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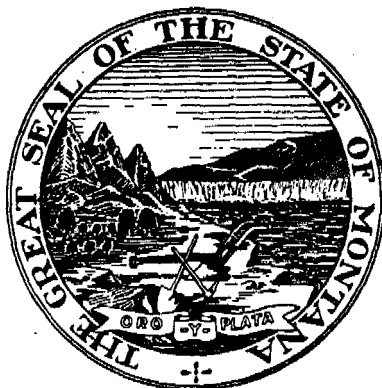
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*FEB 24 1982*

*U.S. DEPT. OF JUSTICE*

**MONTANA  
ADMINISTRATIVE  
REGISTER**

1982 ISSUE NO. 4  
FEBRUARY 25, 1982  
PAGES 320-428



### NOTICE TO ALL MAR SUBSCRIBERS

AS OF JANUARY 1, 1982 THE MONTANA ADMINISTRATIVE REGISTER WILL HAVE A NEW FORMAT TO HELP GUIDE YOU THROUGH THE INFORMATION MAR PROVIDES FOR YOU. THE FOLLOWING IS A LISTING OF THE NEW FORMAT:

- |  |                  |
|--|------------------|
| 1. TABLE OF CONTENTS                                       | WHITE PAGES      |
| 2. NOTICE SECTION  | BUFF PAGES       |
| 3. RULE SECTION  | WHITE PAGES      |
| 4. INTERPRETATION SECTION                                  | WHITE PAGES      |
| 5. NOTICE OF FUNCTIONS OF<br>ADMINISTRATIVE CODE COMMITTEE | GREEN PAGE       |
| 6. HOW TO USE ARM AND MAR                                  | SALMON PAGE      |
| 7. MAR ACCUMULATIVE TABLE                                  | GOLDEN ROD PAGES |
| 8. CROSS REFERENCE TABLE                                   | BLUE PAGES       |
| 9. EMERGENCY RULES (WHEN LISTED)                           | PINK PAGES       |

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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In the matter of the ) NOTICE OF PROPOSED  
amendment of ARM 4.2.303 ) AMENDMENT OF RULE 4.2.303,  
concerning necessity for EIS ) DETERMINATION OF NECESSITY  
 ) FOR ENVIRONMENTAL IMPACT  
 ) STATEMENT NO HEARING  
 ) CONTEMPLATED

1. On March 27, 1982 the Department of Agriculture proposes to amend ARM 4.2.303 concerning necessity for an Environmental Impact Statement.

2. The amendment as proposed would delete in its entirety the following existing subsection (4)(e): (deleted matter underlined).

4. An EIS is not required for the following actions:

(e)-Rule-making:-rules-promulgated-pursuant-to-law

3. The amendment is proposed to make the Department of Agriculture rule in this particular conform with the rules as adopted by the various other Departments in the Executive branch and conform with the intent of the Montana Environmental Policy Act.

4. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than March 25, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than March 25, 1982.

6. If the agency receives requests for a public hearing on the proposed amendment from 25 or more 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.

7. The authority of the Department of Agriculture to make the proposed amendment is based on section 2-3-103, MCA and implements 75-1-201, MCA.

-321-

W. Gordon McOmber  
W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State 2/11/82



BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
repeal of rules 4.9.501	)	REPEAL OF ARM 4.9.501
through 4.9.512, Food &	)	THROUGH 4.9.512
Fuels Program	)	NO HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On March 27, 1982 the Department of Agriculture proposes to repeal ARM 4.9.501 through ARM 4.9.512, appearing as Sub Chapter 5 of Title 4, Chapter 9, Food & Fuels Program, on pages 4-187 through 4-193 of Administrative Rules of Montana.


2. The rules are proposed for repeal as the language therein has become outdated by virtue of a 1981 amendment to the statutory Section which the rules implemented, (Section 80-11-222 MCA). These rules have been replaced by a new set of rules noticed for adoption in Issue No. 18, MAR 1981 at p. 1070.

3. Interested persons may present their data, views or arguments concerning the proposed repeal in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than March 25, 1982.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than March 25, 1982.

5. If the agency receives requests for a public hearing on the proposed amendment from 25 or more 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.

6. The authority of the Department to make the proposed repeal is based on Sec. 80-11-205 MCA.

  
W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State 2/11/82

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 4.4.303 Insured ) OF ARM 4.4.303 INSURED CROPS  
Crops ) NO HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 27, 1982 the Department of Agriculture proposes to amend ARM 4.4.303, Insured Crops.

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

4.4.303 Insured Crops (1) ~~The following crops may be insured at any time to August 15, inclusive.~~ All crops authorized under Sec. 80-2-205 MCA, including the following, may be insured at any time to August 15.


3. The proposed amendment follows the suggestion of the Legislative Audit Committee in its Sunset review pointing out the statutory intent under 80-2-205 MCA to cover all crops and not just those listed in the existing rule. Certain crops remain listed in the rule to serve as an example, rather than to imply they are the only ones eligible.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than March 25, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than March 25, 1982.

6. If the agency receives requests for a public hearing on the proposed amendment from 25 or more 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.

7. The authority of the agency to make the proposed amendment is based on section 80-2-201, MCA, and the rule implements section 80-2-205, MCA.

  
W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State 2/11/82.

4-2/25/82

MAR Notice No. 4-2-71

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF BARBERS

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of ARM 8.10.802 con-) OF ARM 8.10.802 SANITATION  
cerning sanitation require- ) REQUIREMENTS  
ments. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 27, 1982, the Board of Barbers proposes to amend ARM 8.10.802 concerning sanitation requirements.

2. The proposed amendment will read as follows:

"8.10.802 SANITATION REQUIREMENTS (1) A door cannot open directly from a barber shop into a restaurant or a bar.

(2) No hair vacuum with a brush head shall be used in a barber shop on customers.

(3) All tools must be disinfected before use on each patron. All instruments shall be cleaned with water and detergent, then brushed and rinsed with water after each usage. This does not include clipper blades or strops, because it would not be appropriate.

(4) Instruments must be sanitized prior to usage. They must be placed in an approved sanitizing solution for no less than two minutes. Clipper blades are to be sprayed with approved spray which must contain sanitizing agents, or dipped in approved clipper blade solution.

(5) After sanitizing, all tools shall be stored in a clean dry place free from dust and other contamination.

(6) All soiled linens and towels shall be kept in a suitable hamper type container.

(7) Latherizer or other approved method such as Aerosol Lather is to be used.

(8) The barber must wash his/her hands immediately prior to waiting on a customer.

(9) All barbers must be neat and clean in their personal appearance.

(10) The general cleanliness of the barber shop or barber school shall be maintained in a sanitary condition. The back bar or workstands, mirrors and sinks shall be kept in a neat and clean manner.

~~(4)-~~ (11) All new shops licensed after January 1, 1975 must have adequate, clean toilet facilities available for use by their patrons."

3. The board is proposing the amendment as they did not feel their current sanitation rule was sufficient for the protection of the public health and safety and prevention of disease.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Barbers, 1424 9th Avenue, Helena, Montana 59620-0407, no later than March 25, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Barbers, 1424 9th Avenue, Helena, Montana 59620-0407, no later than March 25, 1982.

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

7. The authority of the board to make the proposed amendment is based on section 37-30-203 (2), MCA and implements sections 37-30-403, 422, MCA.

BOARD OF BARBERS  
LAWRENCE SANDRETTO, PRESIDENT

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

BY:   
ROBERT WOOD  
LEGAL COUNSEL

Certified to the Secretary of State, February 11, 1982.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of ARM 8.22.701 con- ) OF ARM 8.22.701 TRAINERS  
cerning trainers )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 27, 1982, the Board of Horse Racing proposes to amend ARM 8.22.701 concerning trainers.

2. The proposed amendment will add new subsections (2) and (3), the current (2), (3) etc will be renumbered. The complete text of the rule is located at pages 8-671 through 8-673 of the Administrative Rules of Montana. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.22.701 TRAINERS (1) ...

(2) Effective January 1, 1982, an applicant may not be issued a trainer license if he fails to attain a passing score of at least 75% on an examination prepared by the board and administered by the state steward. Persons licensed by the board as trainers at any time during the period January 1, 1976 through December 31, 1981 shall be licensed for the 1982 racing season without examination upon application and payment of the license fee. All applicants for a trainer license after the 1982 racing season who were licensed as a trainer by the board in the immediately preceding year shall be licensed without examination upon application and payment of the license fee. Trainers licensed in other racing jurisdictions which are members of the National Associations of State Racing Commissioners and which requires examination for licensure may be licensed without examination upon application and payment of the license fee.

(3) An applicant who fails the examination may be allowed one additional examination during that calendar year.

~~(2)~~ (4) ...

~~(3)~~ (5) ...

~~(4)~~ (6) ..."

3. The board is proposing the amendment to ensure that horses racing in Montana are being handled by persons who have displayed the ability to treat them properly.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to Daniel G. Diemert, 1424 9th Avenue, Helena, Montana 59620-0407, no later than March 25, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request

for a hearing and submit this request along with any written comments he has to Daniel G. Diemert, 1424 9th Avenue, Helena, Montana 59620-0407, no later than March 25, 1982.

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

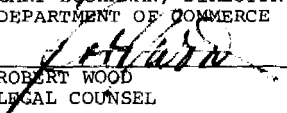
7. The authority of the board to make the proposed amendment is based on section 23-4-104, MCA and implements section 23-4-104 (6), MCA.

BOARD OF HORSE RACING  
HAROLD HOPWOOD  
CHAIRMAN

BY:

  
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

BY:

  
ROBERT WOOD  
LEGAL COUNSEL

Certified to the Secretary of State, February 11, 1982.

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

In the Matter of the	)	NOTICE OF PUBLIC HEARING
Amendment of Rule 8.86.301	)	ON THE PROPOSED AMENDMENT
(6)(g) relating to the	)	OF ARM 8.86.301
calculation of the minimum	)	PRICING RULES
retail price of milk.	)	

TO: All Interested Persons

1. On Friday, April 2, 1982, at 9:30a.m., a hearing will be held in the Conference Room, 1430 9th Avenue, Helena, Montana, to consider the amendment of Rule 8.86.301(6)(g).

2. The proposed rule amendment would change the manner in which the minimum retail price of milk is calculated from a markup of 11 cents to a markup of fifteen percent.

3. Complete text found on pg. 8-2539 of ARM. The rule as proposed to be amended would provide as follows:

"8.86.301 PRICING RULES (1)...

(6)...

(g) The wholesale price of a half ( $\frac{1}{2}$ ) gallon of whole milk will be marked up ~~eleven cents (\$0.11)~~ fifteen percent (15%) to arrive at the retail prices and all other products priced accordingly.

(h)..."

4. The amendment to the rule is being considered as a result of the letter petition of the Montana State Food Distributors Association which requested the change in the manner presented herein.

5. The rationale for the rule change is the petition of the Montana State Food Distributors Association requesting a more favorable pricing system.

6. In its consideration of the proposed change in retail pricing, the Board will consider the following:

The Board takes official notice of information published in the July, 1981 publication of Chain Store Age Supermarkets, pages 38 and 151 regarding a 1980 survey. The information published is for supermarkets which exceed \$1,000,000.00 in sales annually and is as follows:

(a) The survey indicates dairy products are 11.29% of total supermarket sales and fluid milk is 27.66% of total dairy product sales which indicates fluid milk products are approximately 3.12% of total supermarket sales.

The Board takes official notice of a 60 and a 56 store supermarket survey conducted by United Dairy Industry Association which reveals the following:

(a) The 60 Store Supermarket Survey indicated fluid milk product sales were 36.00% of total dairy case sales but occupied only 22.30% of the total cubic feed of display area and 3.82% of total supermarket sales.

(b) The 52 Store Survey indicated white milk turned over five times per week while the average of the whole dairy case turned over one point forty times per week.

(c) A 56 Store Survey in which the store stocks the coolers and shelves indicated an average handling cost of \$0.06475 and \$0.03510 per gallon and half ( $\frac{1}{2}$ ) gallon respectively.

The Board takes official notice of a survey conducted by Milk Control Bureau Auditors' which revealed the following:

(a) A Five Store Supermarket Survey which indicated the dollars spent on fluid milk turned over as follows:

<u>STORE</u>	<u>RATE DOLLAR TURNS OVER</u>
Store #1 . . . . .	2.48
Store #2 . . . . .	2.92
Store #3 . . . . .	2.64
Store #4 . . . . .	3.02
Store #5 . . . . .	2.70
Weighted Average . . . . .	2.76

(b) Dairies deliver to these stores between three and four times a week.

The Board further proposes to consider the statutory factors set out in Section 81-23-302(5) (a)-(i) as relevant matters for discussion as well as any other factors which relate to the matters contained in the factors set out above which the Board proposes to take notice of.

"81-23-302 Establishment of minimum prices. (1)...

(5)...

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

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef, cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the 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;

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general 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;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) a reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6)..."

The Board further proposes to take notice of Section 81-23-304 which requires that dairy product purchases must be paid for within 15 days after the close of the month.

The Board further will consider such factors as cost of labor, refrigeration and other factors relating to the cost of retailing fluid milk products.

7. Copies of the documents mentioned in paragraph 6 are available for inspection, during regular business hours, at the offices of the Department of Commerce, 1430 Ninth Avenue, Helena, Montana 59620. Copies will be provided upon request and payment of copying charges. Requests for copies should be made to the Department by visiting or writing the address given in this paragraph or by telephoning (406) 449-3163.

8. 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 Mr. William E. Ross, Bureau Chief, Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620-0422, no later than March 31, 1982.

9. Dave Slovak, Esq. has been designated to preside over and conduct the hearing.

10. The authority of the Board of Milk Control to amend the rule is based on Section 81-23-302, MCA and implements the same section.

BOARD OF MILK CONTROL  
CURTIS C. COOK  
CHAIRMAN

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

Certified to the Secretary of State, February 11, 1982.

-331-  
BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the amend-	) NOTICE OF PROPOSED AMENDMENT
ment of Rule 18.2.101 per-	) OF RULE 18.2.101, Model Pro-
taining to the adoption of	) cedural Rules.
the Attorney General's model	)
rules.	) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 2, 1982, the Department of Highways proposes to amend Rule 18.2.101, Model Procedural Rules.

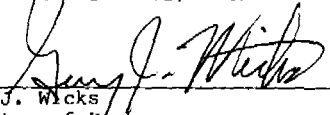
2. The rule as proposed to be amended provides as follows:

18.2.101 MODEL PROCEDURAL RULES (1) Unless otherwise provided by law, the Department of Highways has herein adopted and incorporated the Attorney General's Model Procedural Rules one (1) through thirty-eight (38) by reference to such rules as stated in ARM 1.6.101 through 1.6.233 of this code adopts and incorporates by reference the Attorney General's Model Procedural Rules 1 through 28, ARM 1.3.201 through 1.3.233, for all matters which are within the scope of the Montana Administrative Procedure Act, (Sections 2-4-101 through 2-4-711), MCA. A copy of the model procedural rules may be obtained from the Secretary of State, Montana State Capitol, Helena, Montana 59620.

3. The rule is proposed to be amended to meet the requirements of 2-4-307, MCA, and ARM 1.2.211.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to John L. Prebil, Deputy Director of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 30, 1982.

5. The authority to make the proposed amendment is based on 2-4-201, MCA, and the rule implements 2-4-202, MCA.

  
\_\_\_\_\_  
Gary J. Wicks  
Director of Highways

Certified to the Secretary of State February 11, 1982.

BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PROPOSED ADOPTION OF  
of Rule 18.6.244, relating to) RULE 18.6.244  
cultural signs ) No Public Hearing Contemplated

TO: All Interested Persons:

(1) On the 31st day of March, 1982 the Montana State Highway Commission proposes to Adopt Rule 18.6.244 as follows:

18.6.244 CULTURAL SIGNS (1) Signs or displays advertising cultural exhibits of nonprofit historical or arts organizations may be erected and maintained within 660 feet of the nearest edge of the right of way of Interstate and Primary highways, provided the signs conform to the following standards:

- (a) General - The following signs are prohibited:
- (i) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.
- (ii) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
- (iii) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
- (iv) Obsolete signs.
- (v) Signs which are structurally unsafe or in disrepair.
- (vi) Signs which move or have any animated or moving parts.
- (vii) Signs located in rest areas, parklands or scenic areas.
- (b) Size.
  - (i) NO sign shall exceed the following limits:
    - (A) Maximum area - 150 square feet.
    - (B) Maximum height - 20 feet.
    - (C) Maximum length - 20 feet.
  - (ii) All dimensions include border and trim, but exclude supports.
- (c) Lighting - Signs may be illuminated, subject to the following:
  - (i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.
  - (ii) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or

which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(iii) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) Spacing

(i) Each location of a cultural sign must be approved by the Supervisor, Permit Section, Montana Department of Highways.

(ii) No cultural sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(iii) No cultural sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(iv) No two cultural signs facing the same direction of travel shall be spaced less than one mile apart.

(v) Not more than three cultural signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(vi) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(vii) Signs located adjacent to the Primary System shall be within 50 air miles of the activity.

(e) Message content - The message on cultural signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases and pictorial or photographic representations of the activity or its environs are prohibited.

(f) Qualifying criteria - Privately owned activities or attractions eligible for cultural signing are limited to non-profit historical and arts organizations. To be eligible, privately owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public.

(i) The Montana Department of Highways will make a determination of eligibility for each attraction or activity. In making this determination the Department will, when it is deemed necessary, avail itself of the experience and knowledge of selected groups in the specific type of attraction or activity being considered. These groups shall include but not be limited to, commissions, boards, other agencies and/or other state departments.

(ii) The Department's determination of eligibility is subject to review by the State Highway Commission upon written request of any interested person. Such request must be made

within 30 days of the notification of the determination by the Department to the privately owned activity or attraction. The Commission shall provide the interested person or persons at least 30 days notice of the time and place where the determination of eligibility will be reviewed and shall permit oral or written comments to be submitted.

(2) The proposed Rule does not replace any section currently found in the Administrative Rules of Montana.

(3) The rationale for this Rule's adoption is to allow the Department of Highways to enforce the conformity of the cultural signs to the standards provided for in subsection (1)(f) of 75-15-111, MCA.

(4) Interested parties may submit their data, views or arguments concerning the proposed rule in writing to, W.D. LeRoux, Highway Commission Secretary, 2701 Prospect Avenue, Helena, Montana 59620. Written comments in order to be considered must be received no later than March 26, 1982.

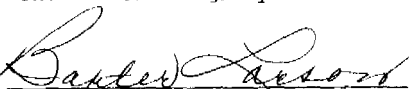
(5) If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with written comments, to Mr. LeRoux at the above-stated address prior to March 26, 1982.

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

(7) The authority of the Commission to make the proposed rule is based on section 75-15-121, MCA, and the rule implements section 75-15-111, MCA.

Montana State Highway Commission

By:

  
Baxter Larson, Chairman

Certified to the Secretary of State February 11, 1982.

BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the Amend-	)	NOTICE OF PROPOSED
ment of Rule 18.8.514	)	AMENDMENT OF RULE
regarding Length for which	)	18.8.514, LENGTH.
Special Permits are issued.	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 29, 1982, the Department of Highways proposes to amend Rule 18.8.514, which pertains to the issuance of Overlength Special Permits.

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

"18.8.514 LENGTH (1) A ~~Single-Trip-or~~ Term Length Permit may be issued up to and including ~~70~~ 85 feet in length.

(2) A Term Length Permit shall not be issued to a single powered vehicle ~~in excess of 50 feet in length.~~

~~(3)---A-Term-Length-Permit-shall-not-be-issued-to-a single-powered-vehicle including load, in excess of 50 feet in length.~~

~~(3) (4)~~ A Trip or Term Length Permit may be issued for travel on Saturdays, Sundays, holidays and at night, to and including 70 feet in length, provided the load shall have lights full width at the extreme rear of the load and the vehicle and load do not exceed the statutory 9 feet in width and 14.5 feet in height.

~~(4) (5)~~ Trip or Term Length Permits may be issued for travel on Saturdays, Sundays, holidays and at night for car carriers consisting of truck and semi trailer with vehicle length up to 70 feet and load length up to 75 feet.

~~(6)---A-Term-Length-Permit-may-be-issued-for-a-long combination-of-vehicles-over-70-feet-to-a-maximum-of-85-feet, provided-vehicle-and-load-do-not-exceed-statutory-width.~~

~~(7)---Application-must-be-made-by-letter,-which-shall state-the-following.--Necessity-for-use-of-the-vehicle, Detailed-route-or-routes-to-be-travelled,-license-number-of each-vehicle-(if-not-licensed,-VIN-numbers-and-complete description-of-each-vehicle),-and-cargo-to-be-hauled.~~

~~(8)---The-letter-must-be-accompanied-by-a-drawing-of-the combination-showing-the-following--Total-overall-length-of-the-combination,-Tire-size-or-sizes,-and-distance-between each-axle.~~

~~(9)---Each-application-must-be-accompanied-by-a-fee-of \$6.00.~~

~~(10)---These-permits-may-be-issued-only-by-the-G.V.W. Division-Helena-Office.~~

4-2/25/82

MAR NOTICE NO. 18-42

(5) ~~(11)~~ Violations of the permit will be recorded on the permit. Three violations and the permit will be confiscated and cannot be reissued, except by the Helena G.V.W. Office."

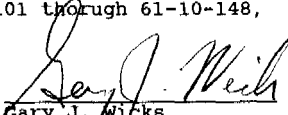
3. The rule is proposed to be amended to clarify wording and change dimension to 85 feet to be consistent with section 61-10-124, MCA. Paragraphs 6, 7, 8, 9, and 10 are proposed to be deleted since the above-mentioned statute allows these permits to be issued without these administrative requirements.

(4) Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Gary J. Wicks, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 26, 1982.

(5) If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any written comments to Gary J. Wicks, Director, Department of Highways, 2701 Prospekt, Helena, Montana 59620, no later than March 26, 1982.

(6) If the Agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 59,800 persons based on the number of licensed Montana drivers.

7. The authority of the Department to make the proposed amendment is based on Sections 61-10-121 and 61-10-122, MCA, and the rule implements Sections 61-10-101 through 61-10-148, MCA.

  
\_\_\_\_\_  
Gary J. Wicks  
Director of Highways

Certified to the Secretary of State February 11, 1982.

-337-  
BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the Amendment	)	NOTICE OF PROPOSED
of Rules 18.8.505 and 18.8.1001	)	AMENDMENT OF RULE
regarding Oversize Permits and	)	18.8.505, FEE FOR
Fees charged.	)	PERMITS, AND RULE
	)	18.8.1001, OVERSIZE
	)	PERMIT.

NO PUBLIC HEARING  
CONTEMPLATED.

TO: All Interested Persons

1. On March 29, 1982, the Department of Highways proposes to amend Rule 18.8.505 which specifies the fees for oversize permits.

2. The rule as proposed to be amended is as follows:  
"18.8.505 FEE FOR PERMITS (1) The fees for permits for dimensions exceeding statutory limits are:

- (a) Single Trip Permit, ~~\$6-00~~ \$10.00.
- (b) Term Permit, ~~\$6-00~~ \$75.00.
- (c) G.V.W. Form 71, No Fee - Issued to U.S. Government, all state, city, county, and political subdivisions of same and other governments."

3. The rule is proposed to be amended to reflect the increase in fees provided in Section 5, Chapter 40, Laws of 1981 (Senate Bill No. 346), which amended 61-10-124, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Gary J. Wicks, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 26, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any written comments to Gary J. Wicks, Director, Department of Highways, 2701 Prospect, Helena, Montana 59620, no later than March 26, 1982.

6. If the Agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 59,800 persons based on the number of licensed Montana drivers.

7. The authority of the Department to make the proposed amendment is based on section 61-10-124, MCA, and the rule implements sections 61-10-101 through 61-10-148, MCA.

1. On March 29, 1982, the Department of Highways proposes to amend Rule 18.8.1001 regarding oversize permits issued to mobile homes.

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

"18.8.1001 OVERSIZE PERMIT (1) A Trip or Term Permit fee is ~~\$6.00~~ \$10.00 and \$75.00 respectively for overlength, overwidth, or a combination of overlength and overwidth.

(2) A Term Permit shall expire with the license or G.V.W. fee, whichever is the lesser period of time. Example: A permit issued to a unit licensed with a Trip Permit would expire in 72 hours. Term permits expire December 31 and are extended to the grace period of the license or gross weight fees, whichever is the lesser.

(3) A Term Permit will be issued for a mobile home that is 15 feet wide and does not exceed 70 feet in length. The measurement for permit length shall not include the towing vehicle.

(4) Single Trip Permits are required for a mobile home that exceeds seventy (70) feet in length."

3. The rule is proposed to be amended to reflect the increase in fees provided in Section 5, Chapter 40, Laws of 1981 (Senate Bill No. 346), which amended 61-10-124, MCA.

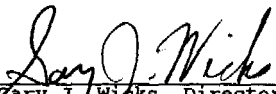
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Gary J. Wicks, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 26, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any written comments to Gary J. Wicks, Director, Department of Highways, 2701 Prospect, Helena, Montana 59620, no later than March 26, 1982.

6. If the Agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 59,800 persons based on the number of licensed Montana drivers.

7. The authority of the Department to make the proposed amendment is based on sections 61-10-121 and 61-10-122, MCA, and the rule implements sections 61-10-101 through 61-10-148, MCA.

  
\_\_\_\_\_  
Gary J. Wicks, Director  
Department of Highways

Certified to the Secretary of State, February 11, 1982.

BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rule 18.8.422	)	OF RULE 18.8.422, TEMPORARY
regarding fees and condi-	)	TRIP PERMITS.
tions of issuance of	)	
Temporary Trip Permits.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Interested Persons

1. On March 29, 1982, the Department of Highways proposes to amend Rule 18.8.422 regarding the fees and conditions for issuance of Temporary Trip Permits.

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

"18.8.422 TEMPORARY TRIP PERMITS (1) The time limit on all trip permits shall be 72 hours. For extension of Temporary Trip Permits, see paragraph (9).

(2) Vehicles used by displays or exhibitions (including circuses and carnivals) may be endorsed to cover the period of their schedule for a single trip through the State. The last date the vehicle is to be in Montana is ~~punched~~ shown as the expiration date of all Temporary Trip Permits issued to displays, carnivals, and circuses.

(3) The fees are as follows:

(a) ~~\$5.00~~ \$10.00 each vehicle for each trip of 200 miles or less.

(b) ~~\$7.50~~ \$15.00 for each vehicle for each trip over 200 miles and up to 400 miles.

(c) ~~\$10.00~~ \$20.00 for each vehicle for each trip over 400 miles.

(4) Each truck, each truck tractor, each trailer, and each semi trailer within a combination of vehicles shall purchase a trip permit.

(5) A trip shall be the total number of miles travelled in Montana by each vehicle.

(6) Each vehicle or each truck or trailer in a combination of vehicles with a gross weight of over 6,000 pounds travelling under the following conditions is required to purchase a Temporary Trip Permit:

(a) Vehicles titled or domiciled in a state not having a reciprocal agreement with the State of Montana.

(b) Non-reciprocal dealers plates.

(c) Commercial busses or charter busses operating from non-reciprocal states.

(d) House trailers being transported for sale or resale by use of non-reciprocal dealers plates.

(e) All non-resident intransit plates, or special permits, including intransit plates used to transport house trailers.

(f) Vehicles travelling with improper proration - weight or license.

(g) All non-resident trucks or trailers not carrying proper registration cards or papers showing state of domicile.

(h) All vehicles a part of an interstate fleet not prorated as required by reciprocal agreements, including prorated vehicles without proper papers.

(i) All non-resident vehicles hauling loads in excess of license of state of domicile.

(j) All non-resident vehicles not currently licensed.

~~(k)---Non-resident-self-propelled-combines.~~

(7) Exceptions are: (a) Non-resident vehicles properly licensed from states with which Montana has reciprocity on gross weight fees.

(b) Non-resident house trailers properly licensed in another state, the principle use of which is living quarters, temporary or permanent.

(c) Non-resident vehicles travelling on Montana trip permits are not required to purchase Montana license plates.

(d) Montana Temporary Trip Permits shall not be issued to resident vehicles.

(e) Trailers drawn by trucks or tractors licensed under Schedule III, including prorated, are not subject to Trip Permits.

(f) Vehicles with less than three axles licensed in an I.R.P. jurisdiction.

(g) Vehicle or combination of vehicles not exceeding 26,000 pounds gross vehicle weight licensed in an I.R.P. jurisdiction.

(8) Non-resident vehicles licensed with a Temporary Trip Permit may perform an intrastate movement.

(9) Upon application to a G.V.W. Enforcement Officer or a Highway Patrolman, a trip permit may be extended by his endorsement for up to 15 days in an emergency, such as mechanical breakage or unsafe road conditions.

(10) Upon application to a G.V.W. Enforcement Officer or Highway Patrolman, a permit may be extended for a period of a holiday or weekend where the Enforcement Officer or Patrolman has knowledge that the vehicle could not load or unload. The extension shall be limited to the period of the holiday.

(11) Extension of Temporary Trip Permits for additional miles may be accomplished as follows: Example: Truck "X" enters the State at Monida to travel to Dillon and return to Monida - a total of 130 miles. The fee collected would be ~~\$5.00~~ \$10.00 (under 200 total miles). At Dillon, Truck "X" is instructed by the home office to

travel to Williston, North Dakota via Great Falls, Havre and Culbertson - the distance being 684 miles from Monida. The truck immediately is subject to a new trip permit for over 400 miles at a fee of ~~\$10.00~~ \$20.00. The permit cannot be extended for an additional ~~\$5.00~~ \$10.00. A new permit at full fee must be purchased for the total number of miles the vehicle will travel in the State of Montana in the single trip."

3. The rule is proposed to be amended to reflect the increase in fees provided in Section 6, Chapter 40, Laws of 1981 (Senate Bill No. 346), which amended 61-10-211, MCA.

The word "punched" is being changed to "shown" in paragraph (2) to correspond with the new permit design recently implemented.

Sub-paragraph (k) in paragraph (6) is being deleted to conform to the provisions of 15-24-1001, MCA.


Sub-paragraphs (f) and (g) are being added to paragraph (7) to reflect changes in the International Registration Plan of which Montana is a member.

(4) Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Gary J. Wicks, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 26, 1982.

(5) If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any written comments to Gary J. Wicks, Director, Department of Highways, 2701 Prospect, Helena, Montana 59620, no later than March 26, 1982.

(6) If the Agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 900 persons based on the number of out-of-state carriers licensed under apportional registration.

7. The authority of the Department to make the proposed amendment is based on Section 61-10-212, MCA, and the rule implements Sections 61-10-211 through 61-10-214, MCA.

  
\_\_\_\_\_  
Gary J. Wicks  
Director of Highways

Certified to the Secretary of State February 11, 1982.

BEFORE THE DEPARTMENT OF INSTITUTIONS  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
adoption of rules concerning	)	ADOPTION OF RULES
resident reimbursement at	)	(Resident Reimbursement -
community correctional	)	Community Correctional
centers	)	Centers)
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On March 27, 1982, the Department of Institutions proposes to adopt rules concerning the charging of reasonable rates for board and room to the persons residing in community correctional centers.

2. The proposed rules provide as follows:

Rule I RESIDENT REIMBURSEMENT (1) Upon arrival at the community correctional program, each resident will pay a minimum of \$3.00 for each day they reside at the program. In the event of a situation which causes a resident's absence from the program (i.e., hospitalization, court order, AWOL, etc.) all costs will be suspended after five consecutive days of absence; until such time as the resident may be reinstated.

(2) Those residents employed on a full time basis will contribute 20% of their earnings, after federal and state taxes and FICA, while in the program - less the following exemptions:

- (a) court ordered restitution
- (b) court ordered fines
- (c) court ordered child support
- (d) medical, dental or pharmaceutical costs paid by the resident.

(3) Residents using the above exemptions will still be required to pay the \$3/day minimum, however, no resident of the center will be required to pay more than \$250.00 per month for reimbursement.

AUTH: 53-1-501 MCA IMP: 53-1-501 MCA

Rule II DETERMINATION OF ABILITY TO PAY (1) The director of the department of institutions may delegate the program managers of the respective centers to determine their residents' ability to pay and submit monthly reports (certification) of their residents' financial status.

- (a) Reports shall be submitted by the tenth working day of the month following.
- (b) This report shall include the number of days per month the resident has been in the program; gross income

during the month; and the cost of reimbursement due based on the criteria in Rule I (2).

(c) Residents shall submit payment by money order payable to the "Montana State Treasurer" and mail to the department of institutions, corrections division. These funds will be deposited in the general fund.

AUTH: 53-1-501 MCA IMP: 53-1-501 MCA

Rule III DAILY RATE - EXCEPTION (1) The program manager of the centers may request that the payment of board and room be waived based on the ability to pay should a resident become enrolled in a full time vocational, or educational or treatment program. Payment will be charged for each day the resident is in the center until the actual date of attendance at the school, training or treatment program.

(a) Residents attending part time educational or training programs will be subject to pay \$3/day as set forth in Rule I (1).

AUTH: 53-1-501 MCA IMP: 53-1-501 MCA

Rule IV PERSONAL EXPENSES (1) All residents shall pay for their own clothing, personal toiletry articles, any leisure time activity costs and medical and dental expenses. In addition, they shall be responsible for damages to the center or damages to items issued on their behalf.

AUTH: 53-1-501 MCA IMP: 53-1-501 MCA

3. The rationale for these rules is located in Section 53-1-501 MCA which specifies that the department shall establish and charge reasonable rates for board and room for persons committed to any residential community correctional programs operated by the department.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, MT 59620, no later than March 25, 1982.

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 Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana, 59620, no later than March 25, 1982.

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 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 75 persons based on the 750 male and female inmates currently in the custody of the Department of Institutions.

7. The authority of the department to make the proposed rules is based on Section 53-1-501 MCA, and the rules implement Section 53-1-501 MCA.

Carroll V. South, Director  
Department of Institutions

BY: 

Certified to the Secretary of State February 16,  
1982



BEFORE THE BOARD OF OIL  
AND GAS CONSERVATION

In the matter of the amendment ) NOTICE OF PROPOSED AMENDMENT  
of Rule 36.22.1308 to authorize ) OF RULE 36.22.1308, PLUGGING  
the acceptance of property bonds) AND RESTORATION BOND  
from surface owners for domestic)  
use of non-commercial gas wells.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On April 8, 1982, the Board of Oil and Gas Conservation (Board) proposes to amend 36.22.1308 which requires that an owner planning to drill or produce an oil or gas well file a bond conditioned for the performance of the duty to properly plug each dry or abandoned well and to restore the surface of the location to its original contours insofar as such restoration is practicable.

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

"36.22.1308 PLUGGING AND RESTORATION BOND (1) The Board, except as hereinafter provided, shall require from the owner a good and sufficient bond on either Form No. 3 or Form No. 14 in the sum of \$5,000.00 where one well is to be drilled to any depth payable to the State of Montana conditioned for the performance of the duty to properly plug each dry or abandoned well and to restore the surface of the location to its original contours insofar as such restoration is practicable, unless the owner of the surface requests otherwise and executes a release to that effect in accordance with the rules of the Board.

(2) It is further provided that where the owner is to drill more than one well, the Board shall require from such owner a good and sufficient bond on either Form No. 3 or Form No. 14, in the sum of \$10,000.00 payable to the State of Montana and conditioned as provided above. Upon acceptance and approval by the Board, such bond shall be considered as being in compliance with the foregoing provisions. The Board shall require an increase by appropriate rider of any bond from \$5,000.00 to \$10,000.00 or from \$10,000.00 to \$20,000.00 when in the opinion of the Board the factual situation warrants such an increase in order for any owner to be in compliance with this rule.

(3) Said bond shall remain in force and effect until the plugging and restoration of the surface has been approved by the Board or a new bond is filed by a successor in interest or the bond is released by the Board. Upon release by the Board, said bond may be terminated and cancelled.

(4) Where the owner of the surface of land upon which a non-commercial gas well has been drilled acquires the well for

domestic purposes, the bond provided by the person who drilled the well will be released if said surface owner furnishes a property bond in the amount of \$10,000.00 on Form No. 18.

3. The Board proposes to amend the rule to authorize acceptance of property bonds from surface owners who are able to acquire a non-commercial gas well for domestic purposes. The Board of Oil and Gas is initiating these rulemaking proceedings to facilitate the transfer of non-commercial wells from mineral developers to surface owners to encourage the beneficial use of the resource. Surface owners have been denied this option in many instances because it is a financial hardship for them to post a cash bond, and surety companies have routinely refused to write plugging and restoration bonds for surface owners.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than March 29, 1982.

5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than March 29, 1982.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 at least greater than 25 persons based on the Board's determination that there are more than 250 persons who own surface acreage underlain by potential natural gas reservoirs who may at some time be able to acquire a non-commercial gas well for domestic use.

7. The authority of the Board to make the proposed amendment is based on Section 82-11-111, MCA, and the rule implements Section 82-11-123, MCA.

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

BY: Dee Rickman  
Dee Rickman  
Assistant Administrator  
Oil and Gas Conservation District

Certified to the Secretary of State February 11, 1982.

4-2/25/82

MAR Notice No. 36-27

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

In the matter of the adoption )	NOTICE OF PUBLIC HEARING
of rules pertaining to the )	ON THE PROPOSED ADOPTION
low income energy assistance )	OF RULES PERTAINING TO THE
program )	LOW INCOME ENERGY ASSIST-
)	ANCE PROGRAM

TO: All Interested Persons

1. On March 18, 1982, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of rules pertaining to the Low Income Energy Assistance Program.

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

RULE I (46.13.101) SAFEGUARDING/SHARING INFORMATION

(1) Disclosure of information concerning applicants for or recipients of low income energy assistance is restricted to purposes directly connected with the administration of such aid. Such purposes include establishing eligibility, determining amount of assistance, and providing benefits to or on behalf of applicants and recipients.

(a) Proper requests for information from a government authority, a court, or a law enforcement agency will be honored and the information released along with a notification of the confidentiality of the information and the penalty for misuse of such information. Whenever possible, the department will attempt to obtain prior consent from the applicant or recipient, except in emergency situations where notification will be given after the release of information and in cases where the information is released for legal and investigative actions concerning fraud, collection of support and third party medical recovery.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE II (46.13.102) ROLE OF THE LOCAL CONTRACTOR

(1) The department will contract with appropriate community-based organizations in the state to provide outreach and to receive and process applications for the low income energy assistance program.

(a) In providing outreach, the local contractor performs specified activities designed to inform all potentially-eligible households in the contract area of the existence of and the benefits available under the low income energy assistance program.

(b) In receiving and processing applications, the local contractor determines household eligibility and benefit award under the rules contained in this chapter.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE III (46.13.104) FAIR HEARINGS (1) Any person who is dissatisfied with action taken on an application, benefit status, form or condition of payment, may request a fair hearing as provided in ARM 46.2.202.

(2) It is the responsibility of the department through the local contractor to inform every applicant/recipient in writing at the time of application and at the time any action affects his benefits of the right to request a fair hearing.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE IV (46.13.105) REFERRALS TO THE DEPARTMENT OF REVENUE (1) When requested by the department, the department of revenue shall have the power and duty to:

(a) investigate matters relating to low income energy assistance including, but not limited to, the claim for an acceptance of benefits by recipients and the receipt and disbursement of funds by the department or the local contractor; and

(b) institute civil and criminal actions in the appropriate courts to enforce the welfare laws with respect to low income energy assistance and violations thereof.

(2) The program integrity bureau is the liaison between the department and the department of revenue. Referrals of fraud and requests for investigation must be sent to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, before they are referred to the department of revenue. When the department of revenue makes a direct request to the local contractor for case information, the information may be sent directly to the department of revenue.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE V (46.13.106) FRAUD (1) Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device low income energy assistance to which he is not entitled is guilty of theft as provided in 45-6-301, MCA.

(2) If an individual appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the program integrity bureau. The bureau may in turn refer the matter to the department of revenue or the county attorney of the county in which the recipient resides for further action.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE VI (46.13.107) OVERPAYMENTS AND UNDERPAYMENTS

(1) When it is discovered that an administrative error resulted in an underpayment of low income energy assistance, it may be corrected by increasing the benefit award to cover the underpayment.

(a) For purposes of determining financial eligibility, such retroactive corrective payments shall not be considered as income.

(2) Current and future payments of low income energy assistance will be reduced the full amount of prior overpayments, unless the administrative cost would exceed the amount of overpayment.

(a) However, cases in which the recipient willfully made false statements causing overpayment are to be referred to the program integrity bureau for determination of fraud as provided in 46.13.106.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE VII (46.13.201) INTERVIEWS REQUIRED AND CONTENT OF INTERVIEWS (1) Rights and responsibilities explained.

(a) A staff member of the local contractor shall interview all applicants or persons authorized to act responsibly on behalf of applicants who contact the offices of the local contractor to apply for low income energy assistance. During the first interview, the staff member shall explain the person's rights, outline his responsibilities and describe the process in the system which may affect the client.

(2) The staff member shall explain to the person applying all factors of eligibility which must be substantiated and assist the person to understand the regulations governing his eligibility and receipt of benefits. The staff member shall inform the client of the availability of the regulations affecting eligibility as found in the Administrative Rules of Montana, copies of which are available and may be inspected in the offices of the clerk and recorder and the clerk of court in each county.

(3) No person shall be excluded from participation in, be denied benefits, or be subject to discrimination under the low income energy assistance program on the grounds of race, color, religion, sex, culture, age, creed, marital status, physical or mental handicap, political beliefs, or national origin.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE VIII (46.13.202) APPLICATIONS TO BE VOLUNTARY

(1) Applications must be voluntary and initiated by the person in need. There shall be no requirement of pre-application proof of eligibility; however, the applicant shall have the burden of proving eligibility at the time of application. The authority to proceed with a determination of eligibility for low income energy assistance is the signed application of the person who applies. When a case has been closed, application must be made for reinstatement of benefits. An application may be made by a third party when the physical or mental condition of the needy person precludes his ability to make application himself.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE IX (46.13.203) PLACE OF APPLICATION (1) The place of application shall not be closed for any portion of the working day or working week.

(2) Applications are to be made at the office of the local contractor in the area where the person lives. When conditions preclude a person from visiting the local contractor's office to make application, he shall have an opportunity to make application through the mail, at a mutually agreed place, by telephone with the staff-completed application mailed to the applicant for signature, or through a home visit by a member of the local contractor's staff.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE X (46.13.204) INVESTIGATION OF ELIGIBILITY

(1) Investigations of eligibility will include securing information from the person applying for or receiving benefits and such other investigation as may be determined necessary by the department.

(a) Each application for assistance will be promptly and thoroughly investigated by a staff member of the local con-

tractor. If a case is picked for quality control review, the client must cooperate.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XI (46.13.205) PROCEDURES FOLLOWED IN PROCESSING

APPLICATIONS (1) Procedures followed in determining eligibility for low income energy assistance are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and benefit award. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons for approval or disapproval of his application.

(b) Financial eligibility requirements that must be verified are:

(i) current receipt of benefits under supplemental security income or aid to families with dependent children;

(ii) income;

(iii) medical deductions;

(iv) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education.

(c) Benefit award requirement which must be verified is any credit balance with previous fiscal year's fuel vendor(s), if applicable.

(d) If reasonable doubt exists as to the accuracy of the information provided by the client, the type of dwelling, including the number of bedrooms and/or the primary heating fuel/vendor must also be verified.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XII (46.13.206) NOTIFICATION OF ELIGIBILITY

(1) An individual who makes application for low income energy assistance will receive written notice of eligibility within 45 days of the date of application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the local contractor immediately following final decision on the application.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XIII (46.13.207) NOTICE OF ADVERSE ACTION (1) Each person who receives assistance must be notified ten days in advance of any action that terminates or reduces his benefits. Notification must be in writing and contain information about the amount of decrease or the closure, the reason and legal basis for the action, and must advise the client of the date on which the action will take effect. The notice must inform the client of his right to a fair hearing.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XIV (46.13.301) DEFINITION OF HOUSEHOLD

(1) Financial eligibility standards are implemented throughout the state and are applied to applicants on the basis of households.

(2) A household consists of all individuals who share a single primary heating source and who live in a single shelter or rental unit.

(3) An unborn child may not be counted as a member of the household.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XV (46.13.302) ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS

(1) Except as provided below, households which consist solely of members receiving supplemental security income, aid to families with dependent children, or general assistance are automatically financially eligible for low income energy assistance. "Members receiving SSI, AFDC, or general assistance" includes any financially responsible relative or individual whose income and resources were considered in determining eligibility for these programs.

(2) Households which consist of members receiving SSI, AFDC, or general assistance and other individuals whose income and resources were not considered in determining eligibility for SSI, AFDC, or general assistance are not automatically eligible for low income energy assistance but must meet the financial requirements set forth in this sub-chapter.

(3) Individuals living in licensed group-living situations or subsidized housing, including recipients of SSI, AFDC, or general assistance, are not eligible for low income energy assistance.

(4) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent child for federal income tax purposes by a taxpayer who is not a member



of an eligible household are ineligible for low income energy assistance.

(a) An institution of higher education means a college, university, or vocational or technical school at the post-high school level.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XVI (46.13.303) TABLES OF GROSS RECEIPTS AND INCOME STANDARDS

(1) The gross receipts standards in the table in (2) below are 250% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to households with income from self-employment. Self-employed households with annual gross receipts at or below 250% of the 1982 poverty level are financially eligible for low income energy assistance only if they further meet the adjusted gross income test as set forth in (3) and (4) below.

(2) Gross receipts standards for households with self-employment income:

Number of individuals in household	Annual gross receipts for self-employed households
1	\$10,775
2	14,225
3	17,675
4	21,125
5	24,575
6	28,025
Each additional member	3,450

(3) The income standards in the table in (4) below are 125% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to all households, including self-employed households that meet the gross receipts test set forth in (1) and (2) above. Households with adjusted gross income at or below 125% of the 1982 poverty level are financially eligible for low income energy assistance.

(4) Adjusted gross income standards for all households:

Number of individuals in household	Annual adjusted gross income for all households
1	\$ 5,388
2	7,113
3	8,838
4	10,563
5	12,288
6	14,013
Each additional member	1,725

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XVII (46.13.304) INCOME (1) Definitions:

(a) Annual gross income applies to households with income from other than self-employment only and means all non-excluded income before deductions, including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, worker's compensation, unemployment compensation, and capital gains received by the members of the household in the twelve months immediately preceding the month of application.

(b) Annual gross receipts apply to households with income from self-employment and mean all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the twelve months immediately preceding the month of application.

(c) Medical deductions mean all medical payments for allowable medical costs, as described in (4), made by members of the household in the twelve months immediately preceding the month of application. Medical deductions may not include medical payments by the household which are reimbursable by a third party.

(d) Self-employment deductions means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.

(e) For households with self-employment income, annual adjusted gross income means annual gross receipts minus medical deductions and self-employment deductions. For all other households, annual adjusted gross income means annual gross income minus medical deductions.

(2) Excluded from income are the following types of unearned income:

(a) complementary assistance from other agencies and organizations which consists of goods and services not included in or duplicated by the low income energy assistance benefit award;

(b) home produce utilized for household consumption;

(c) undergraduate student loans and grants for educational purposes made or insured under any program administered by the commissioner of education;

(d) extension of OASDI benefits for 18 to 22 year olds who are full time students;

(e) the value of the food stamp coupon allotment;

(f) the value of U.S. department of agriculture donated foods;

(g) any benefits received under Title III of the Nutrition Program for the Elderly of the Older Americans Act of 1965 as amended;

(h) the value of supplemental food assistance received under the Child Nutrition Act of 1966, and the special food services program for children under the National School Lunch Act (P.L. 92-433 and P.L. 93-150);

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims shall be excluded as authorized by P.L. 93-134, 92-254, 94-540 and 94-114;

(j) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(k) the tax exempt portions of payments made pursuant to P.L. 92-203, the Alaska Native Claims Settlement Act;

(l) all payments under Title I of the Elementary and Secondary Education Act;

(m) all weekly incentive allowances paid under P.L. 93-203, the Comprehensive Employment and Training Act of 1973;

(n) earnings or allowances paid to participants of any youth employment programs established under P.L. 95-524;

(o) incentive payments or reimbursement of training-related expenses made to work incentive program participants by the manpower agency;

(p) payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as senior health aides, or senior companions, and to persons serving in service corps of the retired executives and active corps of executives, and any other program under Titles II and III of P.L. 93-113; and

(q) payments to individual volunteers under Title I (VISTA) of P.L. 93-113, pursuant to section 404(g) of that law.

(3) Also excluded from income are one-time insurance payments or compensation for injury not to exceed \$10,000.

(4) Allowable medical costs are:

(a) medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional;

(b) hospitalization or outpatient treatment, nursing care, and nursing home care provided by a facility recognized by the state, including payments by the household for an individual who was a household member immediately prior to entering such a facility;

(c) prescription drugs when prescribed by a licensed practitioner and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional;

(d) medical supplies and sickroom or other equipment prescribed by a licensed practitioner or other qualified health professional;

(e) health and hospitalization insurance policy premiums, except that the costs of health and accident policies, such as those payable in lump sum settlements for death or

dismemberment, or other income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled, are not deductible;

(f) premiums related to coverage under Title XVIII, Medicare, of the Social Security Act;

(g) cost-sharing or spenddown expenses incurred by medicaid recipients;

(h) dentures, hearing aides, and prosthetic devices;

(i) seeing eye or hearing dogs, including the cost of securing and maintaining such dogs;

(j) eye glasses prescribed by a physician skilled in eye diseases or by an optometrist.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XIII (46.13.305) RESOURCES (1) Financial eligibility for the low income energy assistance program will be determined without consideration of real or personal, tangible or intangible assets owned by members of the household.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XIX (46.13.401) BENEFIT AWARD MATRICES

(1) Definitions:

(a) LC means local contractor.

(b) MPC means Montana Power Company.

(c) MDU means Montana-Dakota Utilities.

(d) GFG means Great Falls Gas Company.

(e) Single family unit means a building which contains a single shelter or rental unit for living purposes. For purposes of the program, a double wide trailer or mobile home is considered a single family unit.

(f) Multi-family unit means a building which contains two or more shelter or rental units for living purposes. For purposes of the program, a duplex and a home with a basement apartment are considered multi-family units.

(g) Mobile home means a single wide trailer or mobile home only.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru March). The maximum benefit varies by type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. The maximum benefit also varies by local contractor districts to account for weather differences across the state.

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield,  
McCone, Richland, Dawson, Prairie, Wibaux, Rosebud,  
Treasure, Custer, Fallon, Powder River and Carter Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	278	194	340	238
Fuel Oil	746	522	910	637
Propane	561	393	685	480
Electricity				
M.P.C.	342	239	417	292
Electricity				
M.D.U.	769	538	947	663
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	386	270	432	302
Fuel Oil	1000	725	1000	811
Propane	779	546	873	611
Electricity				
M.P.C.	474	332	532	372
Electricity				
M.D.U.	1000	704	1000	833
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT IV

Liberty, Hill and Blaine Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	275	197	350	245
Fuel Oil	730	511	890	623
Propane	622	435	760	532
Electricity	348	244	425	298
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	407	285	463	325
Fuel Oil	1000	709	1000	794
Propane	864	605	967	677
Electricity	483	338	542	379
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT V

Glacier, Toole, Pondera, Teton,  
Chouteau and Cascade Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single	Multi-Family	Single	Multi-Family
	Family Unit	Unit or Mobile Home	Family Unit	Unit or Mobile Home
Natural Gas				
G.F.G.	257	180	330	231
Natural Gas				
M.P.C.	238	166	305	213
Fuel Oil	650	455	793	555
Propane	479	335	586	410
Electricity	310	217	379	265
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single	Multi-Family	Single	Multi-Family
	Family Unit	Unit or Mobile Home	Family Unit	Unit or Mobile Home
Natural Gas				
G.F.G.	385	269	440	308
Natural Gas				
M.P.C.	355	249	406	284
Fuel Oil	902	631	1000	707
Propane	666	466	745	522
Electricity	431	302	483	338
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheatland,  
Golden Valley and Musselshell Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	238	166	305	213
Fuel Oil	666	466	814	570
Propane	516	361	631	442
Electricity	310	217	379	265
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	355	249	406	284
Fuel Oil	925	648	1000	725
Propane	718	502	803	562
Electricity	431	302	483	338
Coal	270	225	315	270
Wood	325	260	390	325



MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,  
Yellowstone and Big Horn Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single	Multi-Family	Single	Multi-Family
	Family Unit	Unit or Mobile Home	Family Unit	Unit or Mobile Home
Natural Gas				
M.D.U.	231	161	282	197
Natural Gas				
M.P.C.	254	178	324	227
Fuel Oil	574	402	701	491
Propane	466	326	569	398
Electricity	284	199	347	243
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single	Multi-Family	Single	Multi-Family
	Family Unit	Unit or Mobile Home	Family Unit	Unit or Mobile Home
Natural Gas				
M.D.U.	320	224	359	251
Natural Gas				
M.P.C.	376	263	429	300
Fuel Oil	797	558	893	625
Propane	647	453	724	507
Electricity	394	276	442	309
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT VIII

Lewis & Clark, Jefferson and  
Broadwater Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	682	477	832	582
Propane	581	407	711	498
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	947	663	1000	735
Propane	808	566	904	633
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT IX

Meagher, Gallatin and Park Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	665	466	812	568
Propane	566	396	692	484
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	923	646	1000	716
Propane	786	550	880	616
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT X

Lincoln, Flathead, Lake  
and Sanders Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	255	179	326	228
Fuel Oil	716	501	874	612
Propane	586	410	716	501
Electricity	464	325	567	397
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	380	266	433	303
Fuel Oil	995	697	1000	779
Propane	814	570	912	638
Electricity	644	451	729	510
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	687	481	840	588
Propane	550	385	673	471
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	955	669	1000	741
Propane	764	535	855	599
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,  
Beaverhead and Madison Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	653	457	798	559
Propane	581	407	667	466
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	907	635	1000	704
Propane	808	566	904	633
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XX (46.13.402) DETERMINING BENEFIT AWARD

(1) Benefit awards will be made to eligible households in accordance with the following, except that for households that are billed for energy costs directly by the primary fuel vendor and that also received assistance in the previous year only an adjusted award will be made. The adjusted award will be arrived at by subtracting from the household's benefit award any funds from the previous program year remaining in any of the household's fuel vendor accounts. This will be accomplished by subtracting from the household's benefit award the credit balances in any of the household's fuel vendor accounts as of September 30, unless the household can establish through documentation the amount of the credit balances which are not associated with last year's program funds.

(a) For applications filed in October, November, and December, households found eligible will be awarded the full amount of the benefit award matrix.

(b) For applications filed in January, households found eligible will be awarded 2/3 of the full amount of the benefit award matrix.

(c) For applications filed in February, households found eligible will be awarded 1/2 of the full amount of the benefit award matrix.

(d) For applications filed in March, the last month in which applications may be filed for the current year's program, households found eligible will be awarded 1/3 of the full amount of the benefit award matrix.

(2) When a household changes residence or type of primary fuel during the heating season but continues to be served by the same fuel vendor, no change-in-circumstance adjustment will be made to the household's benefit award.

(3) When a household changes residence or type of primary fuel during the heating season and is also served by a different fuel vendor, the household may request to have its benefit award recomputed for the new circumstances. The benefit award for the new circumstances will be equal to the benefit award the household would have received had its original application been for the new circumstances times the unused portion of the original benefit award divided by the amount of the original benefit award. The unused portion of the original benefit award reverts to the department.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XXI (46.13.403) METHOD OF PAYMENT (1) Definitions:

(a) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors and which, for applications filed after December 31, are delivered to the household no earlier than the month prior to the month of application. For applications filed after September 30, but before January 1, energy delivered by the household's fuel vendors prior to October 1, are ineligible for payment under the current year's program.

(i) Notwithstanding the above, eligible energy costs may include energy delivered two months prior to the month of application for applications filed after December 31 and may include energy delivered prior to October 1 for applications filed after September 30, but before January 1, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

(2) For eligible households that are billed for energy costs directly by the fuel vendor:

(a) Reimbursement may, with the approval of the department only, be made by check payable to the household for any eligible energy costs which have been paid by the household at the time of the benefit or adjusted award. Paid eligible fuel costs claimed by the household must be supported by fuel receipts.

(b) The amount of the benefit or adjusted award remaining after the application of (a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance attributable to the benefit or adjusted award as of September 30, 1982, will be returned to the department by the fuel vendor.

(3) For eligible households that have their energy costs included in their rental payments:

(a) Reimbursement at the rate of 1/6 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. Reimbursement will be made by check directly payable to the household and in no more than two installments. Paid eligible energy costs claimed by the household must be supported by rent receipts.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XXII (46.13.404) ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS

(1) When funds are not available to serve all eligible households, the department will take the following steps in sequential order as needed:



- (a) reduce the maximum benefit amounts of the benefit award matrices;
- (b) limit eligibility to only financially needy households with a member 65 years of age or older or with a member who is disabled and receiving supplemental security income or social security income based on permanent and total disability;
- (c) deny all subsequent applications.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

RULE XXIII (46.13.501) EMERGENCY ASSISTANCE (1) Emergency assistance under the low income energy assistance program may be provided to an eligible household in the following circumstances only when such circumstances present an imminent threat to the health and safety of the household:

(a) the household's primary supply of energy is interrupted because of weather conditions and another supply or a different type of energy is necessary;

(b) weather or other forces outside the control of the household damages the household's dwelling and causes the dwelling to suffer a severe loss of heat;

(c) hazardous or potentially hazardous conditions exist in the household's home heating system, and safety modifications to the system are required;

(d) any other home heating-related conditions caused by severe weather conditions, fuel shortages and/or acts of God.

(2) Eligibility requirements:

(a) A household eligible for the low income energy assistance program which has an emergency as defined above is eligible for emergency assistance.

(b) A household which would be eligible for the low income energy assistance program had the household applied and which has an emergency as defined above is also eligible for emergency assistance.

(3) Amount of assistance and method of payment:


(a) Emergency assistance payments will be made on behalf of the eligible household for actual costs necessary to alleviate the emergency up to \$250 per year. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

3. On October 22, 1981, the Department of Social and Rehabilitation Services applied for the low income energy assistance funds available to Montana under the Omnibus Budget Reconciliation Act of 1981, and on November 22, 1981, the federal government approved Montana's application for these funds. However, it was not until December 4, 1981, that legislative action through the first Special Session of the 47th Legislature apportioning these funds between the Low Income Energy Assistance Program and social services (Title XX of the Social Security Act) programs was completed. Montana implemented emergency rules on December 15, 1981. Final rules are now proposed to govern the operation of the program until September 30, 1982.

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 March 26, 1982.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 11, 1982.

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

In the matter of the amend-	)	NOTICE OF CHANGE IN HEAR-
ment of Rules 46.12.1201,	)	ING DATE FOR PUBLIC HEAR-
46.12.1202, 46.12.1203 and	)	ING ON PROPOSED AMENDMENT
46.12.1204 pertaining to the	)	OF RULES 46.12.1201,
reimbursement for skilled	)	46.12.1202, 46.12.1203 AND
nursing and intermediate care	)	46.12.1204 PERTAINING TO
services, reimbursement	)	THE REIMBURSEMENT FOR
method and procedures	)	SKILLED NURSING AND INTER-
	)	MEDIATE CARE SERVICES,
	)	REIMBURSEMENT METHOD AND
	)	PROCEDURES

TO: All Interested Persons

1. The March 3, 1982 public hearing has been rescheduled for March 19, 1982, at 1:00 p.m., which will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.12.1201, 46.12.1202, 46.12.1203 and 46.12.1204 pertaining to the reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.

2. Proposed rules were published in the Montana Administrative Register, 1982 Issue No. 3. The rules below incorporate the above mentioned changes and further clarify the indexed onset date for capitalized cost of a nursing home facility.

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

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE APRIL 1, 1979 (1) The rules in effect between April 1, 1979 and December 31, 1980 provide for determining a prospective rate based on prior fiscal year's costs. Those rules further provide for determining rates under an alternative rate review process.

(2) A facility which has entered into an agreement for rate review prior to December 31, 1980, will continue under that agreement for the period covered by the agreement. A facility which has not requested a rate review by December 31, 1980, shall receive a rate determined under the rules that follow.

(3) These rules shall be effective January 1, 1981  
May 1, 1982.

The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-141, MCA.

46.12.1202 PURPOSE AND DEFINITIONS (1) Reasonable cost-related reimbursement for skilled nursing and intermediate care facility services is mandated by section 249 of Public Law 92-603, the 1972 amendment to the Social Security Act. In accordance with section 1902(a)(13)(E) of the Social Security Act, payment for skilled and intermediate nursing care services shall be made through the use of rates which the state determines are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care in conformity with applicable state and federal statutes, regulations, and standards.

(a) The purpose of the following rules is to meet the requirements of Title XIX of the Social Security Act including ~~section 249 of Public Law 92-603 and~~ 42 CFR 447 et seq, while treating the eligible recipient, the provider of services, and the department fairly and equitably.

(b) through (2)(t) remains the same

(u) "Free-standing facility" means a facility in which none of the equipment or structured elements required for licensure are physically or financially shared with a hospital.

(uv) The laws and regulations and federal policies cited in this sub-chapter shall mean those laws and regulations which are in effect as of ~~October 22, 1980~~ October 31, 1981.

The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-141, MCA.

46.12.1203 PARTICIPATION REQUIREMENTS The skilled nursing and intermediate care facilities participating in the Montana medicaid program shall meet the following basic requirements to receive payments for services:

(1) maintain a current license under the rules of the department of health and environmental sciences for the category of care being provided;

(2) maintain a current certification for Montana medicaid under the rules of the department for the category of care being provided;

(3) maintain a current agreement with the department to provide the care for which payment is being made;

(4) have a licensed nursing home administrator or other qualified supervisor for the facility as statutes or regulations may require; and

(5) accept, as payment in full for all operating and property costs, the amounts calculated and paid in accordance with the reimbursement method set forth in these rules; and

(6) a provider maintaining patient trust accounts, must insure that any funds maintained in those accounts are used only for those purposes for which the patient or legal guardian has given written delegation. A provider may not borrow funds from these accounts for any purpose.

The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-141, MCA.

46.12.1204 REIMBURSEMENT METHOD AND PROCEDURES

(1) through (5)(b) remains the same

(c) Allowable property costs shall be limited in the following manner:

(i) The capitalized cost of a facility including the building, leasehold improvements, and fixed equipment shall not exceed the indexed cost per bed of the most recently newly constructed entire free-standing facility participating in the medicaid program which was licensed due to new construction prior to April 30, 1982, and approved according to the certificate of need process prior to April 30, 1982. The basis for indexing the cost per bed of this newly constructed facility shall be the index for construction costs as prepared by marshall valuation service. The indexing period shall be from the year of construction to the rate year using section 98 of the marshall valuation service, western region index for a class B building.

(ii) The capitalized cost of movable equipment shall not exceed the fair market value of the asset at the time of acquisition.

(iii) Property related interest, whether actual interest or imputed interest for capitalized leases, shall not exceed the interest rates available to commercial borrowers from established lending institutions at the date of asset acquisition or at the inception of a lease.

~~(iv) Leases shall be capitalized according to generally accepted accounting principles. Noncapitalized lease costs shall not exceed the sum of the cost per bed as determined according to ARM 46.12.1204(5)(c)(i) plus the applicable interest as determined according to ARM 46.12.1204(5)(c)(iii).~~

(iv) For all leases entered into, assigned, or renewed after May 1, 1982, the allowable lease cost will be determined as though the lessor and lessee are one and the same. The basis for depreciation will be the historical cost of the asset to the lessor adjusted for accumulated depreciation. If historical cost records are not available, an acceptable appraisal for establishing the historical cost must be supplied. Historical cost shall be determined from an appraisal by establishing current replacement cost indexed using section 98 of the marshall valuation service, western

region index for a class B building, back to the date of original construction. To the extent that the lessor can supply acceptable documentation of other allowable costs incurred by the lessor and directly associated with the leased assets, these costs will be included in the basis for determining allowable lease costs.

(v) For all leases originally entered into on or prior to May 1, 1982, not to include renewals or assignments, the allowable lease cost will be determined as stated in ARM 46.12.1204(5)(c)(iv) except that in addition to the allowable property costs of the lessor, the allowable lease cost may include a return on equity to the lessor. The percentage rate of return on equity shall not exceed one and one-half times the average of the rates of interest on special issues of public debt obligations issued to the federal hospital insurance trust fund for each of the months during the provider's fiscal year. The percentage rate is determined by the health care financing agency of the United States department of health and human services.

(vi) Depreciation of real property, but not movable equipment, reported in cost report periods with beginning dates on or after January 1, 1981, shall be based on estimated economic useful lives which have been established by an acceptable appraisal prepared by an appraisal expert as defined in HIM 15 which has been incorporated by reference into this rule (see ARM 46.12.1204(5)). A copy of the appraisal must accompany the cost report. The cost of the original appraisal to determine economic useful life shall be an allowable cost, but the cost of an appraisal to determine the value of assets shall not be an allowable cost.

(5)(d) through (8)(b) remains the same

The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-141, MCA.

4. The Department is proposing these amendments to its rules in order to better accomplish cost containment within the nursing home reimbursement program and to clarify several portions of the current rules. Specifically, the changes proposed involve:

A. Clarification of the Department's policy regarding provider loans from patient trust accounts.

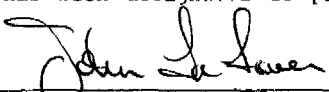
B. Clarification of the Department's policy relative to the determination of allowable lease costs for facility leases entered into on or before March 31, 1982.

C. Changing the method used to determine allowable lease costs. This change applies to leases entered into or renewed on or after May 1, 1982.

D. Revising and clarifying the method used to determine maximum allowable cost per bed for facilities built or sold on or after May 1, 1982.

5. Interested parties may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than March 29, 1982.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation  
Services

Certified to the Secretary of State February 11, 1982.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF THE ADOPTION OF  
of new rules 4.9.310 through ) NEW RULES 4.9.310 THROUGH  
4.9.321 ) 4.9.321

TO: All Interested Persons.

1. On September 30, 1981 the Department of Agriculture published notice of adoption of new rules to replace the existing rules under Title 4, Ch. 9, Sub Ch. 5 concerning the food & fuels program, at p. 1070, Issue No. 18.

2. No comments, requests for hearing or testimony were received, and the rules are adopted as proposed.

3. Certain rules (4.9.301 through 4.9.306) were inadvertently proposed for repeal in the aforementioned notice (Issue 18, p. 1070). As the Department wished to retain those rules, that notice of proposed repeal is herewith announced as abandoned.

  
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W. Gordon McOmber, Director

Montana Department of Agriculture

Certified to the Secretary of State

2/11/82



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the Adoption) NOTICE OF ADOPTION OF CONTINUING  
of continuing education rules) EDUCATION RULES, ARM 8.62.701 -  
8.62.705

TO: All Interested Persons:

1. On December 31, 1981, the Board of Speech Pathologists and Audiologists published a notice of public hearing on proposed continuing education rules at pages 1825 and 1826, 1981 Montana Administrative Register, issue number 24.

2. The hearing was held on January 22, 1982 in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana. Three individuals stated the requirements were excessive in light of the activities available and the geographic location. One of these individuals also commented that credit should not be granted for those individuals serving as instructors.

The board feels that the number of units required are the minimum to have an effective continuing education program and that it would be impractical to have different requirements for different areas in the state. The board also feels that as the credit for instruction is only allowed for the first time a program is presented, the credit is appropriate.

3. For the reasons stated above and those in the notice, the board is adopting the rules exactly as proposed. No other comments or testimony were received.

BOARD OF SPEECH PATHOLOGISTS  
AND AUDIOLOGISTS  
LEE MICKEN, CHAIRMAN

BY:   
GARY BUCHAMAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 11, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the repeal )	NOTICE OF THE REPEAL OF RULES
of 10.55.201, 10.55.301, 10.)	10.55.201, INTRODUCTION; 10.
55.401, and 10.55.501 con- )	55.301, INTRODUCTION; 10.55.401,
cerning introductions to )	INTRODUCTION; and 10.55.501,
various accreditation stan- )	INTRODUCTION
dards )	

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed repeal of rules 10.55.201, 10.55.301, 10.55.401, and 10.55.501, concerning accreditation standards, at page 1349 of the Montana Administrative Register, issue number 21.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

In the matter of the amend- )	NOTICE OF THE AMENDMENT OF
ment of rule 10.57.102 con- )	RULE 10.57.102, DEFINITIONS
cerning certification )	
definitions )	

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed amendment of rule 10.57.102, concerning certification definitions, at page 1325 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the repeal )	NOTICE OF THE REPEAL OF RULE
of rule 10.57.105 concerning )	10.57.105, CERTIFICATION OF
certification requirements )	NON-CITIZEN
for non-citizens )	

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed repeal of rule 10.57.105, concerning certification requirements for non-citizens, at page 1318 of the Montana Administrative Register, issue number 21.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

In the matter of the amend- )	NOTICE OF THE AMENDMENT OF
ment of rule 10.57.501 con- )	RULE 10.57.501, SCHOOL
cerning certification re- )	PSYCHOLOGISTS, SOCIAL WORK-
quirements for School Psy- )	ERS, NURSES AND SPEECH AND
chologists, Social Workers, )	HEARING THERAPISTS
Nurses, and Speech and )	
Hearing Therapists )	

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed amendment of rule 10.57.501, concerning certification requirements for School Psychologists, Social Workers, Nurses, and Speech and Hearing Therapists, at page 1319 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amend- )	NOTICE OF THE AMENDMENT OF
ment of rule 10.47.405 con- )	RULE 10.47.405, CLASS 5
cerning provisional certifi- )	PROVISIONAL CERTIFICATE
cates )	

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed amendment of rule 10.47.405, concerning provisional certificates, at page 1322 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amend- )	NOTICE OF THE AMENDMENT OF
ment of rules 10.58.208, 10. )	RULES 10.58.208, FACILITIES
58.302, 10.58.303, and 10.58. )	AND INSTRUCTIONAL MATERIALS;
523 concerning multicultural )	10.58.302, GENERAL EDUCATION;
teacher education )	10.58.303, PROFESSIONAL
	EDUCATION; 10.58.523, SOCIAL
	SCIENCE

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed amendment of rules 10.58.208, 10.58.302, 10.58.303, and 10.58.523 concerning multicultural teacher education, at pages 1335-1339 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of the )	NOTICE OF THE ADOPTION OF
adoption of 10.64.501-) RULES 10.64.501 - 10.64.516,	
10.64.516 concerning )	SPECIAL EDUCATION VEHICLE
special education )	STANDARDS
vehicle standards )	

TO: All Interested Persons.

1. On September 30, 1981 the Board of Public Education published notice of a proposed adoption of rules 10.64.501 - 10.64.516, concerning special education vehicle standards, at page 1076 of the Montana Administrative Register, issue number 18.
2. The agency has adopted the rules as proposed.
3. No comments or testimony were received.

In the matter of the )	NOTICE OF THE ADOPTION OF
adoption of rules )	RULES 10.64.350 - 10.64.353,
concerning LP gas )	LP GAS MOTOR FUEL INSTALLATION
conversion )	

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed adoption of rules concerning LP gas motor fuel installation, at page 1330 of the Montana Administrative Register, issue number 21.
2. The agency has adopted the following rules as proposed:  
Rule I (10.64.350)  
Rule III (10.64.352)  
Rule IV (10.64.353)

These rule numbers were incorrectly assigned beginning with rule number 10.64.601, sub-chapter 6 in the proposed notice.

The following rule is adopted with the following change:  
Rule II (10.64.351)

Paragraph (1) remains as proposed.

Paragraph (2) ~~It is recommended that~~ The gasoline tank should be removed from the bus when converting to straight propane. If the gasoline tank is not removed, non-flammable solution must be added to the tank. The filler cap or door cover must be sealed so that the gasoline tank cannot be accidentally filled.

The rest of the rule remains as proposed.

3. No comments or testimony were received.

In the matter of the )	NOTICE OF ADOPTION OF RULES
adoption of rules )	10.64.601; 10.64.602; 10.64.
concerning minimum )	603; 10.64.604, MINIMUM
standards for four )	STANDARDS FOR FOUR WHEEL DRIVE
wheel drive vehicles )	VEHICLES FOR SCHOOL USE

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed adoption of rules concerning minimum standards for four wheel drive vehicles for school use, at page 1346 of the Montana Administrative Register, issue number 21.

2. The agency has adopted the following rules as proposed:

- I. (10.64.601)
- II. (10.64.602)
- III. (10.64.603)
- IV. (10.64.604)

3. No comments or testimony were received.

In the matter of the )	NOTICE OF THE AMENDMENT OF
amendment of 10.66.101 )	RULE 10.66.101, REQUIREMENTS
concerning GED require- )	WHICH MUST BE MET IN ORDER TO
ments )	RECEIVE HIGH SCHOOL EQUIVALENCY
	CERTIFICATES

TO: All Interested Persons.

1. On November 12, 1981 the Board of Public Education published notice of a proposed amendment of rule 10.66.101, concerning requirements which must be met in order to receive high school equivalency certificates, at page 1328 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

*Allen D. Gunderson*

ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

*Wade Lane D. Jm*

by

Assistant to the Board

Certified to the Secretary of State February 12, 1982.

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

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.2.101 which adopts	)	OF RULE
and incorporates by reference	)	ARM 16.2.101
the model rules of the	)	
Attorney General	)	(Model Rules)

TO: All Interested Persons

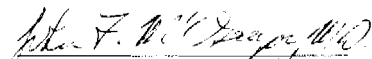
1. On November 25, 1981, the board and department published notice of proposed amendment of rule 16.2.101 which adopts and incorporates by reference the model rules of the attorney general at page 1559 of the 1981 Montana Administrative Register, issue number 22.

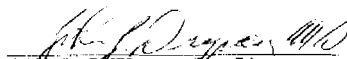
2. The board and department have amended the rule as proposed.

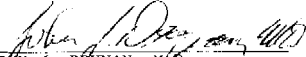
3. No comments or testimony were received.

FOR THE BOARD:

FOR THE DEPARTMENT:

  
JOHN F. MCGREGOR, M.D., Chairman

  
JOHN J. DRYNAN, M.D., Director

By:   
JOHN J. DRYNAN, M.D.

Certified to the Secretary of State February 11, 1982

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

In the matter of the adoption ) NOTICE OF THE ADOPTION  
of a rule concerning procedures ) OF RULE  
for compliance with the Montana )  
Environmental Policy Act ) ARM 16.2.110

TO: All Interested Persons

1. On October 15, 1981, the board published notice of a proposed adoption of rule concerning procedures for compliance with the Montana Environmental Policy Act at page 1162 of the 1981 Montana Administrative Register, issue number 19.
2. The board has adopted the rule as proposed.
3. No comments or testimony were received.

John F. McGregor, M.D.  
JOHN F. MCGREGOR, Chairman

By: John J. Drynan, M.D.  
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State February 11, 1982

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

In the matter of the repeal	)	NOTICE OF REPEAL OF
of rule 16.2.201, which sets	)	RULE
forth noticing procedure for	)	ARM 16.2.201
clean air rules	)	(Clean Air Rules -- Notice)

TO: All Interested Persons

1. On December 17, 1981, the board published notice of a proposed repeal of rule 16.2.201 concerning notice procedures for clean air rules at page 1646 of the 1981 Montana Administrative Register, issue number 23.


2. The board has repealed rule 16.2.201 found on page 16-19 of the Administrative Rules of Montana

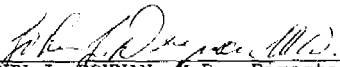
3. Comment: The board would be breaching the intent of the public participation laws even though the board would be within the law if it repeals rule 16.2.201.

Response: All rulemaking under the Clean Air Act is subject to procedural notice requirements and hearing procedures under the Montana Administrative Procedure Act which is recognized by the public participation laws, i.e., Sec. 2-3-104, MCA, as compliance with public participation requirements.

Comment: Conservation of funds does not justify reduction of public notice in legal advertisements even though legal advertisements are not adequate public notice. Public notice should be expanded, not reduced. More press releases and preparation of public service announcements were recommended.

Response: The board doesn't believe that the expense of publishing legal advertisements within the constricted time frames of 16.2.201 have proven to be that effective. The public notice requirements of the Montana Administrative Procedure Act, publication in the Montana Administrative Register and mailing notices to interested persons, are adequate for formal legal notice; however, the board has instructed the Department of Health and Environmental Sciences to update and enhance its public participation efforts.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. BRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State February 11, 1982



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

In the matter of the adoption ) NOTICE OF THE ADOPTION  
of a rule concerning MEPA ) OF RULE  
requirements for specific ) ARM 16.2.621  
activities ) (MEPA Requirements)

TO: All Interested Persons

1. On October 15, 1981, the department and board published a notice of a proposed adoption of a rule concerning MEPA requirements for specific activities at page 1159 of the 1981 Montana Administrative Register, issue number 19.

2. The department and board have adopted the rule with the following changes:

16.2.621 MEPA REQUIREMENTS FOR SPECIFIC ACTIVITIES

(1) A PER or an EIS will normally not be prepared for the following actions:

(a) Actions which are excluded from the EIS requirement by ARM 16.2.603(4).

(b) Issuance of an air quality permit pursuant to 75-2-211 MCA (Clean Air Act of Montana) for

(i) a new source which emits will emit under 100 tons per year of any regulated pollutant; or

(ii) modification of an existing source, such that the source, after modification, which-emits-or will emit under 100 tons per year of a regulated pollutant.

(c) Issuance of an MPDES permit pursuant to 75-5-402 MCA (Montana Water Quality Act) for a new or expanded wastewater discharge when the discharge will occur for a period of less not more than 3 years.

(d) Short-term exemptions from surface water quality standards pursuant to ARM 16.20.633(3).

(e) Approval of a public water or sewer system, pursuant to 75-6-112, unless such system has not been reviewed under either the Sanitation in Subdivisions Act (Title 76, Chapter 4, Part 1, MCA) or the Tourist Campground and Trailer Court Act, (Title 50, Chapter 52, MCA).

(f) Lifting of sanitary restrictions, pursuant to 75-4-125 76-4-125 MCA (Sanitation in Subdivisions Act), from:

(i) a subdivision containing fewer than 5 50 lots or condominium units, or which is connected to an approved municipal sewage disposal and water supply system,

(ii) a subdivision containing 5 or more, but fewer than 50 lots, where each lot utilizes an individual sewage disposal and water supply system, except that a PER will be prepared where the subdivision:

(A) (i) is in proximity to critical wildlife habitat or wilderness areas;

(B) (ii) may conflict with existing land uses;

(C) (iii) may have an impact on water quality; or

(D) (iv) may have an impact on an area of special scenic,

historic, archeologic, topographic, cultural or recreational significance.

~~(iii) -- a minimum development containing fewer than 50 units, except that a PER will be prepared in those cases described in paragraphs (i)(f)(iii)(A)-(B) of this rule.~~

(g) Approval of new construction or remodeling of hotels, motels, ~~trailer courts, travel trailer parks,~~ campgrounds, labor camps, food purveyor establishments, swimming pools, schools, jails, and other public establishments, pursuant to 50-1-203, 50-50-201, 50-51-201, and 50-52-201 MCA, except that a PER will be prepared in those cases described in paragraphs (1)(f)(iii)(A)-(B) - (i) through (iv) of this rule.

(h) Construction, addition, or remodeling of a health care facility which is:

(i) exempt from the Certificate of Need requirements of 50-5-301, et seq, MCA; or

(ii) located within corporate city limits or a zoned rural area.

(i) Vector and biological control of insect pests, where the department's only action is to advise and consult other agencies or private individuals.

(j) Licensing of cesspool and septic tank cleaners, pursuant to Title 39 37, Chapter 41, ~~Part 17~~, MCA.

(k) Licensing of water and wastewater treatment plant operators, pursuant to Title 37, Chapter 41 ~~42~~, ~~Part 2~~, MCA.

(l) Adoption, amendment or repeal of rules, except where rules establish air, water, solid or hazardous waste or radioactive materials standards, or would otherwise impact the quality or availability of air, water or land, or establish a major new program or policy, the implementation of which may have significant impacts on the environment.

(2) An EIS will normally be prepared for the following actions:

(a) When a PER indicates that an air quality standard is or may be exceeded;

(b) When a PER indicates significant deterioration of air quality may result, or where the applicable air quality increment to prevent significant deterioration may be exceeded;

~~(c) -- licensing of a hazardous waste disposal facility pursuant to Title 75, Chapter 107, Part 47, MCA.~~

~~(d) (c)~~ All other actions or situations described in ARM 16.2.603(2) and (3).

(3) Notwithstanding subsections (1) and (2) of this rule, at least a PER will be prepared on any multi-agency project when another department of state government with concurrent jurisdiction, or jurisdiction over other aspects of the project, has determined its decision to be a major action requiring an EIS.

3. The explanations for the changes in the proposed rule are as follows:

Paragraph (1)(b)(i) "emits" is changed to "will emit". The change to future tense is appropriate, as the rule refers to future emissions.

Paragraph (1)(b)(ii) The new language more clearly expresses the intent of the rule. It is not the modification per se, but rather the nature of the source after modification, which is the focus of the rule.

Paragraph (1)(c) "less" is changed to "not more". This language more closely tracks language on water quality permits.

Paragraph (1)(f) The citation to the Sanitation in Subdivisions Act should be 76-4-125, MCA. The text is rearranged so that all subdivisions, regardless of size, will receive a PER if the special conditions apply. As originally proposed, subdivisions with fewer than 5 parcels would have been exempt from PER review, even if the special impact conditions applied.

Paragraph (1)(g) Reference to trailer courts and travel trailer parks is redundant, as such developments are also reviewed as subdivisions, and paragraph (1)(f) would apply to them.

Paragraph (1)(g) Approval of labor camps is added to the list of actions which normally will not require a PER. In most cases where labor camps are associated with large industrial projects, the industrial project itself would require at least a PER. In such a case, the provisions of section (3) of the proposed rule may apply.

Paragraph (1)(j) The citation should be to Title 37, Chapter 41.

Paragraph (1)(k) The citation should be to Title 37, Chapter 42.

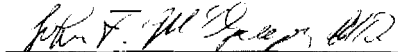
Paragraph (2)(c) This change was recommended by the Solid Waste Management Bureau. Section (2) of the proposed rule lists actions which normally will require an EIS. Licensing of a hazardous waste management facility was included on that list, indicating that an EIS would normally be done without bothering with a PER. On further consideration, the Bureau has determined that in some cases --- for example, small-scale on-site storage of industrial wastes --- the severity of impact may be less clear, and it would be appropriate to first prepare a PER before committing to an EIS. Therefore, at the request of the Solid Waste Management Bureau, subsection (2)(c) is being deleted. All hazardous waste management facilities would still receive at least a PER.

4. At the November 13 hearing, Mr. Don Allen of the Montana Petroleum Association made a number of suggestions for changes in the proposed rule. Several of those suggestions for minor language changes have been accepted and are included in the amendments explained above. Mr. Allen made two other recommendations which have been rejected, as explained below.


Paragraph (1) Mr. Allen suggested deletion of "normally." This suggestion is rejected for two reasons. First, the use of "normally" is consistent with ARM 16.2.603(6) which calls for the adoption of the proposed rule. More importantly, inclusion of "normally" provides necessary flexibility. It is impossible to determine in advance all possible situations which may require preparation of a PER. If such a special situation arose which was not anticipated by the rule, we would have to disregard either our own rule or the statute. In either case, resulting litigation would cause more delay than would preparation of a PER.

Paragraph (2)(b) Mr. Allen suggested deletion of the phrase "significant deterioration of air quality may result, or where." The result of deleting that language would be that an EIS would normally be prepared only where air quality standards or PSD increments may be exceeded. That would be an overly narrow view of MEPA requirements. There are many air pollution parameters not currently subject to ambient standards. EIS review is required where significant environmental impacts will result, even though no specific standards may be violated. MEPA requires "full disclosure" of significant environmental impacts, so that, even if there is no legal basis for denying a permit, the public will be aware of the environmental trade-offs being made.

FOR THE BOARD:

  
JOHN F. MCGREGOR, Chairman

By:

  
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

FOR THE DEPARTMENT:

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State February 11, 1982

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

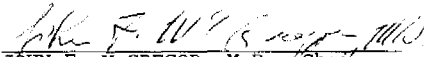
In the matter of the adoption	)	NOTICE OF ADOPTION
of rules regulating fluoride	)	OF RULES
and particulate emissions from	)	16.8.1501 - 16.8.1505
existing primary aluminum	)	(Fluoride and
reduction plants	)	Particulate Emissions)

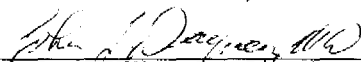
To: All Interested Persons

1. On December 17, 1981, the board published notice of a proposed adoption of rules I through V (16.8.1501 through 16.8.1505) concerning fluoride and particulate emissions from existing primary aluminum reduction plants at pages 1642-1644 of the 1981 Montana Administrative Register, issue number 23.

2. The board has adopted the rule as proposed.

3. No comments or testimony were received.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State February 11, 1982

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

In the matter of the adoption )	NOTICE OF ADOPTION
of rules establishing report- )	OF RULES
able tumors and hospital )	
record-keeping requirements )	ARM 16.32.501, 16.32.502
for information to be )	16.32.503
included in the Montana )	(Tumor Registry)
Tumor Registry )	

TO: All Interested Persons

1. On December 31, 1981, the department published notice of a proposed adoption of rules concerning the Montana Tumor Registry, reportable tumors, and hospital record-keeping requirements, at page 1834 of the 1981 Montana Administrative Register, issue number 24.

2. The department has adopted the rules with minor editorial changes but substantially as proposed.

3. No comments or testimony were received.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State February 11, 1982

BEFORE THE DEPARTMENT OF INSTITUTIONS  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF THE AMENDMENT
amendment of Rules 20.7.101, )	AND REPEAL OF RULES 20.7.101
20.7.102, 20.7.103, 20.7.104, )	THROUGH 20.7.109 FORMERLY
20.7.105, 20.7.106, and )	CALLED THE FURLOUGH PROGRAM,
20.7.108 and the proposed )	NOW TO BE CALLED THE SUPER-
repeal of Rules 20.7.107 and )	VED RELEASE PROGRAM
20.7.109 )	

TO: All Interested Persons.

1. On December 31, 1981, the Department of Institutions published notice of proposed amendments to rules 20.7.101 through 20.7.106 and 20.7.108 and the proposed repeal of rules 20.7.107 and 20.7.109 concerning the Supervised Release Program at page 1855 of the 1981 Montana Administrative Register, issue number 24.

2. The agency has amended and repealed the rules as proposed with the following changes:

20.7.103 CONTRACT - ESTABLISHMENT OF A PLAN

(1)(a) - (i) same as proposed rule.

(j) That prior to any minor amendment of the contract the proposed change will be submitted in writing to the supervising agent who will submit it, along with his recommendation, to the department.

(k) - (r) same as proposed rule.

(s) That the prisoner shall be subject to search of his person, place of residence and/or automobile at any time of the day or night with or without a warrant determined upon reasonable cause as determined by a supervising agent.

20.7.104 REVOCATION OR CHANGE OF CONTRACT

(1) same as proposed rule.

(2) Should the sponsor, supervising agent, or the department have any doubt as to the success of the plan or to the prisoner's ability to conform to the contractual agreement, any party may request that the prisoner meet with the sponsor, parole officer, or department separately or jointly. At such a conference, the prisoner shall be informed of the nature of the violation or nonperformance. If that conference is not sufficient to resolve the problem, an on-site hearing by a hearings officer of the department shall be requested. If the hearings officer finds there is probable cause to believe that the conditions, limitations and restrictions of the contract have been violated, the prisoner may be returned to the prison. ~~At the next meeting of the board of pardons, the prisoner will be accorded a revocation hearing.~~ The prisoner will be given a hearing by the board

of pardons within a reasonable time following his return to Montana State Prison.

(3) - (4) same as proposed rule.

20.7.105 SPONSOR - REQUIREMENTS

(1) - (2)(c) same as proposed rule.

(d) Under no circumstances are major changes to be made to the contract without prior consent of the department and the board. Any proposed change shall be in the form of written recommendation by the supervising agent and a copy of the change shall be sent to the board.

(e) - (f) same as proposed rule.

3. Written comments were received requesting the above minor changes. The Department concurs with these changes and adopts the affected rules with the above specified changes.

Carroll V. South, Director  
Department of Institutions

BY: 

Certified to the Secretary of State February 16,  
1982.



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

In the matter of the adoption	)	NOTICE OF THE ADOPTION
of rules pertaining to the	)	OF RULES PERTAINING TO
water development loan	)	THE WATER DEVELOPMENT
and grant program	)	LOAN AND GRANT PROGRAM

TO: ALL INTERESTED PERSONS

1. On November 25, 1981, the Board of Natural Resources and Conservation published Notice of the proposed adoption of rules pertaining to the Water Development Loan and Grant Program on page 1574 of the 1981 Montana Administrative Register, issue number 22.

2. The Board has adopted the rules as proposed with the changes which follow. The rules which have not been changed are: Rule I (36.17.101), Rule II (36.17.102), Rule IV (36.17.201), Rule VIII (36.17.205), Rule X (36.17.207), Rule XI (36.17.208), Rule XIII (36.17.302), Rule XV (36.17.401), Rule XVI (36.17.402), Rule XVII (36.17.403) and Rule XVIII (36.17.501).

RULE III (36.17.103) ELIGIBILITY FOR PROGRAM (1) Public entities may receive funding for "the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development or protection of the water and related agricultural, land, fish, wildlife, and water recreation resource in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the legislature." Section 85-1-605, MCA.

(2) Private entities may receive funding for "the construction and development of water development projects and activities". Section 85-1-606, MCA. Private individuals may receive funding for the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development or protection of the water and related agricultural, land, fish, wildlife, and water recreation

resource in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the department. These projects and activities may include but are not limited to: irrigation system development or repair, saline seep abatement, offstream and tributary storage, canal lining, providing access to water recreation areas, streambank stabilization, erosion control, or rural water supply development.

AUTH: 85-1-612, MCA IMP: 85-1-605 and 85-1-606, MCA

RULE V (36.17.202) STATEMENT OF INTENT FOR LOANS AND GRANTS The statement of intent shall be made on Form 680 and shall contain:

- (1) name, address, and telephone number of applicant or applicant's authorized representative, or both;
- (2) title or name of proposed project or activity;
- (3) location of proposed project or activity;
- (4) description of the proposed project or activity and the desired accomplishment;
- (5) preliminary estimate of project or activity costs and benefits. The estimate should include primary and secondary purposes and the benefits resulting from each;
- (6) approximate amount of loan or grant money, or both, to be requested; and,
- (7) statement of applicant's willingness to prepare required engineering, environmental, economic and financial feasibility studies of the project or activity as part of a loan or grant application, or both, if initial review indicates a proposal merits further review. This will not be required of applications for feasibility studies.

AUTH: 85-1-612, MCA IMP: 85-1-608 and 85-1-612, MCA

RULE VI (36.17.203) APPLICATION CONTENT FOR LOANS AND GRANTS All applications shall be made on Form 681 and shall contain:

(1) name, address, and telephone number of applicant or applicant's authorized representative, or both;

(2) title or name of proposed project or activity;

(3) location of proposed project or activity;

(4) description of the proposed project and the desired accomplishments;

(5) amount of loan or grant money, or both, to be requested. A statement as to whether money from other sources is available and whether or not it has been sought. If it has, the applicant shall discuss the process and its results; if not, the applicant shall give the reasons;

(6) a brief description of the history and background of the project or activity;

(7) a discussion of the need and urgency for the project or activity including discussion of why the project or activity is the best means to achieve the desired result, description of other alternatives and the applicant's consideration of those alternatives, and description of why the proposed alternative is the most efficient use of the natural resources;

(8) proof that the "applicant holds or can acquire all necessary lands, other than public lands, and interests therein and water rights necessary for the construction, operation, and maintenance of the proposed water development project or activity." Section 85-1-609 MCA. The requirement that "the applicant holds or can acquire all necessary lands, other than public lands, and interests therein" can be met by interests such as leases or easements if the interests are sufficient for the proposed project or activity.

(9) a statement that the applicant if successful, is able and willing to enter into a contract with the Department for repayment of loan funds or utilization of grant funds;

(10) a statement regarding the public benefits which would result from the proposed project or activity as these

benefits are required by law. Public benefits include but are not limited to recreation, flood control, erosion reduction, posted access to recreation opportunities, and wildlife conservation; Section 85-1-102(7), MCA; and,

(11) the detail of the information required for feasibility evaluation - technical, economic, environmental and legal - will vary among proposed projects and activities. Before a formal application is submitted, the Department will advise the applicant of the informational detail in each of these areas. In general the types of information that will be requested are described in Rule VII through Rule XI.

AUTH: 85-1-612, MCA IMP: 85-1-609 and 85-1-610, MCA

RULE VII (36.17.204) TECHNICAL FEASIBILITY OF PROJECTS AND ACTIVITIES. Technical data and information to be provided in the application describing the technical feasibility of the project or activity should include, but is not limited to, the following:

(1) a detailed and thorough discussion of the plan of development selected including techniques to be utilized in all aspects of the project or activity; the purpose, location, function and schedule of all activity measures and project civil works.

(2) a description of all field or research investigations or design criteria for projects made to substantiate the technical feasibility which may include but is not limited to soils, geologic, hydraulic, or hydrologic investigations. A descriptive listing of all design calculations, soils, geologic, hydraulic, hydrologic, or other relevant data, and criteria used to substantiate the technical feasibility. This description should document all field investigations, research information, specific assumptions, and reference to use of state of the art methodology in support of all final design criteria. For projects, criteria for final design should also include structural, embankments, and foundation criteria; detailed feasibility and design information shall be provided for all civil works including such items as embankments, structures, and conveyance facilities;

(3) maps, drawings, charts, tables, etc., used as a basis for the feasibility analysis;

(4) a description of the water and land rights associated with the project and pertinent water supply information, if appropriate; and,

(5) The Department may request any additional information deemed necessary to document technical feasibility;

AUTH: 85-1-612, MCA IMP: 85-1-609 and 85-1-610

RULE IX (36.17.206) ENVIRONMENTAL FEASIBILITY ACCEPTABILITY OF PROJECTS AND ACTIVITIES (1) A project or activity is considered to be environmentally acceptable when the benefits of the project outweigh the impacts and the plan of development mitigates, in a manner satisfactory to the Department minimizes adverse impact on the environment. Measures may be required by the Department to mitigate or compensate, or both, any adverse impacts in a manner consistent with the Montana Environmental Policy Act and other applicable state laws. To assist the Department in determining environmental acceptance, the applicant must demonstrate the probable environmental and ecological consequences of the project by considering all areas of study identified on an environmental checklist supplied by the Department. The Department will assess these results to determine if a proposed project or activity is environmentally feasible acceptable. If further information is needed an environmental impact statement will be required. If the project or activity constitutes a major state action significantly affecting the quality of the human environment, an environmental impact statement will be required as prescribed by the administrative rules governing the Montana Environmental Policy Act.

AUTH: 85-1-612, MCA IMP: 85-1-609, MCA

RULE XII (36.17.301) SOLICITATION OF VIEWS FROM OTHER INTERESTED PARTIES (1) The Department shall solicit views of interested and affected parties during its evaluations of proposed projects and activities.

(2) The Department will form an Advisory Committee to assist in the final review and prioritization of these projects. In forming this advisory committee the Department will select representatives of the interests of affected parties such as conservation districts, irrigation districts, water users associations, public interest groups,

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and as appropriate, other groups concerned with water development.

AUTH: 85-1-612, MCA      IMP: 85-1-611, MCA

RULE XIV (36.17.303) REPORTING AND MONITORING PROCEDURES

(1) The Department will require periodic progress and fiscal reports from the project sponsor. The Department will also make periodic field inspections to insure that plans and specifications are being followed, and that the works, if any, are being constructed in accordance with sound engineering and technical principles and practices. The Department will bring to the attention of the sponsor or the attention of the project engineer or director, or both, any unapproved variances from the approved plans and specifications. The sponsor, the project engineer, or the Department shall initiate necessary corrective action.

AUTH: 85-1-612, MCA      IMP: 85-1-612, 85-1-616, MCA

RULE XIX (36.17.502) FEES (1) An applicant must pay a \$150 fee upon making formal application to the program. The Department may elect to refund this fee, or any portion thereof, if initial review does not require substantial staff time and the project is found to be infeasible.

(2) A loan applicant must bear the cost of appraisal of offered security and filing or related costs necessary to perfect the security interest.

(3) If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the Department's rules (ARM 36.2.601 through 36.2.608), the applicant must bear the cost of the environmental impact statement. These rules set out a fee schedule which will be used for this program.

(4) As required by Section 85-1-616, MCA, the Department shall collect "reasonable fees or charges for the servicing of loans". The fee for servicing costs will be a one time charge of up to 5% of the value of the loan for servicing costs.

AUTH: 85-1-612, MCA      IMP: 85-1-612 and 65-1-616, MCA

RULE XX (36.17.503) FORMS The following forms are used in the administration of these rules:

- (1) Statement of intent (Form 680); and
- (2) Application (Form 681).

These forms can be obtained from the Water Development Bureau, Water Resources Division, Department of Natural Resources, 28 South Rodney, Helena, Mt 59620, 449-3760.

AUTH: 85-1-612, MCA IMP: 85-1-612, MCA

3. The following are summaries of the comments received and the Department's response to those comments:

RULE II DEFINITIONS

COMMENT: Add definition for private and public entities.

RESPONSE: SB 409 contains a definition for private person which distinguishes between private and public entities. Therefore, this distinction need not be repeated in the rules.

RULE III ELIGIBILITY FOR PROGRAM

COMMENT: Can private entities receive funding for planning or design? If the rules are as written, this does not appear possible. Would the drilling of wells be applicable? Also, can the loan or grant money be used to purchase system parts such as gated pipe, sprinkler laterals, soil moisture testing devices, etc.

RESPONSE: In consideration of the concern that the types of private projects eligible for funding needed more definition, we have changed Section 2 to read: "Private entities may receive funding for 'the construction and development of water development projects and activities': Section 85-1-606, MCA. Private individuals may receive funding for the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development or protection of the water and related agricultural, land, fish, wildlife, and water recreation resource in the state;

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for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the department. These projects and activities may include but are not limited to: irrigation system development and repair, saline seep abatement, offstream and tributary storage, canal lining, providing access to water recreation areas, streambank stabilization, erosion control, or rural water supply development."

Regarding the second part of your comment as to whether drilling of wells could be funded from this program. Once found feasible, a well drilling project would compete with all other feasible projects in terms of how well a particular project meets the criteria for the program as defined by the law. These criteria will be applied in a point ranking system.

In reference to the third part of your question, loan or grant money could be used to fund part of a large project and these funds could be used for parts of a larger system such as gated pipe, sprinkler laterals, soil moisture testing devices, and other necessary portions of the project.

RULE IV PROCESSING AND ACTION ON PROPOSED PROJECTS OR ACTIVITIES

(a) COMMENT: Where can Forms #680 and #681 be obtained?

RESPONSE: Forms 680 and 681 can be obtained from the Water Development Bureau, Water Resources Division, Department of Natural Resources and Conservation, 28 South Rodney, Helena, MT 59620. This information has been added to Rule XX - FORMS, as you suggest.

(b) COMMENT: Suggest adding the following sentence "Conservation Districts working with applicants may apply for technical assistance funds to assist in developing projects under the provisions set forth in HB 223."

RESPONSE: The comment that "Conservation Districts working with applicants may apply for technical assistance funds to assist in developing projects under the provisions set forth in HB 223", as adopted by the 47th legislative session, is valid and we would hope that this would occur.



The staff of the loan and grant program discusses that program with potential applicants if it is appropriate to their project. However, there should be no specific reference to another program in these rules as HB 223 is subject to legal change or revocation. Should that type of change occur, DNRC would be required to go through a public notice process to change the loan and grant rules accordingly.

RULE V STATEMENT OF INTENT FOR LOANS AND GRANTS

(a) COMMENT: We assume that the information covered in this rule is on Form #680 and would suggest the first sentence read as follows: "The statement of intent shall be made on Form #680 and shall contain . . ."

RESPONSE: The suggestion has been adopted and the first sentence now reads: "The statement of intent shall be made on Form 680 and shall contain:"

(b) COMMENT: The last sentence in Section 5 states that estimates should include primary and secondary purposes and the benefits resulting from each. We would suggest the following wording: "The estimate should include only primary benefits for primary and secondary purposes."

RESPONSE: In performing analyses, primary benefits will be the main concern but DNRC wishes to retain the flexibility of considering secondary benefits should that be appropriate. Some economists would argue that secondary benefits will accrue no matter where the funds are spent. This may be true but it is possible that these benefits will be greater for one project relative to another. For that reason, DNRC may consider secondary benefits in this program.

(c) COMMENT: Would a lease or easement be satisfactory under Section 8. If so, for what length of time? As written, one could conclude that all land would be purchased.

RESPONSE: This section has been changed to incorporate this comment. "The requirements that 'the applicant holds or can acquire necessary lands, other than public lands and interests therein' can be met by interests such as leases or easements if the interests are sufficient for the proposed project or activity." The length of time required for a lease or easement will be determined on a case by case basis.

RULE VII--TECHNICAL FEASIBILITY OF PROJECTS AND ACTIVITIES

COMMENT: Paragraph 2 discusses the design criteria. Whose design criteria is the applicant to use? Also, it is felt that the last sentence of this paragraph needs clarification as it relates to how much detail is wanted in identifying final design criteria. Is this saying that the final design should have a design report?

RESPONSE: The comments regarding the level of detail required for technical feasibility have been incorporated and Sections 1 and 2 now read:

"(1) A detailed and thorough discussion of the plan of development including the purpose, location, function and schedule of all activity measures and project civil works.

(2) A descriptive listing of all design calculations, soils, geologic, hydraulic, hydrologic, or other relevant data, and criteria used to substantiate the technical feasibility. This description should document all field investigations, research information, specific assumptions, and reference to use of state of the art methodology in support of all final design criteria. For projects, detailed feasibility and design information shall be provided for all civil works including such items as embankments, structures, and conveyance facilities."

RULE VIII ECONOMIC FEASIBILITY OF PROJECTS AND ACTIVITIES

(a) COMMENT: There are no clear guidelines under this rule on what will be required of the applicant in the way of data.

RESPONSE: Specific data and information requirements for assessing an individual project's economic feasibility will vary depending on the magnitude and nature of each project. For example, the same level of detail will not be required of a \$5,000 project as will be of a \$5 million project. The information and specific data required of an applicant will be discussed with the applicant on an individual basis.

(b) COMMENT: Section 5 addresses tangible benefits including primary and secondary benefits. Secondary benefits are usually based on a multiplier effect of primary benefits. A uniform set of multipliers needs to be made available. One potential source of information which could be used is the 1975 Montana Agricultural Experiment Station

Bulletin #682, titled "An Input/Output Model of the Montana Economy."

RESPONSE: There has been no methodology chosen for the determination of secondary benefits so your suggestion as to a reference which may provide a good methodology is timely.

(c) COMMENT: Credit should be given to indirect benefits such as flood control, water quality, fisheries, erosion control and streambank stabilization.

RESPONSE: In assessing economic feasibility, indirect benefits will be credited to the proposed project. These benefits will include such things as flood control, water quality, fishery benefits, erosion control or recreation.

(d) COMMENT: Concern was expressed that the definitions of "primary" and "secondary" benefits in the proposed regulations will be incorporated into the application process or into the proposed point system in such a way that the statutory objectives will not be fulfilled.

RESPONSE: Primary and secondary benefits will be quantified and used to determine whether a proposed project or activity is economically feasible as required by law. Once a project or activity is found to be feasible - economically, technically, financially, and environmentally, it will then be compared with all other feasible projects using a point system which will reflect statutory objectives. In this two step process, the statutory objectives will be met insofar as feasible projects are available to meet them.

#### RULE IX ENVIRONMENTAL ACCEPTABILITY OF PROJECTS AND ACTIVITIES

(a) COMMENT: There are no clear guidelines under this rule on what will be required of the applicant in the way of data.

RESPONSE: This rule does not contain specific guidelines as to how environmental acceptability will be determined. These guidelines are being drafted and will be made available with each application. Program staff will be available to assist applicants in completing environmental assessment as it will likely be an area with which many applicants are unfamiliar.

(b) COMMENT: The phrase "mitigates and/or compensates", be substituted for the word "mitigates" under rule IX.

RESPONSE: As suggested, the word compensates has been incorporated into Rule IX such that the first two sentences now read "A project or activity is considered to be environmentally acceptable when the benefits of the project outweigh the impacts and the plan of development minimizes adverse impact on the environment. Measures may be required by the Department to mitigate or compensate, or both, any adverse impacts . . . . ."

1(c) COMMENT: It is recommended that you change Rule 9 to read:

(1) "In a manner consistent with the Montana Environmental Protection Act and other applicable state law such as the Streambed Preservation Act and any applicable standards promulgated by any agency of state government such as water quality standards."

(2) We recommend that you change the wording from "If the proposed project is feasible" to "is acceptable."

(3) We recommend that you change the last sentence to read "If the project or activity constitutes a major state action or further information is necessary, an environmental impact statement may be required as prescribed by the administrative rules governing the Montana Environmental Protection Act."

RESPONSE: Rule IX now reads: "A project or activity is considered to be environmentally acceptable when the benefits of the project outweigh the impacts and the plan of development minimizes adverse impact on the environment. Measures may be required by the Department to mitigate or compensate, or both, any adverse impacts in a manner consistent with the Montana Environmental Policy Act and other applicable state laws. To assist the Department in determining environmental acceptance, the applicant must estimate the probable environmental and ecological consequences of the project by considering all areas of study identified on an environmental checklist supplied by the Department. The Department will assess these results to determine if a proposed project or activity is environmentally acceptable. If the project or activity constitutes a major state action significantly affecting the quality of the human environment, an environmental impact

statement will be required as prescribed by the administrative rules governing the Montana Environmental Policy Act."

RULE X FINANCIAL FEASIBILITY FOR LOANS

COMMENT: It is suggested that a study of the cost sharing programs in the Department of Agriculture which cost-share up to 75% of a projects cost would be benficial to the program in setting loan and grant proportions.

RESPONSE: In considering financial feasibility or the applicant's ability to pay, the cost of any indirect or public benefits associated with a project may be paid with a grant. This grant can be up to 25% of the project cost if the applicant is a private individual and up to 100% if the applicant is a public entity. In the case of an individual the grant may lower the effective interest rate on the remaining loan portion of the funds.

RULE XII SOLICITATION OF REVIEWS FROM OTHER INTERESTED PARTIES

(a) COMMENT: It is suggested that this program be run with the cooperation of the Conservation Districts.

RESPONSE: Agricultural interests will be represented on the Advisory Committee which will be formed to aid in the prioritization of these projects.

To date the majority of the interest in the program has been from the agricultural segment of the state. Currently, the Department is evaluating projects such as irrigation system repair, conversion from pumped to gravity sprinkler, and rural water system development. We believe that as time passes the program will become a valuable asset to agriculture in Montana.

(b) COMMENT: I suggest Rule XII Section 2 read: "The Department will form an Advisory Committee to assist in the final review and prioritization of these projects. In forming this advisory committee the Department will attempt to represent the interests of affected parties including conservation districts, irrigation districts, water users associations, and, as appropriate, other groups concerned with water development."

RESPONSE: In line with your suggestion Rule XII now reads: "The Department will form an Advisory Committee to

assist in the final review and prioritization of these projects. In forming this advisory committee the department will attempt to represent the interests of affected parties including conservation districts, irrigation districts, water users associations, state and federal agencies, public interest groups, and, as appropriate, other groups concerned with water development."

(c) COMMENT: The Department of Fish, Wildlife and Parks requests review authority for fish and wildlife mitigation and/or compensation plans for those projects judged to have significant adverse environmental impact. We would also welcome the opportunity to review and comment on the environmental checklist mentioned in rule IX.

The Department offers its assistance pursuant to rule XII, in evaluating proposed projects judged to have significant environmental impacts particularly with regard to environmental feasibility as outlined in rule IX. We also request a seat on the Advisory Committee to assist in the final review and prioritization of these projects.

RESPONSE: In regard to the comment regarding review of environmental issues, it is the plan of the Board and of the program staff to include Department of Fish, Wildlife, and Parks in the review of any aspects relative to your Department. This will include review of fish and wildlife mitigation and/or compensation plans for any project judged to have adverse environmental impact and of the environmental checklist which will be proposed for use in environmental review.

The Board appreciates your offer to assist in the administration of this program by being represented on the Advisory Committee. Appointment of the Advisory Committee is pursuant to 2-15-122 and not a part of this rule making process.

#### RULE XIII RANKING OF FEASIBLE PROJECTS OR ACTIVITIES TO DETERMINE FUNDING PRIORITIES

COMMENT: Section 2 of SB 409 (47th legislative session) requires the Department to give water storage for existing and future beneficial uses the highest priority. Water development projects or activities designed to accomplish another objective will gain priority only if they are demonstrated to be more beneficial than storage projects to a greater number of people. Other statutory objectives with lower priority include the promotion of private water

development, development of water-based recreation, and protection of water resources for the benefit of agriculture, flood control, and other uses. In order for the water development program to fulfill the intent of the Legislature, the Department must adopt rules designed to achieve these objectives and give the proper priority.

RESPONSE: Your point that water storage is to be given the highest priority is a good one. The law clearly indicates this priority and it will be taken into consideration when proposed projects are prioritized for recommended funding.

#### RULE XIV REPORTING AND MONITORING PROCEDURES

COMMENT: In reference to the next to last sentence where it states that "any unapproved variances from the approved plans and specifications will be brought to the attention of the sponsor, project engineer or director." The question is--who approves the plans and specifications?

RESPONSE: These will be the plans and specifications agreed upon contractually between the applicant and the Department.

#### RULE XVIII USE OF FUNDS FOR GRANTS VERSUS LOANS

COMMENT: I suggest that at such time as bonds are sold to finance loans for the program, all coal severance tax funds not needed to subsidize interest rates be used solely for grants.

RESPONSE: This is a good concept which may be workable at some time in the future of this program. However, because of the statutory requirements for the issuance of bonds and the financial mechanisms dictated by both Montana and Federal law it would be impossible to include this suggestion in the rules at this time. An example of the complexity of the financial considerations which come to bear on this decision are the requirements in the statutes to use the coal tax funds to pay initial bond debt and establish and maintain a 12-month reserve fund to cover subsequent bond debt. As the program evolves and loan repayments rise to the level of annual debt service it may be feasible to alter the rules to encompass your suggestion.

#### RULE XX FORMS

COMMENT: The location where the forms may be obtained should be addressed.

RESPONSE: Your comment as to where Forms 680 and 681 can be obtained has been incorporated and Rule XX now reads:

- "(1) Statement of intent (Form 680) and
- (2) Application (Form 681).

These forms can be obtained from the Water Development Bureau, Water Resources Division, Department of Natural Resources and Conservation, 28 South Rodney, Helena, Montana 59620, 449-3760."

4. The authority of the Board to establish the proposed rules is granted by Section 85-1-612, MCA, and implements sections cited in each proposed rule.



Gordon G. Holte, Chairman

Certified to the Secretary of State February 8, 1982.

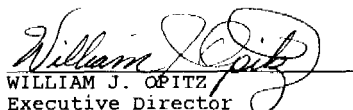


BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

IN THE MATTER of Proposed Amend-) NOTICE OF AMENDMENT OF RULE  
ment of Rule 38.2.1209 Regarding) 38.2.1209  
the Number of Copies of Plead-) )  
ings and Documents to be filed )  
with the Commisson. )

TO: All Interested Persons

1. On December 17, 1981 the Department of Public Service Regulation published notice of proposed amendment of Rule 38.2.1209 regarding number of copies of pleadings and documents to be filed with the Commission at page 1676 of the 1981 Montana Administrative Register, issue number 23.
2. The agency has amended the rule as proposed.
3. No comments were received.

  
WILLIAM J. OPITZ  
Executive Director

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 11, 1982.

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

In the matter of the adoption )	NOTICE OF ADOPTION OF
of emergency rules pertaining )	EMERGENCY RULES PERTAINING
to refugee assistance )	TO REFUGEE ASSISTANCE

TO: All Interested Persons.

1. Statement of reasons for emergency:

The agency has adopted the emergency rules to comply with 45 CFR Parts 400 and 401 found in the Federal Register, Vol. 46, No. 238 which were implemented February 1, 1982. These federal rules offer federally funded refugee assistance which if the department delayed implementation of would imperil the health and welfare of those members of the public.

2. The rules are adopted as follows:

Rule I (46.15.101) DEFINITIONS (1) For the purpose of this chapter, the following definitions apply:

(a) Refugee means an individual who:

(i) is a national of Cambodia, Vietnam or Laos and entered the United States on or after April 8, 1975; or

(ii) is a national of Cuba or Haiti and is an entrant to the United States as verified by the immigration and naturalization service through INS form I-94.

(b) Assistance unit means all individuals who live in the same household and whose needs, income and resources are considered in determining the amount of assistance payments. Such individuals living together may consist of an individual, a couple, an intact family, or a combination of family members, such as aunt, uncle, niece and nephew.

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

Rule II (46.15.102) REFUGEE CASH ASSISTANCE (1) Refugee cash assistance (RCA) shall be provided to eligible refugees.

(a) An otherwise eligible recipient of RCA is eligible to receive assistance for 18 months from the date of entry into the United States or from the date the individual was first issued documentation by the immigration and naturalization service.

(i) Date of entry is the date that the individual entered the United State as certified by the immigration & naturalization service on INS form I-94.

(2) To be non-financially eligible for cash assistance, a refugee must meet the citizenship, residence and other non-financial criteria as described in this rule.

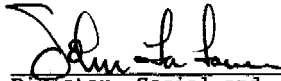
- (a) A refugee must:
  - (i) have parole, voluntary departure or conditional entry status as verified by INS form I-94; or
  - (ii) have been admitted to the United States with permanent residence status on or after April 8, 1975, as verified by INS form I-151 or I-551; or
  - (iii) be a dependent of a repatriated United States citizen and have been in the United States ninety (90) days and otherwise qualify as a refugee.
- (b) A refugee must be a resident of Montana as defined in ARM 46.10.107.
- (c) A recipient of RCA employed part time must be enrolled in English language or skill training, if appropriate and available; a RCA recipient employed full time may be enrolled in English language or skill training.
- (d) A recipient of RCA must register for work with the employment office.
  - (i) Refusal to accept or continue employment or training will result in sanctions:
    - (A) the grant will be reduced by the amount included for the individual who failed to meet the employment requirement;
    - (B) assistance will be provided without interruption when employment is accepted within 30 days after refusal;
  - (C) reapplication for assistance can be made 30 days after termination of assistance.
- (3) To be financially eligible for cash assistance, a refugee must meet all income and resource criteria of the AFDC program except that the \$30 plus 1/3 disregard to earned income is not allowed. These AFDC criteria are found in ARM 46.10.401 through 404 and ARM 46.10.505 through 514.
- (a) Title IV-A funded day care is not allowed.

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

Rule III (46.15.103) REFUGEE MEDICAL ASSISTANCE

- (1) Medicaid will be provided to eligible refugees.
  - (a) All rules of the medicaid program as found in ARM 46.12.101 through 46.12.217 apply.
    - (i) For recipients of refugee cash assistance, the rules for AFDC - related categorically needy apply.
    - (ii) For individuals not eligible for refugee cash assistance due to excess income or resources, the rules for the medically needy apply.

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



Director, Social and  
Rehabilitation Services

Certified to the Secretary of State February 11, 1982.

RURAL SPECIAL IMPROVEMENT DISTRICTS - Assessment of less than all property in district;  
RURAL SPECIAL IMPROVEMENT DISTRICTS - Inclusion of portions of individual lots within district;  
RURAL SPECIAL IMPROVEMENT DISTRICTS - Enforcement of delinquent assessments;  
SUBDIVISION AND PLATTING ACT - Exemption from Act of division which occurs through enforcement of lien for rural special improvement district assessments;  
MONTANA CODE ANNOTATED - Sections 7-12-2151, 7-12-2168, 7-12-4161 to 7-12-4165, Title 76, ch. 3.

- HELD: 1. The County Commission has no power to create a rural special improvement district in which only portions of the land within the district will be assessed for the cost of the improvement.
2. The County Commission may create a rural special improvement district including only portions of individual lots in a rural subdivision in order to equalize the benefits and burdens borne by each lot.
3. If only a portion of a lot is included in the district and the owner defaults in paying his rural special improvement district assessment, only the portion of the lot within the district may be sold to satisfy the delinquency.
4. Sale of a portion of a lot to satisfy delinquent rural special improvement district assessments is a division of property "by operation of law" which is exempt from the provisions of the Subdivision and Platting Act, Title 76, chapter 3, MCA.

1 February 1982

Harold F. Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

May the county commissioners create a rural special improvement district containing within its boundaries a smaller "assessment area" whose property will bear the entire assessed cost of the improvement?

Your letter and memorandum inform me that the Yellowstone County Commission has proposed creation of a rural special improvement district for the purpose of paving a road into a rural subdivision. The subdivision contains lots ranging in size from two to twenty acres. The commissioners have determined that each lot is equally benefitted regardless of size. They decided to include the entirety of each lot within the boundaries of the subdivision but to assess only an equal sized portion of each lot. The result is the proposed district contains within its boundaries land which is not assessed for the cost of the improvement.

In my opinion, the statutes dealing with creation of rural special improvement districts do not permit this kind of arrangement. Section 7-12-2151, MCA, provides the method by which the cost of an improvement must be assessed against the land within the district boundary:

To defray the cost of making any of the improvements provided for in this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of such improvements against the entire district. Each lot or parcel of land assessed in such district shall be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) Where said rural special improvement district is located more than 5 miles from the boundary of an incorporated city or town, said assessment may, at the option of the board, be based upon the assessed value of the lots or pieces of land within said district.

(3) The board in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out

of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(Emphasis added.) In creating a special improvement district, a local government must comply in all respects with the statutory procedures. Shapard v. City of Missoula, 49 Mont. 269, 278-79, 141 P. 544, 547 (1914). The Shapard rule requires the local government to comply with statutory methods of assessing the cost of the improvement against the property in the district. Smith v. City of Bozeman, 144 Mont. 528, 540-41, 398 P.2d 462, 469 (1965). Your proposal for creation of an "assessment area" including only a part of the land within the district boundary is plainly at odds with the legislative provision, set forth in section 7-12-2151, MCA, that the cost of the improvement "shall" be assessed against "the entire district," and that each lot be assessed a percentage of the cost based on the ratio of its area to the total area of the district. Unlike the statutes dealing with municipal special improvement districts, the statute in question here gives the county commissioners very little discretion in selecting a method of assessment. Compare § 7-12-2151, MCA, with §§ 7-12-4161 to 7-12-4165, MCA. Montana law does not allow the method you propose.

You suggest that assessment of the cost on an area basis will result in an unconstitutional inequality between the assessment and the benefit derived by the larger lots. The Montana Supreme Court has found such arguments unpersuasive in cases in which the local government complied with a statutory requirement that the assessment be determined on an area basis. Mansur v. City of Polson, 45 Mont. 585, 594-96, 125 P. 1002, 1004-5 (1912); McMillan v. City of Butte, 30 Mont. 220, 224-28, 76 P. 203, 204-05 (1904). Concededly, in both Mansur and McMillan the Court had before it no proof of equal benefit accruing to differently situated lots. However, even if such proof is present, see, e.g., Larsen Farms v. City of Plentywood, 145 Mont. 509, 402 P.2d 410 (1965), the commissioners are not thereby empowered to violate the law and create an assessment method other than that set forth in the statute. Rather, the commissioners may deal with the problem of equalizing benefits and burdens by including within the boundaries of the district only part of the larger lots which would otherwise bear an unfairly large part of the cost. Ricker v. City of Helena, 68 Mont. 350, 360-61, 218 P. 1049, 1051-52 (1923).

While this may not be a wholly satisfactory solution, it appears to be the only option left open by law.

You raise an additional question not reached by the Court in Ricker: In the event the property owner defaults in paying his assessments, may the county execute against and sell the entire lot, or only the portion included in the district? You assert that sale of only a portion of the lot may be unworkable. Under Montana law, taxes for rural special improvement districts are a lien "against the property assessed." § 7-12-2168(1), MCA. While our courts have not ruled on the question, it appears the general rule is that statutory methods of enforcement of special improvement assessments are exclusive. 88 A.L.R.2d 1250 (1963); see City of Cut Bank v. Clapper Motor Co., 120 Mont. 274, 280, 182 P.2d 474, 476-77 (1947). The Legislature provided a lien against assessed property as the enforcement mechanism, and it is doubtful the courts would permit the county to proceed against the owner's other property to satisfy any deficiency in the security provided by the lien. Since only the portion of the lot within the district is assessed and therefore is subject to the lien, only that portion may be executed against and sold.

You suggest that this conclusion will provide insufficient security for the county. If so, the same result may follow from your proposal to create "assessment areas" within the rural special improvement district. As noted above, the statutory lien attaches only to "the property assessed" under section 7-12-2168(1), MCA. If only a portion of the lot is assessed, it could be argued that only a portion may be subjected to the lien, even if the entire lot is included in the district. If this reasoning is adopted, your attempt to assess less than all of the property will be unavailing. In any event, if the statute provides insufficient security, it is for the Legislature to remedy.

You finally suggest that sale of only a portion of a lot would subject the sale to the provisions of the Subdivision and Platting Act, Title 76, chapter 3, MCA. I disagree. Section 76-3-201(1), MCA, exempts divisions of land resulting from an order of a court or "by operation of law" from the requirements of the Act. Where part of a lot is sold to satisfy a rural special improvement district assessment, the buyer acquires a new title created by operation of the statutes governing enforcement of delinquent assessments. See State ex rel. City of Great Falls v. Jeffries, 83 Mont.

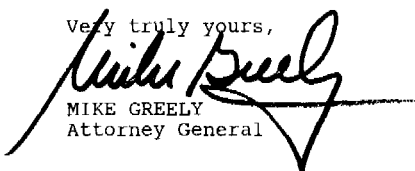


111, 116-17, 270 P. 638, 640 (1928). In such a case, the lot is divided by operation of the statutes, and not through any affirmative act on the part of the owner. Such a division "by operation of law" is exempt from the requirements of the Subdivision and Platting Act.

THEREFORE, IT IS MY OPINION:

1. The County Commission has no power to create a rural special improvement district in which only portions of the land within the district will be assessed for the cost of the improvement.
2. The County Commission may create a rural special improvement district including only portions of individual lots in a rural subdivision in order to equalize the benefits and burdens borne by each lot.
3. If only a portion of a lot is included in the district and the owner defaults in paying his rural special improvement district assessment, only the portion of the lot within the district may be sold to satisfy the delinquency.
4. Sale of a portion of a lot to satisfy delinquent rural special improvement district assessments is a division of property "by operation of law" which is exempt from the provisions of the Subdivision and Platting Act, Title 76, chapter 3, MCA.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 39

OPINION NO. 49

COUNTY SUPERINTENDENT OF SCHOOLS -- Deputy county superintendent not required to meet qualifications imposed on county superintendent;  
SCHOOLS AND SCHOOL DISTRICTS -- Deputy county superintendent of schools need not meet statutory requirements imposed on county superintendent;  
MONTANA CODE ANNOTATED -- Sections 20-3-201 and 20-3-203;  
REVISED CODES OF MONTANA, 1947 -- Sections 75-1528 and 75-5804.

HELD: A chief deputy or deputy county superintendent of schools is not required to have the same qualifications as those required by law for the county superintendent of schools.

5 February 1982

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

Must a chief deputy or deputy county superintendent of schools  
(a) be a qualified elector;  
(b) hold a valid teacher certificate issued by the superintendent of public instruction; and  
(c) have not less than three years of successful teaching experience.

Section 20-3-201, MCA, sets out the above requirements as qualifications for the position of county superintendent of schools. Your question is whether a deputy superintendent must meet the same qualifications as the county superintendent. No specific statutory requirements exist for the

4-2/25/82

Montana Administrative Register

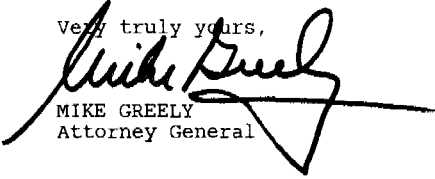
deputy's position. Section 20-3-203, MCA, allows the county commissioners, on the superintendent's recommendation, to appoint deputy superintendents but gives no further guidance.

This question has been the subject of a previous Attorney General's Opinion, which stated that a deputy county superintendent of schools did not have to meet the statutory requirements imposed on a county superintendent. 24 OP. ATT'Y GEN. NO. 51 (1951). The opinion was based on an interpretation of section 75-1528, R.C.M. 1947, which authorized the appointment of deputies but set up no qualifications. The section had previously required an applicant to have a valid teaching certificate but was amended to delete this prerequisite. The deletion of this requirement from the statute evidenced the legislative intent to open up the deputy position to any individual the superintendent deemed qualified. Section 75-1528, R.C.M. 1947, was repealed in 1971, 1971 Mont. Laws, ch. 5, § 496. It was, however, reenacted in substantially the same form in section 75-5804, R.C.M. 1947, 1971 Mont. Laws, ch. 5, § 22. That section was recodified and is now section 20-3-203, MCA. The statute has not been substantively changed since the 1951 opinion was issued and the rationale behind that opinion is still valid today.

THEREFORE, IT IS MY OPINION:

A chief deputy or deputy county superintendent of schools is not required to have the same qualifications as those required by law for the county superintendent of schools.

Very truly yours,



MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

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

4-2/25/82

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

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

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies' (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                               |   |
|-------------------------------|---|
| Known Subject Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.           |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
|                               | 3. Locate volume and title.   |
| Subject Matter and Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.   |
| Title Number and Department   | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.  |
| Title Number and Chapter      | 6. Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing rule.)                              |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.                              |
| Rule in ARM                   | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.                              |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1981. This table includes those rules adopted during the period January 1, 1982 through March 31, 1982, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1981, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1981 and 1982 Montana Administrative Registers.

ADMINISTRATION, Department of, Title 2

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