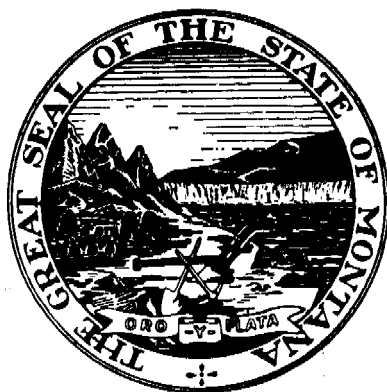


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MONTANA ADMINISTRATIVE REGISTER

1984 ISSUE NO. 4
FEBRUARY 29, 1984
PAGES 350-408



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED
amendment of Rule 2.31.101	) AMENDMENT OF RULE
adopting the American	) 2.31.101 ANSI
National Standard Safety	) STANDARDS
Requirements for Aerial	) NO PUBLIC HEARING
Passenger Tramways.	) CONTEMPLATED

TO: All Interested Persons.

1. On March 30, 1984, the department of administration proposes to amend rule ARM 2.31.101 which adopts the American National Standard Safety Requirements for Aerial Passenger Tramways.

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

"2.31.101 ADOPTION OF ANSI STANDARDS (1) As permitted by statute, the department of administration, in cooperation with the passenger tramway advisory council, has adopted hereby adopts and incorporates by reference the "American National Standard Safety Requirements for Aerial Passenger Tramways" (referred to herein as ANSI Standards) promulgated by the American national standards institute, incorporated, on ~~January 25, 1973~~ July 16, 1982 (publication numbered ANSI B77.1-1973 B77.1-1982) to the extent that said standards do not conflict with Montana statutory laws or these regulations. By this reference, the above-cited publication is hereby annexed to these rules and made a part hereof. The ANSI Standards establish safety requirements for passenger transportation systems that use cables or ropes in the system for power transmission, including reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows. Copies of the ANSI Standards text may be obtained from the Department of Administration, Helena, MT 59620, upon request at cost.

(2) The department of administration reserves the right to modify, add, or delete provisions included in the above referenced ANSI Standards."

3. The department proposes these changes to its rule to keep the state's passenger tramway safety codes current with modern technology by adopting the latest available edition of the ANSI Standards.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Mr. Philip H. Hauck, Administrator, Architecture and Engineering Division, 1500 East Sixth Avenue, Helena, Montana 59620, no later than March 28, 1984.

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 Mr. Philip H. Hauck, Administrator, Architecture and Engineering Division, 1500 East Sixth Avenue, Helena, Montana 59620, no later than March 18, 1984.

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

7. The authority of the agency to make the proposed amendment is based on section 23-2-721, MCA, and the rule implements section 23-2-721, MCA.

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

Certified to the Secretary of State 2-21-84

BEFORE THE STATE AUDITOR'S OFFICE
SECURITIES DEPARTMENT
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED
of a rule creating a venture)	ADOPTION OF A NEW RULE -
capital exemption from the)	SECURITY REGULATION
registration provisions of)	No Public Hearing
the Securities Act of Montana.)	Contemplated

TO: All Interested Persons:

1. On April 12, 1984, the Securities Department of the State Auditor's Office proposes to adopt a rule creating an exemption from the registration provisions of the Securities Act of Montana, Section 30-10-101, et seq., MCA (1983).

2. The Rule as proposed provides as follows:

RULE 1. THE MONTANA VENTURE CAPITAL EXEMPTION. (1) By the authority delegated to the commissioner in Section 30-10-105 (16), MCA (1983), Sections 30-10-202 through 30-10-207, MCA (1983) shall not apply to transactions by an issuer involving the sale of its securities to not more than 25 persons in this state during any period of 12 consecutive months, provided that the securities are offered and sold in compliance with the following terms and conditions:

(a) Securities offered and sold pursuant to this exemption shall not be offered or sold by any means of general advertising or general solicitation;

(b) All persons who offer or sell securities pursuant to this exemption shall be registered as salesmen or broker-dealers in accordance with Section 30-10-201, MCA (1983);

(c) At least ten days prior to any offer or sale to a person in this state, the issuer shall file two copies of its disclosure document with the commissioner along with a check for \$200 made payable to the Montana State Auditor Securities Commissioner. The disclosure document shall at a minimum contain at least the following: the name and address of the issuer; the number of units, the price per unit, and a description of the securities to be sold; the amount of commissions to be paid and the persons to whom they will be paid; a history of the issuer's business; a statement on risk factors, use of proceeds, conflicts of interest; and a financial statement of the issuer. The first page of the disclosure document shall contain a bold-faced legend providing that "These securities are offered pursuant to an exemption from registration under the Securities Act of Montana. The Montana Securities Department has not passed upon the merits or qualifications of, or recommended or given approval to, the securities hereby offered, or passed upon the accuracy or adequacy of this disclosure document".

(d) The aggregate sales price of all sales of the issuer's securities shall not exceed \$400,000 during any period of 12 consecutive months. Securities registered pursuant to Section 30-10-204 or 30-10-205, MCA (1983) shall be excluded from the \$400,000 limitation. For the purposes of this exemption, the term "issuer's securities" shall include all securities issued by the issuer and by any affiliate of the issuer; and

(e) A copy of the issuer's disclosure document shall be given to each purchaser at least 48 hours prior to any sale.

(2) The Commissioner may by order revoke, deny, or further condition the use of this exemption with respect to any particular offering when the commissioner finds that such an order is necessary for the protection of investors and is in the public interest.

(3) Upon the entry of an order under subsection (2) of this Rule, the commissioner shall promptly notify the issuer of the securities that an order has been entered and of the reasons therefore and that, if requested by the issuer within 15 days after the receipt of the commissioner's order, the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

3. Adoption of the proposed rule is necessary in order to effect the purpose of the securities act to "encourage, promote, and facilitate capital investment in Montana." The proposed rule will encourage, promote, and facilitate capital investment in Montana by simplifying the process through which securities may be lawfully sold in this state and by significantly reducing the number of documents that must be filed with the Department.

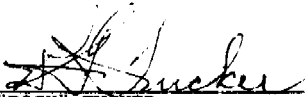
4. Interested persons may submit their written data, views, or arguments concerning the proposed rule to Mr. Gordon Bruce, State Auditor's Office, Box 4009, Helena, MT 59604, no later than March 30, 1984.

5. If a person who is directly affected by the proposed amendments wishes to express data, views or arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to Mr. Gordon Bruce, State Auditor's Office, Box 4009, Helena, MT 59604, no later than March 30, 1984.

6. If the agency 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 or 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 more than 25 persons based upon number of persons filing applications to register securities in Montana.

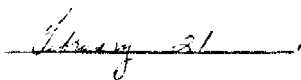
7. The authority of the Department to adopt this rule is based on Section 30-10-105(16), MCA (1983), and the rule implements section 30-10-105(16), MCA.

E. V. "SONNY" OMHOLT
State Auditor & Ex Officio
Commissioner of Insurance and
Securities Commissioner



R. G. "RICK" TUCKER
Chief Deputy Securities Commissioner

CERTIFIED TO THE SECRETARY OF STATE
1984.



STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.6.410 subsection) OF 8.6.410 (2) RENEWALS
(2) concerning renewals.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 30, 1984, the Board of Architects proposes to amend rule 8.6.410 subsection (2) concerning late renewals.
2. The proposed amendment 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.

(2) The beginning of the fiscal year is July 1 and all licenses bear this date. The renewal fee shall be due beginning on July 1. However, a one month grace period thereafter is provided by statute. A late renewal fee will be imposed upon any license which has not been renewed by July 31. The holder of an expired Any licensee who allows his license to lapse for two years may be required to make reapplication to the state or national board will be notified by certified mail of his delinquency and if he fails to renew by July 31 of the same year, his license shall be revoked for non-renewal. If he wishes to practice his profession in the state of Montana thereafter, he shall obtain a new original license from the board through established procedures."

Auth: 37-65-204, MCA Imp: 37-65-306, MCA

3. The current rule does not specify the length of time a license may be lapsed and then reinstated. Thus, the board finds themselves in the position of maintaining records for an unlimited period of time. The board believes that two years is ample time for a responsible licensee to take positive action for the renewing of his license. After a period of time, there is no method of guaranteeing to the public that the individual still is competent and that no legal action has been taken or is pending against him. Although the board currently charges a penalty fee, some individuals continue to practice without a current license. If a consumer were to file a complaint against a licensee who does not hold a current license, the board would have no disciplinary authority to take action against the architect which could be of benefit to the consumer.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 28, 1984.

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 comments he has to the Board of Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 28, 1984.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, repeals and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public 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 74 based on the 746 licensees in Montana.

BOARD OF ARCHITECTS
JERRELL BALLAS, A.I.A.
PRESIDENT

BY: 

GARY BOCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 21, 1984

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the proposed	)	8.40.405 EXPLOSIVE CHEMICALS
amendments of 8.40.405 sub-	)	AND 8.40.1215 ADDITIONS,
section (2) concerning explo-	)	DELETIONS, & RESCHEDULING
sive chemicals and 8.40.1215	)	OF DANGEROUS DRUGS
concerning additions, deletions)	
and rescheduling of dangerous	)	NO PUBLIC HEARING
drugs.	)	CONTEMPLATED

TO: All Interested Persons:

1. On March 30, 1984, the Board of Pharmacy proposes to amend the above-stated rules. In addition to the amendments of 8.40.405 and 8.40.1215, Chapter 247, Laws of Montana 1983 also changed the name of the Board of Pharmacists to the Board of Pharmacy. The title headings throughout Chapter 40, Title 8, will be corrected as other revisions to each page are needed during the replacement page periods.

2. The proposed amendment of 8.40.405 will repeal subsection (2) of the rule and will read as follows:

(new matter underlined, deleted matter interlined) (full text of the rules are located at pages 8-1136.1 - 8-1137, Administrative Rules of Montana)

"8.40.405 EXPLOSIVE CHEMICALS (1) ...

~~(2) All such sales to be recorded in the poison register."~~

Auth: 37-7-201, MCA Imp: 37-7-201, MCA

3. The board is proposing the amendment because Chapter 247, Laws of Montana 1983 deleted the requirement that a poison register be kept.

4. The proposed amendment of 8.40.1215 will read as follows:

(new matter underlined, deleted matter interlined) (full text of the rules are located at pages 8-1180 - 8-1182, Administrative Rules of Montana)

8.40.1215 ADDITIONS, DELETIONS, & RESCHEDULING OF DANGEROUS DRUGS (1) Whereas certain substances have been designated as controlled substances by the legislature of the state of Montana through enactment and amendment of sections 50-32-221 through 50-32-232, MCA; and whereas the board considers that such statutory enactments preempt the list of controlled substances as originally adopted and stated in ARM 8.40.1215, thereby making it unnecessary to adopt and publish the statutorily created schedules of controlled substances as a part of their rules, the board herein consents to the

omission of the text of such schedules from the Administrative Rules of Montana.

(2) ...

(4) The above statutory sections referred to may be found in the Montana Code Annotated, Replacement Volume 9, part 2, Title 50, Chapter 32, which may be reviewed at the office of the secretary of state, Capitol Building, Helena, Montana or at the office of the board of pharmacists pharmacy, 1424 9th Avenue, Helena, Montana 59620.

(5) In addition to the controlled substances identified and referred to above, the board has adopted, pursuant to the authorization in section 50-32-103, MCA, the following substances to be added, deleted or rescheduled thereto:

(a) Schedule I: Difenoazin; Propiram; Brocbanol; 4-bromo-2, 5-dimethoxyamphetamine; 4-methoxyamphetamine; thiopene analog of phenyletidine; Melequalone; N-ethyl-1-phenylcyclohexylamine; 1-(1-phenylcyclohexyl) pyrrolidine; Sufentanil; Tiindine.

(b) Schedule II: Amobarbital; Pentobarbital; Secobarbital; Methaqualone; Etorphine Hydrochloride; Diprenorphine; Apomorphine; Codeine; Ethylmorphine; Hydrocodone; Hydromorphone; Metopon; Morphine; Oxycodone; Oxymorphone; Thebaine; Cocaine; Methylphenidate; Norpethidine; Phenyletidine; Phenylacetone, also known as phenyl-2-propanone; benzyl methyl ketone; methyl benzyl ketone; and P2P; Bulk Bextropropoxyphene (non-dosage forms) as an opiate.

(i) Single entity ORA dosage forms of amphetamine, dextroamphetamine or methamphetamine, or ORA amphetamine-dextroamphetamine combinations.

(ii) Section 50-32-224, MCA, specific dangerous drugs included in Schedule II, subsection (1)(d) thereunder shall be interpreted to include cocaine, and ecgonine, and all their optical isomers and salts, and the optical isomers of their salts. This interpretation shall also apply to the definition stated in section 50-32-101 (17)(d), MCA.

(c) Schedule III: Benzphetamine; Chlorphentermine; Chlorphentermine; Phendimetrazine; Mazindol.

(i) Pursuant to section 50-32-103 (1), MCA, Phenyletidine, listed in Schedule III in section 50-32-226 (1)(g), MCA, is rescheduled to Schedule II as listed in subsection (b) above.

(d) Schedule IV: Diethyl propion; Fenfluramine; Pentermine; Clordiazepoxide; Diasepam; Glonasepan; Etorazepate; Flurazepam; Oxazepam; Pemoline; Mebutamate; Brazepam; Pipradrol; SPA ((-)-1-dimethylamino-2, 2-diphenylethane); Bextropropoxyphene as a narcotic; Propoxyphene, its optical isomers and salts of all optical isomers, preparations of not more than 1 mg of difenoxin with not less than 0.025 mg of atropine sulfate per dosage unit. Any material, compound, mixture or preparation which contains any quantity of pentazocine, including its salts.

(e) Schedule V- Loperamide- Preparations of not more than 0.5 mg of difenoxin with not less than 0.025 mg of atropine sulfate per dosage unit-

(a) Schedule V.

(i) Loperamide is deleted from the list of controlled substances. Auth: 50-32-103, MCA Imp: 50-32-103, 232, MCA

5. The list of controlled substances was updated to conform with controlled substances listed in the Code of Federal Regulation, 1308.11-15, Chapter 141, Laws of Montana 1983. Therefore, it is not necessary to have them listed in the rules.

Loperamide is deleted from Schedule V as a result of being deleted by the U.S. Department of Justice, Drug Enforcement Administration.

Loperamide has a currently accepted medical use in treatment in the United States and does not have sufficient potential for abuse or abuse liability to justify its continued control in any schedule.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacy, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 28, 1984.

7. 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 comments he has to the Board of Pharmacy, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 28, 1984.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 150 based on the 1500 licensees in Montana.

BOARD OF PHARMACY
D. WAYNE BOLLINGER, R.Ph.
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 21, 1984

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

IN THE MATTER of Proposed	)	NOTICE OF PUBLIC HEARING ON
Adoption of New Rules for	)	PROPOSED ADOPTION OF NEW
Charges Related to Utility	)	RULES FOR CHARGES RELATED TO
Line Moves Associated with	)	UTILITY LINE MOVES ASSOCIATED
Movement of Structures	)	WITH MOVEMENT OF STRUCTURES

TO: All Interested Persons

1. On March 20, 1984, in the House Chambers, State Capitol Building, Helena, Montana, at 9:00 a.m., a hearing will be held to consider the proposed adoption of rules for charges related to utility line moves associated with the movement of structures. These rules will establish the responsibility of owners of structures for expenses of raising or cutting utility wires and moving utility poles.

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. GENERAL PROHIBITION (1) No public utility shall charge or otherwise request payment of any costs it incurs in moving poles or raising or cutting wires to accommodate transportation or hauling of buildings or other structures through existing electrical lines, telephone lines, telegraph lines, cables, messenger wires, guidewires or poles, except in accordance with these rules.

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-4-601, et seq., MCA

Rule II. PERMITTED CHARGES (1) A public utility may charge any person transporting or hauling a prefabricated structure, built with the intention of being transported or hauled, the necessary and reasonable costs of raising or cutting wires or moving poles to facilitate that movement.

(2) A public utility may charge only one-half of the necessary and reasonable expense of moving poles and raising or cutting wires necessary to accomplish the transportation or hauling of any other building or structure.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA

Rule III. DETERMINATION OF NECESSARY AND REASONABLE EXPENSES (1) The necessary and reasonable expense of raising or cutting wires or moving poles is the average cost per line or pole for time and materials expended.

(2) Average cost of moving poles and raising or cutting wires shall include the following components:

(a) the average wage for all necessary employees, determined by dividing necessary and reasonable employee expense incurred during the most recent calendar year for the tasks specified in Rule III(4), by the number of those tasks, plus

(b) the average equipment cost, determined by dividing equipment expense incurred during the most recent calendar year for the tasks specified in Rule III(4), by the number of those tasks.

(3) Wages included as necessary and reasonable expenses shall be based on the hourly base wage for employees required in accordance with sound management principles and due regard to the safety of employees and the public, and shall include direct fringe benefits.

(4) Average employee and equipment costs shall be determined for the tasks of

- (a) raising wires
- (b) cutting wires, and
- (c) moving poles.

(5) Average employee and equipment costs shall further be determined for the categories of:

- (a) electric utilities, and
- (b) telephone utilities.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA

Rule IV. EXCEPTIONS TO NECESSARY AND REASONABLE EXPENSES

(1) Expenses for raising or cutting wires are not necessary or reasonable if they would not have been incurred except for the fact that the wire involved violates minimum vertical clearance requirements established in Section 69-4-201, MCA.

AUTH: Sec. 69-3-301, MCA; IMP, Sec. 69-4-603, MCA

Rule V. AVERAGE COSTS (1) Average costs for time and materials expended are determined to be:

- (a) \$50 for each telephone wire raised,
- (b) \$100 for each telephone wire cut,
- (c) \$50 for each electric wire raised,
- (d) \$100 for each electric wire cut, and
- (e) \$150 for each telephone or electric pole moved.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA

Rule VI. PREPAYMENT OF ESTIMATE (1) Estimates provided pursuant to 69-4-602, MCA, shall include a detailed description of the basis for the estimate, including the number and type of wires to be raised or cut, the number of poles to be moved, and the average cost for each of those items.

(2) Estimated charges shall be paid to the utility in advance of any work performed by the utility to accomplish the transportation or hauling of a building or other structure.

(3) Deviations from estimated charges must be based upon average costs, and shall be set forth in a detailed amendment to the original estimate.

(4) Any over or under charges based on the original estimate shall be promptly paid to the utility or refunded to the owner of the building or structure.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA

Rule VII. BIENNIAL REVIEW (1) All average costs as set forth in Rule III shall be filed by each public utility by April 1 of each odd-numbered year.

(2) Upon filing, the Commission shall publish a notice of proposed rulemaking in accordance with the Montana Administrative Procedure Act, to establish average costs set forth in Rule V.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA

4. The proposed rules are necessary to discharge the Commission's responsibility to fix and determine the necessary and reasonable expense of raising or cutting the wires or of removing the poles of utilities subject to Commission jurisdiction, as required by § 69-4-603, MCA. The rules are designed to ensure that the purpose of removing 50 percent of the burden from utility ratepayers will be achieved in an equitable manner.

5. Interested parties may submit their data, views or arguments concerning the proposed rules at the hearing, or in writing to Robert A. Nelson, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 30, 1984.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.


THOMAS J. SCHNEIDER, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 21, 1984.

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE MONTANA AGRICULTURAL LOAN AUTHORITY
OF THE STATE OF MONTANA

In the Matter of the Adoption	)	NOTICE OF ADOPTION OF
of Rules I through XXI	)	NEW RULES. (MONTANA
4.14.101 through 4.14.801	)	AGRICULTURAL LOAN
relating to implementing the Montana)	)	AUTHORITY ACT)
Agricultural Loan Authority Act.)	

TO: All Interested Persons

1. On November 25, 1983, the Montana Agricultural Loan Authority published notice of the proposed adoption of Rules I through XXI (4.14.101 through 4.14.801) relating to the sale of tax-exempt bonds to provide agricultural loans to beginning farmers/ranchers at pages 1683-1692 of the 1983 Montana Administrative Register issue No. 22. A public hearing was held on December 16, 1983.

2. The Montana Agricultural Loan Authority has adopted the rules with the following changes:

4.14.101 RULE I ORGANIZATIONAL RULE Same as proposed rule.

4.14.201 RULE II PROCEDURAL RULES Same as proposed rule.

4.14.202 RULE III PUBLIC PARTICIPATON RULES Same as proposed rule.

4.14.301 RULE IV DEFINITIONS (1) When used in these rules, unless the context clearly requires a different meaning:

(a) Same as proposed.

(b) Same as proposed.

(c) Same as proposed.

(d) Same as proposed.

(e) Same as proposed.

(f) "Application" means a completed instrument on a form approved by the Authority. Each Application must include the following: beginning farmer name, address, financial data, evidence of unavailability of alternative credit, description of anticipated use of loan proceeds, amount of loan, cost or purchase price of the item financed (including the interest rate and collateral or other security required)

loan-down-payment-amount-(if-any), statement of beginning farmer's net worth determined in accordance with Authority rules, a summary of proposed loan terms and certain certifications of the beginning farmer and lender.

(g) Same as proposed.

(h) Same as proposed.

(i) Same as proposed.

(j) Same as proposed.

(k) "Lender" means any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, credit union, life insurance company, any state or federal government agency or instrumentality, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state.

(l) "Total Assets" means assets including, but not limited to the following: cash and deposits in financial institutions, etc., cash crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery and equipment, cars and trucks; farm and other real estate, and personal residence and summer homes; value of beneficial interest in a trust; government payments or grants; any other assets.

(a) Total assets shall not include items used for personal, family or household purposes by the applicant, but in no event shall such property be excluded to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. Such value shall be what a willing buyer would pay a willing seller in the locality. A deduction of ten per cent (10%) may be made from fair market value of farm and other real estate.

m) "Total Liabilities" means liabilities including, but not limited to the following: accounts payable, notes or other indebtedness owed to any source; taxes; rent; leases; amount owed on real estate contracts or real estate mortgages; judgements; accrued interest payable; and other liabilities. Contingent liabilities cannot be included in the computation of total liabilities, but all such contingent liabilities shall be disclosed.

AUTH. 80-12-103, MCA; IMP: 80-12-102, MCA.

4.14.302 RULE V LOAN POWERS AND ELIGIBLE LOAN ACTIVITIES Same as proposed rule.

4.14.303 RULE VI LOAN MAXIMUMS Same as proposed rule.

4.14.304 RULE VII LOAN MINIMUMS Same as proposed rule.

4.14.305 RULE VIII APPLICANT ELIGIBILITY Same as proposed rule.

4.14.306 RULE IX APPLICATION PROCEDURES Same as proposed rule.

4.14.307 RULE X LOANS TO BEGINNING FARMERS AND SECURITY ARRANGEMENTS (1) Loans to beginning farmers involve the lender, beginning farmer, and the Authority. The program involves either the sale of individual industrial development

bonds, to individual lenders or a public bond sale to provide funds for an aggregation of loans. The Authority will make the loan to the eligible beginning farmer and the lending institution will purchase the bond as an investment or the loan will be made from a portion of an aggregate bond sale. To facilitate the making servicing of the loan the lender and the Authority will enter into an agency relationship whereby the lender agrees to act as agent and fiduciary for the Authority for all processing purposes in connection with financing servicing the loan. The lender will make its own security evaluation of the loan and the beginning farmer's ability to repay principal and interest payments. The interest and other conditions of the loan are set by the lender. The interest rate may be either variable or fixed for the term of the loan as long as the method for determining the rate is contained in the loan agreement and the rate is reasonable as determined by the Authority. In no case may the loan repayment period (term) exceed thirty (30) years. The principal and interest shall be limited obligations, payable solely out of the revenue derived from the debt obligation, collateral, or other security furnished by or on behalf of the beginning farmer (a co-signer on the note is permissible). The bond which is issued by the Authority is a non-recourse obligation. The principal and interest on the bond do not constitute an indebtedness of the Authority or a charge against its general credit or general fund. It should also be noted that any recording or filing fees associated with the loan will be paid by the beginning farmer or lender not the Authority.

Auth: 80-12-103, MCA; IMP: 80-12-201, MCA.

4.14.308 RULE XI USE OF FINANCIAL AND SECURITY DOCUMENTS

Same as proposed rule.

4.14.309 RULE XII REPAYMENT OF LOANS (1) The beginning farmer's repayment obligations, under the loan agreement and promissory note, are subject to mandatory prepayment in certain events which are set forth in the loan agreement form. These include the Agreement becoming void or unenforceable, and interest on the bond becoming subject to federal income taxation. Loans are subject to immediate repayment if the property for which the loan is made or other collateral used to secure the loan is sold or otherwise disposed of. In addition, the forms provide for optional prepayment (at the discretion of the lender) in the event of damage, destruction or condemnation of all or any part of the financed properties or project.

(2) Same as proposed.

4.14.310 RULE XIII ASSIGNMENT OF ~~LOANS~~ BONDS (1)

Participating lenders may assign a loan bond in whole or in part to any person. Servicing of the loan may also be assigned, but must at all times be with a participating lender. The Authority must be notified in writing prior to assignment of servicing of the loan.

(2) Same as proposed.

4.14.311 RULE XIV FEES AND TERMS OF LOAN Same as proposed rule.

4.14.312 RULE XV LENDERS (1) Any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, credit union, life insurance company, any state or federal governmental agency or instrumentality, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state may be with the approval of the Authority, a participating lender.
AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

4.14.313 RULE XVI PROCEDURES FOLLOWING BOND ISSUANCE
Same as proposed rule.

4.14.314 RULE XVII ASSUMPTION OF LOANS, SUBSTITUTION OF COLLATERAL AND TRANSFER OF PROPERTY Same as proposed rule.

4.14.315 RULE XVIII PUBLIC Hearing (1) The Authority will conduct public hearings in conjunction with its regularly scheduled Authority meetings to consider loan-applications and bond-sales the sale of bonds. However, in an emergency, some deviation might be made from this procedure. It should be noted that a hearing need not be held before an Authority application is approved, but must be held before the bond documents are approved.
AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

4.14.316 RULE XIX RIGHT TO AUDIT Same as proposed rule.

4.14.601 RULE XX TAX DEDUCTION (1) The Authority will follow rules of the Montana Department of Revenue implementing the tax deduction provided in Title 80, Chapter 12, Section 80-12-211, MCA, for the sale of qualifying land on a long term contract for deed to a beginning farmer. The repayment period (term) of the contract for deed must extend for a period of ten (10) years or more. In addition, the dollar amount of the contract for deed must be fifty one percent (51%) or more of the total purchase price of the land. The transaction must be approved in advance by the authority.

(2) Basic Authority applicant eligibility requirements for a beginning farmer are:

(a) The applicant beginning farmer may not have a net worth in excess of \$250,000.

(b) There are no age limits for borrowers participating in the Authority, however, Title 41, Chapter 1, Part 3, MCA, will be followed.

(c) The beginning farmer must be a resident of Montana at the time the completed application is submitted to the Authority.

(d) The beginning farmer must have documented, to the satisfaction of the Authority, sufficient education, training and experience for the anticipated farming operations.

(e) The Authority may require certain documents to determine eligibility.

(3) The Authority may conduct additional inquiries or investigations as necessary to determine the accuracy and completeness of an application.

~~43~~ (4) The beginning farmer need not be a recipient of an Authority loan.

~~44~~ (5) A \$25 application fee will be charged by the Authority to cover administrative costs.

AUTH: 80-12-103, MCA; IMP: 80-12-211, MCA.

4.14.801 RULE XX1 DISCLAIMER Same as proposed rule.

3. The following is a summary of the comments received in writing and at the public hearing, and the response from the Montana Agricultural Loan Authority:

Specific Comments:

Rule IV Definitions - subsection (j)(f) - Comment: Purchase price and terms of loan important to loan review procedure. Loan down payment amount not necessary.

Response: Specific agreement with comments and changes to reflect comments were approved.

Rule IV Definitions - subsection (l)(k) - Comment: Credit Unions should be included within the definition of "lender".

Response: Credit Unions were added to the definition of "lender".

Rule IV Definitions - subsection (l)(i) - Comment: cash and deposits in financial institutions and summer homes should be added to the definition of "Total Assets".

Response: The areas of comment were added to the definition of "Total Assets".

Rule IV Definitions - subsection (j)(m) - Comment: Contingent liabilities require further clarification and leases should be added to the definition of "Total Liabilities".

Response: Contingent liabilities were further defined as to applicability and leases were added to the definition of "Total Liabilities".

Rule X Loans to Beginning Farmers and Security Arrangements - subsection (i) - Comment: The agency relationship between the Montana Agricultural Loan Authority and the lender as well as the loan terms requires further clarification to cover intent of law.

Response: Terms were revised and added to provide accurate assessment of agency relationship and clarify loan terms and the lenders responsibilities.

Rule XIV Repayment of Loans - subsection (i) - Comment: As a lending policy, immediate repayment of a loan should be required if the collateral property is sold or otherwise disposed of.

Response: Provisions for such immediate repayment were added.

Rule XIII Assignment of Loans - subsection (l) - Comment: There appears to be a typographical error as this section

should have applied to the assignment of bonds rather than loans.

Response: The error was revised to reflect the assignment of bonds.

Rule XV Lenders - subsection (1) - Comment: Credit unions should be added to the list of qualified lenders.

Response: Credit unions were added to the list of qualified lenders as provided by law.

Rule XVIII Public Hearing - subsection (1) - Comment: A public hearing should be held prior to the issuance of the bonds, but not to consider loan applications.

Response: The comment was determined to be consistent with required hearing procedures and the revision was implemented.

Rule XX Tax Deduction - subsection (1) - Comment: Qualifying for the tax deduction is dependent upon providing for a long term contract and as such the term and conditions of the contract should be specifically described.

Response: In order to clarify what conditions must be met to obtain the tax deduction, the required conditions of the long term contract were more adequately described.

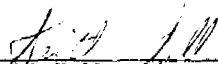
Rule XX Tax Deduction - subsection (3) - Comment: In order to give the Authority more ability to ensure eligibility of application for tax deduction additional verification abilities should be available to the Authority.

Response: Verification abilities of the Authority are essential and the appropriate section was added.

Other Comments: Several other comments were received. Several comments addressed the restriction on the use of tax-exempt bonds that prohibit the financing of transactions involving blood relationships. This is a current federal limitation that is not subject to State modification.

Another comment concerned the aspect of limiting interest rates on the loans to a fixed rate. However, the interest rate on the loan is set by the lender as provided for by law.

By



Keith Kelly, Director
Department of Agriculture and
member, Montana Agricultural
Loan Authority.

Certified to the Secretary of State February 21, 1984

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.36.
of ARM 8.36.407 concerning) 407 UNPROFESSIONAL CONDUCT
unprofessional conduct and) - VIOLATIONS, and ADOPTION
adoption of a new rule con-) OF A NEW RULE 8.36.411
cerning disciplinary actions.) DISCIPLINARY ACTIONS

TO: All Interested Persons:

1. On January 12, 1984, the Board of Optometrists published a notice of amendment and adoption of the above-stated rules at pages 1 through 3, 1984 Montana Administrative Register, issue number 1.

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

3. The board received one letter of comment from Dr. Robert G. Essig, suggesting more exact wording. The board attorney, Geoffrey L. Brazier responded to the letter and explained the too precise language would be too restrictive to fit questionable conduct under. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, February 21, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the) NOTICE OF ADOPTION OF RULES
adoption of rules under sub-) UNDER SUB-CHAPTER 3, GENERAL
chapter 3, concerning general) PROVISIONS AND APPLICATION
provisions and application pro-) PROCEDURES and SUB-CHAPTER 4,
cedures, and rules under sub-) MONTANA IN-STATE INVESTMENT
chapter 4 concerning the Mon-)
tana in-state investment fund.)

TO: All Interested Persons.

1. On Friday, January 20, 1984, at 10:00 a.m., a public hearing was held in Room 114, Coach House East, 2101 11th Avenue, Helena, Montana, to consider the adoption of rules under Sub-Chapter 3, general provisions and application procedures, and Sub-Chapter 4, concerning the Montana in-state investment fund, as noticed in 1983 MAR Issue No. 24, page 1880.

In addition to staff and the board, approximately 60 persons attended the hearing, fourteen individuals presented oral or written testimony supporting the proposed rules, but offering amendments to the rules. An additional nine letters were received supporting the rules, but also offering amendments. Based on comments and testimony at the hearing, letters received, and comments from Greg Petesch, attorney, Legislative Council, the rules have been adopted with the following changes: (new matter underlined, deleted matter interlined)

Rules under Sub-Chapter 3, entitled General Provisions and Application Procedures

I. now "8.97.301 DEFINITIONS (1) As used in Sub-Chapters 3 through 8, and unless the context clearly requires another meaning:

(a) 'administrator' means the administrative officer of the Montana economic development board created in sections 2-15-1806 and 2-15-1807, MCA.

(b) 'application' means the completed application provided for in Rule ~~8.97.305~~ 8.97.305. An application cannot be submitted unless a short-application has been given a favorable conditional determination.

(c) 'board' means the Montana economic development board created in section 2-15-1805, MCA.

~~(d) 'completed application' means an application that meets the requirements of these rules.~~

~~(e) (d) 'board of housing' means the board of housing created in section 2-15-1814, MCA.~~

~~(f) (e) 'board of investments' means the board of investments created in section 2-15-1005, MCA.~~

~~(g) (f) 'bond' means any bond, note, debenture, interim certificate, or other evidence of financial~~

indebtedness issued by the board pursuant to Title 17, Chapter 5, MCA.

(h) (g) 'borrower' means the person to whom the proposed loan will be made or the person whose payments under a loan, lease, or other credit arrangement are guaranteed or proposed to be guaranteed by the board.

(i) (h) 'clean and healthful environment' means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(j) '~~conditional determination~~' means the ~~conditional approval or disapproval of a short-application as provided in Rule VI.~~

(k) 'commitment' means a letter from the board agreeing to reserve a stated amount of its funds for a particular financing and setting forth the interest rates and other terms and conditions therefor.

(l) 'day' means a business working day and excludes weekends and recognized state holidays.

(m) 'financial institution' means a person that

(i) is a state- or federally-chartered bank, savings and loan association, credit union, development credit corporation, ~~insurance company~~, investment company, trust company, savings institution, small business investment company, or qualified Montana capital company; and

(ii) maintains an office in Montana; and

(iii) is approved by the board as provided in rules ~~8.97.302.~~

(n) 'interest rate' means the rate at which the board will invest its funds, and is determined in accordance with rule 8.97.308, A.R.M.

(o) (m) 'lender' means

(i) the approved financial institution that will originate the ~~short-application~~ or application for a financial transaction.

(ii) the financial institution, municipality, or county to whom payments from a borrower on account of a project financed either by the board under Sub-Chapter 5 or by a municipality or county under sections 90-5-101 through 90-5-112, MCA, are proposed to be guaranteed by the board under Sub-Chapter 6.

(p) (n) 'loan participation' means loans or portions thereof ~~bought~~ purchased from a financial institution.

(q) (o) 'local government' means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(r) (p) 'locally owned enterprise' means any enterprise 51% of whose stock, partnership interests, or other

ownership interests are owned and controlled by residents of Montana.

(p) (q) 'long-term benefit to the Montana economy' means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the peoples of Montana, either directly or indirectly.

(q) (r) 'Montana economy' means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(r) (s) 'Montana in-state investment fund' means the fund established by 17-6-306, MCA.

(s) (t) 'Montana resident' means a person an individual who has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state is coupled with the intention to make it his permanent residence. Sojourners or persons who come to Montana solely in pursuance of financial assistance from the board or any contract or agreement to perform labor shall under no circumstances be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

(u) 'mortgage' means a pledge of property as security for a loan, whether in the form of a mortgage, deed of trust, or trust indenture, including a security agreement constituting a lien on the real or personal property encumbered thereby and the obligations secured thereby.

(t) (v) 'person' is any individual, sole proprietorship, partnership, corporation, or other entity which is authorized by law to transact business in Montana.

(u) (w) 'project' means the purpose for which the financing is to be used, including any property to be acquired and services to be obtained, and in an application under Sub-Chapter 4 or 5 is limited to projects as defined in 90-5-101, MCA.

(v) (x) 'project costs' means the costs of acquiring or improving any project, including the following:

- (i) the actual cost of acquiring or improving real estate for any project;
- (ii) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;
- (iii) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;
- (iv) bond reserves and premiums or fees for insurance, a letter of credit, or a guaranty of loan payments or lease rentals pledged to pay the bonds; and
- (v) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding six months after completion of construction.

indebtedness issued by the board pursuant to Title 17, Chapter 5, MCA.

(h) (g) 'borrower' means the person to whom the proposed loan will be made or the person whose payments under a loan, lease, or other credit arrangement are guaranteed or proposed to be guaranteed by the board.

(i) (h) 'clean and healthful environment' means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(j) ~~'conditional determination'~~ means the conditional approval or disapproval of a short-application as provided in Rule VI.

(k) (i) 'commitment' means a letter from the board agreeing to reserve a stated amount of its funds for a particular financing and setting forth the interest rates and other terms and conditions therefor.

(l) (j) 'day' means a business working day and excludes weekends and recognized state holidays.

(m) (k) 'financial institution' means a person that (i) is a state- or federally-chartered bank, savings and loan association, credit union, development credit corporation, ~~insurance company~~, investment company, trust company, savings institution, small business investment company, or qualified Montana capital company; and

(ii) maintains an office in Montana; and
(iii) is approved by the board as provided in rules ~~8.97.302~~.

(n) (l) 'interest rate' means the rate at which the board will invest its funds, and is determined in accordance with rule ~~8.97.308~~, A.R.M.

(o) (i) (m) 'lender' means (i) the approved financial institution that will originate the ~~short-application~~ or application for a financial transaction.

(ii) the financial institution, municipality, or county to whom payments from a borrower on account of a project financed either by the board under Sub-Chapter 5 or by a municipality or county under sections 90-5-101 through 90-5-112, MCA, are proposed to be guaranteed by the board under Sub-Chapter 6.

(p) (n) 'loan participation' means loans or portions thereof ~~ought~~ purchased from a financial institution.

(q) (o) 'local government' means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(r) (p) 'locally owned enterprise' means any enterprise 51% of whose stock, partnership interests, or other

ownership interests are owned and controlled by residents of Montana.

(p) (q) 'long-term benefit to the Montana economy' means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the peoples of Montana, either directly or indirectly.

(q) (r) 'Montana economy' means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(r) (s) 'Montana in-state investment fund' means the fund established by 17-6-306, MCA.

(s) (t) 'Montana resident' means a person an individual who has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state is coupled with the intention to make it his permanent residence. Sojourners or persons who come to Montana solely in pursuance of financial assistance from the board or any contract or agreement to perform labor shall under no circumstances be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

(u) 'mortgage' means a pledge of property as security for a loan, whether in the form of a mortgage, deed of trust, or trust indenture, including a security agreement constituting a lien on the real or personal property encumbered thereby and the obligations secured thereby.

(t) (v) 'person' is any individual, sole proprietorship, partnership, corporation, or other entity which is authorized by law to transact business in Montana.

(u) (w) 'project' means the purpose for which the financing is to be used, including any property to be acquired and services to be obtained, and in an application under Sub-Chapter 4 or 5 is limited to projects as defined in 90-5-101, MCA.

(v) (x) 'project costs' means the costs of acquiring or improving any project, including the following:

(i) the actual cost of acquiring or improving real estate for any project;

(ii) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(iii) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(iv) bond reserves and premiums or fees for insurance, a letter of credit, or a guaranty of loan payments or lease rentals pledged to pay the bonds; and

(v) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding six months after completion of construction.

(y) 'qualified Montana capital company' means a company designated by the board as a qualified Montana capital company pursuant to the Montana capital companies act and rules adopted pursuant thereto.

(w) (z) 'SBA' means the United States Small Business Administration.

(x) 'short application' means the abbreviated submittal of information provided in Rule VI. Filing a short-application is a prerequisite to filing an application.

(y) (aa) 'small- and medium-sized business' means a business that has a net worth less than \$6 million; has an average net income, after federal income taxes, for the preceding two years of less than \$2 million (average net income to be computed without benefit of any carryover loss); and has less than 200 employees employed in Montana.

(2) The most current Standard Industrial Classification Manual published by the Office of Budget and Management Management and Budget of the Executive Office of the President shall be used to classify businesses for the purpose of implementing the provisions of statutes and these rules administered by the board. A copy of this publication is available for examination at the office of the board."

II. now "8.97.302 APPROVAL OF FINANCIAL INSTITUTIONS

(1) To participate in the programs of the board, financial institutions may shall apply to become approved financial institutions on forms approved by the board and provided by the administrator. The application shall include a loan participation and/or servicing agreement. The administrator will transmit the application together with a summary and recommendation to the board for a decision.

(2) The administrator shall maintain a list of approved financial institutions. The administrator may coordinate the approval of financial institutions with the board of investments, board of housing, department of natural resources and conservation or other state agencies that require approval of financial institutions. The board may restrict the approval of a financial institution to one or more specified sub-chapters of these rules if it is determined that the financial institution is ineligible for approval for purposes of other sub-chapters under existing law.

(3) The board, at its discretion, may suspend approval of financial institutions and discontinue purchasing certificates of deposit and loans from that financial institution when:

(a) any fees or expenses due the board by the financial institution remain unpaid for more than 30 calendar days

(b) the board determines that an unreasonable amount or percentage of loan payments remain has been delinquent for more than 90 calendar days- as determined by the board.

(c) the financial condition of the financial institution is such that further investment of funds in or purchases of loans from that financial institution is deemed imprudent by the board."

III. now "8.97.303 CONFIDENTIALITY OF INFORMATION (1) Unless otherwise required by law, the board will shall treat as confidential all information submitted by a lender and borrower except the following information (which will be included in a supplement to each short-application):

- (a) name and address of lender;
- (b) name and address of borrower;
- (c) short description of proposed project, including location of project;
- (d) amount of proposed loan;
- (e) information required to determine eligibility and preference under Rules ~~Xi~~ and ~~Xii~~, 8.97.402 and 403, A.R.M., and 17-6-302 (6), MCA, 17-6-304, MCA, 17-6-309, MCA;
- (f) the program(s) under which the lender or borrower are is applying.

(g) any other information in which the demand of individual privacy does not clearly exceed the merits of public disclosure; and

(h) any information in which the demand of individual privacy clearly exceeds the merits of public disclosure when the borrower has expressly waived his right to privacy.

(2) The board shall maintain public files including information contained in (1)(a-f), and shall also include a summary of board action regarding the application and the final interest rate established for a project and loan payment records on each completed application received containing the following information:

- (a) items (1)(a) through (h) of this rule;
- (b) all written documents received or prepared concerning items (1) (a) through (h) of this rule;

(c) the administrator's recommendation to the board regarding items (1)(a) through (h) and his recommendation for approval or denial of the application; and

(d) a summary of board action regarding the application, including the board's approval or disapproval of the application, the terms and interest rate of the financing, and the loan repayment record.

(3) This rule is based on the board's finding that beyond except for the information described in items (1)(a-f) through (h), the demands of individual privacy clearly exceed the merits of public disclosure of the personal, financial and business information that is contained in applications to the board."

IV. now "8.97.304 FALSE OR MISLEADING STATEMENTS (1) Any person who purposely or knowingly makes a false or

deceptive statement in an application or short-application or purposely or knowingly omits information necessary to prevent the statements in an application or short-application from being misleading may be prosecuted under section 45-6-317 and 45-7-203, MCA.

(2) The submittal submission of false, or misleading or deceptive information in an application or short-application is shall be grounds for rejection of the application or short-application and denial of further consideration."

V. now "8.97.305 UNIFIED APPLICATION PROCEDURES (1) Information on board programs, short-applications and applications can be obtained from the administrator, Montana Economic Development Board, or from approved financial institutions.

(2) The administrator shall prepare and distribute short-application forms and application forms that have been approved by the board for the programs established in Sub-chapters 4, 5, 6, & 7. The forms shall provide for adequate information on proposed projects, business principals including their business history, credit reports, tax returns, business plan, financial plan, feasibility studies, land and buildings, appraisals, leases, machinery, project timetable, proposed employees, local suppliers, potential taxes, potential benefits to the state, other business, credit or economic benefit information, and other information deemed necessary by the board to implement these rules. An application for any of the board's programs shall be submitted on the application form approved and provided by the board, shall be properly signed and certified by the borrower and the lender, and shall be accompanied by payment of a non-refundable application fee as specified in these rules.

(3) All programs in Sub-Chapters 4, 5, 6 & 7 require submission of both the short-application and application form except the following. An application signed by the lender shall constitute a commitment to originate the loan or enter into the credit arrangement on the terms specified in the application, subject to the board's participation.

(a) short-term certificates of deposit, which are placed on a bid or negotiated basis as provided in Rule XVI.
(b) purchase of federally guaranteed loans or Economic Development Certificates of Deposit, which require only the submission of short-application form.

(4) A short-application or application may be withdrawn by either the lender or borrower at any time prior to notice of the administrator's or board's decision on the application, but no fees theretofore paid will be refunded."

VI. SHORT APPLICATION is stricken in its entirety and replaced with the following new rule:

"8.97.306 REVIEW OF APPLICATION BY ADMINISTRATOR (1)

The administrator shall review in a timely manner each application to determine whether it is complete and whether the borrower, lender, and project are eligible for board investment and shall notify the lender of any deficiencies in the application.

(2) If a completed application is determined by the administrator to be ineligible for board investment, the lender will be timely notified of the ineligibility in a letter setting forth the reasons therefor. Upon receipt of the administrator's letter and within 30 days thereof, unless additional time is requested by the lender and granted by the board, the lender may resubmit the application with additional supporting material for a redetermination of eligibility by the administrator. An application may be resubmitted for an eligibility determination one time without paying an additional application fee.

(3) If the resubmitted application is deemed ineligible, the administrator will transmit the application, together with a summary of issues and a recommendation for action, to the board for its decision.

(4) If a completed application is determined by the administrator to be eligible for board investment, the administrator will transmit the application, together with a summary of issues and a recommendation for action, to the board for its decision.

(5) If in the process of reviewing the application unusual or extraordinary circumstances require the board to incur out-of-pocket expenses to complete the review, the board will so notify the lender, requesting permission to incur those specific, relevant, and reasonable expenses on the borrower's behalf. If within 15 days the lender or borrower do not agree to pay directly or to reimburse the board for the additional expenses, the application will not be further processed by the board. Application fees already paid will not be refunded."

Auth: 17-5-1521, 17-6-324, MCA Imp: 17-5-1504 (16), 17-5-1505, 17-6-310, MCA

"VII. APPLICATION is deleted in its entirety and replaced with the following new rule:

"8.97.307 BOARD REVIEW OF APPLICATION (1) At a meeting of which notice shall be given, the board shall consider the application transmitted to it by the administrator. At that meeting or at a subsequent meeting, the board shall decide whether to participate in the financing proposed in the application.

(2) The board shall timely notify the lender in writing of its decision. If the decision is adverse, the letter shall specify the reasons for which the board declined to

participate. If the decision is favorable, the board shall issue its commitment, setting forth the terms and conditions of its participation in the financing.

(3) An application may be withdrawn from consideration by the lender or borrower at any time prior to the time the board makes its determination of whether to participate. Once an application is withdrawn, it may not be resubmitted without the payment of an additional application fee. If a previously-withdrawn application is resubmitted, it will be processed as a new application.

(4) Upon receipt of an adverse decision by the board, and within 30 days thereof, unless additional time is requested and granted by the board, the lender may request the board to reconsider its decision and submit additional information relevant to the adverse decision.

(5) At a meeting of which notice shall be given, the board shall consider its previous decision in light of the additional information submitted. If the board declines the application a second time, it may be resubmitted only if an additional application fee is paid. The application will then be processed as a new application.

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1504 (16), 17-5-1505, 17-6-310, 17-6-315, MCA

VIII. now "8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULE

(1) Interest rates. The board shall adopt and periodically establish and distribute to financial institutions and make available to the public a schedule of all fees and charges for all programs and authorized interest rates for Sub-Chapters 4, 5, 6, and 7, authorized interest rates for its programs authorized in rules 8.97.406 through 8.97.410, A.R.M. In establishing those interest rates, the board will consider:

(a) interest rates available in Montana for other types of financing for similar purposes;

(b) interest rates available in the national money market;

(c) the effect of interest rates on the programs and objectives of the board; and

(d) the type of loan program being financed by the board.

(2) Service charges. The board may, by participation agreement, or loan agreement, limit the fees and charges of the financial institution for originating and servicing financial transactions. A lender originating a loan which the board has guaranteed or participated in under rules 8.97.406 through 8.97.410 may charge the borrower a rate of interest no more than two percent above the board's interest rate on the portion of the loan which the board participates in or supports with its investment.

(3) Application fees. Non-refundable application fees for the programs of the board are as follows:

(a) For the purchase of federally guaranteed loans authorized by rule 8.97.407, A.R.M.:

To the board	\$100
To the lender	up to \$100

(b) For the placement of economic development linked deposits authorized by rule 8.97.406, A.R.M.:

To the board	\$100
To the lender	up to \$500

(c) For other board investments authorized by rules 8.97.408 through 8.97.410:

To the board	\$500
To the lender	up to \$500

(4) Guarantee fee. To secure a board guarantee of up to 80 percent of the principal of a loan qualifying for board participation under rule 8.97.409, A.R.M., the lender originating the loan shall pay a guarantee fee equal to one percent per annum of the unpaid principal balance of the guaranteed portion of the loan.

(5) Basic commitment fee. Financial transactions participated in by the board under these rules must be closed within 90 calendar days of the board's issuance of its commitment. In the event such loans or financial transactions are not closed within that time, the board may extend its commitment for an additional period of time at a fee herein specified, if the board determines such extension is warranted and in the best interest of the board's programs. The fee to be charged for extension of a commitment shall be calculated on the basis of the amount committed at the following rates:

<u>(a) Period of Commitment</u>	<u>Rate</u>
<u>91 to 180 calendar days</u>	<u>1 1/2% of the amount committed</u>
<u>181 to 270 calendar days</u>	<u>1% of the amount committed</u>
<u>271 to 360 calendar days</u>	<u>1 1/2% of the amount committed</u>

(b) Construction loan 'takeout' fee. In the case of a construction loan 'takeout' commitment by the board, the underlying construction loan must be closed within 90 calendar days of the board's issuance of its commitment. At the time of such closing, the borrower shall pay to the board a commitment fee based on his estimated construction schedule and calculated as set forth in (5)(a) above. If construction has not been completed by the expiration of the commitment period, the borrower shall pay an additional commitment fee for the additional period needed to complete the project, such fee to be calculated in accordance with (5)(a) above.

(6) Interest rate fee. At the time of submission of an application to the administrator, the borrower, through payment of a non-refundable fee, may fix a board interest rate

for the investment proposed in the application at the rate in effect the date the fee is received by the board. The acceptance of the fee does not obligate the board to make the investment proposed in the application. From 0 to 90 days the fee is 1/4% of the amount committed. The fees in subsection (5) (a) apply for periods over 90 days."

Auth: 17-5-1521, 17-6-324,, MCA Imp: 17-5-1504 (16), 17-6-315, MCA

IX. now 8.97.309 NON-DISCRIMINATION Borrowers must also agree to comply with section 9 4, article I II of the Constitution of Montana."

Rules under Sub-Chapter 4, entitled Montana In-State Investment Fund,

X. now "8.97.401 BOARD IN-STATE INVESTMENT POLICY

(1) As required by section 17-6-304, MCA, the objectives of the board for the investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

(2) The statement of intent of House Bill 100, Chapter 677, Montana Session Laws, 1983 indicates that the permissible investments of the board should 'be based on the long-term benefit to the Montana economy.' The board has determined that investment in 'basic' economic activity, ~~will best fulfill this mandate~~ import substitution activity, and the retail and wholesale distribution of Montana-made goods will strengthen the Montana economy, has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the peoples of Montana, either directly or indirectly.

~~(a)~~ (a) Basic economic activity is defined by the board as ~~(a)~~ any business activity conducted in the state for which 50% or more of the gross receipts revenues are derived from the sale of products or services for use or consumption outside of Montana; ~~or, out-of-state sources.~~

~~(b)~~ manufacturing or wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts. This definition is intended to include but not be limited to businesses engaged in one or more of the following activities:

- (i) manufacturing;
- (ii) agricultural, fishery, or forestry production and processing;
- (iii) mineral production and processing,
- (iv) recognized nonfossil forms of energy generation as defined in 15-32-102 (5), MCA;
- (v) transportation; and

(vi) tourism.

(b) 'Import substitution activity' is defined by the board as the in-state production of a good or service 50% or more of which will be purchased by in-state users in place of like or similar goods or services which previously would have been purchased from out-of-state sources.

(c) 'retail and wholesale distribution of Montana-made goods' is defined by the board as any retail or wholesale distribution activity conducted in the state for which the sale of goods produced in Montana comprise 50% or more of gross revenues.

(3) The board has determined that its programs are primarily designed to make available fixed rate loans, and it will target its funds accordingly. Variable rate loans will be considered only in exceptional circumstances.

XI. now "8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY

The board shall determine that an application for financing is eligible under this Sub-Chapter only if it finds that:

(1) The financing will be made in the Montana economy with special emphasis on new or expanding locally-owned enterprises and will further the objectives of section 17-6-304, MCA, which provides: 'Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.'

(2) The financing is permitted by state law ~~or~~ and rule of the board.

(3) All financing except short-term certificates of deposit must be for the benefit of a business engaged in 'basic' economic activity, import substitution activity, or the wholesale or retail distribution of Montana-made goods as defined in rule 8.97.401, A.R.M..

(4) If a loan participation under rules ~~XX~~ 8.97.408 and 8.97.409 A.R.M., a financial institution approved by the board has originated the loan and is offering a participation of not more than 80% of the loan to the Montana in-state investment fund on terms such that the fund shall participate ratably in the security for the loan.

(5) The financing will not result in the borrower receiving a benefit from or incurring a debt to the Montana in-state investment fund in excess of 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund; and

(6) The financing is consistent with that degree of judgment and care, under circumstances from time to time prevailing, which individuals of prudence, discretion, and intelligence exercise in the management of their own affairs,

not for speculation but for investment, considering the following factors:

- (a) the probable safety of their capital;
- (b) the probable income to be derived, taking into consideration the preservation of purchasing power of capital during periods of sustained high monetary inflation; and
- (c) the long-term benefit to the Montana economy."

XII. now "8.97.403 PREFERENCES (1) As provided in section 17-6-309, MCA, when deciding which of several eligible investments of equal or comparable security and return to finance when sufficient funds are not available to finance all possible investments, the board shall give preference to investments that:

(a) are for locally owned enterprises that are either expanding or establishing new operations;

(b) provide jobs that will be substantially filled by current Montana residents, as opposed to jobs that will be filled by non-residents coming into the state to fill such jobs;

(c) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(d) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(e) benefit small- and medium-sized businesses."

XIII. APPLICATION PROCEDURES FOR THE INSTATE INVESTMENT FUNDS This rule is not being adopted as all information contained herein is contained in rules 8.97.305, 306 and 307.

XIV. FEES This rule is not being adopted as all information contained herein is contained in rule 8.97.308.

XV. now "8.97.404 INVESTMENT AUTHORIZED BY RULE

(1) In addition to the investments authorized as permissible investments under section 17-6-211, MCA, the board authorizes the investments and deposits established in rules ~~XXI~~ 8.97.405 through ~~XXII~~ 8.97.411."

XVI. now 8.97.405 SHORT-TERM CERTIFICATE OF DEPOSIT PROGRAM adopted as noticed.

XVII. now "8.97.406 ECONOMIC DEVELOPMENT CERTIFICATES OF LINKED DEPOSIT PROGRAM (1) The board will may place Economic Development Certificates of Linked Deposits (EDCD) at an interest rate determined in accordance with rule 8.97.308, A.R.M. with approved financial institutions who contract with the board to utilize the receipts to finance long-term fixed rate loans to small- and medium-sized businesses that meet the requirements of Rule X 8.97.401.

The financial institution retains all risk on any loans financed with the proceeds of an Economic Development Certificate of Linked Deposit.

(2) The board's buy-rate will be established periodically by vote of the board and distributed as provided in Sub-Chapter 3, Rule VIII.

(3) The terms and conditions for maximum term for an Economic Development Certificate of Linked Deposits is ten years shall be determined by the board, but in no case shall the maximum term exceed twenty years.

(4) (3) Funds from The Economic Development Certificates of Linked Deposit funds may be used by financial institutions to make loans for working capital, interim construction, inventory, site development, acquisition of machinery, and equipment, and buildings or other types of loans or the financial institution may agree to issue a letter of credit or comparable instrument to secure a loan made for such purposes.

(5) Financial institutions desiring to participate in the Economic Development Certificates of Deposit program shall submit a short-application that shall identify the loan that will be made with the proceeds of the Economic Development Certificate of Deposit.

(6) (4) Economic Development Certificates of Linked Deposits are subject to the collateral and pledging requirements provided in 17-6-101 through 17-6-105, MCA, or such other collateral and pledging requirements as may be necessary to secure the board's investment."

XVIII. now "8.97.407 FEDERALLY GUARANTEED LOAN PROGRAM

(1) The board may purchase participation in fixed rate loans may be purchased by the board that are guaranteed by the United States or an agency or instrumentality of the United States, including but not limited to the Small Business Administration, the National Marine Fisheries Service, the Farmers Home Administration and the Federal Aviation Administration.

(2) The board's buy-rate will be established periodically by vote of the board and distributed as provided in Sub-Chapter 3, Rule VIII. Lenders originating loans under this program are subject to the service charge limits set forth in Rule 8.97.308 (2) A.R.M."

XIX. now "8.97.408 503 LOAN PARTICIPATIONS The board may purchase up to an 80% participation in participating interest in a financial institution's portion of a project financing financed under the Small Business Administration 503 loan program."

XX. now "8.97.409 LOAN PARTICIPATIONS (1) All business loan participations must conform to section 17-6-211

(f) MCA, and the requirements of this rule. The board may purchase from an approved financial institution a participation interest of up to 80 percent in a commercial loan that meets the requirements of this rule.

(2) No offering of less than \$75,000.00 will be considered. Only a loan in which the financial institution agrees to retain at least a 20 percent interest and which it will service in its entirety will be considered for participation.

(3) Only participating offerings in which the lender retains at least 20 percent of the offering and agrees to service the entire loan will be considered. The maximum loan-to-value ratio permitted under this program is 75%, using the lower of appraisal value or cost/purchase to determine value.

(4) A maximum of 75 percent loan-to-value ratio using the lower of the appraised value or cost/purchase amount. The board requires an MAI approved appraiser or an appraiser acceptable by the board.

(5) The maximum amortization to be considered will be thirty period for the loan shall be twenty years.

(6) (5) Land development loans will not be considered unless such loans support the development of a basic or import substitution industry as defined in Sub-Chapter 4, X 8.97.401, A.R.M.

(6) The board may require personal guarantees on loans.

(7) All offerings involving closely held corporations must include personal, as well as corporate or partnership signatures, on the loan documentation.

(8) Private mortgage insurance may be required as an additional credit guarantee.

(8) The payment of loan principal and interest shall be secured by a mortgage on the property being financed and additional collateral, if deemed necessary by the board, and shall be subject to any other terms and covenants the board deems necessary to protect its investments.

(9) Mortgages shall contain complete amortization provisions satisfactory to the board. Working capital may be financed only in conjunction with loans for real or personal property, in a ratio to be determined by the board.

(10) Mortgages shall be in the form and contain the terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, acceleration of maturity, secondary liens and other matters the board prescribes.

(11) Mortgages shall be secured as to repayment by a mortgage or other security instrument in the manner the board determines is feasible to assure timely repayment under the loan agreement.

(12) (11) A prepayment penalty may be charged.

~~(13)~~ (12) Loans for construction financing will not be made."

XXI. now "8.97.410 GUARANTEED LOAN PROGRAM (1) The board may issue a guarantee to the lender in an amount up to 80% of the principal of a loan qualifying for board participation under these rules.

(2) The loan underwriting criteria and collateral requirements for the guaranteed loan program will be the same as those used for the loan participations authorized in Rule XX 8.97.409.

(3) The lender may exercise the guarantee only after the liquidation of all collateral securing the loan All guarantees issued by the board shall provide that a financial institution to which the board has issued a guarantee may at any time at its discretion request the board to purchase the guaranteed portion of the loan at the interest rate established by the board when it issued its commitment.

(4) Board guarantees are subject to the collateral and pledging requirements provided in 17-6-101 through 17-6-105, MCA. The guarantee fee provided for in rule 8.97.308 (5), A.R.M., shall be paid by the lender originating the loan being guaranteed and shall not be passed on to the borrower.

(5) Board guarantees are subject to the investment limitations provided in 17-6-311, MCA."

XXII. PURCHASE LEASE-BACK OF LAND AND BUILDINGS is not being adopted.

XXIII. COMMITMENT OF FUNDS This rule is not being adopted as the information is contained in rule 8.97.308 (5). A new rule is being adopted which will read as follows:

"8.97.411 BONDS AND NOTES OF BOARD The board may invest its funds in bonds, notes or other obligations of the board issued pursuant to Title 17, Chapter 5, Part 15, MCA to provide funds for the capital reserve account and the economic development guarantee fund created pursuant to and authorized thereby."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

3. Comments and responses from hearing and letters are as follows:

COMMENT: The fees and service charges should be specified in the rules.

RESPONSE: The board amended rule 8.97.308 to include specific fees and service charges for board programs. The proposed fees and service charges were distributed and explained at the public hearing on January 20, 1984. The statement of intent of HB 1 required that "... the level of service fees be set to cover the costs associated with

processing the investment and be similar to those charged by financial institutions" and the statute required in section 17-6-315, MCA, "the board shall by rule establish reasonable service fees that may be charged on loans made from the Montana in-state investment fund."

COMMENT: "Workplace" should be included in the definition of "clean and healthful environment"

RESPONSE: The definition provided for in the rules is a quote from the statute. The board believes that the requirement for a healthful "workplace" is covered by the requirement for compliance with federal and state health standards and that it lacks the authority to revise statutory definition.

COMMENT: Restrict definition of Montana resident to a person who has resided in the state for at least one year immediately before submitting an application and specify that at least 60% of jobs created by the program must be filled by Montanans.

RESPONSE: The board is satisfied that the proposed definition which is based on existing state statutes is satisfactory and that a more restrictive definition may be unconstitutional.

COMMENT: Insurance companies were dropped from the definition of financial institutions by the legislature.

RESPONSE: The board has eliminated insurance companies from the definition of financial institutions in order to conform to legislative action.

COMMENT: A series of comments were offered urging the board to lower the size of businesses defined as small and medium sized, these included:

a. Define "small" as 1-20 employees, "medium" as 21-100 employees and drop the net worth criterion.

b. Retain the definition, but add "Preference shall be given to businesses that are small and medium-sized by Montana standards...The...board will attempt to invest its funds in businesses that are small (1-10 employees) and medium-(11 to 50 employees) sized"

c. Define "small" as 0-9 employees and "medium" as 10-75 employees.

RESPONSE: The board reviewed these and other alternatives and determined that the definition proposed in the original rule identified the class of Montana businesses that would benefit from the board's programs and strengthen and diversify the Montana economy. The board feels that a purely statistical approach to defining small and medium size businesses would exclude too many Montana businesses.

COMMENT: The two-step application process should be replaced with a single-step application process.

RESPONSE: The board adopted a series of amendments to eliminate the two step-process and replace it with a single application process because it determined that such a process

would be more convenient for the board, borrowers, and lenders.

COMMENT: The "servicing spread" should be increased from 2% to 5% to facilitate participation of capital companies in originating loans.

RESPONSE: The board feels that the 2% spread is adequate compensation for financial institution, but recognizes that some special rules may be needed to facilitate the participation of capital companies, but the board is not prepared at this time to adopt such rules.

COMMENT: Authorize a \$500 fee for institutions financial on economic development linked deposits because they must do a complete credit review.

RESPONSE: The board amended the proposed rule to allow a \$500 fee because of the financial institutions need to do a complete credit review on linked deposits.

COMMENT: The citations to the non-discrimination clause of the constitution were inaccurate.

RESPONSE: The rule was amended to correct the citation.

COMMENT: Specify that 50% of the money shall be invested in businesses with fewer than 50 employees.

RESPONSE: The board feels that the restriction on its discretion in considering projects is not appropriate.

COMMENT: Disallow investment in resource extraction firms.

RESPONSE: The board feels that this restriction on its discretion in considering projects is not appropriate. The statute and rules provide adequate safeguards regarding environmental protection.

COMMENT: Set aside a specific allocation of the fund for minorities and tribal governments; or to high unemployment areas.

RESPONSE: The legislature considered and rejected geographic targeting of the loan funds. The board feels that such targeting by rule is also not appropriate.

COMMENT: A series of comments were offered regarding the definitions of businesses eligible for financing. Most encourage the board to drop or modify the definition of basic economic activities. These included:

a. In section (2) of the proposed rules, omit "basic economic activity" and insert "the following economic activities". Omit the first line of section (3), retain (a) as 2(a), revise (b) to read: "Any business activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of Montana produced products or services within Montana to purchasers who would otherwise make such purchases of products or services outside of Montana."

b. Add a new subsection (c): "Business activities in the service sector which create jobs".

c. Drop the "basic economic activity" requirement for a broader definition of eligible businesses that stresses:

"Enterprises which promise to stabilize the economy over the long-term, rather than perpetuating the boom and bust cycle..."; "maintaining a quality environment and style of life"; and "information age" activities which are increasingly going to dominate the economy of the future."

d. Import substitution activity is defined as the in-state production of a good or service 50% or more of which is for use in-state, and for which such good or service was previously produced out-of-state.

RESPONSE: The board revised the proposed definition to clearly include import substitution and clarified the language to indicate that service businesses are basic activities if 50% or more of the gross revenues are derived from out-of-state sources and the board emphasizes that retail and wholesale businesses that distribute Montana produced goods is also eligible under the rules. The board is an economic development agency, not an alternative to the local financial institutions. Its responsibility is to strengthen and diversify the state's economy. New and emerging sectors such as communications are eligible as long as 50% of their revenues are derived from out-of-state or they are providing a good or service that would have been purchased previously from out-of-state sources.

COMMENT: Health care services and facilities should be included as eligible activities.

RESPONSE: The board deferred action on this comment because of lack of adequate information.

COMMENT: Add energy conservation businesses.

RESPONSE: There is a special state loan and grant program for energy conservation businesses. There is a preference for business that emphasize energy efficiency.

COMMENT: A series of new preferences were proposed:

- a. preference to businesses that pay prevailing wage for that industry.
- b. preferences to businesses that meet or exceed affirmative action policies.
- c. preference to energy conservation businesses.
- d. preference to businesses in high unemployment areas.
- e. require businesses to demonstrate that they have affirmative action plans to be eligible for board financing.

RESPONSE: These proposals were rejected by the legislature. The board feels that it does not have the authority to add requirements rejected by the legislature.

COMMENT: Limit short-term certificates of deposit to 90 days.

RESPONSE: The board feels that a one year maximum limit will provide it appropriate flexibility in managing its funds although most short term deposits will be for a shorter duration.

COMMENT: Increase the maximum term for economic development linked deposits from 10 to 25 years.

RESPONSE: The board has increased the term from 10 to 20 years as a more appropriate limit.

COMMENT: The pledging requirements should be modified to permit non-depository institutions to participate in the economic development linked deposit program.

RESPONSE: The rules were amended to provide that the board may establish collateral and pledging requirements necessary to secure the board's investments.

COMMENT: Allow working capital loans.

RESPONSE: The rules were amended to permit working capital loans in conjunction with loans for real or personal property. This can also be done under the federally guaranteed program and the economic development linked deposit program.

COMMENT: Comments were received to remove or lower the minimum size requirement for loan participations.

RESPONSE: The board eliminated any minimum size requirement.

COMMENT: Lower maximum term on loans to 20 years.

RESPONSE: The board lowered the maximum term to 20 years.

COMMENT: The collateral requirements for certificates of deposit need to be coordinated with the Board of Investments.

RESPONSE: The board intends to closely coordinate collateral requirements with the Board of Investments.

There were other recommendations for editorial, grammatical and style changes that were incorporated in the rules by the board.

MONTANA ECONOMIC DEVELOPMENT
BOARD

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 21, 1984

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE REPEAL OF
repeal of Rule 18.8.516	)	RULE 18.8.516, HAYSTACK
regarding haystack movers	)	MOVERS - COMMERCIAL SELF-
and Rule 18.8.1001 regard-	)	PROPELLED AND RULE
ing mobile home oversize	)	18.8.1001, OVERSIZE PERMIT
permits)	

TO: All Interested Persons:

1. On January 12, 1984, the Department of Highways published notice of a proposed repeal of Rules 18.8.516 and 18.8.1001 concerning commercial haystack movers and oversize permits at page 11 of the 1984 Montana Administrative Register, issue number one.

2. The agency has repealed the rules as proposed. They are found on pages 18-295, 18-296, and 18-303 of the Administrative Rules of Montana.

3. No comments or testimony were received.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 18.8.502, 18.8.503,
18.8.502, 18.8.503,	)	18.8.513, 18.8.514,
18.8.513, 18.8.514,	)	18.8.601, 18.8.801,
18.8.601, 18.8.801,	)	18.8.1004 AND 18.8.1007,
18.8.1004 and 18.8.1007	)	ALL CONCERNING OVER-
regarding overdimensional	)	DIMENSIONAL LOAD AND
loads and insurance	)	INSURANCE REQUIREMENTS
requirements)	

TO: All Interested Persons:

1. On January 12, 1984, the Department of Highways published notice of a proposed amendment to Rules 18.8.502, 18.8.503, 18.8.513, 18.8.514, 18.8.601, 18.8.801, 18.8.1004 and 18.8.1007 concerning overdimensional loads and insurance requirements at pages 11 through 17 of the 1984 Montana Administrative Register, issue number one.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State February 21, 1984.

Montana Administrative Register

4-2/29/84

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE AMENDMENT
ment of Rule 20.7.102 which	)	OF RULE 20.7.102
sets forth the prisoner	)	(Prisoner Application
application procedure for	)	Procedure, General Statute
the supervised release	)	Requirements)
program.)	

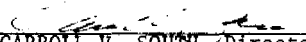
TO: All Interested Persons.

1. On December 29, 1983, the Department of Institutions published notice of a proposed amendment to rule 20.7.102 concerning the prisoner application procedure for the supervised release program at page 1899 of the 1983 Montana Administrative Register, issue number 24.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is Section 46-23-405 MCA, and the rule implements Sections 46-23-405, 411 MCA.



CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State February 21,
1984.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPT-	)	NOTICE OF ADOPTION of Rule I
TION of Rule I (42.15.415)	)	(42.15.415) relating to a
relating to a deduction from	)	deduction from individual
individual income tax for the	)	income tax for the sale of
sale of land to beginning	)	land to beginning farmers.
farmers.)	

TO: All Interested Persons:

1. On December 15, 1983, the Department of Revenue published notice of the proposed adoption of Rule I (42.15.415) relating to a deduction from individual income tax for the sale of land to beginning farmers at pages 1788 through 1800 of the 1983 Montana Administrative Register, Issue number 23.

2. The Department has adopted rule I (42.15.415) as proposed except for the following changes:

42.15.415 DEDUCTIONS FOR SALE OF LAND TO A BEGINNING

FARMER (1)(a) A deduction from adjusted gross income is allowed as a result of for each sale of 80 acres or more if approved by the agricultural loan authority. The deduction is the amount which would have to be included in adjusted gross income as ordinary income and the taxable portion of capital gains resulting from the sale, up to a maximum deduction of \$50,000.

(b)--The deduction may be taken only in the year of the sale.

(i)--If income from the sale is received in installments, a The deduction may will be taken in a each year a payment is received until the loan is repaid or the deductions for all years equals equal \$50,000.

(ii)--if the income is not received in installments, the deduction cannot be carried to another year.

Subsections (2) through (6) remain the same.

3. References to taking the deduction in a single year are deleted from subsection (1) because they are unnecessary. Section 80-12-211, MCA, permits deductions only when a long term contract exists. With such a contract, there will be payments in more than one year. Consequently, the deduction will be taken over several years.

Public comment on this rule was received from an interested party who suggested that a retroactive clause be added to the rule to allow a taxpayer to claim the deduction for sales of land made on or after October 1, 1983. The party was concerned that because no rules had been adopted by either the Department of Revenue or the Agricultural Loan Authority before December 31, 1983, they would be unable to claim the deduction for a sale made between October 1, 1983, and December 31, 1983.

Response: The tax deduction for the sale of land to beginning farmers is available for sales approved after October 1, 1983. The availability of the deduction is not hinged upon the adoption of rules by the Department.

The critical consideration for availability of the deduction is approval of a sale by the Agricultural Loan Authority. Once the sale is approved, a tax deduction can be taken.

For sales made between October 1, 1983, and the effective date of the rules, the Department of Revenue will honor a tax deduction for a sale if it is approved by the Agricultural Loan Authority and otherwise meets the standards of the law and implementing regulations.

4. The authority for the rule is § 15-1-201, MCA, and the rule implements § 80-12-211, MCA.

IN THE MATTER OF THE ADOPT-	)	NOTICE OF ADOPTION of Rule I
TION of Rule I (42.23.424)	)	(42.23.424) relating to a
relating to a deduction from	)	deduction from corporation
corporation license tax for	)	license tax for the sale of
the sale of land to a begin-	)	land to a beginning farmer.
ning farmer.)	

TO: All Interested Persons:

1. On December 15, 1983, the Department of Revenue published notice of the proposed adoption of Rule I (42.23.424) relating to a deduction from corporation license tax for the sale of land to beginning farmers at pages 1796 and 1797 of the 1983 Montana Administrative Register, issue number 23.

2. The Department has adopted rule I (42.23.424) as proposed except for the following changes:

42.23.424 SALE OF LAND TO A BEGINNING FARMER - CORPORATION LICENSE TAX DEDUCTION (1)(a) A deduction from Montana net income is allowed as a result of for each sale of 80 acres or more approved by the agricultural loan authority. The deduction is the amount which would have to be included in net income resulting from the sale, up to a maximum deduction of \$50,000.

(b)--The deduction may be taken only in the year of the sale.

(i)--If income from the sale is received in installments, a The deduction may will be taken in a each year a payment is received until the loan is paid or the deductions for all years equals equal \$50,000.

(ii)--if the income is not received in installments, the deduction cannot be carried to another year.

(c) (b) To the extent that a net operating loss is created as a result of the deduction, such loss is not available for carryover or carryback provisions.

Subsections (2) and (3) remain the same.

3. References to taking the deduction in a single year are deleted from subsection (1) because they are unnecessary. Section 80-12-211, MCA, permits deductions only when a long term contract exists. With such a contract, there will be payments in more than one year. Consequently, the deduction will be taken over several years.

No comments or testimony were received.

4. The authority for the rule is § 15-1-201, MCA, and the rule implements § 80-12-211, MCA.


ELLEN FFAVER, Director
Department of Revenue

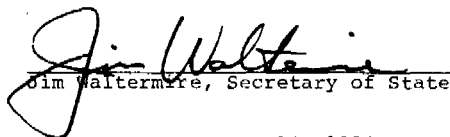
Certified to Secretary of State 02/21/84

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE ADOPTION
adoption of an interpretive	)	OF AN INTERPRETIVE RULE REL-
rule relative to graphics and	)	ATIVE TO ABSENTEE BALLOT
information required to be	)	ENVELOPES - ARM 44.3.1401
printed on ballot envelopes)	
for electors in United States)	
service.		

TO: All Interested Persons:

1. On December 15, 1983 and January 12, 1984, the Secretary of State published notice of a proposed adoption of a rule in the above matter at page 1802 of issue 23 and page 18 of issue 1 of the 1983 and 1984, respectively, Montana Administrative Register.
2. The Secretary of State has adopted the rule as proposed.
3. No written comments or testimony were received.


Jim Waltermire, Secretary of State

Certified to the Secretary of State February 14, 1984

VOLUME NO. 40

OPINION NO. 34

CITIES AND TOWNS - Request by private property owner for establishment of reserved spaces for handicapped persons;

CITIES AND TOWNS - Authority to enforce handicapped parking privilege on private property;

CITIES AND TOWNS - Necessity of ordinance to implement enforcement powers concerning handicapped parking privilege;

PHYSICALLY HANDICAPPED - Special parking privilege;

POLICE - Enforcement powers concerning handicapped parking privilege;

MONTANA CODE ANNOTATED - Sections 45-2-101(36), 49-4-301, 49-4-302, 49-4-307;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 42 (1977);

1983 MONTANA LAWS - House Bill 232.

- HELD:
1. Under section 49-4-302, MCA, a request by a private property owner for establishment of special parking spaces reserved for handicapped persons on private property available for public use should be made to the governing body of the local government unit.
 2. A city has authority to enforce the prohibition in section 49-4-302(2), MCA, on private property available for public use, and such enforcement does not depend upon enactment of local implementing ordinances.

17 February 1984

David Gliko, Esq.
Great Falls City Attorney
Post Office Box 5021
Great Falls MT 59403

Dear Mr. Gliko:

You have requested my opinion concerning questions which I have phrased as follows:

1. Under section 49-4-302, MCA, to whom should a private property owner submit a request for establishment of special parking spaces reserved for handicapped persons on private property available for public use?
2. Does a city have authority to enforce the prohibition in section 49-4-302(2), MCA, on private property available for public use? If so, must the city enact an ordinance to implement such enforcement powers?

The 1983 Legislature passed House Bill 232, which broadened the special parking privileges of handicapped persons. Section 49-4-301, MCA, directs the Division of Motor Vehicles, Department of Justice, to issue special parking permits to persons with permanent or temporary physical handicaps. Amended section 49-4-302(1), MCA, provides:

The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use. [Emphasis added].

Your first question requires an interpretation of the emphasized language quoted above. The fundamental rule of all statutory construction is that the intent of the Legislature controls. To ascertain that intent, it is necessary to examine the language employed and the purpose to be served by the statute. State ex rel. Krona v. Holmes, 114 Mont. 372, 136 P.2d 220 (1943). The meaning of the phrase "upon the request of the private property owner" is unclear, since the statute does not specify to whom the request must be made. When there is doubt about the meaning of a phrase in a statute, the history of the statute may be considered to ascertain the intent of the Legislature. State v. State

Board of Equalization, 93 Mont. 19, 17 P.2d 68 (1933). In committee hearings on House Bill 232, the bill's sponsor noted that the local governing body would designate areas for establishment of parking spaces reserved for handicapped persons. Additional comments by legislators considering the bill indicate an intent to place control over implementation of the statutory provisions concerning the handicapped parking privilege in local officials. Subsection (3) of section 49-4-302, MCA, permits the governing body of a city, town, or county to exempt vehicles displaying a handicapped parking permit from the normal time limitations imposed on vehicles parked on public streets. Again, this manifests an intent by the Legislature to place control over implementation of the handicapped parking privilege in local officials. A statute must be considered in its entirety, and a phrase of doubtful meaning must be given a construction which will enable it to be harmonized with the whole statute. McClanathan v. Smith, 37 St. Rptr. 113, 606 P.2d 507 (1980). Consideration of all these factors leads me to conclude that the Legislature intended a request by a private property owner to be made to the governing body of the local government unit, which would include a county, city, or town.

Your second question concerns the authority of cities to enforce the statutory prohibition in section 49-4-302(2), MCA, which provides:

No vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

The tone of your letter indicates your main concern to be whether city police officers are authorized to enforce the new law on "private property available for public use," e.g., parking lots.

Section 49-4-307, MCA, establishes a penalty for violation of the statute: "A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of not less than \$10 or more than \$100." The Legislature has declared a violation of the statute to be a misdemeanor. It is

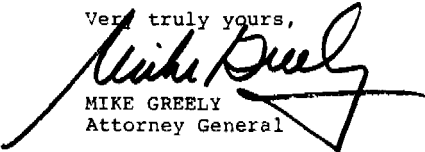
therefore a violation of the state criminal law. See § 45-2-101(36), MCA, and State ex rel. Streit v. Justice Court, 45 Mont. 375, 381, 123 P. 405, 406 (1912). The Montana Supreme Court has recognized that municipal police officers, as peace officers, are obligated to enforce the State's laws within their territorial jurisdiction. Andrieux v. City of Butte, 44 Mont. 557, 560, 121 P. 291, 292 (1912); State ex rel. Quintin v. Edwards, 38 Mont. 250, 265-66, 99 P. 940, 944-45 (1909). Section 49-4-302(2), MCA, expressly includes reserved parking spaces located on private property within the proscription established by the statute. City police officers may therefore enforce the new laws on private property, such as parking lots, as well as on public streets, within their territorial jurisdiction.

You also inquire whether a city ordinance is required to implement such enforcement powers. A city ordinance, the object of which would be to implement enforcement powers which already exist as noted above, would be redundant and unnecessary. See generally 37 Op. Att'y Gen. No. 42 (1977).

THEREFORE, IT IS MY OPINION:

1. Under section 49-4-302, MCA, a request by a private property owner for establishment of special parking spaces reserved for handicapped persons on private property available for public use should be made to the governing body of the local government unit.
2. A city has authority to enforce the prohibition in section 49-4-302(2), MCA, on private property available for public use, and such enforcement does not depend upon enactment of local implementing ordinances.

Very truly yours,


MIKE GREELY
Attorney General

4-2/29/84

Montana Administrative Register

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of 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 ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1983. This table includes those rules adopted during the period October 1, 1983 through December 31, 1983, 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 December 31, 1983, 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 1983 and 1984 Montana Administrative Registers.

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