	Original License fee	20.00
(6)	Documents, Duplicate License, Rosters	25.00"

9. The board is proposing the adoption to comply with section 37-1-134, MCA which requires the board to set fees commensurate with program costs. The authority of the board to make the adoption is based on section 37-1-134, MCA and implements sections 37-65-304 (1), 305, 306, 307, and 201 (4) and (5), MCA.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Architects, 1424 9th Avenue, Helena, Montana 59620-0407 no later than July 16, 1982.

11. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must

make written request for a hearing and submit this request along with any written comments he has to the Board of Architects, 1424 9th Avenue, Helena, Montana 59620-0407 no later than July 16, 1982.

12. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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 is determined to be 72 based on the 725 licensees.

13. The authority and implementing sections are listed after each proposed change.

BOARD OF ARCHITECTS
BONNIE B. DONOHUE, PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 7, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

IN THE MATTER of the Proposed amendments of rules ARM 8.16.402 concerning examination for dentists; 8.16.405 concerning the fee schedule for dentists; 8.16.605 concerning examinations for dental hygienists; and 8.16.606 concerning the fee schedule for dental hygienists.)	NOTICE OF PROPOSED AMENDMENTS OF ARM 8.16.402 EXAMINATIONS; 8.16.405 FEE SCHEDULE; 8.16.605 EXAMINATIONS; and 8.16.606 FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 18, 1982 the Board of Dentistry proposes to amend rules ARM 8.16.402 subsections (8) (d) and (f) concerning dentists examinations; 8.16.405 concerning the fee schedule for dentists; 8.16.605 subsections (7) (d) and (f), concerning examinations for dental hygienists; and 8.16.606 concerning the fee schedule for dental hygientists.

2. The proposed amendment of ARM 8.16.402 subsection (8) (d) and (e) will read as follows: (full text of rule is located at pages 8-503 and 8-504, Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.16.402 EXAMINATIONS ...

(8) Applicants for licensure shall submit an application, which shall be ~~furnished~~ by the board and shall include:

...

(d) an examination fee ~~of $60.00~~.

...

(f) upon successful completion of the examination, a licensure fee ~~of $20.00~~."

3. The board is proposing the change to delete the actual fee amount from the text of the rule as it is contained in the fee schedule. The authority of the board to make the proposed change is based on sections 37-4-301 and 37-1-134, MCA. The rule implements section 37-4-301 (8), MCA.

4. The proposed amendment of 8.16.405 will read as follows: (new matter underlined, deleted matter interlined)

"8.16.405 FEE SCHEDULE

(1)	Examination fee	~~$60.00~~ 40.00
(2)	Re-examination fee (When re-examination does not occur at the same testing date and site as the initial examination)	~~60.00~~ 40.00
(3)	* Reciprocity	50.00
(4)	Licensure fee	~~20.00~~ 25.00
(5)	Renewal, in-state	~~25.00~~ 30.00
(6)	Renewal, out-of-state	~~25.00~~ 30.00
(7)	*Duplicate licensure fee	10.00
(8)	*Penalty fee	10.00 25.00
(9)	Documents	10.00

~~*-Indicates-those-fees-which-are-set-by-statute.~~ "

5. The board is proposing the amendments to comply with section 37-1-134, MCA which allows the boards to set fees commensurate with program costs. The authority of the board to make the proposed change is based on section 37-1-134, MCA and implements sections 37-4-301 (4)(e), (f), (7), 202, 303, 306, 307 (1), (2) & (3), MCA.

6. The proposed amendment of 8.16.605 subsections (7)(d) and (e) will read as follows: (full text of the rule is located at pages 8-511 and 8-512, Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.16.605 EXAMINATION ...

(7) Applicants for licensure shall submit an application, which shall be furnished by the board, and which shall include:

...

(d) an examination fee ~~of $60.00~~.

...

(f) upon successful completion of the examination, a licensure fee ~~of $15.00~~."

7. The board is proposing the amendment to include all fees within the fee schedule only. The authority of the board to make the proposed change is based on section 37-1-134, MCA and section 37-4-402, MCA. The rule implements section 37-4-402, MCA.

8. The proposed amendment of 8.16.606 will read as follows: (new matter underlined, deleted matter interlined)

"8.16.606 FEE SCHEDULE

(1)	Examination fee	~~$60.00~~	40.00
(2)	Re-examination (When re-examination does not occur at the same testing date and site as the initial examination)	~~60.00~~	40.00
(3)	*Reciprocity	20.00	
(4)	Renewal, in-state	~~10.00~~	20.00
(5)	Renewal, out-of-state	~~10.00~~	20.00
(6)	*Licensure fee	~~15.00~~	25.00
(7)	*Duplicate license fee	10.00	
(8)	Penalty fee	~~10.00~~	25.00
(9)	Documents	10.00	

~~*-Indicates those fees which are set by statute.~~"

9. The board is proposing the rule amendment to comply with the provisions of section 37-1-134, MCA which allows the board to set fees commensurate with costs. The authority of the board to make the proposed change is based on section 37-1-134, MCA and implements sections 37-4-303, 402 (5)(e)(f), (7), 403, and 406 (1), MCA.

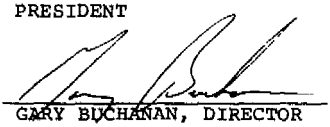
10. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 16, 1982.

11. If a person who is directly affected by the proposed amendments 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 Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 16, 1982.

12. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislatures; from a governmental agency or subdivision; 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 is determined to be 110 based on the 1100 licensees.

13. The authority and implementing sections are listed after each proposed change.

BOARD OF DENTISTRY
JEANNETTE S. BUCHANAN, R.D.H.
PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 7, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

IN THE MATTER of the Proposed amendment of ARM 8.54.410 concerning the fee schedule) NOTICE OF PROPOSED AMENDMENT OF ARM 8.54.410 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 18, 1982, the Board of Public Accountants proposes to amend rule 8.54.410 fee schedule. The effective date of the proposed amendment will be September 16, 1982.

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

"8.54.410 FEE SCHEDULE

(1)	Certified public accountant application for uniform C.P.A. examination -- All original Montana applications.....	~~$50.00~~	100.00
(2)	Certified public accountant application by reciprocity	~~50.00~~	70.00
(3)	Re-examination fee -- for each separate part to be re-examined (Accounting Practice I and II are two parts).....	~~10.00~~	20.00
(4)	Annual license -- C.P.A.	50.00	
(5)	Annual license -- L.P.A.	50.00	
(6)	Cancellation and request for refund fee -- C.P.A./L.P.A.	10.00"	

3. The board is proposing the amendment to comply with the provisions of section 37-1-134, MCA which allows the boards to set fees commensurate with program costs.

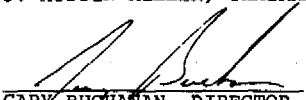
4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Public Accountants, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 16, 1982.

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 Board of Public Accountants, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 16, 1982.

6. If the board 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 agency or subdivision; 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 is determined to be 150 based on the 1500 licensees.

7. The authority of the board to make the proposed amendment is based on section 37-50-204, 314, MCA and implements sections 37-1-134, MCA and 37-50-204 and 314, MCA.

BOARD OF PUBLIC ACCOUNTANTS
J. AUSTIN MILLER, CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 7, 1982.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 8.79.101(6)(a)(b)(c)(7)(8)(11)(e)(f)(13), as it relates to testing of raw milk samples and reporting of those results.	NOTICE OF PROPOSED AMENDMENT OF RULE 8.79.101(6)(a)(b)(c)(7)(8)(11)(e)(f)(13) PURCHASE AND RESALE OF MILK NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On Wednesday July 18, 1982, the Milk Control Bureau of the Department of Commerce proposes to amend Rule 8.79.101 which will require licensed Montana Milk Distributors to use fresh raw milk samples to test for butterfat content, which the department proposes to be effective August 1, 1982.

2. The proposed rule 8.79.101(6)(a)(b)(c),(7),(8),(11)(e)(f) and (13) as amended will read as follows: (full text of rule is located at pages 8-2302 through 8-2310 Administrative Rules of Montana)(new matter underlined, deleted matter interlined)

"8.79.101 Purchase and Resale of Milk(1)...

(6)...

(a) All ~~tests~~ testing procedures approved by the Animal Health Division of the Montana Department of Livestock shall be considered by the Department as official ~~tests~~ for the purpose of administration of the Milk Control Act.

(b) In case of controversy butterfat testing results from sampling techniques employed by Milk Control Bureau personnel and testing procedures performed by the Animal Health Division of the Department of Livestock will be considered by the Department as the official tests to determine the minimum producer payment.

(c) Plant results of producer butterfat tests with variations in excess of ten-hundredths (.10) of a percent from Milk Control Bureau results will not be accepted as an allowable deviation.

~~(7) When producer payments are based upon butterfat tests from composite samples, a portion of each composit sample must be retained until the succeeding composite sample is tested.~~

(7) Distributors must test each farm bulk tank of producer milk picked up by each distributor or contract hauler. Test results are to be used by distributors to determine producer payments each month. Each sample must be retained for a period of seven (7) days.

(8) Each distributor must maintain a record of butterfat ~~tests of each producer's milk or cream, covering each pay period~~ of every farm bulk tank of producer milk picked up by processors or contract haulers. Such record shall be kept on file for two years and be made available to any authorized agent of the Department upon request.

...

(11) ...

(e) ~~Producer~~ Butterfat test for ~~the first half of the month or other test period~~ each farm bulk tank of producer milk picked up.

~~(f) Producer butterfat test for the last half of the month or other test period.~~

(f) Pounds of producer milk delivered each day of pick-up from each farm bulk tank.

...

(13) On or before the 15th day of each month each distributor must submit to the department a duplicate or other correct copy of his producer payroll, for the preceding month, indicating the daily weight of milk delivered from each farm bulk tank of producer milk and each butterfat test of same, total producer deliveries and payment ~~for the preceding month~~ for each producer supplying the plant.

..."

3. The amendments to the rule are proposed as an aid to enforcement of correct producer payments by requiring distributors to change from testing producer milk for butterfat content on a composite sample basis, because testing fresh milk samples results in greater testing accuracy.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1430 9th Avenue, Helena, Montana 59620 no later than July 16, 1982.

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 Milk Control Bureau, 1430 9th Avenue, Helena, Montana 59620 no later than July 16, 1982.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having 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 two (2) based on twelve (12) licensed distributors licensed to do business in Montana.

7. The authority of the department to make the proposed rule is based on Section 81-23-104, MCA, and implement the same section.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

BY: William E. Ross
WILLIAM E. ROSS, CHIEF
MILK CONTROL BUREAU

Certified to the Secretary of State, June 7, 1982.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 8.86.301(6)(a)(iv)(vii)) OF RULE 8.86.301(6)(a)(iv)
(12), as it relates to the cal-) (vii)(12) PRICING RULES
culation of the minimum Class I)
producer and jobber prices.) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On Wednesday July 18, 1982, the Milk Control Board proposes to amend Rule 8.86.301 as follows:

(a) Amend subsection (6)(a)(iv)(vii) to facilitate Administrative Computation of the producers flexible economic formula, and

(b) Amend subsection (12) so that all paragraphs of the rule relating to minimum jobber pricing are in harmony.

2. The proposed amendment of 8.86.301 subsections (6)(a)(iv)(vii) and (12) will read as follows: (full text of rule is located at pages 8-2539 through 8-2549 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES (1)...

(6)...

(a) The minimum prices which shall be paid to producers by distributors in all market areas of the State shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin Series plus three dollars ($3.00) whichever price is lower. The flexible economic formula utilizes a November 1969 Base equalling 100, an interval of 4.5 and consists of seven (7) factors. The factors and their assigned weights are as follows:

FACTOR	WEIGHT	CONVERSION FACTOR
(i) Unemployment U.S. (6.67(3.8-C)+100).05	5%	
(ii) Unemployment Mt. (6.67(6.1-C)+100).10	10%	
(iii) Weekley Wages-total private (Revised and Seasonally Adjusted)	15%	.13297873
(iv) Prices Received by Farmers Mt. ('47-'49=100)	15%	~~.15789474~~ .22960139
(v) Mixed Dairy Feed	20%	.32258065
(vi) Alfalfa Hay	12%	.48000000

FACTOR	WEIGHT	CONVERSION FACTOR
(vii) Prices Paid by Farmers U.S. ('67=100)	23%	~~.20720721~~ .41990335
	100%	

. . .

(12) Jobber and/or Independent Contractor Prices. Minimum prices that must be charged to jobbers and/or independent contractors by distributors for packaged milk products are set forth in the appropriate price announcement~~, in the column entitled "Jobber Price At Plant Dock". It is directed that, in cases where a reasonably efficient distributor transports and delivers milk products to jobber and/or independent contractors he will add the cost of delivery to the prices listed in respective market areas concerned.~~

. . ."

3. The amendments to rules are housekeeping actions proposed for the following reasons:

(a) To facilitate administratively, the computation of Class I producer flexible economic formula, and

(b) To make it clear that the Board's intent is to fix a minimum jobber price only, exclusive of hauling charges.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1430 9th Avenue, Helena, Montana 59620 no later than July 16, 1982.

5. If a person who is directly affected by the proposed amendments 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 Milk Control Bureau, 1430 9th Avenue, Helena, Montana 59620 no later than July 16, 1982.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having 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 ten (10) based on twelve (12) licensed distributors, seventy-three (73) jobbers and sixteen out-of-state distributors licensed to do business in Montana.

7. The authority of the department to make the proposed rule is based on Section 81-23-302, MCA and implement the same section.

BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross
WILLIAM E. ROSS, CHIEF
MILK CONTROL BUREAU

Certified to the Secretary of State, June 7, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.57.501 School Psychologists, Social Workers, Nurses and Speech and Hearing Therapists	NOTICE OF PROPOSED AMENDMENT OF RULE 10.57.501 SCHOOL PSYCHOLOGISTS, SOCIAL WORKERS NURSES AND SPEECH AND HEARING THERAPISTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 17, 1982, the Board of Public Education proposes to amend rule 10.57.501 which specifies the certification requirements for school psychologists.

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

10.57.501 SCHOOL PSYCHOLOGISTS, SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS. (1) through (4) (a) - (c) remain the same.

(d) Reinstatement and recent training. For reinstatement of lapsed certificates or initial certification for applicants with training more than 5 but less than 15 years old, a class 6 certificate cannot be issued until the required number of graduate credits are presented. Credits presented must have been earned within the five-year period preceding the date of application on the basis of 12 quarter credits for the first 5 years plus 6 quarter credits for each additional 5-year period since certification or original training. (Specific courses may be required for initial certification.) The applicant may, however, practice under a class 5 provisional (specialist certificate for (1) year while completing the credit deficiency. For provisional certification a plan of intent outlining the specific courses required must be submitted to teacher certification in the office of public instruction. The plan of intent, a part of the application form which may be obtained from the office of public instruction, must be signed by the applicant, the college certification official where the coursework will be completed (if applicable) and a representative of the employing school district. After March 1, 1982, an applicant applying for a class 5 provisional certificate must have completed the individual intelligence testing requirement and not have more than four (4) of the required courses to complete in the one-year period of the certificate. A class 5 provisional certificate is issued for one (1) year and is not renewable. The individual who has allowed a certificate to lapse for more than 15 years or has not completed any recent academic training on the basis of 6 quarter credits for every five years, must contact the office of public instruction for evaluation of his/her certification position and procedures to obtain a certificate. Indi-

viduals in this category, lacking the recent training requirements, are not eligible to receive any class of certification until a minimum of 12 quarter credits of formal training or the equivalent is met.

(e) Renewal and reinstatement credits must supplement, strengthen and update the specialist preparation and must be graduate credit.

(5) Psychologists who have been fully approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have had at least half-time employment during the school year between September 1, 1975, and May 31, 1981, and hold a six-year approval which expires prior to July 1, 1984, can continue to serve as a school psychologist until ~~1984, when they must be certified with a class 6 specialist certificate.~~ the expiration date of the approval when they must be certified. After July 1, 1984, all school psychologists must be certified with a class 6 specialist certificate.

(6) Psychologists who have been fully approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have practiced continuously in Montana since September 1, 1975, under the Montana Special Education rules and regulations may receive class 6 certification without additional training, upon application, commencing January 1, 1981. Those people who have received their certification under this provision ~~must~~ should obtain credits for certificate renewal in their areas of deficiency.

AUTH: 20-4-102 IMP: 20-4-102

3. The board of public education is proposing this amendment because the change would require that a provisional certificate be available only if the individual intelligence testing course is completed prior to, and not more than four of the other course content areas would be completed during, the period covered by the provisional certificate.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than July 16, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than July 16, 1982.

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 sub-division 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 20 persons based on 200 psychologists in the state of Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-4-102, MCA, and the rule implements section 20-4-102, MCA.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by Linda Vaughn

Assistant to the Board

Certified to the Secretary of State May 26, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rule I regarding the professional program for the school psychologist	)))	NOTICE OF PROPOSED ADOPTION OF RULE I SCHOOL PSYCHOLOGIST NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 17, 1982, the Board of Public Education proposes to adopt a rule regarding the professional program for the school psychologists.

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

RULE I SCHOOL PSYCHOLOGISTS. For the prospective school psychologist the professional program shall:

(1) apply specific criteria requiring subjective and objective data for admission to the school psychology program;

(2) provide specific criteria for evaluation of candidates to insure that they possess the personal characteristics and academic competencies appropriate to the requirements of their future roles as practicing school psychologists;

(3) conduct a well-defined plan for evaluating the school psychologists it prepares and use the results in the study, development and improvement of its program;

(4) provide full-time faculty who possess the doctorate degree in psychology or education or related disciplines or have training and experience deemed equivalent. At least one faculty member shall possess a doctorate with advanced study in school psychology and experience as a school psychologist in the schools. Part-time faculty shall meet the requirements for appointment to the full-time faculty and shall be employed only when they can make special contributions to the school psychology program;

(5) provide evidence that faculty members who teach laboratory and clinical practicums and supervise internship experiences of school psychologists shall have continuing association and involvement with elementary and secondary schools;

(6) insure that the department responsible for the school psychology training program has a cooperative relationship with other departments in the educational and behavioral sciences;

(7) include the specific school psychologist certification requirements for Montana;

(8) provide that students develop appropriate knowledge of the organization, administration, and operation of elementary and secondary schools, the major roles of the personnel

employed in public schools, and curriculum development at all grade levels;

(9) provide that school psychologists in training develop competencies in consultation, counseling, psychoeducational assessment, report writing, and individual and group prescriptive programming procedures, utilizing applied research techniques and ethical decision-making;

(10) provide substantial participation in laboratory and clinical practicums. A significant portion of the practicum experiences shall be in schools.

AUTH: 20-2-121 IMP: 20-2-121

3. The board of public education is proposing this adoption because basic criteria are needed for the review of the college program.

4. Interested parties may submit their data, views or arguments concerning the proposed rule adoption in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than July 16, 1982.

5. If a person who is directly affected by the proposed rule adoption wishes to express his data, views and arguments orally or in writing at a public hearing, (s)he must make written request for a hearing and submit this request along with any written comments he has to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than July 16, 1982.

6. If the agency receives requests for a public hearing on the proposed rule adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule adoption; from the Administrative Code Committee of the legislature; from a governmental sub-division 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 20 persons based on 200 psychologists in the state of Montana.

7. The authority of the agency to make the proposed rule adoption is based on section 20-2-121, MCA, and the rule implements section 20-2-121, MCA.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by

Assistant to the Board

Certified to the Secretary of State May 26, 1982.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of rule 12.7.501 relating to) OF RULE 12.7.501 FISH
fish disease certification) DISEASE CERTIFICATION
) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. At its first meeting after July 23, 1982, the Montana fish and game commission proposed to amend Rule 12.7.501 relating to fish disease certification.

2. The rule is proposed to be amended as follows (new matter underlined, deletions are interlined):

12.7.501 FISH DISEASE CERTIFICATION (1) Diseases. Salmonid fish or eggs may not be imported into the state of Montana for release into any private or public waters, hatcheries, or holding tanks unless written certification is provided that the importation or source is free of the following diseases and/or the infectious organisms that are known to cause the diseases:

(a) Salmonid eggs shipped into Montana shall be certified to have come from brood stock free of infectious pancreatic necrosis (IPN), infectious hemopoetic necrosis (IHN), viral hemorrhagic septicemia (VHS), kidney disease, and furunculosis, and common or Hagerman type enteric redmouth.

(b) Salmonid fish shipped into Montana shall be certified free of IPN, VHS, kidney disease, and furunculosis, and common or Hagerman type enteric redmouth. Any salmonid fish older than four months shall also be certified free of myxosoma cerebralis, the causative agent of whirling disease.

(2) through (5) remain the same.

(6) Exemptions. The director may make exemptions from these requirements for specific diseases and specific waters. Such exemptions may be made for diseases already known to be present in a water, for certain waters that are accessible to stocks of fish known to have had or have been exposed to specific diseases, or for untested eggs to be held in adequate isolation until disease tests on parent stocks are completed.

Each exemption granted shall be made in writing and may be limited by criteria or conditions such as (but not limited to) time, place, facilities, equipment, and methods of operation.

No exemptions may be granted for viral hemorrhagic septicemia (VHS) into any public or private water of the state.

3. The agency proposes to amend this rule because without this change, it is unlikely we would ever be able to introduce pacific salmon in eastern Montana waters. Also the change would allow us to bring green eggs to an isolation unit where they can be eyeing while the disease tests are being run. The other changes are minor. One adds a disease that has become a problem in Idaho since the rule was last changed and

the other clarifies the fact that fish or eggs must be free not only of the disease but of the causative organisms as well.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Art Whitney, Department of Fish, Wildlife, & Parks, 1420 E. 6 Ave., Helena, MT 59620, no later than July 23, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Art Whitney at the above address, no later than July 23, 1982.

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 of 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 amendment is based on section 87-3-223 and the rule implements section 87-3-221, MCA.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

Certified to Secretary of State June 1, 1982

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

In the matter of the amendment of rule 16.10.703, stating the procedure and requirements for licensure as a tourist campground or trailer court	)))))	NOTICE OF PROPOSED AMENDMENT OF ARM 16.10.703 (Tourist Campground or Trailer Court) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 19, 1982, the department proposes to amend rule 16.10.703, which states the standards which must be met and the procedure for licensure as a tourist campground or trailer court.

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

16.10.703 LICENSURE (1) It is unlawful for any person to operate a tourist campground or trailer court unless he holds a current license issued by the department and validated by the local health officer in the name of such a person for the specific tourist campground or trailer court.

(2) Licenses shall expire on December 31 of the year in which issued.

(3) A nonrefundable $20 license application fee must be submitted by all applicants. An applicant wishing to license a new establishment shall submit his application and fee when the establishment is complete and ready for inspection.

(4) The department or the health authority shall make a pre-licensing inspection after a complete license application and fee have been received. If the tourist campground or trailer court is in compliance with this sub-chapter and the act, and the department has not received notification that the campground or court fails to meet building or fire codes, a license will be issued. If the establishment is not in compliance, the department shall commence proceedings to deny the license application pursuant to 50-52-207, MCA.

(5) A licensee shall give notice in writing to the department at least 30 days prior to selling, transferring, giving away, or otherwise disposing of interest in or control of any tourist campground or trailer court. Such notice shall include the name and address of the person succeeding to the ownership or control of the tourist campground or trailer court.

(6) Upon application in writing for issue or renewal of a license and deposit of a fee of $20, the department shall issue or renew the license if the tourist campground or trailer court is in compliance with all applicable provisions of this sub-chapter and the department has not received notification that the campground or court fails to meet building or fire codes.

(7) The department hereby adopts and incorporates by reference the provisions of ARM Title 16, Chapter 10, Sub-chapter 7, setting requirements for operation and approval of tourist campgrounds and trailer courts. Copies of ARM Title 16, Chapter 10, Sub-chapter 7, may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

3. The rationale for the amendment is to ensure that licensure is not granted to a tourist campground or trailer court which the department has been informed is in violation of building or fire code standards. The addition falls short of requiring those seeking licensure to provide proof their facilities meet building or fire codes as a condition of licensure, while ensuring that if the department has notice of a building or fire code violation, it will avoid conflict with those codes by withholding licensure. The amendment is considered reasonably necessary, along with other portions of the notice, to prevent conflict and ensure harmony of enforcement among the various bodies of rules, each with a separate enforcement authority, impinging upon tourist campgrounds and trailer courts.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on both the number of campgrounds and trailer courts (approximately 1600) and the substantial numbers of people using them.

7. The authority of the department to make the proposed amendment is based on section 50-52-102, MCA, and the rule implements sections 50-52-102 and 50-52-201 through 50-52-203, MCA.

In the matter of the repeal of rule 16.10.712, which sets standards for storage of fuel in tourist campgrounds or trailer courts	))))	NOTICE OF PROPOSED REPEAL OF ARM 16.10.712 (Tourist Campgrounds and Trailer Courts) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 19, 1982, the department proposes to repeal rule 16.10.712, which sets requirements for storage of liquefied petroleum gas and fuel oil within trailer courts and tourist campgrounds.

2. The rule proposed to be repealed can be found on page 1110 of the 1982 Montana Administrative Register, issue no. 10.

3. The rationale for repealing this rule is that it duplicates restrictions on fuel storage found in the Uniform Fire Code, to which tourist campgrounds and trailer courts are already subject; the repeal is considered reasonably necessary in that including them with the tourist campground and trailer court rules creates the possibility that the rule may at some time in the future become in conflict with the Uniform Fire Code as it is amended, resulting in administrative and enforcement problems, without adding anything to protection of the public.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on both the number of campgrounds and trailer courts (approximately 1600) and the substantial numbers of people using them.

7. The authority of the department to repeal the rule is based on section 50-52-102, MCA, and implements section 50-52-102, MCA.

In the matter of the repeal of rule 16.10.713, setting fire safety standards for tourist campgrounds and trailer courts	))))	NOTICE OF PROPOSED REPEAL OF ARM 16.10.713 (Tourist Campgrounds and Trailer Courts) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 19, 1982, the department proposes to repeal rule 16.10.713, which sets fire safety standards for tourist campgrounds and trailer courts.

2. The rule proposed to be repealed can be found on page 1110 of the 1982 Montana Administrative Register, issue no. 10.

3. The rationale for repealing the above rule is, in conformity with the other rule changes in this notice, to eliminate enforcement of fire codes from these rules, leaving them to the fire prevention authorities, and to move the provision in paragraph (2), which is an operating, rather than fire code, provision by nature, to rule 16.10.714 containing operator requirements, where it more naturally belongs.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on both the number of campgrounds and trailer courts (approximately 1600) and the substantial numbers of people using them.

7. The authority of the department to repeal the rule is based on section 50-52-102, MCA, and implements sections 50-52-102, MCA.

In the matter of the amendment of rule 16.10.714, containing requirements for operators of tourist campgrounds or trailer courts	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 16.10.714 (Tourist Campgrounds and Trailer Courts) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 19, 1982, the department proposes to amend rule 16.10.714, which sets out the day-to-day operating duties of an operator of a tourist campground or trailer court.

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

16.10.714 OPERATOR REQUIREMENTS

(1) - (7) Same as existing rule.

(8) Tourist campgrounds and trailer courts must be kept free of litter, rubbish, and other burnable material.

3. The rationale for this amendment is to transfer what is basically an operating requirement from ARM 16.10.713, the fire safety rule (proposed repeal of which is contained in this notice), to the more logical site of the day-to-day operating requirements rule.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on both the number of campgrounds and trailer courts (approximately 1600) and the substantial numbers of people using them.

7. The authority of the department to make the proposed amendment is based on section 50-52-102, MCA, and the rule

implements section 50-52-102, MCA.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State June 7, 1982

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

In the matter of the repeal of ARM 16.10.901, setting standards for tourist campgrounds	))))	NOTICE OF PROPOSED REPEAL OF ARM 16.10.901 (Tourist Campgrounds) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 19, 1982, the department proposes to repeal rule 16.10.901, which sets health standards for tourist campgrounds.

2. The rule proposed to be repealed can be found on pages 16-457 through 16-459 of the Administrative Rules of Montana.

3. The rationale and need for the repeal of the above rule is that it has been effectively replaced by the revised rules whose adoption appears on pages 1098 through 1114 of the 1982 Montana Administrative Register, issue no. 10, and which cover both trailer courts and tourist campgrounds.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Bldg., Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of tourist campgrounds (approximately 330) and the substantial number of people using them.

7. The authority of the department to repeal the rule is based on section 50-52-102, MCA, and implements section 50-52-102, MCA.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT

Certified to the Secretary of State June 7, 1982

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

In the matter of the amendment of rules 16.8.1423 and 16.8.1424 concerning new source performance standards and emission standards for hazardous air pollutants	AMENDMENT OF NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.8.1423 and 16.8.1424 TO CHANGE DATE OF HEARING

TO: All Interested Persons

1. On May 27, 1982, notice of public hearing to consider the amendment of rules 16.8.1423 and 16.8.1424 was published on pages 1078 through 1080 of the 1982 Montana Administrative Register, issue no. 10. Due to a change in scheduling of the July meeting of the Board of Health and Environmental Sciences, the time and date of the public hearing will be 9:00 a.m., July 9, 1982, rather than July 21, 1982. All other items in the notice remain the same.

JOHN F. McGREGOR, M.D., Chairman

By JOHN W. BARTLETT

Certified to the Secretary of State June 7, 1982

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

In the matter of the adoption of Rules I through XV establishing groundwater classifications, standards, and a permit program	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Groundwater)

To: All Interested Persons

1. On July 9, 1982, at 9:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which establish groundwater classifications and groundwater quality standards, and a permit program for regulation of sources which discharge into groundwater.

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 (16.20.1001) DEFINITIONS For the purpose of this sub-chapter, the following definitions, in addition to those in section 75-5-103, MCA, will apply:

(1) "Beneficial use" means any legal use of groundwater authorized under the laws of the state of Montana.

(2) "Discharge" means the addition of any pollutant to waters of the state.

(3) "Existing source" means a source existing on the effective date of this rule which is in compliance with Montana water quality laws and regulations.

(4) "Groundwater" means water occupying the voids within a geologic stratum and within the zone of saturation.

(5) "Mixing zone" means a portion of groundwater to which pollutants are discharged and in which otherwise applicable groundwater standards may be exceeded.

(6) "Montana groundwater quality standards" means the standards for groundwater quality set forth in ARM 16.20.1003.

(7) "Montana pollutant discharge elimination system (MPDES)" means the system developed by the state of Montana for issuing permits for the discharge of pollutants from point sources into state surface waters pursuant to ARM Title 16, Chapter 20, sub-chapter 9.

(8) "MIMUCS" means the Montana in-situ mining of uranium control system as defined in ARM Title 16, Chapter 20, sub-chapter 11.

(9) "MGWPCS" means the Montana groundwater pollution control system established in this sub-chapter.

(10) "MPDES permit" means any permit or equivalent document or requirement issued by the department pursuant to ARM Title 16, Chapter 20, sub-chapter 9 to regulate the discharge of pollutants from point sources into state surface waters.

(11) "Nonpoint source" means a diffuse source of pollutants resulting from the activities of man over a relatively large area, the effects of which normally must be addressed or controlled by a management practice rather than by an engineered containment or structure.

(12) "Owner or operator" means any person who owns, leases, operates, controls or supervises a source discharging pollutants to groundwaters.

(13) "Source" means any sewage system, treatment works, point source, disposal system, stockpile of pollutants, or pond containing process wastes or pollutants used, employed or operated so that the same may reasonably be expected to result in the discharge of pollutants to groundwaters of the state.

(14) "TDS" means total dissolved solids - evaporation 180° C. method.

(15) "UIC program" means the underground injection control program established in compliance with the federal safe drinking water act, 42 USCA 300f et seq.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE II (16.20.1002) CLASSIFICATION OF GROUNDWATER

(1) These groundwater classifications are established to protect the present and future most beneficial uses of water, i.e., the highest classification level into which groundwater may be placed based upon existing quality or use on the effective date of this rule.

(2) The groundwaters of the state are classified as follows:

(a) Class I groundwaters are suitable for public and private water supplies, culinary and food processing purposes, irrigation, livestock and wildlife watering, and for commercial and industrial purposes with little or no treatment. Class I groundwaters have a TDS concentration of no more than 500 mg/l.

(b) Class II groundwaters are marginally suitable for public and private water supplies, culinary and food processing uses and are suitable for irrigation of some agricultural crops, for drinking water for most wildlife and livestock, and for most commercial and industrial purposes. Class II groundwaters have a TDS concentration of no more than 1500 mg/l.

(c) Class III groundwaters are suitable for some industrial and commercial uses and as drinking water for some wildlife and livestock and for irrigation of some salt-tolerant crops using special water management practices. Class III groundwaters have a TDS concentration of no more than 5000 mg/l.

(d) Class IV groundwaters may be suitable for some industrial, commercial and other uses. These groundwaters, where they have a beneficial use, are to be protected to continue that beneficial use. These groundwaters contain

more than 5,000 mg/l of total dissolved solids, or are unsuitable or, for practical purposes, untreatable for higher class beneficial uses.

(3) In the event sufficient data is unavailable for groundwater classification at the time an MGWPCS application is received, the applicant shall perform sufficient groundwater investigations and surveys of current beneficial uses to enable the designation to be made.

AUTHORITY: 75-5-401 MCA
IMPLEMENTING: 75-5-301 MCA

RULE III (16.20.1003) GROUNDWATER QUALITY STANDARDS

(1) The board hereby adopts and incorporates by reference EPA publication, EPA 600/4-79-020, "Methods for Chemical Analysis of Water and Wastes" which sets forth EPA-approved testing procedures for chemical analysis of water. Copies of EPA 600/4-79-020 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The board hereby adopts and incorporates by reference ARM 16.20.203, 16.20.204, 16.20.206 and 16.20.207 which set forth maximum allowable chemical, radiological and microbiological contaminant levels for drinking water. Copies of ARM 16.20.203, 16.20.204, 16.20.206 and 16.20.207 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(3) These standards for quality of groundwaters of the state are established to protect their present and future most beneficial uses, i.e., the highest classification level into which they may be placed based upon their existing quality or use on the effective date of this rule. The standards are based on the dissolved portion (after filtration through a 0.45 micron filter) of the contaminating substance as specified in the EPA publication, EPA 600/4-79-020, "Methods for Chemical Analysis of Water and Wastes."

(4) Concentrations of dissolved substances in Class I groundwater shall not exceed the Montana maximum contaminant levels for drinking water as set forth in ARM 16.20.203, 16.20.204, 16.20.206 and 16.20.207.

(5) Concentrations of dissolved substances shall not exceed the following amounts:

(table on following page)

POLLUTANTS	GROUNDWATER CLASS I	CLASS II	CLASS III
Chloride, Cl	250 mg/l	--------	2000 mg/l
Copper, Cu	0.2 mg/l	--------	.5 mg/l
Cyanide, CN	0.2 mg/l	--------	---------
Iron, Fe	0.3 mg/l	--------	---------
Manganese, Mn	0.05 mg/l	--------	---------
Phenolic compounds (as phenols)	0.001 mg/l	--------	---------
Sulfate, SO_4	250 mg/l	--------	3000 mg/l
TDS	500 mg/l	1500 mg/l	5000 mg/l
Uranium, U	5.0 mg/l	--------	---------
Zinc, Zn	5.0 mg/l.	--------	---------
Aluminum (Al)	--------	5.0 mg/l	---------
Boron (B)	--------	0.75 mg/l	---------
Cadmium (Cd)	*	0.01 mg/l	.05 mg/l
Cobalt (Co)	--------	0.05 mg/l	---------
Molybdenum (Mo)	--------	0.01 mg/l	---------
Nickel (Ni)	--------	0.2 mg/l	---------
$NO_2 + NO_3$	--------	10 mg/l	100 mg/l
Oil and grease	--------	10 mg/l	10 mg/l
Selenium (Se)	*	0.02 mg/l	---------
SAR (ratio)	--------	8	---------
Arsenic, AS	*	---------	0.2 mg/l
Lead, Pb	*	---------	0.1 mg/l
Sodium, Na	--------	---------	2000 mg/l
Nitrite nitrogen as N	--------	---------	10 mg/l

* See ARM 16.20.203

(6) Concentrations of other toxic, hazardous, or deleterious substances shall not exceed levels that would interfere with the designated beneficial uses of groundwater of that classification.
AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

RULE IV (16.20.1010) MIXING ZONE Discharges of pollutants to groundwaters may be entitled to a mixing zone. The areal and vertical extent of the mixing zone must be determined by the department and generally will extend to a point where a beneficial use of groundwater occurs or is reasonably expected to occur. The size of the mixing zone need not necessarily be determined by the property boundaries of the operator of the source.
AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE V (16.20.1011) NONDEGRADATION (1) Any groundwater whose existing quality is higher than the established groundwater quality standards for its classification must be maintained at that high quality, unless it has been affirmatively demonstrated to the board that a change is

justifiable as a result of necessary economic or social development and will not preclude present or anticipated use of such waters.

(2) Except as provided in subsections (3) and (4) of this rule, "degradation" means that as a result of any source discharging pollutants to groundwaters, the concentration of pollutants in groundwater has become worse and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(3) Changes in groundwater quality, whether or not applicable groundwater quality standards for dissolved substances are violated, resulting from nonpoint source pollutants from lands or operations where all reasonable land, soil and water conservation practices have been applied do not constitute degradation.

(4) Temporary changes in groundwater quality resulting from short-term construction, maintenance or rehabilitation activities performed in accordance with conditions approved by the department do not constitute degradation.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303 MCA

RULE VI (16.20.1012) EXCLUSIONS FROM PERMIT REQUIREMENTS

(1) For the purposes of this sub-chapter, the following are not subject to the permit requirements of ARM 16.20.1013 through 16.20.1021:

(a) discharges or activities regulated under the federal UIC program;

(b) solid waste management systems licensed pursuant to ARM 16.14.501 et seq.;

(c) hazardous waste management facilities permitted pursuant to ARM 16.44.601 et seq.;

(d) water injection wells, reserve pits and produced water pits employed in oil and gas field operations and approved pursuant to ARM 36.22.1226 through 36.22.1234, and ARM 16.20.916;

(e) agricultural irrigation facilities;

(f) stormwater disposal or stormwater detention facilities;

(g) individual subsurface disposal systems;

(h) existing treatment works as approved by the department prior to the effective date of this rule;

(i) facilities approved by the department pursuant to ARM 16.20.401;

(j) in-situ mining of uranium facilities controlled under MIMUCS;

(k) mining operations subject to operating permits or exploration licenses in compliance with the Strip and Underground Mine Reclamation Act, 82-4-201 et seq., MCA, or the Metal Mine Reclamation Act, 82-4-301 et seq., MCA.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE VII (16.20.1013) PERMIT APPLICATIONS (1) The owner or operator of any existing source not excluded under ARM 16.20.1012 discharging pollutants into state groundwaters shall file an MGWPCS permit application within 2 years of the effective date of this rule.

(2) The owner or operator of any source with an MGWPCS permit discharging pollutants into state groundwaters, who proposes any extension, modification, addition or enlargment subsequent to the effective date of this rule which may result in violation of existing permit conditions shall file a new completed MGWPCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the modified discharge.

(3) The owner or operator of any proposed source not excluded under ARM 16.20.1012 which may discharge pollutants into state groundwaters shall file a completed MGWPCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the source.

(4) All applications for an MGWPCS permit must contain the following information:

(a) A specific site plan, indicating topography if available;

(b) Location of treatment works and disposal systems;

(c) Location of adjacent state surface waters;

(d) List of owners of land overlying affected groundwaters or adjoining affected surface waters;

(e) Location of water supply wells and springs within one mile;

(f) Description of waste or process solutions to be contained on site; and

(g) The existing groundwater classification at the proposed site, accompanied by data and information to support that designation.

(5) The department may require the submission of additional data and information with any MGWPCS permit application where warranted by the potential impacts of a source including but not limited to the following:

(a) Specific design conditions and process descriptions, proposed alternatives, soil conditions, descriptions in areas proposed for location of treatment ponds and land disposal, geological conditions, groundwater characteristics, local hydrogeology, discussion of potential for and measures to be taken for emergency and accidental spills, chemical and physical characteristics of process water and wastewater, nature of proposed pond sealants and linings.

(b) For industrial wastes, waste flow diagrams showing water and material balances, chemical additions, and waste volumes and concentrations before and after treatment, including but not limited to oil and other floating material, biochemical oxygen demand, settleable and suspended solids, acids, alkalies, dissolved salts, organic materials, toxic materials, compounds producing taste and odor in water and colored materials and dyes.

(c) Proposed means of providing alternative water supplies or treatment for any domestic, municipal, agricultural, or commercial/industrial well that is adversely affected by the proposed discharge to groundwater; and

(d) A written evaluation of alternative disposal practices for maximumization of environmental protection.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE VIII (16.20.1014) REVIEW PROCEDURES (1) No application will be processed by the department until all of the requested information is supplied and the application is complete. The department shall make a determination of the completeness of the information within 30 calendar days of receipt of an application.

(2) After receipt of a completed MGWPCS permit application and requested supplemental information, the department shall make a tentative determination with respect to issuance or denial of an MGWPCS permit. The tentative determination must be based on compliance or noncompliance with the requirements of this sub-chapter and Title 75, Chapter 5, MCA.

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

(a) If the determination is to deny an MGWPCS permit, the department shall given written notice of the denial to the applicant.

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

(i) proposed effluent limitations and conditions;

(ii) monitoring and reporting requirements if any;

(iii) necessary schedules of compliance, including interim dates and requirements for meeting proposed effluent limitations or other special conditions.

(4) Except as provided in subsection (10) below, a public notice of every completed MGWPCS permit application must be circulated by the department in accordance with the procedures described in ARM 16.20.1020 to inform the public of the proposed discharge and of the tentative determination.

(5) The department shall provide a period of not less than 30 days following the date of the public notice during which time any person may submit written views or request a public hearing on the tentative determination. Any request for a public hearing must indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(6) The department may hold a hearing on its own initiative or when it determines good cause exists to hold such a hearing upon request of any person. Except as provided in subsection (10) below, public notice of a public hearing on a tentative determination must be given in accordance with ARM 16.20.1020.

(7) If a public hearing is not held pursuant to subsection (6) above, the department shall, within 30 days after termination of the comment period provided for in subsection (5) above, make a final determination on issuance or denial of an MGWPCS permit. All written comments submitted during the 30-day comment period must be retained by the department and considered in the formation of the final determination.

(8) If a public hearing is held on the tentative determination, the department shall make its final determination on the MGWPCS permit application within 60 days following the hearing. All comments recorded during the public hearing and written comments submitted during the 30-day comment period required in subsection (5) of this rule must be retained by the department and considered in the formation of the final determination.

(9) After making the final determination on an MGWPCS permit application the department shall issue an MGWPCS permit or give written notice to the applicant of the department's decision to deny, including notice to the applicant of its right to appeal the denial to the board.

(10) If the MGWPCS application is also an application under the Major Facility Siting Act, rules 16.2.501, 16.2.502, and 16.2.503 apply and take precedence in the event of a conflict with the provisions of this sub-chapter.

(11) The board hereby adopts and incorporates by reference ARM 16.20.501, 16.2.502, and 16.20.503 which set forth public participation procedures for permits issued by the department where the proposed activity is also subject to review under the Major Facility Siting Act. Copies of ARM 16.2.501, 16.2.502, and 16.2.503 may be obtained from the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 75-5-401, 75-20-216(3) MCA
IMPLEMENTING: Sec. 75-5-401, 75-20-216(3) MCA

RULE IX (16.20.1015) GENERAL PERMIT CONDITIONS All issued MGWPCS permits must contain general conditions including but not limited to, the following:

(1) All discharges of pollutants into state groundwaters authorized by an MGWPCS permit must be consistent with the conditions of the permit; any sewerage system, treatment works or disposal system expansions, production increases or process modifications which may result in new or increased discharges of pollutants into state groundwaters in violation of permit conditions must be reported by submission of a new MGWPCS permit application.

(2) The discharge of pollutants to state groundwaters more frequently than or at a level in excess of that identified and authorized by an MGWPCS permit is a violation of the conditions of the permit.

(3) An MGWPCS permit may be modified, suspended, or revoked in whole or in part during its term under provisons of sections 75-5-403 and 75-5-404, MCA, for cause, including but not limited to, any of the following:

(a) violation of any conditions of the permit;

(b) obtaining an MGWPCS permit by misrepresentation or failure to disclose fully all relevant facts;

(c) a change in any condition or a violation of groundwater standards caused by the discharge that requires either a temporary or permanent reduction or elimination of the authorized discharge; or

(d) a failure or refusal by the permittee to comply with the requirements of section 75-5-602, MCA.

(4) An MGWPCS permit may be modified in whole or in part during its term to apply a more stringent condition or effluent limitation if the department finds that substantial impairment of an existing beneficial use is imminent as a result of the discharge.

(5) The department shall notify the permittee of any tentative determination that a permit should be modified pursuant to this section. The department shall provide a period of not less than 30 days following such notification during which time the permittee may submit its views regarding the tentative determination, which shall be considered in the formation of a final determination. The permittee may appeal any permit modification to the board of health and environmental sciences pursuant to section 75-5-403, MCA.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401, 75-5-403, 75-5-404 MCA

RULE X (16.20.1016) SPECIAL PERMIT CONDITIONS All issued MGWPCS permits must contain special conditions which will assure compliance with the groundwater quality standards, giving consideration to the economics of waste treatment and prevention, including, but not limited to, the following:

(1) Authorization of discharges of pollutants into state groundwaters.

(2) Effluent limitations and, if necessary, compliance schedules on each authorized discharge of pollutants into state groundwaters.

(3) The basis of calculation of effluent limitations.

(4) The prohibition of certain discharges without prior approval from the department.

(5) Self-monitoring requirements for each authorized discharge, including but not limited to, the following:

(a) monitoring well configuration;

(b) pollutants to be monitored;

(c) frequency of monitoring, recording, and reporting;

(d) analytical and sampling methods to be utilized by the permittee;

(e) recording and reporting procedures to be utilized by the permittee; and

(f) procedures for reporting other considerations having an effect on authorized discharges or that may affect any of the conditions of the permit;

(g) the permittee will be required to maintain self-monitoring records for a minimum of 3 years.

(6) Procedures to be used to alleviate groundwater pollution if pollution in violation of permit conditions or groundwater standards is detected.

(7) Owners or operators of sources discharging to groundwaters shall provide notice to the department in the following situations:

(a) any new introduction of pollutants into the disposal system or treatment works;

(b) any substantial change in volume or character of pollutants being introduced into the treatment works.

(8) Such notice shall include information on the quality and quantity of pollutants to be or being introduced into the treatment works and the anticipated impact of such change in the quality and quantity of pollutants to be discharged to state groundwaters.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XI (16.20.1017) DURATION OF PERMIT Every permit issued under this sub-chapter must have a fixed term not to exceed 10 years.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XII (16.20.1018) REISSUANCE OF PERMITS (1) Any permittee who wishes to continue to discharge after the expiration date of his MGWPCS permit must request reissuance of his permit at least 90 days prior to its date of expiration.

(2) The request for reissuance of an MGWPCS permit must be in letter form and contain as a minimum the following information:

(a) The number of the issued MGWPCS permit and date of its issuance; and

(b) Any past, present, or future changes in the quantity or quality of the authorized discharge not reflected in the conditions and terms of the issued MGWPCS permit.

(3) The department shall review each request for reissuance of an MGWPCS permit in light of the existing MGWPCS permit, information provided by the permittee with the request for reissuance, and other information available to the department to insure that the following conditions exist:

(a) That the permittee is in compliance with or has substantially complied with all the conditions and terms of the expiring MGWPCS permit.

(b) That the discharge is consistent with applicable effluent limitations and compliance schedules and groundwater quality standards.

(c) That the department has up-to-date information on the permittee's production levels and waste treatment practices and the quantity, quality, and frequency of the permittee's discharge, either pursuant to the submission of new MGWPCS forms and applications or pursuant to monitoring records and reports submitted to the department by the permittee.

(4) Following the review of the request for reissuance of an MGWPCS permit and the other considerations described in ARM 16.20.1014, the department shall make a tentative determination to reissue or refuse to reissue an MGWPCS permit.

(5) The processing procedures for MGWPCS permit applications described in subsections (4) through (9) of ARM 16.20.1014 will apply to the reissuance of an MGWPCS permit.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XIII (16.20.1020) PUBLIC NOTICE (1) Public notice of every completed MGWPCS application must be mailed to any person upon request and must be circulated within the geographic area of the proposed discharge. Circulation may include any 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; or

(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 must be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MGWPCS application. Circulation must 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 for the MGWPCS application; and

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

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XIV (16.20.1021 DISTRIBUTION OF INFORMATION

(1) The following governmental agencies must be included on a mailing list for public notice of MGWPCS applications and are exempted from a copying fee where copies of a draft permit, fact sheet, or any related documents are requested:

(a) United States Environmental Protection Agency.
(b) United States Bureau of Reclamation.
(c) United States Soil Conservation Service.
(d) United States Forest Service.

(e) Montana Department of Natural Resources and Conservation.
(f) Montana Department of Fish, Wildlife and Parks.
(g) Montana Department of Agriculture.
(h) Montana Environmental Quality Council.
(i) Any state or federal agency requesting an opportunity to participate in the MGWPCS permit review process.

(2) Any state whose waters may be affected by the issuance of an MGWPCS permit shall be provided a copy, upon request, of the MGWPCS application, draft permit, or any related documents.

(3) Upon request, the department shall add the name of any person or group to a mailing list to receive copies of notices for all MGWPCS application.

(4) Interested parties may request or inspect a copy of the draft MGWPCS permit, or any related documents. A reasonable copying fee will be charged for any of the aforementioned documents. The copying fee for the documents relating to any particular MGWPCS application will be included as part of the notice of application. A request for MGWPCS application documents will not be processed unless payment of the stated copying fee is included with the request.

(5) The department shall provide facilities for the inspection of all information relating to MGWPCS applications and forms, except reports, papers, or information determined to be confidential in accordance with section 75-5-105, MCA. A copying machine will be available to provide copies of this information at a reasonable fee.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-105, 75-5-401 MCA

RULE XV (16.20.1025) EMERGENCY POWERS OF THE DEPARTMENT

(1) This rule is applicable to spills or unanticipated discharges of pesticides, herbicides, other toxic substances or any other materials that would lower the quality of any groundwaters of the state below Montana groundwater quality standards.

(2) The owner, operator, or person responsible for a spill or unanticipated discharge must notify the department as soon as possible and provide all relevant information about the spill.

(3) Pursuant to MCA 75-5-621 and 75-5-622 and depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:

(a) take immediate remedial measures;

(b) monitor the direction, depth and rate of movement of any contaminated groundwaters and of the spilled or discharged material;

(c) determine the probable impact, including the duration of impact, on existing water supply wells, springs, and anticipated future beneficial uses of the groundwater supply impacted;

(d) determine the probable impact, including the duration of impact, on surface waters that may be affected by contaminated groundwaters; or

(e) provide alternate water supplies to existing water uses disrupted by the spill or unanticipated discharge.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-621, 75-5-622 MCA

4. The Board is proposing these rules because there are currently no water quality standards for groundwater, nor is there a permit program currently in effect which is designed to regulate discharges into groundwater. The proposed rules will establish such a program by classifying groundwaters according to beneficial uses, setting quantitative groundwater quality standards for each groundwater class, and establishing a permit program for sources which discharge into groundwater.

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 Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 15, 1982.

6. Sandra R. Muckelston, Helena, Montana, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman

By _____
JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State June 7, 1982

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

In the matter of the amendment of rules 16.20.605 and 16.20.607 relating to surface water classifications	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.20.605 AND 16.20.607 (Water Quality)

TO: All Interested Persons

1. On July 9, 1982 at 10:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.20.605 and 16.20.607.

2. The proposed amendments replace present rules 16.20.605 and 16.20.607 found in the Administrative Rules of Montana. The proposed amendments correct inconsistencies presently found in the stream water-use classifications.

3. The rules as proposed to be amended provide as follows (matter to be stricken is interlined, new material is underlined):

16.20.605 WATER-USE CLASSIFICATIONS -- FLATHEAD RIVER DRAINAGE The water-use classifications adopted for the Flathead River are as follows:

(1) Flathead River drainage above Flathead Lake except waters listed in subsections (1)(a) through (1)(g) B-1 A-1

(a) - (g) Same as existing rule.

(2), (3) Same as existing rule.

AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

16.20.607 WATER-USE CLASSIFICATIONS -- MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES

(1) through (4) Same as existing rule.

(5)(a) through (d) Same as existing rule.

(e) Musselshell River drainage except for the waters listed in subsections (5)(e)(i) through (5)(e)(v) B-1

(i) Musselshell River (Mainstem) from Hopley Creek to Deadman's Basin Diversion Canal near Shawmut B-2

(ii) through (v) Same as existing rule.

(6) through (9) Same as existing rule.

AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

4. The Board is proposing the amendment to rule 16.20.605(1) to eliminate an inconsistency in the present classification of the mainstem of the Middle and North Forks of the Flathead River. At present, these streams are divided lengthwise into A-1 classification (for the half lying within

Glacier National Park) and B-1 classification. The proposed amendment makes the stream classification A-1 for its entire width.

5. The Board is proposing the amendment to rule 16.20.607(5)(e)(i) to insert a phrase which was mistakenly omitted during the last revision of the rule.

6. 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 Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than July 15, 1982.

7. Sandra R. Muckelston, Helena, MT, has been designated to preside over and conduct the hearing.

8. The authority of the Board to make the proposed amendments is based on section 75-5-301 MCA and the rules implement section 75-5-301 MCA.

JOHN F. McGREGOR, M.D., Chairman

By _____
JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State June 7, 1982

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES I, II, III and IV relating to Montana Corporate License Tax found in Title 15, Chapter 31, MCA.	NOTICE OF PROPOSED ADOPTION OF RULES I, II, III and IV providing that dividends received from small business companies shall be tax exempt.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 19, 1982, the Montana Department of Revenue proposes to adopt Rule I, Definitions of Small Business Corporations; Rule II, Conditions for Exemption for Dividends; Rule III, Reporting Requirements; Rule IV, Determination of Qualified Investments.

2. The new rules do not replace any rules presently found in the Administrative Rules of Montana.

3. The rules proposed for adoption provide as follows:

RULE I DEFINITIONS "Small Business Investment Company", for the purposes of Rules I, II, III and IV contained herein shall include only those companies approved and licensed to operate as small business investment companies by the Small Business Administration.
AUTH: 15-33-105; IMP: 15-33-103.

RULE II CONDITIONS FOR EXEMPTION FOR DIVIDENDS Dividends and capital gains received by a corporation from an investment in a Small Business Investment Company are exempt from tax and the provisions of Title 15, chapter 30, MCA, provided all the following conditions are met:

(1) The Small Business Investment Company is organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana.

(2) Within one year of licensing by the Small Business Administration, 75% of the Small Business Investment Company's investments are in manufacturing companies as defined in (a) or timber product processing companies, or agricultural companies as defined in (b), and such companies' processing plants are located within Montana. The companies must have at least 50% of their employees working in Montana.

(a) Manufacturing, for the purposes of this section, is defined as engaging in the mechanical or chemical transformation of materials or substances into new products. The manufacturing facilities are usually described as plants, factories, or mills and characteristically use power driven machines and material

handling equipment. Businesses engaged in assembling component parts of manufactured products are all considered to be manufacturing if the product is neither a structure affixed to real estate nor a fixed improvement. Manufacturing facilities shall not include facilities engaged in whole or part in the extraction of any mineral or non-renewable energy resource.

(b) Agricultural refers to the raising or processing of livestock, swine, poultry, field crops, fruit and other animal and vegetable matter.

(3) It is substantiated that the taxpayer has invested in the Small Business Investment Company and that the Small Business Investment Company has invested in companies located within Montana. The Small Business Investment Company must provide a report as part of the annual filing of the Montana corporation license tax return.

AUTH: 15-33-105; IMP: 15-33-102, 15-33-106.

RULE III REPORTING REQUIREMENTS (1) The Small Business Investment Company shall report as part of the corporation license tax return the following information on a form provided for that purpose:

(a) the names of all investors in the Small Business Investment Company;

(b) the amount of investment of each of the investors;

(c) a list of all companies invested and showing:

(i) the name and location of the companies, and

(ii) the amount invested in the company.

(2) If any of the information required to be reported in subsection (1) shall change after the return is made, such changes must be reported to the department by the last day of the month the change occurred.

AUTH: 15-33-105; IMP: 15-33-104.

RULE IV DETERMINATION OF QUALIFIED INVESTMENTS In instances where it is difficult to determine if a business in which a Small Business Investment Company has invested qualifies as a manufacturing, timber product processing, or agricultural company with at least 50% of its employees working in Montana, a description of the activities of the business and the location of its jobs shall be submitted to the department for a determination. The description of the activities of the business and the location of its jobs may be submitted either on the initiative of the Small Business Investment Company or at the request of the department.

AUTH: 15-33-105; IMP: 15-33-102.

4. These rules implement Title 15, chapter 33, MCA, enacted by Chapter 571, Laws, 1981. The purpose of the legislation is to encourage private sector investments in venture capital firms. These firms would in turn invest in certain specified manufacturing and agricultural companies. As a result, Montana

employment and tax base of Montana would be enhanced.

Rule I is necessary to require that the Small Business Investment Company be licensed by the Small Business Administration, as well as meeting the requirements of federal law. Rule II provides that only those Small Business Investment Companies that make investments in certain qualified industries will be eligible for exemption of their dividends and capital gains from taxation. Rule III is necessary to establish the reporting requirements which are required to administer this act. Rule IV allows the Department to gather information to satisfy itself that businesses in which money is invested meet the qualifications established. Further, the Small Business Investment Company may submit information before making an investment to determine if all the qualifications are met.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing no later than July 15, 1982:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed adoption wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to R. Bruce McGinnis, at the address given in Paragraph 5 above no later than July 15, 1982.

7. If the Department receives request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight 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 5 persons based on the number of local economic development associations in Montana.

8. The authority of the Department to make the proposed rules is given by §15-33-105, MCA, and the rules implement §15-33-103 (Rule I); §15-33-102, §15-33-106 (Rule II); §15-33-104 (Rule III); §15-33-102 (Rule IV).

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 6-7-72

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES I, II, III and IV relating to Montana Income Tax found in Title 15, Chapter 30, MCA.)	NOTICE OF PROPOSED ADOPTION OF RULES I, II, III and IV providing that dividends received from small business companies shall be tax exempt.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 19, 1982, the Montana Department of Revenue proposes to adopt Rule I, Definitions of Small Business Corporations; Rule II, Conditions for Exemption for Dividends; Rule III, Reporting Requirements; Rule IV, Determination of Qualified Investments.

2. The new rules do not replace any rules presently found in the Administrative Rules of Montana.

3. The rules proposed for adoption provide as follows:

RULE I DEFINITIONS "Small Business Investment Company", for the purposes of Rules I, II, III and IV contained herein shall include only those companies approved and licensed to operate as small business investment companies by the Small Business Administration.

AUTH: 15-33-105; IMP: 15-33-103.

RULE II CONDITIONS FOR EXEMPTION FOR DIVIDENDS Dividends and capital gains received by a person in an individual capacity or as a distribution of a partnership or small business corporation, from an investment in a Small Business Investment Company are exempt from tax and the provisions of Title 15, chapter 30, MCA, provided all the following conditions are met:

(1) The Small Business Investment Company is organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana.

(2) Within one year of licensing by the Small Business Administration, 75% of the Small Business Investment Company's investments are in manufacturing companies as defined in (a) or timber product processing companies, or agricultural companies as defined in (b), and such companies' processing plants are located within Montana. The companies must have at least 50% of their employees working in Montana.

(a) Manufacturing, for the purposes of this section, is defined as engaging in the mechanical or chemical transformation of materials or substances into new products. The manufacturing facilities are usually described as plants, factories, or mills and characteristically use power driven machines and material

handling equipment. Businesses engaged in assembling component parts of manufactured products are all considered to be manufacturing if the product is neither a structure affixed to real estate nor a fixed improvement. Manufacturing facilities shall not include facilities engaged in whole or part in the extraction of any mineral or non-renewable energy resource.

(b) Agricultural refers to the raising or processing of livestock, swine, poultry, field crops, fruit and other animal and vegetable matter.

(3) It is substantiated that the taxpayer has invested in the Small Business Investment Company and that the Small Business Investment Company has invested in companies located within Montana. The Small Business Investment Company must provide a report as part of the annual filing of the Montana corporation license tax return.

AUTH: 15-33-105; IMP: 15-33-102, 15-33-106.

RULE III REPORTING REQUIREMENTS (1) The Small Business Investment Company shall report as part of the corporation license tax return the following information on a form provided for that purpose:

(a) the names of all investors in the Small Business Investment Company;

(b) the amount of investment of each of the investors;

(c) a list of all companies invested and showing:

(i) the name and location of the companies, and

(ii) the amount invested in the company.

(2) If any of the information required to be reported in subsection (1) shall change after the return is made, such changes must be reported to the department by the last day of the month the change occurred.

AUTH: 15-33-105; IMP: 15-33-104.

RULE IV DETERMINATION OF QUALIFIED INVESTMENTS In instances where it is difficult to determine if a business in which a Small Business Investment Company has invested qualifies as a manufacturing, timber product processing, or agricultural company with at least 50% of its employees working in Montana, a description of the activities of the business and the location of its jobs shall be submitted to the department for a determination. The description of the activities of the business and the location of its jobs may be submitted either on the initiative of the Small Business Investment Company or at the request of the department.

AUTH: 15-33-105; IMP: 15-33-102.

4. These rules implement Title 15, chapter 33, MCA, enacted by Chapter 571, Laws, 1981. The purpose of the legislation is to encourage private sector investments in venture capital firms. These firms would in turn invest in certain specified manufacturing and agricultural companies. As a result, Montana

employment and tax base of Montana would be enhanced.

Rule I is necessary to require that the Small Business Investment Company be licensed by the Small Business Administration, as well as meeting the requirements of federal law. Rule II provides that only those Small Business Investment Companies that make investments in certain qualified industries will be eligible for exemption of their dividends and capital gains from taxation. Rule III is necessary to establish the reporting requirements which are required to administer this act. Rule IV allows the Department to gather information to satisfy itself that businesses in which money is invested meet the qualifications established. Further, the Small Business Investment Company may submit information before making an investment to determine if all the qualifications are met.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing no later than July 15, 1982:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed adoption wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to R. Bruce McGinnis, at the address given in Paragraph 5 above no later than July 15, 1982.

7. If the Department receives request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight 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 5 persons based on the number of local economic development associations in Montana.

8. The authority of the Department to make the proposed rules is given by §15-33-105, MCA, and the rules implement §15-33-103 (Rule I); §15-33-102, §15-33-106 (Rule II); §15-33-104 (Rule III); §15-33-102 (Rule IV).

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 6-7-72

MAR Notice No. 42-2-192 11-6/17/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE implementing Appropriations House Bill 500, Laws of 1981, relating to the retail selling prices of liquor and wine.	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I implementing Appropriations House Bill 500, Laws of 1981, relating to the retail selling prices of liquor and wine.

TO: All Interested Persons:

1. On July 7, 1982, at 1:30 p.m., a public hearing will be held in the Department of Social and Rehabilitation Services Auditorium, SRS Building, 111 Sanders, Helena, Montana, to consider the adoption of a rule implementing Appropriations House Bill 500, Laws of 1981, relating to the retail selling price of liquor and wine.

2. The proposed rule does not replace or modify any rules presently found in the Administrative Rules of Montana.

3. The rule as proposed for adoption provides as follows:

RULE I RETAIL SELLING PRICE (1) Except as provided in subsection (6), the retail selling price of liquor, other than fortified wine, as defined in 16-1-106(9), MCA, is determined by adding:

(a) the department's base case cost; and

(b) the state mark up of 48% on the department's base case cost.

(2) Except as provided in subsection (6), the retail selling price of fortified wine containing more than 14% but no greater than 24% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state mark up of 60% on the department's base case cost if less than $20 or 40% on the department's base case cost if equal to or more than $20.

(3) The retail selling price of table wine containing not less than 7% or more than 14% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state mark up of 60% on the department's base case cost if less than $20 or 40% on the department's base case cost if equal to or more than $20.

(4) For liquor and fortified wine, "base case cost" means the supplier's quoted price plus all freight charges. For table wine, "base case cost" means the supplier's quoted price plus all freight charges and applicable taxes as provided in Title 16, chapter 1, part 4, MCA.

(5) For liquor and fortified wine, the cost to the retail purchaser is the retail selling price plus applicable state

taxes as provided in Title 16, chapter 1, part 4, MCA. For table wine, the cost to the retail purchaser is the retail selling price as provided in subsection (3).

(6) The state mark up of liquor shall be reduced by 10% as provided in 16-2-202, MCA.

AUTH: 16-1-303; IMP. 16-1-103, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-202, 16-2-301.

4. The 47th Legislature enacted Appropriations House Bill 500, Laws of 1981. Appropriations House Bill 500 mandated the Department to deposit not less than $13 million of liquor profits to the general fund during the 1983 biennium, and that liquor profits may not be less than 15% of net liquor sales. The Legislature empowered the Department to raise or lower the liquor pricing formula to achieve the deposit requirement.

Current liquor profit deposits to the general fund and projected liquor profits establish the necessity to increase the liquor pricing formula in order to comply with the $13 million liquor profit deposit requirement.

5. Current liquor and wine price lists, and liquor and wine price lists reflecting increased retail selling prices as a result of the proposed rule may be obtained from the Department of Revenue, Liquor Division, P. O. Box 1712, Helena, Montana 59620.

6. Interested parties may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than July 15,1982, to:

Michael G. Garrity
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

7. J. Daniel Hoven has been designated to preside over and conduct the hearing.

8. The authority of the Department to adopt Rule I is given by §16-1-303, MCA. The rule implements Appropriations House Bill 500, Laws of 1981.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 6-7-82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF PROPOSED AMENDMENT of Rule 42.22.1117 relating to deductions allowed in computing the net proceeds of mines tax.	NOTICE OF PROPOSED AMENDMENT RULE 42.22.1117 relating to the deductions allowed in computing the net proceeds of mines tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 19, 1982, the Department of Revenue proposes to amend Rule 42.22.1117 regarding deductions allowed in computing the net proceeds of mines tax.

2. The rule proposed for amendment is found on page 42-2247.

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

42.22.1117 MARKETING, ADMINISTRATIVE, AND OTHER OPERATIONAL COSTS (1) All monies expended for supplies.

~~(2) If an operator values the mineral prior to the actual sale, deductions for marketing charges will not be allowed. Market costs must be actual dollars spent for marketing the specific product of the specific mine, not an allocated amount of corporate or headquarters expenses for marketing, etc. No costs will be allowed under this item if the product is valued prior to conversion into money.~~

(2) All monies actually expended for transporting the ores or mineral products to the place of sale and for marketing the product and the conversion of the same into money. In the case of ores or concentrates sold or transported in a crude or unfinished condition from a Montana mine, market costs must reflect the actual marketing expenses (including any handling and storage charges and sales costs), including brokers' commissions. In the case of mineral products manufactured in Montana from ores or concentrates produced in this state, the ores or concentrates may be valued at the end of the mining process and prior to further manufacturing; and in that event the deduction for transporting the mineral products to market and the cost of marketing the product and conversions into money will be determined by allocating an amount of the transportation cost to the place of sale, based on the actual cost of transporting a crude product to the same point, and then the amount representing the actual marketing expenses, based on the costs of marketing a crude product, including any handling and storage charges and sales costs including brokers commissions. No deduction will be allowed for expenses which cannot be shown to be directly related to transportation, handling and sales costs incurred in marketing the product and converting it into money.

(3) All monies expended for fire insurance and for workmen's compensation insurance, social security, unemployment insurance, medical-surgical-hospital insurance, and for payments by mine operators to welfare and retirement funds when required by wage contracts between mine operators and employees.

(4) No payments for taxes on production, license taxes, corporation, income, sales, real estate, personal property, and excise taxes may be used as a deduction.

(5) No monies expended for land lease rental or for land lease holdings may be used as a deduction.

AUTH: 15-1-201; IMP: 15-23-503.

4. On or about August 13, 1981, the Department received a Petition from Pfizer, Inc., requesting the Department to amend its rule concerning deductions allowed in computing the net proceeds of mines tax. Pursuant to the Petition, the Department published a Notice of Public Hearing on the proposed amendment at page 1677 of the 1981 Montana Administrative Register, issue number 23. A hearing was held on January 14, 1982. After the hearing and after receiving the Recommendations of the Hearing Officer, the Department determined that additional changes should be made in the rule as proposed. These changes are incorporated in the above proposal. In order to permit the Petitioners and other interested parties to comment on the Department's changes, this rule is being renoticed.

The original Petition replaced subsection (2) with new language detailing the extent of marketing and transportation costs that are deductible in computing net proceeds for purposes of the net proceeds of mines tax. The changes the Department is making from the Petitioner's proposal are as follows:

(a) The word "an" is changed to "then the" pursuant to the recommendation of the Hearing Officer.

(b) The phrase "based on the costs of marketing a crude product" was added in response to the comments of the Hearing Officer and with which the Department agrees.

(c) The phrase "those general overhead administrative or headquarters" was deleted from the last sentence because the Department believes such language goes beyond the scope of the statute this rule implements.

5. Interested parties may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than July 15, 1982, to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed adoption wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to R. Bruce McGinnis, at the address given in Paragraph 5 above no later than July 15, 1982.

7. If the Department receives request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight 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 persons.

8. The authority of the Department to make the proposed amendment is based on §15-1-201, MCA. The rule implements §15-23-503, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 6-7-72

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

In the matter of the repeal of Rules 46.9.501, 46.9.502, 46.9.503, 46.9.504, 46.9.505, 46.9.506, 46.9.507, 46.9.508 and 46.9.509 pertaining to the county medical program.	) NOTICE OF PUBLIC HEARING ON) THE REPEAL OF RULES 46.9.501,) 46.9.502, 46.9.503, 46.9.504,) 46.9.505, 46.9.506, 46.9.507,) 46.9.508, AND 46.9.509 PER-) TAINING TO THE COUNTY MEDICAL) PROGRAM

TO: All Interested Persons

1. On July 9, 1982, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the repeal of Rules 46.9.501, 46.9.502, 46.9.503, 46.9.504, 46.9.505, 46.9.506, 46.9.507, 46.9.508, and 46.9.509 pertaining to the county medical program.

2. Rule 46.9.501 proposed to be repealed can be found on page 46-639 of the Administrative Rules of Montana.

3. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

4. Rule 46.9.502 proposed to be repealed can be found on page 46-645 of the Administrative Rules of Montana.

5. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103 and 53-3-201, MCA.

6. Rule 46.9.503 proposed to be repealed can be found on page 46-645 of the Administrative Rules of Montana.

7. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-201, MCA.

8. Rule 46.9.504 proposed to be repealed can be found on page 46-646 of the Administrative Rules of Montana.

9. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

10. Rule 46.9.505 proposed to be repealed can be found on page 46-646 of the Administrative Rules of Montana.

11. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

12. Rule 46.9.506 proposed to be repealed can be found on page 46-647 of the Administrative Rules of Montana.

13. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

14. Rule 46.9.507 proposed to be repealed can be found on page 46-647 of the Administrative Rules of Montana.

15. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

16. Rule 46.9.508 proposed to be repealed can be found on page 46-647 of the Administrative Rules of Montana.

17. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

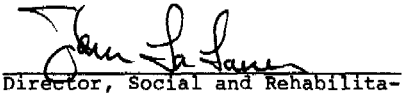
18. Rule 46.9.509 proposed to be repealed can be found on page 46-647 of the Administrative Rules of Montana.

19. The authority of the department to repeal the rule is based on 53-3-103, MCA and the rule implements 53-3-103, MCA.

20. Administrative rules 46.9.501, 502, 503, 504, 505, 506, 507, 508, and 509 are to be repealed and have been replaced by new rules 46.9.407, 46.9.413 and 46.9.419. The existing rules are no longer in conformity with the county medical program. The newly adopted rules replace that material and correctly reflect the administration of the program.

21. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604, no later than July 19, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 7, 1982.

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the food stamp program, Rule 46.11.101	NOTICE OF ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULE 46.11.101, FOOD STAMP PROGRAM. NO PUBLIC HEARING CONTEMPLATED

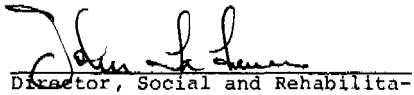
TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 20739, Friday, May 14, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. The amendments provide for final rules for the proration of a household's initial month's benefits. These final rules allow the participation in the Food Stamp Program of certain migrant households in the month following the month of application even if the household is unable to obtain verification from out-of-state sources prior to the beginning of that month. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 20739, Friday, May 14, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is June 18, 1982. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment May 14, 1982.

3. If the department receives requests for a public hearing under 2-4-315, MCA, 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 5,253 persons based on 52,530 food stamp recipients.

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 7, 1982.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of amendment of Rule 2.21.6704, relating to the state employee incentive awards program	)))	NOTICE OF THE AMENDMENT OF RULE 2.21.6704 RELATING TO THE STATE EMPLOYEE INCENTIVE AWARDS PROGRAM

TO: All Interested Persons.

1. On April 15, 1982, the Department of Administration published notice of a proposed amendment of Rule ARM 2.21.6704 relating to the state employee incentive awards program at page 624 of the 1982 Montana Administrative Register, issue number 7.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

By: Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State June 7, 1982.

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

In the matter of the amendments of ARM 8.58.409 concerning branch office requirements, and ARM 8.58.414, subsections (1), (4) and (6) concerning trust account requirements.	NOTICE OF AMENDMENT OF ARM 8.58.409 BRANCH OFFICE REQUIREMENTS AND ARM 8.54.414 subsections (1), (4), and (6) TRUST ACCOUNT REQUIREMENTS

1. On April 29, 1982 the Board of Realty Regulation publishes a notice of proposed amendment of the above stated rules at pages 798 through 800, Montana Administrative Register, issue number 8.

2. The board has amended the rules exactly as proposed.

3. A letter was received from Gregory J. Petesch, staff attorney, for the Administrative Code Committee in which the Code Committee raised objections to the amendment of 8.58.414. The Committee voted at its May 27 meeting, to object to the amendment which would allow a broker to deposit trust funds in interest-bearing accounts with the interest payable to the broker. The Committee felt that the authority found in section 37-1-131, MCA did not specifically provide for the amendment, and felt that the proposed amendment raised some ethical concerns.

The Committee stated that section 37-51-321(5), MCA, provided that failing to account for or to remit money coming into a broker's possession belonging to others is grounds for a disciplinary proceeding against a broker. Since the money deposited in a trust account does not belong to the broker, the committee felt the proposed amendment appears to conflict with this section in violation of 2-4-305 (6), MCA. The Committee requested that the amendment not be adopted, as proposed, and that trust funds deposited in interest-bearing accounts be paid to the client consistent with section 37-51-321 (5), MCA.

The Board of Realty Regulation, at its regularly scheduled meeting on June 1, 1982, considered the letter of May 27, 1982, received from the Administrative Code Committee, relative to the proposed amendment of ARM 8.58.414. Following a discussion of the letter, the board directed the rule to be amended over the objections of the Committee.

The board's reasons for the amendment of the rule were that ARM 8.58.414 (4) allows the broker to deposit and keep a sum not to exceed $500.00 in his trust account to cover bank service charges related to the trust account. The interest to be earned on such interest-bearing trust accounts would be used to offset the service charges of the banks for the maintenance of the trust account.

The board has been advised that in some locales within the state, only interest-bearing accounts are available within which to deposit trust funds. If this rule amendment is not adopted, brokers in these areas will be forced to open their trust accounts at banks which are not located in their office

location causing undue expense and time in order to comply with the trust accounting rules of the board.

Most funds received by brokers are received as earnest money deposits from purchasers of real estate. These funds are usually in the range of $100.00 to $500.00, and are on deposit in the trust account for only a short period of time, ranging from one to two weeks to a month or month and one-half. To require the broker to account for the interest earned on such small sums and to allocate such interest among the various trust account deposits would result in a large increase in the broker's cost of business which would be passed through to the sellers and purchasers of real estate, thereby causing a further increase in the available cost of housing.

For the reasons stated above the board is amending the rules as proposed. No other comments or testimony were received.

BOARD OF REALTY REGULATION
DEXTER L. DELANEY, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Ceritifed to the Secretary of State, June 7, 1982.

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

In the matter of the amendment of rule 16.8.1109, stating conditions which must be met prior to issuance of an air quality permit	)))))	NOTICE OF THE AMENDMENT OF RULE 16.8.1109 (Conditions for Issuance of Permit)

TO: All Interested Persons

1. On April 15, 1982, the board published notice of a proposed amendment of rule 16.8.1109 concerning conditions for issuance of air quality permits at page 643 of the 1982 Montana Administrative Register, issue number 7.

2. The board has amended the rule with the following changes:

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT

(1) - (6) Same as proposed.

(7) An air quality permit for a new or altered source or stack may be issued in an area designated as non-attainment in 40 CFR 81.327 only if the applicable implementation plan approved in 40 CFR Part 52, Subpart BB, is being carried out for the non-attainment area in which the proposed source is to be constructed or altered.

(8) The board hereby adopts and incorporates by reference 40 CFR Part 52, Subpart BB, which describes Montana's state implementation plan for control of air pollution in Montana; 40 CFR 81.327, which sets forth air quality attainment status designations for the state of Montana; and ARM 16.8.901(14), which defines "major stationary source". Copies of 40 CFR Part 52, Subpart BB, 40 CFR 81.327, and ARM 16.8.901(14) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

3. The department of health and environmental sciences requested an error be corrected in the federal rule citation for the state implementation plan, which was done. No other comments or testimony were received.

In the matter of the repeal of rule 16.8.706, concerning air pollution control or process equipment malfunctions, and the adoption of rule 16.8.705, concerning the same subject matter	))))))	NOTICE OF REPEAL OF RULE 16.8.706 (Malfunctions) AND THE ADOPTION OF RULE 16.8.705 (Malfunctions)

To: All Interested Persons

1. On April 15, 1982, the board published notice of a

proposed repeal of rule 16.8.706, concerning procedure for control of malfunctions of air pollution control or process equipment, and a proposed adoption of rule 16.8.705, replacing 16.8.706 concerning the same subject matter at page 646 of the 1982 Montana Administrative Register, issue number 7.

2. The board has repealed rule 16.8.706 found at page 16-159 of the Administrative Rules of Montana, and has adopted rule 16.8.705 as proposed.

3. No comments or testimony were received.

JOHN F. McGREGOR, Chairman

By JOHN W. BARTLETT

Certified to the Secretary of State June 7, 1982

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

In the matter of the adoption of a rule providing for the issuance of general MPDES permits and the amendment of rule 16.20.902, defining the term "MPDES permit"	)))))	NOTICE OF ADOPTION OF RULE 16.20.914 AND AMENDMENT OF RULE 16.20.902 (Water Quality)

To: All Interested Persons

1. On April 15, 1982, the board published notice of a proposed adoption of rule 16.20.914 providing for the issuance of general MPDES permits at page 638 of the 1982 Montana Administrative Register, issue number 7, and notice of proposed amendment of rule 16.20.902 defining the term MPDES permit at page 641 of the 1982 Montana Administrative Register, issue number 7.

2. The board has adopted rule 16.20.914 and amended rule 16.20.902 as proposed.

3. Summaries of comments and testimony on the proposed rule in addition to the Board's responses are as follows:

COMMENTOR: Stillwater PGM Resources

COMMENT: Stillwater PGM Resources, while supporting the creation of a general permit program, recommended that a simplified application form be used for general permit applicants instead of using the standard MPDES application.

RESPONSE: The standard MPDES application form is already simplified and will be easy to use for an applicant for a general permit authorization.

COMMENT: Stillwater also recommended that instead of a predetermined list of categories of sources eligible for general permitting, the Board simply adopt the criteria listed in 40 CFR 122.59 and allow the Department to select categories of minor sources on an ongoing basis in accordance with the federal criteria.

RESPONSE: Since the proposed list of categories already covers most minor sources operating in Montana which fit the federal criteria, the Board does not foresee many instances where new categories will have to be added to the list. Therefore, any delay associated with Board rulemaking to add such a category will not appreciably limit the utility of the general permit program or constitute a burden on the public.

COMMENTOR: Peabody Coal Company

COMMENT: The proposed category of "groundwater pump test discharges" is not appropriate for MPDES permitting of any kind. These tests are usually required by the Department of State Lands. Moreover, the amounts of water discharged during such tests are so minimal as to be non-existent and should not be regulated with any water quality permit.

RESPONSE: If groundwater pump test discharges are not discharged to state waters but are slurried off to holding

ponds, for example, then they are not subject to the MPDES requirements. However, the federally delegated MPDES program does not grant any discretion to exempt certain point sources because they discharge only small amounts of water. In fact, the general MPDES permit program is designed to reduce substantially the processing of applications, and persons discharging groundwater pump test water may avail themselves of this quick procedure.

JOHN F. McGREGOR, Chairman

By JOHN W. BARTLETT

Certified to the Secretary of State June 7, 1982

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Rules 36.22.1001 and 36.22.1002 to require that only freshwater based drilling fluid be used when drilling through freshwater aquifers.	)))))	NOTICE OF AMENDMENT OF RULE 36.22.1001. ROTARY DRILLING PROCEDURE AND RULE 36.22.1002, CABLE DRILLING PROCEDURE

TO: All Interested Persons

1. On March 25, 1982, the Board of Oil and Gas Conservation published Notice of a proposed amendment to ARM 36.22.1002 concerning the drilling procedure rules to require that only freshwater based drilling fluids be used when drilling through freshwater aquifers. The notice was published at page 546 of the 1981 Montana Administrataive Register, issue number 6.

2. The Board has adopted the rules as proposed.

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

4. The authority of the Board to make the proposed amendment is based on Section 82-11-111, MCA, and the rule implements Sections 82-11-122, MCA.

Richard A. Campbell
Richard A. Campbell, Chairman
Board of Oil and Gas Conservation

BY: Dee Rickman
Dee Rickman
Assistant Administsrator
Oil and Gas Conservation Division

Certified to the Secretary of State June 7, 1982.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I, II and III) relating to the appraisal of) mobile homes.)	NOTICE OF ADOPTION OF RULES I, II and III (42.21.110, 42.21.111 and 42.21.112), relating to the appraisal of mobile homes.

TO: All Interested Persons:

1. On February 1, 1982, the Department of Revenue published notice of a public hearing on proposed rules relating to the appraisal of mobile homes at pages 185 through 186 of the 1982 Montana Administrative Register, issue no. 3. On March 5, 1982, the public hearing was held.

2. The Department hereby adopts Rules I and II (42.21.110 and 42.21.111) as originally noticed. Rule III (42.21.112) is hereby adopted with the following changes (deletions interlined and additions underlined):

RULE III (42.21.112) MOBILE HOME - IMPROVEMENT TO REAL PROPERTY Pursuant to 15-1-101(e), MCA, a mobile home will be considered an improvement to real property as soon as it is connected to a utility and the mobile home and the land it rests on are in common ownership. Utilities for this purpose include, but are not limited to, water, sewage, electricity, natural gas, propane and telephone.

AUTH: 15-1-201, IMP: 15-1-101(e), MCA.

3 The public hearing was well attended by interested parties. Moreover, the proposed rules generated a wealth of written comment. Briefly the written comment can be broken down into two areas of concern:

(a) by defining mobile homes as improvements to real property as soon as they are connected to utilities, one places an undue burden on the record owners of the realty whereupon the mobile homes are situated if the owner of the realty and the owner of the mobile home are different parties, and

(b) the net result of the new rules will be to substantially raise the taxes on mobile homes.

4. The first contention has been disposed of by the change to Rule III (42.21.112). Before any mobile home will be considered an improvement to real property, the ownership of the mobile home and the ownership of the realty on which it is situated must be consonant. Therefore, the concerns expressed by mobile home park owners have been alleviated. Since the ownership interests in such situations are split, the taxes on mobile homes could never be attributed to the owners of the realty.

The second contention is without merit and is rejected. Nothing in these rules relates to the increased valuation of mobile homes. Indeed, Rule I (42.21.110) is intended to "freeze" the values of all mobile homes through the end of the current appraisal cycle. A mobile home will be reappraised only upon the request of an owner pursuant to Rule II (42.21.111). Thus, taxes will not increase unless the local taxing jurisdiction should elect to raise the mill levy - a matter over which the Department of Revenue has no authority.

The rule, as adopted, alleviates a good deal of confusion as to the proper categorization of mobile homes. It will insure a more uniform application of the tax laws to the mobile home owner. For those reasons, it will be adopted as changed.

5. Authority to promulgate these rules is found in §15-1-201, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 6-7-82

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

IN THE MATTER of the adoption of rules implementing Initiative 85, the Montana Lobbyist Disclosure Act of 1980	NOTICE OF ADOPTION OF RULES

1. On March 22, 1982, the Agency published notice of the proposed adoption of rules, at page 551 of the 1982 Montana Administrative Register, issue number 6. A public hearing was held on April 15, 1982.

2. The Agency has adopted the rules substantially as proposed, with certain exceptions. Proposed Rule I is extensively edited to eliminate the definition of "lobbying." It was suggested by several parties that it was unnecessary since a definition of lobbying is already contained in the statute (section 5-7-102(4)(a). The Agency agrees.

Proposed Rule II is not adopted. The Agency agrees with the suggestions of several persons that the decision of the Montana Supreme Court in State Bar of Montana V. Krivec, 38 St. Rep. 1322 (1981) has either effectively eliminated non-legislative lobbying from the statue, or at least has left the meaning so unclear that we cannct supply an administrative definition where no statutory one exists.

Proposed Rule XI is not adopted. Its substance is effectively covered by the statutory definition of lobbying in section 5-7-102(4)(a) in combination with Rule X, and we feel therefore that it is unnecessary.

The remainder of the proposed rules are adopted substantially as proposed, with changes made at the suggestion of various persons. The comments on the proposed rules, both adverse and favorable, are far too numerous to detail here. They have been fully considered. The entire record of the proceedings, including the transcript of the April 15 hearing, is available for public inspection at the office of the Commissioner of Political Practices, 1205 8th Avenue, Helena, Montana.

3. Text of the rules as adopted is as follows. Changes from the rules as proposed are printed, with explanations of the changes set forth in the rationales. As used in the rules, "The Act" refers to Initiative 85, now codified as §§5-7-101 et seq., MCA.

ARM 44.12.101 [RULE I] LOBBYING--~~DEFINITION~~--EXEMPTIONS (1) ~~As used in section 5-7-102(4), the phrase "practice of promoting or opposing" the introduction or enactment of legislation means attempting to influence the course of pending or proposed legislation by direct personal contact and persuasion, or direct communications from a person to a legislator.~~

~~(2) It is immaterial whether such contact or persuasion occurs during a legislative session or other official proceeding or not.~~

~~(3)--Exemptions.~~ (a) Appearances before the legislature or a committee thereof in response to a subpeona or written request to appear from the presiding official of the body shall not be considered "lobbying."

(b) Response to a public invitation for comment is not considered "lobbying."

~~(4)--The definition embodied in this rule is primarily for determination of who is required to register as a lobbyist, and should not be construed to encompass all activities covered by the Act for purposes of reporting by principals.~~

RATIONALE: As explained in paragraph two, the definition of "lobbying" in the proposed rule is omitted. The exemptions, to which no adverse comment was directed, are retained. The rule implements section 5-7-102(4), MCA. AUTH: 5-7-111, MCA.

ARM 44.12.103 [RULE III] LOBBYISTS--REPORTING OF INFORMATION TO PRINCIPAL (1) It is the duty of each individual lobbyist whose activities are covered by this Act to maintain records relating to information required to be reported by the Act and to transmit such information to his principal in a fashion that will allow timely reporting by the principal.

RATIONALE: This rule is required since the Act requires reports of lobbying expenditures to be filed by principals, but certain required information will be in the possession of the lobbyist. The proposed rule implements section 5-7-111, MCA. AUTH: 5-7-111, MCA.

ARM 44.12.105 [RULE IV] STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS AND REPORTING (1) For purposes of calculation of expenditures for lobbying efforts by state government agencies, salaries paid to employees engaged in the following types of activities need not be calculated or reported:

(a) recommendations or reports to the legislature or a committee thereof in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

~~(b)--any appearance before the legislature or a committee thereof if the appearance is in response to a subpoena or a written request to appear from the presiding official of the body;~~

~~(c)~~ any ~~other~~ duty which is mandated by law or rule, such as the governor's annual message to the legislature.

(2) With the above exceptions, ~~any~~ other activities of state government agencies which are direct attempts to influence the course of proposed or pending legislation are "lobbying" as defined, and the staff time and resources expended are lobbying payments. Each individual department

of the executive branch is a "principal" as defined if lobbying payments reach the threshold $1000 level. Each department shall file a single report on the statutory dates which covers lobbying activities of all employees of the department.

(3) For purposes of section 5-7-103, "public official" includes any individual who is elected to public office or appointed to public office by the Governor. No activity by any such public official is considered to be "lobbying" within the meaning of the Act or this rule.

RATIONALE: Since the Act defines "lobbying" as any direct attempt to influence the actions of the Legislature, making an exception only for actions of public officials, by implication it covers activities of public employees. However, since many of their activities are mandated by law, it seems logical to make certain exceptions. The Act itself does this in section 5-7-211. Paragraph (1)(b) is deleted, since it merely duplicated Rule I. The rule implements sections 5-7-208 and 5-7-211, MCA. AUTH: 5-7-111, MCA.

ARM 44.12.107 [RULE V] STATE GOVERNMENT EMPLOYEES--WAIVER OF REGISTRATION FEE (1) State government employees whose lobbying activities are covered by the Act and these rules are required to register as lobbyists in the usual manner. The $10 fee mentioned in section 5-7-103 will be waived for such employees.

RATIONALE: There is no express provision in the Act authorizing such a waiver, but in this case it makes sense. The fee would only be charged to the State and repaid to the State, with the interposition of a considerable amount of paperwork which costs money. The rule implements section 5-7-103, MCA. AUTH: 5-7-111, MCA.

ARM 44.12.109 [RULE VII] PERSONAL FINANCIAL DISCLOSURE BY ELECTED OFFICIALS (1) For purposes of sections 5-7-102 (12) and 5-7-213, the term "business interest" means any interest in any business, firm, corporation, partnership, or other business or professional entity or trust owned by an elected official, his spouse or minor children, the current fair market value of which is $1000 or more. Ownership of any security, equity, or evidence of indebtedness in any business corporation or other entity is a "business interest."

(2) Not included within the meaning of "business interest" and therefore not reportable under section 5-7-213 are interests of the following nature:

(a) ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal automobiles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) money held in any retirement fund, whether public or private;

(d) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(e) securities issued by any government or political subdivision.

(3) In section 5-7-102(12), "property held in anticipation of profit" includes an ownership interest in real property. An ownership interest includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), option to purchase, or mineral or royalty interest, if the current fair market value of the interest is $1000 or more.

(a) It is not necessary to disclose ownership of a personal residence, but each elected official is entitled to exclude only one residence.

(b) While valuation of ~~the~~ property is not required (it need only be disclosed if its current fair market value exceeds $1000), a description of both the property and the nature of the interest must be included. This must be a legal or other description sufficient to identify the property without recourse to oral testimony. A street address is sufficient unless it is a rural route. The nature of the property must be described; for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc. Any real property held by or through a corporation or other business entity which was disclosed pursuant to paragraph (1) above need not be disclosed pursuant to this part.

RATIONALE: Under section 5-7-213, certain elected officials must file biennial reports of personal financial interests. This rule is needed to clarify what must be reported under the section. Real property is treated either as a "business interest" or "property held in anticipation of profit." We see no need to treat a personal residence, however, as either. The rule implements sections 5-7-102(12) and 5-7-213, MCA. AUTH: 5-7-111, MCA.

44.12.201 [RULE VI] REPORTING OF CONTRIBUTIONS AND MEMBERSHIP FEES (1) As used in section 11(5)(c), a contribution or membership fee is considered to be paid for the purpose of lobbying and therefore reportable by a principal if it is:

(a) solicited by the recipient to be used primarily for payment of lobbying expenses;

(b) paid to a group formed or existing primarily for the purpose of lobbying;

(c) earmarked or intended by the donor to be used for payment of lobbying expenses.

RATIONALE: A rule in this area is required to clarify what is meant by the phrase "paid for the purpose of lobbying"

in section 5-7-208(5)(c). The rule implements that section. Suggestions by the Montana Society of Association Executives that the word "primarily" in paragraphs (1)(a) and (b) be replaced by "solely" are overruled. There are no such groups, and that would effectively eliminate reporting entirely. AUTH: 5-7-111, MCA.

44.12.203 [RULE X] PRINCIPALS--REPORTING OF COMPENSATION PAID TO LOBBYISTS (1) Pursuant to section 5-7-208(5), MCA, reports filed by principals shall disclose fees, and salaries, ~~and--other--compensation~~ paid to lobbyists in the following manner:

(a) If the compensation is on a fee basis and the primary purpose of the contract is for lobbying services, the entire amount of the fee;

(b) If the lobbyist is a full-time employee or officer of the principal, and his duties include lobbying, the salary may be allocated on a daily basis or on an hourly basis. If computed on an hourly basis, a fraction of an hour shall be counted as an hour.

(c) If the compensation is a fee for services which include lobbying but not as a primary purpose of the contract, either:

(i) The proportion of the total fee which equals the proportion of the total time spent ~~on-legislative-activities~~ lobbying on behalf of the principal, or

(ii) If the principal is being billed on an hourly basis, the compensation paid for the actual time spent ~~by-the-lobbyists-on--legislative--activities~~ lobbying on behalf of the principal.

RATIONALE: Since there are different classes of relationships between lobbyists and employers, it is necessary to make some distinction in how compensation is to be reported. The rule as originally proposed, in the case of full-time employees, would have required any half-day in which a person lobbyied to be counted as a half-day devoted to lobbying. This is corrected to computation on an hourly basis. The phrase "and other compensation" in paragraph (1) is omitted, to make clear that fringe benefits, etc. need not be counted. The phrase "legislative activites" is changed to "lobbying," at the suggestion of several persons who complained it was too vague. This rule is expressly authorized by section 5-7-111, MCA, and implements that section and 5-7-208(5), MCA.

44.12.205 [RULE XII] PRINCIPALS--REPORTING OF TRAVEL, LIVING AND OTHER EXPENSES OF LOBBYISTS (1) Expenses incurred by a lobbyist which are reimbursed by his principal, including those for travel, meals, lodging, and other expenses related to the lobbying effort which are not required to be itemized under section 5-7-208(5)(b), shall be reported by the principal as follows:

(a) If the lobbyist's services are contracted for on a fee basis and the primary purpose of the contract is for lobbying services, all reimbursed expenses;

(b) If the services are contracted for on a fee basis and lobbying services are a ~~portion~~ part of but ~~less than~~ not the primary purpose of the contract, only those expenses or the portion of them which are reasonably related or incurred in relation to ~~legislative activities~~ lobbying on behalf of the principal;

(c) If the expenses are incurred by a full-time employee or officer of the principal, ~~part of~~ whose duties include lobbying, ~~those reimbursed expenses which were incurred during periods of time in which the employee was engaged in legislative activities on behalf of the principal shall be considered as a full day devoted to lobbying on behalf of the principal~~ only those reimbursed expenses or the proportion of them which are reasonably related to or incurred in relation to lobbying on behalf of the principal.

RATIONALE: The statute requires reporting of "travel and personal living expenses," section 5-7-208(5)(a)(vii). Once again, not every expense a lobbyist might incur can be said to be related to the lobbying effort. The rule singles out only those reasonably related to lobbying activities, and of course it speaks only to expenses which are reimbursed by the principal. The phrase "legislative activities" in the proposed rule is replaced by "lobbying" at the request of several persons. A reasonable-relation test is substituted for the proposed "time-period" test in the case of full-time employees who lobby (at the request of several persons). Suggestions by several persons that the rule be modified to take into account the fact that some lobbyists have higher-than-average travel expenses because they live outside Helena Must be rejected. The statute simply says to report expenses. The rule implements section 5-7-208(5)(a)(vii), MCA. AUTH: 5-7-111, MCA.

44.12.207 [RULE XIII] PRINCIPALS--REPORTING OF MISCELLANEOUS OFFICE EXPENSES (1) As used in section 5-7-208(5), MCA, "other office expenses" means expenses related to or incurred in the support of a lobbying presentation or argument or the support of a lobbyist. ~~Specifically included are costs of staff time.~~ Regular and recurring expenses such as rent, ~~or~~ utilities and staff time need not be reported unless lobbying is the primary purpose of the organization.

(2) For purposes of this rule, lobbying is considered to be an organization's primary purpose if over ~~50%~~ 75% of its yearly budget is allocated to lobbying efforts ~~during any time when the legislature is in session.~~

RATIONALE: The statute (section 5-7-208(5)(a)(xi) does not elaborate on just what "other office expenses" need to be reported. The rule requires reporting only of those that are reasonably related to the lobbying effort. An earlier version of the rule used 50% as the budget figure for classifying an organization as "organized primarily for lobbying

purposes." Implements section 5-7-208(5)(a)(xi), MCA. AUTH: 5-7-111, MCA.

44.12.209 [RULE XIV] PRINCIPALS--REPORTING OF COSTS OF SOCIAL EVENTS RELATED TO LEGISLATIVE EFFORTS (1) A principal shall report the cost of gatherings and events ~~to which legislators are invited~~ (if such expenses are not required to be itemized under section 5-7-208(5)(b) if the primary purpose of the event is related to the principal's legislative effort.

(2) For purposes of this rule, the primary purpose of an event is related to the principal's legislative effort if;

(a) The event includes a program the subject of which is pending or proposed ~~or existing~~ legislation. ;

(b) ~~The event occurs during a legislative session or within sixty days preceding a legislative session.~~ Substantial lobbying activity is undertaken.

RATIONALE: This rule would require lump-sum reporting of the costs of certain gatherings to which legislators are invited. It attempts to distinguish between those affairs whose purpose is mostly social and those which could be described as "promoting or opposing the introduction or enactment of legislation." Many of such affairs would probably include entertainment which would be required to be itemized under section 5-7-208(5)(b), which makes no distinction between business and social purposes, but some would not. An earlier version which simply presumed a lobbying purpose if the event occurred during a legislative session or within 60 days of it is deleted. But the objections of certain parties that such a rule would limit the social lives of lobbyists and legislators is too absurd for serious consideration. Only principals report expenses, and a lobbyist alone could generate reportable expenses only if they were reimbursed by his principal. This does not describe the typical social contact. The rule implements section 5-7-208(5)(a)(ix), MCA. AUTH: 5-7-111, MCA.

44.12.211 [RULE XV] ALLOCATION OF TIME AND COSTS--ALTERNATIVE METHOD (1) A person who is compensated by a principal and whose duties include lobbying is lobbying for hire, as defined in section 5-7-102(6). If all of such an employee's time during a given period is devoted to lobbying or lobbying-related activities, the total sum of all compensation paid to him during the period may be reported as lobbying payments.

(2) If less than all of such an individual's time is devoted to lobbying or other legislative activities, the costs of which is reportable under the Act, then the sum reportable may be computed as the proportion of the total compensation paid which equals the reasonable proportion of the total hours or days spent on reportable activities during the period. For example, if an employee or agent is paid $500 per week and spends the reasonable equivalent of two days on lobbying or lobbying-related activities, then $200 may be reported by his principal as lobbying payments.

(3) In the same manner, office and other expenses may be reported as an estimated proportion of total expenses (including staff salaries) for the period. If it can be reasonably estimated that a given proportion of total expenses during a period were related to lobbying efforts, a principal may report the proportion of total expenses for the period which equals the estimated proportion of time and budget spent on the lobbying effort.

RATIONALE: A rule of this nature is specifically required by section 5-7-111. This would allow organizations which have activities other than lobbying to make a reasonable estimate of the time and budget devoted to lobbying purposes. The alternative is to keep detailed records of how time and budget is spent, which could be costly. The phrases "lobbying-related activities" and "legislative activities" are retained, over the objection of some persons that they are too vague. This rule is intended to be deliberately non-technical. The rule implements section 5-7-111, MCA. AUTH: 5-7-111, MCA.

44.12.213 [RULE VIII] COMPLAINTS--PROCEDURE--RIGHT TO HEARING (1) A person against whom a complaint is filed with the Commissioner by a third party may request an administrative hearing prior to a determination by the Commissioner that the complaint is or is not justified. In addition, such a hearing may be requested by the complaining party or by the Commissioner.

(2) Such hearings shall be conducted in accordance with the Montana Administrative Procedure Act and the Attorney General's model rules for contested-case or declaratory rulings.

(3) If a complaint is filed against a person, the Commissioner shall notify the person of that fact. The Commissioner shall provide a copy of a complaint to the affected party on request.

RATIONALE: This rule is adopted at the request of several persons who have suggested that an administrative determination would be useful prior to a decision by the Commissioner to either reject a complaint or pursue formal legal action. Adoption of the MAPA and model rules eliminates the need for further procedural rules adopted by the agency and establishes both procedures and procedural safeguards. The rule implements section 5-7-305, MCA. AUTH: 5-7-111, MCA.

44.12.215 [RULE IX] AUDITS (1) From time to time the Commissioner may undertake audits of reports filed by principals and of the circumstances and documentation underlying them. Such audits may be conducted either pursuant to a complaint or on the agency's own initiative.

(2) Such audits shall be conducted during normal and reasonable business hours and under circumstances that will assure minimal disruption of business affairs.

(3) The information or materials involved in such audits shall not be made public by the Commssioner unless the audit results in formal administrative or legal action, and then only to the extent necessary to accomplish such action.

RATIONALE: Another rule adopted at the request of several parties subject to the act. Audits could no doubt be undertaken in the absence of a rule, but the rule attempts to guarantee that they will not be made in an unreasonable manner and that business affairs will not be unnecessarily made public. The rule implements section 5-7-305, MCA. AUTH: 5-7-111, MCA.

4. The Rules are adopted effective 18 June 1982, and will be codified in ARM with numbers as noted.

Peg Krivec

PEG KRIVEC, Commissioner

Certified to the Secretary of State June 7, 1982.

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

In the matter of the adoption of Rules 46.9.407, 46.9.413 and 46.9.419 and the repeal of Rules 46.9.401, 46.9.402, 46.9.403, 46.9.404, 46.9.405 and 46.9.406 pertaining to general relief assistance	) NOTICE OF THE ADOPTION OF) RULES 46.9.407, 46.9.413 AND) 46.9.419 AND THE REPEAL OF) RULES 46.9.401, 46.9.402,) 46.9.403, 46.9.404, 46.9.405) AND 46.9.406 PERTAINING TO) GENERAL RELIEF ASSISTANCE

TO: All Interested Persons

1. On April 15, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules and the repeal of Rules 46.9.401, 46.9.402, 46.9.403, 46.9.404, 46.9.405, and 46.9.406 pertaining to general relief assistance at page 677 of the 1982 Montana Administrative Register, issue number 7.

2. The department has repealed the rules as proposed.

3. The department has adopted the rules as proposed with the following changes:

~~RULE I~~ 46.9.407 COUNTY PLAN (1) Counties shall write their own general assistance and medical rules which then must be approved by the department to be effective prior to implementation.

~~(1)~~ (a) For general assistance, any county whose plan or portion thereof that has not been approved must use the maximum applicable criteria of the AFDC program for eligibility determination and furnishing assistance as described below:

(i) the AFDC eligibility and income standards as found in ARM 46.10.402, .403, .507, .511 and the resource standards as found at 46.10.406 and .407.

~~(2)~~ (b) For county medical assistance, any county whose plan or portion thereof that has not been approved must use the maximum income and resource assets criteria of the medicaid program for eligibility determination and applicable criteria for furnishing assistance, except that medical assistance may not be provided to individuals whose income exceeds 300% of the AFDC standard.

(i) The medicaid eligibility and income standards as found at ARM 46~~.12~~, chapter 12, subchapter 34 and services as provided at ARM 46.12.501.

~~(3)~~ (2) Submission and amendment to the county plan must be provided to ~~social and rehabilitation services~~ the department 15 working days prior to the desired implementation date.

~~RULE II~~ 46.9.413 GENERAL ASSISTANCE (1) Each county ~~that has a~~ plan must ~~have it~~ be approved by the department and describ~~ing~~e the scope and duration of assistance provided

within the county which meets a minimal subsistence standard compatible with decency and health.

(2) The county plan must describe procedures for application and determination of eligibility for general assistance.

~~(i)~~ (a) Maximum allowable income and resources and appropriate disregards to those items must be designated.

(3) The county plan must provide for the following:

~~(i)~~ (a) provision of goods or services to meet a demonstrated need in the area of shelter, utilities, clothing, food, transportation and personal care items at a level that is reasonable and necessary but not to exceed the AFDC standard~~.~~, except in emergency situations where provisions for need may not exceed $250 per assistance unit per year. The county plan must describe the criteria for granting emergency assistance;

~~(ii)~~ (b) a method of appealing any decision made by the county board must be described and be consistent with 53-2-606 and 53-3-107, MCA~~.~~;

~~(iii)~~ (c) provide for work registration at the job service office as mandated by 53-3-303, MCA~~.~~;

~~(iv)~~ (d) provide for a penalty of one week for each refusal to accept work as mandated by 53-3-305, MCA.

(4) The county plan must describe procedures for providing the services described in subsection (3) above and be consistent with 53-3-302, MCA.

(5) Any county to be eligible for a matching grant-in-aid must have a county work program. The county plan must describe the policies and operation of the work program in the county. All work programs must:

~~(i)~~ (a) reimburse participants at the prevailing rate of wages paid by that county for similar work~~.~~, but no less than federal minimum wage;

~~(ii)~~ (b) provide worker's compensation~~.~~;

~~(iii)~~ (c) maintain a system of records whereby a review can be made of the number of applicants, number of participants, and estimated number of applicants who did not receive benefits due to refusal to work. These records must be available to the department or its designee.

~~RULE--III~~ 46.9.419 COUNTY MEDICAL ASSISTANCE (1) The county plan must provide:

~~(i)~~ (a) maximum allowable income and resources and appropriate disregards for eligibility determinations, except that medical assistance may not be provided to individuals whose income exceeds 300% of the AFDC standard~~.~~;

~~(ii)~~ (b) retroactive coverage for services rendered prior to application not to exceed 90 days~~.~~;

~~(iii)~~ (c) mandatory services to ensure that emergency health needs are covered as found at ARM 46.12.501 (1), (a), (b), (c), (d) and (f)~~.~~;

~~(iv)~~ (d) optional services as determined necessary or desirable by the county board.

(2) The county plan must describe the method of payment for medical services. For a county to be eligible for matching or emergency grant-in-aid, reimbursement must not exceed medicaid limits nor services exceed those provided by the medicaid program.

4. The department has thoroughly considered all verbal and written commentary received:

COMMENT: The proposed rule to reimburse medical services provided under the county medical program at the medicaid reimbursement rate would require providers to increase payments from private pay patients to make up the balance for actual cost of care.

RESPONSE: We believe that the Statement of Legislative Intent attached to HB 291 clearly directs that county medical payments be consistent with the medicaid reimbursement rates and intend to comply with that document.

COMMENT: It is unrealistic to expect a county to operate an effective county work program with no additional administrative support. An amount no greater than 20% of the expended funds would be reasonable to enable effective operation of the program.

RESPONSE: The legislature clearly made no allowances for administrative costs when considering reimbursement for matching or emergency grant-in-aid counties over and above customary recordkeeping costs.

COMMENT: Provisions for emergency assistance similar to that allowed under the AFDC program should be made to enable the counties reimbursement even though resources and income may exceed the AFDC standards.

RESPONSE: Emergency and matching grant-in-aid is offered to relieve the counties of inordinate burdens on the poor fund at the 8 and 13.5 mill level, provided as reimbursement for expenditures determined to be legal, reasonable, and necessary. The administrative rule will be amended to allow emergency assistance at no more than $250 per year per assistance unit. The approved county plan must specify types of emergencies allowable for payment under this rule.

COMMENT: Counties are currently providing payment for personal care services and other special needs as negotiated with providers in the community. Will reimbursement be available for those costs?

RESPONSE: Until such time that personal care or other special services are included under medicaid covered services and reimbursement and appropriate review procedures, the department cannot participate in financial support or reimbursement for their services.

COMMENT: The proposed rule mandates that counties must reimburse recipients "at the prevailing rate of wages paid for similar work". This language should be changed to include a reference to "minimum wage" as the lower limit for hourly reimbursement.

RESPONSE: The language of the rule has been changed to include a reference to the federal minimum wage as the lower limit for reimbursement.

COMMENT: No eligibility standards have been outlined in the rules for GA and medical assistance. There is a lack of minimum benefit standards allowed for in the rule.

RESPONSE: Each county's policy for standards will be detailed in the county plan which must be approved by the department prior to implementation. We believe that consistent application of policies will be safeguarded through the approval process.

The review process will also provide safeguards against an unduly restrictive policy for benefits.

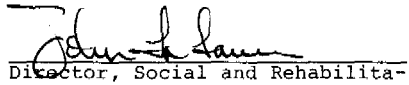
COMMENT: Administration of workfare is not addressed.

It will be necessary that each county plan describe the operation of the county work program. In order to make allowances for specific county needs when operating the program, maximum flexibility will be maintained through allowing counties to develop each program with attention to their particular needs.

COMMENT: There is no requirement that the public be involved in the making of the county plans.

RESPONSE: Public hearings are conducted on the local level when the budgets are developed for each county. That is the most appropriate forum for input into the development of policies for the general assistance program.

In order to best impact the development of county plans, the use of advisory or task groups would be more useful at the local level.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 7, 1982.

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

In the matter of the adoption of rules 46.9.601, 46.9.602, 46.9.603, 46.9.604, 46.9.605, 46.9.606, 46.9.607, and 46.9.608 pertaining to the community services block grants to counties	)))))))	NOTICE OF THE ADOPTION OF RULES 46.9.601, 46.9.602, 46.9.603, 46.9.604, 46.9.605, 46.9.606, 46.9.607, AND 46.9.608 PERTAINING TO THE COMMUNITY SERVICES BLOCK GRANTS TO COUNTIES

To: All Interested Persons

1. On April 15, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to the community services block grants to counties at page 671 of the 1982 Montana Administrative Register, issue number 7.

2. The department has adopted Rules 46.9.601, PURPOSE; 46.9.602, DEFINITIONS; 46.9.603, COUNTY PLAN; 46.9.604, COUNTY PLAN ASSURANCES; 46.9.605, PLAN APPROVAL, DISAPPROVAL, AMENDMENTS; 46.9.607, RELEASE OF COUNTY ALLOTMENTS; and 46.9.608, REPORTS as proposed.

3. The department has adopted Rule 46.9.606 as proposed with the following changes:

46.9.606 COUNTY ALLOTMENTS

Subsections (1)(a)(b)(c) and (2) remain the same as proposed.

(3) Poverty population allocation: Each county shall receive an amount equal to the county's 1980 census of poverty less the county's Indian population living on reservations below poverty population divided by Montana's 1980 census of poverty population less Montana's Indian population living on reservations below poverty times the amount available for allocation according to poverty population distribution in subsection (1)(b). If the 1980 census information referenced to in subsections (2) and (3) of this rule is unavailable, the most current and accurate information available will be used.

Subsections (4) through (5)(b)(ii) remain the same as proposed.

4. The authority of the department to adopt these rules is based on Section 53-2-201, MCA and the rules implement HB 2 of the the First Special Session, 1981.

5. The department has thoroughly considered all verbal and written commentary received:

COMMENT: The department should reduce its administrative rate from 5 percent to 2 percent of the available CSBG funds.

RESPONSE: At the President's proposed FY 1983 CSBG funding level, 2 percent of Montana's allocation will be approximately $7,413. As the CSBG administration will entail reviewing and approving grants to all of the state's counties, monitoring the use of the funds, preparing and submitting required or requested reports or information and other duties attendant to the effective administration of the CSBG, that figure would be inadequate. The federal law allows 5 percent to be retained at state level. It is felt that the department should avail itself of the full amount available.

There is no limitation as to how much of the counties' funds may be used for administration.

COMMENT: Instead of the county funding allocation formula proposed by SRS, (i.e., 50 percent based on population, 35 percent based on poverty population and 15 percent to insure a minimum for each county and possible supplements to economically distressed counties) distribute the funds based on 50 percent by population and 50 percent for a county's poverty population.

RESPONSE: The proposed formula is an attempt to insure that the money is distributed equitably while, at the same time, allowing a county to have at least a minimal level to provide a "floor" for a county's CSBG activities. The proposed formula is supported by the Montana Association of Counties. To do as has been suggested would mean that many of the smaller counties would receive extremely limited resources and could not begin to meet the intent of the federal law.

COMMENT: The department should retain no funds for special projects.

RESPONSE: The department proposes to retain 5 percent of its allotment to use in this capacity. It is felt that retention of that amount would not seriously affect the amount available to individual counties. These funds have not been committed, but will be used to further the purposes of the CSBG. The funds could be used to provide training or technical assistance to counties to assist in their implementation of the CSBG or to conduct a statewide program addressing one or more of the CSBG objectives. The CSBG is one of the new block grants authorized by federal law in 1981. As such, its operation in Montana is also new and requires that the greatest flexibility be maintained to meet problems or concerns that may arise. The special projects money will be so used.

COMMENT: The department should not reserve any funds for economically depressed counties.

RESPONSE: The funds for economically depressed counties will only be utilized after all other funding considerations have been met (general population, poverty population and minimum levels). Only if there are sufficient funds to address these needs, will the economically depressed counties be able to receive supplemental funding.

The economically depressed counties are those suffering the most immediate effects of poverty due to much higher than average unemployment rates. To weight some allocation factors in their favor does not seem inconsistent with the purposes of the CSBG.

COMMENT: The department should require low-income citizen participation, at the county level, during development of CSBG plans.

RESPONSE: The federal law contains no such requirement. What is required and what will be done, is a state level hearing on the proposed use and distribution of CSBG funds.

The state law authorizing CSBG funds to be channeled through the counties states that, "a county may use such funds in any manner in conformance with the requirements set forth (in the CSBG law)". To require significantly more than this is deemed to be inconsistent with the law's intent.

As was pointed out by a county commissioner, the expenditure of these funds will be subject to the county's public budget hearing. That hearing, which covers all county expenditures, is the best opportunity for public input into the full range of services proposed by the state's counties.

COMMENT: SRS should establish a citizen committee to review the county plan.

RESPONSE: There does not appear to be a compelling reason for such a review. SRS, as the federal grantee, is responsible for assuring that the state's CSBG plan is in compliance with federal law. SRS staff will accomplish this through present administrative structures with less cost and without an additional level of activity.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 7, 1982.

BEFORE THE COMMISSIONER
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the application of Section 18-2-422, MCA, of the Montana Prevailing Wage Act, Section 18-2-401, et. seq., MCA, to nonconstruction contracts let by public contracting agencies.	)))))	DECLARATORY RULING

On April 27, 1982 at 9:00 a.m. a public hearing was held in the conference room, Labor Standards Division, Department of Labor and Industry, at 35 South Last Chance Gulch, Helena, Montana on a Petition for Declaratory Ruling. Notice of the hearing and petition was published as MAR Notice No. 24-2-18-1 on March 15, 1982, 1982 Issue No. 6, Montana Administrative Register. The Petition was from Morris L. Brusett, Director, Department of Administration, Sam W. Mitchell Building, Room 155, Helena, Montana 59620. Among the duties of Mr. Brusett are recommending and drafting contracts for the Board of Examiners, administering those contracts, and purchasing materials and services for the State of Montana.

1. The statutes as to which petitioner requested a declaratory ruling were Sections 18-4-403 and 422 of the Montana Prevailing Wage Act, Section 18-4-401, et. seq., MCA.

Section 18-4-422, MCA provides:

> "All bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that contractors and subcontractors must pay during construction of the project."

Section 18-2-403, MCA provides:

> "(1) In any contract let for state, county, municipal, school, or heavy construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality in which the work is being performed . . .
>
> (3) Failure to include the provisions required by 18-2-403 in a public works contract relieves the contractor

from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency."

2. The questions presented for declaratory ruling by the Department of Labor and Industry were: (1) whether the above statutes require that contracts which are not for construction or construction-related activity; e.g., repair or remodeling, must "contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project"; and (2) if the specific wage rates do not have to be contained in nonconstruction or nonconstruction-related projects, what is an appropriate "provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality which the work is being performed," which should be inserted into the contract.

3. Petitioner contended that "a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project" is only required in contracts for construction or construction-related projects.

4. The Petitioner requests a declaratory ruling that public contracts for nonconstruction or nonconstruction-related projects do not require a provision stating the prevailing wage rate that the contractors and subcontractors must pay.

5. No written comments were received by the Labor Standards Division, Department of Labor and Industry, State of Montana.

6. Two people appeared at the hearing: Luther Glenn, Administrator, Purchasing Division, Department of Administration, and Gretchen Olheiser, Administrative Officer, Parks Division, Department of Fish, Wildlife and Parks. Both people supported the petition.

7. Discussion and Ruling on First Question. Section 18-2-422, to 18-2-424 were added to the Montana Prevailing Wage Act, Section 18-2-401, et. seq., MCA by the 1981 Montana legislature. The Act does not define the term "public works". There is no apparent definition of "public works" in other Montana statutes or case law. The Montana Prevailing Wage Act like the prevailing wage laws of other states is commonly known as the "Little Davis-Bacon Act." This identification refers to the "Davis-Bacon Act," 40 U.S.C. 276a - 276a-7, which is a federal law similar, although not identical, to the Montana Prevailing Wage Act. Since the Davis-Bacon

Act is familar to government contractors when there is no clear Montana authority and no conflict with the Montana Prevailing Wage Act, the Commissioner uses the federal regulations and authority as guidance in interpreting the Montana Prevailing Wage Act.

Under Title 29, Section 5.2(f) Code of Federal Regulations Definitions for the Davis-Bacon regulation: "The terms 'building' or 'work' generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment . . . is not a "building" or "work" . . . unless conducted in connection with and at the site of such a building or work . . ." Under 29 CFR, Section 5.2 (g): "The term 'construction,' 'prosecution,' 'completion' or 'repair' means all types of work done on a particular building or work . . . including without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to and from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work . . ." 29 CFR, Section 5.2 (h) states: "The term 'public building' or 'public work' includes building or work, the construction, prosecution, completion, or repair of which as defined above, is carried on directly by authority of or with funds of a . . . public agency to serve the interest of the public . . ."

A review of the legislative history of the amendments made to the Prevailing Wage Law by the 1981 Montana legislature reveals that the legislature was aware of the Davis-Bacon Act and sought by the amendments to parallel the Montana Prevailing Wage Act to the Davis-Bacon Act. Therefore, the use of these definitions of the United States Department of Labor is appropriate.

RULING ON FIRST QUESTION

A "public works project" would not include projects which are not for construction or construction-related activity. The United States Department of Labor and the Department of Labor and Industry views "construction-related activity" to include without limitation, altering, remodeling, painting, decorating, repair, reconstruction and a rehabilitation of existing "building" or "works". "Construction"

includes all building and construction activity as distinguished from furnishing materials, or serving or maintenance work. Public contracts which are not construction or construction related contracts do not have to have a provision stating for each job classification, the prevailing wage rates including fringe benefits.

8. Discussion and Ruling on Second Question: Your second question involves contracts which are under the coverage of the Prevailing Wage Law but are not for construction or building or works. Section 18-2-403, MCA, requires that "[i]n any contract for state, county, municipal, school or heavy highway construction, services, repair, or maintenence work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work and to pay the standard prevailing rate of wages . . ." It is preferred that the actual standard prevailing rate of wages as determined by the Commissioner be placed in all bid specifications and contracts for construction, services, repair or maintenance work of any nature, to give the contractors fair and adequate notice of his obligations. The applicable rates may be obtained from the Labor Standards Division, Department of Labor and Industry, Capitol Station, Helena, Montana 59620, telephone (406)449-5600.

RULING ON SECOND QUESTION

For contracts for nonconstruction or nonconstruction-related projects, if the actual prevailing wage rates are not put in the contract, an appropriate contract provision is:

WAGE DETERMINATION

State law (Section 18-2-401, et. seq., Montana Code Annotated) requires that in all contracts let for state, county, municipal, school, heavy highway construction, services, repair, and maintenance work the contractor must give a preference to the employment of bona fide Montana residents and must pay the prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which work is being performed.

Section 18-2-406 Montana Code Annotated provides that Contractors, subcontractors, and employers who are performing services under public works contracts as provided in this part shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees on such site or work area.

The standard prevailing rate of wages is determined by the Montana Commissioner of Labor in accordance with Sections 18-2-401 (3)(b) and 18-2-402 Montana Code Annotated.

Travel allowance if applicable, may or may not be all inclusive of "travel" and/or subsistence and travel time due employees. It is incumbent on the employer to determine the amount due for each craft employed.

Contractors and subcontractors are required to obtain the rates from the Labor Standards Division, Capitol Station, Helena, Montana 59620, telephone 449-5600.

All five of the above paragraphs should be in the bid specifications.

David L. Hunter

DAVID L. HUNTER, COMMISSIONER
Department of Labor and Industry
State of Montana

Certified to be the Secretary of State this 2nd day of June, 1982.

VOLUME NO. 39 OPINION NO. 60

LICENSES - Authority of local governments with self-government powers;
LICENSES, OCCUPATIONAL AND PROFESSIONAL - City licensing, self-government powers;
LOCAL GOVERNMENT - Self-government powers, authority to require license fees for certain professions;
MUNICIPAL CORPORATIONS - Self-government powers, authority to enact license fees;
1972 MONTANA CONSTITUTION - Article XI, section 6;
MONTANA CODE ANNOTATED - Sections 7-1-101, 7-1-103, 7-1-106, 37-3-308(3), 37-31-323(3), 37-51-312 and 37-65-203;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 68 (1977), 37 Op. Att'y Gen. No. 71 (1977).

HELD: State statutes, standing alone, that prohibit local governments from licensing certain professions or occupations do not apply to local governments with self-government powers unless the statutes are specifically made applicable to local governments with self-government powers.

24 May 1982

Jeffrey M. Sherlock
City Attorney
316 North Park
Helena, Montana 59623

Dear Mr. Sherlock:

You have requested an opinion concerning whether state statutes that exempt certain professions from licensing fees imposed by local governments apply to municipalities with self-government powers.

The City of Helena has passed an ordinance that requires all persons engaged in business in the city to pay a license fee based upon the number of full-time employees engaged in the business. However, the Legislature has enacted a number of statutes that preclude a municipality from licensing certain occupations. For example, in the chapter regarding cosmetology, section 37-31-323(3), MCA, provides:

> No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

Similar provisions are contained throughout the code. See, for example, section 37-65-203 (architects); section 37-3-308(3) (physicians); and section 37-51-312 (real estate brokers or salesmen). Generally these statutes state that no municipality may impose a license fee on the indicated professions.

In 37 Op. Att'y Gen. No. 71 at 284 (1977), it was held that a city with general government powers may not require real estate firms to obtain business licenses. Your question is whether the same rule applies to municipalities with self-government powers. It is my opinion that the rule does not apply to these home rule jurisdictions.

The 1972 Montana Constitution article XI, section 6 provides:

> A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter.

The convention notes to that section clearly indicate that home rule governments have all powers not specifically denied. The Legislature has echoed that philosophy in section 7-1-101, MCA. Additionally, the Legislature has mandated that self-government powers be liberally construed. Section 7-1-106, MCA, provides:

> The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

Those provisions constitute a significant departure from the old law that required narrow construction of local government authority. See 37 Op. Att'y Gen. No. 68 at 272 (1977). Recently the Montana Supreme Court reviewed these provisions. In Tipco Corp., Inc. v. City of Billings, 39 St. Rptr. 600, 603 (1982), a case concerning an ordinance adopted by a home rule jurisdiction, the Court held:

> We expressly overrule statements...that a county, city, or town can only exercise powers expressly conferred on it by the constitution and statutes or arising by necessary implication and that any reasonable doubt concerning such powers should be resolved against the municipality. This was the law under Montana's 1889 Constitution and cases decided thereunder. It is not the law under Montana's 1972 Constitution and statutes enacted thereunder.

It is within this framework that your question must be answered. Section 7-1-103, MCA, provides:

> A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function except such limitations as are contained in its charter or in state law specifically applicable to self-government units. (Emphasis added.)

Most of the statutes that prohibit local government licensing of professions were passed prior to the 1972 Constitution and prior to section 7-1-103, MCA. The Legislature has had opportunities to make the provisions specifically applicable to home rule governments, but has not done so. Thus, section 7-1-103, MCA, coupled with the principles regarding home rule governments discussed above, make it clear that state provisions which prohibit municipalities from imposing license fees on certain professions or occupations do not apply to local government units with self-government powers, unless the statutes specifically designate such forms of local government.

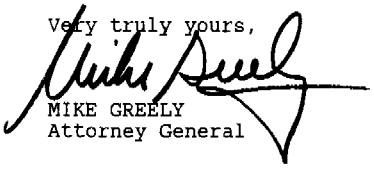
It must be emphasized that this opinion makes no determination as to the validity of the actual ordinance passed by the City of Helena nor does it impress an imprimatur upon the city council's action in passing the ordinance. Rather, it is simply my opinion that state statutes, standing alone, prohibiting local government licensing of certain professions or occupations do not apply to home rule governments within the State of Montana unless the statutes

specifically express applicability to such local governments. This opinion does not address any constitutional questions that may arise by imposition of a fee on certain professions nor does it address any question that could arise under section 7-1-113, MCA, a statute that prohibits home rule local governments from exercising any power in a manner that is inconsistent with state law in an area affirmatively subjected by law to state regulation or control. Those questions would have to be answered individually with respect to each profession, and preferably by a court of law.

THEREFORE, IT IS MY OPINION:

State statutes, standing alone, that prohibit local governments from licensing certain professions or occupations do not apply to local governments with self-government powers unless the statutes are specifically made applicable to local governments with self-government powers.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO 61

CONSTITUTIONS - Rights of the convicted: holding public office;
ELECTIONS - Eligibility of candidate convicted of official misconduct;
MISFEASANCE AND MALFEASANCE - Effect of official misconduct conviction on eligibility for future office;
PUBLIC OFFICE - Right to hold office after state supervision for conviction has terminated;
QUALIFICATIONS - Effect of official misconduct conviction on eligibility for future office;
WORDS AND PHRASES - "Permanently forfeit his office;"
MONTANA CODE ANNOTATED - Section 45-7-401(4);
MONTANA CONSTITUTION - Article II, section 28;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 32.

HELD: A person who is no longer under state supervision is not disqualified as a candidate for justice of the peace by a conviction for official misconduct during a previous term in that office.

1 June 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion on the following question:

> Is a person eligible for the office of justice of the peace, if he or she was convicted of official misconduct while holding that office during a previous term and state supervision for the offense has terminated?

In my opinion, such a person is eligible to run for the office of justice of the peace.

Section 45-7-401(4), MCA, provides:

> A public servant who has been charged [with official misconduct] may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

The statute does not explicitly address whether a convicted official is disqualified from holding future office. The answer to your question turns on the construction of the phrase, "permanently forfeit his office."

The phrase is ambiguous; arguments can be made in support of either side of the issue you have raised. On one hand, it is arguable that the word "permanently" indicates a legislative intent to forever disqualify the convicted person from holding future office. See 37 Op. Att'y Gen. No. 32 at 140, 142 (1977). On the other hand, it is arguable that the absence of express disqualifying language indicates a legislative intent to allow the convicted person to be reelected to the office. See Cannon v. Town of Tempe, 36 Ariz. 16, 281 P. 947, 948 (1929); 63 Am. Jur. 2d Public Officers and Employees § 60, at 666-67 (1972); 67 C.J.S. Officers § 101, at 445 (1978); compare § 45-7-401(4), MCA, with § 94-3523, R.C.M. 1947, and § 94-3910, R.C.M. 1947. My research has revealed no Montana cases concerning the possible disqualifying effect of section 45-7-401(4), MCA, nor any statutes from other jurisdictions that include the phrase "permanently forfeit his office," which would be helpful in answering your question.

In deciding between the alternative interpretations of section 45-7-401(4), MCA, given above, one principle of statutory construction is determinative. If a construction of a statute is fairly possible by which a serious doubt of constitutionality may be avoided, that construction should be adopted. See McMillen v. Arthur G. McKee and Co., 166 Mont. 400, 409, 533 P.2d 1095, 1099 (1975); accord Califano v. Yamasaki, 442 U.S. 682, 693 (1979). In this case, construing the statute to disqualify a person from running for an office, because of a criminal conviction, after state supervision for the crime has terminated would raise a serious doubt as to its constitutionality. Article II, section 28 of the Montana Constitution states: "Rights of the convicted. Laws for the punishment of crime shall be

founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state." The Montana Supreme Court, interpreting this provision, has said:

> In our view the constitutional provision refers to those rights commonly considered political and civil rights incident to citizenship such as the right to vote, the right to hold public office, the right to serve as a juror in our courts and the panoply of rights possessed by all citizens under the laws of the land.

State v. Radi, 176 Mont. 451, 469, 578 P.2d 1169, 1180 (1978), quoting State v. Gafford, 172 Mont. 380, 389-90, 563 P.2d 1129, 1134 (1977) (emphasis added); see V Montana Constitutional Convention Transcript 1800. To avoid doubt as to whether section 45-7-401(4), MCA, complies with this constitutional guarantee, I conclude that the term "permanently forfeit his office" does not disqualify a person who has been convicted of official misconduct from holding office after state supervision for the offense has terminated.

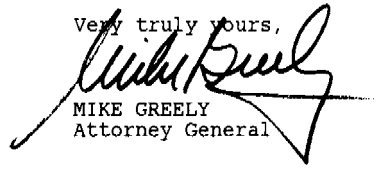
This conclusion does not render the word "permanently" meaningless in the context of section 45-7-401(4), MCA. That term clearly mandates forfeiture of a convicted official's entire term of office, and precludes the imposition of a temporary suspension instead. The word "permanently" means that a person who has forfeited his or her office may not subsequently be reinstated, reappointed, or reelected to the same term of office. See 37 Op. Att'y Gen. No. 32 at 145; compare State ex rel. Tyrrell v. Jersey City, 25 N.J.L. 536, 542-43 (1856) with State v. Rose, 74 Kan. 262, 86 P. 297, 298-99 (1906). In 37 Op. Att'y Gen. No. 32 at 145, I said that the word "permanently" "must be construed as contemplating a more drastic and broader remedy" than statutes using the unmodified term "forfeit," which have been narrowly construed. Nothing in this opinion should be interpreted as negating that statement or the holding of that opinion.

THEREFORE, IT IS MY OPINION:

> A person who is no longer under state supervision is not disqualified as a candidate for justice of the

peace by a conviction for official misconduct during a previous term in that office.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 62

ELECTIONS - Ballot measures, gathering petition signatures at polling place;
ELECTIONS - Duty of election administrator regarding obstructions at polling place;
INITIATIVE AND REFERENDUM - Petitions, gathering signatures at polling place;
MONTANA CONSTITUTION - Article II, section 6; Article II, section 7; Article III, section 4; Article V, section 1;
MONTANA CODE ANNOTATED - Sections 13-3-122, 13-35-211, 13-35-218.

HELD: Orderly gathering of initiative petition signatures at a polling place which does not interfere with the election process or obstruct voter access to the polls may not be prohibited.

4 June 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion regarding the collection of initiative petition signatures at polling places during the primary election. There are no provisions of Montana law that prohibit gathering signatures at the polling place.

Section 13-35-211, MCA, provides:

> ELECTIONEERING. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.
> (2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

This statute prohibits political activity which aids or promotes a ballot issue to be voted upon at the election. The gathering of signatures for initiatives proposed for future elections does not violate the provisions of section 13-35-211, MCA.

During the 1981 legislative session two bills were introduced which would have banned the collection of petition signatures at a polling place. One of the bills, Senate Bill 87, did not pass; the other was significantly modified before passage. 1981 Mont. Laws, ch. 561. Chapter 561 amended section 13-35-218, MCA, which now provides:

> (5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

(Emphasis added.) Section 13-13-122, MCA, allows local election administrators to prevent obstructions. Thus local election administrators have the authority to limit the collection of signatures if that activity creates an obstruction at a specific polling place. However, in my opinion, orderly signature gathering which does not interfere with the election process may not be prohibited.

Your inquiry has constitutional implications. The United States Supreme Court has held that states may require shopping centers to allow citizens to distribute handbills and gather signatures. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980). The Supreme Court held that it would defer to each state's interpretation of its own constitution in this field.

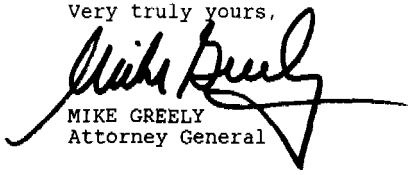
Montana's Constitution contains a number of provisions that guarantee an open initiative process. Article III, section 4, specifically grants the people the right to enact laws by initiative. Article V, section 1, provides that the powers of initiative and referendum are reserved to the people. These provisions, coupled with the provisions of our constitution ensuring freedom of speech, art. II, § 7, and the right to petition for grievances, art. II § 6, demonstrate a strong commitment by the framers of our constitution to the

initiative process. Any interference with the initiative process must be narrowly construed in light of those constitutional provisions.

THEREFORE, IT IS MY OPINION:

> Orderly gathering of initiative petition signatures at a polling place which does not interfere with the election process or obstruct voter access to the polls may not be prohibited.

Very truly yours,



MIKE GREELY
Attorney General

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, Montana State Capitol, Helena, Montana, 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1.	Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2.	Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3.	Locate volume and title.
Subject Matter and Title	4.	Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5.	Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6.	Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule in ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1982. This table includes those rules adopted during the period April 1, 1982 through June 30, 1982, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1982, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1981 and 1982 Montana Administrative Registers.

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I-VI	Adoption of Personnel Policy, p.429, 843
I-VII	Education and Training, p. 435, 843
I-VII	Alternate Work Schedules, p.56, 681
2.11.103	Capitol Building Tour Guide Service, p. 623, 1090
2.21.4701	and other rules - New Employee Orientation, p. 439, 844
2.21.5101	and other rules - Exit Interviews, p. 433, 844
2.21.6501	and other rules - Discipline Handling, p. 60
2.21.6704	Creation of the State Incentive Awards Advisory Council, p. 624

AGRICULTURE, Department of, Title 4

I-III	Emergency Rules - Certain Uses of Pesticides Ambush 2E and Pounce 3-2 E.C., p. 1091
I-III	Emergency Rules - Certain Uses of the Pesticide Lorsban 4E, p. 845
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4.4.303	Insured Crops, p. 780

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