RESERVE
KFM
9035
1973
.A245a

RESERVE

STATE LAW LIBRARY
JUN 16 1989
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1989 ISSUE NO. 11
JUNE 15, 1989
PAGES 694-799

STATE LAW LIBRARY

JUN 16 1989

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

TABLE OF CONTENTS

Page Number

NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HEARING AID DISPENSERS

In the matter of the proposed amendment of rules pertaining to traineeship, fees, address change, record retention, ethics, disciplinary actions; repeal of a rule pertaining to hearings; and the adoption of a new rule pertaining to testing procedures	) NOTICE OF PROPOSED AMENDMENT OF 8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS, 8.20.402 FEES, 8.20.405 NOTIFICATION OF ADDRESS CHANGE, 8.20.407 RECORD RETENTION, 8.20.408 CODE OF ETHICS, 8.20.411 DISCIPLINARY ACTIONS - FINES; REPEAL OF 8.20.410 HEARINGS; AND THE ADOPTION OF NEW RULE I. MINIMUM TESTING AND RECORDING PROCEDURES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 15, 1989, the Board of Hearing Aid Dispensers proposes to amend, adopt and repeal the above-stated rules.

2. The proposed amendment of 8.20.401 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-583, Administrative Rules of Montana)

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS

~~(1)--The traineeship period shall be for 12 months beginning upon notification of successfully passing the written examination.~~

~~(a)--The trainee shall work for 60 days under the direct supervision of a licensed hearing aid dispenser.~~

~~(2)~~ (1) The dispenser (supervisor) will:

(a) peruse every fitting made by the trainee. The supervisor shall pre-approve the selection of the ear mold, aid and choice of ear to fit.

(b) The dispenser shall have personal contact with all customers of the trainee who experience difficulty in fitting.

(3) through (7) will remain the same but will be renumbered (2) through (6).

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee in his training activities as if the conduct were licensee's own.

(8) For the purposes of section 37-16-405, MCA, the word "supervision" will be applied to include:

(a) direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available for prompt consultation and treatment; and

(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and procedures that do not require the physical presence of the licensed dispenser on the premises. However, the trainee must remain under the licensed hearing aid dispenser's direction, control, responsibility and evaluation."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-405, MCA

3. REASON: The amendments are proposed because (1)(a) is a repetition of the statute and to clarify the responsibility of the sponsoring licensed dispenser of the trainee during the training period.

4. The proposed amendment of 8.20.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-584, Administrative Rules of Montana)

"8.20.402 FEES

(1) Application fee (includes initial written and practical examination)	~~$125.00~~	$150.00
Re-examination--written	~~40.00~~	65.00
Re-examination--practical (includes renewal of trainee license)	55.00	
Original license (upon passing examinations)	100.00	
Renewal license	125.00	
Copies of law and rules	5.00	

(2) ~~$100.00~~ 125.00 of the application fee is refundable within first 60 days after application, with $25.00 being retained for board administrative costs.

(3) will remain the same."

Auth: Sec. 37-1-134, 37-16-202, MCA; IMP, Sec. 37-1-134, 37-16-202, 37-16-402, 37-16-405, 37-16-407, MCA

5. REASON: The amendment in application and written examination fees is being proposed because Educational Testing Service has increased the cost of the written exam. This amendment will make the fees commensurate with program area costs.

6. The proposed amendment of 8.20.408 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-585 and 8-586, Administrative Rules of Montana)

"8.20.408 ~~CODE OF ETHICS~~ UNETHICAL CONDUCT For the purpose of section 37-16-411(14), MCA, unethical conduct shall include, but not be limited to the following:

(1) through (6) will remain the same."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, MCA

7. REASON: This amendment is intended to clarify to licensees what conduct the board will consider to be unethical for the purpose of defining and enforcing conduct of licensees.

8. ARM 8.20.410 is being proposed for repeal. The text of the rule is located at page 8-586, Administrative Rules of Montana. The authority section is 37-16-202 and the rule implements 37-16-412, MCA. The rule is being proposed for repeal because the hearing process is set out in the Administrative Procedure Act and this rule is redundant.

9. The proposed new rule will read as follows:

"I. MINIMUM TESTING AND RECORDING PROCEDURES (1) The minimum testing procedures under section 37-16-411(15), MCA, shall include the following:

(a) Air conduction tests must be made at American National Standards Institute (ANSI) standard frequencies of 250-500-1000-2000-4000-6000 hertz. Appropriate masking must be used in administering these tests.

(b) Bone conduction tests must be made on every client at ANSI standards at 500-1000-2000-4000 hertz. Proper masking must be applied while administering these tests.

(c) Speech reception threshold and discrimination, testing must be conducted under quiet conditions, with appropriate masking.

(d) Measurements of user discomfort levels must be taken.

(2) Reference food and drug administration regulations on required referral of clients to a medical doctor under certain conditions.

(3) Reports of audiometric test results on the patient's audiogram for the purpose of fitting and dispensing hearing aids shall include the following:

(a) Name of the patient;

(b) Date of the test;

(c) Name and license number of the person giving the test;

(d) Whether the test was calibrated in SPL or HTL.

(4) Audiometers used in testing the hard of hearing must be calibrated to ANSI standards once a year. A certified copy of an electronic audiometer calibration made within the past twelve months must be submitted to the board by the licensee no later than June 30 annually.

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, 37-16-411, MCA

10. REASON: This rule will define minimum testing and recording procedures for compliance with the statute which provides conduct standards for licensees. In recent years a large number of complaints have been received from consumers who were found to have been inadequately tested, resulting in frustration to the consumer and loss of thousands of dollars to senior citizens. Some members of the dispensing industry requested the board to set out procedures for minimum testing standards. This rule will also serve to direct persons entering the industry to learn from the beginning the appropriate test procedures for evaluating the hard of hearing. The result of this rule will be consumer protection in the selling, dispensing and fitting of hearing aids.

11. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoption in writing to the Board of Hearing Aid Dispensers, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than July 13, 1989.

12. If a person who is directly affected by the proposed amendments, repeal and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Hearing Aid Dispensers, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than July 13, 1989.

13. If the board receives requests for a public hearing on the proposed amendments, repeal and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeal and 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 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 10 based on the 104 licensees in Montana.

BOARD OF HEARING AID DISPENSERS
LEE MICKEN, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State June 5, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the proposed amendment of rules pertaining to applications, seals, examinations, reciprocity, suspensions and revocations, complaint process and the adoption of a new rule pertaining to disciplinary actions - fines	)	NOTICE OF PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO LANDSCAPE ARCHITECTS - ARM 8.24.403 - 405; 8.24.407; 8.24.410; 411; RULE I NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons:

1. On July 15, 1989, the Board of Landscape Architects proposes to amend and adopt the above-stated rules.

2. The proposed amendments and the statements of reasonable necessity for the amendments are as follows: (new matter underlined, deleted matter interlined) (full text of the rules is located at pages 8-787 through 8-792, Administrative Rules of Montana)

"8.24.403 APPLICATIONS (1) through (2)(b) will remain the same.

~~(c)--The conditions set out in the application form are incorporated by this reference as part of the rules.~~

~~(3)--Disposal of applications:--When the board, after due consideration of an applicant and of information pertaining thereto, is satisfied that the applicant is eligible for registration, the applicant will be voted registration by board majority.--The applicant will be notified of the action by the board.~~

~~(a)--If the board is unable to determine from the information provided by the applicant whether the applicant is eligible for registration, the application shall be deferred and the applicant requested by certified mail to furnish such additional information as may be necessary.--If after 1 year from the date of the request for such information, no reply has been received, the application will be rejected and a new application will be required.~~

~~(b)~~ (3) All registrants applications and related data shall be kept in separate permanent files and maintained by the board.

~~(4)--Rejected applications:--If an application is rejected, the board will advise the applicant in accordance with the provisions of the act.~~

~~(5)--Reconsiderations and reapplications:--At any time within 1 year after date of notice of action by the board, a request may be made for reconsideration of an application which has been rejected.~~

(a) After 1 year has expired, a new application is required and must be made under the section of the law applicable on the date the new application is filed.

~~(a)~~ (b) will remain the same."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-304, MCA

REASON: This amendment is being proposed to delete provisions that are vague, redundant and archaic and to clarify the procedures for reconsideration of applications or reapplications for licensure.

"8.24.404 SEALS AND ISSUE LICENSES (1) will remain the same.

(a) ~~Seals or rubber stamps of the seal for landscape architects must be purchased through the board.~~ Seals of 2 different sizes are authorized; pocket seal, the size commercially designated as a 1 - 5/8 inch seal; or a desk seal, commercially designated as a 2 inch seal. The seal or rubber stamp will bear the registrant's name, registration number and the legend, "Licensed Landscape Architect", as prescribed by the board. Every registered landscape architect shall have a seal in design authorized by the board. This seal or rubber stamp with the registrant's counter signature shall appear on the title page of specifications and on every sheet of the working drawings when filed with public authorities. In case of a partnership, only one of the registered principal partners shall be required to seal or stamp documents.

(2) and (a) will remain the same."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-303, 37-66-308, MCA

REASON: This amendment is being proposed so that licensees may purchase seals at firms of their choice and relieve the board from acting as a supplier.

"8.24.405 EXAMINATIONS ~~(1) After July 1, 1979, registration as a landscape architect will be by uniform national examination.~~ The application fee shall not be included in the examination fees.

(2) through (5) will remain the same."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-202, 37-66-305, MCA

REASON: This amendment is being proposed to delete provisions that are archaic and unnecessarily repeat statutory language.

"8.24.407 RECIPROCITY (1) The board may, without written examination, upon application therefore and payment of proper fee, issue a certificate of registration as a landscape architect to any person who submits evidence that he holds a current certificate of qualification or registration issued to him by proper authority of the council of landscape architecture registration boards. ~~Such applicants shall, as~~

~~part-of-their-application;-complete-and-send-to-the-board-the standard-application-form.~~

(a) and (b) will remain the same."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-306, MCA

REASON: This amendment is being proposed to delete a provision that is redundant to application requirements in ARM 8.24.403.

"8.24.410 SUSPENSIONS AND REVOCATIONS (1) ~~Under-the provisions-of-the-act,~~ Holders of certificates of registration may be disciplined ~~revoked-by-the-board-for-cause-and~~ after proper hearings in conformity with ~~as-fully-set-out-in~~ the Montana Administrative Procedure Act~~,-and-Title-8,-Chapter-2 of-the-Administrative-Rules-of-Montana.~~

~~(2)--When-a-certificate-of-registration-is-revoked,-the individual-shall-surrender-to-the-custody-of-the-secretary, his-certificate,-pocket-registration-card,-and-seal.~~"

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-321, MCA

REASON: These amendments are being proposed to remove archaic and redundant language under the Administrative Procedure Act. Provisions for surrender of revoked licenses are contained in proposed new RULE I(3).

"8.24.411 COMPLAINT PROCESS (1) ~~Anyone-wishing-to enter-a-complaint-against-a-registered-landscape-architect shall-do-so-to-the-board-on-forms-provided-by-the-board.--The complainant-may-also-provide-a-copy-of-the-complaint-to-the landscape-architect-in-question.~~ Complaints must be made in writing to the board. The board will investigate and act on such complaints. It may also investigate matters within its own knowledge.

~~(2)--Anyone-wishing-to-enter-a-complaint-against-any unlicensed-person-offering-to-practice-landscape-architecture or-holding-himself-out-as-a-landscape-architect,-may-do-so-by filing-a-complaint-with-the-board-or-directly-with-the-office of-the-local-county-attorney.~~

~~(3)--The-board-will,-within-its-authority,-assist-any person-wishing-to-enter-any-complaint-against-any-violator-of this-act.~~"

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-66-323, MCA

REASON: This amendment is being proposed to remove archaic and redundant language, to make filing of complaints with the board as simple as possible and to make clear that the board may investigate serious appearing matters even though no complaint is filed.

3. The proposed new rule will read as follows:

" RULE I DISCIPLINARY ACTIONS - FINES (1) The board reserves the discretion to take appropriate disciplinary action provided for in section 37-1-136 and 37-16-411, MCA, against a licensee who has violated any law or rule of the

board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

(a) the seriousness of the infraction;

(b) the detriment to the health, safety and welfare of the people of Montana; and

(c) disciplinary actions relating to the licensee.

(2) The board may impose one or more of the following sanctions in appropriate cases:

(a) revocation of a license;

(b) suspension of the right to practice for a period not exceeding 1 year;

(c) placing a licensee on probation;

(d) public or private reprimand or censure of a licensee;

(e) limitation or restriction of the scope of the license and the licensee's practice;

(f) deferral of disciplinary proceedings or imposition of disciplinary sanctions;

(g) ordering the licensee to successfully complete appropriate professional training; or

(h) imposition of a fine or fines not to exceed $500 per incident of violation.

(i) fines will be determined by the board on an individual per case basis.

(ii) fines must be paid within 30 days of notification from the board.

(iii) failure to pay the fine and assessments for violation(s) may result in non-renewal of license.

(3) When a license is revoked or suspended, the licensee must surrender the license to the board."

Auth: 37-66-202, MCA; IMP, Sec. 37-1-136, 37-66-321, MCA

REASON: This rule is being proposed to implement section 37-1-136, MCA, and provide the board with more options for disciplinary sanctions in cases of violation of practice standards.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Landscape Architects, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than July 13, 1989.

5. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Landscape Architects, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than July 13, 1989.

6. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment and 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 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 9 based on the 90 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS
VALERIE TOOLEY, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State June 5, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the proposed amendment of rules pertaining to suspension or revocation - gross immorality and dangerous drugs	))))	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO PHARMACY - ARM 8.40.415; 8.40.1215

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 15, 1989, the Board of Pharmacy proposes to amend the above-stated rules.

2. The proposed amendment of 8.40.415 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1139 and 8-1140, Administrative Rules of Montana)

"8.40.415 SUSPENSION OR REVOCATION - GROSS IMMORALITY (1) For the purpose of ~~interpreting "gross immorality" as it applies to~~ implementing the provisions of section 37-7-311~~(5)~~(4), MCA, the board ~~has determined that it includes, but is not limited to~~ defines "gross immorality" as follows:

(a) ~~knowingly~~ engaging in any activity which violates state and federal statutes and rules governing the practice of pharmacy;

(b) ~~knowingly~~ dispensing an outdated or questionable product;

(c) ~~knowingly~~ dispensing a cheaper product and charging for a more expensive product;

(d) ~~knowingly~~ charging for more dosage units than is actually dispensed;

(e) ~~knowingly~~ altering prescriptions or other records which the law requires pharmacies and pharmacists to maintain;

(f) ~~knowingly~~ dispensing medication without proper authorization;

(g) ~~knowingly~~ defrauding any persons or government agency receiving pharmacy services;

(h) and (i) will remain the same.

(j) buying, selling, purchasing or trading any prescription drug samples or offering to sell, purchase or trade drug samples. A "drug sample", as used herein, is defined to mean a unit of a prescription drug which is not intended to be sold and is intended to promote the sale of a drug."

Auth: Sec. 37-7-201, MCA; Sec. 37-7-311, MCA

REASON: Since it is now a violation of Federal law (Prescription Drug Marketing Act of 1987-P.L. 100-293) to buy, sell, purchase or trade any prescription drug samples or to offer to sell, purchase or trade drug samples, the Board of

Pharmacy felt it appropriate that engaging in this practice by pharmacists should be added to the list of practices prohibited in this rule.

Deletion of the word "knowingly" from conduct standards reduces the burden of proof for license discipline proceedings from the burden for conviction of a crime to the burden for a civil suit. It is felt that harm to the public could result from inadvertent acts or omissions, as-well-as from intentional acts.

3. The proposed amendment of 8.40.1215 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1180 through 8-1182, Administrative Rules of Montana) (The REASON for the amendments to each schedule is located at the end of the schedule)

8.40.1215 ADDITIONS, DELETIONS & RESCHEDULING OF DANGEROUS DRUGS (1) through (4) will remain the same.

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

(a) Schedule I

(i) acetyl-alpha-methylfentanyl under section 50-32-222(1), MCA, opiates

(ii) beta-hydroxyfentanyl under section 50-32-222(1), MCA, opiates

(iii) beta-hyroxy-3-methylfentanyl under section 50-32-222(1), MCA, opiates

(iv) doet= 2,5 -dimethoxy-4-ethalamphetamine under section 50-32-222(3), MCA, hallucinogenic substances

~~(v)~~ (v) methaqualone under section 50-32-222(4), MCA, depressants

~~(vi)~~ (vi) 3, 4-methylenedioxymethamphetamine (MDMA) under section 50-32-222(3), MCA, hallucinogenic substances

(vii) 3-methylfentanyl under section 50-32-222(1), MCA, opiates

(viii) 3-methylthiofentanyl under section 50-32-222(1), MCA, opiates

(ix) mppp=1-methyl-4phenyl-4-propionoxypiperidine under section 50-32-222(1), opiates

(x) parahexyl under section 50-32-222(3), MCA, hallucinogenic substances

(xi) para-flurofentanyl under section 50-32-222(1), MCA, opiates

(xii) pce=n-ethyl-1-phenylcyclohexylamnie under section 50-32-222(3), MCA, hallucinogenic substances

(xiii) pepap=1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine under section 50-32-222(1), MCA, opiates

(xiv) php=1-(1-phenylcyclohexyl)pyrrolidine (pcp analog) under section 50-32-222(3), MCA, hallucinogenic substances

~~(xxxx)~~ (xv) sufentanil listed in section 50-32-222(1)(rr), MCA, is rescheduled to schedule II as listed below

(xvi) thiofentanyl under section 50-32-222(1), MCA, opiates

REASON: The above-listed drugs have been placed in Schedule I in the U.S. Code of Federal Regulations (CFR). These actions were based on the finding that these substances fit in the category for inclusion in Schedule I in the CFR. The Federal Regulation Citation for each drug and its effective date are available at the Board of Pharmacy office at 1424 - 9th Avenue, Helena, Montana 59620-0407.

(b) Schedule II

(i) will remain the same.

(ii) Hallucinogenic substances listed in section 50-32-224(5) hallucinogenic substances.

(A) ~~D~~dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product~~;~~

(B) nabilone under section 50-32-224(5), MCA, hallucinogenic substances

(iii) and (iv) will remain the same.

REASON: Nabilone has been placed in Schedule II in the U.S. Code of Federal Register (CFR). This amendment was finalized in the Federal Register 4/7/87. The Federal Register citation is 52FR11042. This action was based on the finding that this substance fits in the category for inclusion in Schedule II in the CFR.

(c) Schedule III

(i) tiletamine & zolazepam (telazol) under section 50-32-226(2), MCA, depressants

REASON: Tiletamine & Zolazepam (Telazol) has been placed in Schedule III of the U.S. Code of Federal Regulation (CFR). This action was based on the finding that this substance fits the category for inclusion in Schedule III in the CFR. The Federal Register citation is 52FR2221. This amendment was finalized in the Federal Register 2/20/87.

~~(c)~~ (d) Schedule IV

(i) bromazepam under section 50-32-229(2), MCA, depressants

(ii) camezepam under section 50-32-229(2), MCA, depressants

(iii) cathine under section 50-32-229(4), MCA, stimulants

(iv) clobazam under section 50-32-229(2), MCA, depressants

(v) clotiazepam under section 50-32-229(2), MCA, depressants

(vi) cloxazolam under section 50-32-229(2), MCA, depressants
(vii) delorazepam under section 50-32-229(2), MCA, depressants
(viii) estazolam under section 50-32-229(2), MCA, depressants
(ix) ethyl loflazepate under section 50-32-229(2), MCA, depressants
(x) fencamfamin under section 50-32-229(4), MCA, stimulants
(xi) fenproporex under section 50-32-229(4), MCA, stimulants
(xii) fludiazepam under section 50-32-229(2), MCA, depressants
(xiii) flunitrazepam under section 50-32-229(2), MCA, depressants
(xiv) haloxazolam under section 50-32-229(2), MCA, depressants
(xv) ketazolam under section 50-32-229(2), MCA, depressants
(xvi) loprazolam under section 50-32-229(2), MCA, depressants
(xvii) lometazepam under section 50-32-229(2), MCA, depressants
(xviii) medazepam under section 50-32-229(2), MCA, depressants
(xix) mefenorex under section 50-32-229(4), MCA, stimulants
~~(xx)~~ (xx) midazolam listed in section 50-32-229(2)(r), depressants
(xxi) nimetazepam under section 50-32-229(2), MCA, depressants
(xxii) nitrazepam under section 50-32-229(2), MCA, depressants
(xxiii) nordiazepam under section 50-32-229(2), MCA, depressants
(xxiv) oxazolam under section 50-32-229(2), MCA, depressants
(xxv) pinazepam under section 50-32-229(2), MCA, depressants
~~(xxi)~~ (xxvi) quazepam listed in section 50-32-229(2)(x), depressants
(xxvii) tetrazepam under section 50-32-229(2), MCA, depressants
(xxviii) triazolam under section 50-32-229(2), MCA, depressants

REASON: The above-listed drugs have been placed in Schedule IV in the U.S. Code of Federal Regulation (CFR). These actions were based on the finding that these substances fit in the category for inclusion in Schedule IV in the CFR. The Federal Regulation citation for each drug and its effective date are available at the Board of Pharmacy office at 1424 - 9th Avenue, Helena, Montana 59620-0407.

~~(d)~~ (e) Schedule V

(i) and (A) will remain the same.

(B) propyhexedrine under section 50-32-232(3), MCA, stimulants

(C) pyrovalerone under section 50-32-232(3), MCA, stimulants

(ii) will remain the same."

REASON: Propyhexedrine and Pyrovalerone were placed in Schedule V in the U.S. Code of Federal Register (CFR). The Federal Register Citation is 53FR10869 and the amendments were effective 5/4/88.

Auth: Sec. 50-32-103, MCA; IMP, Sec. 50-32-103, 50-32-209, 50-32-222, 50-32-223, 50-32-224, 50-32-225, 50-32-226, 50-32-228, 50-32-229, 50-32-231, 50-32-232, MCA

4. 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 July 15, 1989.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Pharmacy, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than July 13, 1989.

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 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 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 1042 licensees in Montana.

BOARD OF PHARMACY

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State June 5, 1989.

**BEFORE THE DEPARTMENT OF COMMERCE
MILK CONTROL BUREAU
OF THE STATE OF MONTANA**

In the matter of proposed amendment of Rule 8.79.201 (1)(b) regarding trade practices	)))))	**NOTICE OF PUBLIC HEARING ON A PROPOSED AMENDMENT OF RULE 8.79.201(1)(b)--REGULATION OF UNFAIR TRADE PRACTICES** **DOCKET #94-89**

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

1. On Wednesday, July 26, 1989, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held in the Glacier Room, 1520 East Sixth Avenue, 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. Keith Nye (petitioner), general manager, Country Classic Dairies, Inc. The purpose for the hearing is to amend ARM 8.79.201(1)(b) as shown below to permit the sampling of milk by consumers. (Full text of the rule is located at pages 8-2311 through 8-2313, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.79.201 REGULATION OF UNFAIR TRADE PRACTICES

(1) through (a) remain the same.

(b) The giving of any milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.

The sampling of class I milk products to consumers will be permitted when each sample does not exceed three (3) fluid ounces and no consumer receives more than one (1) sample each day.

(c) . . ."

3. The rationale for the proposed action is to allow for greater flexibility in promoting dairy products to increase the consumption of those products.

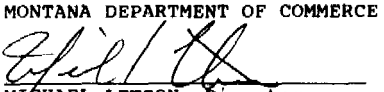
4. The burden is on the petitioner to prove the requested amendment would be beneficial and in the public interest.

5. 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, MT 59620-0512, no later than July 21, 1989.

6. Mr. Geoffrey Brazier, 1424 Ninth Avenue, Helena, Montana, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

7. The authority of the department to amend the proposed rules is based on section 81-23-104, MCA, and implements section 81-23-103 and 81-23-303, MCA.

MONTANA DEPARTMENT OF COMMERCE

BY: 

MICHAEL LETSON, Director

Certified to the Secretary of State June 5, 1989.

**BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA**

In the matter of proposed amendment of Rule 8.86.301 (6)(b), (g)(i)(B) and (C) as it relates to class I resale pricing formula	))))))	**NOTICE OF PUBLIC HEARING ON A PROPOSED AMENDMENT OF RULE 8.86.301** **PRICING RULES** **DOCKET #93-89**

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

1. On Monday, July 17, 1989, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the Department of Highways auditorium, 2701 Prospect Avenue, 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 on the board of milk control's own motion and in response to a petition filed by James T. Harrison, Esq., on behalf of Clover Leaf Dairy, Inc., Equity Supply Co., Vita Rich Dairy, and the Montana Jobber's Association. Petitioners propose to amend table II of ARM 8.86.301(g)(b).

3. Petitioners and the board of milk control (board) propose amending ARM 8.86.301(6)(b) as follows. (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) through (6)(a) remain the same.

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of class I milk in the state of Montana utilizes a November 1969 base equalling 100, an interval of 5.3 and consists of five (5) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

	FACTOR	WEIGHT	CONVERSION FACTOR	
(i)	Weekly wages - total private revised	50%	.4035187	
(ii)	Wholesale price index (US)	28%	~~.2607876~~	.7806202
(iii)	Pulp, paper and allied products (US)	12%	~~.1142857~~	.3299850
(iv)	Industrial machinery (US)	6%	~~.0556586~~	.1550846
(v)	Motor vehicle and equipment (US)	4%	~~.0376294~~	.0945103
		100%		

NOTE: The reported revised weekly wages - total private is seasonally adjusted by dividing each months revised figures by the factors listed above in paragraph (6)(a).

The following table will be used in computing distributor prices.

TABLE II

Handler incremental deviation from last official reading of present formula. (December, 1973 - 122.10; Formula Base = November, 1969; Interval = 5.3.)

FORMULA INDEX		HANDLER INCREMENTAL DEVIATION
~~143.70-147.94~~	101.30-105.54	-$ 0.02
~~149.00-153.24~~	106.60-110.84	- 0.01
~~154.30-158.54~~	111.90-116.14	0.00
~~159.60-163.84~~	117.20-121.44	0.01
~~164.90-169.14~~	122.50-126.74	0.02
~~170.20-174.44~~	127.80-132.04	0.03
~~175.50-179.74~~	133.10-137.34	0.04
~~180.80-185.04~~	138.40-142.64	0.05
~~186.10-190.34~~	143.70-147.94	0.06
~~191.40-195.64~~	149.00-153.24	0.07
~~196.70-200.94~~	154.30-158.54	0.08
~~202.00-206.24~~	159.60-163.84	0.09
~~207.30-211.34~~	164.90-169.14	0.10
~~212.60-216.84~~	170.20-174.44	0.11
~~217.90-222.14~~	175.50-179.74	0.12
~~223.20-227.44~~	180.80-185.04	0.13
~~228.50-232.74~~	186.10-190.34	0.14
~~233.80-238.04~~	191.40-195.64	0.15
~~239.10-243.34~~	196.70-200.94	0.16
~~244.40-248.64~~	202.00-206.24	0.17
~~249.70-253.94~~	207.30-211.54	0.18
~~255.00-259.24~~	212.60-216.84	0.19
~~260.30-264.54~~	217.90-222.14	0.20
~~265.60-269.84~~	223.20-227.44	0.21

~~270,90-275,14~~	228.50-232.74	0.22
~~276,20-280,44~~	233.80-238.04	0.23
~~281,50-285,74~~	239.10-243.34	0.24
~~286,80-291,04~~	244.40-248.64	0.25

(c) through (f) remain the same.

(g) The minimum wholesale price will be marked up ten percent (10%) to arrive at minimum retail prices.

(i) Special wholesale price for retail grocery stores will be based on the procedures provided in subsections (A), (B) and (C) below. All milk purchased under one of the procedures indicated below must be paid within fifteen (15) days after invoicing unless there is a different time frame specified in the applicable rule section. Retailers are prohibited from purchasing milk at more than one level of service from any one distributor and distributors are prohibited from offering more than one level of service to any one retailer in any single billing period. This does not prohibit a retailer from changing levels of service in subsequent billing periods.

(A) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty nine percent (89%) for full service delivery by a distributor. Any milk purchased herein must be paid for within fifteen (15) days after invoicing.

(B) Wholesale drop service for retail stores:

(I) Deliveries shall be limited to a maximum of four (4) times per week~~, with a one hundred fifty dollar ($150.00) minimum sale~~.

(II) The minimum retail price will be marked down by sixteen percent (16%) to arrive at a minimum wholesale drop service price.

(C) Wholesale dock pickup price:

(I) Delivery shall be FOB the processing plant's dock or processing plant's warehouse dock.

(II) The minimum retail price will be marked down by twenty two and three tenths percent (22.3%) to arrive at the minimum wholesale dock pickup or delivery price.

(III) Any milk purchased herein must be paid for within ten (10) days after invoicing.

(IV) Resale will be based upon the wholesale full service price or wholesale drop service price, whichever is applicable.

~~(V) A minimum pickup or delivery will be five hundred (500) gallons.~~

(h) . . ."

4. The reasons given for the proposed action by petitioners, represented by James T. Harrison, Esq., is to set prices which are economically and reasonably profitable and which will permit said petitioners to remain in business. Petitioners assert that, without the relief they will be

unable to remain in the milk business at a profit and that each of them will lose money, go bankrupt, or otherwise be obliged to retire from the milk business.

5. The board will consider changes to the conversion factors in the rule to reflect current data. The base period on certain indexes in the formula were changed necessitating a revision in the conversion used. The rule may be amended to reflect these revisions.

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

(a) supplies of milk in adjacent and surrounding areas;

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

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

(d) cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(e) cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging costs, processing costs, and that part of general and administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state.

7. Specific issues that the board will deliberate on, and wants data, views, and arguments from interested persons on, include the following:

<u>These are not rhetorical questions, and this is not a survey or referendum.</u> The board needs empirical data and sound reasons in order to be adequately informed for decision making.

(a) Should there be an official wholesale dock pickup price for sales at the plant dock? If so, why?

What should the price be? Why? (see alternatives in the accompanying chart) What costs and cost factors support this price?

What adjustments, if any, should be made to the formula to reflect this price level?

(b) Should the minimum pickup be limited to 500 gallons? Why? (What are the arguments for and against?)

(c) Should there be a drop-service wholesale price to stores? If so, why?

What should the price be? Why? (see alternatives in the accompanying chart) What costs and cost factors support this price?

What adjustments, if any, should be made to the formula to support this price level?

(d) Should there be a separate wholesale price (or prices) based on servicing stores? If so, why?

What should that price be? Why? What costs and cost factors support this price?

What adjustments should be made to the formula to reflect these changes?

(e) Should there be a separate wholesale price for restaurants and other wholesale accounts (other than stores and schools)? If so, why?

What should that price be? Why? What costs and cost factors support this price?

What adjustments should be made to the formulas to reflect these changes?

(f) Do any of the foregoing decisions necessitate a change in the jobber price? Or jobber formula? If so, why?

What should that price be? Why? What costs and cost factors support this price?

What changes in the formulas will reflect this decision?

(g) Do any of the foregoing decisions necessitate or support changes in the retail price? If so, why?

What should that price be? Why? What costs or cost factors support this price level?

What changes in the formula will reflect this decision?

(h) Based on action taken by the board of milk control on December 9, 1988, what effect will it have on service in small communities to schools, hospitals, restaurants, etc.?

8. In its consideration on the merits of the proposed action, the board takes official notice as facts within its own knowledge of the following:

TABLE A

Based on a recent cost survey of two major processing plants in Montana conducted by staff of the Milk Control Bureau, simple average dock costs with a raw product cost of $13.98 per c.w.t. for period November 1, 1987, through April 30, 1988, were as follows:

ITEM	RAW PROD COSTS	CRTN/INGR COSTS	PROCESS COSTS	GEN/ADMN COSTS	DOCK COSTS
WHOLE MILK					
1/2 Gal	.58857	.08071	.14444	.05470	.86842
Gallon	1.17714	.16178	.25538	.10940	1.70370
LOWFAT 2%					
1/2 Gal	.50806	.08073	.14444	.05470	.78793
Gallon	1.01612	.16244	.25538	.10940	1.54334
SKIM MILK					
1/2 Gal	.41407	.08874	.15391	.06046	.71718
Gallon	.82813	.17974	.24246	.09914	1.34947

TABLE B

Based on a recent cost survey of two major processing plants in Montana conducted by staff of the Milk Control Bureau, delivery costs for period November 1, 1987, through April 30, 1988, were as follows:

ITEM	DOCK COST TABLE A	DROP DEL COSTS	TL DROP DEL COST	WHOLESALE DEL COSTS	TL WHLS DEL COSTS
WHOLE MILK					
1/2 Gal	.86842	.07854	.94696	.17569	1.04411
Gallon	1.70370	.15709	1.86079	.35139	2.05509
LOWFAT 2%					
1/2 Gal	.78793	.07854	.86647	.17569	.96362
Gallon	1.54334	.15709	1.70043	.35139	1.89473
SKIM MILK					
1/2 Gal	.71718	.08902	.80620	.19912	.91630

The board, in its deliberations wishes to utilize actual costs allocated back on a "per unit" basis in establishing price levels for milk. The board also wishes to have persons testifying submit unit costs of their own operations for the board's use in establishing price levels as a result of this proceeding.

TABLE C

Bid prices for sales to Malmstrom Air Force base for period March through September 1989

	WHOLE MILK		LOWFAT MILK		SKIM MILK	
	1/2 Gal	Gal	1/2 Gal	Gal	1/2 Gal	Gal
UNIT PRICE	.79	1.61	.71	1.42	.57	---

*NOTE: Previous bid prices published in Docket #89-88 were from $.04 to $.09 a gallon less.

TABLE D

Lowest milk prices to a retailer on inter-state program for Meadow Gold Dairies May 1, 1989

	WHOLE MILK-GALLON		LOWFAT MILK-GALLON		SKIM MILK	
	MG	PL	MG	PL	MG	PL
UNIT PRICE	$2.002	$1.839	$1.849	$1.719	$1.653	$1.653

Note: Stores are charged an additional 3.50% for freight.
MG = Meadow Gold PL = Private Label

TABLE E

Country Classic milk prices on Wyoming program for Montana stores beginning April 1, 1989

	WHOLE MILK-GALLON		LOWFAT MILK-GALLON	
	DARIGOLD	PRIVATE LABEL	DARIGOLD	PRIVATE LABEL
UNIT PRICE	$2.16	$1.992	$2.00	$1.86

Note: Freight of $.165 per gallon is included.

9. The board takes official notice that Meadow Gold Dairies and Country Classic Dairies represent 82.14% of the total fluid milk volume for 1988.

10. The board takes official notice of changes in the marketplace and of the fact that Country Classic currently sells 45.2% of its total wholesale dollar volume through the grocery warehouse system.

11. The board takes official notice that the cost of transporting packaged milk 198 miles from Bozeman, Montana to Powell, Wyoming is approximately $0.043 per gallon, based on freight charges submitted by Associated Food Stores to Country Classic Dairies, Inc.

12. The board takes official notice of the unrest which has been prevalent in the milk industry and continues to exert pressure on the market as evidenced by the requests for emergency relief made in March 1986, November 1987, and August 1988. In addition, the board takes notice of the fact that there have been and continue to be numerous violations of ARM 8.86.301(6)(g)(i)(B) and (C), as they pertain to the $150 and 500 gallon minimum requirements. It should be noted these are unauthorized reductions in minimum prices.

13. 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 E. 6th Avenue - rm 50, Helena, MT 59620-0512, no later than July 14, 1989.

14. Geoffrey L. Brazier, Esq., 1424 9th Avenue, Helena, Montana, has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full board will sit in convened session at the hearing.

15. Authority for the board to take the action and adopt the 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
MILTON J. OLSEN, CHAIRMAN

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

Certified to the Secretary of State June 5, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the proposed adoption of a new rule for the administration of the 1989 Federal Community Development Block Grant Program	)))))	NOTICE OF PUBLIC HEARING ON A PROPOSED RULE PERTAINING TO THE ADMINISTRATION OF THE 1989 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On July 6, 1989, at 1:30, p.m., a public hearing will be held in Room C-209 of the Cogswell Building, Helena, Montana, to consider the adoption by reference of a rule governing the administration of the 1989 Federal Community Development Block Grant (CDBG) program.

2. The proposed new rule will read as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1989 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1989 Application Guidelines and the Montana Community Development Block Grant Program, February, 1989 Grant Administration Manual published by it as rules for the administration of the 1989 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,
(b) requirements for applicants,
(c) procedures for evaluating applications,
(d) procedures for local project administration,
(e) environmental review of project activities,
(f) procurement of goods and services,
(g) financial management,
(h) protection of civil rights,
(i) fair labor standards,
(j) acquisition of property and relocation of persons displaced thereby, and
(k) administrative considerations specific to public facilities, housing and neighborhood revitalization and economic development projects.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

3. REASON: It is reasonably necessary to adopt the rule because the federal regulations governing the states' administration of the 1989 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

4. 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 the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than July 13, 1989.

5. Richard M. Weddle will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE
DIVISION

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 5, 1989.

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

In the matter of the adoption of a new rule concerning the temporary licensing of tourist homes during the Montana Centennial Cattle Drive	) NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE) (Food and Consumer Safety)

To: All Interested Persons

1. On July 7, 1989, at 9:00 a.m., or as soon thereafter as the matter may be heard, the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a temporary rule concerning the licensing of tourist homes during the Montana Centennial Cattle Drive.

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

3. The rule, as proposed, appears as follows:

RULE I TEMPORARY LICENSE FOR MONTANA CENTENNIAL CATTLE DRIVE (1) Notwithstanding the other provisions of this subchapter, a person who desires a temporary tourist home license during the period beginning Saturday, August 26, 1989, through Sunday, September 17, 1989, may receive such a license by observing the following procedure and accepting the following conditions:

(a) An application for the license must be received with a $30.00 fee in the office of the Food and Consumer Safety Bureau, Cogswell Building, Helena, Montana 59620 on or before Friday, August 11, 1989.

(b) Applicants must agree to sign and file a waiver of the annual period of licensure and agree the license will expire September 17, 1989.

(c) Before the department may issue a license under this rule, the local health officer must certify to the department that the applicant has attended a training session at which the licensing requirements for sanitation, food safety, personal hygiene, housekeeping and related matters which are applicable to licenses issued under this rule were discussed.

(d) Applicants must agree to accept the license subject to spot inspections as provided for in Section 50-51-302, MCA.

(e) Applicants must agree to summary revocation of their license upon determination by the department or the local health authority of non-compliance with the provisions of this subchapter applicable to licenses issued under this rule.

(f) A license under this rule will be issued only for establishments with five or fewer guest rooms.

(g) A license under this rule will be issued only to an establishment connected to a municipal water system, or if the operator submits proof that a satisfactory microbiological

analysis of the establishment's water source has been completed within 30 days of the date of application by a laboratory certified by the department.

(h) Meal service must be limited to breakfast.

(i) Applicants must physically surrender their licenses to the department by mail and cease operation at the close of business September 17, 1989.

(j) Applicants must be at least twenty-one (21) years of age.

AUTH: 50-51-103, MCA IMP: 50-51-103, 50-51-201, MCA

4. The department is proposing the rule in order to allow private homes to be expediently licensed as tourist homes, as defined by Section 50-51-102(6), MCA, to provide expanded housing accommodations for the anticipated influx of Montana residents and tourists attending the Montana Centennial Cattle Drive (September 4-9, 1989) and its ancillary events. Based upon contacts and telephone calls received by the department as of May 1, 1989, the department anticipates an increasing demand for housing accommodations in the greater Yellowstone area during the Montana Centennial Cattle Drive. The current public accommodation rules require a pre-licensing inspection to be conducted by the department or the local health authority. Given the limited nature of the food service (breakfast only) and the short duration of the license (approximately three weeks), the proposed rule, including specific training requirements for operators and the use of spot inspections, establishes sufficient safeguards for public health and safety under the state's public accommodation statutes.

5. Interested persons may submit their data, views, or arguments concerning the proposed rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 14, 1989.

6. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.

DONALD E. PIZZINI, Director

Certified to the Secretary of State June 5, 1989.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of new rules for the New Horizons Program; amending ARM 24.12.201 through 24.12.206, and 24.12.208; and repealing ARM 24.12.207.	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES I, II AND III; PROPOSED AMENDMENT OF ARM 24.12.201 THROUGH 24.12.206, AND ARM 24.12.208; AND REPEAL OF ARM 24.12.207, DEALING WITH THE NEW HORIZONS PROGRAM FOR DISPLACED HOMEMAKERS.

To: All Interested Persons:

1. On July 19, 1989 at 10:00 a.m. a public hearing will be held in the first floor conference room of the Department of Labor and Industry Building in Helena, Montana, to consider the adoption of new rules and amendment of rules on the New Horizons Program as defined in sections 39-7-601 through 39-7-606, MCA, and ARM 24.12.201 through 24.12.208.

2. The proposed rules provide as follows:

RULE I PROGRAM EVALUATION (1) Program operators must provide background and followup information on clients as requested by the department, including but not limited to, information on:

(a) length of time on AFDC;

(b) amount of monthly AFDC assistance; and

(c) information on employment status.

AUTH: Section 39-7-603, MCA. IMP: Sections 39-7-603 through 39-7-606, MCA.

RULE II CLASSROOM TRAINING (CRT) (1) As used in the Act, the term "classroom training" means any training in an institutional setting designed to provide individuals with the skills or information necessary to complete basic education requirements or necessary to perform a specific job or type of jobs.

AUTH: section 39-7-603, MCA. IMP: Sections 39-7-603 through 39-7-606, MCA.

RULE III EXTENT AND METHOD OF PAYMENT (1) Payments for child care must be made directly to the child care provider by the program operator and may not exceed $100 for any two-week period.

(2) Payments may not be made for child care unrelated to employment or classroom training. Child care for longer than one hour before or after employment or classroom training is not covered, unless additional travel time must be considered. The program operator must document the necessity for any additional travel time.

(3) Payments shall be provided for no longer than 12 months and shall be calculated as follows:

(a) for the first 6 months of child care, $50 per week

per child;

(b) for the 7th and 8th months, $38 per week per child or 75% of the cost for child care, whichever is less;

(c) for the 9th and 10th months, $25 per week per child or 50% of the cost for child care, whichever is less; and

(d) for the 11th and 12th months, $13 per week per child or 25% of the cost for child care, whichever is less.

(4) A client who completed the 6th month of child care assistance during June of 1989 may be eligible for further assistance at a decreased rate as provided in this rule.

AUTH: 39-7-603, MCA IMP: 39-7-603 - 606, MCA

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

24.12.201 DEFINITIONS (1) "Act" means the New Horizons Act, Ch. 579, Laws of Montana, 1987 as amended.

(2) "Program operator" means a displaced homemaker subgrantee with the department.

(3) "Child care" means care provided for children 12 years of age and younger and for handicapped children requiring aid and attendance up to 21 years of age.

(4) "Client" means a displaced homemakers program participant who is eligible for the ~~daycare~~ child care assistance ~~and~~ or incentive programs.

(5) ~~"Daycare provider"~~ "Child care provider" means the person and/or place providing supplemental parental care as defined in 53-4-501, MCA.

(6) "Department" means the Department of Labor and Industry created in Article XII, Section 2, of the Montana Constitution.

Auth: Section. 39-7-603, MCA; IMP, Sec. 39-7-604 through 606, MCA.

24.12.202 NEW HORIZONS PROGRAM, ADMINISTRATIVE ENTITY

(1) The department is the administrative entity for this program.

(2) The administrative entity provides funds to ~~the displaced homemakers centers~~ program operators for ~~incentives~~incentive and ~~daycare~~ child care programs.

(3) The administrative entity shall ~~conduct~~ prepare a monitoring report by verifying information and eligibility documentation and outlining program evaluation ~~following the end of~~ during the fiscal year and perform any necessary audits at the end of the fiscal year.

(4) Administrative costs paid to program operators may not exceed 10% of the funds expended for child care assistance and may be used as provided in section 39-7-605, MCA.

Auth: Sec. 39-7-603, MCA; IMP, Sec. 39-7-606, MCA.

24.12.203 DISPLACED HOMEMAKERS PROGRAM OPERATORS

(1) Program operators shall carryout the ~~daycare~~ child care and ~~incentives~~ incentive programs.

(2) Program operators shall perform the following activities:

(a) provide additional counseling and/or services as

available;

(b) collect verifying information needed for the payment of ~~daycare~~ child care services ~~and incentive bonuses~~;

(c) conduct eligibility assessment of clients and collect eligibility documentation;

(d) collect and verify information regarding clients' employment for the purposes of ~~the incentives~~ program evaluation; and,

(e) provide information and reports on activities as requested by the administrative entity.

~~(3) Follow-up activities may be charged as administrative costs and will include subsequent control of clients for the provisions of service and/or collection of information about the client's circumstances.~~

(3) In order to be a program operator for this Act, a program operator must meet the qualifications for program operators under Title IIA of the Job Training Partnership Act, Public Law 97-300 (1982).

Auth: Sec. 39-7-603, MCA; IMP, Sec. 39-7-602 through 606, MCA.

24.12.204 ~~DAYCARE~~ CHILD CARE PROVIDERS (1) The client is responsible for selecting the ~~daycare~~ child care provider.

(2) The client must select a ~~daycare~~ child care provider who is licensed or registered as provided in 53-4-501, MCA. ~~or in the process of application to be licensed or registered.~~

~~(3) Payment must be made direct to the daycare childcare provider by the displaced homemaker program.~~

AUTH: Sec. 39-7-603, MCA; IMP, Sec. 39-7-605, MCA.

24.12.205 INCENTIVES (1) ~~Incentives must be used for program staff, and/or client enhancement.~~ Incentive awards may be used for program enhancement, staff training, or for services to assist persons who have received AFDC in the past 36 months in obtaining or retaining gainful employment.

(2) At least one client must be helped to obtain or retain gainful employment for every $700.00 received as incentive funds.

(3) Program operators must provide the following documentation on those clients receiving assistance under the incentive program:

(a) AFDC enrollment in the past 36 months; and

(b) certification of gainful employment by the employer.

AUTH: Sec. 39-7-603, MCA; IMP, Sec. 39-7-603 through 39-7-607, MCA.

24.12.206 ELIGIBILITY FOR THE ~~DAYCARE~~ CHILD CARE PROGRAM (1) There is no residency requirement for ~~this~~ the child care assistance program.

(2) Eligibility for child care assistance is limited to persons who have received AFDC in the past 36 months and who are:

(a) gainfully employed; or

(b) currently receiving both AFDC and classroom training.

~~(2)~~(3) Program operators shall determine which clients have the demonstrated need for ~~dayeare~~ child care assistance. Individuals who meet income guidelines under Title II of the Job Training Partnership Act, Public Law 97-300, are presumed to have the demonstrated need for elibility.

~~(3)~~ (4) ~~Dayeare~~ Child care assistance shall be provided for children 12 years of age and younger and for handicapped children requiring aid and attendance up to 21 years of age.

~~(4)~~ (5) Clients who apply for ~~dayeare~~ child care assistance shall provide the following documentation:

(a) AFDC enrollment ~~for at least 9 months~~ during the past 36 months; and

(b) verification of gainful employment by the employer(s) ~~to include~~ including wages and hours, or verification of enrollment in classroom training.

(c) birth certificates for children 12 years of age and younger or certification of handicap requiring aid and attendance by a physician for children 13 to 21 years of age. If birth certificates are unavailable, other verification may be used, but must be documented.

(6) If a client is presently on AFDC, program operators must obtain verification that the client is not able to receive child care assistance through other existing federal, state or local entities. Such verification must be in writing and include any reason for denial of child care assistance.

AUTH: Sec. 39-7-603, MCA; IMP, Sec. 39-7-605, MCA.

24.12.208 ~~GAINFUL AND CONSECUTIVE~~ EMPLOYMENT (1) For the purposes of this act, gainful employment is unsubsidized employment for a minimum of 120 hours per month ~~with a goal of optimum placement but no less than minimum wage.~~

~~(2) For the purposes of this act, 6 consecutive months will afford a break of no more than two weeks to allow for job upgrading.~~

AUTH: Sec. 39-7-603, MCA; IMP, Sec. 39-7-604 and 605, MCA.

4. The department proposes to repeal ARM 24.12.207 on eligibility for the incentive program and incorporate its provisions into ARM 24.12.205. 24.12.207 can be found on page 24-718.

5. (a) The department believes that Rule I is necessary in order to comply with the requirements in section 39-7-603(3) and 39-7-603(4), MCA, requiring the department to establish methods for determining client eligibility under the Act and determining employment status of former AFDC recipients. Rule II is necessary in order to define "classroom training", a new term put into the Act by Chapter No. 251, Laws of Montana (1989). Rule III is

necessary in order to implement the 1989 amendments to section 39-7-605(3), MCA, which requires that payments be gradually decreased over the last 6-month period.

(b) The department believes that amendments to ARM 24.12.201 through 24.12.206, and ARM 24.12.208 are necessary to implement the changes to the statutes under Chapter 251, Laws of Montana, (1989).

(c) For expediency, the department proposes to repeal ARM 24.12.207 and incorporate it into ARM 24.12.205.

6. Interested parties may submit their data, views or arguments concerning the proposed changes to John Ilgenfritz, Apprenticeship and Training Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624, no later than July 21, 1989.

7. David A. Scott has been designated to preside over and conduct the hearing.

8. The authority of the agency to adopt, amend, or repeal the proposed rules is based on section 39-7-603, MCA, and the rules implement sections 39-7-602 through 39-7-606, MCA.

Mario A. Micone, Commissioner
Department of Labor and
Industry

Certified to the Secretary of State on June 5, 1989.

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION

In the Matter of the Amendment of Rules 36.15.101 through 36.15.903 pertaining to floodplain management	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 36.15.101 THROUGH 36.15.903, ADOPTION OF RULES I THROUGH III AND REPEAL OF RULE 36.15.210 PERTAINING TO FLOODPLAIN MANAGEMENT

TO: All Interested Persons

1. On July 17, 1989, at 3:30 P.M., a public hearing will be held in the Board's Conference Room of the Lee Metcalf Building at 1520 E. 6th Avenue, Helena, Montana, to consider the proposed amendment to Administrative Rules 36.15.101 through 36.15.903 pertaining to floodplain management.

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

36.15.101 DEFINITIONS In addition to the definition of terms contained in section 76-5-103, MCA, and unless the context requires otherwise, as used in the Act and in this chapter:

(1) "Act" remains the same.

(2) "Alteration" means any change or addition to an artificial obstruction that either increases the size of the artificial obstruction or increases its potential flood hazard. Maintenance of an artificial obstruction is not an alteration. ~~However, the repair, reconstruction, or improvement of an artificial obstruction, the cost of which equals or exceeds 50 percent of the actual cash value of the artificial obstruction either (a) before the improvement is started, or (b) if the artificial obstruction has been damaged and is being restored, before the damage occurred, is an alteration and not maintenance.~~

(3) "Artificial obstruction" means any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across, or projecting into any 100-year floodplain which may impede, retard, or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

(4) "Base flood" means a flood having a one percent (1%) chance of being equalled or exceeded in any given year. A base flood is the same as a flood of 100-year frequency.

(5) "Base flood elevation" means the elevation above sea level of the base flood in relation to national geodetic vertical datum of 1929, unless otherwise specified.

(6) "Board" means the board of natural resources and conservation.

~~(3)~~(7) "Channelization project" means the excavation and construction of an artificial channel for the purpose of diverting the entire flow of a watercourse or drainway from its established course.

(8) "Department" means the department of natural resources and conservation.

(9) "Establish" means to construct, place, insert, or excavate.

~~(4)~~(10) "Flood fringe" remains the same.

~~(5)~~(11) "Floodplain" ~~as defined by Section 76-5-103 (11), MCA~~, means the area adjoining the watercourse or drainway which would be covered by the floodwater of a base flood ~~of 100-year frequency~~ except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered zone b areas by the federal emergency management agency. The floodplain consists of the floodway and flood fringe.

~~(6)~~(12) "Floodway" ~~as defined by Section 76-5-103(12), MCA~~, means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(13) "Lowest floor" means any floor used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.

(14) "Manufactured home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes it also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

~~(7)~~(15) "Permit issuing authority" remains the same.

~~(8)~~(16) "Responsible political subdivision" means a political subdivision that has received board approval of its adopted land use regulations and administrative and enforcement procedures in accordance with section 76-5-302, MCA, and ARM 36.15.201 through 36.15.204.

--~~(9)~~(17) "Riprap" remains the same.

(18) "Start of construction" for purposes of these rules means the commencement of clearing, grading, filling or excavation for the purposes of preparing a site for construction.

(19) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

(a) before the improvement or repair is started, or

(b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor, or other

structural part of the building commences. The term does not include:

(i) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(ii) any alteration of a structure listed on the national register of historic places or state inventory of historic places.

(20) "Suitable fill" means fill material which is stable, compacted, well graded, pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, tree stumps, or other organic material; and is fitting for the purpose of supporting the intended use and/or permanent structure.

(21) "Variance" means a grant or relief from the requirements of these rules which would permit construction in a manner that would otherwise be prohibited by these rules.

(22) "100 year frequency flood" - See "base flood"

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-208 and Sec. 76-5-404, MCA

36.15.202 BOARD APPROVAL OF LOCAL REGULATIONS AND ENFORCEMENT (1) Copies of all regulations and administrative and enforcement procedures~~, resolutions, or ordinances~~ proposed to be adopted by a political subdivision to meet the requirements of the Act and these rules ~~and an explanation of its proposed administrative and enforcement procedures~~ shall be sent to the department for approval by the board.

(2) The department will notify the political subdivision by letter of board approval or disapproval.

(3) Any changes to the regulations or administrative and enforcement procedures proposed to be adopted by a political subdivision shall be sent to the department for approval by the board.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-302, MCA.

36.15.203 TIME LIMIT FOR ADOPTION OF LOCAL REGULATIONS (1) After a floodway or a floodplain has been designated by the board, the department shall notify the affected political subdivisions and set forth the date by which the political subdivision must adopt land use regulations and administrative and enforcement procedures in accordance with the Act and these rules.

AUTH: Sec. 76-5-208, MCA; IMP, Sec. 76-5-302, MCA.

36.15.204 LOCAL REGULATIONS - REQUIREMENTS (1) Land use regulations adopted by a local political subdivision in conformance with the Act and these rules may include zoning, building codes, and subdivision regulations adopted pursuant to other enabling statutory authority, such as Title 76, chapters 1 and 3; Title 76, chapter 2, part 3; and Title 76, chapter 2, parts 1 and 2, MCA; as well as regulations adopted under the authority given in sections 76-5-404 through 76-5-406, MCA.

(2) Any land use regulations and administrative and enforcement procedures adopted to comply with the Act and these rules must include the following:

(a) A permit is ~~must be~~ required prior to the ~~establishment~~ new construction, substantial improvement or alteration of any new artificial obstruction ~~or nonconforming use requiring a permit under the Act or these rules or for the alteration of any existing artificial obstruction~~;

(b) remains the same but will be relabeled (h)

(c) remains the same but will be relabeled (b);

(c) Provisions for providing notice to the department, adjacent property owners, and the public of proposed actions requiring a permit or variance in accordance with these rules. Notice shall be published in a legal newspaper published or of general circulation in the area and shall include a brief description of the proposed activity. There shall be a period not less than fifteen days following publication of notice to receive comment regarding the proposed activity for consideration prior to issuance of a permit or variance. If the responsible political subdivision determines that comments warrant it, a hearing may be held to determine if the proposed issuance or denial of a permit or the proposed issuance or denial of a variance is in accordance with adopted regulations and these rules.

(d) remains the same.

(e) Copies of all permits and variances granted must be sent to the department;

(f) Before the regulations are effective, all known property owners within the designated floodplain and designated floodway must be notified by mail by the political subdivision that their property is located within the designated floodplain or floodway and is subject to regulation. This notification provision shall not apply to political subdivisions that have adopted building codes requiring permits for new construction or to municipalities or counties that have received flood hazard boundary maps or flood insurance rate maps from the United States department of housing and urban development or the federal emergency management agency;

(g) A disclosure provision requiring all property owners with property in a designated floodplain or floodway, or their agents, to notify potential buyers ~~or their agents~~ that such property is located within the designated floodplain or floodway and is subject to regulation;

(h) text moved from (b).

(3) through (a) remain the same.

(b) the imposition of a reasonable application fee ~~not to exceed $25.00~~ for the processing of permit applications. The fee may cover the costs of providing public notice, processing permits and variances, and performing sufficient field inspections to ensure compliance with these rules.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-302, MCA.

I. BOARD REVIEW OF LOCAL ENFORCEMENT (1) The department shall periodically report to the board on permit and variances

filed, complaints received, and any other relevant information on the administration and enforcement of local regulations by the responsible political subdivision.

(2) If the board determines that the responsible political subdivision has failed to comply with the intent, purposes, or provisions of the local regulations, these rules, or the Act, the board may, after hearing, suspend the powers of the responsible political subdivision. In accordance with ARM 36.15.209 the department shall enforce the minimum standards adopted by the board until such time as the board determines that the responsible political subdivision will comply.
AUTH: Sec. 76-5-208, MCA; IMP Sec. 76-5-302(2) MCA

36.15.209 DEPARTMENT REGULATION AND ENFORCEMENT

(1) If the political subdivision fails to adopt land use regulations and administrative and enforcement procedures that meet or exceed the minimum standards required by the act and these rules within the time specified, or fails to enforce the regulations, the minimum standards set forth in the act and these rules regulating the designated floodplain or floodway will be enforced by the department.

(2) An application to the department for a permit shall be made on a standard form furnished by the department ~~(Form-650)~~ and shall include all applicable information listed on the form.

(3) The permit ~~to-establish-or-alter-artificial obstructions-or-nonconforming-uses~~, if approved, will be given by the Department on a standard form ~~(Form-651)~~.

(4) A permit application requiring an environmental impact statement will be specifically approved or denied by the department only after full compliance with the provisions of the Montana Environmental Policy Act. Normally, the period of time required for review of these permit applications will be from 60 to 120 days.
AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-301 and 76-5-405, MCA.

36.15.210 ENVIRONMENTAL IMPACT STATEMENTS This rule is proposed to be repealed and can be found on page 36-281 of the ARM.

36.15.216 PERMITS - CRITERIA - TIME LIMITS

(1) Permits shall be granted or denied by the permit issuing authority on the basis of whether the proposed ~~establishment-or-alteration-of-an-artificial-obstruction-or nonconforming-use~~ new construction, substantial improvement, or alteration of an artificial obstruction meets the requirements of the act and the minimum standards established by the board in these rules.

(2) (a) through (g) remain the same.

~~(3)--The-permit-issuing-authority-may-grant-a-permit-for the-establishment-or-alteration-of-an-artificial-obstruction-or nonconforming-use-that-is-not-in-compliance-with-the-minimum standards-contained-in-these-rules-only-if:~~

~~(a)--The-proposed-use-would-not-increase-flood-heights-of flood-hazard-either-upstream-or-downstream;~~

~~(b)--Refusal-of-a-permit-would-because-of-exceptional circumstances-cause-a-unique-or-undue-hardship-on-the-applicant or-community-involved;~~

~~(c)--The-proposed-use-is-adequately-floodproofed;-and~~

~~(d)--Reasonable-alternative-locations-outside-the designated-floodplain-are-not-available.~~

~~(4)~~(3) A permit application is considered to have been automatically granted 60 days after receipt of the application, unless the permit issuing authority notifies the applicant before the 60th day that additional information is required, more time is required to process the application, or that the permit is denied ~~unless-ARM-36.15.801(3)-or-36.15.210-apply~~. AUTH: Sec. 76-5-208, MCA; IMP:, Sec. 76-5-405 and 76-5-406, MCA.

36.15.501 FLOODPLAIN AND FLOODWAY DELINEATION - DATA USED - HYDROLOGICAL CERTAINTY (1) All floodplain delineation studies, reports, maps, and water surface profiles used by the department and board to establish designated floodplains shall be based upon a the base flood ~~of-100-year-frequency~~.

(2) Each floodplain delineation study arranged by the department will, insofar as time and funds permit, include a water surface profile showing the elevation of the base flood ~~of-100-year-frequency~~ and a suggested designated floodway.

(3) The department and board will also utilize flood hazard maps and data provided by the U.S. department of housing and urban development or the federal emergency management agency for the ~~federal~~ national flood insurance program as a basis for establishing the designated floodplain ~~and-floodway~~. Such maps will delineate the boundaries of the base flood ~~of 100-year-frequency~~ but will not generally include flood elevations or floodway data.

(4) remains the same.

(5) ~~As-required-by-Section-76-5-202,-MCA,~~ The designation of floodplains and floodways shall be based upon reasonable hydrological certainty. Flood hazard maps that do not include floodway data or base flood elevations constitute a rebuttable presumption of reasonable hydrological certainty.

(6) The designated floodplain boundary is based on base flood elevations. The mapped floodplain boundary is a guide for determining whether property is within the designated floodplain. The exact boundary shall be determined according to the base flood elevation.

AUTH: Sec. 76-5-201, 76-5-202, and 76-5-208, MCA; IMP: Sec. 76-5-201 and 76-5-202, MCA

36.15.502 FLOODWAY DELINEATION (1) The delineations of a designated floodway shall be based on the channel of the water course or drainway and those portions of the adjoining floodplain which are reasonably required to carry the discharge of the base flood ~~100-year-frequency~~ without ~~any-theoretical measurable-increase-in-flood-heights~~ cumulatively increasing the water surface more than one half foot.

(2) In areas having appreciable urban development on the floodplain, the outer boundary lines of the floodway may generally follow the riverward limits of development provided that:

(a) The calculated elevation of the base flood ~~of 100-year frequency~~ would not be increased more than 0.5 of a foot as a result of ~~the theoretical additional construction of the~~ any adjustment to the floodway;

(2)(b) through (c) remain the same.

(3) After delineation of a suggested designated floodway and prior to the public hearing to consider the floodway delineation, the department shall meet with local planning officials to consider possible adjustments due to land use considerations. No adjustments in floodway width or location may be made if the theoretical increase in flood heights would exceed 0.5 foot or if adjustments affect private property rights.

AUTH: Sec. 76-5-201, 76-5-202, and 76-5-208, MCA; IMP: Sec. 76-5-201 and 76-5-202, MCA

36.15.503 PUBLIC INPUT ON PROPOSED DESIGNATED FLOODPLAINS OR FLOODWAYS (1) The department shall at least 3 weeks prior to any hearing held for the purpose of establishing a designated floodplain or floodway furnish the affected political subdivisions maps and other data showing the proposed designated floodplain or floodway together with a letter requesting the political subdivision to furnish any pertinent data on flood hazards ~~as required by Section 76-5-201 of the Act~~.

(2) remains the same but will be renumbered (3).

(2) Notice of a hearing or order of the board establishing or altering designated floodplains and floodways shall be published once each week for three (3) consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of notice shall be not less than 10 days prior to the hearing or order by the board.

(3) text moved from (2).

AUTH: Sec. 76-5-202 and 76-5-204, MCA; IMP: Sec. 76-5-201 through 76-5-204, MCA

II. ALTERATION OF FLOODPLAINS AND FLOODWAYS (1) The Board may alter a designated floodplain or designated floodway, after a public hearing, when sufficient data become available.

(a) When scientific or technical flood data shows that the base flood elevation was erroneously established and the designation of the floodplain boundary was therefore incorrect.

(b) When property has been raised to a level above the base flood elevation by suitable fill provided that:

(i) the filled area is contiguous to areas naturally above the base flood elevation and not within the designated floodplain;

(ii) the filled area is a minimum of 2 feet above the base flood elevation;

(iii) the fill is suitable material according to definition in ARM 36.15.101 and is not subject to settlement and has been compacted to 95 percent of the maximum density obtainable with the standard proctor test method of the American society for testing and materials (ASTM Standard D-698) or equivalent;

(iv) no portion of the fill is within the floodway;

(v) the fill slope must not be steeper than 1 1/2 horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters. The erosion protection for fill slopes exposed to velocities of four feet per second and less may consist of vegetative cover consisting of grasses or similar undergrowth as approved by the permit issuing authority. Slopes exposed to velocities greater than four feet per second shall be protected by armoring with stone or rock slope protection;

(vi) compaction of earthen fill and erosion protection measures must be certified as meeting these criteria by a registered professional engineer;

(vii) the fill does not increase the elevation of the base flood in areas of existing development.

(c) when areas have been protected by a properly engineered flood protection project provided that:

(i) dams are designed and operated for flood control purposes and constructed in accordance with acceptable safety standards and the Montana Dam Safety Act; and

(ii) levees and floodwalls comply with ARM 36.15.606 and are publicly owned and maintained. Minimum freeboard above the base flood elevation shall be three feet with an additional foot 100 feet either side of a structure such as bridges. An additional 1/2 foot above the minimum is required at the upstream end of the levee, tapering to the minimum at the downstream end. The levee must be designed and constructed to offer base flood protection without human supplementation. Human intervention is only acceptable for the operation of closure structures such as gates or stop logs. A levee system designed for human operation of closures are acceptable provided that:

(A) adequate warning time exists for the operation of closures before floodwaters reach the base of the closure,

(B) the closure is an integral part of the system during operation,

(C) operation and maintenance of closure structures are responsibilities mandated by local regulation with periodic operation performed for testing and training purposes,

(D) a formal operation plan is available and capable of being implemented.

(iii) dams and levees must be designed by a registered professional engineer and flood protection certified as adequate to provide protection from the base flood.

(iv) floodway channels designed by a registered professional engineer may carry less than the discharge of the base flood provided that they do not increase the extent of flooding.

(2) No alteration of a designated floodplain is required when property located within the flood fringe is naturally above the base flood elevation as proven by a certified elevation survey provided by a registered professional engineer or licensed land surveyor.
AUTH: Sec. 76-5-204, MCA; IMP: Sec. 76-5-204, MCA

III. VARIANCES (1) The permit issuing authority may grant a ~~permit~~ variance for the ~~establishment~~ new construction, substantial improvement or alteration of an artificial obstruction ~~or nonconforming use~~ that is not in compliance with the minimum standards contained in these rules only if:
(a) the proposed use would not increase flood hazard either upstream or downstream in the area of insurable buildings;
(b) refusal of a ~~permit~~ variance would because of exceptional circumstances cause a unique or undue hardship on the applicant or community involved;
(c) the proposed use is adequately floodproofed; and
(d) reasonable alternative locations outside the designated floodplain are not available.
AUTH: Sec. 76-5-405 and 76-5-406, MCA; IMP: Sec. 76-5-405 and 76-5-406, MCA.

36.15.601 USES ALLOWED WITHOUT PERMITS (1) ~~In accordance with Section 76-5-401, MCA,~~ The following open space uses shall be allowed without a permit anywhere within the designated floodway provided that they are not prohibited by any other ordinance or statute and provided that they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:
(1)(a) through (2)(b) remain the same.
AUTH: Sec. 76-5-406, MCA; IMP: Sec. 76-5-401, MCA.

36.15.602 USES REQUIRING PERMITS In addition to the uses allowed under ARM 36.15.601, the following ~~nonconforming uses and~~ artificial obstructions may be permitted within the designated floodway subject to the issuance of a permit by the permit issuing authority under the conditions set forth in this rule and ARM 36.15.603 and 36.15.604:
(1) through (3)(b) remain the same.
(4) Buried or suspended utility transmission lines provided that:
(a) suspended utility transmission lines are designed such that the lowest point of the suspended line is at least 6 feet higher than the elevation of the base flood ~~of 100-year frequency~~;
(b) remains the same.
(c) utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for a the base flood ~~of 100-year frequency~~. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the

final calculated figure shall be subject to approval by the permit issuing authority;

(5) through (7) remain the same.

(8) Public or private campgrounds provided that:

(a) remains the same.

(b) no dwellings or permanent mobile homes are allowed ~~(camp trailers without wheels or towing vehicles or otherwise not quickly movable are considered permanent mobile homes)~~;

(9) (a) through (f) remain the same.

(10) All other ~~nonconforming uses or~~ artificial obstructions not specifically listed in this subsection or in ARM 36.15.606, not allowed under ARM 36.15.601, and not prohibited under ARM 36.15.605.

AUTH: Sec. 76-5-208, MCA; IMP; Sec. 76-5-404 through 76-5-406, MCA.

36.15.603 PERMITS FOR WATER DIVERSIONS (1) and (2) remain the same.

(3) A permit under Title 76, chapter 5, MCA, as amended, shall not be granted if in the judgment of the permit issuing authority:

(a) the proposed diversion will increase the upstream elevation of the ~~100-year~~ base flood a significant amount (0.5 of a foot or as otherwise determined by the permit issuing authority);

(b) the proposed diversion is not designed and constructed to minimize potential erosion from a base flood ~~of 100-year frequency~~; and,

(c) any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a base flood ~~of 100-year frequency~~.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-404 through 75-5-406, MCA.

36.15.604 MINIMUM CRITERIA FOR PERMITS (1) In addition to the requirements of ARM 36.15.602 and 36.15.603, a permit shall not be approved for a new construction, substantial improvement, or alteration of an artificial obstruction ~~or nonconforming use~~ under this rule if it will ~~significantly~~ increase the upstream elevation of the base flood ~~of 100-year frequency~~ 0.5 of a foot or as otherwise determined by the permit issuing authority or significantly increase flood velocities.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-404 through 76-5-405, MCA.

36.15.605 PROHIBITED USES (1) ~~In accordance with Section 76-5-403, MCA,~~ The following artificial obstructions ~~and nonconforming uses~~ are prohibited within the designated floodway except as allowed by permit under ARM 36.15.602 through 36.15.604 and ARM 36.15.606:

(a) through (c) remain the same.

(2) The following artificial obstructions ~~and~~-

~~nonconforming uses~~ are also prohibited within the designated floodway:

(a) mobile homes ~~without wheels or towing vehicles or otherwise not readily movable~~ and manufactured homes;

(b) remains the same.

(c) solid and hazardous waste disposal and individual or multiple family sewage disposal systems; ~~soil absorption sewage systems except as allowed or approved under the laws and standards administered by the Department of Health and Environmental Sciences~~;

(d) storage of ~~highly~~ toxic, flammable, hazardous, or explosive materials.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-403 and 76-5-406, MCA.

36.15.606 PERMITS FOR FLOOD CONTROL WORKS (1) Since structural flood control works often significantly obstruct and affect floodway flow capacity, the following flood control measures shall be allowed within designated floodways subject to the issuance of a permit by the permit issuing authority and certification by a registered professional engineer of compliance with the conditions set forth in this rule:

(a) Flood control levees and floodwalls if:

(i) the proposed levees and floodwalls are designed and constructed to safely convey a the base flood ~~of 100-year frequency~~;

(ii) the cumulative effect of the levees and floodwalls combined with allowable flood fringe encroachments does not increase the unobstructed elevation of a the base flood ~~of 100-year frequency~~ more than 0.5 of a foot at any point;

(b) riprap, except that which is hand placed, if:

(i) the riprap is designed to withstand a the base flood ~~of 100-year frequency; and~~

(ii) the riprap does not increase the elevation of the base flood; ~~and~~

(iii) remains the same.

(c) channelization projects if they do not significantly increase the magnitude, velocity, or elevation of the base flood ~~of 100-year frequency downstream from such projects~~;

(d) dams provided that:

(i) they are designed and constructed in accordance with approved safety standards, and the Montana Dam Safety Act; ~~and~~

(ii) remains the same.

(2) The permit issuing authority may establish either a lower or higher permissible increase in the elevation of the base flood ~~of 100-year frequency~~ than that established in subsection (1)(a)(ii) for individual levee projects based on consideration of the following criteria:

(a) the proposed levees and floodwalls, except those to protect agricultural land only, are constructed at least 3 feet higher than the elevation of a the base flood ~~of 100-year frequency more than 0.5 of a foot at any point~~; and

(b) the estimated cumulative effect of other reasonably anticipated future permissible uses; ~~and~~

(c) remains the same.

(d) no detrimental impact occurs to existing or foreseeable development.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-404 through 76-5-406, MCA.

36.15.701 ALLOWED USES (1) All uses allowed in the designated floodway without a permit under ARM 36.15.601 shall also be allowed without a permit in the flood fringe.

(a) In addition, individual or multiple family sub-surface sewage disposal systems are allowed without permit provided that they are reviewed and approved under laws and regulations administered by the department of health and environmental sciences or the local health board.

(2) All uses allowed in the designated floodway subject to the issuance of a permit under ARM 36.15.602 through 36.15.604 and ARM 36.15.606 shall also be allowed in the flood fringe subject to the issuance of a permit ~~by the permit issuing authority~~.

(3) In addition, structures including, but not limited to residential, commercial, and industrial structures, and suitable fill shall be allowed by permit from the permit issuing authority within the flood fringe subject to the following conditions and the requirements of ARM 36.15.702 and 36.15.901 through 36.15.903:

(a) through (b) remain the same.

~~(c) Residential structures must be constructed on suitable fill such that the lowest finish floor elevations (including basement) are 2 feet or more above the elevation of the flood of 100-year frequency. The fill shall be at an elevation no lower than the elevation of the flood of 100-year frequency and shall extend for at least 15 feet at that elevation beyond the structure in all directions. Where existing streets, utilities, or lot dimensions make strict compliance with this provision impossible, the permit issuing authority may authorize through the permit a lesser amount of fill or alternative flood proofing measures. The responsible political subdivision shall notify the Department and receive its approval prior to approving any lesser fill or alternative flood proofing for residential structures;~~

~~(d) Commercial and industrial structures must be either constructed on fill as specified in the preceding subparagraph or be adequately flood proofed up to an elevation no lower than 2 feet above the elevation of the flood of 100-year frequency;~~

~~(e)~~(c) Roads, streets, highways, and rail lines shall be designed to minimize increases in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facilities shall be located 2 feet above the elevation of the base flood ~~of 100-year frequency~~;

(f) and (g) remain the same but will be relabeled (d) and (e).

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-402, Sec. 76-5-404 through 76-5-406, MCA.

36.15.702 FLOOD PROOFING FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL STRUCTURES (1) The new construction, substantial improvement, and alteration of residential structures shall meet the following conditions:

(a) Residential structures shall be constructed on suitable fill with a permanent foundation such that the lowest floor (including basement) level is 2 or more feet above the base flood elevation. The suitable fill shall be at a level no lower than the base flood elevation extending 15 feet at that elevation beyond the structure in all directions. Where existing streets, utilities, lot dimensions, or additions onto existing structures, make strict compliance with this provision impossible, the permit issuing authority may authorize a lesser amount of fill or alternative flood proofing measures. Alternative flood proofing measures must, at a minimum, meet the conditions of ARM 36.15.702 and ARM 36.15.901 through 36.15.903.

(i) The new placement of manufactured and mobile homes must be elevated on fill with a permanent foundation as prescribed for residential structures.

(ii) Replacement manufactured and mobile homes in an existing mobile home park or subdivision may, instead of using suitable fill, be elevated on a concrete or mortared block foundation, or other suitable permanent foundation, and anchored to prevent flotation or downstream movement.

(2) The new construction, substantial improvement, and alteration of commercial and industrial structures shall be elevated on fill as prescribed for residential structures in ARM 36.15.702(1) or flood proofed to a level no lower than 2 feet above the base flood elevation. Flood proofing shall be accomplished in accordance with ARM 36.15.901 through 36.15.903 and shall further include the following: ~~Floodproofing as required in ARM 36.15.701(3)(d) shall be accomplished in accordance with ARM 36.15.901 through 36.15.903 and shall further include the following:~~

~~(1)~~(a) If the structure is designed to allow internal flooding of the lowest floor, use of the floor shall be limited to such uses as parking, loading areas, and storage of equipment or materials not appreciably affected by flood water. Further, the floors and walls shall be designed and constructed of materials resistant to flooding up to an elevation of 2 or more feet above the elevation of the base flood ~~of 100-year frequency~~. Structures designed to allow internal flooding shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the exit and entry of flood waters.

~~(2)~~(b) Structures whose lowest floors are used for purposes other than parking, loading or storage of materials resistant to flooding shall be ~~waterproofed~~ flood proofed up to an elevation no lower than 2 feet above the elevation of the base flood ~~of 100-year frequency~~. ~~Waterproofing~~ Flood proofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall be designed to

withstand the hydrostatic pressures and hydrodynamic forces resulting from the base flood ~~of 100-year frequency~~.

~~(3)~~(c) The new construction, substantial improvement and alteration of commercial or industrial structures floodproofed according to these requirements must be designed and flood proofing measures certified as adequate by a registered professional engineer or architect.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-402, 76-5-404 through 76-5-406, MCA.

36.15.703 PROHIBITED USES The following artificial obstructions and nonconforming uses are prohibited within the flood fringe:

(1) solid and hazardous waste disposal ~~and soil absorption sewage systems, except as allowed or approved under laws and standards administered by the Department of Health and Environmental Sciences~~; and

(2) storage of ~~highly~~ toxic, flammable, hazardous, or explosive materials. Storage of petroleum products may be allowed by permit ~~if buried in tightly sealed and constrained containers or~~ if stored on compacted fill at least 2 feet above the elevation of the base flood ~~of 100-year frequency~~ and anchored to a permanent foundation that is properly anchored to the ground.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-404 through Sec. 76-5-406, MCA.

36.15.801 ALLOWED USES WHERE FLOODWAY NOT DESIGNATED OR NO FLOOD ELEVATIONS (1) remains the same.

(2) All other uses within the designated floodplain shall require permits from the permit issuing authority. The following conditions insofar as each is applicable shall be attached to each permit approval:

(a) If the elevation of the base flood ~~of 100-year frequency~~ is available, residential structures must be built on compacted fill as specified in ARM 36.15.702(1)~~(d)(3)(e)~~. If such elevation is not available, the highest known historical flood elevation may be used to establish fill heights;

(b) If the elevation of the base flood ~~of 100-year frequency~~ is available, commercial and industrial structures must meet the flood proofing requirements set forth in ARM ~~36.15.701(3)(d) and~~ 36.15.702 (2). If such elevation is not available, the highest known historical flood elevation may be used to establish flood proofing heights;

(c) remains the same.

(d) Sanitary sewage systems must be allowed and approved under laws and standards administered by the department of health and environmental sciences ~~prior to any approval given under these rules~~ or the local health board.

(3) through (4) remain the same.

AUTH: Sec. 76-5-208, MCA; IMP: Sec. 76-5-402, Sec. 76-5-404 through 76-5-406, MCA.

36.15.901 FLOOD PROOFING REQUIREMENTS FOR ELECTRICAL SYSTEMS (1) All electrical service materials, equipment, and installation for uses permitted with or without a permit in a designated floodplain or floodway shall conform to the following conditions:

~~(1)~~(a) All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment must be located at least 2 feet above the elevation of the base flood ~~of 100-year frequency~~;

~~(2)~~(b) Portable or movable electrical equipment may be placed below the elevation of the base flood ~~of 100-year frequency~~ provided that the equipment can be disconnected by a single plug-and-socket assembly of the submersible type;

~~(3)~~(c) The main power service line shall have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the designated floodplain and above the elevation of the base flood ~~of 100-year frequency~~; and

~~(4)~~(d) All electrical wiring systems installed below the elevation of the base flood ~~of 100-year frequency~~ shall be suitable for continuous submergence and may not contain fibrous components.

AUTH: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402 and Sec. 76-5-404 through 76-5-406, MCA.

36.15.902 FLOODPROOFING REQUIREMENTS FOR HEATING SYSTEMS (1) Heating systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:

~~(1)~~(a) Float operated automatic control valves must be installed in supply lines to gas furnaces so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnaces are located;

~~(2)~~(b) Manually operated gate valves that can be operated from a location above the elevation of the base flood ~~of 100-year frequency~~ shall also be provided in gas supply lines; and

~~(3)~~(c) Electric heating systems must be installed in accordance with ARM 36.15.~~902~~ 901.

AUTH: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402 and Sec. 76-5-404 through 76-5-406, MCA.

36.15.903 FLOOD PROOFING REQUIREMENTS FOR PLUMBING SYSTEMS (1) Plumbing systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:

(1) remains the same but will be relabeled (a).

~~(2)~~(b) All toilet stools, sinks, urinals, and drains must be located such that the lowest point of possible water entry is at least 2 feet above the elevation of the base flood ~~of 100-year frequency~~.

AUTH: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402 and Sec. 76-5-404 through 76-5-406, MCA.

3. The proposed amendments are necessary to bring these rules into closer conformity with rules administered by the Federal Emergency Management Agency for the National Flood Insurance Program. Additional definitions have been added to clarify the rules.

Sections 76-5-101 through 76-5-406, MCA provide authority to the Board of Natural Resources and Conservation to establish floodplain management standards and enable local governments to participate in the National Flood Insurance Program. The basis for floodplain designations by the Board of Natural Resources and Conservation is being defined to be consistent with current practice and federal policy. A provision is proposed to require notice be provided to interested parties prior to developments in flood prone areas. Specific standards are also proposed to define when property will be considered for removal from a designated floodplain or floodway. These amendments are an attempt to prevent time consuming and costly hearings before the Board of Natural Resources and Conservation for altering a designated floodplain or floodway. The notice requirement will also enable the Department of Natural Resources and Conservation to comment on permit applications and ensure that the Board's standards are enforced at the local level. The proposed amendments will establish rules for policies currently practiced by the Board and Department of Natural Resources and Conservation.

4. 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 the Board of Natural Resources and Conservation, 1520 East Sixth Ave., Helena, MT 59620-2301 no later than July 17, 1989.

5. William Shields, Chairman of the Board of Natural Resources and Conservation will preside over and conduct the hearing.

William A. Shields

Dr. William Shields, Chairman
Board of Natural Resources
and Conservation

Certified to the Secretary of the State June 5, 1989.

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

In the Matter of Proposed Amendment of Rule 38.5.301(1) to change the conditions under which municipal water and sewer utilities must meet minimum filing requirements.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 38.5.301(1), FILING REQUIREMENTS FOR MUNICIPAL WATER AND SEWER UTILITIES
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 24, 1989 the Department of Public Service Regulation proposes to amend rule 38.5.301(1), which pertains to rate increase applications by municipal water and sewer utilities.

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

38.5.301 APPLICATIONS FOR RATE INCREASES (1) Any application for a rate increase filed by a municipal water and/or sewer utility, that will generate a revenue increase in excess of 50,000 dollars per year, must include the materials specified in ARM 38.5.303 through ARM 38.5.311. These materials must be filed in one or the other of the forms specified in ARM 38.5.302. Additional materials may be supplied by the utility if it feels that such materials are necessary. These rules do not limit discovery procedures set forth in the procedural rules of the Montana public service commission.

(2) and (3) No change.

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

3. Rationale: The Commission proposes this amendment because it is often impractical and burdensome for small municipal water and sewer utilities to comply with minimum filing requirements. It will benefit the Commission and the small municipalities to have the filing requirements determined informally on a case-by-case basis.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than July 14, 1989.

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 public hearing and submit this request along with any written comments he has to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than July 14, 1989.

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 more than 25 persons based upon the number of municipal water and sewer utilities in Montana.

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

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 5, 1989

Reviewed by

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I relating to Keylock or Cardtrol Statements.	NOTICE OF THE PROPOSED ADOPTION of Rule I relating to Keylock or Cardtrol Statements.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 28, 1989, the Department proposes to adopt rule I relating to Keylock or Cardtrol Statements.

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

RULE I STATEMENT FOR KEYLOCK CARDTROL REPORTING (1) Any seller who sells gasoline to a purchaser through a keylock or cardtrol on which a refund may be claimed in accordance with 15-70-223, MCA, shall provide the purchaser with a statement of fuel purchased. The statement may be prepared as frequently as deemed necessary, but one statement must be issued on the last working day of the calendar month. To support the accuracy of the statement, the seller shall list or attach a list supporting all information used in the statement.

3. This rule is necessary to clarify the meaning of "evidence" as referenced in the amendment made to 15-70-223, MCA, Ch. 356, L.1989.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption and amendment in writing to:

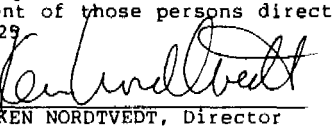
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 22, 1989.

5. If a person who is directly affected by the proposed adoption 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 Cleo Anderson at the above address no later than July 22, 1989.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from

an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.



KEN NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State June 5, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.27.301 relating to Gasoline Seller's License for Motor Fuels.	NOTICE OF PROPOSED AMENDMENT of ARM 42.27.301 relating to Gasoline Seller's License for Motor Fuels.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 28, 1989, the Department of Revenue proposes to amend ARM 42.27.301 relating to Gasoline Seller's License for Motor Fuels.

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

42.27.301 REFUND GASOLINE SELLER'S ~~PERMIT~~ LICENSE

(1) Any person shall obtain a refund gasoline seller's ~~permit~~ license from the department of revenue prior to selling gasoline on which a refund of tax may be claimed by the purchaser. Application for ~~permits~~ licenses (one ~~permit~~ license for each outlet) shall be made on forms furnished by the department ~~with a fee of $3.00~~.

(2) ~~Permits are issued for 3 years and shall show a permit number and date of issuance but shall be valid only for the 3 years for which issued unless cancelled or suspended by the department of revenue. Renewals of refund gasoline seller's permits must be made every 3 years on or before September 1, accompanied by $3.00 renewal fee.~~ A nontransferable license is issued and is effective until cancelled or suspended by the Department of Revenue.

(3) A licensed distributor qualifies as a seller of refund gasoline by virtue of his compliance with licensing and bonding requirements. Accordingly, each distributor shall submit to the department an application and the required fee for each place under his control or operation from which he sells refund gasoline. The department shall issue a separate ~~permit~~ license for each such outlet.

3. This amendment is necessary to clarify Ch. 205, L.1989, which amends 15-70-203, MCA to allow for a continuous nontransferable license to be obtained by any person selling gasoline on which a refund may be claimed.

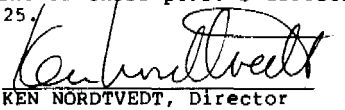
4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 22, 1989.

5. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than July 22, 1989.

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



KEN NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State June 5, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of interpretive rule regarding requesting absentee ballots via facsimile messages.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF AN INTERPRETIVE RULE REGARDING FACSIMILE REQUESTS FOR ABSENTEE BALLOTS

TO: All Interested Persons:

1. On July 6, 1989, at 10:00 a.m. a public hearing will be held in the conference room of the office of the Secretary of State to consider the adoption of an interpretive rule regarding facsimile requests for absentee ballots.

2. The proposed rule provides as follows:

RULE I FACSIMILE REQUESTS FOR ABSENTEE BALLOTS (1) An election administrator may treat a facsimile copy request for an absentee ballot as an original if all other requirements of section 13-13-212, MCA are met.

(2) A facsimile copy may be accepted under subsection (1) if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

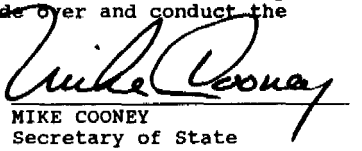
Auth: 13-1-201, MCA IMP:13-13-212, MCA

3. This rule is necessary because requests have come from election officials for clarification as to the acceptability of facsimile copy requests for absentee ballots. The intent of the statute is to establish an orderly method of obtaining absentee ballots in a convenient and verifiable manner. The statutes do not address the new technology of facsimile machines. It is clear from recent case law the courts are beginning to accept the use of facsimile machine transmissions of documents. One court has even permitted service of process of legal documents via facsimile. Facsimile copy requests meet the requirements necessary to provide proper documentation of the request for an absentee ballot. The possibility for fraud is no greater via a facsimile copy of than from the original copy. The election administrator still can verify the facsimile copy of the voter's signature with the original on the registration card. Therefore it can be concluded that the facsimile copy of a request for an absentee ballot can be accepted as the original.

This rule identifies and standardizes the requirements for acceptable facsimile copy requests. The rule prevents inconsistencies between counties. It avoids voter confusion.

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 Garth Jacobson, Chief Legal Counsel, Secretary of State, Room 225, Capitol Building, Helena, MT 59620, no later than July 13, 1989.

5. Garth Jacobson, from the Office of the Secretary of State has been designated to preside over and conduct the hearing.



MIKE COONEY
Secretary of State

Dated this 5th day of June, 1989.

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

In the matter of the amendment of Rules 46.10.304A and 46.10.308 pertaining to the NETWORK pilot program in Lewis and Clark County	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.304A and 46.10.308 PERTAINING TO THE NETWORK PILOT PROGRAM IN LEWIS AND CLARK COUNTY

TO: All Interested Persons

1. On July 6, 1989, at 9:00 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 Rules 46.10.304A and 46.10.308 pertaining to the NETWORK pilot program in Lewis and Clark County.

(2) The rules as proposed to be amended provide as follows:

46.10.304A UNEMPLOYED PARENT Subsections (1) through (4) remain the same.

(a) Both parents in a two-parent household selected for the NETWORK pilot program in Lewis and Clark County may be required to participate in that program. Failure to comply will subject the household to the sanctions in ARM 46.10.310.

Subsection (5) remains the same.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-201 and 53-4-231 MCA

46.10.308 WORK REGISTRATION REQUIREMENTS (WIN) Subsections (1) and (1)(a) remain the same.

(i) persons selected for the NETWORK pilot program in Lewis and Clark County will not be exempt.

Subsections (1)(b) through (2) remain the same.

(a) report for an appraisal interview conducted by WIN staff and to participate effectively in the program as determined by WIN staff; and

(b) assist in redetermination and reappraisal to maintain a current registration status once every six months so that the WIN staff can maintain a current file on the person; and

(c) for NETWORK participants in Lewis and Clark County, participate in career preparation, parenting, and other related program training as assigned by WIN staff.

(3) Persons selected for the NETWORK pilot program in Lewis and Clark County shall be required to participate in assigned career preparation activities and parenting education.

(a) The NETWORK pilot project is a program designed to train selected single parents between the ages of 16 and 21 and both parents in selected unemployed parent households in Lewis and Clark County.

Subsections (3) through (5) remain the same in text but will be renumbered as (4) through (6).

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

3. The federal Family Support Act of 1988 requires the implementation of the Job Opportunity and Basic Skills (JOBS) program. The 51st Montana Legislature set the implementation date of JOBS for July 1, 1990. Four pilot programs have been initiated to provide necessary information regarding innovative approaches to the upcoming welfare reform. Three of those programs are voluntary. The NETWORK pilot program in Lewis and Clark County will be mandatory.

The proposed amendments are to clarify the power of the department to require participation by AFDC recipients with children under the age of six and who have been selected for the NETWORK program in Lewis and Clark County. Selected recipients will receive funds to provide day care for their children while participating in NETWORK.

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 July 13, 1989.

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

6. This rule change will be effective August 1, 1989.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the amendment of a rule pertaining to fees) NOTICE OF AMENDMENT OF 8.56.409 FEES SCHEDULE

TO: All Interested Persons:

1. On April 13, 1989, the Board of Radiologic Technologists published a notice of proposed amendment of the above-stated rule at page 430, 1989 Montana Administrative Register, issue number 7.

2. The Board amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF RADIOLOGIC TECHNOLOGISTS
CAROL ANGLAND, PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 5, 1989.

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

In the matter of the amendment of a rule pertaining to real estate license applicant examination rescheduling fee	))))	NOTICE OF AMENDMENT OF 8.58.411 FEE SCHEDULE

TO: All Interested Persons:

1. On April 13, 1989, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 432, 1989 Montana Administrative Register, issue number 7.

2. The Board amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State June 5, 1989.

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

In the matter of the amendment of rules pertaining to hours, credits and carry over, and fees and the adoption of a new rules pertaining to ethical standards	)))))	NOTICE OF AMENDMENT OF 8.61.1601 HOURS, CREDITS AND CARRY OVER, 8.61.404 FEE SCHEDULE AND 8.61.1203 FEE SCHEDULE AND THE ADOPTION OF NEW RULE I (8.61.405 ETHICAL STANDARDS

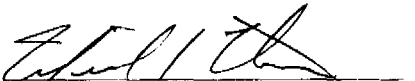
TO: All Interested Persons:

1. On April 13, 1989, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment and adoption of the above-stated rules at page 434, 1989 Montana Administrative Register, issue number 7.

2. The Board amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

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

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 5, 1989.

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

In the matter of the amendment of rules 16.8.921, 16.8.936, 16.8.937, 16.8.941, 16.8.1101, 16.8.1103 and 16.8.1109 concerning the permitting of new or altered sources of air contamination.	NOTICE OF AMENDMENT OF RULES (Air Quality)

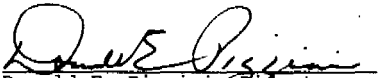
To: All Interested Persons

1. On January 26, 1989, the Department published notice at pages 181-185 of the 1989 Montana Administrative Register, Issue number 2 and on February 13, 1989, the Department republished notice at page 315 of the 1989 Montana Administrative Register, Issue number 4, of proposed amendments to the above-captioned rules which update and/or correct federal incorporations by reference and clarify other terms in the captioned rules.

2. The Board of Health and Environmental Sciences has amended the rules as proposed with no changes.

3. No comments were received from any members of the public.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

by 
Donald E. Pizzini, Director

Certified to the Secretary of State June 5, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE TRANSFER of ARM 42.6.101 through 42.6.109; 42.6.121 through 42.6.123; 42.6.141 through 42.6.149; 42.6.201 through 42.6.204; 42.6.301 through 42.6.314 relating to child support collection	NOTICE OF TRANSFER of ARM 42.6.101 through 42.6.109; 42.6.121 through 42.6.123; 42.6.141 through 42.6.149; 42.6.201 through 42.6.204; 42.6.301 through 42.6.314 relating to child support collection

TO: All Interested Persons:

1. On July 1, 1989, the Department of Revenue will transfer to the Department of Social and Rehabilitation Services all the child support rules found in Chapter 6, Title 42, ARM relating to the collection and enforcement of child support.

2. This transfer is required because the 1989 Legislature transferred the child support program from the Department of Revenue to the Department of Social and Rehabilitation Services in Senate Bill 129, Ch. 702, L. 1989, effective July 1, 1989.

3. The rules will be assigned the following numbers under the Department of Social and Rehabilitation Services title:

~~42.6.101~~	46.30.901	Definitions Related to Support Standards
~~42.6.102~~	46.30.902	Exemptions from Assets
~~42.6.103~~	46.30.903	Exemptions from Income
~~42.6.104~~	46.30.904	Adjustment for Deductions and Certain Living Expenses
~~42.6.105~~	46.30.905	Adjustment for Living Standards
~~42.6.106~~	46.30.906	Adjustment for Special Needs
~~42.6.107~~	46.30.907	Child Support Computation
~~42.6.108~~	46.30.908	Contribution Table
~~42.6.109~~	46.30.203	Scale of Suggested Minimum Contributions
~~42.6.121~~	46.30.909	Definitions Related to Fees for Services
~~42.6.122~~	46.30.101	Application Fee

~~42.6.123~~ 46.30.103 Collection Fees

~~42.6.141~~ 46.30.201 Definitions

~~42.6.142~~ 46.30.205 Releasing Information About An Individual's Child Support Debt

~~42.6.143~~ 46.30.207 Notice of Credit Agency's Intent to Request Information

~~42.6.144~~ 46.30.209 Individual's Request for Inspection

~~42.6.145~~ 46.30.211 Hearing on Accuracy of Information in Department's Records

~~42.6.146~~ 46.30.213 Waiver of Rights for the Release of Information

~~42.6.147~~ 46.30.215 Credit Agency's Request for Information

~~42.6.148~~ 46.30.217 Response to Credit Agency's Request for Information

~~42.6.149~~ 46.30.219 Fees

~~42.6.201~~ 46.30.301 Offset of State Tax Refunds for Child Support Debts

~~42.6.202~~ 46.30.303 Notice of Offset of State Tax Refunds For Child Support Debts

~~42.6.203~~ 46.30.305 Child Support Offset of Joint Returns

~~42.6.204~~ 46.30.307 Hearing Procedures for Child Support Offsets

~~42.6.301~~ 46.30.401 Definitions

~~42.6.302~~ 46.30.403 Independent Support Enforcement Contractors

~~42.6.303~~ 46.30.405 Withholding Entity

~~42.6.304~~ 46.30.407 Voluntary

~~42.6.305~~ 46.30.411 Hearing Procedures

~~42.6.306~~ 46.30.413 Issues Determinable at Hearing

~~42.6.307~~ 46.30.415 Modification or Termination of Withholding Orders

~~42.6.308~~ 46.30.417 Receipt of Payments Required

~~42.6.309~~ 46.30.419 Prompt Delivery of Withheld Amount

~~42.3.310~~ 46.30.421 Allocation of Payments

~~42.6.311~~ 46.30.423 Availability of Hardship Adjustments

~~42.6.312~~ 46.30.425 Affect of Hardship Determination

~~42.6.313~~ 46.30.427 Procedures for Determining Hardship Adjustments

~~42.6.314~~ 46.30.429 Interstate Income Withholding

KEN NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State June 5, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.101, 42.22.105 and 42.22.122, and ADOPTION of Rule I (42.22.108) relating to Centrally Assessed Property.	NOTICE OF THE AMENDMENT of ARM 42.22.101, 42.22.105 and 42.22.122, and ADOPTION of Rule I (42.22.108) relating to Centrally Assessed Property.

TO: All Interested Persons:

1. On February 23, 1989, the Department published notice of the proposed amendment of ARM 42.22.101, 42.22.105 and 42.22.122 and the proposed adoption of Rule I (42.22.108) relating to Centrally Assessed Property at page 316 of the 1989 Montana Administrative Register, issue no. 4.

2. The Department, Montana Power Company and various counties throughout Montana entered into a Settlement Agreement and Release concerning property taxes paid by centrally assessed taxpayers. A portion of this agreement required the Department to conduct a public rules hearing to determine if the current rules being utilized by the Department in determining the manner and method for apportioning centrally assessed property located in these counties was appropriate under the law. This agreement states the decision of the Hearing Examiner is final and binding on all parties to the agreement.

3. A Public Hearing was held on March 20, 1989 to consider the proposed amendments and adoption of these rules. Several persons appeared at this hearing and presented oral and written testimony.

Oral testimony was presented by: Department of Revenue personnel; Montana Power Company personnel; James Nybo representing Lewis and Clark County; Dick Michilotti, Treasurer, Cascade County; Kevin Bryan, Treasurer, Yellowstone County; Diana Felton, Treasurer, Toole County; and Gene Vuckovich, Unified Government Manager, Anaconda-Deer Lodge County. The Hearing Examiner indicated he had received a telephone call from Don Bailey, Rosebud County Commissioner asking that their position on the rules be indicated at the hearing.

The Hearing Examiner allowed the period for written comments to be extended from March 24, 1989 to the dates set on the Agreed Procedure and Statement of Positions prepared by the parties to the Settlement Agreement and Release. The Montana Power Company was to file its brief by March 27, 1989; Department of Revenue's reply brief was due on April 3, 1989 and Montana Power Company's reply brief was due on April 7, 1989.

Besides the briefs filed by the parties, written comments were received from Lewis and Clark County; Yellowstone County; Anaconda-Deer Lodge County; Toole County; Lake County; Rosebud County; and U.S. West Communications.

The Hearing Examiner considered all oral and written testimony, written comments and briefs filed by the parties to the Settlement Agreement and Release. After a thorough review he ruled that the Department shall amend ARM 42.22.101, 42.22.105 and 42.22.122 to reflect the language of the rules as adopted prior to December 17, 1984, deleting the trending methodology contained in the present rules.

The Hearing Examiner also instructed the Department to adopt Rule I (42.22.108) Market Value of Pollution Control Equipment as proposed.

ARM 42.22.101, 42.22.105 and 42.22.122, as published prior to December 17, 1984 were properly noticed with opportunity for public comment at that time.

3. The Department is legally bound through the Settlement Agreement and Release to abide by the Hearing Examiner's findings and order.

4. Therefore, the Department adopts rule I (42.22.108) as proposed. No change to ARM 42.22.101 is necessary so the Department will not amend that rule. The Department makes the following amendments to ARM 42.22.105 and 42.22.122:

42.22.105 REPORTING REQUIREMENTS (1) and (2) remain unchanged.

(3) In addition to the report each centrally assessed company must revise and update statements of situs and mileage printouts provided by the department and return them along with the report. The information on the printouts shall be reported by county and taxing units in which they are situated. The situs printouts shall contain ~~the following additional information for operating situs property:~~

~~(a)~~ a general description ~~of the property;~~ and

~~(b)~~ installed cost ~~and date of installation if required under ARM 42.22.122(3). If additions have been made to operating property then there should be a breakdown of installed costs and dates under the property listing~~ for operating situs property.

42.22.122 APPORTIONMENT PROCEDURE (1) and (2) remain unchanged.

(3) The Montana situs property value is apportioned to the taxing units in which the property is situated. To accomplish this~~, the department may utilize one of the two following methods:~~

~~(a)~~ the total installed cost of situs property in each taxing unit is multiplied by the percentage computed by dividing the MSPV developed in subsection (1)(c) by the total installed cost of Montana situs property. ~~, or~~

~~(b) total installed cost of situs property in each taxing unit multiplied by a trending index to arrive at a current dollar value for all property. The trending index may be determined by the following indices:~~

~~(i)----Implicit-Price-Deflator~~
~~(ii)---Handy-Whitman;-or~~
~~(iii)--other-indices-that-attempt-to-measure-price-change for-like-properties.--The-current-dollar-price-of-situs-property is-then-multiplied-by-the-MSPV-developed-in-subsection-(1)(c).~~
~~(4)--Recognizing--the--difficulty--in-generating-installed cost-data,-and-dates-of-installation,-the-department-will,-upon~~

~~written-request,-consider-granting-an-extension-until-December 31,-1986,-for-information-requested-as-of-December-31,-1985,-to any-centrally-assessed-company-in-order-to-enable-the-company-to provide--the--necessary-cost-information.---If--an-extension--is granted,--the--company-is-required-to-assist-the-department--in developing--an--acceptable--method--of--apportioning--the--1986 valuation.~~

KENNETH NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State June 5, 1989.

VOLUME NO. 43 OPINION NO. 12

FIREARMS - Special railroad peace officer's authority to carry concealed weapons;
PEACE OFFICERS - Special railroad peace officer's authority to carry concealed weapons;
TRANSPORTATION, PUBLIC - Special railroad peace officer's authority to carry concealed weapons;
CODE OF FEDERAL REGULATIONS - 49 C.F.R § 1201;
MONTANA CODE ANNOTATED - Sections 1-1-207, 44-4-901 to 44-4-903, 45-8-315 to 45-8-319, 46-1-201(8).

HELD: Special peace officers of a class I railroad are exempt from the prohibition against concealed weapons set out in section 45-8-316, MCA, but they may carry a concealed weapon only when on duty and when necessary for the protection of the property of the class I railroad employing the officer. The special peace officer must follow the permit procedure of section 45-8-319, MCA, in order to carry a concealed weapon at any other time.

May 19, 1989

David G. Rice
Hill County Attorney
Hill County Courthouse
Havre MT 59501

Dear Mr. Rice:

You have asked my opinion on the following:

> Whether special peace officers of a class I railroad are exempt from the prohibition against carrying concealed weapons as set forth in section 45-8-316, MCA.

Generally, carrying a concealed weapon is a misdemeanor offense against public order on first conviction and a felony if convicted a second time. § 45-8-316, MCA. A concealed weapon is any weapon mentioned in sections 45-8-316 to 319, MCA, which is wholly or partially covered by the clothing of the person carrying it. § 45-8-315, MCA. Exceptions to the offense defined in section 45-8-316, MCA, are found in section 45-8-317, MCA:

> Section 45-8-316 does not apply to:
>
> (1) any peace officer of the state of Montana;
>
> (2) any officer of the United States government authorized to carry a concealed weapon;
>
> (3) a person in actual service as a national guardsman;
>
> (4) a person summoned to the aid of any of the persons named in subsections (1) through (3);
>
> (5) a civil officer or his deputy engaged in the discharge of official business;
>
> (6) a person authorized by a judge of a district court of this state to carry a weapon; or
>
> (7) the carrying of arms on one's own premises or at one's home or place of business.

Pursuant to sections 44-4-901 and 44-4-902, MCA, the Attorney General is given discretionary authority to appoint qualified persons as special peace officers at the request of class I railroad corporations (as defined in 49 C.F.R § 1201). The authority of these officers is limited by section 44-4-903, MCA:

> A person appointed and sworn as a special peace officer shall when on duty have the power and authority of a peace officer but may exercise such power and authority only in the protection of the property of the class I railroad corporation employing him.

As used in the Montana Code Annotated, a peace officer is "any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority." §§ 1-1-207, 46-1-201(8), MCA.

Following the plain meaning of the statutes cited above, I conclude that special peace officers of class I railroads are excepted from the penalties described in section 45-8-316, MCA, but only to the extent permitted by section 44-4-903, MCA. In other words, special peace officers for class I railroads are permitted to carry concealed weapons, "but may exercise such power and authority only [when on duty and] in the protection of

the property of the class I railroad corporation employing him." § 44-4-903, MCA. If a special peace officer is interested in carrying a concealed weapon beyond the scope authorized in section 44-4-903, MCA, he must obtain a Montana district court judge's authorization described by sections 45-8-317(6) and 45-8-319, MCA.

THEREFORE, IT IS MY OPINION:

> Special peace officers of a class I railroad are exempt from the prohibition against concealed weapons set out in section 45-8-316, MCA, but they may carry a concealed weapon only when on duty and when necessary for the protection of the property of the class I railroad employing the officer. The special peace officer must follow the permit procedure of section 45-8-319, MCA, in order to carry a concealed weapon at any other time.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 13

ANNEXATION - Authority of municipality to require consent to annexation as condition of providing sewer service when property is within county water and sewer district;
CITIES AND TOWNS - Authority of municipality to provide sewer service within county water and sewer district;
COUNTIES - Responsibility for expenses associated with giving notice of county water and sewer district tax levies;
MUNICIPAL GOVERNMENT - Authority of municipality to provide sewer services within county water and sewer district;
PROPERTY, PUBLIC - County water and sewer district's right of eminent domain with respect to municipal property used by municipality to provide sewer service;
TAXATION AND REVENUE - Applicability of Initiative No. 105 and 1987 Montana Laws, chapter 654 to a county water and sewer district created after tax year 1986;
TAXATION AND REVENUE - Responsibility of persons within county water and sewer district but receiving municipal sewer service to pay district tax levies;
URBAN RENEWAL - Entitlement of municipality to amounts attributable to county water and sewer district tax levies when tax increment provision applicable;
WATER AND SEWER DISTRICTS - Applicability of Initiative No. 105 and 1987 Montana Laws, chapter 654 when created after tax year 1986;
WATER AND SEWER DISTRICTS - Authority of municipality to provide sewer service within county water and sewer districts;
WATER AND SEWER DISTRICTS - Entitlement of municipality to amounts attributable to county water and sewer district tax levies when tax increment provision applicable;
WATER AND SEWER DISTRICTS - Responsibility for expenses associated with giving notice of property tax levy on its behalf;
WATER AND SEWER DISTRICTS - Responsibility of persons within county water and sewer district but receiving municipal sewer service to pay district tax levies;
WATER AND SEWER DISTRICTS - Right of eminent domain with respect to municipal property used by municipality to provide sewer service;
MONTANA CODE ANNOTATED - Sections 7-13-2202, 7-13-2204 to 7-13-2206, 7-13-2208, 7-13-2210, 7-13-2211, 7-13-2213, 7-13-2214, 7-13-2218, 7-13-2231, 7-13-2301, 7-13-2302, 7-13-2304 to 7-13-2307, 7-13-2351, 7-13-4301, 7-13-4304, 7-13-4311, 7-13-4312, 7-13-4314, 7-13-4321, 7-13-4322, 7-13-4341, 7-15-4282 to 7-15-4292, 7-15-4286, 7-15-4288, 15-10-401 to 15-10-412, 70-30-103;

MONTANA LAWS OF 1987 - Chapter 654;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 109 (1988).

HELD: 1. A municipality retains all authority granted to it under sections 7-13-4301 to 4345, MCA, with respect to providing water and sewer services after a county water and sewer district has been incorporated which includes the municipality.

2. A county water and sewer district may not exercise the right of eminent domain with respect to municipal property located within the district and utilized by the municipality to provide sewer services.

3. Persons receiving municipal sewer services but residing within a county water and sewer district are required to pay that portion of property taxes imposed pursuant to section 7-13-2302, MCA, with respect to the district's expenditures unrelated to principal and interest payments for bonded indebtedness. Whether those persons are sufficiently benefited by expenses associated with bonded indebtedness so as to be responsible for property tax amounts attributable to such indebtedness is a question of fact inappropriate for resolution through an Attorney General's Opinion.

4. The board of county commissioners must assume the expense attendant to providing notice of intent to levy property taxes on behalf of a county water and sewer district.

5. If a tax increment provision exists in a municipality's urban renewal plan, the municipality will receive revenue for use in the urban renewal area attributable to application of a county water and sewer district's property tax levy upon the incremental taxable value.

6. The property tax limitations in Initiative No. 105 and 1987 Montana Laws, chapter 654 do not apply to taxing jurisdictions formed after tax year 1986.

May 22, 1989

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

Dear Mr. Nugent:

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

1. If a county water and sewer district is created which includes a municipality already providing sewer service, may the municipality continue to operate its sewer system?

2. May a county water and sewer district exercise the right of eminent domain with respect to a municipal sewer system located within such district?

3. Are persons receiving municipal sewer service required to pay property taxes levied on behalf of a county water and sewer district within which they reside?

4. Is a county water and sewer district or the county responsible for the cost associated with mailing notices concerning a public hearing on a proposed tax levy on behalf of the district?

5. Is a municipality entitled to any taxes paid with respect to properties within an urban renewal area attributable to tax levies on behalf of a county water and sewer district?

6. Are property tax levies on behalf of a county and water sewer district not attributable to the expense of bonded indebtedness subject to the tax limitations in Initiative No. 105 and 1987 Montana Laws, chapter 654?

Your questions are resolved by specific statutory provisions or prior Attorney General Opinions except as to one element of the third inquiry which is inappropriate for resolution through the opinion process.

The questions arise from the proposed creation of a county water and sewer district ("county district") within Missoula County. The district would have included the city of Missoula and a large area outside the city. The city has its own sewer system, and some property within the proposed district but outside the city is also connected to that system. The affected residents voted against creation of the county district in November 1988, but the city nonetheless remains interested in the questions which you pose because a similar proposal may be voted upon later this year. Before I address your individual questions, a brief summary of the statutes governing county districts and provision of municipal water and sewer service is helpful.

The procedure for forming a county district is initiated by filing with the involved board of county commissioners a petition signed by at least 10 percent of the residents within the proposed district. § 7-13-2204, MCA. The county board must then publish notice of the petition and hold a hearing concerning it. §§ 7-13-2205, 7-13-2206, MCA. If the board concludes the petition complies with statutory requirements, it must finally determine the proposed district's boundaries and give notice of an election on the issue of whether the district should be incorporated. §§ 7-13-2208, 7-13-2210, 7-13-2211, MCA. Approval requires a majority vote from at least 40 percent of all registered voters within the district. §§ 7-13-2213, 7-13-2214, MCA. Once incorporated, a county district has broad powers with respect to undertaking water and sewer projects. § 7-13-2218, MCA. These powers are exercised through a board of directors. § 7-13-2231, MCA. The board is required, inter alia, to establish charges for services which the county district provides and may cause taxes to be levied for any district expenses in excess of the amounts collected from the service charges. §§ 7-13-2301, 7-13-2302, MCA. The board of county commissioners is responsible for actually levying the county district's property taxes (§ 7-13-2302(2), MCA) and must give notice of its intent to do so through several means, including forwarding such notice "addressed to the owners and the purchasers under contracts for deed of taxable real property within the district" (§ 7-13-2304(2)(c), MCA). Most importantly for present purposes, section 7-13-2202, MCA, states that "[n]othing in this part and part 23 shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or sewers or the supply of water to or the acquisition thereof by counties or municipalities within this state."

A municipality is granted authority to establish sewer and water systems in section 7-13-4301, MCA, upon a majority vote of its registered electors. The municipality may provide service not only within its own boundaries but also outside those boundaries. §§ 7-13-4311, 7-13-4312, MCA. Section 7-13-4314, MCA, further permits a municipality to condition service to a person located outside its boundaries upon consent to annexation. Municipal sewer and water systems are financed through service charges (§ 7-13-4304, MCA) and revenue and revenue refunding bonds (§§ 7-13-4321, 7-13-4322, 7-13-4341, MCA). Unlike county districts which can be dissolved (§ 7-13-2351, MCA), no express provision is made for the sale or other termination of a municipal system.

Section 7-13-2202, MCA, directly answers your first question. That provision disclaims any intent to supersede through formation of a county district a municipality's authority with respect to maintenance or even creation of a sewer and water system. Moreover, nothing in the statutes governing a county district's or a municipal system's operation suggests that a municipality's powers as to its sewer and water system are somehow diminished by inclusion within a county district. An included municipality therefore has the same legal rights and obligations after a county district has been established as before.

Although county districts may exercise eminent domain powers under appropriate circumstances (Lincoln/Lewis and Clark County Sewer District at Lincoln v. Bossing, 42 St. Rptr. 318, 696 P.2d 989 (1985)), section 70-30-103(1)(b), MCA, excludes from those forms of "private property" subject to condemnation municipal lands already "appropriated to some public use[.]" Obviously, land which is utilized for municipal sewer and water system purposes is so appropriated. The express exclusion of such lands from eminent domain proceedings thus controls over the more general provision in section 70-30-103(1)(c), MCA, which authorizes the taking of property previously appropriated to public use when the proposed use is "more necessary[.]" Permitting a county district to exercise eminent domain rights over property containing a municipal water or sewer system would also conflict with section 7-13-2202, MCA. The second question must be answered negatively.

You next ask whether persons receiving municipal sewer service are required to pay property taxes levied on behalf of a county district. Section 7-13-2302(3), MCA, states that "[s]uch taxes for the payment of any

[principal or interest on] bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district." Whether persons already receiving municipal services would be sufficiently "benefited" by county district activities financed through bonded indebtedness is a question of fact (Parker v. County of Yellowstone, 140 Mont. 538, 374 P.2d 328 (1962)) inappropriate for resolution through an Attorney General's Opinion. However, they would be subject to taxes imposed pursuant to section 7-13-2302, MCA, for expenses unrelated to bonded indebtedness.

Section 7-13-2304(1), MCA, requires the board of county commissioners to give notice of its intent to levy a property tax on behalf of a county district. Since the statutory responsibility is the county's and no provision is made for the county district to bear the expense associated with such notice, the county itself is responsible for that expense. This result is hardly anomalous because a principal purpose of the notice is to advise county district residents of a hearing before the county commissioners, at which protests to the proposed levy may be heard and resolved by them. §§ 7-13-2305, 7-13-2306(4), 7-13-2307, MCA. Consequently, while the financial benefit of the proposed levy flows to the county district, the notice and associated hearing relate to county commissioner responsibilities.

Your fifth question is presumably directed to the tax increment provisions relating to urban renewal areas in sections 7-15-4282 to 4292, MCA. If a tax increment provision has been included in a municipality's urban renewal plan, revenue from application of a county district's mill levy to "incremental taxable value," as defined in section 7-15-4283(3), MCA, must be segregated for use in connection with urban renewal projects and paid into a fund for use by the municipality. § 7-15-4282, 7-15-4286(2)(a), 7-15-4288, MCA. Absent a tax increment provision, none of the income attributable to a county district's ad valorem taxation of property within an urban renewal area will accrue to the municipality for expenditures in such area.

With respect to the final question, the proposed county district would not be subject to the property tax limitations in Initiative No. 105 and 1987 Montana Laws, chapter 654 (codified in §§ 15-10-401 to 412, MCA) because it would be created after tax year 1986. 42 Op. Att'y Gen. No. 109 (1988).

THEREFORE, IT IS MY OPINION:

1. A municipality retains all authority granted to it under sections 7-13-4301 to 4345, MCA, with respect to providing water and sewer services after a county water and sewer district has been incorporated which includes the municipality.

2. A county water and sewer district may not exercise the right of eminent domain with respect to municipal property located within the district and utilized by the municipality to provide sewer services.

3. Persons receiving municipal sewer services but residing within a county water and sewer district are required to pay that portion of property taxes imposed pursuant to section 7-13-2302, MCA, with respect to the district's expenditures unrelated to principal and interest payments for bonded indebtedness. Whether those persons are sufficiently benefited by expenses associated with bonded indebtedness so as to be responsible for property tax amounts attributable to such indebtedness is a question of fact inappropriate for resolution through an Attorney General's Opinion.

4. The board of county commissioners must assume the expense attendant to providing notice of intent to levy property taxes on behalf of a county water and sewer district.

5. If a tax increment provision exists in a municipality's urban renewal plan, the municipality will receive revenue for use in the urban renewal area attributable to application of a county water and sewer district's property tax levy upon the incremental taxable value.

6. The property tax limitations in Initiative No. 105 and 1987 Montana Laws, chapter 654 do not apply to taxing jurisdictions formed after tax year 1986.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 14

COUNTIES - Holiday pay entitlement of employees working 10-hour days;
COUNTY OFFICERS AND EMPLOYEES - Holiday pay entitlement of employees working 10-hour days;
EMPLOYEES, PUBLIC - Holiday pay entitlement of employees working 10-hour days;
HOLIDAYS - Pay entitlement of county employees working 10-hour days;
HOURS OF WORK - Holiday pay entitlement of county employees working 10-hour days;
SALARIES - Holiday pay entitlement of county employees working 10-hour days;
ADMINISTRATIVE RULES OF MONTANA - Sections 2.21.121 to 2.21.646, 2.21.134, 2.21.223, 2.21.619, 2.21.641;
MONTANA CODE ANNOTATED - Sections 2-18-603 to 2-18-620, 2-18-603, 2-18-604, 2-18-612, 2-18-618, 39-4-101 to 39-4-112, 39-4-107, 39-71-736;
MONTANA CONSTITUTION - Article XII, section 2(2);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 69 (1988), 37 Op. Att'y Gen. No. 16 (1977).

HELD: County road and bridge department employees regularly working four 10-hour days per week are entitled to eight hours' pay under section 2-18-603, MCA, for all nonworked holidays.

May 23, 1989

C. Ed Laws
Stillwater County Attorney
Stillwater County Courthouse
Columbus MT 59019

Dear Mr. Laws:

You have requested my opinion concerning the following question:

> Are full-time county road and bridge department employees with a normal weekly work schedule consisting of four 10-hour days entitled to eight or ten hours of pay for those holidays on which they do not work?

I conclude that such employees are entitled only to eight hours of pay for nonworked holidays since, by constitutional and statutory provision, a regular day of work for full-time local government employees is generally defined as eight hours.

Article XII, section 2(2) of the Montana Constitution states that "[a] maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising" but authorizes "[t]he legislature [to] change this maximum period to promote the general welfare." The Legislature, in turn, has adopted workday length statutes dealing with various types of employment in sections 39-4-101 to 112, MCA. Of particular relevance is section 39-4-107(1), MCA, which provides in part that "[a] period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district[.]" Section 39-4-107(3), MCA, however, permits 40-hour workweeks to be scheduled through four 10-hour workdays for county road and bridge department employees:

> In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

This authorization to establish four-day workweeks consisting of 10-hour days has been used in Stillwater County for its road and bridge department employees. Virtually all other Stillwater County employees work five 8-hour shifts per week.

The sole statutory provision addressing holiday compensation for state and local government employees is section 2-18-603, MCA. Subsection (1) of that provision reads:

> Any full-time employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and his supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time

employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

See generally 37 Op. Att'y Gen. No. 16 at 62 (1977) (discussing effect of holiday pay requirement on computation of overtime compensation). Section 2-18-604, MCA, places responsibility for administering "employee annual, sick, or military leave provisions and the jury duty provisions" in sections 2-18-603 to 620, MCA, upon the Department of Administration or local government administrative officers and directs them to "promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof." Although the Department of Administration has issued such regulations for state employees (§§ 2.21.121 to 2.21.646, ARM), Stillwater County has not.

Section 2-18-603, MCA, does not specify the number of paid hours to which a full-time employee is entitled for holiday purposes. Indeed, other provisions dealing with annual and sick leave are similarly silent, indicating accrual amounts only in terms of "working days" credits. §§ 2-18-612(1), 2-18-618(1), MCA. These various leave provisions must nonetheless be read in light of the regular workday length of eight hours contained in Article XII, section 2(2) and section 37-4-107(1), MCA, and the accompanying presumption that the Legislature intended eight hours to constitute the basis upon which leave benefits would be calculated for full-time employees unless another amount was expressly stated. See 42 Op. Att'y Gen. No. 69 (1988) (construing the phrase "6 days' loss of wages" in section 39-71-736(1)(a), MCA, to mean 48 hours of wage loss irrespective of the affected employee's normal shift length).

I further note that, while section 39-4-107(3), MCA, allows counties and their road and bridge department employees or collective-bargaining representatives to agree upon a 40-hour workweek consisting of four consecutive 10-hour workdays, nothing in either section 2-18-603, MCA, or related annual and sick leave provisions suggests that, as to full-time employees, the particular method of workday scheduling should alter their leave entitlements or create arbitrary entitlement distinctions between individuals employed for the same number of regular hours per week.

This construction of section 2-18-603, MCA, is reflected in the Department of Administration's regulations governing state employee holiday pay entitlement. The regulations define "[h]oliday benefits" as "pay at the regular rate up to eight hours or equivalent paid time off up to eight hours paid to an eligible employee when the state observes a legal state holiday" (§ 2.21.619(4), ARM) and extends the 8-hour limitation to employees working four 10-hour days per week (§ 2.21.641(1), ARM). These regulations also provide that, "[i]f the employee [working 10-hour days] would receive less pay than usual, at the agency's discretion, the employee could work additional hours in the same pay period to make up the difference or could take annual leave or accrued compensatory time." § 2.21.641(1)(b), ARM. The same scheduling flexibility, of course, is available to local governments. The Department's interpretation of state employee holiday pay entitlement warrants substantial deference absent conflicting statutory provisions (Weis v. Division of Workers' Compensation, 45 St. Rptr. 1004, 1007, 755 P.2d 1385, 1387 (1988)), and I discern no basis upon which to conclude the Legislature intended local government employees to have any greater entitlement. It is noteworthy that not only the Department (§§ 2.21.134, 2.21.223(1), ARM) but also Stillwater County in administering the statutory vacation and sick leave provisions predicate "working days" credits on 8-hour periods--a settled, practical interpretation of analogous statutes supporting my determination with respect to the appropriate amount of holiday pay entitlement under section 2-18-603, MCA.

Finally, the road and bridge employees involved here are not represented for collective-bargaining purposes. Nothing in this opinion, therefore, should be construed as addressing the issue of whether a county employer is authorized to enter into a collective bargaining agreement which provides for a holiday pay amount in excess of eight hours.

THEREFORE, IT IS MY OPINION:

County road and bridge department employees regularly working four 10-hour days per week are

entitled to eight hours' pay under section 2-18-603, MCA, for all nonworked holidays.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 15

COUNTY ATTORNEYS - Obligation to act as counsel for hospital districts;
HEALTH - Obligation of county attorney to act as counsel for hospital districts;
MONTANA CODE ANNOTATED - Sections 7-4-2711, 7-4-2717, 7-13-218, 7-34-2101 to 7-34-2164, 7-34-2115, 7-34-2122, 20-1-204, 50-2-115;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 22 (1985), 40 Op. Att'y Gen. No. 27 (1983).

HELD: A county attorney has no obligation to act as counsel for hospital districts formed pursuant to section 7-34-2101, MCA.

May 23, 1989

John T. Flynn
Broadwater County Attorney
Broadwater County Courthouse
Townsend MT 59644

Dear Mr. Flynn:

You have requested my opinion concerning the following question:

> Must a county attorney act as counsel for hospital districts formed pursuant to section 7-34-2101, MCA?

The creation and operation of hospital districts are provided for in sections 7-34-2101 to 2164, MCA. Section 7-34-2115, MCA, provides that a hospital district shall be "governed and managed" by a board of trustees. Section 7-34-2122(1), MCA, provides for the employment and compensation of legal counsel by a hospital district acting by and through its board of trustees.

The obligation of a county attorney to provide legal representation is generally set forth in section 7-4-2711, MCA:

> (1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or

illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county; and

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee.

Section 7-4-2717, MCA, provides county attorneys with the additional obligation of "perform[ing] such other duties as are prescribed by law." The Legislature has specifically enumerated the other types of districts and political subdivisions for which county attorneys are obligated to act as counsel in addition to those set forth in section 7-4-2711, MCA. E.g., § 7-13-218, MCA (refuse disposal districts); § 20-1-204, MCA (school districts and community college districts); and § 50-2-115, MCA (county and city-county boards of health). There is no specific statutory provision requiring county attorneys to represent hospital districts, and its absence indicates that they are not obligated to act as counsel for such districts. See also 41 Op. Att'y Gen. No. 22 at 75 (1985), 40 Op. Att'y Gen. No. 27 at 104 (1983).

THEREFORE, IT IS MY OPINION:

A county attorney has no obligation to act as counsel for hospital districts formed pursuant to section 7-34-2101, MCA.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 16

CITIES AND TOWNS - Authority of city to reduce office hours for city offices;
OFFICES - Authority of city to reduce office hours for city offices;
MONTANA CODE ANNOTATED - Sections 1-1-101, 1-1-102, 1-2-107, 7-1-105, 7-1-114(1)(f), 7-1-4121, 7-4-102;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 120 (1988), 34 Op. Att'y Gen. No. 27 (1971).

HELD: The phrase "unless otherwise provided by law," as used in section 7-4-102, MCA, does not authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open.

May 24, 1989

William A. Schreiber
Belgrade City Attorney
P.O. Box 268
Belgrade MT 59714

Dear Mr. Schreiber:

You have requested my opinion on the following question:

> Does the phrase "unless otherwise provided by law," as used in section 7-4-102, MCA, authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open?

Section 7-4-102, MCA, states:

> Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, except county and city treasurers, who in their discretion may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

Your letter of inquiry informs me that the city is considering various alternatives in an effort to save money and come to grips with a shortfall in the city's budget. One alternative would be to reduce the city office hours by opening later or closing earlier than section 7-4-102, MCA, provides. The city manager has asked whether municipal ordinances are included within the meaning of the word "law" in section 7-4-102, MCA, so that a city could enact an ordinance reducing the statutorily prescribed office hours for city officers.

The Montana Supreme Court has not directly addressed your question. Cf. Silver Bow County v. Davies, 40 Mont. 418, 107 P. 81 (1910); Broadwater v. Kendig, 80 Mont. 515, 261 P. 264 (1927); State ex. rel. Burns v. Lacklen, 129 Mont. 243, 284 P.2d 998 (1955). Nor has this office previously issued an opinion addressing the question. Cf. 34 Op. Att'y Gen. No. 27 at 166 (1971). I am aware that the term "law" is sometimes used "in a generic sense, as meaning the rules of action or conduct duly prescribed by controlling authority, and having binding legal force; including valid municipal ordinances as well as statutes." United States Fidelity & Guaranty Company v. Guenther, 281 U.S. 34, 37 (1930); State ex rel. Marquette v. Police Court of City of Deer Lodge, 86 Mont. 297, 283 P. 430 (1929). See 62 C.J.S. Municipal Corporations § 411 at 785 (1949). However, I conclude on the basis of settled statutory construction principles that the word "law" as used in section 7-4-102, MCA, does not include municipal ordinances.

The phrase "unless otherwise prescribed by law" has been part of the statute establishing government office hours since its original enactment in 1895. Although the office hours required by the statute have changed over the years as the result of several amendments, this introductory exception to the statute's application has been retained by the Legislature throughout the statute's history. In answering your question, therefore, I am guided by the Legislature's understanding of the word "law" as expressed in Montana's Political Code of 1895 and subsequent enactments.

Section 1-1-101, MCA, which was enacted in the Political Code of 1895 and has since remained unchanged, defines "law" as "a solemn expression of the will of the supreme power of the state." Section 1-1-102, MCA, which was also retained from the 1895 code, provides that the will of the supreme power "is expressed by: (1) the constitution; [and] (2) statutes." Ordinances are not included in this statutory definition of "law."

The term "law" also is defined in section 7-1-4121, MCA, enacted in 1979, which contains definitions for terms used in certain provisions relating generally to municipalities. Subsection (8) defines "law" as "a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures." Subsection (12) separately defines "ordinance" as "an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government." Again the Legislature's definition of "law" does not include municipal ordinances.

As a matter of general statutory construction, the statutory definitions of "law" in section 1-1-101, 1-1-102, and 7-1-4121(8), MCA, are applicable wherever the word "law" occurs in the code, except where a contrary intention plainly appears. § 1-2-107, MCA. See, e.g., Mountain View Education Association v. Mountain View School, 44 St. Rptr. 1089, 738 P.2d 1288 (1987); State ex rel. Department of Health v. Lasorte, 182 Mont. 267, 596 P.2d 477 (1979). Clearly no such contrary intention appears in section 7-4-102, MCA.

The result reached by application of these statutory construction principles is consistent with the scope of the city's legislative authority under state law. The City of Belgrade has self-government powers, pursuant to Article XI, section 6 of the Montana Constitution and the city's charter. See 42 Op. Att'y Gen. No. 120 (1988). State statutes are applicable to local governments with self-government powers until superseded by an ordinance or resolution; however, the authority to enact such ordinances or resolutions is subject to the limitations of Title 7, chapter 1, part 1, MCA. § 7-1-105, MCA. Section 7-1-114(1)(f), MCA, provides that a local government with self-government powers is subject to "[a]ny law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service." Under subsection (2) of the statute, this provision is a prohibition on the self-government unit acting other than as provided by the state law.

Section 7-4-102, MCA, is a law which directs city officers to carry out a function and provide a service by keeping their offices open for the transaction of business during certain hours. It is my opinion that section 7-1-114(1)(f), MCA, applies to prohibit the city from reducing its office hours beyond those required by section 7-4-102, MCA.

By enacting section 7-4-102, MCA, the Legislature has deemed government office hours to be a matter of statewide concern and has effectively preempted local governments from the field. In view of the statutory definitions of "law" and the limitations imposed by statute upon the city's legislative powers, I conclude that Belgrade does not have authority to reduce the city office hours by ordinance. While I understand and appreciate the city's need to cut expenses, I find that the Legislature has imposed an affirmative duty upon local officials to maintain the office hours set forth in section 7-4-102, MCA; consequently, only the Legislature can relieve the officers of this duty.

THEREFORE, IT IS MY OPINION:

> The phrase "unless otherwise provided by law," as used in section 7-4-102, MCA, does not authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 17

POLICE - Ineligibility of out-of-state police service for inclusion in local retirement fund;
POLICE DEPARTMENTS - Ineligibility of out-of-state police service for inclusion in local retirement fund;
RETIREMENT SYSTEMS - Ineligibility of out-of-state police service for inclusion in local retirement fund;
MONTANA CODE ANNOTATED - Title 19, chapter 10; sections 19-4-402, 19-10-406.

HELD: A police officer participating in a local police retirement fund may not buy an additional number of years toward retirement based upon prior out-of-state police service.

June 1, 1989

Katherine R. Curtis
Columbia Falls City Attorney
P.O. Box 329
Columbia Falls MT 59912-0329

Dear Ms. Curtis:

You requested my opinion on the following question:

> May a police officer buy into the local police retirement fund in order to receive certain benefits based upon previous out-of-state police service?

The city of Columbia Falls maintains a local police retirement fund pursuant to Title 19, chapter 10, MCA. In 1985 the city adopted a policy enabling police officers to buy into the local police retirement fund for retirement benefits based on previous out-of-state police service. Recently a police officer submitted an amount of money to the city for the purpose of buying an additional number of years toward his retirement benefits based upon his prior law enforcement service in another state.

Title 19, chapter 10, MCA, does not provide statutory authority for the purchase of creditable police service performed out-of-state. Section 19-10-406, MCA, permits a police officer to purchase credit based on previous military duty. However, provisions for purchasing any other creditable service are conspicuously absent. The rules of statutory construction preclude me from imputing authority to the city that the Legislature has

failed to provide. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660, 662 (1968). Moreover, since the Legislature has expressly authorized the purchase of credit for military duty, its failure to provide for purchase of credit for any other type of service indicates a clear legislative intent to preclude such other purchases. See Reed v. Reed, 130 Mont. 409, 304 P.2d 590, 592 (1957) (where a statute contains express mention of certain authority, the mentioning of it implies exclusion of any other). By contrast, the Legislature has provided for purchase of out-of-state creditable service for other retirement programs. For example, the Teachers' Retirement Act expressly authorizes teachers to buy creditable service for out-of-state teaching. § 19-4-402, MCA.

I conclude that the city does not have authority to permit a police officer to buy into a retirement program for previous out-of-state service.

You have also inquired about the city's obligation with respect to the police officer who has already paid the city for his out-of-state service. The city's lack of authority to make such an arrangement applies to this officer also. The money submitted by him to pay for his out-of-state service should be refunded.

THEREFORE, IT IS MY OPINION:

> A police officer participating in a local police retirement fund may not buy an additional number of years toward retirement based upon prior out-of-state police service.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 18

COUNTIES - Inability of county planning board to serve as county zoning commission;
COUNTY GOVERNMENT - Inability of county planning board to serve as county zoning commission;
MONTANA CODE ANNOTATED - Sections 76-1-104, 76-1-106, 76-1-211(1), (2), 76-1-212(1), 76-1-501, 76-2-202, 76-2-220;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 75 (1982).

HELD: A county planning board may not be designated to serve as the county zoning commission. However, members of one board may serve as members of the other so long as they meet the statutory requirements for membership of each board.

June 1, 1989

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You requested my opinion on the following question:

> May the county planning board be designated to serve as the county zoning commission?

Both the planning board and the zoning commission are creatures of statute. A county planning board is created at the discretion of the county commissioners, upon a resolution and public hearing. § 76-1-104, MCA. Its function is to serve in an advisory capacity to the county with regard to subdivision plats, development of roads, public buildings, utilities, and improvement location permits. § 76-1-106, MCA. The planning board consists of not less than five members, one of whom must be a member of the governing board of an existing conservation district or state cooperative district, if officers of either reside in the county. § 76-1-211(1), MCA. The citizen members must be resident freeholders in the jurisdictional area of the planning board. § 76-1-212(1), MCA. The planning board's jurisdictional area may include any or all of the area within the county boundaries. § 76-1-501, MCA. In the event a

city or town is included in the jurisdictional area, at least one person appointed by the city or town council must serve on the board. § 76-1-211(2), MCA.

A zoning commission is also established at the discretion of the county commissioners. The members are appointed by the county commissioners and serve for the purpose of recommending amendments to zoning regulations and classifications. § 76-2-220, MCA. The commission is composed of at least five citizen members appointed "at large" from the zoning district. § 76-2-220, MCA. The zoning district may include any or all of the jurisdictional area established for the county planning board, except it may not include incorporated cities or towns. § 76-2-202, MCA.

It is evident that the jurisdictional areas of zoning commissions and planning boards are not necessarily the same. Nor are the requirements for membership of each board. The most obvious difference between the two is the permitted inclusion of incorporated cities and towns in a planning board jurisdiction and their exclusion from a zoning district. Thus, a zoning commission would be statutorily inadequate to serve as a planning board whose jurisdictional area includes an incorporated city or town.

As I previously mentioned, the creation of planning boards and zoning commissions is within the discretion of the county commissioners. Once created, however, the statutory mandates as to each board must be followed. 39 Op. Att'y Gen. No. 75 at 285 (1982). Therefore, the county may not avoid the membership requirements of each board. Since the membership requirements and jurisdictional areas of the boards are not statutorily identical, the county may not designate one board to serve as the other. That is not to say, however, that a given member of one board may not serve on the other. There is no statute prohibiting an individual from serving on both boards. In order to do so, he or she must qualify for membership according to the statutory requirements for each board.

THEREFORE, IT IS MY OPINION:

> A county planning board may not be designated to serve as the county zoning commission. However, members of one board may serve as members of the other so long as they meet the statutory requirements for membership of each board.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 19

COUNTIES - Priority of delinquent tax liens over security interests in personal property;
LIENS - Priority of delinquent tax liens over security interests in personal property;
PROPERTY, PERSONAL - Priority of delinquent tax liens over security interests in personal property;
REVENUE, DEPARTMENT OF - Priority of delinquent tax liens over security interests in personal property;
TAXATION AND REVENUE - Priority of delinquent tax liens over security interests in personal property;
MONTANA CODE ANNOTATED - Section 15-16-402(1);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 95 (1988), 40 Op. Att'y Gen. No. 80 (1984), 38 Op. Att'y Gen. No. 6 (1979).

HELD: When personal property is subject to a delinquent tax lien, a county is not required to tender payment to a person having a security interest in the personal property before seizing and selling such property.

June 1, 1989

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
Philipsburg MT 59858

Dear Mr. Bradshaw:

You have requested my opinion on a question I have phrased as follows:

> When personal property is subject to a delinquent tax lien, is a county required to tender payment to a person having a security interest in the personal property before seizing and selling the property?

It is my opinion that counties are not required to tender payment to such secured parties before selling personal property subject to delinquent tax liens because tax liens on personal property are superior to all other liens.

Montana law expressly confers priority of tax liens on personal property. Section 15-16-402(1), MCA, provides:

> Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property[.]

This statute, which has substantially the same pertinent language now as it had in 1963, was discussed in United States v. Christensen, 218 F. Supp. 722 (D. Mont. 1963). That court concluded:

> "It cannot be inferred that the lien for personal taxes *** was intended to be subordinate to all prior private liens because the legislature failed to say that it should be deemed paramount. On the contrary, considering the character of the obligation and the dignity usually accorded to such liens, in public estimation, and above all, considering the necessity which exists for giving them priority in order that the public revenues may be promptly and faithfully collected, we conclude that the inference should be that the lien was intended by the legislature to be superior to all liens, prior or subsequent, claimed by individuals, and that nothing should be allowed to overcome this inference but a plain expression of a different purpose found in the statute itself."

United States v. Christensen, 218 F. Supp. at 726-27, citing State ex rel. Malott v. Board of Commissioners, 89 Mont. 37 at 77-78, 296 P. 1 at 12 (1930). See also 42 Op. Att'y Gen. No. 95 (1988), 40 Op. Att'y Gen. No. 80 at 320 (1984), 38 Op. Att'y Gen. No. 6 at 16 (1979).

THEREFORE, IT IS MY OPINION:

> When personal property is subject to a delinquent tax lien, a county is not required to tender payment to a person having a security interest in the personal property before seizing and selling such property.

Sincerely,

Marc Racicot

MARC RACICOT
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. 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 list 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 March 31, 1989. This table includes those rules adopted during the period April 1, 1989 through June 30, 1989 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1989, 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 1989 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I	Exempt Compensatory Time - Workweek, p. 2609
2.21.8001	and other rules - Grievances, p. 2055, 2559

AGRICULTURE, Department of, Title 4

I	Inspection Fee for Commercial Feeds, p. 2467, 13
I-XXVI	and other rules - Standards and Procedures for Implementation of the Montana Environmental Policy Act, p. 1606, 2692
4.5.203	Designation of Noxious Weeds, p. 628
4.12.3011	Regulation of Noxious Weed Seeds, p. 248, 394
4.12.3501	and other rules - Grading of Certified Seed Potatoes, p. 2062, 2562

STATE AUDITOR, Title 6

I-II	Unethical Practices by Investment Advisers and Broker-dealers, p. 2065, 221
I-VII	Emergency Rules - Implementation of the Medicare Catastrophic Coverage Act of 1988, p. 2563
6.10.121	Registration of Securities Salesmen and Broker-dealers, p. 2071, 220

COMMERCE, Department of, Title 8

I-XXVI	and other rules - Standards and Procedures for

Implementation of the Montana Environmental Policy Act, p. 1606, 2692

(Board of Athletics)

8.8.2803 and other rules - Prohibitions - Boxing Contestants - Physician Requirements - Weights and Classes - Scoring - Down - Equipment - Judges - Inspectors - Appeals - Appeal of Decisions of Officials, p. 630

(Board of Cosmetologists)

8.14.603 School Requirements, p. 1943, 2479

(Board of Horse Racing)

8.22.501 and other rules - Definitions - Parimutuel Exercise Persons - Jockeys - Pony Persons - Trainers - Veterinarians - General Requirements - Medication, p. 635

(Board of Medical Examiners)

8.28.418 and other rule - Annual Registration and Fees - Fee Schedule, p. 172, 395

(Board of Morticians)

8.30.701 Unprofessional Conduct - Narcotics Law Violations - Felony, p. 2535, 225

(Board of Nursing)

8.32.305 and other rules - Educational Requirements - Licensure - Conduct - Disciplinary Procedures - Standards - General Welfare - Reports - Definitions, p. 1629, 2720

(Board of Nursing Home Administrators)

8.34.414 and other rule - Examinations - Fee Schedule, p. 2269, 2567, 14

(Board of Optometrists)

8.36.404 Examinations, p. 1947, 318

(Board of Outfitters)

8.39.504 and other rules - Licensure -- Approved Operations Plan - Conduct -- Standards of Outfitter and Professional Guide - Conduct -- Additional Required Outfitter Procedures - Outfitter Records, p. 460

(Board of Physical Therapy Examiners)

8.42.601 and other rules - Unprofessional Conduct - Disciplinary Actions, p. 174

8.42.702 and other rules - Reported Violations, p. 463

(Polygraph Examiners)

8.47.404 License Renewal - Date - Continuing Education, p. 1, 474

8.47.404 License Renewal - Date, p. 465

(Board of Private Security Patrolmen and Investigators)

8.50.437 Fee Schedule, p. 2073, 2480

(Board of Radiologic Technologists)

8.56.409 Fees Schedule, p. 430

(Board of Realty Regulation)

8.58.411 Fee Schedule, p. 432

8.58.412 Inactive Licenses - Reactivation of Licenses - Continuing Education, p. 467

8.58.606 Licensure - Course of Education, p. 179, 475
(Board of Social Work Examiners and Professional Counselors)
8.61.1201 Licensure Requirements, p. 1866, 319
8.61.1601 and other rules - Hours, Credits and Carry Over - Fee Schedule - Ethical Standards, p. 434
8.61.1601 Hours, Credits and Carry Over, p. 2469, 320
(Board of Speech Pathologists and Audiologists)
8.62.504 Nonallowable Functions of Aides, p. 645
(Building Codes Bureau)
8.70.101 and other rules - Incorporation by Reference of Codes - Standards - Fees - National Standard for Park Trailers, p. 2611, 476
(Milk Control Bureau)
8.79.301 Licensee Assessments, p. 250, 396
(Financial Division)
8.80.102 Banks - Direct Leasing of Personal Property, p. 470
(Board of Milk Control)
8.86.301 Class I Pricing Formulas, p. 2333, 15
8.86.301 Class I Pricing Formulas - Formula Index, p. 1949, 15
8.86.504 and other rule - Quota Plans, p. 501
(Local Government Assistance Division)
I Administration of the 1989 Federal Community Development Block Grant (CDBG) Program, p. 647
(Board of Investments)
I-XVII Economic Development Bond Program - Investments By the Montana Board of Investments, p. 252, 659
8.97.1502 Interest Rate Reduction for Loans Funded from the Coal Tax Trust, p. 472
(Board of Housing)
8.111.305 and other rule - Qualified Lending Institutions - Qualified Loan Servicers Guidelines, p. 2625, 266
8.111.305 Qualified Lending Institutions, p. 504
(Montana Agriculture Development Council)
I-VI Growth Through Agriculture Program, p. 2026, 2481
(Montana State Lottery Commission)
8.127.605 and other rules - Licenses - License Renewal - Electronic Funds Transfer - Prizes, p. 2342, 19

EDUCATION, Title 10

(Superintendent of Public Instruction)
I-VII Traffic Education, p. 2074A, 438
10.13.301 and other rules - Program Standards and Course Requirements for Traffic Education, p. 2537, 438
(Board of Public Education)
I-CLXXXVI and other rules - Accreditation, p. 2075, 2271, 342
10.57.301 and other rules - Endorsement Information - Class 2 Teaching Certification, p. 312, 662
10.58.302 and other rules - Teacher Education Programs Leading to Interstate Reciprocity of Teacher

Certification, p. 2629, 397
10.65.201 Policy Statement on Kindergarten Accreditation and Schedule Variances, p. 311, 662
(Montana Arts Council)
10.111.705 Challenge Grants for Permanent Endowment Development, p. 649

FAMILY SERVICES, Department of, Title 11

11.12.211 and other rules - Payment Rates for Residential Foster Care Providers, p. 2344, 20

FISH, WILDLIFE AND PARKS, Department of, Title 12

I-XXVI and other rules - Standards and Procedures for Implementation of the Montana Environmental Policy Act, p. 1606, 2692
12.6.701 Personal Flotation Devices and Life Preservers, p. 1960, 267
12.6.707 Definition of "Vessel", p. 1959, 269
12.6.903 Helena Valley Equalizing Regulations, p. 506

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I-XV Licensure Standards for Medical Assistance Facilities, p. 2349, 479, 663
I-XXVI and other rules - Standards and Procedures for Implementation of the Montana Environmental Policy Act, p. 1606, 226, 398
16.8.921 and other rules - Air Quality Permitting of New or Altered Sources of Air Contamination, p. 181, 315
16.8.1407 and other rules - Air Quality - Combustion in Woodwaste Burners - Definitions for Emission Standards for Existing Aluminum Plants - Standards for Visible Emissions in Aluminum Plants, p. 2471, 270
16.20.102 Enforcement Procedures Under the Water Quality Act, p. 2679, 314, 611
16.32.110 Certificate of Need - Criteria for Granting Certificates of Need for Health Care Facilities and Services, p. 2030, 2484
16.44.202 and other rules - Hazardous Wastes - Definitions - Requirements for Samples Collected for Treatability Studies - Requirements for Recyclable Materials - Reclassification to a Material Other than a Waste - Reclassification as a Boiler - Regulation of Certain Recycling Activities - Applicability of Interim Status Requirements - Information Statement for Chapter 44, Subchapter 10 Regarding the Availability of Information, p. 2153, 2485

HIGHWAYS, Department of, Title 18

I Classifying Certain Types of Actions as Categorical Exclusions, p. 508
I-XXVI and other rules - Standards and Procedures for Implementation of the Montana Environmental Policy Act, p. 1606, 2692
18.8.511A Circumstances Under Which Flag Vehicles are Required, p. 1962, 321
18.8.514 and other rule - Special Permits for Length, p. 1964, 2487

JUSTICE, Department of, Title 23

23.3.502 and other rules - Licensing of Commercial Motor Vehicle Endorsements, p. 2680, 486

LABOR AND INDUSTRY, Department of, Title 24

24.11.101 and other rules - Unemployment Insurance, p. 2162, 2723
24.16.9003 Establishing the Standard Prevailing Rate of Wages, p. 375, 665
(Human Rights Commission)
24.9.202 and other rules - Definitions - Investigation - Procedure on Finding of No Cause - Certification - Right to Sue Letters - Issuance of Right to Sue Letter, p. 2539, 487

STATE LANDS, Department of, Title 26

I-V Department of State Lands' Responsibility to Maintain State Land Ownership Records, p. 2546, 667
I-XXVI and other rules - Standards and Procedures for Implementation of the Montana Environmental Policy Act, p. 1606, 28
26.4.301 and other rules - Regulation of Strip and Underground Coal and Uranium Mining, p. 1317, 30, 399

LIEUTENANT GOVERNOR, Title 30

(Statehood Centennial Office)
I and other rule - Grants to the Counties or Organization of Counties - Application Review Procedure, p. 2360, 2743

LIVESTOCK, Department of, Title 32

I Notice of Change of Agent Employment Status, p. 511
32.6.712 State Meat and Poultry Inspection Program,

Notice of Agricultural Lien, p. 3

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46