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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the proposed amendments of 8.34.403 concerning board meetings, 8.34.407 concerning public information, 8.34.414 concerning examinations, 8.34.416 concerning continuing education, 8.34.418 concerning fees, 8.34.419 concerning reinstatement)	NOTICE OF PROPOSED AMENDMENTS OF 8.34.403 BOARD MEETINGS, 8.34.407 PUBLIC INFORMATION, 8.34.414 EXAMINATIONS, 8.34.416 CONTINUING EDUCATION, 8.34.418 FEE SCHEDULE, 8.34.419 REINSTATEMENT
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On April 13, 1987, the Board of Nursing Home Administrators proposes to amend the above-stated rules.

2. The proposed amendment of 8.34.403 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1035 and 8-1036, Administrative Rules of Montana)

"8.34.403 BOARD MEETINGS (1) Regular meetings of the board ~~shall be held in the months of June and December in at least two times each year.~~ Each member shall be advised of business to be considered at least 7 days prior to any meeting.

(a) . . .

(b) The annual meeting shall be held in ~~December~~ the fall of each year.

(3) . . .

(4) The chairman shall preside at all meetings of the board and shall coordinate the work of the board in order that the purposes may be served. He/she shall have general powers and duties of management usually vested in the office of chairman, and shall have such other powers and duties as may be prescribed by the board, these bylaws or by law or related rules.

(a) In the absence or disability or refusal to act as the chairman, the vice-chairman shall perform all the duties of the chairman, and when so acting he shall have the powers of and be subject to all the restrictions upon the chairman. The vice-chairman shall assist the chairman as requested.

(5) . . .

Auth: 37-9-201, MCA Imp: 37-9-201, MCA

3. These amendments are being proposed because the board needs more flexibility regarding meetings, so as to assure total attendance at each board meeting and accommodate interested persons. Also, the chairman feels that in light of the current movement toward sexual equality and elimination,

changes to terms referring to exclusively masculine gender should be made at this time.

4. The proposed amendment of 8.34.407 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1038, Administrative Rules of Montana)

"8.34.407 PUBLIC INFORMATION (1) and (2) will remain the same.

~~(a)--Public-records-printed-or-reproduced-by-the-board-in quantity--shall-be-given-to-any-person-requesting-the-same-and paying-the-actual-cost-thereof.~~

(b) (a)"

Auth: 37-9-201, MCA Imp: 37-9-201, MCA

5. The board feels that 8.34.407(2)(a) is redundant.

6. The proposed amendment of 8.34.414 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1040 and 8-1041, Administrative Rules of Montana)

"8.34.414 EXAMINATIONS (1) and (2) will remain the same.

~~(3)---Applicant--must--provide---a--recent--photograph approximately-2-1/2"-x-2-1/2"-in-size,-of-the-head-a-shoulders only:~~

(4) (3) After--November--11,--1983,--a--Applicants for nursing home administrator examinations will be required to:

(a) through (7) will remain the same."

Auth: 37-1-131, 37-9-203, MCA Imp: 37-9-301, MCA

7. The board no longer requires an applicant to provide a photograph as a result of a resolution adopted at the October 28, 1980 board meeting. This decision was never incorporated in the rules. The present rule is archaic. The board feels that the phrase deleted in new subsection (3) is no longer necessary for clarification as the "grandfather" period has passed.

8. The proposed amendment of 8.34.416 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1041 and 8-1042, Administrative Rules of Montana)

"8.34.416 CONTINUING EDUCATION (1) Pursuant---to requirements-imposed-by-statute,-effective-July-1,-1983,-a All applicants for renewal of licenses and inactive registration shall have completed a continuing education course as a condition to establish eligibility for renewal.

(2) will remain the same.

~~(3) Effective-January-1,-1976-25~~ Twenty five hours of continuing education will be required annually for renewal of license or renewal of inactive registration.

(a) ~~These persons granted a license after January 1, 1976, shall be subject to the educational requirements stated above, but~~ The hours of continuing education will not commence until January 1 of the year following the year of original license.

(b) Any ~~excess or~~ surplus hours earned in excess of 25 hours in a calendar year may be carried over into the succeeding year, but shall be limited to 25 hours."

Auth: 37-1-131, 37-9-203, MCA Imp: 37-9-203, 305, MCA

9. The board feels that the deleted material is no longer necessary for clarification. The "grandfather" period has passed. The material is archaic.

10. The proposed amendment of 8.24.418 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1042 and 8-1043, Administrative Rules of Montana)

"8.34.418 FEE SCHEDULE (1) through (10) will remain the same.

(11) Completion of records for ~~reciprocal~~ licensing history shall require a fee of \$10.

(12) will remain the same."

Auth: 37-1-134, 37-9-203, MCA Imp: 37-1-134, 37-9-203, 304, MCA

11. The revised designation would be clearer and have a broader application.

12. The proposed amendment of 8.34.419 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1043, Administrative Rules of Montana)

"8.34.419 REINSTATEMENT (1) An application for reinstatement of an expired license may be filed within 2 years of the date of expiration, provided the applicant can establish to the satisfaction of the board that he continues to be qualified, and The application must be accompanied by all delinquent fees which shall not be refunded.

~~(2) The holder of an expired license may have the same reinstated within 2 years of the date of expiration upon application therefore and payment of all delinquent fees, provided the applicant can establish to the satisfaction of the board that he continues to be qualified."~~

Auth: 37-1-131, 37-9-203, MCA Imp: 37-1-131, 37-9-203, 305, MCA

13. 8.34.419(2) is redundant, and is therefore not necessary for clarification. Part of (2) has been incorporated into (1) for added clarification.

14. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to

the Board of Nursing Home Administrators, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 9, 1987.

15. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Nursing Home Administrators, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 9, 1987.

16. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 17 based on the 177 licensees in Montana.

BOARD OF NURSING HOME
ADMINISTRATORS
VERA GERKE, CHAIRMAN

BY:

Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State March 2, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENTS
amendments of 8.40.404 con-) OF 8.40.404 FEE SCHEDULE AND
cerning fee schedule and 8.) 8.40.1209 FEES
40.1209 concerning fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On April 13, 1987, the Board of Pharmacy proposes to amend the above-stated rules.

2. The proposed amendment of 8.40.404 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1134 and 8-1135, Administrative Rules of Montana)

"8.40.404 FEE SCHEDULE

(1) Application for reciprocity	\$225.00	\$250.00
(2) Original registration for pharmacist	50.00	60.00
(3) Pharmacist annual renewal fee	40.00	55.00
(4) Pharmacist late renewal	80.00	110.00
(5) Certified pharmacy original certification (includes original, change in location, and change in ownership)	100.00	200.00
(6) Certified pharmacy annual renewal fee	75.00	100.00
(7) Certified pharmacy late renewal fee	150.00	200.00
(8) Class IV facility, certified pharmacy license, (original and renewal)	50.00	75.00

(9) through (12) will remain the same."

Auth: 37-1-134, 37-7-201, 50-32-103, MCA Imp:
37-1-134, 37-7-201, 303, 321, 50-32-103, MCA

3. The proposed amendment of 8.40.1209 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1177 and 8-1178, Administrative Rules of Montana)

"8.40.1209 FEES (1) through (1)(b) will remain the same.

(c) dispense - pharmacies \$25.00--\$35.00
(d) and (e) will remain the same."

Auth: 37-1-134, 37-7-201, 50-32-103, MCA Imp:
37-1-134, 37-7-201, 303, 321, 50-32-103, MCA

4. The amendments are being proposed by the board to keep fees commensurate with costs of operating board programs. The proposed fees are necessary to cover costs.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacy, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than April 9, 1987.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Pharmacy, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 9, 1987.

7. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision; or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 104 based on the 1049 licensees in Montana.

BOARD OF PHARMACY
ANTHONY J. FRANCISCO, R.Ph.

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State March 2, 1987.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.58.419 concern-) OF 8.58.419 SUSPENSION OR
ing suspension or revocation) REVOCATION - VIOLATION OF
and violations) RULES - UNWORTHINESS OR
) INCOMPETENCY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 13, 1987, the Board of Realty Regulation proposes to amend the above-stated rule.

2. The proposed amendment of 8.58.419 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1610 through 8-1612, Administrative Rules of Montana)

"8.58.419 SUSPENSION OR REVOCATION - VIOLATION OF RULES - UNWORTHINESS OR INCOMPETENCY (i) through (4)(j) will remain the same.

(k) failure to disclose to the broker-owner, responsible broker, business partner or any other responsible business associate any additional wages, tips, bonuses or gifts which have been or are to be recovered by the licensee which are not considered to be real estate commission(s).

(5) will remain the same."

Auth: 37-1-103, MCA Imp: 37-51-203, MCA

3. The Board of Realty Regulation felt this rule was necessary to provide for full disclosure of all details regarding a real estate transaction. This would protect both the buyer and seller, as well as the licensees involved but not receiving the excess compensation.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, not later than April 9, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 9, 1987.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed 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 470 based on the 4700 licensees in Montana.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 2, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS

In the matter of the proposed)	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.61.404 con-)	OF 8.61.404 FEE SCHEDULE, 8.
cerning fees, 8.61.1203 con-)	61.1203 FEE SCHEDULE, AND
cerning fees, and adoption of)	ADOPTION OF NEW RULES I.
new rules concerning hours,)	HOURS, CREDITS, AND CARRY
credits and carry over;)	OVER, II. ACCREDITATION AND
accreditation and standards;)	STANDARDS, III. REPORTING
reporting requirements;)	REQUIREMENTS, IV. NONCOMPLI-
noncompliance; annual license)	ANCE, V. ANNUAL LICENSE
renewal)	RENEWAL

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On April 13, 1987, the Board of Social Work Examiners and Professional Counselors proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.61.404 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1669, Administrative Rules of Montana)

"8.61.404 FEE SCHEDULE

(1) Application fee	\$50.00	\$ 75.00
(2) Original licensee license fee	25.00	120.00
(3) Exam fee	50.00	75.00
(4) Renewal fee (based on biennial renewal)		150.00
(5) Continuing education accreditation fee (for providers)		25.00
(6) Continuing education accreditation fee (for licensee)"		10.00

Auth: 37-1-134, 37-22-201, MCA Imp: 37-1-134, 37-22-302, MCA

3. RATIONALE: The fee increases are proposed because increasing program area costs require increased revenue in order for the Board to operate in a fiscally sound manner and because the Board must implement a Continuing Education program.

4. STATEMENT OF REASONABLE NECESSITY: 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.

5. The proposed amendment of 8.61.1203 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1674, Administrative Rules of Montana)

"8.61.1203 FEE SCHEDULE

(1) Application fee	\$50.00	\$ 75.00
(2) Original license fee	50.00	120.00
(3) Examination fee	50.00	75.00
(4) Renewal fee	75.00	120.00
(5) Continuing education accreditation fee (for providers)		25.00
(6) Continuing education accreditation fee (for licensee)"		10.00

Auth: 37-1-134, 37-23-103, MCA Imp: 37-1-134, 37-23-306, MCA

6. RATIONALE: The fee increases are proposed because increasing costs require increased revenue in order for the board to operate in a fiscally sound manner and because the board must implement a continuing education program.

7. STATEMENT OF REASONABLE NECESSITY: 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.

8. The proposed new rules will read as follows:

"I. HOURS, CREDITS AND CARRY OVER (1) Each licensee of the Board of Social Work Examiners and Professional Counselors shall earn 20 clock hours of accredited continuing professional counselor education for each year after 1986. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) If a licensee completes more than 20 hours of continuing education after 1986, excess hours in an amount not to exceed 10 hours may be carried forward to the next year.

(3) Any licensee over the age of 70 may apply for an exemption from the Continuing Professional Counselor Education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules and an exemption may be granted by the board."

Auth: 37-1-121, 37-23-103, MCA Imp: 37-23-101, 103, 205, 211, MCA

"II. ACCREDITATION AND STANDARDS The following standards shall govern the approval of continuing professional counselor education activities by the board:

(1) They shall have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as a Professional Counselor.

(2) They shall constitute an organized program of learning dealing with matters directly related to the practice of professional counseling, professional responsibility or ethical obligation of professional counselors.

(3) Providers of continuing professional counselor education shall apply to the board for accreditation.

(4) Applicants shall demonstrate that the offered course complies with the standards."

Auth: 37-1-121, 37-23-103, MCA Imp: 37-23-101, 103, 205, 211, MCA

"III. REPORTING REQUIREMENTS (1) Each licensee shall submit an affidavit on a form approved by the board attesting to the number of accredited continuing education hours completed each year. Said affidavit shall be filed as part of licensee's renewal.

(2) Licensees and course providers may inquire in advance of continuing education activity for board accreditation.

(3) The board shall appoint a continuing education review committee which shall assist the board in approving courses, papers, workshops, and other activities designed to meet continuing education requirements of licensed professional counselors."

Auth: 37-1-121, 37-23-103, MCA Imp: 37-23-101, 103, 205, 211, MCA

"IV. NONCOMPLIANCE (1) In the event that a licensed professional counselor shall fail to comply with these rules in any respect, the board shall promptly send a notice of noncompliance. The notice shall specify the nature of the noncompliance and state that unless the noncompliance is corrected or a request for a hearing before the board is made within 30 days, the statement of noncompliance shall be an instance of unprofessional conduct."

Auth: 37-1-121, 37-23-103, MCA Imp: 37-23-101, 103, 205, 211, MCA

"V. ANNUAL LICENSE RENEWAL Professional counselor licenses expire on December 31 of each year. Current licenses expire December 31, 1987. Fees for initial licenses issued other than the uniform renewal date will be prorated.

Auth: 31-1-134, 103, 205, MCA Imp: 37-23-205, MCA

9. RATIONALE: (Proposed new rules I-IV) The rules are proposed to set forth the standards the board feels are necessary for maintaining professional competency as a professional counselor.

10. STATEMENT OF REASONABLE NECESSITY: (Proposed new rules I-IV) The rules are proposed because section 37-23-205, MCA, requires proof of completion of continuing education requirements for license renewal and section 37-23-103(d), MCA, requires the board to establish requirements for continuing education that are conditions for license renewal.

11. RATIONALE: (Proposed new rule V) The rule is proposed to establish a uniform renewal date for all professional counselor licenses.

12. STATEMENT OF REASONABLE NECESSITY: (Proposed new rule V) The rule is necessary to allow adequate planning and allocation of board and staff time and avoid confusion.

13. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Social Work Examiners and Professional Counselors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 9, 1987.

14. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Social Work Examiners and Professional Counselors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 9, 1987.

15. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, from the Administrative Code committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 15 based on the 149 social work examiner licensees and 5 based on the 54 professional counselor licensees in Montana.

BOARD OF SOCIAL WORK
EXAMINERS AND PROFESSIONAL
COUNSELORS
PATRICK J. KELLY, CHAIRMAN

BY: Keith P. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 2, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of Rule 8.86.301) THE PROPOSED AMENDMENT OF
(6) (a) as it relates to the) RULE 8.86.301 (6)(a)
formula for fixing the Class) PRICING RULES
I producer price)
) DOCKET #77-87

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING) AND TO ALL INTERESTED PERSONS:

1. On Friday, April 24, 1987 at 9:30 a.m. or as soon thereafter, as interested persons can be heard, a public hearing will be held in the SRS auditorium at 111 Sanders, Helena, Montana.

The hearing will continue at said place from day to day thereafter, until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of Mr. Kenneth M. Kelly, authorized agent and representative of various milk processors in the state of Montana. The processors include Beatrice Dairy Products, Inc., with processing plants located in Billings, Great Falls, Kalispell and Missoula; Country Classic Dairies, Inc. in Bozeman; Vita Rich Dairy in Havre; Equity Supply Company, Inc. in Kalispell; and Clover Leaf Dairy Inc. in Helena. The purpose for the hearing is to amend Rule 8.86.301 (6)(a) to change the formula for fixing the Class I producer price as shown below. (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

~~(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin series plus three dollars whichever price is lower. The flexible economic formula utilizes a November 7, 1969 base equaling 100, an interval of 4.5 and consists of seven (7) factors. The factors and their assigned weights are as follows:~~

	FACTOR	WEIGHT	CONVERSION FACTOR
+++	Unemployment-H&B 46.67--43.8--E+-+100+-+05	5%	
+++	Unemployment-MP 46.67--46.1--E+-+100+-+10	10%	

++++	Weekly-Wages---Total-Private		
	(Revised-and-Seasonally		
	Adjusted)	15%	+1297873
+++	Prices-Received-by-Farmers		
	MP---(+147---149---100)	15%	+22968120
++	Mixed-Pairy-Feed	20%	+32258865
++	Alfalfa-Hay	12%	+48800000
+++	Prices-Paid-by-Farmers---HrSr	23%	+41998145
	(+167---100)		
		+100%	

*NOTE:--The-reported-revised-weekly-wage-total-private-is seasonally-adjusted-by-dividing-each-month's-revised-figures by-the-following-factors:--Jan,---.9867;--Feb,---.9832;--March---.9809;--April---.9822;--May-----.9911;--June---1.0053;--July---1.0165;--August---1.0261;--Sept---1.0136;--Oct,---1.0192;--Nov---1.0047;--Dec---.9985;--

The-following-table-will-be-used--in--computing--producer prices:

TABLE-F

Producer-price-determination--using--above--formula--with November, 1969---100-and-an-interval---4.5

FORMULA INDEX	PRICE-PER CWT
201.5---205.6	\$12.86
206.0---209.6	13.09
210.5---214.1	13.32
215.0---218.6	13.55
219.5---223.1	13.78
224.0---227.6	14.01
228.5---232.1	14.24
233.0---236.6	14.47
237.5---241.1	14.70
242.0---245.6	14.93
246.5---250.1	15.16
251.0---254.6	15.39
255.5---259.1	15.62
260.0---263.6	15.85
264.5---268.1	16.08
269.0---272.6	16.31
273.5---277.1	16.54
278.0---281.6	16.77
282.5---286.1	17.00
287.0---290.6	17.23

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be the mid-point of the Basic Formula Price for the second preceding month expressed in dollars and cents plus the Class I Differential of two dollars and twenty-five cents (\$2.25). The Basic Formula Price will utilize the Minnesota-Wisconsin series price as reported by the department of agriculture in Minneapolis for the month, adjusted to a 3.50% butterfat basis to determine the applicable bracket of the Basic Formula Price to be used.

Pursuant to the above pricing formula, the following table will be used in computing Class I prices to be paid to producers:

<u>BASIC FORMULA</u> <u>PRICE</u>	<u>CLASS I PRICE PER CWT</u> <u>FOR 3.50% BUTTERFAT</u>
10.50 - 10.72	12.86
10.73 - 10.95	13.09
10.96 - 11.18	13.32
11.19 - 11.41	13.55
11.42 - 11.64	13.78
11.65 - 11.87	14.01
11.88 - 12.10	14.24
12.11 - 12.33	14.47
12.34 - 12.56	14.70
12.57 - 12.79	14.93
12.80 - 13.02	15.16
13.03 - 13.25	15.39
13.26 - 13.48	15.62
13.49 - 13.71	15.85
13.72 - 13.89	16.08
13.85 - 14.17	16.31
14.18 - 14.40	16.54
14.41 - 14.63	16.77
14.64 - 14.86	17.00
14.87 - 15.09	17.23

(b) . . . "

3. The petition was submitted pursuant to sections 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in section 81-23-302, MCA.

4. The rationale for the proposed action is to align producer prices in Montana with adjacent and surrounding areas so that prices set enable distributors to be competitive with pricing and marketing conditions as in areas adjacent to and surrounding Montana to stabilize the marketing of milk.

5. Specific factors which the Board will take into consideration in these proceedings will include, but may not be limited to the following:

a) The cost factors in producing milk, including those set forth in section 81-23-302(5)(c), MCA;

b) The prices of milk in adjacent and surrounding areas;

c) The current and prospective supplies of milk in relation to current and prospective demand for such milk for all purposes;

d) The supplies of milk in adjacent and surrounding areas;

e) The alternate opportunities, both farm and nonfarm, presently open to milk producers.

6. Facts within the Board's own knowledge which it may rely upon include the following:

a) The current Montana producer price is \$13.98 per hundredweight for milk testing 3.50% butterfat.

b) The Board takes official notice of the fact that the M-W price series plus a differential of \$2.25 would have resulted in the producer price being higher in 33 of 63 months from November 1981 through January 31, 1987.

c) Producer prices in areas adjacent to and surrounding Montana for January 1987 are as follows:

TABLE II

	CLASS I PRICE	CLASS II PRICE	CLASS III PRICE	BLEND PRICE
Oregon-Washington	\$13.86	\$12.18	\$11.70	**\$12.61
Puget Sound-Inland	13.76	12.18	11.70	12.58
S.W. Idaho - E. Oregon	13.41	12.03	11.70	12.08
Western Colorado	13.91	12.03	11.70	13.44
Great Basin	13.81	12.03	11.70	12.85
Eastern Colorado	14.64	12.03	11.70	13.72
Lake Mead	13.51	12.08	11.70	12.77
Rapid City	13.96	11.70	-----	13.02
North Dakota	13.11	12.03	11.23	*12.08
Montana	13.78	12.04	10.23	12.70

* indicates December 1986 prices

** indicates price at test

d) Supplies of milk in areas adjacent to and surrounding Montana for January 1987 are as follows:

TABLE III

	CLASS I UTILIZATION	CLASS II UTILIZATION	CLASS III UTILIZATION
Oregon-Washington	75,200,364	15,460,246	82,844,664
Puget Sound-Inland	86,989,319	18,320,690	115,190,136
S.W. Idaho - E. Oregon	10,805,131	4,655,461	38,115,033
Western Colorado	6,748,730	373,228	1,411,818
Great Basin	55,058,843	5,133,348	57,329,638
Eastern Colorado	56,823,951	12,688,184	20,003,658

e) Cost of transporting milk in ARM Rule 8.86.301 (9) are as follows:

TABLE IV

<u>DISTANCE</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>
25 to 50 miles	\$.25
51 to 75 miles	.40
76 to 100 miles	.50
101 to 150 miles	.64
151 to 200 miles	.85
201 to 250 miles	1.06
251 to 300 miles	1.28
301 to 350 miles	1.49

7. The burden is on the petitioner, Mr. Kenneth M. Kelly and his constituents whom he represents, to prove there is a need to amend the producer formula and that the proposed amendments will, in fact, result in prices that are fair and equitable, and will provide the market stability that is mandated by law.

8. Interested persons may participate and present data, views or arguments pursuant to Section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Helena, Montana, 59620, no later than April 20, 1987.

9. Mr. Geoffrey L. Brazier, 1424 Ninth Avenue, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing. However, the Montana Board of Milk Control will sit in convened session at the hearing.

10. The authority for the Board to take the action and adopt rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL
Curtis C. Cook, Chairman

BY: William E. Ross
William E. Ross, Bureau Chief

Certified to the Secretary of State March 2, 1987.

BEFORE THE DEPARTMENT OF COMMERCE
OF STATE OF MONTANA
BOARD OF HOUSING

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule 8.111.202	)	AMENDMENT OF RULE 8.111.202
meetings of the board	)	MEETINGS OF THE BOARD
of housing	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On April 13, 1987, the Montana Board of Housing proposes to amend rule 8.111.202, which clarifies the board's policy with regard to the means by which the board shall give notice of its meetings.

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

8.111.202 MEETINGS OF THE BOARD (1) All meetings of the board are open to the public pursuant to 90-6-105, MCA. Notice of the board's regular meetings will shall be given through normal communication channels and in addition will be sent to any interested parties who have notified the board in writing by (a) posting a statement of the time and place of the meeting on a bulletin board at the entrance to the board's offices, (b) mailing the said notice to a newspaper of general circulation in Helena, Montana, and (c) mailing said notice to any interested parties who have notified the board in writing.

(2) Notice of the board's special or emergency meetings and notice of committee meetings shall be given by posting a statement of the time, place and nature of the meeting on a bulletin board at the entrance to the board's offices.

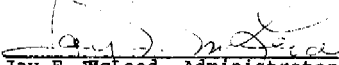
(3) In the case of matters determined by the board to be of significant interest to the public, notice may be given by the means in (1) above, and by any additional appropriate means of notice, given sufficiently prior to a final decision to permit public comment on the matter.

3. The board finds it necessary to develop a definitive procedure by which notice can be given of meetings of the board or its committees to the public. This procedure includes a means of giving notice of regular, special, or emergency board meetings and will allow for efficient means for notice to those interested persons who may wish to participate in meetings of the board.

4. Interested parties may submit their data, views and arguments concerning the proposed amendments in writing to Jay McLeod, administrator of the Montana Board of Housing, 2001 Eleventh Avenue, Helena, MT 59601, no later than April 9, 1987.

5. The authority of the agency to make the proposed amendment is based on sections 90-6-104 and 90-6-106, MCA, and the implementing section is 90-6-105, MCA.

MONTANA BOARD OF HOUSING

By: 
Jay F. McLeod, Administrator

Certified to the Secretary of State, February 27, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of	)	ON THE PROPOSED AMENDMENT
ARM 12.6.901	)	OF ARM 12.6.901
	)	ESTABLISHING A NO-WAKE
	)	SPEED ON PORTIONS OF
	)	HARRISON LAKE

TO: All Interested Persons:

1. On April 6, 1987, a public hearing will be held at the City of Bozeman Public Library, 220 E. Lamme, Bozeman, Montana, at 7 p.m., to consider the proposed amendment of Rule 12.6.901 pertaining to a no-wake speed on portions of Harrison Lake.

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

12.6.901 WATER SAFETY REGULATIONS Subsections (1) through 1(b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No-wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Broadwater County:	(A) on Canyon Ferry Reservoir: White Earth and Goose Bay, within 300 feet of dock or as buoyed.
Carbon County:	(A) on Cooney Reservoir: all of Willow Creek arm as buoyed;
Daniels County:	Whitetail Reservoir
Fergus County:	(A) upper & lower Carter Ponds; (B) Crystal Lake 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
Flathead County:	(A) on Flathead Lake: Bigfork Bay (B) Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
Hill County:	(A) Beaver Creek Reservoir
Lewis & Clark Co:	(A) on Canyon Ferry Reservoir: Yacht Basin, Cave Bay, Little Hellgate, Magpie Bay & Carp Bay within 300 feet of dock or as buoyed; (B) on Hauser Reservoir: Lakeside marina and Black Sandy beach within 300 feet of the docks or as buoyed; (C) on upper Holter Lake: Gates of Mountains marina within 300 feet of docks or as buoyed; (D) on Holter Lake: bureau of land management boat landing as buoyed,

Juniper Bay, Log Gulch, Departure Point, Merriweather Camp, and Holter Lake lodge docks.

Lincoln County: (A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;

Madison County: (A) on Harrison Lake (Willow Creek Reservoir): all of Willow Creek Arm and Norwegian Arm as buoyed;

Missoula County: (A) Clearwater River from the outlet of Seeley Lake to the first bridge downstream from Camp Paxson swim dock;

(B) on Holland Lake: Holland Lake Lodge and the Bay Loop campground within 300 feet or as buoyed.

Subsections 1(d) through 2 remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA IMP: 87-1-303, 23-1-106(1), MCA

3. This rule is being amended in response to a complaint pointing out the danger posed to other water users by high speed boating in narrow portions of Harrison Lake. The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective, as required by Section 87-1-303, MCA.

4. Interested parties may submit their data, views and arguments concerning the proposed rule in writing to Eileen Shore, 1420 East Sixth, Helena, Montana 59620, no later than April 13, 1987.

5. Eileen Shore has been designated to preside over and conduct the hearing.


RON MARCOUX, Associate Director

Certified to the Secretary of State March 2, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED
of ARM 12.6.901 relating to)	AMENDMENT OF ARM
prohibiting motorboats on)	12.6.901 PERTAINING TO
portions of the Bighorn River)	PROHIBITING MOTOR OR ENGINE
)	OPERATED VESSELS ON THE
)	BIGHORN RIVER FROM AFTERBAY
)	DAM TO THE BIGHORN ACCESS
)	AREA. NO PUBLIC HEARING
)	CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On April 20, 1987, the Fish and Game Commission proposes to amend Rule 12.6.901.

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

"12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use for any motor-propelled water craft except in case of use for official patrol search and rescue, maintenance or hydroelectric projects and related facilities with prior notification by the utility, or for scientific purposes;

Beaverhead County:

Big Hole River

Big Horn County:

Arapoosh access area

That portion of the Bighorn River from Afterbay Dam to the Big Horn access area.

Cascade County

Smith River

That portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle and that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.

Custer County:

Branum Pond

Deer Lodge County:

Big Hole River

Gallatin County:

Bozeman Ponds

Granite County:

Bear Mouth rest area pond

Hill County:

Bearpaw Lake

Jefferson County:	Park Lake
Lewis & Clark County:	Wood Lake
	Spring Meadow Lake
Madison County:	Big Hole River
Meagher County:	Forest Lake - Smith River
Missoula County:	Frenchtown Pond - Harpers Lake
Ravalli County:	Twin Lakes
Richland County:	Gartside Reservoir
Silver Bow County:	Big Hole River
Toole County:	Henry Reservoir-Fitzpatrick Lake
(1) (b) through (2) will remain the same.	
AUTH: 87-1-303, 23-1-106, MCA; IMP: 87-1-303, 23-1-106,	

MCA

3. The Fish and game Commission is proposing this amendment to its rule to prohibit motorboats on designated portions of the Bighorn River. This portion of the river is so extensively used by floaters that motorboat activity would create serious safety hazards for those in non-motorized vessels. The Commission also wishes to protect the shoreline from erosion that would take place with the use of motorized vessels. The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective, as required by Section 87-1-303, MCA.

4. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to Eileen Shore, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than April 17, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his data or views orally, he must make a written request for a hearing and submit this request along with any written comments he has to Eileen Shore, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than April 17, 1987.

6. If the Commission receives requests for a public hearing from either 10 percent or 25 persons, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having not 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 25 persons based on all users of the portion of the river who would be affected.



RON MARCOUX, Associate Director

Certified to Secretary of State March 2, 1987.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of	)	AMENDMENT OF RULE
Rule 20.14.106	)	20.14.106
Admission criteria	)	NO PUBLIC HEARING
		CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On April 11, 1987, the department of institutions proposes to adopt the amendment to the above stated rule.
2. The proposed rule provides as follows:

20.14.106 ADMISSION CRITERIA (1) Eligibility for admission to the Montana center for the aged is determined without regard to race, color, sex, culture, social origin or condition, political or religious ideas, or ability to pay for the cost of care.

(2) To be eligible for admission a person must:
(a) be in need of long term care;
(b) have a chronic mental disorder associated with the aging process;

(c) be 55 years of age or older; and
(d) meet the following criteria:
(i) The person's mental disorder renders him/her unable to function be served appropriately in the community of residence or in appropriate-and-available services elsewhere in Montana;

(ii) The person does not require acute hospital care, and/or psychiatric treatment as provided by Montana state hospital;

(iii) the person is not in need of active psychiatric treatment as determined by a professional person; The person's mental health status has been stable and active treatment is not needed;

(iv) The person does not require skilled nursing care and is ambulatory or, if confined to a wheelchair, is able to assist in transfer to and from the wheelchair;

(v) The person must have received a comprehensive medical evaluation within 60 days prior to application. The medical evaluation must include a complete blood count, urinalysis, serum multichemistry, thyroid function, chest x-ray, and an EKG;

(vi) The person must have received a mental health evaluation and recommendation for admission by a professional person within 60 days prior to application;

(vii) The person must not be persistently combative or assaultive;

(viii) The person must be admitted on a voluntary basis by self or a legally appointed guardian. ~~If there is a question of competency, the person must have a legal guardian prior to admission.~~

(e) Patients referred from Montana state hospital who meet the above criteria will be given priority for admission to

5-3/12/87

MAR Notice No. 20-14-6

the center.

AUTH: 53-21-411, MCA

IMP: 53-21-411, MCA


3. The amendments to 2(d)(i) and 2(d)(iii) are proposed to clarify the rule. The proposed amendment to 2(d)(viii) is needed because frequently people who need the services of the Center, are otherwise qualified for admission, and whose competency may be questioned, do not have a guardian and delaying admission until a guardian can be appointed may inappropriately delay or effectively deny admission.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Carroll V. South, 1539 11th Avenue, Helena, MT 59620, no later than April 9, 1987.

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 Carroll V. South, 1539 11th Avenue, Helena, MT 59620, no later than April 9, 1987.

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 18 persons based on 180 new admissions over a 10 year period at the facility.

7. The authority of the agency to make the proposed amendment is based on section 53-21-411, MCA, and the rule implements section 53-21-411, MCA.


CARROLL SOUTH, Director
Department of Institutions

Certified to the Secretary of State February 26, 1987.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rule 46.10.318	)	THE PROPOSED AMENDMENT OF
pertaining to the policy of	)	RULE 46.10.318 PERTAINING
the AFDC emergency assis-	)	TO THE POLICY OF THE AFDC
tance program to not pay	)	EMERGENCY ASSISTANCE PRO-
recipient's taxes	)	GRAM TO NOT PAY RECIPIENT'S
	)	TAXES

TO: All Interested Persons

1. On April 1, 1987, at 10:00 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 amendment of Rule 46.10.318 pertaining to the policy of the AFDC emergency assistance program to not pay recipient's taxes.

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

46.10.318 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DEPENDENT CHILDREN Subsections (1) through (3) remain the same.

(4) Emergency assistance is not available to pay any taxes that an applicant or recipient has failed to pay.

Subsections (4) through (4)(f) remain the same in text but will be renumbered (5) through (5)(f).

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

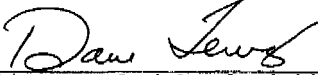
3. The Department's interpretation of the current administrative rule has always been that delinquent taxes are not payable under the emergency AFDC program. Payment of taxes is a common requirement and, as such, is a foreseeable circumstance. Recipients are responsible to pay taxes on the assets they own and the income they earn. A recent administrative fair hearing decision has caused some confusion on this issue. This amendment is proposed to clarify the administrative rule and resolve any question of its consistency with the existing policy of denying emergency AFDC for payment of delinquent taxes.

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 April 10, 1987.

5-3/12/87

MAR Notice No. 46-2-495

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 March 2, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE adoption) NOTICE OF ADOPTION
of Rule relating to Blind) of ARM 2.5.405
Vendors' Bidding Preference.) Relating to Blind Vendors'
) Bidding Preference.

TO: All Interested Persons:

1. On October 30, 1986, the Department of Administration published notice of the proposed adoption of a rule relating to Blind Vendors' Bidding Preference at Page 1730 of the 1986 Montana Administrative Register, issue number 20.

2. The rule has been adopted as proposed with the following changes:

2.5.405 BLIND VENDORS' BIDDING PREFERENCE

~~----(1)---Blind persons who meet the following definition from House Bill 48 (passed by the June 1986 special session) may claim a bidding preference for award of contracts for vending facilities and/or vending machines on state property.~~

~~----(2)---For the purposes of this rule the following definitions apply:~~

~~----(a)---"Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.~~

~~----(b)---"State property" means a building or portion of a building or other real property that is owned or leased by the state or an agency of the state, utilized in the conduct of state matters, and occupied principally by state employees. State property does not include vocational institutions or institutions of higher education.~~

(3) (1) A blind person wishing to claim preference must complete the determination form provided with the bid document. The determination form is available from Department of Administration, Purchasing Division. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye or a State of Montana, Department of Social and Rehabilitative Services, Visual Services Counselor.

(4) (2) A determination form shall be submitted with each individual bid. The determination form shall be valid for six (6) months. At the end of the six (6) month period, a new determination form will be required or submitted with bids. A new determination form will be required for renewal of a contract if the contract renewal date exceeds 6 months from the completion date of the original determination form.

~~----(5)---Preference will be applied in the following manner:~~

~~----- (a) -- A preference shall be granted to eligible persons whose proposal is substantially equal to other responsible bidder's proposals for contracts effective July 1, 1986, or after. A proposal shall be substantially equal if the overall rating of the proposal does not differ by more than 3% from the other proposals as determined by the purchasing official.~~

~~----- (b) -- The preference does not apply to contracts established prior to July 1, 1986. The preference does not apply to contract renewals with an original effective date prior to July 1, 1986.~~

~~----- AUTH: -- House Bill 48, June 1986 Special Legislative Session; IMP: -- House Bill 48, June 1986 Special Legislative Session.~~

COMMENTS: Ms. Valencia Lane, Staff Attorney for the Legislative Council, suggested implementation Sections 18-5-501 and 18-5-502.

RESPONSE: The department agrees.



ELLEN FEAVER, Director
Department of Administration

Certified to the Secretary of State February 24, 1987

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF THE ADOPTION
of rule 4.12.1012 increasing)	OF AMENDMENTS OF RULE
the fees charged for sampling,)	4.12.1012 CONCERNING
inspection and testing of grains)	GRAIN FEES AND
at the state grain laboratories)	REPEALING RULE
and repealing rule 4.12.1013)	4.12.1013

TO: All interested persons.

1. On January 29, 1987 the Department of Agriculture published notice of a proposed amendment to rule 4.12.1012 and the repeal of 4.12.1013 ARM concerning fees for grain sampling at page 53 of the 1987 Montana Administrative Register, issue no. 2.

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

3. The department received one written statement opposing the amendments from Dan Place, Secretary of the Montana Grain Elevator Association. He argued that because of the increased use of the Grain Inspection Laboratory by grain elevators that no fee increase should be made.

Response: The department acknowledges that there has been an increased volume of services conducted by the lab. However the revenue from the increase in services does not sufficiently offset the indirect cost expenses assessed to the lab as determined by the Office of Budget and Program Planning. Therefor it is necessary to increase the fees to meet the expenses incurred by the lab.

No other comments or testimony were received.

4. The authority for the amendments is 80-4-403 MCA and the amendments implement 80-4-721 MCA.

KEITH KELLY, DIRECTOR
DEPARTMENT OF AGRICULTURE

By: *Keith Kelly*

Certified to the Secretary of State March 2, 1987

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

In the matter of the amendments of 8.6.405 concerning recipro-	)	NOTICE OF AMENDMENTS OF
city, 8.6.409 concerning seals,	)	8.6.405 RECIPROCITY, 8.6.
and 8.6.412 concerning profes-	)	409 INDIVIDUAL SEAL, AND
sional conduct	)	8.6.412 STANDARDS OF PRO-
	)	FESSIONAL CONDUCT AND
	)	ACTIVITIES CONSTITUTING
	)	MISCONDUCT

TO: All Interested Persons:

1. On October 16, 1986, the Board of Architects published a notice of amendments of the above-stated rules at page 1648, 1986 Montana Administrative Register, issue number 19.

2. The Board has amended rules 8.6.405 and 8.6.409 exactly as proposed. The Board has amended rule 8.6.412 as proposed with the following changes: (new matter underlined, deleted matter interlined)

"8.6.412 STANDARDS OF PROFESSIONAL CONDUCT AND
ACTIVITIES CONSTITUTING MISCONDUCT (1) through (o) will
remain the same.

~~(p)--failing-to-report-building-code-violations-to--local~~
~~building-inspectors-or-other-public-officials-charged-with-the~~
~~enforcement-of-the-applicable--state--or--municipal--building~~
~~laws-and-regulations;~~

~~(q)--failing-to-report-violation--by-other--licensees--of~~
~~these-standards-to-the-board;~~

~~(r)(p)~~ . . .
~~(s)(q)~~ . . ."

3. The Board received the following comments and made the following responses:

COMMENT: Philip A. Heine, Architect, suggested that the phrase "or employ the services of a licensed structural engineer" be added to 8.6.405(2) in proposed amended form, for the reason that it was Mr. Heine's impression that it would be in harmony with the practices of the majority of licensed architects in the country.

RESPONSE: The Board declines to adopt the suggested amendment because it would leave the board with no way of assuring that applicants have adequate knowledge of modern seismic requirements as they relate to basic design.

COMMENT: Merlyn Miller, Architect, on behalf of the Billings Architectural Association, suggested that proposed rule 8.6.412(1)(p) and (q) be deleted. It is the opinion of the Billings Architectural Association that, as architects, they can only be responsible for construction code compliance to the extent of their professional involvement in any given

project. These two standards in their present form, would place without limitation, the additional burden of policing the work of others upon licensed architects.

RESPONSE: The Board concurred with the Billings Architectural Association that the proposed items are vague and, if taken literally, could be applied counter to the intent of the rule. The rules as adopted will not include proposed subrules (p) and (q). Subrule designations will be changed accordingly.

COMMENT: Ken Richardson, Architect, suggested that Rule 8.6.412(1)(i) be deleted because the standard appears to be overly-broad and ambiguous. Mr. Richardson further stated that, if an architect is retained by a public body, such as a school board, and is meeting with that board in regular session and makes a statement, that statement could be considered to be a "public statement". If that statement concerns nearly any facet of the client's project, it could be viewed as a statement on an "architectural question". Since the architect has been retained by the school board, the architect is being compensated for his statement.

RESPONSE: The Board declines to adopt the suggested amendment because the architect can still speak so long as his comments are consistent with the probity which the public expects from the profession and so long as he not be allowed, under the circumstances described in the rule, to disguise the fact that he is not speaking on the particular issue as an independent professional, but is speaking as a professional engaged to act on behalf of a client.

COMMENT: James Bauer, Architect, suggested that proposed rule 8.6.412(c) be amended to include a provision that staff of the architectural office are to maintain an attitude of responsibility toward meeting the obligations of the firm, toward the public and toward the client.

RESPONSE: The Board declines to adopt this suggestion, because the licensed architect, by law, has these responsibilities. The Board licenses the architects, not supporting staff.

4. No other comments or testimony were received.

BOARD OF ARCHITECTS
ROBERT C. UTZINGER, PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 2, 1987.

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

In the matter of the amendment)
of rules 16.44.103, 16.44.104,)
16.44.105, 16.44.109, 16.44.110,)
16.44.121, 16.44.123, 16.44.126,)
16.44.202, 16.44.302, 16.44.305,)
16.44.306, 16.44.311, 16.44.324,)
16.44.330, 16.44.333, 16.44.334,)
16.44.351, 16.44.352, 16.44.401,)
16.44.402, 16.44.403, 16.44.404,)
16.44.405, 16.44.415, 16.44.505,)
16.44.609, 16.44.612, 16.44.701,)
16.44.702, 16.44.801, 16.44.803,)
and 16.44.823, and the adoption)
of new rules I, II, and III)
regarding hazardous waste)
management)

NOTICE OF
AMENDMENT OF RULES
ADOPTION OF
NEW RULES I, II, AND III

) (Hazardous Waste Management)

To: All Interested Persons

1. On January 29, 1987, the department published notice at page 60 of the 1987 Montana Administrative Register, issue number 2, of proposed amendments of the above rules and proposed adoption of three new rules, effecting minor clerical or other changes in permitting, counting hazardous wastes, requirements for recycled materials, incorporating appendices, redefining generator categories, creating requirements for conditionally exempt small quantity generators, registration and fee requirements for generators and transporters, accumulating hazardous wastes, and annual reporting.

2. The amendments and new rules were proposed in order to effect changes in the state regulatory program consistent with federal regulatory changes.

3. The department has amended the rules and adopted the new rules as proposed (new rule I to be numbered 16.44.503, new rule II to be numbered 16.44.603, and new rule III to be numbered 16.44.703).

4. No adverse testimony was received by the department; positive comments supporting the rules were received by the department.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 2, 1987.

5-3/12/87

Montana Administrative Register

VOLUME NO. 42

OPINION NO. 8

CITIES AND TOWNS - Extraterritorial authority to regulate discharge of firearms;
HEALTH - Authority of city to enact ordinance regulating discharge of firearms as a health ordinance;
LOCAL GOVERNMENT - Extraterritorial authority of city to regulate discharge of firearms;
MUNICIPAL CORPORATIONS - Mayor's extraterritorial power to enforce firearm discharge ordinance as health ordinance;
MONTANA CODE ANNOTATED - Sections 7-1-4123, 7-4-4306, 7-32-4302, 45-8-101(1)(d), 45-8-343, 45-8-351, 50-2-116;
MONTANA CONSTITUTION - Article XI, section 4(2).

- HELD: 1. A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA.
2. A city may adopt an ordinance prohibiting disorderly conduct resulting from the discharge of firearms and enforce the ordinance within three miles of the city limits pursuant to section 7-32-4302, MCA.

27 February 1987

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning whether a city ordinance regulating the discharge of firearms outside the city limits may be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA. That section provides:

Extraterritorial powers. The mayor has power to exercise such power as may be vested in the

mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

The Missoula City Council has adopted an ordinance prohibiting, with certain exceptions, the discharge of firearms within designated areas which lie outside the city limits but within five miles of the boundaries of the city. The ordinance was enacted in response to concern that hunting and shooting with firearms in developed residential and commercial areas outside the city can endanger persons who reside or recreate within or near those developed areas. The ordinance provides that the city council may designate an area to be included within the geographic scope of the ordinance upon written request of the county commissioners. Your letter states that three areas adjacent to the city have thus far been designated by the council as areas within which the discharge restriction applies.

The City of Missoula is a municipality with general powers and therefore has the legislative power, subject to the provisions of state law, to adopt ordinances required to preserve peace and order and secure freedom from dangerous activities, secure and promote the general public health and welfare, and exercise any power granted by state law. § 7-1-4123, MCA. Powers of incorporated cities such as Missoula are to be liberally construed. Mont. Const., art. XI, § 4(2); Stevens v. City of Missoula, 40 St. Rptr. 1267, 667 P.2d 440 (1983). However, since Missoula has chosen to retain general governmental powers rather than to adopt a self-government charter, the city has only those powers expressly given to it by the Legislature. See D&F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 713 P.2d 977 (1986).

In 1985 the Legislature enacted section 45-8-351, MCA, which provides as follows:

Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or

other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any rifle, shotgun, or handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed weapons, the carrying of weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

Subsection (2)(a) of this statute grants the city the express power to regulate the discharge of firearms for public safety purposes. The city's authority to prevent and punish the discharge of firearms is also found in section 45-8-343, MCA, which permits the city to impose a fine in excess of \$25 or a term of imprisonment upon any person who "willfully shoots or fires off a gun, pistol, or any other firearm" within its limits. In addition, the city has the power to adopt an ordinance prohibiting disorderly conduct, which by statutory definition includes disturbing the peace by discharging firearms. §§ 45-8-101(1)(d), 7-32-4302, MCA; see City of Billings v. Batten, 42 St. Rptr. 1398, 705 P.2d 1120 (1985); City of Whitefish v. O'Shaughnessy, 42 St. Rptr. 928, 704 P.2d 1021 (1985).

I conclude from a reading of these statutes that the Legislature has granted the City of Missoula the authority to adopt ordinances regulating the discharge of firearms. However, as discussed below, I also

conclude that an ordinance prohibiting the discharge of firearms may not be adopted as a health ordinance and enforced pursuant to the extraterritorial powers of the mayor as provided in section 7-4-4306, MCA.

There is no doubt that section 7-4-4306, MCA, allows the city to extend its police power five miles beyond the city limits in matters relating to health and quarantine. While the police power jurisdiction of a municipal corporation is generally limited by the territorial boundaries of the municipality, the Legislature may confer on a municipal corporation the right to exercise police power beyond and within a prescribed distance of the municipal limits. However, statutes authorizing the exercise of municipal power beyond the municipal boundaries are strictly construed. See 62 C.J.S. Municipal Corporations § 141; 56 Am. Jur. 2d Municipal Corporations § 436.

Since the Missoula ordinance is obviously not a quarantine ordinance, the question is whether it may be viewed as a health ordinance. While the ordinance does not refer to its purpose, your letter indicates that the city council members have determined that the discharge of firearms is both a public health and a public safety matter and want the ordinance enforced as a health ordinance pursuant to the mayor's extraterritorial powers provided in section 7-4-4306, MCA.

It is well settled that under the guise of police power the state and its municipal subdivisions have the power and duty to do all things necessary to fully protect the public in the preservation of its health and well-being. Ruona v. City of Billings, 136 Mont. 554, 323 P.2d 29 (1958). However, neither the Legislature nor the Montana Supreme Court has addressed the definition and scope of the term "health" as it concerns the ordinance authority of a municipality.

While it is true that to the victim of a gunshot wound the discharge of the offending firearm is a "health" matter of utmost concern, I am not persuaded that regulation of the discharge of firearms should be viewed as within the scope of the health ordinance authority of the city. By enacting section 45-8-351(2)(a), MCA, the Legislature has indicated that such regulation is authorized for the purpose of promoting public safety. Municipal power relative to the public safety has been

distinguished from municipal power relative to the public health. In general the distinction is between control of causes of personal injury and property damage and control of the causes of disease. Power as to public health will not justify measures as to public safety. See McQuillan Municipal Corporations § 24.220 (3d ed. 1981); Vincon v. Howe Builders Association of Atlanta, 213 S.E.2d 890 (Ga. 1975).

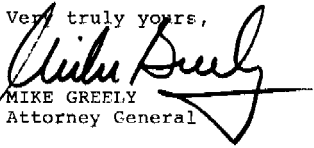
The terms "health" and "safety" are often used together in statutes and judicial decisions. See, e.g., § 82-4-203(14), MCA; Mont. Const., art. II, § 3; Ruona v. City of Billings, *supra*. However, the terms should be construed as coordinate words when determining either a power of government or a reservation of power. State v. Clausen, 148 P. 28, 33 (Wash. 1915). The terms are not interchangeable even though they may refer to similar concerns for the public well-being. The provisions of section 50-2-116, MCA, which set forth the powers and duties of local boards of health, further support the view that the term "public health" relates to matters such as sanitation and the control of communicable diseases rather than the prevention of traumatic personal injury resulting from the discharge of firearms. Because the mayor's extraterritorial power under section 7-4-4306, MCA, does not extend to matters of safety as distinguished from health, I conclude that the ordinance in question may not be enforced as a health ordinance beyond the city limits.

This opinion should not be read to mean that the city is without authority to regulate the discharge of firearms outside the city limits. Section 7-32-4302, MCA, gives the city council the express power to prevent and punish disorderly conduct within three miles of the city limits. As mentioned above, discharging a firearm is one of the statutorily enumerated acts which may disturb the peace and constitute the offense of disorderly conduct. § 45-8-101(1)(d), MCA. Although the extraterritorial reach of the city's police power under section 7-32-4302, MCA, is not as extensive as its five-mile jurisdiction under section 7-4-4306, MCA, the Legislature has clearly granted the city the authority to prevent disturbances of the peace which result from the discharge of firearms in developed areas within three miles of the city limits.

THEREFORE, IT IS MY OPINION:

1. A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA.
2. A city may adopt an ordinance prohibiting disorderly conduct resulting from the discharge of firearms and enforce the ordinance within three miles of the city limits pursuant to section 7-32-4302, MCA.

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 the 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 statutes 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.
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Statute Number and Department	2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.
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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, 1986. This table includes those rules adopted during the period December 31, 1986 through March 31, 1987 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, 1986, 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 1986 or 1987 Montana Administrative Register.

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