MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 2.32.101 concerning the adoption of the Uniform Building Code by reference	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 2.32.101 concerning the Uniform Building Code NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 4, 1984 the Building Codes Division proposes to amend rule ARM 2.32.101, Incorporation by Reference of Uniform Building Code which adopts the Uniform Building Code, 1982 Edition, by reference.

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

2.32.101, INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) (a) through (d) remains the same.

(e) Section 3305(h) Openings. 1. Doors. of the Uniform Building Code, of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in Section 50-5-101, Montana Code Annotated (MCA). Section 50-5-101, MCA defines "health care facility" as any building used to provide health services, medical treatment, nursing, rehabilitative, or preventive care to persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, out-patient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

3. The Division is proposing this amendment to the rule in order to comply with the Legislative change to Section 50-60-205, MCA, passed during the 48th Legislature, through House Bill No. 361 (Chapter 168, Laws of 1983).

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than June 4, 1984.

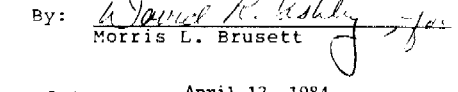
5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration,

Capitol Station, Helena, Montana 59620, no later than June 4, 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 750 persons based on the population of Montana.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA, and the rule implements Sections 50-60-103 and 50-60-104, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: 
Morris L. Brusett

Certified to the Secretary of State April 12, 1984

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the repeal of rule ARM 2.32.210 concerning the review of school plans by the Division	)	NOTICE OF PROPOSED REPEAL OF RULE ARM 2.32.210 concerning review of school plans
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 4, 1984 the Building Codes Division proposes to repeal rule ARM 2.32.210, School Plans.

2. The rule proposed to be repealed is on page 2-2693 of the Administrative Rules of Montana.

3. The Division is proposing to repeal this rule to comply with the Legislative change to Section 20-6-622, Montana Code Annotated, passed during the 48th Legislature, through House Bill No. 315 (Chapter 274, Laws of 1983), which prohibits the Division from reviewing school plans in areas where there is a local government code enforcement program.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than June 4, 1984.

5. If a person who is directly affected by the proposed repeal 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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than June 4, 1984.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 750 persons based on the population of Montana.

7. The authority of the agency to make the proposed repeal is based on Section 50-60-302, MCA, and the rule implements Sections 50-60-302 and 20-6-622, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: _____

Certified to the Secretary of State April 12, 1984

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 2.32.401 concerning the adoption of the National Electrical Code by reference.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.401 concerning the National Electrical Code

TO: All Interested Persons:

1. On June 4, 1984 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.401, National Electrical Code.

2. The proposed amendment replaces the present rule ARM 2.32.401 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1984 Edition of the National Electrical Code, by reference.

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

2.32.401 NATIONAL ELECTRICAL CODE (1) The department of administration, building codes division, hereby adopts and incorporates herein by reference the standards adopted by the national fire protection association for electrical installations on May ~~21~~ 19, ~~1980~~ 1983, appearing in Pamphlet NFPA 70 (~~1981~~ 1984), under the title of National Electrical Code ~~1981~~ 1984. The National Electrical Code ~~1981~~ 1984 is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code ~~1981~~ 1984 may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, ~~470 Atlantic Avenue~~ Batterymarch Park, ~~Boston~~ Quincy, Massachusetts ~~02210~~ 02269.

4. The Division is proposing this amendment to its rule to keep the state standard current with modern technology by adopting the latest available edition of the National Electrical Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than June 4, 1984.

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-203 and 50-60-603, MCA and the rule implements Sections 50-60-203 and 50-60-603, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett

Certified to the Secretary of State April 12, 1984

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 2.32.501 concerning the adoption of the Standard For Recreational Vehicles, NFPA 501C/ANSI A119.2 by reference	NOTICE OF PUBLIC HEARING ON PPOPOSED AMENDMENT OF RULE ARM 2.32.501 concerning the Standard For Recreational Vehicles

TO: All Interested Persons:

1. On June 4, 1984 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.501, Incorporation By Reference of NFPA 501C/ANSI A119.2, Standard For Recreational Vehicles.

2. The proposed amendment replaces the present rule ARM 2.32.501 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1982 Edition of NFPA 501C/ANSI A119.2, Standard For Recreational Vehicles, by reference.

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

2.32.501 INCORPORATION BY REFERENCE OF NFPA 501C/ANSI A119.2 STANDARD FOR RECREATIONAL VEHICLES (1) The Building Codes division of the department of administration adopts and incorporates by reference herein the NFPA 501C/ANSI A119.2, Standards For Recreational Vehicles, ~~1977~~ 1982 Edition. The NFPA 501C/ANSI A119.2, Standard For Recreational Vehicles, 1982 edition, is a nationally recognized model code for the construction of travel trailers, camping trailers, truck campers, and motor homes. A copy of the NFPA 501C/ANSI A119.2 Standard for Recreational Vehicles, 1982 edition may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) The purpose of this standard is to provide a uniform standard covering the installation of plumbing, heating, and electrical systems for travel trailers, camping trailers, truck campers, and motor homes.

4. The Division is proposing this amendment to its rule to keep the state standard current with modern technology by adopting the latest available edition of the NFPA standards for recreational vehicles. The requirement to maintain

current codes is provided in Section 50-60-201, MCA.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than June 4, 1984.

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-203 and 50-60-401, MCA and the rule implements Sections 50-60-203 and 50-60-401, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett

Certified to the Secretary of State April 12, 1984

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

In the matter of the proposed amendment of rule 8.48.1105 concerning the fees.) NOTICE OF PROPOSED AMENDMENT OF ARM 8.48.1105 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 26, 1984, the Board of Professional Engineers and Land Surveyors proposes to amend the rule 8.48.1105 concerning the fee schedule.

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

8.48.1105 FEE SCHEDULE (1) Fees shall be transmitted by check payable to the board of professional engineers and land surveyors. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

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

(3) The biennial renewal fee for registration as a professional engineer or land surveyor shall be $40.00. For professional engineers-surveyors, (ES), it shall be $60.00.

(4) The remainder of the fees shall be as follows:

(a)	EIT application and test	~~$30.00~~	40.00
(b)	PE application and test (Original)	~~40.00~~	80.00
(c)	PE app. and test for out-of-state EIT	~~50.00~~	100.00
(d)	PE Comity application	~~60.00~~	100.00
(e)	LSIT application and test	~~30.00~~	40.00
(f)	LS application and test	~~40.00~~	80.00
(g)	LS comity and test	~~50.00~~	100.00
(h)	ES Comity and test	~~100.00~~	160.00
(i)	Re-exam	~~30.00~~	50.00
(j)	Temporary permit	100.00	

Auth: 37-1-134, 37-67-202, MCA Imp: 37-1-134, 37-67-303, 311, 319, MCA

3. Section 37-1-134, MCA requires all licensing boards to set fees commensurate with program area costs. These are the fees the board has determined are necessary to cover administrative costs for the program areas.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than May 24, 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 Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than May 24, 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, 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 70 based on the 700 applicants.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
ROBERT HAFFERMAN, CHAIRMAN

BY: _____
ROBERT WOOD, LEGAL COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1984.

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

In the matter of the proposed amendment of rules 8.54.401 through 8.54.403, 8.54.405 through 8.54.411, 8.54.415, 8.54.601, 8.54.603 through 8.54.616, 8.54.801 through 8.54.806, 8.54.808 through 8.54.812, 8.54.816 through 8.54.818, 8.54.820 through 8.54.822, proposed repeal of rule 8.54.602 concerning definitions, and proposed adoptions of new rules under sub-chapter 2 concerning definitions, under sub-chapter 6 concerning professional conduct, under sub-chapter 7 concerning positive enforcement rules.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS OF RULES 8.54.401 through 8.54.403, 8.54.405 through 8.54.411, 8.54.415, 8.54.601, 8.54.603 through 8.54.616, 8.54.801 through 8.54.806, 8.54.808 through 8.54.812, 8.54.816 through 8.54.818, 8.54.820 through 8.54.822, PROPOSED REPEAL OF RULE 8.54.602 DEFINITIONS, AND PROPOSED ADOPTIONS OF RULES UNDER SUB-CHAPTER 2, SUB-CHAPTER 6, AND SUB-CHAPTER 7

TO: All Interested Persons:

1. On May 22, 1984 at 10:00 a.m. a public hearing will be held in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana, to consider the amendments, repeal and adoptions of the above-stated rules.

2. The proposed amendment of 8.54.401 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1477, Administrative Rules of Montana)

"8.54.401 BOARD MEETINGS (1)...

(2) The ~~secretary~~ department shall keep accurate minutes of the meetings of the board and complete records of all applications for examination and registration, certificates granted, and persons registered as licensed public accountants, and all necessary information in regard thereto.

(3) The ~~treasurer~~ department shall collect all fees and deposits same to the credit of the state treasurer in a special fund as provided in section 37-50-315, MCA; ~~and he~~. The department shall prepare and (after approval of the board) file the annual operating budget with the budget director of the state of Montana. After the close of the state fiscal year (June 30) ~~he~~ the department shall prepare and submit to the board a statement showing, in reasonable detail, the amount of monies received and disbursed during that year and a comparison with the related budget allotments.

(4) ..."

Auth: 37-50-201, MCA Imp: 37-50-201, MCA

3. The board is proposing the amendment to clarify that the department performs the task of keeping minutes and records, as well as being responsible for collection of fees.

4. The proposed amendment of 8.54.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 8-1477 and 8-1478, Administrative Rules of Montana)

"8.54.402 EXAMINATIONS (1) The ~~chairman~~ board shall be responsible for the administration of ~~appoint a three member committee of board members to administer~~ the certified public accountants examination.

(2) ...

(3) The board hereby adopts the use and grading services of the American Institute of Certified Public Accountants and its examination schedule. Applications for the examination must be filed ~~on~~ by the 15th date of the second month prior to each scheduled examination.

(a) Those applicants who wish to defer the examination until a later date shall notify the board in writing prior to the date of the examination for which they are scheduled."

Auth: 37-50-203, 308, MCA Imp: 37-50-308, MCA

5. The amendment is proposed to more accurately reflect the procedure followed by the board in the area of administering examinations.

6. The proposed amendment of 8.54.403 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 1478, Administrative Rules of Montana)

"8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION

(1) ...

(3) An out-of-state ~~student~~ candidate will be considered a resident of his home state. Out-of-state residents wishing to sit as Montana candidates must take the exam at a Montana site."

Auth: 37-50-203, 308, MCA Imp: 37-50-308, MCA

7. Subsection (3) deletes student because all candidates from out-of-state are not necessarily students. The addition of out-of-state residents wishing to sit as Montana candidates being required to sit at a Montana site is proposed because this has been board policy for many years and they feel it should be made into a rule to avoid challenge.

8. The proposed amendment of 8.54.405 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 8-1478 and 1479, Administrative Rules of Montana)

"8.54.405 CONSECUTIVE EXAMINATIONS AND RE-EXAMINATION REQUIREMENTS (1) ...

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

(i) the applicant wrote all parts of the examination at that sitting,

(ii) the applicant attained a minimum grade of 50 on each part not passed at that sitting,

(iii) at each subsequent sitting at which the applicant seeks to pass any additional parts, the applicant writes all parts not yet passed, and

(iv) in order to receive credit for passing additional parts in any such subsequent sitting, the applicant attains a minimum grade of 50 on each part written, but not passed on such sitting.

Accounting practice will be considered 2 parts.

(b) ...

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

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

(a) ..."

Auth: 37-50-203, 204, 308 MCA Imp: 37-50-204, 308, MCA

9. Subsections (1) (i),(ii), (iii), (iv), and (v) have been added because a trend seems to be developing to concentrate on one subject. In the opinion of the board, the exam is an interlocking one with each subject relating to the other and it is not a wise practice to concentrate in one area.

10. The proposed amendment of 8.54.406 will read as follows: (new matter underlined, deleted matter interlined)

(full text of rule is located at pages 8-1479 and 1480, Administrative Rules of Montana)

"8.54.406 REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT CERTIFICATE AND LICENSED PUBLIC ACCOUNTANT ~~REGISTRATION~~ LICENSE

~~(1)~~ ...

(b) if such person meets the requirements of section 37-50-304 (2), MCA, he will not be issued a ~~registration~~ license as a licensed public accountant until he has met the requirements of section 37-50-303, MCA and the regulations thereunder."

Auth: 37-50-203, MCA Imp: 37-50-303, MCA

11. The word registration was changed for purposes of clarification to license, since a license is what is issued, rather than registration to an applicant who meets LPA requirements.

12. The proposed amendment of 8.54.407 will read as follows: (full text of rule is located at page 8-1480, Administrative Rules of Montana)

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

(a) ..."

Auth: 37-50-203, MCA Imp: 37-50-303, MCA

13. The amendment is proposed for the reason as stated in paragraph 11.

14. The proposed amendment of 8.54.408 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1480, Administrative Rules of Montana)

"8.54.408 EDUCATION REQUIREMENTS (1) A candidate for certification ~~or registration~~ as a certified public accountant or licensing as a licensed public accountant must have graduated from ~~an accredited~~ college or university accredited to offer ~~with~~ a baccalaureate degree, with a concentration in accounting~~,~~ or

(a) a baccalaureate degree with a concentration other than accounting if supplemented by experience and the board determines that an equivalent education has been achieved; or

(b) a baccalaureate degree with a concentration other than accounting if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

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

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

accounting will be interpreted by the board to include 24 semester hours (36 quarter hours) of accounting and auditing courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 18 semester hours (27 quarter hours) shall include no more than 6 semester hours (9 quarter hours) in one area.

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

~~(a) minimum number of accounting credits required;~~

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

~~(c) total number of credits required in business administration.~~ Supplemental experience will be interpreted by the board to be 5 years employment by a public accounting firm, or 5 years employment in industry or government in a responsible financial position, and the board determines that an equivalent accounting education has been achieved.

(5) A concentration other than accounting if supplemented by related courses in other areas of business will be interpreted by the board to include 12 semester hours (18 quarter hours) of accounting, auditing, and tax courses and 9 semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 9 semester hours (14 quarter hours) shall include no more than 3 semester hours (5 quarter hours) in one area.

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(c), 302, 303, 305, MCA

15. The deletion of registration corresponds to the reason as stated in paragraph 11. Subsections (1) (a) through (5) were changed to clarify what constitutes a concentration in accounting and what constitutes an equivalency to a major in accounting. Applicants find the present rule hard to understand and the board feels that a more specific definition is required.

16. The proposed amendment of 8.54.409 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.409 ACCOUNTING AND AUDITING EXPERIENCE REQUIREMENTS

(1) Accounting and auditing experience will be considered adequate by the board if satisfactory evidence is presented of having performed for at least 12 ~~calendar~~ months, (2,000) hours of accounting and auditing functions ordinarily required ~~at levels described in any of the following fields of accounting~~ in the practice of public accounting, provided this experience:

(a) ~~public accounting - on the staff of a certified public accountant or a partnership or association of certified public accountants, or licensed public accountants or a partnership or association of licensed public accountants, engaged in the full time practice of public accountancy; or~~ be under the supervision of a holder of a permit to practice, and

(b) ~~private accounting - compilation of financial data, internal auditing, preparation of financial data,~~ takes place in the five years prior to date of the application for permit to practice, and

(c) ~~governmental accounting - similar to duties encompassed in (a) and (b) above.~~ includes at least 500 hours of attest oriented audit experience requiring application of generally accepted standards and issuance of reports requiring application of generally accepted accounting principles. The prescribed experience may be fulfilled from a combination of attest experience having as its objective financial audits, compliance audits, reviews and compilations.

The demonstration of this experience by the applicant shall have as its objective that upon the issuance of the permit that the applicant shall have obtained sufficient, diversified experience to enable him to conduct an examination of the financial statements of an entity and report thereon with a minimum of supervision.

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

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(g), MCA

17. The board is proposing the amendment of subsections (1)(a) through (d) as the experience requirement for CPA/LPA applicants is very lax and open to various interpretations which confuse applicants. It is also not comparable to experience requirements of most other states. The experience requirement has been changed to ensure minimum competency in a profession that is becoming more complex and to allow for equitable reciprocity qualifications.

18. The proposed amendment of 8.54.410 will read as follows: (new matter underlined, deleted matter interlined)

8.54.410 FEE SCHEDULE

(1) Certified public accountant application for uniform C.P.A. examination -- All original Montana applications.....$100.00

(2) Certified public accountant application by reciprocity..... 70.00

(3) Transfer of grades (all parts).....70.00

~~(3)~~ (4) Re-examination fee -- for each separate part to be re-examined (Accounting Practice I and II are two parts)..... ... 20.00

~~(4)~~ (5) Annual ~~license -- C.P.A.~~ ~~50.00~~ fee for non-permit holder.....35.00

~~(5)~~ (6) Annual ~~license -- R.P.A.~~ ~~50.00~~ fee for permit to practice..... 65.00

~~(6)~~ (7) Candidates cancelling their ~~examinations and~~ requesting a refund will be charged a maximum fee of $25.00 to cover administrative costs.

(a) Those candidates being re-examined in only 1 part of the exam will receive no refund for cancellation.

(8) Re-issuance of certificate or license..... 10.00

(9) Registration of professional corporation pursuant to 35-4-208, MCA..... 10.00 plus 5.00 per shareholder"

Auth: 37-1-134, 37-50-203, MCA Imp: 35-4-209, 37-1-134, 37-50-317, MCA

19. Chapter 335, 1983 Sessions Laws of Montana gave the board the authority to establish a two-tier licensing system , one for certificate/license holders and another for permit holders, which makes it necessary to establish separate fees. Section 35-4-208, MCA requires professional corporations to register with their licensing authority and 35-4-209, MCA allows for a fee to be charged for this filing.

20. The proposed amendment of rule 8.54.411 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.411 EXPIRATION - RENEWAL - GRACE PERIOD (1) Pursuant to section 37-50-314, and 317, MCA, all certified public accountants and licensed public accountants certificates, ~~and~~ licenses and permits to practice expire on December 31st of each year.

(2) Renewal licenses, ~~and~~ certificates, and permits to practice will be issued by the board to all certified public accountants, ~~and~~ licensed public accountants, and permit holders in good standing upon payment of the established license fees, pursuant to ARM 8.54.410.

(3) After the expiration of the annual ~~license~~ permit to practice, certificate and license on December 31 of each ~~license~~ year and ~~prior to February 28~~ after January 31 ~~of the year~~ following the ~~license~~ year, the board shall, in writing, request the surrender of the license or certificate and permit to practice of all persons failing to renew the same.

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

(5) Certificate or license holders that are fully retired from active employment will be exempt from paying annual renewal fees."

Auth: 37-50-203, MCA Imp: 37-50-203, 314, 317, MCA

21. Since there are two categories, permit to practice must be added and the words "and" and "license" are deleted for better reading. "License" is no longer valid in the context as used. License is now restricted to use as registration document for LPA and "permit to practice" is now the term used for the annual renewal procedure. The permits are run on a word processor and are processed all at one time. The grace period from December 31 to February 28 was deemed to be too long, delaying the mail-out of yearly permits. The board felt that January 31 is a lenient enough grace period for late renewals.

22. The proposed amendment of rule 8.54.415 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1482, Administrative Rules of Montana)

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

(a) ...

(2) Incomplete applications for licensure or certification or transfer of grades that are older than 12 months, will be considered invalid and void. The applicant will be required to re-apply and pay another fee."

Auth: 37-50-203, 309, MCA Imp: 37-50-311, 312, 313, 317, MCA

22. The amendment is proposed to include the permit to practice as it is a new category which must be added to all rules referring to a person's right to practice public accounting. Subsection (2) was added to encourage reciprocal applicants to complete their requests for reciprocity or transfer of grades within a reasonable length of time.

Chapter 335, 1983 Session laws gave the board the authority to establish a two-tier licensing system. The term "licensee" has been subsequently changed to "permit holder" or "firm or permit holder". All such references to "licensee" in Sub-chapters 6 through 8 have been changed to reflect the same.

23. The proposed amendment of rule 8.54.601 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 8-1493 and 8-1494, Administrative Rules of Montana)

8.54.601 PREAMBLE (1) ...

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

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

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

(5) A ~~licensee~~ certificate or license holder who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the rules, so long as his conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which he is practicing. However, even in such a case if a ~~licensee's~~ certificate or license holders' name is associated with financial statements in such manner as to imply that he is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices are followed, he will be expected to comply with rules ARM 8.54.609 and ARM 8.54.610.

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

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), 314, MCA

24. Licensure was changed to a permit for clarification and license changed to permit holders as per Chapter 335, 1983 session laws. (see paragraph 22) Certificate and license holders now replace the term licensee, to describe CPAs and LPAs who are not permit holders.

25. The proposed amendment of rule 8.54.603 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1495, Administrative Rules of Montana)

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

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

(i) ...

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

(iv) ...

(A) loans obtained by the ~~licensee~~ firm or permit holder which are not material in relation to the net worth of the borrower, and

(B) ...

(C) other secured loans, except those secured solely by a guarantee of the ~~licensee~~ firm or permit holder.

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

(i) ..."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

26. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

27. The proposed amendment of rule 8.54.604 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.604 INTEGRITY AND OBJECTIVETY (1) A ~~licensee~~ firm or permit holder shall not in the performance of professional services knowingly misrepresent facts, nor subordinate his judgement to another. In tax practice, however, a ~~licensee~~ firm or permit holder may resolve doubt in favor of his client as long as there is a reasonable support for his position."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

28. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

29. The proposed amendment of rule 8.54.605 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.605 COMMISSIONS (1) A ~~licensee~~ firm or permit holder shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others. This rules ~~does~~ shall not prohibit payments for the purchase of ~~all, or a material part, of~~ an accounting practice or retirement payments to individuals formerly engaged in the practice of public accountancy, or payments to their heirs or estates ~~of such persons~~."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

30. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. The amendment is also proposed to clarify that retirement payments are not to be considered as commissions.

31. The proposed amendment of rule 8.54.606 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

32. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

33. The proposed amendment of rule 8.54.607 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.607 INCOMPATIBLE OCCUPATIONS (1) A ~~licensee~~ firm or permit holder shall not concurrently engage in the practice of public accountancy and in any other business or occupation which ~~impairs his independence or objectivity in rendering professional services.~~ would create a conflict of interest in rendering professional service."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

34. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. The wording has also been changed for easier reading and understanding.

35. The proposed amendment of rule 8.54.608 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.608 COMPETENCE (1) A ~~licensee~~ firm or permit holder shall not undertake any engagement for the performance of professional services ~~which he cannot reasonably expect to complete with due professional competence, including compliance where applicable, with rules ARM 8.54.609 and ARM 8.54.610.~~ unless he complies with the following general standards:

(a) professional competence - A firm or permit holder shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence, including compliance where applicable, with ARM 8.54.609 and ARM 8.54.610;

(b) due professional care - A firm or permit holder shall exercise due professional care in the performance of an engagement;

(c) planning and supervision - A firm or permit holder shall adequately plan and supervise an engagement;

(d) sufficient relevant data - A firm or permit holder shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

36. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. Subsections (a) through (d) were added to do away with the vagueness of the present rule.

37. The proposed amendment of rule 8.54.609 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

38. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

39. The proposed amendment of rule 8.54.610 will read as follows: (new matter underlined, deleted matter interlined)

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

Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority."
Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

40. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.
41. The proposed amendment of rule 8.54.611 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.611 FORECASTS (1) A ~~licensee~~ firm or permit holder shall not in the performance of professional services permit his name to be used in conjunction with any forecast of future transactions in a manner which may reasonably lead to the belief that the ~~licensee~~ firm or permit holder vouches for the achievability of the forecast.
(2) This rule does not prohibit a firm or permit holder from preparing, or assisting a client in the preparation of, forecasts of the results of future transactions. When a firm or permit holder's name is associated with such forecasts, there shall be the presumption that such data may be used by parties other than the client. Therefore, full disclosure must be made of the sources of the information used and the major assumptions made in the preparation of the statements and analyses, the character of the work performed by the firm or permit holder, and the degree of the responsibility he is taking."
Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

42. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. Subsection (2) was added to provide guidelines for accountants when they are associated with forecasts.
43. The proposed amendment of rule 8.54.612 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.612 CONFIDENTIAL CLIENT INFORMATION (1) A ~~licensee~~ firm or permit holder shall not without the consent of his client disclose any confidential information pertaining to his client obtained in the course of performing professional services.
(2) This rule does not
(a) relieve a ~~licensee~~ firm or permit holder of any obligations under rules ARM 8.54.609 and ARM 8.54.610, or
(b) affect in any way a ~~licensee~~ firm or permit holder's obligation to comply with a validly issued subpoena or summons enforceable by order of a court, or
(c) prohibit disclosures in the course of a quality review of a ~~licensee~~ firm or permit holder's professional service, or

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

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

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

44. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

45. The proposed amendment of rule 8.54.613 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.613 RECORDS (1) A ~~licensee~~ firm or permit holder shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

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

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

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

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

(2) Examples of working papers that are considered to be client's records would include:

(a) worksheets in lieu of books of original entry (e.g., listings and distributions of cash receipts or cash disbursements on columnar working paper);

(b) worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers or similar depreciation records;

(c) all adjusting and closing journal entries and supporting details (If supporting details are not fully set forth in the explanation of the journal entry, but are contained in analyses of accounts in the accountant's working

papers, then copies of such analyses must be furnished to the client.);

(d) consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(2) Retention by firm or permit holder of clients records after a demand is made for them is an act discreditable to the profession in violation of ARM 8.54.614.

(3) A firm's or permit holder's working papers are his property and need not be surrendered to the client. Any working papers developed by the firm or permit holder incident to the performance of his engagement which do not result in changes in the clients' records or are not in themselves part of the records ordinarily maintained by such clients, are considered to be solely 'accountant's working papers' and are not the property of the client. If the firm or permit holder has retained in his files copies of a client's records already in possession of the client, the firm or permit holder is not required to return such copies to the client."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

46. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. Subsections (2) and (3) were added for clarification of definition of "work papers" and to explain the ownership of such papers. The board has found some licensees retain papers which rightfully belong to clients.

47. The proposed amendment of rule 8.54.614 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.614 DISCREDITABLE ACTS (1) A ~~licensee~~ firm, permit holder, certificate holder, or license holder shall not commit any act discreditable to the profession ~~that reflects adversely on his fitness to engage in the practice of public accountancy~~. A discreditable act will be considered to have occurred if, for example:

(a) a firm or permit holder retains any records rightfully belonging to the client in order to enforce payment of fees.

(b) a firm or permit holder fails to follow required standards or procedure required in governmental audits and does not disclose in his report the fact that such requirements were not followed and the reasons therefor. Engagements for audits of government grants, government units or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a member has accepted such an engagement and undertakes an obligation to follow specified government audit

standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, he is obligated to follow such requirements."
Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

48. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. Subsections (1)(a) and (b) are added to define the term "discreditable act". The present rule is too vague in the fact that no specific items were listed as discreditable acts. Sub-chapter (a) and (b) are 2 areas the board has found to be problem areas in submitted complaints.

49. The proposed amendment of rule 8.54.615 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.615 ACTING THROUGH OTHERS (1) A ~~licensee~~ firm or permit holder shall not permit others to carry out on his behalf, either with or without compensation, acts which if carried out by the ~~licensee~~ firm or permit holder , would place him in violation of the rules of conduct."
Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

50. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

51. The proposed amendment of rule 8.54.616 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1499, Administrative Rules of Montana)

8.54.616 ADVERTISING (1) A ~~licensee~~ firm or permit holder shall not use or participate in the use of any form of public communication having reference to his professional services which contains a false, fraudulent, misleading, deceptive or unfair statement or claim including, but not limited to, a statement or claim which:

(a) ...

(c) contains any testimonial or laudatory statement, or ~~other statement or implication that the licensee's professional services are of exceptional quality, or~~ that is not based on verifiable facts; or

(d) ...

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

(g) ...

(h) implies the ability to influence any court, tribunal, regulatory agency, or similar body or official;

~~(h)~~ (i) contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived."
Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

52. Licensee changed to firm or permit holder as per Chapter 335, L. 1983. The wording in subsection (c) has been changed to reflect more accurately that advertising should contain truthful statements. Subsection (h) is a further example of what cannot be used in advertising.

53. The proposed amendment of rule 8.54.801 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

53. Licensee changed to firm or permit holder as per Chapter 335, L. 1983.

54. The proposed amendment of rule 8.54.802 will read as follows: (new matter underlined, deleted matter interlined)

8.54.802 BASIC REQUIREMENT (1) During the three-year period, ending the June 30th immediately preceding the ~~license~~ permit year of January 1 through December 31, applicants for ~~certificate or license renewal~~ a permit to practice must complete 120 hours of acceptable continuing education credit, except as otherwise provided under section 37-50-314 ~~(4) and (5)~~ (3) and (4), MCA, explained in ARM ~~8.54.805~~, 8.54.806, 8.54.807, of these rules.

(2) At least 24 hours of the aforementioned 120 hours of acceptable continuing education credit must consist of ~~accounting related and/or auditing related subjects.~~ subjects related to the reporting on financial statements as defined in rule I (1) (d) and (i) in these regulations. The purpose of this requirement is to have permit holders participate in a minimum amount of continuing education in the area of reporting on financial statements which is an area of responsibility specifically given to permit holders in section 37-50-301 (6) of the law.

(3) Applicants who have not completed their full basic requirement by the end of the continuing education reporting period (June 30) as described in (4) below; or because of hardship as described in rule 8.54.806; or because their reported continuing education was not acceptable to the board, may use the period of time between the end of the continuing education reporting period (June 30) and the start of the next permit year (January 1) to complete their full basic requirement. This time is limited to the last day of August for those applicants described in (4) below. The purpose of

this exception is to allow the applicants described in (4) below, or those with a hardship, or those with a disagreement with the board as to whether continuing education submitted is acceptable, the opportunity to properly complete the full basic requirement in time for the next permit year. It is not the intent of the board to change the basic requirement reporting period from the three year period ending the June 30th immediately preceeding the permit year to the three and one half years immediately preceeding the permit year except in the unusual situations designated above.

(4) The board realizes that an applicant, because of distance to travel, course selection, or for other reasons, may wish to apply continuing education hours taken near each June 30 to either the preceeding or subsequent continuing education reporting period. Accordingly, if the applicant has already met the full basic requirement by the end of any June 30th reporting period, the applicant may elect to have excess qualified continuing education hours taken during the immediately preceeding months of May and June apply to the subsequent reporting period. Conversely, applicants who have not completed their full basic requirements by the end of any June 30th reporting period may elect to have qualified continuing education hours taken during the immediately following months of July and August apply to the previous reporting period. The election and reporting will be made on forms provided by the board."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(d), 314, MCA

55. The purpose of the amendment is to ease the administration of the program by emphasizing the reporting year ends June 30, but leaves an opportunity for certain persons to complete the requirement. Subsection (4) is included to liberalize the timing of meeting the full basic requirement. The purpose is to allow flexibility for the applicant who is taking qualified continuing education during the two months on either side of the end of the reporting period. This section will be interpreted so that hours from one course could be split between reporting periods, i.e. applicant needs 2 hours of financial reporting related courses and completes an 8 hour course in July. The election could be made for 2 hours to fall in one period and the remaining six hours in the other period.

56. The proposed amendment of rule 8.54.803 will read as follows: (new matter underlined, deleted matter interlined)

8.54.803 WHO MUST COMPLY - GENERAL (1) All persons who are issued a ~~certificate or license~~ permit to practice must comply with the continuing education requirements unless they have been excepted as provided by rules ARM 8.54.805, 8.54.806, 8.54.807 of these rules."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(d), 314, MCA

57. License or certificate changed to permit to practice as per Chapter 335, L. 1983.

58. The proposed amendment of 8.54.804 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-201, 203, MCA Imp: 37-50-203 (2)(d), 314, MCA

59. The amendment is proposed as it appears this distinction need not be made if a permit is needed to practice public accounting in Montana. If a person wants a permit, then they must meet the continuing education requirement.

60. The proposed amendment of 8.54.805 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.805 EXCEPTIONS - NOT PRACTICING PUBLIC ACCOUNTING (1) ~~The board has authority to make a written exception from the continuing education requirements for those persons who certify they do not intend to practice public accounting in Montana. Applicants for certificate or license renewal must certify their intention to the board on a form prescribed by the board. The board defined "practice of public accounting" as offering to perform or performing for compensation for a client, potential client, or employer by an individual issued a certificate or license to practice, any service normally performed in public accounting, including, but not limited to, auditing, reporting of financial information on which third parties may rely, preparation of tax returns, furnishing of advice on tax matters, consulting, and other accounting services.~~ An applicant for a permit to practice who does not intend to engage in the practice of public accounting should be informed that a permit to practice is only required when the applicant practices public accounting. Accordingly, the application should be withdrawn and there is no continuing education requirement for this license or certificate holder."

Auth: 37-50-201, 203, MCA Imp: 37-50-203 (2)(a), 314, MCA

61. Under the new law and regulations, a person must have continuing education only if that person wants a permit to practice which is necessary to practice public accounting. Since continuing education is not required if a person is not in public accounting, (i.e. doesn't have a permit to practice) it appears unnecessary to restate the obvious. However, the new law states that the board can relax education rules if the person certifies they are not in public accounting.

62. The proposed amendment of 8.54.806 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.806 HARDSHIP EXCEPTION (1) The board has authority to make a written exception which must be reviewed and reapproved, if applicable, each year, for reasons of individual hardship including health, military service, ~~foreign residence, retirement,~~ inaccessibility to programs or interference with an interstate practice."

Auth: 37-50-201, 203, MCA Imp: 37-50-203 (2)(a), 314, MCA

63. The amendment is proposed as annual review should discourage "perpetual" exceptions. Foreign residents and retired licensees are deleted because that reference is not necessary with the two-tiered system.

64. The proposed amendment of 8.54.808 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.808 GENERAL EFFECTIVE DATE (1) The implementation date of the continuing education requirements is June 30, 1984, three years after the effective date of these rules (7/1/81), or three years from the June 30th following an individual's initial ~~registration~~ application for permit to practice, whichever is later."

Auth: 37-50-201, 203, MCA Imp: 37-50-203 (2)(a), 314, MCA

65. A new CPA/LPA wanting a permit must first meet the experience requirements in 5 years and then apply for a permit. The 3 year continuing education requirement would start at that time. An individual could prolong the experience to the full 5 years, obtain a permit, then wait until the end of the 3 years to take their 120 hours, so that there is no education for 8+ years. However, it is assumed that this would be infrequent.

66. The proposed amendment of 8.54.809 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.809 RECIPROCITY EFFECTIVE DATE (1) An individual, who holds a valid and unrevoked certified public accountant certificate or public accountant license issued by any other state or political subdivision of the United States,

~~or comparable certificate, license, or degree issued by any foreign country, and who also holds a valid and unrevoked license to practice public accounting if one is issued by such other jurisdiction,~~ and who makes application under the appropriate provisions of the statutes for a certificate or license ~~to practice~~ in this state, and who receives a certificate or license from this state; shall be required to comply with the full basic requirement before being issued a permit to practice in this state. Compliance will be reported on a form provided by the board. ~~was actively engaged in the practice of public accounting in such other jurisdiction immediately prior to filing an application for a certificate or license to practice in this state shall be considered to have met the continuing education requirement until the June 30th following the date of application, at which time the individual must complete the full basic continuing education requirement. Except that, for transitional purposes, until the June 30th following the date of application and the effective date of these regulations, the minimum basic continuing education requirement for purposes of this reciprocity section is 40 hours (of which at least 8 will be accounting related and/or auditing related subjects) for the year ending June 30, 1982, 80 hours (of which at least 16 hours will be accounting related and/or auditing related subjects) for the two years ending June 30, 1983. Except that such individual's basic continuing education requirement for purposes of this reciprocity section be no greater than if the individual's initial registration a license in such other jurisdiction was made in this state as explained in rule ARM 8.54.808. The practice of public accounting will be allowed by the board in writing until the license year following the aforementioned June 30.~~

~~(2) An individual who meets the qualifications in ARM 8.54.809 except for holding a valid and unrevoked license to practice public accounting if one is issued by such other jurisdiction and/or being actively engaged in the practice of public accounting in such jurisdiction immediately prior to filing an application for a certificate or license to practice in this state, shall be required to comply with the full basic continuing education requirement before being issued a certificate or license to practice in this state. The full basic continuing education requirement will be completed so that the course will properly qualify the individual on the June 30th following the certificate or license to practice application date subject to the two transitional effective date exceptions detailed in the preceding paragraph. Except that such individual's basic continuing education requirements for purposes of this reciprocity section be no greater than if the individual's initial registration a license in such other jurisdiction was made in this state as explained in rule ARM 8.54.808. The practice of public accounting may be~~

~~conditionally allowed by the board in writing until the license year following the aforementioned June 30.~~ Except that if the individual holds a valid and unrevoked permit to practice public accounting if one is issued by such other jurisdiction, or was otherwise allowed to practice public accounting in such other jurisdication, and cannot meet the full basic requirement at the time of application for a permit to practice, the individual must request that the public accounting regulatory entity of such other jurisdiction submit in writing, directly to the board, verification that the individual was allowed to practice public accounting in that other jurisdiction. Upon acceptance of the verification by the board, the individual will be issued a permit to practice until the permit year following the June 30 following the individual's application. The individual must complete the full basic requirement by the June 30 following their application.

(3) Except that such individual's basic continuing education requirements for purposes of this reciprocity section shall be no greater than if the individual's initial registration in such other jurisdiction was made in this state as explained in rule ARM 8.54.808"

Auth: 37-50-201, 203, MCA Imp: 37-50-203 (2)(a), 314, MCA

67. This is totally rewritten. Originally, a distinction was made between the applicant who was in the practice of public accounting in the other state and one who was not practicing. Different rules applied and are no longer applicable because of the two-tiered system. The revised rule simplifies administration. The intent is to have all applicants meet the basic requirement. However, if they can't meet the requirement, but were allowed to practice in the other state, they must verify that fact to the board and then will be given a permit to practice. They have until the next June 30 to meet the full basic requirement.

68. The proposed amendment of 8.54.810 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.810 REENTRY (1) ~~An individual who has been excepted from provisions of the continuing education requirement as provided under section 37-50-314 (4) and (5), MCA and explained in rules ARM 8.54.805, 8.54.806, and 8.54.807 shall notify the board upon desiring reentry to public accounting (as herein defined in rules ARM 8.54.805, 8.54.806, and 8.54.807), and will be required to comply with the continuing education full basic requirement on the June 30th following his reentry application. The board may grant the applicant conditional permission to practice public accounting until the license year following the aforementioned June 30.~~

~~(2)~~ An individual formerly the holder of a ~~certified public accounting~~ certificate, or ~~public accountant~~ license, or permit and no longer the holder because of inactive status, revocation, suspension, or refusal to renew certificate, ~~or~~ license, or permit as described in section 37-50-321, MCA, or because of failure to properly pay the annual renewal fee as described in section 37-50-~~314~~ 317, MCA, or because of failure for a permit holder to meet the continuing education requirement shall otherwise apply to the board for reinstatement of certificate, ~~or~~ license, or permit as described in section 37-50-322, MCA and, ~~if re-entering public accounting (as defined in rules ARM 8.54.805, 8.54.806, 8.54.807),~~ wishing a permit to practice, must comply with the continuing education full basic requirement ~~on the June 30th following his~~ upon their reentry. at which time, they will receive a permit to practice. ~~The board may grant the applicant permission to practice public accounting until the license year following the aforementioned June 30.~~"

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, 322, MCA

69. The proposed amendment adds permit holder to certificate and license to comply with Chapter 335, Laws of 1983. The former rule distinguished between those reentering because of exemptions from education and those reentering because of board action. The proposed rule requires anyone formerly holding a permit to have their education current before getting a new permit. Hardship cases can be handled under existing hardship exceptions.

70. The proposed amendment of 8.54.811 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1512 and 8-1513, Administrative Rules of Montana)

"8.54.811 PROGRAMS WHICH QUALIFY (1) A specific program qualifies as acceptable continuing education if it is a formal program of learning which contributes directly to the professional competence of an individual ~~certified or licensed~~ permitted to practice public accounting and such program meets the minimum standards of quality of development and presentation and of measurement and reporting of credits set forth in the Statement on Standards for Formal Continuing Education Programs published by the National Association of State Boards of Accountancy, (rules ARM 8.54.823 through 8.54.827) or such other educational standards as may be established from time to time by the board.

(2) ..."

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

71. Word "permitted" is used to replace certified or licensed as per Chapter 335, Laws of 1983. (See paragraph 22)

72. The proposed amendment of 8.54.812 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1513, Administrative Rules of Montana)

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

(a) ..."

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

73. Change is to comply with Chapter 335, Laws of 1983. (see paragraph 22)

74. The proposed amendment of 8.54.816 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.816 CREDIT FOR FORMAL INDIVIDUAL STUDY PROGRAMS (1) The amount of credit to be allowed for correspondence and formal individual study programs (including taped study programs), is to be recommended by the program sponsor based upon one-half the average completion time under appropriate 'field tests'. Individuals claiming credit for such correspondence or formal individual study courses are required to obtain evidence of satisfactory completion of the course from the program sponsor. Credit will be allowed in the ~~renewal~~ period in which the course is completed, except as allowed in 8.54.802 (3), ARM."

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

75. The amendment provides for more liberal timing as allowed in rule 8.54.802.

76. The proposed amendment of 8.54.817 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

77. The amendment is proposed as the full basic requirement refers to the 120 hours of education required in a

3 year period. Renewal occurs every year. The amendment is proposed to clarify that the continuing professional education requirement applies to a 3 year period.

78. The proposed amendment of 8.54.818 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

79. The amendment is proposed for the reasons stated in paragraph 74.

80. The proposed amendment of 8.54.820 will read as follows: (new matter underlined, deleted matter interlined)

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

Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

81. Certificate or license changed to permit to practice as per Chapter 335, Laws of 1983. (see paragraph 22)

82. The proposed amendment of 8.54.821 will read as follows: (new matter underlined, deleted matter interlined)

"8.54.821 RENEWAL OF ~~CERTIFICATE OR LICENSE~~ PERMIT TO PRACTICE (1) To renew ~~an unexpired certificate or license~~ a permit to practice after June 30, 1984, the applicant shall on or before the July 31 prior to the time at which the ~~certificate or license~~ permit to practice would otherwise expire, (December 31) gives evidence to the board that the continuing education provisions have been met for the reporting period ending the June 30 prior to the ~~certificate or license~~ permit to practice renewal date. Except that persons described in 8.54.802 (4) will have until the August 31 following the end of the reporting period. The intent of the board is for all other persons to report by July 31 so

that the board has adequate administrative time to process reports prior to the time permits to practice are issued."
Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

83. Certificate or license has been changed to permit to comply with Chapter 335, Laws of 1983. (see paragraph 22) The addition of the new material is to allow flexibility for the applicant who is taking qualified continuing education during the two months on either side of the end of the reporting period.

84. The proposed amendment of 8.54.822 will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 8-1516 and 8-1517, Administrative Rules of Montana)

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

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

(b) ..."
Auth: 37-50-201, 203, MCA Imp: 37-50-203, 314, MCA

85. The amendment is proposed to comply with the two-tiered system set out in Chapter 335, Laws of 1983. (see paragraph 22)

86. The proposed repeal of 8.54.602 deletes the current rule in its entirety. The full text of the rule is found at pages 8-1494 and 8-1495, Administrative Rules of Montana.

87. The board is proposing the repeal as it is proposing to add a definitional rule in Sub-Chapter 2. The board feels the rule would be better placed in Sub-Chapter 2.

88. The proposed new rules include a definitional rule under sub-chapter 2, two new rules under sub-chapter 6 concerning other technical standards and form of practice name, and 4 new rules under a new sub-chapter 7, entitled positive enforcement rules.

The rules as proposed will read as follows:

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

(a) 'Practice of (or practice) public accounting' means the performance or the offering to perform, by a certificate or license holder, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements on which third parties may rely, or of one or more kinds of management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

(b) 'Non-practice of public accounting' - a certificate or license holder not in the practice of public accounting but providing financial or consulting services to the public must have a permit to practice, if they hold themselves out to the public as a CPA or LPA in any manner.

CPA's or LPA's working for a non-public accounting employer shall not use their CPA or LPA designation when presenting employer reports to outside parties.

(c) 'Client' - The person, entity, or enterprise whether organized for profit or not, which retains a permit holder for the performance of professional services. A client may be an entity served by governmental or non-governmental agencies performing services similar to public accounting firms.

(d) 'Firm' - A proprietorship, partnership or professional corporation engaged in the practice of public accounting.

(e) 'Report' - when used with reference to financial statements, means an opinion, report or other form of language which states or implies assurance as to the reliability of any financial statements (examples include audits, reviews and compilations) and which also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or the firm is an accountant or auditor, or from the language of the report itself. The term 'report' includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

(f) 'Certificate holder' - A person holding a CPA certificate issued by the board pursuant to 37-50-302, MCA

(g) 'License holder' - A person holding a license issued by the board pursuant to 37-50-303, MCA.

(h) 'Permit holder' - A person holding an annual permit to practice public accounting issued by the board pursuant to 37-50-314, MCA.

(i) 'Professional services' - Any services performed or offered to be performed by a permit holder for a client in the course of the practice of public accountancy.

(j) 'Financial statement - A presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles. Financial forecasts, projection and similar presentations, and financial presentations included in tax returns are not financial statements for purposes of this definition, The following financial presentations are examples of financial statements:

balance sheet
statement of income
statement of retained earnings
statement of changes in financial position
statement of changes in owners equity
statement of assets and liabilities (with or without owners' equity accounts)
statement of revenue and expenses
summary of operations
statement of operations by product lines
statement of cash receipts and disbursements"

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

II. "OTHER TECHNICAL STANDARDS (1) A firm or permit holder shall comply with proper technical standards when providing clients with management advisory services or accounting and review services. For purposes of this rule, the technical standards are considered to be defined by pronouncements issued by the American Institute of CPA's committees on 'Management Advisory Services' and 'Accounting and Review Services'."

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

"III. FORM OF PRACTICE AND NAME (1) A permit holder or firm shall not practice public accounting under a name which includes any fictitious name, indicates specialization or is misleading as to the type of organization (proprietorship, partnership or corporation). However, names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner surviving the death or withdrawal of all other partners may continue to practice under the partnership name for up to two years after becoming a sole practitioner.

(2) A firm or permit holder in the practice of public accounting may have a financial interest in a commercial corporation which performs for the public services of a type performed by public accountants and whose characteristics do not conform to 8.54.618 (1), ARM, provided such interest is not material to the corporation's net worth, and the firm or permit holder's interest in and relation to the corporation is solely that of an investor".

Auth: 37-50-203, MCA Imp: 37-50-203 (2)(a), MCA

IV. DEFINITIONS (1) The word 'permit holder' as used in these rules shall include certified public accountants and licensed public accountants."

Auth: 37-1-136, 37-50-201, MCA Imp: 37-1-136, 37-50-321, MCA

V. ENFORCEMENT AGAINST PERMIT HOLDERS (1) Pursuant to sections 37-1-136 and 37-50-321, MCA, and the Montana administrative procedures act, the board may revoke any certificate, license or permit issued under Title 37, Chapter 50, MCA, suspend any such certificate, license, or permit for a period of not more than one year, refuse to renew such certificate, license or permit, censure or place on probation, any certificate holder, license holder, or permit holder all with or without terms, for any one or more of the following reasons:

(a) fraud or deceit in obtaining a certificate, license, or permit;

(b) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a licensed public accountant by any other state for any cause other than failure to pay a renewal fee or to comply with a continuing professional education requirement in such other states;

(c) failure on the part of a holder of a certificate, license or permit to maintain compliance with the requirements for issuance of a certificate, license, or annual permit;

(d) suspension or revocation of the right to practice before any state or federal agency;

(e) dishonesty, fraud or gross negligence in the practice of public accountancy;

(f) violation of any of the provisions of Title 37, Chapter 50, MCA, or rules promulgated by the board;

(g) conviction of a felony or of any crime, an element of which is dishonesty or fraud, under the laws of any state of the United States;

(h) performance of any fraudulent act while holding a certificate, license, or permit issued under Title 37, Chapter 50, MCA;

(i) any conduct reflecting adversely upon the permit holder's fitness to engage in the practice of public accountancy; and

(j) failure to meet the continuing education requirements established by the board.

(2) In lieu of or in addition to any causes specifically provided in subsection (1) of this section, the board may require of a permit holder:

(a) satisfactory completion of such continuing professional education programs the board may specify;

(b) limitation of the scope of the accounting practice to those functions which the board may specify;

(c) reimbursement of board costs.

(3) The board may publish the enforcements implemented against permit holders under subsections (1) and (2) of this section whenever the board determines that the public's need to know outweighs the permit holder's need for confidentiality."

Auth: 37-1-136, 37-50-203, MCA Imp: 37-1-136, 37-50-321, MCA

VI. ENFORCEMENT PROCEDURES - INVESTIGATIONS (1) The board may conduct investigations of suspected violations of Title 37, Chapter 50, MCA or of the rules of the board to determine whether to institute proceedings against any person or firm under sections 37-1-136 and 37-50-321, MCA; but an investigation under this section shall not be a prerequisite to such proceedings.

(2) The board may designate any person not a board member to serve as positive enforcement coordinator to conduct an investigation. The report of the positive enforcement coordinator, the testimony and documents gathered in the investigation and the pendency of the investigation shall be treated as confidential information by the board and its designees, and shall not be disclosed except to the extent deemed necessary in order to conduct the investigation or in compliance with section 37-1-135, MCA.

(3) Upon finding of reasonable cause, the board may direct that notice be issued pursuant to section 37-50-321, MCA. If the subject of the investigation is not a permit holder, the board shall take appropriate action. Upon finding of no reasonable cause, the board shall close the matter and thereafter release information relating thereto only with the consent of the board and of the person or firm under investigation.

(4) The board may review the professional work of a permit holder on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular such person. In the event that as a result of such review the board discovers grounds for a

more specific investigation, the board may proceed according to these rules.

(5) The board may request assistance from permit holders having appropriate experience and competence to review reports submitted by the positive enforcement coordinator, in the determination of reasonable cause for the board to initiate disciplinary proceedings.

(6) After making a final determination and the entry of action taken in the public record, the board may exchange information relating to proceedings resulting in disciplinary action against permit holders with the board of accountancy of other states and with other public authorities or private organizations having an interest in such information."

Auth: 37-1-136, 37-50-203, MCA Imp: 37-1-136, 37-50-321, MCA

VII. "ENFORCEMENT PROCEDURES - HEARING BY THE BOARD

(1) In any case where reasonable cause has been determined with respect to a violation by a permit holder, or where the board has received a written complaint by any person furnishing grounds for a determination of such reasonable cause, or where the board of accountancy of another state furnishes such grounds, the board may cause a notice setting forth appropriate charges to be issued. The board shall, not less than 30 days prior to the date of the hearing, serve a copy of said notice upon the permit holder, by civil service according to the Montana rules of civil procedure.

(2) Any permit holder against whom a notice of proposed board action has been issued under this section shall have the right, reasonably in advance of the hearing, to all discovery available to parties in accordance with the Montana rules of civil procedure, as limited by Model Rule 13.

(3) In a hearing under this section, the respondent permit holder may appear in person or, in the case of a firm, through a partner, officer, director or shareholder or by counsel, examine witnesses and evidence presented in support of the board's action, and present evidence and witnesses on his own behalf. The permit holder shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(4) In a hearing under this section, a stenographic record shall be made, and shall be transcribed on request of any party. The cost of the transcription shall be paid by the requesting party.

(5) In a hearing under this section, a majority vote of all members of the board shall be required to sustain any charge and to impose any sanction with respect thereto.

(6) If, after service of notice, the permit holder fails to appear at the hearing, the board may enter such order as it deems warranted by the evidence, which order shall be final

unless the permit holder petitions for review thereof pursuant to subsection (7) of this section; provided, however, that within 30 days from the date of any such order, upon showing of good cause for the permit holder's failure to appear and defend, the board may set aside the order and schedule a new hearing on the complaint, to be conducted in accordance with applicable subsections of this rule.

(7) A person who has exhausted all administrative remedies available from the board, and who is aggrieved by the final decision in a contested case before the board, is entitled to judicial review by filing a petition in district court within 30 days after service of the board's final decision or, if a rehearing before the board is requested within 30 days after the decision thereon is served, copies of the petition shall be promptly served on the board. Said judicial review shall in all ways comply with Part 7, Chapter 4 of Title 2, MCA."

Auth: 37-1-136, 37-50-203, MCA Imp: 37-1-136, 37-50-321, MCA

VIII. "REINSTATEMENT (1) In any case where the board has suspended or revoked a certificate, license, or permit, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate, license, or permit.

(2) Before reissuing or terminating the suspension of a certificate, license, or permit, and as a condition thereto, the board may require the applicant therefore to show evidence of successful completion of specified continuing professional education, or to undergo a practice review conducted in such fashion as the board may specify."

Auth: 37-1-136, 37-50-203, MCA Imp: 37-1-136, 37-50-321, MCA

89. The proposed adoption of rule I. is to more clearly define the terms used in the rules to prevent misinterpretation as much as possible.

The adoption of rule II. is proposed for reference to technical standards required by firm or permit holders necessary because these are new areas for which standards have been set at the national level.

Rule III. is proposed to prevent firm or permit holders from using a name that may be misleading to the public and to define the basis of acceptable practice of a permit holder to have a financial interest in a commercial corporation.

Rules IV through VIII are proposed to enact a positive enforcement program and to give the board the mechanism to detect and investigate substandard accounting work. In 1979, when the Board of Public Accountants was reviewed for sunset auditing, the report specifically stated that the board needed to establish more effective methods to police its profession.

90. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Board of Public Accountants, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 24, 1984.

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

BOARD OF PUBLIC ACCOUNTANTS
PATRICIA DeVRIES, CHAIRMAN

BY: _____
ROBERT WOOD, LEGAL COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL BUREAU

In the matter of the proposed adoption of a new rule fixing new dollar amounts for loan amounts of consumer loan licensees.	))))	NOTICE OF PROPOSED ADOPTION OF A NEW RULE AMENDING THE DOLLAR AMOUNTS OF LOANS MADE BY CONSUMER LOAN LICENSEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 26, 1984, the financial bureau of the Department of Commerce proposes to adopt a new rule concerning the amount to which finance charges are applied by a licensed consumer loan company in the state of Montana.

2. The rule as proposed provides as follows:

I. "DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

Authority	Stated Amount	Changed Designated Amount
Section 32-5-201 (4)	$1,000.00	$1,100.00
Section 32-5-301 (13)	$ 90.00	$ 99.00
	$ 500.00	$ 550.00
	$1,000.00	$1,100.00
	$7,500.00	$8,250.00
Section 32-5-302 (3)	$ 300.00	$ 330.00
	$1,000.00	$1,100.00
	$2,500.00	$2,750.00
Section 32-5-306 (7)	$ 300.00	$ 330.00"

Auth: 32-5-104, MCA Imp: 32-5-201 (4), 32-5-301 (13), 32-5-302 (3), 32-5-306 (7), MCA

3. Under the provisions of section 32-5-104, MCA, the Department of Commerce must adopt a rule changing the designated dollar amounts in Chapter 5 of Title 32, MCA, if the percentage of change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPW) is 10% or more.

This rule is to be adopted each even numbered year if the increase in the CPW index at the end of the preceding year equals or exceeds 10%, or multiples thereof, of the reference base index of December 1980.

The CPW indices for the pertinent years as reported by the department of labor, bureau of labor statistics, are as follows:

December, 1980 = 258.7 (reference base index)
December, 1981 = 281.1 (8.66% over base index)
December, 1983 = 301.5 (16.54% over base index)

The December, 1983 index exceeds by 10% or more the reference base index.

4. A delayed effective date of July 1, 1984 is proposed as part of the adoption.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Les Alke, Commissioner of Financial Institutions, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620, no later than May 24, 1984.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Les Alke, Commissioner of Financial Institutions, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620, no later than May 24, 1984.

7. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a 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 3 based on the number of consumer loan licensees in Montana.

BY: _____
ROBERT WOOD, LEGAL COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1984.

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

In the matter of the proposed amendments of 8.97.301 concerning definitions, 8.97.308 concerning rates, service changes, and fee schedules, 8.97.401 concerning board in-state investment policy, 8.97.406 concerning economic development linked deposit program, 8.97.409 concerning loan participations, and 8.97.410 concerning guaranteed loan program, and proposed adoption of new rules under sub-chapter 5 concerning the Montana economic development bond program.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS OF 8.97.301 DEFINITIONS, 8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULES, 8.97.401 BOARD IN-STATE INVESTMENT POLICY, 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY, 8.97.406 ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM, 8.97.409 LOAN PARTICIPATION, 8.97.410 GUARANTEED LOAN PROGRAM and PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 5 RULES GOVERNING THE MONTANA ECONOMIC DEVELOPMENT BOND PROGRAM

TO: All Interested Persons.

1. On May 18, 1984 at 10:00 a.m. a public hearing will be held in the downstairs conference room, Department of Commerce, 1430 9th Avenue, Helena, Montana, to consider the amendments and adoptions of the above-stated rules.

2. The proposed amendment of 8.97.301 will add a new subsection (m), renumber all remaining subsections thereafter, and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is found at pages 8-3469 through 8-3471, Administrative Rules of Montana)

"8.97.301 DEFINITIONS (1) ...

(m) 'investment company' means an investment company as defined in section 32-1-108, MCA.

~~(m)~~ (n) "lender means

(i) ..."

Auth: 17-5-1521, 17-6-324, MCA Imp: 17-5-1526 (1), 1527, 17-6-310, MCA

3. The amendment is proposed to define a term that is used in another definition, but is undefined in the rules. The amendment will eliminate confusion as to what constitutes an investment company for purposes of this chapter.

4. The proposed amendment of 8.97.308 will add new subsections (7) and (8) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3475 through 8-3477, Administrative Rules of Montana)

"8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULE

(1) ...

(7) Once a fee has been paid under subsection (5) and (6) of this rule to secure an interest rate for a period beyond 90 days, and prior to the time the loan has closed, the board will allow the loan to be closed at the lower of the interest rate previously secured or the board's interest rate in effect at the time the loan closes.

(8) Assumption fee.

The lender may be authorized to charge an assumption fee not to exceed the difference between the board's original interest rate and the interest rate in effect at the time the loan is assumed applied against the balance of the loan outstanding at the time of the assumption. The board shall receive its prorata share of such fee if charged."

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

5. The amendment is proposed to establish a fee that may be charged by a lender if a loan made by that lender is assumed by another borrower. The fees to be charged to participants in the program are required to be established by rule.

6. The proposed amendment of 8.97.401 amends subsections (2), (2)(a) and (c), adds a new subsection (4) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3487 and 8-3488, Administrative Rules of Montana)

"8.97.401 BOARD IN-STATE INVESTMENT POLICY (1) ...

(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' economy activity, import substitution activity, and the manufacturing, 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 people of Montana, either directly or indirectly.

(a) Basic economic activity is defined by the board as any business activity conducted in the state for which 50% or more of the gross revenues are derived from out-of-state sources. Gross revenues derived from out-of-state sources shall not include insurance, other third party payments or federal transfer payments. ~~This definition~~ Basic economic activity is intended to include, but not be limited to businesses engaged in one or more of the following activities:

(i) ...

(c) 'Manufacturing, retail and wholesale distribution of Montana-made goods' is defined by the board as any manufacturing, 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) ...

(4) The board will not fund loans to any governmental entity or non-profit corporation."

Auth: 17-6-324, MCA Imp: 17-6-304, 305, 314, MCA

7. The amendment of (2) and (2) (c) are to specify that permissible investments of the board shall include the manufacturing of, as well as the retail and wholesale distribution of Montana-made goods. Without the amendment, the rule is unclear. The amendment of (2)(a) is to exclude certain types of payments from the calculation of gross revenues. Without the amendment, certain industries could arguably be classified as a basic industry based on insurance payments alone. This result would be contrary to the board's determination of what constitutes basic economy activity. The addition of subsection (4) is to clarify that loans will not be made for governmental entities or non-profit corporations. The addition is necessary to implement the board's policy that investment should be made in private businesses that pay taxes to the state and local communities in which they operate.

8. The proposed amendment of 8.97.402 adds new subsections (7) and(8) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3488, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY (1) ...

(7) The loan offered to the board for financing was closed by the lender subsequent to March 1, 1984.

(8) The financing will not result in an undue concentration of the board's loans or investments in a single industry."

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

9. The addition of subsection (7) is proposed to clarify that only loans closed subsequent to the effective date of the board's rules will be eligible for financing under the board's program. The addition is necessary to insure that the loans made under the program are evaluated by the "economic benefit to the state" criteria contained in the rules. The addition of subsection (8) is proposed to establish an additional criteria for the board to consider in determining whether a particular loan will be made. Without the addition the board could conceivably be in a position of having a disproportionate amount of its fund invested in a single industry.

10. The proposed amendment of 8.97.406 amends subsection (1) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3490, Administrative Rules of Montana)

"8.97.406 ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM (1) The board may place Economic Development Linked Deposits 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 8.97.402. The amount of the linked deposit shall be limited to 100% of the amount of the loan linked to the deposit. The financial institutions retain all risk on any loans financed with the proceeds of an Economic Development Linked Deposit. This program may not be used to fund or support a loan that is guaranteed in whole or in part by an agency or instrumentality of the United States government.

(2) ..."

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

11. The first change is to clarify the fact that an economic development linked deposit may be placed with a lender in an amount equal to the supported loan, rather than just 80%. The second change is proposed to ensure that the linked deposit program is not used in a manner to provide 100% funding to a project that is already federally guaranteed. Since the board has already provided for the purchase of federally guaranteed portions of loans in rule 8.97.407, there is no reason to use the linked deposit program to address this same market while using more of the board's limited funds.

12. The proposed amendment of 8.97.409 will add a new subsection (13) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3490 and 3491, Administrative Rules of Montana)

"8.97.409 LOAN PARTICIPATIONS (1) ...

(13) Loans made under this rule are assumable only upon approval by the board. A borrower wishing to assume a loan shall submit to the board a complete application form signed by the borrower and the lender along with the non-refundable application fee specified in rule 8.97.308 (c), A.R.M. The board may authorize the charging of an assumption fee pursuant to rule 8.97.308 (8), A.R.M."

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

13. The addition to the rule is proposed to clarify that loans may only be assumed upon approval by the board and to add needed flexibility to the board's administration of its loan program.

14. The proposed amendment of 8.97.410 amends subsection (2) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3491 and 8-3492, Administrative Rules of Montana)

"8.97.410 GUARANTEED LOAN PROGRAM (1) ...
(2) The loan criteria, assumption procedure, and collateral requirements for the guaranteed loan program will be the same as those used for the loan participations authorized in rule 8.97.409.
(3)..."
Auth: 17-6-324, MCA Imp: 17-6-324, MCA

15. The amendment is proposed to clarify that guaranteed loans may also be assumed upon approval by the board and to add needed flexibility to the board's administration of its guaranteed loan program.

16. The new rules under sub-chapter 5 will read as follows:

I. "DEFINITIONS (1) The definitions contained herein are supplemental to the definitions contained in ARM 8.97.301 and shall govern with respect to Sub-Chapter 5 in the event of conflict.

(2) As used in Sub-Chapter 5, and unless the context clearly requires another meaning:

(a) 'notice' means notice of a public hearing on a proposed project, given at least once a week for three weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held, and also in the city or county where the project will be located if the hearing is held by the board in Helena. The notice shall include the time and place of the hearing, the general nature of the project, the name of the borrower, lessee or user of the project, the street address of the project, or if no street address is available, a description designed to inform readers of its location; the maximum face amount of the bonds or notes to be issued with respect thereto; and the estimated cost thereof.

(b) 'originator' means an approved financial institution originating the loan for which an application for financing is made hereunder.

(c) 'project' shall have the meaning given to it in section 90-5-101, MCA, and shall include any land, any building or other improvement and any real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural or industrial enterprises, recreation or tourist facilities; multifamily housing; hospital, long-term care facilities or medical facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects.

(d) 'public hearing' means the hearing conducted by the board of local government for the purpose of ascertaining public interest as required by sections 7-5-1526 and 7-5-1527 and section 103 (k) of the Internal Revenue Code.

(e) 'resolution of intention' means the resolution adopted by the board evidencing its preliminary intention to issue its revenue bonds or notes for a specified project and making appropriate findings with respect thereto."

Auth: 17-5-1521, MCA Imp: 17-5-1521, MCA

II. "SCOPE OF SUB-CHAPTER 5 This sub-chapter shall govern the submittal of and processing of applications for financing and the issuance of bonds or notes therefor under the Montana economic development bond act of 1983."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1504, MCA

III. "DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM

(1) The board is authorized to issue industrial development revenue bonds and to use the proceeds to purchase loans from approved financial institutions for projects located in the state, acquire projects located in the state from financial institutions and lease them to others, or make loans to financial institutions, requiring the proceeds to be used by the financial institution for the purpose of financing projects located in the state. The bonds are payable solely from loan repayments and one or more reserve or guarantee funds. Loan repayments must be guaranteed in whole or in part by public or private insurance, which may include the board's guarantee created pursuant to section 17-5-1519, MCA.

(2) For projects the cost or appraised value of which is less than $1,000,000, the small IDB program, the originator or another approved financial institution must participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board. For projects the cost or appraised value of which exceeds $1,000,000 but is less than $10,000,000, the IDB loan program, the originator shall participate in the financing of the project at the discretion of the board. In determining whether to require such participation the board shall consider:

(a) the extent to which, if any, the board's resources or funds, other than revenues from the project, are pledged to the project;

(b) the credit worthiness of the applicant;

(c) the collateral securing the financing;

(d) any other factor deemed relevant by the board.

(3) Under either program the financing by the board is limited to 90% of the cost or appraised value of the project or $10,000,000, respectively, whichever is less.

(4) The bonds or notes of the board may be sold at public or private offering, may be sold to finance projects on an individual basis, with or without the board's guarantee, or may be sold to finance multiple projects.

(5) Where multiple projects are financed by a single bond issue, a portion of the proceeds may be placed in a

reserve fund to secure the bonds. The board may establish other funds to secure its bonds as provided in section 17-5-1515 (7), MCA.

Auth: 17-5-1504, MCA Imp: 17-5-1505, 1526, 1527, MCA

IV. "BONDING LIMIT The total amount of outstanding bonds for financing projects for which the cost or appraised value does not exceed $800,000 may not exceed $25,000,000. The total amount of outstanding bonds for financing projects for which the cost or appraised value exceeds $800,000 may not exceed $50,000,000."

Auth: 17-5-1504, MCA Imp: 17-5-1506 (6), (7), MCA

V. "ELIGIBILITY REQUIREMENTS (1) In order to qualify for financing under the Economic Development Bond Program, the board shall determine that a project meets the following criteria:

(a) the project is authorized by section 90-5-101, MCA and described in rule I. herein;

(b) the project is in the public interest; such determination to be made after a public hearing conducted by the board or by the governing body of the local government unit in which the project is located;

(c) the financing for the project is insured or guaranteed in whole or in part by a private governmental insurer or guarantor, including but limited to a guaranty by the board pursuant to section 17-5-1519, MCA, as required by the board;

(d) there will be sufficient revenues from the project to pay the debt service on and the costs and expenses of issuing and servicing the bonds as well as any reserve required of or by the board;

(e) the interest borne on the bond or note issued for the project, must be exempt from federal income tax in accordance with section 103 of the Internal Revenue Code; and

(g) upon completion, the project will have compiled with all applicable local, state and federal laws and regulations.

(2) With respect to projects the costs or appraised value of which is less than $1,000,000, in addition to meeting the above criteria the financing must be participated in by the originator or an approved financing institution, in a form acceptable to the board, to an extent of at least 10% of the financing to be provided by the board.

(3) Eligible projects may consist of the acquisition of land and rights and interests in land including the acquisition or construction of buildings, improvements or structures on the land; or the acquisition of fixtures, machinery, equipment and other tangible property so long as the following conditions are satisfied.

(a) the maximum loan-to-value ration shall be 90% using the lower of appraised value or cost/purchase to determine value;

(b) the financing will be secured by a mortgage on the property being financed and on any additional collateral deemed necessary by the board, and shall be subject to any other terms and covenants the board deems necessary;

(c) working capital may not be financed."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1521, 1526, 1527, MCA

VI. "CRITERIA FOR EVALUATING APPLICATIONS In evaluating applications for financing under this program and determining whether ARM V (1)(d) has been satisfied, the administrator and the board shall consider the following factors:

(a) the applicant's net worth;

(b) the applicant's training and experience in the industry involved in the project;

(c) the applicant's prospect for succeeding in the proposed project;

(d) all materials submitted by the applicant and the originator as part of the application; and

(e) other information deemed relevant to protect the board's investment."

Auth: 17-5-1521, MCA Imp: 17-5-1521, MCA

VII. "APPLICATION PROCEDURE (1) A business enterprise may apply for financing under the economic development bond program by submitting a loan application to an originator who will review the proposed use of the money, borrower eligibility and borrower credit-worthiness. Based on the application, the originator shall submit a pre-application letter to the board which shall contain sufficient information to allow the board to determine that the proposed project and the applicant appear to be eligible for financing under the program.

(2) The administrator shall review the pre-application letter to determine whether the project is eligible for financing under the program. If the project appears eligible, the administrator shall notify the governing body of the local government in which the project is located of the pending application for financing and of its right to conduct a public hearing on the project for the purpose of determining whether the project is in the public interest.

(3) The administrator and local government shall agree on the date of a public hearing if it is to be held by the local government. If the local government does not notify the administrator within fourteen days after receipt of notification of the pending application, the board will conduct the public hearing in the jurisdiction in which the

project is located or in Helena, Montana. The administrator will cause notice of the public hearing to be published. If after the public hearing, the local government determines the project to be in the public interest it shall adopt a resolution approving the project and making appropriate findings of public interest with respect thereto. The local government shall notify the board of its findings and provide it with a copy of the resolution, if one is adopted, within fourteen days of the public hearing.

(4) In determining whether a project is in the public interest, the local government or the board shall consider whether the proposed project:

(a) increases job opportunities;

(b) retains existing jobs; and

(c) diversifies the economy of the state and locality in which the project is located.

(5) Upon receipt of the local government's determination, or upon its own determination as the case may be, that the project is in the public interest, the board may adopt a resolution of intention. If the local government determines that the project is not in the public interest, the board may conduct a public hearing and makes its own determination of public interest or it may decline to adopt a resolution of intention. This resolution of intention shall only constitute an expression of present intention of the board with respect to the project and shall not constitute a binding commitment on the part of the board that its bonds or notes will be issued for the project. This resolution expires one year from its date of adoption.

(6) Within 30 days of the passage of the resolution of intention, the originator shall submit to the board a complete application in the form provided by the board. The application shall be properly signed and certified by the borrower and originator. An application signed by the originator shall constitute a commitment to originate the loan or participate in the financing, if such participation is required, in the manner set forth in the application. The administrator shall review the complete application with bond counsel to determine whether the project meets the requirements of these rules and section 103 of the Internal Revenue Code. If the project complies with all of the pertinent rules and code sections, the administrator shall process the application in accordance with ARM 8.97.306 and 8.97.307.

(7) After the board has approved an application for financing, it shall be submitted to the governor. The governor shall, in writing, approve the project and certify that the public hearing thereon was conducted in compliance with section 103 of the Internal Revenue Code.

(8) After an application has been approved by the board and the governor, the board may issue a conditional

commitment. The conditional commitment is evidence of the board's intention to authorize the issuance of and offer for sale, its bonds to finance the project in accordance with the terms of the application and any additional conditions set forth in the commitment."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1521, 1526, 1527, MCA

VIII. "ALLOCATION OF CAPACITY If the bond capacity of the board is not sufficient to finance all eligible projects, the board, in determining which projects to fund, shall consider the following:

(1) the order in which the applications are submitted;

(2) the availability of financing through one of its other programs;

(3) the availability of tax-exempt financing through another issuer; and

(4) the degree to which the project meet s the criteria of rule VI."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1521, MCA

IX. "APPLICATION AND FINANCING FEES AND COSTS (1) The applicant shall submit a non-refundable application fee of $500.00 with the initial pre-application letter.

(2) At the time revenue bonds are issued by the board to provide financing for a project, the applicant shall pay a financing fee equal to one percent of the first $1,000,000 of the principal amount of the revenue bonds issued, one-half percent of the next $4,000,000 of the principal amount of the revenue bonds issued, and one-quarter percent of the next $15,000,000 of the principal amount of the revenue bonds issued.

(3) The financing fee set forth in subsection (2) is designed to reimburse the board for a proportionate share of its administrative costs associated with the making and servicing of its financial undertakings and its general operative and administrative expenses and to provide a reasonable allowance for losses that may be incurred in the program.

(4) The applicant shall pay its proportionate share of the costs of the bond issue. The immediate costs of the bond issue include, but is not limited to fees of the underwriter, financial advisor, and bond counsel, the cost of printing, advertising, executing, and delivering the bonds, and all other costs that may, under federal arbitrage regulations, be recovered in addition to permissible yield differential. Such costs shall be borne by the applicant of each project financed with bond proceeds in proportion to the board's participation in the loans for such projects or the board may required payment of actual costs in extraordinary circumstance.

(5) The payments due from the applicant under subsections (2) and (4) will be withheld and paid out of the bond sale proceeds unless otherwise approved by the administrator."

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

X. "INTEREST RATES The rate of interest on the financing provided by the board will be determined by the board after the sale of its bonds."

Auth: 17-5-1504, MCA Imp: 17-5-1504, MCA

XI. "CLOSING OF LOANS The board will issue its bonds or notes in an amount sufficient to fund the loans approved by the board. Upon certification by the originator that all provisions of the loan commitment have been complied with, the loan will be scheduled for closing and payment of money to the originator."

Auth: 17-5-1504, MCA Imp: 17-5-1504, MCA

XII. "TAXABLE REVENUE BOND PROGRAM (1) The board may participate in the financing of projects which do not qualify for a tax exemption under section 103 of the Internal Revenue Code by issuing taxable bonds. The application procedures for the issuance of taxable composite or single project revenue bonds are the same procedures prescribed for the issuance of tax exempt composite or single purpose revenue bonds contained in these rules, except the limitations on tax exempt financings shall not apply."

Auth: 17-5-1504, MCA Imp: 17-5-1506, MCA

17. The rules are proposed to commence implementation of the Montana Economic Development Bond Program. Rule I provides definitions to terms that are used throughout the sub-chapter. The rule is proposed to give certain terms a specific meaning so that the board, lenders, and potential borrowers under the program understand the terms and to avoid confusion occasioned by different definitions of the terms appearing elsewhere.

Rule II is proposed to define the scope of application of the proposed rules and to establish that applications for loans for the board's Economic Development Bond Program shall be processed under these rules rather than under rules adopted by the board for its other programs.

Rule III is proposed to describe the basic elements and requirements of and limitations on the board's Economic Development Bond Program and to acquaint potential lenders and borrowers with how the board's Economic Development Bond Programs will operate.

Rule IV is proposed to describe the maximum amounts of bonds authorized to be issued by the board and to apprise

users of the bond programs that there are limitations as to the amount of bonds which may be issued by the board.

Rule V is proposed to set forth in one section the various requirements that each project must meet in order to be eligible for financing under the program and to notify potential users of the program of the requirements that each project must satisfy in order to become eligible for financing under this program. The board is required to adopt rules for the approval, standards, and regulations of project applicants under section 17-5-1521, MCA..

Rule VI is proposed to establish how the criteria set forth in section 17-5-1521, MCA will be utilized in evaluating applications. Section 17-5-1521, MCA, requires that the board adopt a rule for evaluating applications using the criteria enumerated therein.

Rule VII is proposed to specify and establish the various steps involved in the processing of an application for financing under this program. Section 17-5-1521, MCA, requires that the board adopt rules to establish procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with sections 17-5-1526 and 17-5-1527, MCA.

Rule IX is proposed to establish the various fees and charges to be paid by an applicant for a financing undertaken by the board under the bond program. The board is authorized to collect reasonable fees and charges for making financing available under this program. Section 17-5-1521, MCA, requires that the board adopt rules for the assessment, collection and payment of all fees and charges in connection with projects financed by the board.

Rule X is proposed to apprise potential users of the program that interest rates on individual loans will not be established until bonds are sold. Section 17-5-1504 (16), MCA, authorizes the board to collect reasonable interest and section 17-5-1521 appears to require that the board adopt a rule governing how the interest rate will be determined.

Rule XI is proposed to apprise applicants and lenders of how the board's funds will be distributed and to clarify that funds of the board will be distributed to the originator upon the sale of the board's bonds and due closing of the loan in accordance with the terms of the commitment.

Rule XII is proposed to clarify that the board is not limited by statute to issuing tax-exempt bonds on financing projects which do not qualify for tax-exemption under section 103 of the Internal Revenue Code. The other proposed rules deal primarily with the issuance of tax-exempt bonds for financing projects that qualify for tax-exempt financing. Without this rule, it would be unclear that the board is authorized to participate in a taxable bond program.

18. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

Written data, views or arguments may also be submitted to Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than May 24, 1984.

19. Steve Brown, Helena, will preside over and conduct the hearing.

MONTANA ECONOMIC DEVELOPMENT BOARD
PAT McKITTRICK, CHAIRMAN

BY: _____
ROBERT WOOD, LEGAL COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1984.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 10.121.801 thru 804 specifying criteria applied by the Cultural and Aesthetic Projects Advisory Committee in evaluation of grant proposals	)))))	NOTICE OF PROPOSED REPEAL OF RULES SPECIFYING CRITERIA FOR GRANTS EVALUATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 2€, 1984, the Montana Historical Society proposes to repeal rules 10.121.801-804, specifying criteria applied by the Cultural and Aesthetic Projects Advisory Committee in evaluation of grant proposals.

2. The rules proposed to be repealed are on page 10-1639 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because new rules have been established by the Montana Arts Council and the Montana Historical Society.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Montana Historical Society, 225 North Roberts, Helena, Montana no later than May 24, 1984.

5. If a person who is directly affected by the proposed repeal 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 the Montana Historical Society, 225 North Roberts, Helena, Montana, 59620, no later than May 24, 1984.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental subdivision of agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be 15 persons based on number responding last session.

7. The authority of the department to repeal the rules is based on section 22-3-107 MCA, and the rule implements section 22-2-303, MCA.

Robert Archibald

By: Robert Archibald

Certified to the Secretary of State April 16, 1984.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 20.3.415 concerning definitions of terms relating to the certification system for chemical dependency personnel	)	NOTICE OF PROPOSED AMENDMENT OF RULE 20.3.415 DEFINITIONS - CERTIFICATION SYSTEM FOR CHEMICAL DEPENDENCY PERSONNEL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 28, 1984, the Department of Institutions proposes to amend rule 20.3.415 which sets forth definitions which relate to the certification system for chemical dependency personnel.

2. The rule as proposed to be amended provides:

20.3.415 DEFINITIONS (1) through (19) remain the same.

(20) Role play For the purpose of the taped work sample, role play shall mean a spontaneous exchange between the counselor and the person playing the part of the client. Reading from a prepared script will not be considered as a test of counselor competency.

3. The addition of this definition to the certification rules will clarify one of the requirements that potential counselors must fulfill in order to qualify for certification.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, MT 59620, no later than May 25, 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 Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, MT 59620, no later than May 25, 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 30 persons based on approximately 300 persons employed in state approved chemical dependency programs and 900 others who have applied for certification.

7. The authority of the agency to make the proposed amendment is based on Section 53-24-204 MCA, and the rule implements Section 53-24-204 MCA.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State April 16, 1984.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Rules 36.22.307, 36.22.1217, 36.22.1243, 36.22.502(5) and 36.22.1305 pertaining to Board of Oil & Gas Conservation reporting requirements.	NOTICE OF PROPOSED AMENDMENT OF RULES 36.22.307, 36.22.1217, 36.22.1243, 36.22.502(5) and 36.22.1305 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 14, 1984, the Board of Oil and Gas Conservation (Board) proposes to amend rules 36.22.1217 and 36.22.1243 to change the required submittal date of transporters, refiners, gasoline or extraction plant and water production reports to the last day of the month following the month covered by the report. The Board also proposes to amend rules 36.22.307, 36.22.502 and 36.22.1305 to eliminate forms No. 6A (continuation sheet for Report of Production) and 12 (Producers Payment of Oil & Gas Production Tax) which are no longer in use and to adopt form No. 19, Release Agreement. Said form, when properly executed by a surface owner and filed with the Board, will relieve the mineral developer of further plugging and abandonment obligation on any oil or gas well or seismic shot hole which the surface owner wishes to convert to a fresh water well. The proposed amendments will be discussed at the Board's May 24, 1984 meeting to be held in Billings, Montana at the Billings Petroleum Club, Sheraton Hotel at 8:00 a.m.

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

36.22.307 ADOPTION OF FORMS The forms hereinafter listed are hereby adopted and made a part of these rules for all purposes, and the same shall be used as herein directed in giving notice and in making reports and requests to the Board. Copies of printed forms will be supplied by the Board on request.

(1)	Form No. 1	Organization Report
(2)	Form No. 2	Sundry Notice and Report of Wells
(3)	Form No. 3	Bond
(4)	Form No. 4	Completion Report
(5)	Form No. 4A	Continuation Sheet Form 4
(6)	Form No. 5	Report of Subsurface Injections
(7)	Form No. 6	Report of Production
~~(8)~~	~~Form No. 6A~~	~~Continuation Sheet Form 6~~
(9 8)	Form No. 7	Transportation Agency's Monthly Report of Receipts and Disposition of Crude Oil
~~(10~~ 9)	Form No. 8	Refiner's Monthly Report of Receipts and Disposition of Crude Oil

(~~11~~ 10)	Form No. 9	Monthly Gas Report
(~~12~~ 11)	Form No. 9A	Continuation Sheet Form 9
(~~13~~ 12)	Form No. 10	Gasoline or other Extraction Plant
(~~14~~ 13)	Form No. 10A	Continuation Sheet Form 10
(~~15~~ 14)	Form No. 11	Reservoir Survey Report and Gas-Oil Ratio
(~~16~~	~~Form No. 12~~	~~Producers Payment of Oil and Gas Production Tax~~
(~~17~~ 15)	Form No. 13	Producers Certificate of Compliance and Authorization to Transport Oil and Gas from Lease
(~~18~~ 16)	Form No. 14	Certificate of Deposit Cash Bond
(~~19~~ 17)	Form No. 15A	N.G.P.A. Application for New Natural Gas Determination
(~~20~~ 18)	Form No. 15B	N.G.P.A. Application for New Onshore Production Well Determination
(~~21~~ 19)	Form No. 15C	N.G.P.A. Application for Stripper Well Natural Gas Determination
(~~22~~ 20)	Form No. 16	Objection to N.G.P.A. Application
(~~23~~ 21)	Form No. 17	Notice of Classification Determination
(~~24~~ 22)	Form No. 18	Domestic Well Bond and Lien
(23)	Form No. 19	Release Agreement

AUTH: 82-11-111, MCA
IMP: 2-4-201, MCA

36.22.502 PLUGGING AND ABANDONMENT (5) A seismic shot hole may be left unplugged at the request of the surface owner for conversion to a fresh water well provided the surface owner executes a release ~~furnished by the Board of Oil and Gas Conservation~~ on Form No. 19 relieving the party otherwise responsible for the plugging and abandonment of the hole from any liability for damages that may thereafter result from the hole remaining unplugged. This release will cite the date, location, surface elevation, depth to aquifer or gas emitting strata, and any action taken. This information shall be furnished by the geophysical operator.

AUTH: 82-1-104, MCA
IMP: 82-1-104, MCA

36.22.1217 WATER PRODUCTION REPORT The owner of each well which produces both oil and water shall separately determine the amount of water produced along with the oil each month and shall each month report to the Board the quantity of such water produced along with the oil. Such report shall be made on Form No. 6 by the ~~20th~~ last day of the succeeding month.

AUTH: 82-11-111, MCA
IMP: 82-11-123 and 82-11-124, MCA

36.22.1243 REPORTS FROM TRANSPORTERS, REFINERS, AND GASOLINE OR EXTRACTION PLANTS All transporters of crude oil shall make monthly reports to the Board on Form No. 7. All refiners of crude oil shall make monthly reports to the Board on Form No. 8. All transporters of gas shall make monthly reports to the Board on Form No. 9. All operators of gasoline or other extraction plants shall make monthly reports to the Board on Form No. 10. Such forms shall contain all information required therein and shall be filed with the Board on or before the ~~20th~~ last day of each month covering the preceding month.

AUTH: 82-11-111, MCA
IMP: 82-11-123, MCA

36.22.1305 EXCEPTION FOR FRESH WATER WELLS (1) When the well to be plugged, as required by ARM 36.22.1303, may safely be used as a fresh water well and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; provided, that written notification of such utilization and a release by use of Form No. 19 is secured from the landowner and filed with the Board.

(2) Approval by the Petroleum Engineer or his authorized agent of the work done shall relieve the operator of further responsibility.

AUTH: 82-11-111, MCA
IMP: 82-11-123 and 82-11-124, MCA

3. The Board proposes to amend rules 36.22.1217 and 36.22.1243 to allow filers of transporter, refiner, gasoline or gasoline extraction plant and water production reports one full month after the month covered by the report to file such reports. This extended filing period is consistent with oil and gas production report filing requirements. The Board proposes to amend rule 36.22.307 to eliminate form No. 6A which is a continuation sheet of the monthly production report that is no longer in use and form No. 12, privilege and license tax report form. Said tax is now collected by the Department of Revenue and reported on the same form used for severance tax. Rule 36.22.307, as well as 36.22.502(5) and 36.22.1305, is also proposed to be be amended to adopt form No. 19, Release Agreement. Said form will facilitate existing rules which allow conversion of oil or gas wells or seismic shotholes to fresh water wells providing that the surface owner executes a release to the Board relieving the operator of further plugging and abandonment obligation.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than May 24, 1984.

5. If a person who is directly affected by the proposed amendments wishes to enter his data, views and arguments orally or in writing at a public hearing he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624 no later than May 24, 1984.

6. If the Board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendments; from the Administrative Code Committee of the legislature, from a government 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 at least greater than 25 persons based on the Board's determination that there are more than 250 persons who may be required to file one or more of the reports subject to this notice.

Richard A. Campbell

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

BY: Dee Rickman

Dee Rickman
Assistant Administrator
Oil & Gas Conservation Division

Certified to the Secretary of State April 16, 1984.

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

In the matter of the repeal of Rules 46.11.111 and 46.11.114; the amendment of Rules 46.11.116, 46.11.120 and 46.11.125 and the adoption of a rule pertaining to the food stamp program	))))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES 46.11.111 AND 46.11.114; THE AMENDMENT OF RULES 46.11.116, 46.11.120 and 46.11.125 AND THE ADOPTION OF A RULE PERTAINING TO THE FOOD STAMP PROGRAM

TO: All Interested Persons

1. On May 18, 1984, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the repeal of Rules 46.11.111 and 46.11.114; the amendment of Rules 46.11.116, 46.11.120 and 46.11.125 and the adoption of a rule pertaining to the food stamp program.

2. Rules 46.11.111 and 46.11.114 proposed to be repealed are on page 46-954 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201 and 53-2-306, MCA

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

46.11.116 FOOD STAMPS, DETERMINING ELIGIBILITY FOR ~~BENEFITS~~ THE FOOD STAMP PROGRAM

(1) Eligibility shall be determined on a prospective basis.

(2) Households anticipating changes in their circumstances which will make them ineligible shall be given written notice of denial or written notice of the closure of their certification.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201 and 53-2-306, MCA

46.11.120 FOOD STAMPS, MONTHLY REPORTING REQUIREMENTS

(1) Households shall be subject to monthly reporting requirements except:

(a) migrant farmworker households which are pursuing migrant farm work outside of their home area; and

(b) households in which all the members are without earned income and ~~whose~~ in which all the adult members are ~~all~~ at least sixty years of age or receive social security or supplemental security income benefits for disability or blindness~~.~~;

(c) disabled individuals living in group homes for the blind and disabled who receive income from sheltered workshops; or

(d) households whose only source of income is from self-employment and who have a history of earning income from the self-employment source for longer than six months.

Subsections (2) through (7) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201 and 53-2-306, MCA

46.11.125 FOOD STAMPS, DETERMINING BENEFITS (1) Except as provided in subsection (2) below, household benefits shall be determined retrospectively on the basis of the household's circumstances reported in their monthly report.

(2) Household benefits shall be determined prospectively in the following situations:

(a) in cases which involve migrant farmworkers who are pursuing migrant farmwork outside of their home area;

(b) in the first two months of eligibility following an initial application;

(c) in the first two months of eligibility when a participating household moves to a new county;

~~(c)~~ (d) when a new member who is not already certified to receive food stamps in another household begins to live with a household which is currently on retrospective budgeting, the income and resources of the new member shall be treated prospectively in the first two months of the new members eligibility~~.~~;

(e) when an individual moves from one participating household into another participating household, he cannot receive benefits twice in the same month. However, that individual can receive benefits in his new household when, before benefits are issued to his former household, the former household agrees in writing to have their benefits reduced by the portion alloted to the departing individual and waives their right to an advance notice of adverse action.

(3) Income received in the first two months of eligibility ~~which is no longer available~~ shall not be included in retrospectively budgeted income in the third and fourth months' of eligibility~~.~~ when:

(a) the income is from a source which no longer provides income to the household; and

(b) the income was included in the household's prospective budget in the first two month's of eligibility.

(4) Lease, royalty, and rental income which is received periodically but not on a monthly basis and which is expected to continue shall be determined for the prior period, July 1 to June 30, and prorated over the current period, September 1 to August 31. However, if any portion of the prior period's income is expected to stop in the current period, then this

portion shall not be considered as income in the current period.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201 and 53-2-306, MCA

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

RULE I FOOD STAMPS, CERTIFICATION PERIODS (1) Households who are eligible for benefits shall be given certification periods of from six (6) to twelve (12) months except:

(a) Self-employed households may be certified for less than six (6) months in order to conform with the time when information about self-employment is available; and

(b) households who do not have a fixed residence in the county may be certified for from one (1) to six (6) months.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201 and 53-2-306, MCA

5. The department operates the Food Stamp Program according to the rules of the U.S. Department of Agriculture. These federal rules require that a system of monthly reporting and retrospective budgeting be used to determine benefits. Although food stamp rules are in most cases fixed, the department was allowed to design an eligibility system which is uniform and compatible with the Montana Aid to Families with Dependent Children Program.

In August 1983, the department started a system of monthly reporting and retrospective budgeting for the Food Stamp Program. Since that time, revised federal regulations were published on December 8, 1983, and the department has identified several waivers from these regulations which we believe will improve the system for determining eligibility.

The waivers that we are proposing are that:

A. Households exempt from monthly reporting would include:
   - Disabled individuals in group homes with wages from sheltered workshops; and
   - Households whose only income is from self-employment when their income has been prorated over at least six (6) months.

B. Households without a fixed residence in a county would be certified for one (1) to six (6) months.

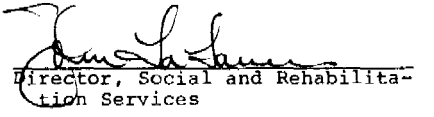
C. Households would be treated as new applicants when they move to a new county. A new applicant receives benefits based on current rather than past situations.

D. Continuing lease, royalty and rental income be prorated over a year period. The prior year's income would be

averaged on a monthly basis and therefore, give households a better understanding of how their eligibility is determined.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than May 28, 1984.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 16, 1984.

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

In the matter of the amending of Rules 46.6.2510, 46.6.2515, 46.6.2525, 46.6.2535, 46.6.2560 and 46.6.2570 pertaining to the blind vendors program.	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS OF RULES 46.6.2510, 46.6.2515, 46.6.2525, 46.6.2535, 46.6.2560 AND 46.6.2570 PERTAINING TO THE BLIND VENDORS PROGRAM

TO: All Interested Persons

1. On May 16, 1983 at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendments pertaining to the blind vendors program.

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

46.6.2510 ISSUANCE AND CONDITIONS OF CERTIFICATION

Subsections (1) and (2) remain the same.

(3) List of eligibles for placement:

(a) Applications for a position as a blind vendor will be accepted from anyone who meets the cited criteria. A record will be maintained of those applying. From this list of applications the department will select those suitable for training.

(b) Applicants who have successfully completed the training program or who have otherwise been certified as qualified blind vendors will be placed on the eligible list for placement in the following order:

(i) applicants who reside in the geographical area where a vacancy occurs or a new facility is being established;

(ii) substitute vendors who merit being placed as regular managers;

(iii) newly trained vendors; these persons will be placed on the list in order of their certification for the program;

(iv) former blind vendors who desire to return to the program and whose previous records do not preclude their return.

(c) The final selection for placement of blind vendors will be the decision of the department.

(4) Initial ~~appointment~~ placement to be probationary:

(a) An applicant selected for ~~appointment~~ placement as a blind vendor will initially be on probationary ~~appointment~~ placement for a period of six months.

(b) The probationary ~~appointment~~ placement is to provide for:

(i) adjustment of the blind vendor to the requirements of the physical environment;

(ii) adjustment of the blind vendor to the mental and physical requirements of a continuous work situation;

(iii) amelioration of any training deficiencies;

(iv) insuring that requirements of the building management can be satisfactorily filled.

(c) If during the probationary period the department determines that the probationary blind vendor is not successfully meeting the duties of facility operation or is unable to meet the requirements of the building management, the probationary appointment will be terminated unless extended at the discretion of the department.

(5) Contracting:

(a) The department will contract with certified blind vendors placed by the department for performance of their services.

(i) The contracts will be on an annual basis.

(b) Contract provisions will be in accord with these rules and may include other provisions as the department determines may be necessary for the conduct of the program, the furtherance of the services provided by the department to the vendor, and the assurance of the quality of services provided by the vendor.

AUTH: Section 18-5-414, MCA
IMP: Section 18-5-403, MCA

46.6.2515 TRANSFER AND TERMINATION Subsections (1) and (2) remain the same.

(3) Termination:

(a) Certifications shall be issued for ~~one-year~~ an indefinite period but may be terminated by the blind vendor giving sixty (60) days written notice to the department if he desires to resign.

(b) Any certification issued to a blind vendor may be revoked by the department, by written notice when the department determines that the facility is not being operated in accordance with these rules and regulations, the terms and conditions governing the permit with the building management, or the contract with the blind vendor.

(c) Any certification may be terminated or suspended, if because of improvement of vision, the blind vendor no longer meets the criteria as defined in this rule.

(d) Any certification may be terminated or suspended because of extended illness with medically documented diagnosis of prolonged incapacity of the blind vendor to operate ~~the~~ a vending facility in a manner consistent with the needs of the location or other available locations in the program.

(e) The blind vendor shall expressly release the department, its agents or employees from any loss, injury,

damage or expense which the vendor may suffer, sustain, or incur by reason of such termination.

(f) The sixty (60) day written notice may be waived by mutual consent of all parties concerned.

AUTH: Section 18-5-414, MCA
IMP: Section 18-5-403, 18-5-411 and 18-5-415, MCA

46.6.2525 VENDOR RESPONSIBILITIES Subsection (1) remains the same.

(2) The duties of the vendor shall be to:

(a) perform faithfully and to the best of his ability the necessary duties in connection with the operation of the facility in accordance with the department's rules and regulations, the terms of the permits, the agreement, and shall perform in the best interests of the blind vendors program as a whole;

(b) cooperate with duly authorized representatives of the department in connection with their official responsibilities under the program;

(c) operate the facility in accord with all applicable health laws and regulations;

(d) furnish such reports as the department may from time to time require;

(i) submit the SRS-VSD-BE-1 by fifteenth of each month;

(ii) participate in ~~annual~~ monthly inventory ~~by fifteenth~~ at beginning of ~~October~~ each month;

(e) follow generally acceptable accounting practices;

(f) take no action in the derogation of, or inconsistent with, the paramount right, title, and interest of the department to the facility, its equipment and the lease or agreement with the management of the property;

(g) maintain the highest standard of personal appearance, grooming and behavior so as to win and retain the respect of the clientele of the facility;

(h) pay cash for all merchandise or immediate payment upon receipt of billing;

(i) to report to the department in writing, as soon as practicable, the occurrence of any accident at this facility. This requirement is in addition to the vendor's duty to report any accident to the insurance carrier;

(j) to report to the department any claim or suit which may be brought against the vendor as the result of any accident at the facility. This requirement is in addition to the vendor's duty to report such information to the insurance carrier.

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

AUTH: Section 18-5-414, MCA
IMP: Section 18-5-415, MCA

46.6.2535 DEPARTMENT'S SET ASIDE FUNDS (1) The department will set aside funds from the net proceeds of the operation of business enterprise facilities under the blind vendors program. To the extent that set aside funds are accumulated as provided for in subsections (2) and (3), those funds may be used for the purposes of:

(a) maintenance and replacement of equipment;

(b) the purchase of new equipment;

(c) management consultant services;

(d) assuring a fair minimum of return to vendors; or

(e) the establishment and maintenance of retirement or pension funds, health insurance contributions, paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors certified by the department, after providing each such vendor information on all matters relevant to such proposed purposes~~;-or~~.

~~(f)--the-purchase--by-the-department--of-public-liability and-products--liability-insurance-as-provided-in-ARM-46.6.2520 (4).~~

(2) The amount of net proceeds for set aside purposes will be computed and reported on the SRS-VSD-BE-1 and paid monthly.

(3) Each unit's set aside fee will be five percent (5%) of the net proceeds.

AUTH: Section 18-5-414, MCA
IMP: Section 18-5-406, MCA

46.6.2560 CONTRACTS WITH VENDING COMPANIES (1) The department will negotiate all contracts with vending companies for the installation ~~or-locating~~ of vending machines ~~in-or-to be-assigned-to-business-enterprise-facilities~~.

(2) The vending company will be selected by competitive bid. Contracts with vending companies will stipulate the type of equipment, periods of service, quality of service, and the ~~percentage-of-commission~~ flat fees to accrue to the business enterprise ~~facility~~ program. A flat fee is an agreed upon monthly unit amount of payment on a per vending machine basis to the department or its agent for purposes of the set aside fund.

~~(3)--Vending--company--payments--for--commissions--will include-information-relative-to-sale-(meter-readings-if-available)-and-will-be-made-to-the-vendor.~~

~~(4)~~ (3) The department will negotiate contracts with vending machine companies for the installation of vending machines in public and other buildings in which there is no competition with an existing business enterprise facility. Proceeds from these vending machines may be used, as determined by the department, as best benefits the blind vendors program.

~~(5)~~ (4) The vendor will be provided a list of assigned vending machines, their locations, and applicable contracts.

AUTH: Section 18-5-414, MCA
IMP: Section 18-5-416, MCA

46.6.2570 INFORMING VENDORS OF RIGHTS AND RESPONSIBILITIES (1) Each blind vendor will be provided with a copy of these rules and regulations.

(2) Each blind vendor will be provided with a vending stand operator's manual explaining their duties as vendors of various type vending stands with the qualifications for the various type stand operators.

(3) Blind vendors shall be provided the opportunity for an administrative review and a fair hearing in accordance with ARM 46.2.201 through 46.2.214 in any contested matter.

(a) A blind vendor dissatisfied with the decision rendered after a fair hearing, may pursue that due process accorded by the Randolph-Sheppard Act (20 USC 107a).

AUTH: Section 18-5-414, MCA
IMP: Section 18-5-404 and 18-5-405, MCA

3. The proposed amendments are necessary in order to bring the state blind vendors program into congruence with the relevant federal statutes and rules.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than May 24, 1984.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 16, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE HEALTH FACILITY AUTHORITY

In the matter of the amendment of rule 8.120.206 concerning fees.	)))	NOTICE OF AMENDMENT OF RULE 8.120.206 FEES

TO: All Interested Persons:

1. On March 15, 1984, the Health Facility Authority published a notice of public hearing on the amendment of the above-stated rule at pages 418 and 419, 1984 Montana Administrative Register, issue number 5.

2. The hearing was held on April 5, 1984 in the downstairs conference room, Department of Commerce, 1424 9th Avenue. No interested persons appeared to offer testimony. No letters of comment were received at the hearing. No comments or testimony were submitted prior to the hearing.

3. The board has amended the rule exactly as proposed.

DEPARTMENT OF COMMERCE

BY: _____
ROBERT WOOD, LEGAL COUNSEL

Certified to the Secretary of State, April 16, 1984.

BEFORE THE DEPARTMENT AND BOARD
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF PROCEDURAL RULES FOR CONTESTED CASE HEARINGS HELD BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION PURSUANT TO TITLE 85, CHAPTER 2, MCA)	NOTICE OF THE ADOPTION OF PROCEDURAL RULES 36.12.201 - 36.12.233

TO: All Interested Persons

1. On November 10, 1983, the Board and the Department published notice of public hearings to consider the adoption of new rules and the amendment of ARM 36.2.101 pertaining to procedural rules for contested case hearings held pursuant to Title 85, chapter 2, MCA, at page 1620 of the 1983 Montana Administrative Register, issue number 21. Public hearings were held on December 1, 6, 8, and 15, 1983, and comments were accepted until January 4, 1984.

2. The Board and the Department adopted the rules as proposed on March 11, 1984, except for Rules III, XV, XXIII, and XXIX which the Board has adopted with the following changes:

36.12.203 (III) HEARING EXAMINERS (1) Assignment. When the department orders a contested case hearing, the director shall assign a hearing examiner to hear the case. The hearing examiner shall not simultaneously be an employee of the agency which also assumes either an applicant or objector position to the hearing. The file that is submitted to the hearing examiner, subsequent to the assignment of the case, shall contain only the parties' applications, notices of applications, petitions, objections to applications, or permits under consideration to be modified or revoked. After reviewing the file, the hearing examiner shall contact the parties and advise them as to the location and time during which a hearing should be held. Except as required under the circumstances of ARM 36.12.232, no hearing shall be scheduled on a Saturday, Sunday or legal holiday.

(2) Duties. Consistent with law, the hearing examiner shall perform the following duties:

(a) regulate the course of the hearing, including the scheduling, recessing, reconvening and adjournment thereof;

(b) grant or deny motions for discovery including the taking of depositions;

(c) receive and act upon requests for subpoenas where appropriate;

(d) hear and rule on motions;

(e) preside at the contested case hearing;

(f) administer oaths and affirmations;

(g) grant or deny requests for continuances;

(h) examine witnesses where he deems it necessary to make a complete record;

(i) rule upon offers of proof and receive evidence;

(j) make preliminary, interlocutory or other orders as he deems appropriate;

(k) recommend a summary disposition of any part of the case where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons;

(l) require testimony, upon the motion of a party or upon his own motion, to be prefiled in whole or in part when prefiling will expedite the hearing and the interests of the parties will not be prejudiced substantially;

(m) hold conferences for settlement, simplification of the issues, or any other proper purpose;

(n) appoint a staff expert;

(o) prepare a proposal for decision containing findings of fact, conclusions of law and a proposed order;

(p) after issuing the proposal for decision, participate in the final decision-making process;

(q) do all things necessary and proper to the performance of the foregoing; and

(r) as authorized by law and rule, perform such other duties as well as any that may be delegated to him by the director.

AUTH: 2-4-201(2) and 85-2-113(2), MCA IMP: 2-4-611, 2-4-612, and 2-4-621, MCA

36.12.215 (XV) DISCOVERY (1) Demand. Each party shall, within 10 days of a demand by another party, disclose the following:

(a) The names and addresses of all witnesses that a party intends to call at the hearing together with a brief summary of each witness's testimony. All witnesses unknown at the time of said disclosure shall be disclosed, together with a brief summary of their testimony, as soon as they become known.

(b) Any relevant written or recorded statements made by the party or by witnesses on behalf of the party shall be permitted to be inspected and reproduced by the demanding parties.

36.12.223 (XXIII) HEARING PROCEDURE Unless the hearing examiner determines otherwise the hearing shall be conducted substantially in the following manner:

(1) Statement of hearing examiner. After opening the hearing, the hearing examiner shall, unless all parties are represented by counsel, state the procedural rules for the hearing including the following:

(a) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the hearing examiner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with disclosure of all relevant testimony and information.

(b) All parties have a right to be represented at the hearing; and,

(c) The rules of evidence are set forth in RULE XXI(1).

(2) Stipulations or agreements. Any stipulation agreements entered into by any of the parties prior to or during the hearing shall be entered into the record.

(3) Opening statements. The party with the burden of proof may make an opening statement. All of the parties may make such statements in a sequence determined by the hearing examiner.

(4) Presentation of evidence. After any opening statements, unless otherwise determined by the hearing examiner, the ~~party with the burden of proof~~ applicant shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing examiner.

(5) Cross-examination. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner.

(6) Final argument. When all parties and witnesses have been heard, opportunity shall be offered to present final argument in a sequence determined by the hearing examiner. Such final argument may, in the discretion of the hearing examiner, be in the form of written memoranda or oral argument, or both. The final argument need not be recorded if, in the discretion of the hearing examiner, it becomes unduly repetitious, irrelevant or immaterial.

(7) End or continuance of hearing. After final argument, the hearing shall be closed or continued at the discretion of the hearing examiner. If continued, it shall be either continued to a certain time and day, announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than 5 days written notice to the parties.

(8) Proposed findings and briefs. The hearing examiner may require all parties of record to file proposed findings of fact or briefs, or both, at the close of testimony in the hearing. The proposed findings and briefs may, at the discretion of the hearing examiner, be submitted

simultaneously or sequentially and within such time periods as the hearing examiner may prescribe. Any party may volunteer to file proposed findings and briefs, and the hearing examiner, in his discretion, may receive them even if the other parties choose not to so file.

(9) Closure of record. The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits that the parties and the hearing examiner have agreed should be received into the record, whichever occurs latest.

AUTH: 2-4-201(2) and 85-2-113(2), MCA IMP: 2-4-611 and 2-4-612, MCA

36.12.229 (XXIX) EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSAL FOR DECISION AND THE FINAL DECISION-MAKING PROCESS

(1) Exceptions. Any party adversely affected by the hearing examiner's proposal for decision may file exceptions. Such exceptions shall be filed with the hearing examiner ~~and/or~~ within 20 days after the proposal is served upon the party. A written request for additional time to file exceptions may, in the discretion of the hearing examiner, be granted upon a showing of good cause. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the transcript or if one was prepared. Parties are cautioned that vague assertions as to what the record shows or does not show without citation to the precise portion of the record (e.g., to exhibits or to a transcript, if one was prepared) may be accorded little attention.

(2) The final decision-making process.

(a) ~~Role of hearing examiner and director.~~ ~~The hearing examiner and the director shall render~~ The final decision in any contested case hearing, shall be rendered in accordance with MCA §§ 2-4-621 to 2-4-623. Only factual information or evidence which is a part of the contested case hearing record shall be considered in the final decision-making process.

(b) ~~The final order.~~ After the 20-day exception period has expired, the director ~~and hearing examiner~~ shall:

(i) adopt the proposal for decision as the final order; or,

(ii) reject or modify the findings of fact, interpretation of administrative rules, or conclusions of law in the proposal for decision.

(c) ~~Mailing of the final order.~~ A copy of the final order shall be served upon all parties by personal service, by first class mail, or by depositing it with the mail and distribution section, general services division, department of administration.

AUTH: 2-4-201(2) and 85-2-113(2), MCA IMP: 2-4-621, 2-4-622, and 2-4-623, MCA

3. The Department of Natural Resources and Conservation conducted the hearings on these proposed rules on behalf of the Board and the Department. The following is the response of the Board and the Department to the oral and written comments received:

RULE II

COMMENT: The Department may be represented by the Hearing Examiner, by expert witnesses and as a party, thereby allowing it to operate in many different ways on its own discretion. The Department should present its position at the outset of a hearing to eliminate surprise on parties later in the hearing process.

RESPONSE: As a matter of routine, the Department generally acquires a Hearing Examiner from outside the agency when the Department is a formal objector or applicant to the proceedings. On those occasions when a Department staff expert provides information to a hearings record, the Department provides such reports and possible "expert" recommendations early to all parties in the process. For the Department to simultaneously serve as the Hearing Examiner, and a formal objector or applicant to the hearing, is certainly discouraged. Rule III has been modified to include: "...hear the case. The hearing examiner shall not simultaneously be an employee of the agency which also assumes either an applicant or objector position to the hearing. The file that...."

RULE III:

COMMENT: Field personnel may make comments to a case file which may, subsequently, influence a Hearing Examiner's decision.

RESPONSE: Comments and details are placed in a case file as part of a field investigation or project research related to the application. Such comments are intended to be factual and to not reflect suggestive opinions. Consequently, field personnel should be able to continue to examine and factually report on their findings. The Hearing Examiner will need to exhibit discretion in his/her application of field personnel reports and will need to disregard those materials that are not relevant.

COMMENT: All materials prepared and submitted to a case file prior to a hearing should remain in the file.

RESPONSE: All materials submitted do remain in the file, but may or may not be allowed to be considered by the Hearing Examiner. The Hearing Examiner will need to disregard those materials that are not relevant. If upon inspection, a party feels that needed materials are not in a case file, that party may request or submit such information, as long as it meets with Rule XXI, Rules of Evidence.

COMMENT: Matters not in the record are considered in a final decision. This is not within the permitted bounds of a hearing examiner's obligation.

RESPONSE: The purpose for a check and balance procedure is to assure, through a proposal for decision, that the relevant facts have been properly presented to yield a fair and reasonable decision. Exceptions to a proposal for decision should reflect on improper findings or possibly misinterpreted conclusions. The hearing examiner is not making policy, but merely reviewing comments to his/her decision through the proposal for decision. Only factual information or evidence as part of the hearing record is used in the final decision-making process.

RULES III & XX:

COMMENT: A staff expert should present his/her testimony prior to testimony of either an applicant or an objector so they may understand the Department's position(s).

RESPONSE: The staff experts are to provide factual data, not to take a position on either side of a matter. The Department's position(s) are developed through cases, i.e. law, and are not a matter for testimony by the staff experts. As a practical matter, the staff experts testify only as to facts, and generally answer questions involving their field of expertise (e.g. hydrogeology). The applicant and objectors are given a chance to question the staff experts; the experts should not also be forced into a position where they are expected to provide the format or framework for the applicant's or objector's case. The conclusions of the staff expert are mailed to all parties prior to the hearings, so that at the hearing, the parties are already aware of the expert's opinion.

COMMENT: Prefiled testimony should only be required upon agreement of all parties with respect to Rule XX(1).

RESPONSE: The suggested requirement that all parties must agree would effectively thwart the intention of the rule - to expedite hearings by allowing for thorough pretrial preparation - because the party whose witness/expert was involved could forestall prefiling by refusing to agree. The application of this rule has met with varying degrees of success. After the hearings process has been debugged and procedures are better understood, the prefiling of testimony should be a useful tool. The rule has merit and would effectively improve the proceedings when properly applied to timely hearings. Therefore, the rule should remain. Consideration may be given if all parties and the Hearing Examiner agree not to prefile testimony.

RULE IV:

COMMENT: In Rule IV(1)(e), if an application does not meet the statutory requirements, the Department cannot

schedule a hearing thereon. Applicants should not be allowed to cure an application's technical defects at a hearing.

RESPONSE: Rule IV(1)(e) does not pertain to applications which are on their face, not correct or complete, or have technical defects. The Rule merely restates the substance of the Administrative Procedures Act provision requiring the Department to notify the parties of what matters will be in issue at the hearing, MCA §2-4-601(1)(d). The issues raised by objection to an application cannot be resolved on the face of the forms so filed, but rather require the hearing for evidence presentation. Only after the hearing can the Department determine whether the project proposed by the applicant will, as he asserts, satisfy the statutory criteria, or whether, as the objector asserts, it will not.

COMMENT: The only exception to a 30 day notice period for a hearing should be when all parties agree to the shortening of time.

RESPONSE: The Hearing Examiner would be advised to contact all parties relevant to moving a hearing date within a standard 30 day notice period. The discretion of the Hearing Examiner is again of significance. There may be urgent issues that need to be heard with less than 30 days notice. Also, if hearings on applications can be combined, it may be useful to schedule within less than 30 days. The application of this rule hinges upon the reasonable discretion of the examiner.

RULE V:

COMMENT: The notice procedure is being expanded and will thusly increase the processing time.

RESPONSE: The notice procedure simply formalizes the procedure that the Department has employed in the past to resolve defective notices. No additions or changes have been made that would increase processing time.

RULES VI, XV, XVI & XX:

COMMENT: Legal counsel will now be needed in every hearing before the Department in order to comply with the rules. A layman would not be able to represent himself/herself in a contested case hearing.

RESPONSE: The rules state that a party to a hearing may appear in their own behalf or be represented by legal counsel. These rules do not require that a party be represented by legal counsel. The purpose of the rules is to clarify and standardize procedures governing contested case hearings and, thereby, potentially reducing the need for legal counsel by allowing parties to reasonably prepare themselves for the proceedings. By knowing what the procedural rules are, a party will be in a better position to determine whether or not he or she should retain legal counsel.

RULE VII:
COMMENT: Terminate a hearing when a settlement has been reached.
RESPONSE: As a practical matter, this often happens. Once the hearing has been noticed, however, the Department will continue to process the application through the hearing procedure, issuing a proposal for decision and a Final Order. This allows the parties to clarify their terms, should the Hearing Examiner have misunderstood the oral settlement expressed at the hearing.

RULE VIII:
COMMENT: The applicant must still present evidence to satisfy his substantial burden of proof when objectors have defaulted. This suggests an unnecessary burden on the applicant.
RESPONSE: When the application is free from all objections, the Department still has a responsibility to assure that the standard criteria for a beneficial water use exist. These criteria need to be presented at a hearing if clarification of such criteria has not been made previously in the application. This aspect of the procedure should, therefore, remain as proposed.

RULE XI:
COMMENT: The Director should not have jurisdictional power beyond that of a district court involving disqualification of a Hearing Examiner.
RESPONSE: Rule XI does not exhibit the degree of discretionary power as suggested by the comment. The Director shall make the affidavit part of the record and will state the belief of the affidavit for disqualifying the hearing examiner.

RULE XIV:
COMMENT: In Rule XIV regarding certification of motions to Director, the Hearing Examiner should be required to certify motions to the Director when so requested, and further should be empowered to certify motions of his/her own accord.
RESPONSE: The parties to a contested case hearing cannot be allowed to frustrate the hearing process through an automatic certification motion. The possibility of abuse looms too large to ignore. Where legitimate motions are filed, the Hearing Examiner has the discretion to disrupt and delay the normal procedure by certifying the issues to the Director. The Hearing Examiner, through his/her power to regulate the content of the hearing, may request briefs on any issue he/she may consider certifiable, and may rule thereon in the proposal or decision. Hence, there is no need for the Hearing Examiner to be empowered to certify on his/her own motion. Upon final decision by the Department, the aggrieved

party's right to judicial review arises, adequately protecting the party's procedural rights.

RULES XV & XXIX:
COMMENT: Typos in the wording include: 1) "parts" should be "parties" in Rule XV(1)(b); 2) "and/or" in Rule XXIX(1) should be eliminated; 3) reference to Rule II(20) and Rule II(12) in "Need for Rule XIX" are incorrect.
RESPONSE: In Rule XV(1)(b), "parts" was changed to "parties"; 2) in Rule XXIX(1), "and/or" was eliminated.

RULE XIX:
COMMENT: Participation by untimely objectors contradicts Rule III and Rule V.
RESPONSE: The file will contain those items, as specified in Rule III, for submission to the Hearing Examiner. In addition to the file, the record may contain other evidences such as pleadings, motions, objections, etc. (Rule XXVI). As such, there is not an apparent contradiction between Rule III and Rule XIX. Rule V provides considerations to timely objectors regarding republication of notices. Such consideration is not expressly warranted for untimely objectors, therefore, an untimely objector may participate in a rescheduled hearing, but an untimely objector cannot force the rescheduling.

RULE XX:
COMMENT: In Rule XX, the Department may call an expert witness which contradicts with Rule XXI on "Rules of Evidence."
RESPONSE: In resolving concerns where considerable testimony may complicate or abstract the issues, a staff expert would be useful for clarification. Staff experts are recognized as not being infallible, but they improve Hearing Examiners' understanding of the case issues and help eliminate confusion. The Hearing Examiner is utilizing "the agency's experience, technical competence, and specialized knowledge in the evaluation of evidence," as stated in MCA §2-4-612(7).

RULE XXI:
COMMENT: The Department should recognize facts before a hearing begins. This relates to a lack of substantive policy by the Department.
RESPONSE: As a hearing progresses, it is not always possible to predict what materials or evidences might contribute to the establishment of judicially cognizable facts. The potential abuse of this practice is not expected to occur and is highly unlikely. A Hearing Examiner, as with a district court, will need to consider judicially cognizable facts when they are recognized.

RULE XXIII:

COMMENT: The applicant in all cases has the burden of proof and, therefore, should always present his evidence first during a hearing.

RESPONSE: The applicant always does have the initial burden of proof. Rule XXIII(4) has been changed to read: "the ~~party with the burden of proof~~ applicant shall begin."

RULE XXV:

COMMENT: Final decision makers should include a statement precluding any contact with the parties to prevent attempts to influence.

RESPONSE: The discretion of the Hearing Examiner will again need to address this concern. The Ex Parte Communication Rule stipulates that which is not permitted.

RULE XXVIII:

COMMENT: The Hearing Examiner should not have discretion in taking official notice of judicially cognizable facts.

RESPONSE: As explained in comment to Rule XXI(4), there are occasions when judicially cognizable facts need to be considered at points during the hearings process which cannot be predicted through policy or scheduling.

RULE XXIX:

COMMENT: By having the Director involved in the decision-making process, political motivations may outweigh factual considerations.

RESPONSE: The definition of "director" includes his designee. The Water Resources Division Administrator is the usual designated official who participates in the decision. Regardless of whoever is involved, only factual information or evidence as part of the hearing record is used in the final decision-making process. Political considerations would not be part of the hearings record. As such, decisions would not reflect pressures outside the hearing record. The decision-making process would proceed as referenced in §2-4-621 to 2-4-623, MCA.

COMMENT: The rule was ambiguous as to who is ultimately responsible for the final decision-making action in the agency.

RESPONSE The rule has been clarified to provide that the decision is an agency decision and is written in accordance with Section 2-4-621.

"RULE XXIX EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSAL FOR DECISION AND THE FINAL DECISION-MAKING PROCESS

(1) Exceptions. Any party adversely affected by the hearing examiner's proposal for decision may file exceptions. Such exceptions shall be filed with the hearing examiner within 20 days after the proposal is served upon the party. A

written request for additional time to file exceptions may, in the discretion of the hearing examiner, be granted upon a showing of good cause. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the transcript or if one was prepared. Parties are cautioned that vague assertions as to what the record shows or does not show without citation to the precise portion of the record (e.g., to exhibits or to a transcript, if one was prepared) may be accorded little attention.

(2) The final decision-making process.

(a) ~~Role of hearing examiner and director.~~ ~~The hearing examiner and the director shall render~~ The final decision in any contested case hearing, shall be rendered in accordance with MCA §§ 2-4-621 to 2-4-623. Only factual information or evidence which is a part of the contested case hearing record shall be considered in the final decision-making process.

(b) ~~The final order.~~ After the 20-day exception period has expired, the director ~~and hearing examiner~~ shall:

(i) adopt the proposal for decision as the final order; or,

(ii) reject or modify the findings of fact, interpretation of administrative rules, or conclusions of law in the proposal for decision.

(c) ~~Mailing of the final order.~~ A copy of the final order shall be served upon all parties by personal service, by first class mail, or by depositing it with the mail and distribution section, general services division, department of administration.

AUTH: 2-4-201(2) and 85-2-113(2), MCA IMP: 2-4-621, 2-4-622, and 2-4-623, MCA

GENERAL COMMENTS:

COMMENT The rules reflect thoughtful study of the principles of administrative law. The Department has given attention to detail in the proposed rules.

RESPONSE: The remarks complimenting the Department's procedural rules are appreciated.

COMMENT: The logistics of the hearings proceedings was insufficient with respect to number of hearings, number of materials at hearings, time of hearings, and length of comment period.

RESPONSE: The proposed rules and notice of hearings were published in the Montana Administrative Register per prescribed procedures. Copies of rules were noticed to be available upon request. The comment procedures were also noticed. It is felt that such logistic concerns are, therefore, invalid.

COMMENT: All rules favor the Department.
RESPONSE: The rules were prepared to improve the effectiveness of the contested case hearings process. Rules will, as a by-product, improve the Department's functioning. They will, however, primarily serve as a format to assist parties to conveniently present arguments in a simple, prescribed, and purposeful manner for decision making.

COMMENT: Claimant is penalized by paying costs for his "Natural, God Given Inalienable Rights."
RESPONSE: When used in the context of Montana Water Law, the procedural rules do not apply to claimants. (A claimant is referred to as a party who filed for existing rights - rights prior to July 1, 1973.) In fact, the only costs addressed in the rules are those required by statute to reimburse for republishing the notice of application. The rules would apply only to contested case hearings involving applications for permits (MCA §85-2-309) and not issues resolving claimant filings. Such comments on claimants' costs are unmerited with respect to the proposed rules.

COMMENT: The thrust of the rules deprive a state resident of a trial.
RESPONSE: MCA (Title 2, Chapter 4, Part 7) provides for judicial review of contested cases. If warranted, judicial review may proceed to a trial.

COMMENT: An undue burden in both time and money has been placed on the applicant.
RESPONSE: The proposed rules have been drafted to reduce the likelihood and burden of random and unknown elements and unpreparedness by clarifying and standardizing procedures governing contested case hearings on water right applications. Hearings may be exceedingly complex or relatively simple. Regardless of the complexity, the Department's decision must be based on the record established at the hearing. It is imperative that parties are well prepared for hearings to present all necessary facts in a clear, accurate, convenient, and timely manner. These rules effectively facilitate the purposes of the Water Use Act by providing for a fair and impartial hearing process to render durable decisions on contested case issues §85-2-311.

COMMENT: With these rules, a layman cannot adequately represent himself/herself.
RESPONSE: The proposed rules are intended to serve as a format to assist parties, whether represented or unrepresented by legal counsel, to conveniently present arguments in a simple, prescribed, and purposeful manner for decision making. The procedural rules of any contest need to be specified prior to engagement of any parties regardless of

their background, profession, or understanding. Some participants may need additional counseling, while others can proceed without counsel. These rules effectively facilitate the purposes of the Water Use Act by providing a fair and impartial hearings process to render durable decisions on contested case issues §85-2-311.

COMMENT: The Department should not be able to serve as a party and a staff expert simultaneously at the same hearing.

RESPONSE: In those contested cases where a hearing includes the Department as an "objector" or "applicant" party, the Department is discouraged from serving as the Hearing Examiner. Rule III has been modified to include: "...hear the case. The hearing examiner shall not simultaneously be an employee of the agency which also assumes either an applicant or objector position to the hearing. The file that...." In this way, the Department may use its expertise to testify on its behalf to protect its rights and interests, and yet not serve as the Hearing Examiner.

COMMENT: The proposed procedural rules do not contain a specific statement of the Department policy upon which the Director will rely in issuing a final opinion and, therefore, applicants and objectors do not know what evidence to present at a hearing.

RESPONSE: The purpose of these rules is to govern the proceedings of a contested case hearing. These rules were not established to describe substantial elements involved in the decision-making processes. Such substantive guidelines are generally provided by the statutes. Any refinement of those guidelines in rule form would be envisioned as permit rules and would be separate from these procedural rules.

The "policy" which is being implemented is the fulfillment of the Department's duties, as legislatively mandated in MCA §85-2-112 and in the Montana Administrative Procedures Act. MCA §85-2-101 sets forth the policy statement for Montana water law. Applicants and objectors within this system are given notice by the statutes as to what kinds of evidence they will be expected to produce; MCA §85-2-311, for example, lists each criterion upon which the applicant is expected to produce evidence.

The Director, then, bases the final opinion on a decision as to whether or not the statutory criteria have been met. Rule XXIX(2), which describes the final decision-making process, specifies that, "Only factual information or evidence which is a part of the contested case hearing record shall be considered in the final decision-making process." (Emphasis added)

4. The new rules are assigned to the following numbers in the ARM: Rule I (36.12.201); Rule II (36.12.202); Rule III

(36.12.203); Rule IV (36.12.204); Rule V (36.12.205); Rule VI (36.12.206); Rule VII (36.12.207); Rule VIII (36.12.208); Rule IX (36.12.209); Rule X (36.12.210); Rule XI (36.12.211); Rule XII (36.12.212); Rule XIII (36.12.213); Rule XIV (36.12.214); Rule XV (36.12.215); Rule XVI (36.12.216); Rule XVII (36.12.217); Rule XVIII (36.12.218); Rule XIX (36.12.219); Rule XX (36.12.220); Rule XXI (36.12.221); Rule XXII (36.12.222); Rule XXIII (36.12.223); Rule XXIV (36.12.224); Rule XXV (36.12.225); Rule XXVI (36.12.226); Rule XXVII (36.12.227); Rule XXVIII (36.12.228); Rule XXIX (36.12.229); Rule XXX (36.12.230); Rule XXXI (36.12.231); Rule XXXII (36.12.232); and Rule XXXIII (36.12.233)

5. The authority and implementing sections were listed at the end of each rule in the Notice of Proposed Adoption, published on November 10, 1983, in the MAR.

Leo Berry, Jr., Director
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620

Gordon Holte, Chairman
Board of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620

Certified to the Secretary of State April 4, 1984.

VOLUME NO. 40 OPINION NO. 45

FEES - Issuance of receipt for payment of refuse disposal district service fees;
FEES - Time of assessment of refuse disposal district service fees;
REFUSE DISPOSAL DISTRICT - Nonpayment of service charges subjects underlying real property to tax sale;
MONTANA CODE ANNOTATED - Sections 7-13-231, 7-13-233, 15-16-101, 15-16-104, 15-17-101;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 22 (1983).

HELD: 1. If a property owner fails to pay the refuse disposal district service fee required by section 7-13-231, MCA, the underlying real property is subject to a tax sale.

2. Tax notices for assessment of fees for operation of the refuse disposal district should not be sent to taxpayers in advance of actual commencement of service.

3. It is the responsibility of the county treasurer to issue a receipt to taxpayers who have paid property taxes but withheld payment of the refuse disposal service fee.

4 April 1984

Loren Tucker, Esq.
Madison County Attorney
Madison County Courthouse
Virginia City MT 59755

Dear Mr. Tucker:

You have requested my opinion on several matters concerning the financing of refuse disposal districts. As you are aware, the board of directors of a refuse disposal district is authorized by section 7-13-231, MCA, to defray the cost of maintenance and operation of the district by establishing a fee for service.

Your first question is whether the nonpayment of charges for services provided by the district subjects the underlying real property to a tax sale. Section 7-13-233, MCA, provides, in pertinent part: "If a property owner fails to pay this fee, it shall become a lien upon the property." Under section 15-17-101, MCA, all property in the county upon which delinquent taxes are a lien is subject to a tax sale. See generally 4 Sands & Libonati, Local Government Law § 24.51 (1983). I conclude, therefore, if a property owner fails to pay the fee for property that is receiving a service from the refuse disposal district, the property is subject to the tax sale proceedings set forth in Title 15, chapter 17, MCA. You may wish to refer to 40 Op. Att'y Gen. No. 22 (1983) for a discussion of what "receiving a service" means in the context of the refuse disposal district statutes.

Your next question is whether the fees for operation of the refuse disposal district may be assessed in advance of actual commencement of the service. You note that notices of payments due were sent out in December, 1983, although service has not yet commenced. Section 7-13-233, MCA, sets forth the procedure for collecting the service fee:

> Procedure to collect service charge. The month the service begins, the department of revenue or its agents shall insure that the amount of this fee is placed on the tax notices, to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property.

The amount of the fee is to be included on the notice of property taxes and assessments due that is sent to each taxpayer pursuant to section 15-16-101, MCA. The fee is to be collected along with the other taxes and assessments included in the tax notice. Section 7-13-233, MCA, also provides that the schedule for the collection procedure commences in the month that the service begins. I conclude from the clear meaning of the statute that the tax notices should not be sent out until actual service begins.

You have also inquired about the county treasurer's responsibility to issue a receipt pursuant to section 15-16-104, MCA, when payment of real estate taxes is

tendered but the refuse disposal district fee is withheld. Section 15-16-104(2), MCA, requires the county treasurer to "give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed." (Emphasis added.) I have already concluded that the fee for receiving service from the refuse disposal district is not due until service has commenced. Certainly, then, a receipt should be issued to those taxpayers who withheld payment of the refuse disposal service fee but paid other property taxes, since they were not yet required to pay the service fee. Once refuse disposal service has commenced, I am of the opinion that a county treasurer must issue a receipt for payment of real estate taxes even if the refuse disposal assessment is withheld. The language of section 15-16-104(2), MCA, directs that a receipt be given for the payment of "any tax." Since real estate taxes would clearly be included in the phrase "any tax," payment of such taxes warrants the issuance of a receipt.

Your last question concerns whether the statutory scheme for creation of refuse disposal districts requires literal performance or substantial compliance. I regret that I cannot respond to this question other than in a very general fashion. While it is possible that noncompliance with statutorily-required procedures for setting up a refuse disposal district might result in the setting aside of the assessment or declaring the district invalid, such a result would depend upon the specific facts of the case. Several Montana cases have held that where the mode of exercising any power granted to a municipal corporation is pointed out in the statute granting it, that mode must be pursued in all substantial particulars. The need for literal compliance with the statutory procedure has been emphasized in these cases. See, for example, Smith v. City of Bozeman, 144 Mont. 528, 533, 398 P.2d 462, 465 (1965); Wood v. City of Kalispell, 131 Mont. 390, 393-94, 310 P.2d 1058, 1060-61 (1957). The general rule with respect to the scope of judicial inquiry, review, and relief, with respect to proceedings leading to public improvements, the formation of improvement districts, and special or local assessments, is limited, in the absence of fraud or bad faith, mistake, or of questions of the public or local character of an improvement, to unreasonableness, arbitrariness, and abuse of power or discretion of the Legislature,

municipal council, or other assessing authority, and such inquiry, review, and relief do not extend to the policy, wisdom, or motives of the Legislature or of the assessing authority. 70 Am. Jur. 2d Special or Local Assessments § 158 (1973); 13 McQuillen, Municipal Corporations § 37.255 (1971). See also Stevens v. City of Missoula, 40 St. Rptr. 1267, 1271, 667 P.2d 440, 444 (1983) (city's judgment as to special benefit and special improvement district boundaries is conclusive absent proof of fraud or mistakes which preclude the exercise of sound judgment).

THEREFORE, IT IS MY OPINION:

1. If a property owner fails to pay the refuse disposal district service fee required by section 7-13-231, MCA, the underlying real property is subject to a tax sale.

2. Tax notices for assessment of fees for operation of the refuse disposal district should not be sent to taxpayers in advance of actual commencement of service.

3. It is the responsibility of the county treasurer to issue a receipt to taxpayers who have paid property taxes but withheld payment of the refuse disposal service fee.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 46

LEGISLATURE - Dual officeholding by member of the Legislature and municipal officer;
MUNICIPAL GOVERNMENT - Dual officeholding by member of the Legislature and municipal officer;
PUBLIC OFFICE - Dual officeholding by member of the Legislature and municipal officer;
MONTANA CODE ANNOTATED - Sections 5-2-104, 7-3-1215;
1889 MONTANA CONSTITUTION - Article V, section 5;
1972 MONTANA CONSTITUTION - Article V, section 9;
OPINIONS OF THE ATTORNEY GENERAL - 8 Op. Atty Gen. at 393 (1920), 10 Op. Att'y Gen. at 42 (1922-24), 15 Op. Att'y Gen. No. 478 (1934), 16 Op. Att'y Gen. No. 245 (1936), 16 Op. Att'y Gen. No. 279 (1936), 18 Op. Att'y Gen. No. 13 (1939), 19 Op. Att'y Gen. No. 155 (1941), 23 Op. Att'y Gen. No. 26 (1949), 34 Op. Att'y Gen. No. 4 (1971), 34 Op. Att'y Gen. No. 25 (1971), 34 Op. Att'y Gen. No. 34 (1972), 35 Op. Att'y Gen. No. 90 (1974), 36 Op. Att'y Gen. No. 80 (1976).

HELD: A municipal officer who holds "public office of a civil nature" as that phrase is defined in State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927), is prohibited by article V, section 9 of the Montana Constitution from serving as a member of the Legislature during his continuance in municipal office.

11 April 1984

Jim Nugent, Esq.
City Attorney
201 West Spruce
Missoula MT 59802

Dear Mr. Nugent:

You have asked my opinion on the following question:

> Does article V, section 9 of the Montana Constitution prohibit an individual from serving as a municipal officer and as a state legislator at the same time?

As a preliminary matter, it should be noted that there are specific statutes that prohibit dual officeholding of certain public officers. For example, section 7-3-1215, MCA, prevents a county commissioner from holding any other public office except notary public or member of the state militia. Your request, however, involves the scope of the constitutional provision regarding dual officeholding by members of the State Legislature. The applicable law is found in the Montana Constitution, art. V, § 9 and in section 5-2-104, MCA. Mont. Const. art. V, § 9 provides:

> No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office. [Emphasis added.]

Section 5-2-104, MCA, provides:

> (1) No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during his term.
>
> (2) A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected. [Emphasis added.]

Neither the Constitution nor the statute defines the phrase "civil office under the state" or "public office." The phrases are admittedly ambiguous when applied to the situation where a member of the State Legislature wishes to seek election to local office or vice versa.

The transcript of the proceedings of Montana's 1972 Constitutional Convention includes discussions of the meaning of art. V, § 9, which is identical in substance to its predecessor in the 1889 Constitution, art. V, § 7. However, it is difficult to derive any clear or

uniform intent of the delegates from a reading of the relevant portion of the 1972 transcript. Initially, the Committee of the Whole proposed a provision that prohibited appointment of a member of the Legislature to civil office under authority of the State, which office was created during the member's term in the Legislature but did not prevent altogether the holding of dual offices. The rationale for proposing this substitute in place of the 1889 constitutional provision, art. V, § 7, was that the 1889 provision had not been enforced and had necessitated excessive interpretation. Delegate Robinson stated at one point, "They've had a hard time discovering what constitutes a civil office--is that everything from county superintendent of schools on up to Supreme Court justice?" She added later, "Now you know in the last session of the Legislature there were a city council person serving and also a mayor. Present section 7 simply isn't being applied as it was read to be intended [sic]." Montana Constitutional Convention transcript, February 19, 1972, pp. 595, 597.

The Committee on the Whole's proposal to amend the 1889 constitutional provision was not approved, and instead the Committee adopted the language of the 1889 provision. Subsequently, on March 7, 1972, the delegates discussed revised language submitted by the Committee on Style and Drafting, which had been written to specifically prohibit a member of the state senate from holding during his term "any civil, federal, state, county, or municipal office." Discussion on this proposal is somewhat confusing. It is clear, however, that the language drafted by the Style and Drafting Committee was intended to get rid of the phrase "under the state," as used in the 1889 Constitution, because it was regarded as an "imprecise term that had no real legal consequences," according to Delegate Schiltz. Montana Constitutional Convention transcript, March 7, 1972, p. 1575. The Style and Drafting Committee's proposal was eventually rejected because it did not address appointment to other office, and in the end the convention agreed to use the language of the 1889 constitutional provision with certain technical changes that are inconsequential in the context of this discussion.

I am unable to conclude from the discussion and debate of the 1972 Constitutional Convention precisely what the delegates intended by use of the phrase "any civil

office under the state." Background materials distributed to the delegates by the Montana Constitutional Convention Commission include some historical perspective on the subject of dual officeholding. The Commission's Report No. 12, entitled "The Legislature," refers to the policy of most states to avoid a conflict of interest or place too much power in the hands of one person. Report No. 12, at 102. Perhaps the only conclusion that can be drawn from the 1972 Constitutional Convention discussion on art. V, § 9, is that the delegates meant to retain the 1889 constitutional provision, the meaning of which was not altogether clear to them.

The proceedings of Montana's 1889 Constitutional Convention do not include discussion of former art. V, § 7. See Proceedings and Debates, Constitutional Convention, 1889, pp. 134, 604, 644. However, the 1889 provision has been interpreted in several Montana Supreme Court and Attorney General opinions, discussed below. With respect to the case law, it should be noted as a preliminary matter that none of the cases requiring an interpretation of former art. V, § 7, involved a legislator appointed or elected to a local office. Rather, the factual situations concerned office or employment on the state or county level of government.

The seminal Montana case on the subject of dual officeholding is State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927). The Montana Supreme Court's opinion in Barney, which sets forth a five-pronged test for determining what is a public office of a civil nature, is still referred to by other state courts as well as by Montana courts. In Barney, the court was confronted with the question of whether the job of auditor of the State Board of Railroad Commissioners was a "civil office" under the 1889 Montana Constitution, art. V, § 7. After a thorough discussion of the case law in other states, the Court concluded that a "civil office" is a public office not of a military character. As for the definition of a "public office of a civil nature," the Court established the following five-pronged test:

> (1) It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature; (2) it must

> possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the Legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity, and not be only temporary or occasional. In addition, in this state, an officer must take and file an official oath, hold a commission or other written authority, and give an official bond, if the latter be required by proper authority.

Barney at 528-29. Applying the five-pronged test to the position of auditor of the State Board of Railroad Commissioners, the Court determined that it was not a civil office under the state because there was no delegation of a portion of the sovereign power of government. While the Court's opinion is more clearly an explanation of "civil office" than of the phrase "under the state," the suggestion remains, nonetheless, that an office created by the Legislature or by a municipality through authority conferred by the Legislature is a civil office under the state so long as it involves the exercise of the sovereign power of government.

Subsequent Montana cases have concluded that the following positions were "civil offices" under former art. V, § 7: a member of the State Relief Commission, State ex rel. Nagle v. Kelsey, 102 Mont. 8, 555 P.2d 685 (1936); and a member of the State Constitutional Convention, Forty-Second Legislative Assembly v. Lennon, 156 Mont. 416, 481 P.2d 330 (1972), and Mahoney v. Murray, 159 Mont. 176, 496 P.2d 1120 (1972). The positions of state boiler inspector and member of the State Relief Commission were found not to be "civil offices" under former art. V, § 7: State ex rel. Nagle v. Page, 98 Mont. 14, 37 P.2d 575 (1934); State ex rel. James v. Aronson, 132 Mont. 120, 314 P.2d 849 (1957). The opinions in these cases refer to Barney's

five-pronged test in order to distinguish between a public officer and an employee who is not a public officer. Although the issue of whether the positions in question involve civil office "under the state" is not specifically addressed in these opinions, the Court appears to have construed the constitutional provision to apply to "public office" in general. In Mahoney v. Murray, supra, the Court concluded, "Accordingly, we find that Relator Mahoney now holds a public office, and he is prohibited by the Constitution from holding another public office." Mahoney v. Murray, 159 Mont. at 189, 496 P.2d at 1126-27. And in Mulholland v. Ayers, 109 Mont. 558, 565, 99 P.2d 234, 238 (1940), the Court offered the following as dictum:

> Section 7, Article V of our state Constitution provides: "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state, and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office." It is difficult to conceive of any office the incumbent of which is chosen at a general election which, if accepted by one holding the office of state senator, would not cause a vacancy in the senatorship under this section of the Constitution. [Emphasis added.]

The opinions of the Attorney General issued under art. V, § 9 and former art. V, § 7, also deal, for the most part, with appointment, election, or employment in a position in state government. Those positions which were determined to be "civil offices" include: county high school trustee, 8 Op. Att'y Gen. at 393 (1920); member of the Montana Relief Commission, 16 Op. Att'y Gen. No. 245 (1936); member of the State Soil Conservation Commission, 19 Op. Att'y Gen. No. 155 (1941); delegate to the 1972 Constitutional Convention, 34 Op. Att'y Gen. No. 34 (1972); and member of a local government study commission, 35 Op. Att'y Gen. No. 90 (1974). Positions found not to be "civil offices" include: University of Montana instructor, 10 Op. Att'y Gen. at 42 (1922-24); assistant income tax auditor, 15 Op. Att'y Gen. No. 478 (1934); head of the Division of

Labor and Industry in the State Department of Agriculture, Labor & Industry, 16 Op. Att'y Gen. No. 279 (1936); member of a joint commission to study water rights, 18 Op. Att'y Gen. No. 13 (1939); inspector for the State Liquor Control Board, 23 Op. Att'y Gen. No. 26 (1949); legal counsel to a state agency, 34 Op. Att'y Gen. No. 25 (1971); and precinct committeeman, 36 Op. Att'y Gen. No. 80 (1976). As with the Montana case law mentioned earlier, clarification of the phrase "under the state" is not provided in the opinions of the Attorney General; however, the constitutional provision is frequently analyzed with reference to "public office" in general. See, for example, 34 Op. Att'y Gen. No. 4 (1971), at 96-97.

I have also examined other state constitutions in order to identify any provisions similar to Mont. Const. art. V, § 9. My research indicates that while 46 state constitutions have some kind of prohibition against dual officeholding, only a few have language similar to that used in Montana's Constitution. By far, the most frequently-used provision concerning dual officeholding is one which prohibits a state legislator from accepting appointment, during the term for which he was elected, to any public office which was created by the Legislature during the legislator's term of office. Several state constitutions use the phrase "civil office under the state," and the phrase has been interpreted by those states in a variety of ways. For example, the Arkansas Constitution, art. V, § 10, like the Montana Constitution, prohibits the election or appointment of a legislator, during the time for which he shall have been elected, to any civil office under the state. In Collins v. McClendon, 5 S.W.2d 734 (Ark. 1928), the Supreme Court of Arkansas ruled that a legislator was ineligible to be elected mayor under the Arkansas Constitution. New Mexico's constitution prohibits appointment of a member of the legislature to "any civil office in the state." That phrase has been determined by the New Mexico Attorney General to apply to an appointment to state, county, or municipal office. 1972 Op. Att'y Gen. No. 72-61. In Missouri, however, under a former constitutional provision (art. IV, § 15), which prohibited a legislator, during the term for which he shall have been elected, from being appointed to any civil office under the state, it was held that the Mayor of St. Louis was not an officer under the state. Britton v. Steber, 62 Mo. 370 (cited in Carpenter v.

People, 5 P. 828, 836 (Colo. 1885)). In Michigan, the state constitution, art. 4, § 9, prohibits a legislator from receiving a civil appointment "within this state" from any state authority, during the term for which he is elected. The Supreme Court of Michigan found that the office of Mayor of Detroit was a "local office" and not a "state office" and thus was not covered by the constitutional prohibition. Young v. Edwards, 389 Mich. 333, 207 N.W.2d 126 (1973). And in Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), the Alaska Supreme Court concluded that an office "under the state" is not synonymous with an office under a political subdivision of the state.

As mentioned earlier, the statutory provision that reflects Mont. Const. art. V, § 9, is section 5-2-104, MCA. The statute was enacted in 1977 as Senate Bill 184. Discussion of Senate Bill 184, and a similar bill, Senate Bill 179, indicates that the Legislature was concerned with making it clear that a legislator could resign his seat in the Legislature and run for civil office. At one point, Senator Feda asked, "What if I wanted to run for city council?" Senator McCallum, referring to proposed Senate Bill 179, responded, "With this bill, you could." Subsequently, the following colloquy is reported:

> Senator Towe: I refer you to the Constitution, Article 5, Section 9. It says that nobody in office can be appointed to a state office. The Supreme Court, in its frenzy, also said that no one could resign and run for other office. When Senators have four year terms, they can never run during their term.
>
> Senator Ryan: Define "civil office."
>
> Senator Towe: That's the rub. Civil office has been interpreted by the Supreme Court to mean the same as elected office....
>
> Senator Kropp: Are there any county civil offices?
>
> Senator Towe: Any elected office. So, you couldn't resign your seat and run for any county office.

Minutes of the Senate State Administration Committee, March 11, 1977.

In summary, what authority does exist regarding the interpretation of the phrase "civil office under the state" favors a definition that includes local office, so long as the office in question meets the five-pronged test of State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927).

THEREFORE, IT IS MY OPINION:

> A municipal officer who holds "public office of a civil nature" as that phrase is defined in State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927), is prohibited by article V, section 9 of the Montana Constitution from serving as a member of the Legislature during his continuance in municipal office.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a 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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