MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

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TO: All Interested Persons.

1. On August 29, 1986, the Department of Administration proposes to adopt amended rules concerning regulation and documentation of travel expenses of State employees engaged in official business.

ARM 2.4.121, proposed for repeal, may be found on page 2-101 of the Administrative Rules of Montana.

2. The proposed amended rules are as follows:

2.4.101 INTRODUCTION (1) Traveling is a necessary operation of state government. However, the authorizat~~ion~~ing agency and traveling employee should always remember that travel expense is often a major budget consideration and that we must always be aware of efficiency and economy in travel.

~~Let it be emphasized that a~~Although the legislature establishes laws governing travel and the department of administration prescribes the regulations attendant thereto, the responsibility for adhering to the laws and providing effective managerial control rests with the agency and its employees.

AUTH: 2-15-112 IMP 2-18-501, 502, 503

2.4.105 DEPARTURE AND RETURN TIME (1) Departure time and return time ~~is~~ are normally ~~considered to be~~ defined as the times when an employee leaves from and returns to ~~his~~ headquarters respectively. However, if the employee departs directly from his residence and returns directly to his residence without a stop at headquarters, ~~then~~ the times leaving from and returning to the residence becomes the times to be used in computing the allowance. ~~Of course, i~~If an employee leaves directly from his residence and returns to headquarters after the trip, the starting time would ~~be~~ begin when leaving the residence and the ending time would be the time of arrival at headquarters.

AUTH: 2-15-112 IMP 2-18-501, 502, 503

2.4.111 USE OF STATE-OWNED VEHICLES (1) The highway motor pools operated by the department of highways, ~~has~~ have a variety of cars available in ~~the~~ Helena ~~area~~ and Billings. To keep the motor pools operating at peak efficiency, the use of ~~the~~ motor pool vehicles is highly encouraged. Questions regarding procedures should be directed to the Helena highway motor pool ~~(449-2705)~~ (444-2705).

(2) Pursuant to 2-17-423, MCA, the department of highways establishes rules governing the use of state-owned or leased vehicles in the motor pools. The motor pools, ~~located in Helena~~ will bill the agency periodically on a cost recovery basis for the vehicles used. ~~Questions regarding the use of motor pool vehicles should be directed to the Helena area dispatcher at 449-2705.~~

(3) Agencies having their own state vehicles should establish regulations regarding the use of their vehicles.

AUTH: 2-15-112 IMP 2-18-503

2.4.112 USE OF PERSONAL VEHICLES--REIMBURSEMENT RATES --GENERAL REQUIREMENTS (1) Section 2-18-503, MCA, as amended, establishes two rates for personal vehicle use. Generally, reimbursement for personal vehicle use (standard rate) will be at 3 cents less than the rate established by the internal revenue service ~~(standard rate)~~. If certain conditions are met, employees may receive reimbursement at a rate equal to that established by the internal revenue service (high rate). The department of administration will periodically issue memos to agencies to alert them of changes in the mileage reimbursement rates. All employees who drive a personal vehicle on

state business and are reimbursed mileage must comply with the Motor Vehicle Safety - Responsibility Act (Title 61, chapter 6, part 1, MCA) and with the mandatory liability protection provisions of Title 61, chapter 6, part 3, MCA.

AUTH: 2-15-112 IMP 2-18-503

2.4.114 USE OF PERSONAL VEHICLES--REIMBURSEMENT AT HIGH RATE (1) An Employee shall be reimbursed for use of a personal vehicle at the high rate under the following conditions:

(a) a motor pool vehicle is not available; or

(b) the use of a personal vehicle is considered to be in the best interest of the state.

(2) Therefore, for ~~Helena-area~~ state employees with access to a state motor pool, one of two processes shall apply:

(a) If a request to the ~~department-of-highways'-Helena area-vehicle~~ dispatcher ~~(449-2705)~~ for a ~~highway~~ motor pool vehicle cannot be met, the dispatcher will prepare a personal vehicle use authorization form in triplicate and promptly send the two copies of the completed form to the employee.

(b) A division administrator or above, in speaking for himself or his staff, who believes that it is in the best interest of the state for a personal vehicle to be used on state business, regardless of whether or not a state vehicle is available, may contact the ~~department-of-highways'-Helena~~ area dispatcher and present justification for the best interest. The dispatcher shall decide whether or not the justification for the best interest is sufficient to issue the authorization. If the request is approved, the dispatcher will prepare a personal vehicle use authorization form in triplicate and promptly send the two copies to the employee. If not approved, the employee may either use a personal vehicle and be reimbursed at the standard rate (with department director's authorization) or request the assignment of a motor pool vehicle.

AUTH: 2-15-112 IMP 2-18-503

2.4.115 USE OF PERSONAL VEHICLES--EXEMPTIONS (1) The following persons are exempt from meeting the requirements of ARM 2.4.113 and 2.4.114 and are authorized reimbursement at the high rate:

(a) members of boards, commissions, committees, or advisory councils;

(b) constitutional officers and elected officials;

(c) department heads appointed by the governor;

(d) all employees without access to a state motor pool ~~headquartered-outside-the-Helena-area;~~

(e) employees driving 25 miles or less in any calendar day.

(2) This exemption does not preclude an agency from prescribing internal administrative procedures that require individuals to use agency-owned vehicles or to be reimbursed at the standard rate. Travel claims for the exempt classification will, however, be processed as submitted by the approving

agency for reimbursement at either the standard rate or the high rate.

AUTH: 2-15-112 IMP 2-18-503

2.4.116 PERSONAL VEHICLE USE AUTHORIZATION FORM--WHERE OBTAINED (1) The personal vehicle use authorization form is a three-part carbonless set (25 sets to a pad) available from: department of administration, property and supply bureau ~~publications-and-graphics-division, old-liquor-ware-house~~ 930 E. Lyndale, Helena, Montana 5960~~1~~20, phone ~~449-3053~~ 444-4514.

AUTH: 2-15-112 IMP 2-18-503

2.4.136 REIMBURSEMENT FOR RECEIPTABLE LODGING (1) Employees shall be reimbursed for their actual out-of-pocket lodging expenses, including room tax, up to the maximum amounts set by 2-18-501, MCA, for in-state and out-of-state travel. Lodging in those areas specifically designated as high cost cities will be reimbursed at actual cost. The department of administration will issue a quarterly memo ~~at-the-beginning-of each-fiscal-year~~ designating those high cost cities which qualify for reimbursement of lodging at actual cost. In order to claim lodging reimbursement of this nature, a bona-fide original copy of a receipt from a licensed lodging facility must be attached to the travel expense voucher, form DA-101, and retained by the agency. Other receipts, such as credit card receipts, are not acceptable.

(2) If an employee is traveling with his/her non-state employee spouse, the lodging rate claimed must reflect only the rate for one person. The one-occupant rate should be noted and marked as such on the receipt.

AUTH: 2-15-112 IMP 2-18-501

2.4.141 REIMBURSEMENT FOR MISCELLANEOUS TRAVEL EXPENSES (1) Miscellaneous business expenses associated with travel are reimbursable. Individual expense items of $10 or more must be supported by paid receipts. Supervisors are encouraged to require receipts of large and unusual items. In any case, all miscellaneous expenses which are reported in the other expense column of the travel expense voucher must be explained in the space provided at the bottom of the form. Examples of allowable miscellaneous expenses include needed working supplies purchased on an emergency basis, taxi fares, and business telephone calls~~,-and-etc~~. Miscellaneous expenses do not include such items as tips or taxes on meals or lodging.

AUTH: 2-15-112 IMP 2-18-501

2.4.146 OUT-OF-COUNTRY TRAVEL (1) No direct mention is made in the statutes concerning out-of-country travel. Due to the silence, out-of-state travel regulations will apply in instances where travel is performed outside of the United

States. See the "High Cost City" Management Memo in Volume I of the Montana Operations Manual.

AUTH: 2-15-112 IMP 2-18-501, 502, 503

2.4.147 CHANGE IN TRAVEL STATUS This rule deals with the question of what rate to charge while traveling from in-state to out- of-state. The following regulations will apply with regard to expense for lodging and meals:

(1) The geographical location of the lodging facilities determines the applicable rate. In other words, if you stay in-state, in-state rates apply. If you stay out-of-state, out-of-state rates apply.

(2) An employee boarding a flight originating in Montana with an out-of-state destination receives out-of-state rates from the time the employee departs and continues until the employee returns to Montana. However, if a layover (in-state) for business or personal reasons occurs, then the out-of-state rates do not apply until the employee leaves Montana from the layover point. If traveling by other means of transportation, the geographical location in which the meal is consumed becomes the determining factor.

AUTH: 2-15-112 IMP 2-18-501, 502

2.4.149 TRAVEL TIME ALLOWED (1) It is usually necessary to begin traveling prior to the time established for a meeting, appointment, or conference~~,~~ ~~or etc~~. that necessitated the travel. Also, business activities may terminate late in the day and because of inclement weather, fatigue, or the unavailability of transportation, ~~or etc.,~~ it may not be feasible for the employee to return promptly to headquarters. In such cases, travel expenses are allowed for a reasonable amount of time preceding and following the actual business activities that necessitated the travel. Because circumstances vary, the reasonable criterion will have to be applied on an individual basis by agency management. To the extent possible, however, the employee should be encouraged to travel within an assigned travel shift. This might mean starting the meeting in Great Falls at 9 a.m. rather than 8 a.m. or it could mean concluding business at 3 p.m. to allow 3 hours to return home. The desired end is to reduce state travel expenses wherever possible.

AUTH: 2-15-112 IMP 2-18-501, 502, 503

2.4.150 USE OF TRANSPORTATION PURCHASE ORDER FOR COMMERCIAL TRANSPORTATION (1) The transportation purchase order is one of several alternatives available to a traveling employee to acquire commercial transportation. Vendors of commercial transportation have agreed to honor a properly completed transportation purchase order. In order to make the form more personalized, the agency name and address is preprinted on the form. In addition, the printer places a unique number on the

form which is extremely important in that it allows the agency to control the distribution of the booklets. Keep in mind these books are as good as cash and if they are used illegally, the agency will be liable to the vendor. A log should be maintained listing all books issued to the employees. Extra books should be kept in a safe, secure place.

(2) The transportation purchase order is a three-part set, 20 sets to a book, printed on carbonless paper. Books can be ordered via the standard forms order blank from department of administration, publications and graphics division, 920 Front Street ~~old liquor warehouse~~, Helena, Montana 5960~~1~~20, phone ~~449-3053~~ 444-3053. Agencies must indicate the quantity desired and the billing information to be printed. The billing information (agency name, street address, or building, city, and state) will be printed on the transportation purchase order exactly as appearing on the forms order. A unique sequential purchase order number will also be added to the pre-printed stock so produced. The sequential press-number will consist of the four-digit SBAS agency code designation followed by a sequential number beginning with one ~~with~~for each change in the prefix. Agencies can also indicate a starting number which follows the last number of the preceding order. Pricing will depend on the quantity requested. Agencies should order at least 90 days in advance to permit the ~~general services~~publications and graphics division to combine orders for a lower group rate. Agencies will be billed on a cost recovery basis.

AUTH: 2-15-112 IMP 2-18-501, 502, 503

2.4.152 TRAVEL EXPENSE VOUCHER, FORM DA-101 (1) The travel expense voucher is a three-part set printed on carbonless paper. Detailed instructions are printed on each pad's back cover.

(2) A travel expense voucher is required to itemize allowable employee expenses and must be attached to either form 231, transfer-warrant claim, or 271, journal voucher, depending on the circumstances.

(3) If the employee has been given a travel advance, ~~after the travel has been completed~~ an adjustment must be made after the travel has been completed. The type of adjustment depends upon the variance between the amount advanced and the allowable travel costs.

~~Variance Action On~~
~~allowable costs exceed advance form 231, transfer warrant~~ [1]
~~allowable costs less than form 241, collection report~~ [2]
~~advance form 271, journal voucher~~
~~allowable costs equal advance form 271, journal voucher~~

~~1) To return the unused advance in cash~~
~~2) To lower the advance account without returning the cash.~~

(4) In all cases, cross-reference should be made to identify the applicable DA-101 with the SBAS form 231, 241, or 271 used to make the adjustment.

(5) Travel expense vouchers are available upon request from the dDepartment of aAdministration, ~~publications and graphics division~~Property and Supply Bureau, ~~old liquor warehouse~~ 930 E. Lyndale Ave., Helena, Montana 5960~~1~~20, phone 4494-4514. Travel expense vouchers are to be ordered in pad quantities, 25 sets per pad, through use of the forms order form. Orders will be filled promptly and agencies billed on a cost recovery basis.

AUTH: 2-15-112 IMP 2-18-501, 502, 503

2.4.121 STATE AIRCRAFT is repealed in its entirety.

3. The Rational for changes to Rules 2.4.101, 105, 111, 112, 114, 115, 116, 136, 141, 147, 149, 150, is a need to correct minor errors in grammar, reduce verbiage and to provide for new addresses and telephone numbers. 2.4.136 recognizes that lodging taxes are allowable expenses as long as the total bill does not exceed the maximum lodging allowable allowed by law. 2.4.146 facilitates reference to high cost city management memo for dealing with travel expenses in foreign countries. 2.4.152 corrects some grammar and deletes reference to obsolete forms and addresses. By repeal of 2.4.121 the rules omit reference to the now defunct State Aircraft Pool.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Ms. Kathy Fabiano, Administrator, Accounting Division, Department of Administration, Room 225, Mitchell Building, Helena, Montana, 59620, no later than August 14, 1986.

5. If a person who is directly affected by the proposed rule 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 Ms. Kathy Fabiano at the above address, no later than August 14, 1986.

6. If the agency receives requests for a public hearing on the proposed rule from either 10% of 25, whichever is less of the persons who are directly affected by the proposed rules; the Administrative Code Committee of the Legislature; a governmental subdivision or agency; an association having not less than 25 members who will be directly affected, a notice of hearing will be published in the Montana Administrative Register. Ten per cent of those persons directly affected has been determined to be more than 25.

DEPARTMENT OF ADMINISTRATION

BY Ellen Feaver
Ellen Feaver
Director

Certified to the Secretary of State July 2, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF COSMETOLOGY

In the matter of the proposed amendments of 8.14.603 concerning school requirements and 8.14.805 concerning application	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.14.603 SCHOOL REQUIREMENTS and 8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/MANICURISTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 18, 1986, the Board of Cosmetologists proposes to amend the above-stated rules.

2. The proposed amendment of 8.14.603 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-410 through 8-413, Administrative Rules of Montana)

"8.14.603 SCHOOL REQUIREMENTS (1) through (7) will remain the same.

(8) There shall be a qualified instructor supervising students on the school premises at all times. ~~There may not be more than 25 cosmetology students to each teacher and there may not be more than 20 manicuring students to each teacher.~~ Any school found violating this regulation is declared to be in violation of Montana law.

(9) through (25) will remain the same."

Auth: 37-31-203, MCA Imp: 37-31-311, MCA

3. The reason for the proposed amendment is that the wording conflicts with statutes 37-31-311(2)(a) and 37-31-311(3) regarding student to teacher ratio.

4. The proposed amendment of 8.14.805 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-429 and 8-430, Administrative Rules of Montana)

"8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/MANICURISTS (1) through (1)(d) will remain the same.

~~(2) MANICURISTS~~

~~(a) To qualify for examination, out-of-state manicurists must submit an application supplied by the department, birth certificate, high school diploma, or equivalent and a board transcript. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.~~

~~(b) Manicurists with 350 hours of training or more, are eligible for examination with the above credentials plus the required fees.~~

~~(c) Manicurists with less than 350 hours of training shall furnish a notarized statement from a former employer~~

~~showing proof of 6 months of continuous experience as a manicurist. The board has the right to give final approval to such experience.~~

(3) through (6) will remain the same but will be renumbered as (2) through (5)."

Auth: 37-31-203, MCA Imp: 37-31-304, MCA

5. The reason for the proposed amendment is that the rule conflicts with statute 37-31-304(3)(a) regarding allowing work experience to count as training.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Cosmetologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than August 16, 1986.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Cosmetologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than August 16, 1986.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 600 based on the 6000 licensees in Montana.

BOARD OF COSMETOLOGISTS
DOROTHY TURNER, PRESIDENT

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

Certified to the Secretary of State, July 7, 1986.

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

In the matter of the proposed amendment of Rule 8.86.301 (6) (i) as it relates to the Class I price formula to change on-the-farm retail prices	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 8.86.301 (6)(i) PRICING RULES DOCKET #76-86

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

1. On Friday, August 22, 1986 at 9:30 a.m. DST, or as soon thereafter, as interested personscan be heard, a public hearing will be held in the Department of Highways auditorium at 2701 Prospect, Helena, Montana.

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

2. The hearing will be held at the request of Mr. Dale Johnson, d/b/a Dale's Dairy, Missoula, Montana to amend Rule 8.86.301 (6)(i) to change margins for on-the-farm retail prices as shown below. (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana)(new matter underlined, deleted matter interlined).

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

(i) . . .

~~(i) the minimum on-the-farm wholesale price for pasteurized milk sold in one (1) gallon containers is twenty-two cents ($0.22) less than the regularly calculated and established jobber price.~~

(i) The minimum on-the-farm retail price for pasteurized milk in any container size is the same as the regularly calculated and established jobber prices.

(ii) The minimum on-the-farm price for raw milk sold in one half (½) gallon containers is ~~twenty-two cents ($0.22)~~ eleven cents ($0.11) less than the regularly calculated and established ~~retail~~ jobber price for pasteurized and homo. in such containers.

(iii) The minimum on-the-farm price for raw milk sold in one (1) gallon containers is ~~forty-four cents ($0.44)~~ twenty two cents ($0.22) less than the regularly calculated and established ~~retail~~ jobber price for pasteurized and homo. in such containers.

~~(iv) The minimum on-the-farm price for pasteurized milk sold in one half (½) gallon containers is seventeen cents ($0.17) less than the regularly calculated and established retail price for pasteurized and homo. in such containers;~~

~~(v) The minimum on-the-farm price for pasteurized milk sold in one (1) gallon containers is thirty-four cents ($0.34) less-~~

~~than-the-regularly-calculated-and-established-retail-price-for pasteurized-and-homo,-in-such-containers.~~

~~(vi)-Prices-for-products-or-quantities-for-on-the-farm sales-other-than-those-specified-in-paragraphs-(i)-through-(iii) above-are-calculated-by-subtracting-differentials-from-the-existing-whole-milk-on-the-farm-price.--The-differentials-will-be the-difference-between-the-regular-whole-white-milk-retail-price and-other-appropriately-established-retail-prices.~~

(j) . . . "

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

4. The rationale for the proposed action is to enable the petitioner to compete for business in retail grocery stores. Restoring the percentage margins to the level they were at when the present price differentials were established will enable the petitioner to regain some of that lost business.

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

A. the ability and willingness of consumers and retailers to purchase at the farm.

B. the cost factors in producing milk.

C. the cost factors in processing, packaging, transporting, distributing and jobbing milk.

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

A. the current producer price is $13.98 per hundredweight for milk testing 3.5% butterfat.

B. The Board takes official notice that prices for retail, retail on-the-farm and jobber for a ½ gallon and gallon of whole milk respectively on April 1, 1975 were as follows:

	WHOLE MILK ½ GALLON	WHOLE MILK GALLON
Retail	.85	1.70
Retail on-the-farm, raw	.63	1.26
Retail on-the-farm, past.	.68	1.36
Jobber	.5805	1.1584

Prices on June 1, 1986 are as follows:

	WHOLE MILK ½ GALLON	WHOLE MILK GALLON
Retail	1.28	2.55
Retail on-the-farm, raw	1.06	2.11
Retail on-the-farm, past.	2.11	2.21
Jobber	.9053	1.8095

C. That a recent cost study for the period October 1, 1984 through September 30, 1985, indicates the retail delivery cost on the various items are as follows:

WHOLE MILK	-	½ Gallon	$ .40764
WHOLE MILK	-	Gallon	.81528
LOWFAT 2%	-	½ Gallon	.40764
LOWFAT 2%	-	Gallon	.81528

7. The burden is on the petitioner, Mr. Dale Johnson, to prove his case to show that there is need to increase the differential between retail and on-the-farm retail, the cost of transportation justifies that differential and to show that such relief is in the public interest.

8. Interested persons may participate and present data, views or arguments pursuant to Section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Helena, Montana, no later than August 17, 1986.

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

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

MONTANA BOARD OF MILK CONTROL
CURTIS C. COOK, Chairman

By: William E. Ross
WILLIAM E. ROSS, Chief
MILK CONTROL BUREAU

Certified to the Secretary of State July 7, 1986.

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

In the matter of the adoption of new rules I, II, and III, for the regulation of phosphorus compounds used for cleaning purposes	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF MODEL RULES (Water Quality)

TO: All Interested Persons

1. On August 8, 1986, at 7:30 p.m., a public hearing will be held in the Winchester Room of the Outlaw Inn, 1701 Highway 93 South, Kalispell, Montana, to consider the adoption of a model rule for the regulation of phosphorus compounds used for cleaning purposes.

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

3. The proposed rules provide as follows:

RULE I POLICY The provisions of this subchapter are adopted as a model rule which the department is required to adopt by section 75-7-401, MCA. The model rule is designed to enable counties to protect water quality and aquatic ecosystems by reducing the amount of phosphorus entering natural lakes.
AUTHORITY: Section 75-7-401, MCA
IMPLEMENTING: Section 75-7-401, MCA

RULE II DEFINITIONS In this subchapter the following terms have the meanings indicated below:

(1) "Chemical water conditioner" means a water softening chemical or other substance containing phosphorus which is intended to treat water for use in machines for washing laundry.

(2) "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, hotels, motels, and food or restaurant establishments.

(3) "Household cleaning product" means any product including but not limited to soaps and detergents, used for domestic or commercial cleaning purposes, including but not limited to the cleaning of fabrics, dishes, food utensils, and household and commercial premises. Household cleaning product does not mean foods, drugs, cosmetics, or personal care items such as toothpaste, shampoo, or hand soap.

(4) "Person" means any individual, proprietor of a commercial establishment, corporation, municipality, the state or any department, agency, or subdivision of the state, and any partnership, unincorporated association, or other legal entity.

(5) "Phosphorus" means elemental phosphorus.

(6) "Trace quantity" means an incidental amount of phosphorus which is not part of the household cleaning product formulation, and is present only as a consequence of manufacturing, and does not exceed 0.5% of the content of the product by weight expressed as elemental phosphorus.

AUTHORITY: Section 75-7-401, MCA
IMPLEMENTING: Section 75-7-401, MCA

RULE III PROHIBITIONS AND EXCEPTIONS (1) No household cleaning product may be distributed, sold, offered, or exposed for sale if it contains a phosphorus compound in concentrations in excess of a trace quantity, except that no dishwashing detergent may be distributed, sold, offered, or exposed for sale if it contains a phosphorus compound in excess of 8.7% by weight expressed as elemental phosphorus.

(2) No chemical water conditioner which contains more than 20% phosphorus by weight may be distributed, sold, offered, or exposed for sale.

(3) Cleaning agents used for industrial processes, cleaning food and beverage processing equipment, cleaning medical or surgical equipment, or cleaning dairy equipment are exempt from the provisions of this rule.

AUTHORITY: Section 75-7-401, MCA
IMPLEMENTING: Section 75-7-401, MCA

4. These rules are being proposed in response to the enactment of chapter 574 of the laws of 1985 which require the department to adopt a model rule establishing standards for eligible counties wishing to regulate the sale of phosphorus compounds used for cleaning purposes in order to prevent nutrient enrichment of natural lakes. The proposed rules are essentially a restatement of the legislature's statement of intent which accompanied the legislation at the time of passage.

5. Interested persons may present their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dr. Abraham Horpestad, Water Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than August 15, 1986.

6. Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 7, 1986.

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

In the matter of the adoption of a new rule authorizing local departments or boards of health to review minor subdivisions	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF A RULE (Subdivisions)

To: All Interested Persons

1. On August 7, 1986, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a new rule setting forth standards when sanitary review under the Sanitation in Subdivisions Act may be delegated to and exercised by qualifying local departments or boards of health.

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

3. The proposed rule provides as follows:

RULE I CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) A local department or board of health will, if it requests certification, be certified to perform the final review of divisions of land described in section 76-4-104(3), MCA, if the following requirements are met and the sanitarian or engineer is qualified as described in section (2):

(a) the local department or board of health employs a registered sanitarian or a registered professional engineer responsible to perform the actual final review; those local governments employing more than one registered sanitarian or registered professional engineer shall designate one such person to be in responsible charge of the review program;

(b) the local department or board of health has adopted local regulations for the installation and inspection of individual on-site sewage disposal facilities which are no less stringent than ARM Title 16, chapter 16, subchapters 1, 3, and 6; and

(c) the local department or board of health accurately completes at least 85% of all subdivision applications during a one-year trial period prior to assumption of the program; those subjects of review permitting two or more interpretations may not be considered in determining this performance level.

(2) A registered sanitarian or registered professional engineer, prior to performing subdivision review, must:

(a) pass a written examination administered by the department of health and environmental sciences demonstrating knowledge of the subdivision rules contained in ARM Title 16, chapter 16, certificates of survey interpretation, and site evaluation criteria; in order to pass the examination, each

applicant must correctly answer 90% of all questions presented; and

(b) have a minimum of one year's experience performing subdivision review under either (1) ARM 16.16.108 or (2) the direct supervision of a department-approved registered sanitarian or registered professional engineer.

(3) A registered sanitarian or professional engineer, prior to performing a review of alternative treatment systems as described in department circular 84-12, must demonstrate a thorough knowledge of the design and evaluation of these systems by successfully completing a written examination administered by the department of health and environmental sciences regarding this subject matter.

(4) The department of health and environmental sciences may conduct a performance evaluation of local review procedures and perform random on-site evaluations of subdivisions reviewed under this rule. Evaluations may be performed at the option of the department or if a written complaint is received against the local department or board of health. The local department or board of health shall retain a copy of all subdivision applications, supporting documentation, and related information utilized to perform the review of subdivisions.

(5) The department of health and environmental sciences retains the right to suspend or revoke the certification of the local department or board of health if:

(a) evaluations show the local reviewing authority has failed to perform at the desired accuracy level of 85%; or

(b) evaluations demonstrate that the local reviewing authority is not complying with the Sanitation in Subdivisions Act or other applicable statutes or rules.

(6) Administrative review fees required by section 76-4-105(3), MCA, shall be distributed to the department of health and environmental sciences on a quarterly basis.

AUTHORITY: 76-4-104, MCA
IMPLEMENTING: 76-4-104, 76-4-105, MCA

4. The department is proposing this rule in response to the enactment of Chapter 490, 1985 Laws of Montana, which requires the department to delegate to qualifying local departments or boards of health the authority to review certain minor subdivisions.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than August 15, 1986.

6. Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 7, 1986.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

IN THE MATTER OF Amending 24.16.9007 to change the annual effective date of the standard prevailing rate of wages applicable to public works from October 1st to December 1st.	))))))	NOTICE OF PROPOSED AMENDMENT TO 24.16.9007 ANNUAL ADOPTION OF STANDARD PREVAILING RATE WAGES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 28, 1986, the department of labor and industry proposes to amend rule 24.16.9007 which sets the effective date of and incorporates by reference the commissioner's determination of the standard prevailing rate of wages under 19-2-402.

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

24.16.9007 ANNUAL ADOPTION OF STANDARD PREVAILING RATE OF WAGES (1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, ~~to be paid on public works projects~~ shall be adopted in accordance with the Montana Administrative Procedures Act and rules implementing the act.

(a) A notice of proposed adoption of the commissioner's determination shall be published in the Montana Administrative Register ~~on the regular publication next preceding the first day of September,~~ 30 to 45 days prior to adoption according to regular publication dates scheduled in ARM 1.2.419.

~~(b) A notice of adoption of minimum wage rates by project character, by county or locality and by craft, classification and type of worker shall be published in the Montana Administrative Register on the regular publication date next preceding the first day of October.~~

~~(c)~~(b) Such minimum wage rates shall become effective on the first day of ~~October,~~ December, and shall supersede and replace all previously adopted wage rates for corresponding classifications. Adopted wage rates shall remain in effect until superseded and replaced by a subsequent adoption.

~~(d)~~(c) An adoption of wage rates shall have no effect on contracts for public works awarded during the effective period of a previous adoption of rates under these rules.

~~(e)~~(d) The ~~commissioner's determination of minimum~~ wage rates proposed and the wage rates adopted shall be incorporated by reference in ~~the above~~ respective notices published in the Montana Administrative Register. ~~and copies of either the proposed wage rates or adopted wage rates will be mailed to all interested persons or agencies as evidenced by their inclusion on a mailing list maintained by the commissioner. All others may obtain a copy of the determination of proposed wage rates or adopted wage rates, or be included on the commissioner's mailing list by request made to the Office of the commissioner, attention Labor Standards Division at the address shown in ARM 24.16.9003(3), above.~~

~~(f) During the transition and initial determination of standard prevailing wage rates pursuant to these rules, the commissioner will propose for adoption as interim rates, his previous determination as follows:~~

~~(i) Building construction rates,~~
~~Date of publication: 08-27-84.~~

~~(ii) Heavy and highway rates,~~
~~Date of publication: 08-27-84.~~

~~(iii) General Rates,~~
~~Effective date: 6-11-84.~~

~~Such wage rates shall be enforced under applicable law on public works contracts awarded on or after the indicated dates and hereafter until the same are superceded and replaced by a subsequent adoption. ARM 24.16.9003(5) supra.~~

(2) The commissioner will maintain a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information will be distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request delivered to the Administrator, Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P.O. Box 1728, Helena, MT 59624. Copies of adopted wage rates will be available at reproduction cost for a period of five years following their effective date.

(a) The standard prevailing rate of wages, by county or locality, adopted by reference in 1986 MAR p. 44, became effective on January 16, 1986. (AUTH: Sec. 18-2-409 and 431 MCA; IMP, Sec. 18-2-402 MCA

3. The proposed amendment clarifies the language of the rule and changes the annual effective date of the standard prevailing rate of wages.

4. Interested persons may submit their data, views and arguments in writing to the Administrator, Employment Relations Division, Corner of Roberts and Lockey, P.O. Box 1728, Helena, MT 59624, no later than August 14th.

5. If any person directly affected by the proposed amendment wishes to express his data, views and arguments

orally or in writing at a public meeting, he must make a written request for a hearing and submit this request together with any written comment he has, to the administrator whose address appears in clause numbered 4 immediately above, no later than August 14th.

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 500 based on an estimated 2000 licensed public contractors, an uncounted number of state, county, municipal, and school district agencies authorized to contract for public works and an uncounted number of construction, maintenance and repair workers' organizations.

7. The authority of the Department to make the proposed amendment is based on Sections 18-2-409 and 431 MCA and the rule implements Section 18-2-402 MCA.

DEPARTMENT OF LABOR AND INDUSTRY

Eugene Huntington

EUGENE HUNTINGTON
Commissioner

Certified to the Secretary of State July 7, 1986.

BEFORE THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF A RULE RELATING TO SHUT-IN OIL ROYALTIES FOR OIL AND GAS LEASES ON STATE LAND	))))	NOTICE OF PROPOSED ADOPTION OF RULE I SHUT-IN OIL ROYALTIES FOR OIL AND GAS LEASES ON STATE LAND NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On August 18, 1986 the Montana Board of Land Commissioners and the Montana Department of State Lands proposes to adopt Rule I relating to shut-in oil royalties for oil and gas leases on state land.

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

RULE I SHUT-IN ROYALTIES

(1) An operator of an oil well producing upon state lands pursuant to a state oil and gas lease, may apply to the commissioner of the department of state lands to temporarily shut-in an oil well for a one year period of time. If the commissioner of the department of state lands finds that the operator has shown the three elements as listed below, the commissioner may allow the operator to temporarily shut-in the oil well for a one year period of time upon the operator's payment of shut-in oil royalties. The operator must show that:

(a) the oil well is incapable of producing in paying quantities at current market values for the oil produced;

(b) a significant amount of oil production can be recovered in the future from the producing formation through the use of equipment presently used at the well head of the oil well;

(c) the well is currently capable of producing in paying quantities should the market value of the oil produced be equal to $25.00 per barrel.

(2) Production in paying quantities for the purposes of this rule is defined as production in quantities sufficient to yield a return in excess of operating costs, even though drilling and equipment costs may never be repaid and the undertaking as a whole may ultimately result in a loss.

(3) All direct costs incurred in the prudent operation of a lease whether paid or accrued may be considered as proper expenditures in the calculation of operating costs. These direct costs include, but are not limited to: labor, trucking, transportation expense, taxes, license and permit fees, general supervision, office maintenance, bookkeeping and accounting, treating oil to make it marketable, and maintenance and repair of roads, entrances, fences, and gates. The bonus paid for the lease, drilling costs, and costs of lease equipment shall not be considered to be direct costs of operation.

(4) In determining whether to allow the extension of the lease by payment of shut-in oil royalties, the

commissioner may also consider whether the temporary shut-in of the oil well would adversely affect correlative rights or the operator's implied covenant to offset drainage occurring on the lease.

(5) Shut-in oil royalties shall be in the amount of $100.00 per lease per year or the amount of the annual lease rentals, whichever is greater. Shut-in oil royalties must be paid within thirty days of the commissioner's decision to allow extension of the lease by payment of shut-in oil royalties. As long as such leased lands contain an oil well capable of production as described by the three elements listed above, and shut-in oil royalty payments are made, the lease shall be considered a producing lease under the lease terms. The lease will be held by the payment of shut-in oil royalties for one year effective on the first day of the month following the month in which shut-in oil royalties are received by the department of state lands.

(6) No equipment shall be removed from the lease while the lease has been extended by the payment of shut-in oil royalties, so as to render the well incapable of production. Nothing in this rule shall be construed to prevent repair or replacement of equipment necessary for production. Each oil well temporarily shut-in by operation of this rule shall be maintained so as to be immediately operable.

AUTH: 77-3-402, MCA. IMP. 77-1-202, MCA.

(3) Interested persons may submit their data, views, or arguments concerning the proposed adoption of this rule to Dennis Hemmer, Commissioner, Department of State Lands, Capitol Station, Helena, MT 59620 no later than August 14, 1986.

(4) If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Dennis Hemmer, Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59620 no later than August 18, 1986.

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

Dennis Hemmer, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE July 2, 1986
13-7/17/86 MAR Notice No. 26-2-48

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed) amendment of rule 36.21.410) concerning examinations)	NOTICE OF PROPOSED AMENDMENT OF ARM 36.21.410 EXAMINATION NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On August 16, 1986, the Board of Water Well Contractors proposes to amend rule 36.21.410 concerning exams.

2. The proposed change will amend subsections (4) and (6) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-393.14 and 36-393.15, Administrative Rules of Montana).

"36.21.410 EXAMINATION (1) . . .

(4) A grade of ~~75%~~ 80% is necessary to pass the examination. Grading will be completed by the board or its designee.

(5) . . .

(6) Applicants for licensure by reciprocity will be required to pass the examination with a score of ~~75%~~ 80%.

(7) . . ."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Ch. 728, L. 1985, Eff. 7/1/85 Imp: 37-43-305, 308 MCA

3. The Board proposes to amend the rule to increase the score needed to pass both the water well contractor's and water well driller's examinations. In the Board's professional judgment, prospective drillers and contractors who have served the required one year apprenticeship and have taken advantage of educational materials available from the Board and the NWWA should have gained the knowledge necessary to achieve this score. The increase in required score will help assure the competency of new water well drillers and contractors in the state.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption in writing to the Board of Water Well Contractors, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620 no later than August 14, 1986.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with written comments he has to the Board of Water Well Contractors, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620 no later than August 14, 1986.

6. If the board 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 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.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, July 7, 1986.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed repeal of rules 36.21.601, 36.21.631 through 36.21.633, current construction standards and proposed adoption of new rules under sub-chapter 6 setting minimum construction standards for water wells in Montana	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF RULES 36.21.601, 36.21.631, 632 AND 633 UNDER SUB-CHAPTER 6 AND PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 6, SETTING MINIMUM CONSTRUCTION STANDARDS FOR WATER WELLS IN MONTANA

To All Interested Persons:

1. On Thursday, August 7, 1986, at 9:00 a.m. a public hearing will be held in the Director's Conference Room of the Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal and proposed adoption of the above-stated rules.

2. The proposed repeal of rules 36.21.601, 36.21.631 through 36.21.633 repeals the rules in their entirety. The full text of the rules is located at pages 36-393.35 and 36-393.61, Administrative Rules of Montana.

3. The rules are proposed for deletion because they are being replaced in their entirety with the proposed adoptions.

4. The proposed adoptions will read as follows:

"I DEFINITIONS For purposes of this chapter, the following terms shall apply:

(1) "Abandoned water well"

(a) "permanent" means a well whose use has been permanently discontinued, or which is in such disrepair that its continued use for the purpose of obtaining ground water is impractical or may be a health hazard.

(b) "temporary" means a well from which a drilling rig has been removed from the well site prior to completing or altering the well.

(2) "Access port" means an opening in the upper terminus of a well casing in the form of a tapped hole and plug or a capped pipe welded onto the casing to permit entry of water-level measuring devices into the well.

(3) "Annular space" ("annulus") means the space between a drill hole and a casing pipe, or between two well casings.

(4) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(5) "Artesian well" means a well in which the water level rises above the point at which it was first encountered. This term includes both flowing and non-flowing wells.

(6) "Bentonite" means a highly plastic, highly absorbent, colloidal clay composed largely of mineral montmorillonite.

(7) "Board" means the Montana board of water well contractors.

(8) "Capped well" means a well that is not in use and has a permanent seal or locked cap installed on top of the casing.

(9) "Casing"

(a) "inner" means the inner tubing, pipe, or conduit installed inside the well casing or lower well drill hole, and used to protect against caving formations or to seal out polluted or mineralized water zones.

(b) "outer" means an impervious durable pipe placed in a well to prevent the walls from caving, to seal off surface drainage or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the waste of ground water.

(10) "Casing seal" means the watertight seal established in the drill hole between the well casing and the drill hole wall to prevent the inflow and movement of surface water or shallow ground water in the well annulus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(11) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.005 mm or 0.0002 inches.

(12) "Community water system" means any public water supply system which serves at least ten service connections used by year-round residents or regularly serves at least 25 year-round residents.

(13) "Concrete" means a mixture of not more than two parts sand and one part cement and not more than six gallons of clear water per 94-pound bag of portland cement. Up to five percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage.

(14) "Confining formation" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

(15) "Consolidated formation" means any geologic formation in which the earth materials have become firm and coherent through natural rock forming processes. It includes, but is not limited to, basalt, granite, sandstone, shale, conglomerate, and limestone.

(16) "Construction of water wells" means all acts necessary to obtain ground water by wells, including the contracting for and excavation of the well, installation of casing, grout, screens, and developing and testing, whether in the installation of a new well or the alteration of an existing well. The term does not include the installation of permanent pumps and pumping equipment.

(17) "Contamination" means an impairment of water quality by chemicals, radionuclides, heat, or biologic life to a degree that may or may not affect the potential or intended use of water.

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

(19) "Disinfection" means the introduction of chlorine, or other disinfecting agents using a method approved by the board, in a sufficient concentration and followed by an adequate exposure contact time so as to inactivate coliform or other indicator organisms.

(20) "Drawdown" means the extent of lowering of the water level in a well when pumping is in progress or when water is discharging from a flowing well. Drawdown is the difference, measured in feet, between the static water level and the pumping level.

(21) "Gravel pack"

(a) "artificial gravel pack" means placement of gravel in the annular space around the well casing or screen. A gravel pack is frequently used to prevent the movement of finer material into the well casing, to increase the ability of the well to yield water and to lend lateral support to screens in unstable formations.

(b) "natural gravel pack" means a gravel pack which leaves the coarser naturally occurring gravels around the screen. The finer sands are removed from the formation by development.

(22) "Grout" means neat cement or heavy bentonite water slurry. Heavy bentonite water slurry when used as grout shall be of sufficient viscosity to require a time of at least 70 seconds to discharge one quart of the material through an American Petroleum Institute (API) marsh funnel viscometer. Bentonite water slurry shall weigh not less than nine pounds per gallon. It must be fresh bentonite with no additives or polymers.

(a) "bentonite clay grout" means a mixture consisting of not less than one-half pound of commercial bentonite clay to one gallon of clear water.

(b) "neat cement grout" means a mixture of not more than six gallons of clear water per 94-pound bag of portland cement. Up to 5 percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage. No sand or gravel is to be used in cement grout.

(23) "Monitoring well" means a well that will be used for the monitoring of ground water quality or flow direction but is not to be used as a means of withdrawing ground water for purposes other than water quality sampling or pump testing.

(24) "Multi-family water supply system" means a non-public water supply system designed to provide water for human consumption to serve two through nine living units. The total people served shall not exceed 24.

(25) "Non-community water system" means any public water supply system which is not a community water system.

(26) "Pitless adapter or pitless unit" means a commercially manufactured unit or device designed for attachment to a well casing which permits buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing the entrance of contaminants from surface or near surface sources from entering the well.

(27) "Pollution" means a serious impairment of water quality by chemicals, radionuclides, heat, biologic organisms, or other extraneous matter to the degree that impairs the potential or intended use of water or creates a hazard to the public health and safety.

(28) "Potable water" means water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

(29) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser or other water that is designed to serve ten or more living units for at least 60 days out of the calendar year or 25 or more persons at least 60 days out of the calendar year.

(30) "Pump test" means the procedure used to determine the yield characteristics of a water well by installing and operating a pump for an extended period of time.

(31) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use, including seals and tanks, together with fittings and controls, in withdrawing or obtaining ground water for any use.

(32) "Sand" means a detrital material having a prevalent grain size ranging from two millimeters to 0.06 millimeters or .08 inches to .002 inches.

(33) "Sanitary well seal" means a manufactured seal installed at the top of the well casing which, when installed, creates a watertight seal to prevent contaminated or polluted water from gaining access to the ground water supply.

(34) "Silt" means an unconsolidated clastic sediment composed predominantly of particles between 0.06 and 0.005 mm or .002 inches to .0002 inches in diameter.

(35) "Static water level" means the vertical distance from the surface of the ground to the water level in a well when no water is being taken from the aquifer either by pumping or by free flow.

(36) "Unconsolidated formation" means naturally occurring, non-cemented materials including, but not limited to, clay, sand, silt, and gravel.

(37) "Water table" means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally.

(38) "Well drilling machine" means any power-driven machine used in the construction or alteration of water wells, including, but not limited to, percussion, jetting, rotary, boring, digging, or augering machines.

(39) "Well log report" means DNRC form no. 603 to be completed and filed by a water well driller/contractor to record well information on wells constructed."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"II PUBLIC, COMMUNITY, NON-COMMUNITY PUBLIC, AND MULTI-FAMILY WATER SUPPLY WELLS (1) All wells for public, community, non-community public and multi-family water supply

system use are governed by those construction standards set forth in the department of health and environmental sciences rules (Title 16, chapters 16 and 20, Administrative Rules of Montana). Copies of the rules may be obtained by contacting that department.

(2) The minimum construction standards set by the board of water well contractors in this sub-chapter (Title 36, chapter 21, sub-chapter 6) shall apply to all wells in Montana. However, for the above-stated wells, the department of health and environmental sciences may adopt more specific or stringent standards."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"III DRILLING AGREEMENT (1) A written drilling agreement shall be provided to the well owner by the water well contractor prior to the construction of the well.

(2) The drilling agreement shall contain, but not be limited to the following items:

(a) name and address of the well owner and the contractor;

(b) legal description of the property on which the well is to be drilled;

(c) site protection;

(d) depth at which well owner requests drilling operations cease and contract be renegotiated (in cases of lack of sufficient water);

(e) size and type of casing to be used;

(f) disinfection responsibility;

(g) excessive pressures (flowing wells);

(h) applicable warranties and guarantees;

(i) abandonment responsibilities, if it becomes necessary to abandon the well for any reason;

(j) itemized price list, including cost per foot of drill hole; and

(k) date, signatures of well owner and water well contractor.

(3) Copies of all drilling agreements shall be maintained by the water well contractor for a period of three years."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA.

"IV PROTECTION OF SITE (1) The contractor shall remove from the site all unused materials. Water pumped from the well shall be conducted to a place where it will be possible to dispose of the water without damage to property or the creation of a nuisance.

(2) Cleanup and restoration of site shall be covered by the drilling agreement.

(3) The well shall be protected by the contractor from pollution during construction."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"V LOCATION OF WELLS (1) Water wells shall not be located within:

(a) 10 feet of property lines unless properly protected by easement or agreement;

(b) 50 feet of septic tanks;

(c) 100 feet of drainfields, seepage pits or cesspools, or other site treatment systems;

(d) 10 feet of sewer lines with permanent watertight joints, or

(e) 50 feet of other sewer lines.

(2) Contractors shall contact local flood plain administrators for rules pertaining to wells in flood plain areas."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"VI WELL LOG REPORTS (1) A licensed Montana water well contractor/driller shall prepare a well log report form for each well drilled. The contractor/driller shall supply a copy of the well log report to the water well owner and such agencies as required by section 85-2-516 and 85-2-517, MCA, and maintain a copy as a record in his files."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"VII WELL CASING (1) All casing installed, other than plastic casing set forth in rules VIII and XII, shall be of steel, in new or like new condition, being free of pits, breaks, or contamination, and shall meet minimum American Society of Testing Materials (ASTM A-120) specifications for line pipe, for the following sizes:

(Minimum specifications for steel well casing)

Nominal Size (inches)	Outside Diameter (inches)	Wall Thickness (inches)	Weight Per Foot (pounds)
2	2.375	.154	3.56
2½	2.875	.203	5.79
3	3.500	.216	7.58
3½	4.000	.226	9.11
4	4.500	.237	10.79
5	5.563	.244	13.70
6	6.625	.250	17.02
8	8.625	.250	22.36
10	10.750	.250	28.04
12	12.750	.312	41.45
14	14.000	.312	45.68
16	16.000	.312	57.27
18	18.000	.375	70.59
20	20.000	.375	78.60

(2) All casing having a diameter larger than twenty (20) inches shall have a wall thickness of at least .375 inch.
(3) Well casing installed in a well greater than a nominal diameter of ten (10) inches, may have a wall thickness of .250 inch as long as it otherwise meets ASTM A-20 specifications and does not exceed the following depth limitations:

Diameter	Maximum Depth
12 inches	250 feet
14-16 inches	150 feet
18-20 inches	100 feet

(4) Casings of other specifications may be considered under the provisions of variances (rule XLVIII)."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"VIII INNER CASING (1) Inner casing installed through caving formations, or for sealing out water of poor quality, and installed without driving, may be of lighter weight than specified by the table under rule VII. Such lightweight pipe shall have a wall thickness equal to or greater than a minimum wall thickness of .188 inch. All inner casing shall be of steel, in new or like new condition, being free of pits or breaks; or shall be of polymerized vinyl chloride conforming with American Society for Testing and Materials Specification F 480-81 or latest revision as per rule XII. Inner casing installed in a well shall extend or telescope at least 4 feet into the lower end of the well casing. In the event that more than one string of inner casing is installed, each string shall extend or telescope at least 4 feet into the adjacent larger diameter inner casing.
(2) In the event inner casing must be driven, it must meet the specifications of rule VII."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"IX STEEL CASING JOINTS (1) All casing joints shall be welded or screw coupled and shall be watertight. If welded casing joints are used, the weld shall be a full penetrating weld at least equal in thickness to the wall thickness of the casing. Welded casing joints shall have a tensile strength equal to or greater than that of the casing."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"X TEMPORARY CASING (1) Temporary outer surface casing used in the construction of a well shall be withdrawn as sealing material is placed."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XI CASING SHOE (1) In all drilled wells, permanent well casing that is driven should be equipped with a standard drive shoe at its lower end, welded or threaded onto the lower end of the string of casing. The shoe shall have a beveled cutting edge of metal forged, cast, or fabricated for this special purpose."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XII PLASTIC CASING (1) All plastic casing shall be installed only in an oversized drillhole without driving. Wells cased with plastic shall have steel casing extending a minimum of 18 feet below the surface and 18 inches above the ground surface. Methods of installation shall be:

(a) by installing a larger size steel casing on the outside of the plastic casing with a minimum of 8 feet of overlap (Figure 6-A); or

(b) by attaching directly to the plastic casing a threaded plastic to steel coupling (Figure 6-B).

(2) Thermoplastic well casing shall conform with American Society for Testing and Materials Specification F480-81 or latest revision as follows:

(a) minimum standards dimension ratio shall be twenty-six for inner casing in bedrock applications;

(b) minimum standards dimension ratio shall be twenty-one for unconsolidated formations greater than 125 feet;

(c) minimum pipe stiffness shall be two hundred twenty-four foot-pounds/in^2 [kiloneutron (meter · meter)] when tested according to section 5.4.I of American Society for Testing and Materials Specification F480;

(d) all casing five inches [12.7 centimeters] and larger shall be tested for impact resistance and meet or exceed IC-1 impact classification according to section 6.5 and table 6 of American Society for Testing and Materials Specification F480;

(e) carry the seal of the National Sanitation Foundation.

(3) All casing shall have additional thickness and weight if standard thickness is not capable of withstanding forces to which it is subject.

(4) The well casing must be clearly marked by the manufacturer showing: nominal size, type plastic material, Standard Dimension Ratio (SDR), ASTM designation, and National Sanitation Foundation seal of certified approval.

(5) The use of plastic well casing in connection with a pitless adaptor is not acceptable."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XIII PLASTIC CASING JOINTS (1) All casing joints shall be watertight. Either "bell" type or coupling hubs or threaded couplings are approved. Hub couplings shall be of material meeting the specifications for plastic casings as stipulated in rule XII. Solvent cemented joints shall be made in accordance with manufacturer's directions."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XIV TOP TERMINAL HEIGHT (1) The casing head or pitless unit of any water well shall extend not less than 18 inches above the finished ground surface or pumphouse floor, and not less than 18 inches above the local surface runoff level. No casing shall be cut off below land surface except to install a basement offset or a pitless unit, or during permanent abandonment of a well. The ground surface immediately surrounding the top of the well casing or pitless unit shall be graded so as to drain surface water away from the well. The watertight casing of any water well shall extend not less than 3 feet above the regional flood level of record."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XV CASING OPENINGS (1) There shall be no opening in the casing wall between the top of the casing and the bottom of the required casing seal except for pitless adapters, screened vents (inverted u-construction), measurement access ports, and grout nipples installed in conformance with these standards.

(a) All pitless adaptors must be installed according to manufacturers specifications.

(2) In no case shall holes be cut in the casing wall for the purpose of lifting or lowering casing into the well bore, unless such holes are properly welded closed and watertight prior to placement into the well bore."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XVI CASING CENTRALIZERS (1) Well casing to be sealed into an oversize drillhole should be equipped with centering guides to ensure the proper centering of a casing. In all events, casings shall be centered in the sealed interval. Guides should be of steel, at least ¼ inch in thickness, evenly spaced in groups of 3 or 4 in 20 foot intervals or less. (See Figure 1.)"

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XVII CASING PERFORATIONS (1) Perforations above the lowest expected static water level shall not be permitted. Wells may be completed with perforations as follows:

(a) In-place perforations with star, mills knife, similar type perforators, millslotted, sawed, or drilled;

(b) Perforated inner casing, either torch-cut, mill-slotted or punched. Such inner casing may be of steel, plastic or other suitable corrosion-resistant material, but if other than steel, a full evaluation of the structural stability of the inner casing must be made prior to its placement. They may be used in a natural development or gravel-packed type of construction. Where appropriate, the top of the inner casing shall be fitted with suitable packers or grout sealed to the well casing."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XVIII MOVEMENT OF CASING AFTER GROUTING (1) In no case shall the permanent well casing be moved or driven following the placement and initial set of the cement grout."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XIX WELL SCREENS (1) Well screens shall be constructed of one type of corrosion-resistant material.
(a) The choice of material should be selected on the basis of chemical analysis of the water or prior knowledge of the water quality.
(2) The well screen aperture openings, screen length and diameter should be selected to have sufficient open area to transmit the desired yield, at aperture entrance velocities of 0.1 feet per second or less.
(3) Where appropriate, suitable neoprene packers or cement grout shall be fitted to the top of the well screen assembly."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XX WELL DEVELOPMENT PROCEDURES (1) Upon completion of the well and before conducting the yield and drawdown tests, the contractor shall surge and develop the well to remove all fines, drill cuttings, mud, drilling fluids, and additives. The method of developing and length of time of development shall be determined by the contractor and well owner dependent on the type of water bearing formation encountered.
(2) The development work shall be started slowly and gently and increased in vigor as the well is developed."
Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXI SEALING OF CASING--GENERAL (1) In developing, redeveloping or conditioning a well, care shall be taken to preserve the natural barriers to ground-water movement between aquifers and to seal aquifers or strata penetrated during drilling operations which might impair water quality or result in cascading water. All sealing shall be permanent and prevent possible downward movement of surface waters in the annular space around the well casing. Sealing shall be accomplished to prevent the upward movement of artesian waters within the annular space around the well casing that could result in the waste of ground water. The sealing shall restrict the movement of ground water either upward or downward from zones that have been cased out of the well because of poor quality. When cement grout is used in sealing, it shall be set in place 72 hours before additional drilling takes place, unless special additives are mixed with the grout that will cause it to adequately set in a shorter period of time. All grouting shall be performed by adding the mixture from the bottom of the space to be grouted toward the surface in one continuous operation. The minimum grout thickness shall be 3 inches.
(a) three inches of grout shall mean 1¼ inches of grout around the outside of the casing on all sides.

(2) When casing diameter is reduced, a minimum of 4 feet of overlap shall be required and the bottom of the annular space between the casings shall be sealed with a suitable packer; the remainder of the annular space will be pressure grouted with bentonite or neat cement.

(3) All new wells shall be sealed to a minimum depth of 18 feet with grout with the exception of those wells addressed in subsection (4) of this rule.

(4) For wells drilled with a cable tool or other driven methods through unconsolidated formations, when the drilling and driving is a continuous operation, bentonite shall be fed continuously along the outside of the casing as the well is being driven. However, it is required that fresh, clean, pure bentonite be used."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXII DESIGN AND CONSTRUCTION--SEALING OF CONSOLIDATED FORMATIONS In drilled wells that penetrate an aquifer either within or overlain by a consolidated formation, sealing of the casing shall conform with one of the following procedures:

(1) An upper drill hole at least 4 inches greater in diameter than the nominal size of the permanent well casing shall extend from land surface to at least 5 feet into sound, uncreviced, consolidated rock, but in no instance shall said upper drill hole extend less than 18 feet below land surface.

(a) Unperforated permanent casing shall be installed to extend to this same depth and the lower part of the casing shall be sealed into the rock formation with cement grout. The remainder of the annular space to land surface shall be filled with cement grout or bentonite clay grout (see Figure 2A at the end of this chapter).

(b) If cement grout is placed by pumping to seal the entire annulus from the bottom up to land surface, the upper drill hole need only be a minimum of 3 inches larger than the outside diameter of the permanent casing.

(2) An upper drill hole at least 4 inches greater in diameter than the nominal size of the permanent casing shall extend from land surface to a depth of at least 18 feet. An unperforated permanent casing shall be installed so that it extends at least 5 feet into sound, uncreviced, rock formation.

(a) Throughout the driving of the well casing to the rock formation, the annular space between the upper drill hole and the permanent casing shall be kept at least one half full with bentonite slurry.

(b) The annular space between the rock formation and the permanent casing shall be tightly sealed with cement grout. The remainder of the annular space to land surface shall then be filled with cement grout or bentonite clay grout (see figure 2B at the end of this chapter).

(3) If temporary surface casing is used in either of the above procedures (1) or (2), this casing shall be of sufficient diameter to conform to the upper drill hole specifications.

Withdrawal of the temporary casing shall take place simultaneously with proper sealing of the annular space to land surface."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXIII SEALING OF UNCONSOLIDATED FORMATIONS WITHOUT SIGNIFICANT CLAY BEDS (1) In drilled wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds, an unperforated well casing shall extend to at least 1 foot below the known seasonal low water table. An upper drill hole having a diameter at least 3 inches greater than the nominal size of the permanent casing shall extend to at least 18 feet below land surface.

(2) The annular space between the upper drill hole and the well casing shall be kept at least one-half full with bentonite slurry throughout the driving of the permanent casing into the aquifer. After the permanent casing is set in its final position, the remaining annular space shall be filled to land surface with cement grout or bentonite clay grout (see figure 3A at the end of this chapter).

(3) If the oversized drill hole is extended to the same depth as the permanent casing, a suitable bridge shall be installed between the casing and the drill hole at a position directly above the production aquifer. The remaining annular space shall be completely filled and sealed to land surface with cement grout or bentonite clay grout (see figure 3B at the end of this chapter).

(a) A suitable bridge is one that prevents grout from dropping into the producing formations and reducing the output of the well.

(4) If temporary casing is used to maintain the oversized drill hole, the annular space shall be kept full with cement grout or bentonite clay grout as the temporary casing is being withdrawn.

(5) For drilling with cable tool rigs, see rule XXI."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXIV SEALING OF UNCONSOLIDATED FORMATIONS WITH CLAY BEDS (1) In drilled wells that penetrate an aquifer overlain by clay or other unconsolidated deposits such as sand and gravel in which significant (at least 6 feet thick) interbeds of clay are present, the well casing may be terminated in such clay strata, provided that the casing be sealed in substantially the same manner as is required in the case of consolidated formations (see rule XXII and figure 3C at the end of this chapter)."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXV SPECIAL SEALING STANDARDS FOR ARTESIAN WELLS (1) When artesian water is encountered in the well, an unperforated well casing shall extend into the confining stratum overlying the artesian zone. The casing shall be adequately sealed into the confining stratum so as to prevent surface and subsurface leakage from the artesian zone.

(2) If the well flows at land surface, it shall be equipped with a control valve so that the flow can be completely stopped.

(3) The well shall be completed with seals, packers, and neat cement grout that will eliminate leakage around the well casing.

(4) The driller shall not move his drilling rig from the well site until the leakage has been completely stopped unless authority for temporary removal is granted by the board."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXVI SEALING OF ARTIFICIAL GRAVEL-PACKED WELLS, PERMANENT SURFACE CASING NOT INSTALLED (1) An upper drill hole having a diameter of at least 4 inches greater than the outside diameter of the production casing shall be drilled to extend from land surface into a clay or other formation of low permeability overlying the water-bearing zone. The annular space to this depth shall be filled with cement grout or bentonite clay grout. If the clay or other impermeable formation is at or near land surface, the upper drill hole and unperforated production casing shall extend to a minimum depth of 18 feet below land surface, provided that the casing does not pass through the impermeable zone. A suitable bridge shall be installed in the annular space between the gravel pack and cement grout seal. A gravel fill pipe may be installed for injecting gravel prior to sealing the top of the gravel pack (see rule XXIII(3)(a) for definition of a suitable bridge). Special care shall be taken to insure that the seal is watertight around the injection pipe. The injection pipe shall be capped with a watertight seal or plug (see figure 4A at the end of this chapter)."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXVII SEALING OF ARTIFICIAL GRAVEL PACKED WELLS, PERMANENT SURFACE CASING INSTALLED (1) When permanent surface casing is installed, the well bore shall have a diameter of at least 4 inches greater than the surface casing for the introduction of sealing materials. A watertight seal shall be installed at the top of the gravel pack between the permanent surface and production casing. Sealing procedures and installation of gravel fill pipes are substantially the same as in rule XXVI above. If a temporary casing is used to maintain the oversized drill hole, the annular space to be sealed under conditions of rule XXVI and XXVII shall be kept full with cement grout or bentonite clay grout as the temporary casing is withdrawn (see figure 4B at the end of this chapter).

(2) If a clay layer or other formation of low permeability is not encountered before reaching the top of the water-bearing zone, the upper drill hole and unperforated production casing shall extend to a minimum depth of 18 feet below land surface. Sealing procedures, installation of gravel fill pipes and temporary casing are substantially the same as in rules XXVI and XXVII."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXVIII TEMPORARY CAPPING (1) At all times during the progress of the work, the contractor shall protect the well in such a manner as to effectively prevent either tampering with the well or the entrance of foreign matter into it. Upon its completion, he shall provide and set a substantial screwed, flanged or welded cap.

(2) Any well to be temporarily removed from service, temporarily abandoned due to a recess in construction, or any well to be temporarily abandoned before commencing service, shall be capped with a watertight seal, watertight welded steel cap, or threaded cap. In all cases, caps shall be of steel or cast iron of at least three-sixteenths of an inch in thickness.

(3) Temporarily abandoned wells shall have an access port as per rule XXXII."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXIX DISINFECTION (1) Sand and gravel used in filter pack wells shall be thoroughly hosed or sluiced with water, and shall be disinfected with a solution containing at least 50 parts per million chlorine before being placed in the well. All water introduced into a well during construction shall be clean and potable. The well and its equipment, including the interior of the well casing, shall be thoroughly swabbed and cleaned to remove all oil, grease, and foreign substances upon completion of the well's construction. Following the completion of a well, and again after the pumping equipment has been installed, a well and its equipment shall be disinfected by thoroughly agitating and mixing in the well a solution containing enough chlorine to leave a residual of 25 parts per million throughout the well after a period of 24 hours.

(2) The responsibility for the chlorination of the well shall be agreed upon in writing by the parties to the drilling agreement."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXX WARRANTY AND GUARANTEES (1) The contractor warrants and guarantees to the well owner that all materials and equipment shall be new unless otherwise specified and that all work shall be of good quality and free from faults or defects and in accordance with the requirements of the drilling agreement and of any inspections, tests or approvals referred to in the drilling agreement. These warranties and guarantees are

void if the well owner does not give timely notice to the contractor of all unsatisfactory work, all faulty or defective work and all work not conforming to the requirements of the drilling agreement or such inspections, tests or approvals.

(2) The contractor shall extend to the purchaser, factory guarantees on pumps and accessories sold and installed by him.

(3) The warranty or guarantee period shall be a minimum of one year from the date of completion of the well."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXI TESTS FOR YIELD AND DRAWDOWN (1) Every well shall be tested for yield and drawdown for a period of not less than one hour either by bailing, pumping, or air testing. During testing, discharge rate shall be as uniform as possible.

(a) For individual wells in subdivisions, public community, non-community public and multi-family water supply wells, the testing requirements set out in the department of health and environmental sciences rules shall apply (Title 16, Chapter 16 and 20, Administrative Rules of Montana). Copies may be obtained by contacting that department.

(2) Test data to be recorded on the well log report form shall be:

(a) static water level immediately before testing begins;

(b) depth at which pump is set for test;

(c) the pumping rate and means of discharge (i.e., bailing, airlift, pumping);

(d) the maximum drawdown during the test;

(e) the duration of the test, including both

(i) the pumping time and

(ii) recovery time;

(f) recovery water levels and the respective times after cessation of pumping that the recovery water level data was taken.

All depth measurements shall be from the top of the well casing unless otherwise specified.

(3) Flowing wells must be flow tested at least one hour.

(4) Wells intended to yield 100 gpm or more shall be tested for a period of 8 hours or more. The test shall follow development of the well, and shall be conducted continuously at a constant discharge which is at least as great as the intended appropriation. As a minimum, water level data shall be collected and recorded on the schedule shown on the department's "well test data sheet". If possible, it is recommended that drawdown data instead be collected on a logarithmic schedule (see, for instance, Johnson's "Ground Water and Wells") throughout the test. The height above ground of the point from which water levels are measured shall also be recorded. The above information and any additional aquifer testing data shall be attached to the driller's log and submitted to the department."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXII ACCESS PORT (1) All wells shall be equipped with an access port ½ inch minimum that will allow for the unobstructed measurement of the depth to water surface or a pressure gauge that will indicate the shut-in pressure of a flowing well (see figure 5 at the end of this chapter). The access ports and pressure gauges or other openings in the cover shall be sealed or capped to prevent entrance of surface water or foreign material into the well.

(2) Removable caps are acceptable as access ports."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXIII ARTIFICIAL GRAVEL-PACKED WELLS - GENERAL (1) In gravel-packed wells, the gravel mixture shall be placed around the screen so that bridging or size separation will not occur. The gravel pack shall be clean, chemically stable, and composed of reasonably uniform grains. All gravel and water used shall be disinfected in at least 50 ppm chlorine.

(2) Gravel packing shall be placed from the bottom of the screen upwards to 2 to 3 feet above the screen."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXIV SAMPLING OF FORMATIONS (1) The contractor shall secure representative samples of all materials encountered in the formations drilled in the well. These samples shall be taken as required by the following:

(a) one sample at the beginning of each change in material encountered; and

(b) samples should be taken in the water-bearing aquifer(s).

(2) Sampling methods used shall assure securing the required representative sample. Care shall be taken to accurately determine the depth of the material sampled.

(3) Materials encountered during the sampling shall be so indicated on the well log report form."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXV WATER SAMPLES (1) To determine the chemical quality of ground water which will be available from each well and its suitability for intended uses, the water in all wells should be sampled during or immediately following construction and development.

(a) The sample shall be clearly marked with the location of the well, the date and time taken, and the depth of the strata from which the water was taken.

(2) To determine the bacteriological quality of a water supply, the water in all wells should be sampled after construction is complete and the system has been disinfected.

(a) The sample shall be collected after chlorinating solution has been dissipated or been flushed from the system.

(3) The contractor/driller should inform the well owner of the importance of having the water analyzed and coliform tests performed.

(4) Local health offices and the department of health and environmental sciences can be contacted for lists of certified labs who can perform these tests."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXVI PLUMBNESS AND ALIGNMENT TEST (1) The completed well shall be sufficiently plumb and straight so that there will be no interference with installation, alignment, operation or future removal of the permanent pump."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXVII PERMANENT ABANDONMENT (1) Any well that is to be permanently abandoned shall be completely filled in such a manner that vertical movement of water within the well bore, including vertical movement of water within the annular space surrounding the well casing, is effectively and permanently prohibited. All fluids within a well are to be permanently confined to the specific strata in which they were originally encountered.

(2) Abandoned wells must be completely filled with concrete or grout to within the last 3 feet of the surface. The last 3 feet shall be filled in with naturally occurring soils.

(3) In no instance shall abandoned wells be used for disposal of sewage, household waters or other contaminated material.

(4) Land surface shall be restored to a like condition, safe to livestock and humans."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXVIII ABANDONMENT OF FLOWING WELLS (1) The flow of flowing wells to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden or cast plug placed at the bottom of the confining formation immediately above the flowing water-bearing zone. Cement grout or concrete shall be used to effectively fill the well to land surface.

(2) Flowing wells should be made static before plugging with cement if they are not contained by casing. If unable to make the well static with heavy mud, heavy weight cement should be pumped into the hole from the bottom up at a brisk rate. Cement mix should be at least twice the volume needed to plug the well. The first cement pumped out will be diluted and should be discarded.

(3) If the flowing well is controlled by the casing, a pressure reading should be taken and sufficient cement should be pumped in the casing from the top so that the cement will enter the aquifer."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XXXIX ABANDONMENT OF FILTER PACK WELLS (1) Appropriate methods of abandonment of filter pack or gravel enveloped wells, or other wells in which coarse material has been added around the inner casing should be determined individually by the responsible water well contractor. Approval should be obtained from the board prior to abandonment."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XL REMOVAL OF WELL CASING DURING ABANDONMENT (1) If the casing of a well is removed during abandonment, the well shall be plugged and sealed in accordance with rule XXVII and shall be filled with sealing materials as the casing is removed."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLI OBSTRUCTIONS (1) All obstructions or debris which may interfere with effective sealing operations shall be removed from the well to be abandoned."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLII CEMENT GROUT (1) Cement grout for use in abandonment operations shall conform to the requirements of rule XVIII."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLIII CONCRETE (1) Concrete for use in abandonment operations shall conform to the requirements of rule XXI."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLIV METHOD OF PLACEMENT OF CONCRETE OR CEMENT GROUT (1) Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or required sealing interval and placed progressively to 3 feet from the top of the well. The upper 3 feet shall be restored to its natural state. All such sealing materials shall be placed by the use of a grout pipe, tremie, or by dump bailer in order to avoid segregation or dilution of the sealing materials."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLV WATER WELL LOG REPORT (1) A water well log report, fully describing all abandonment procedures, shall be submitted to the department of natural resources and conservation."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLVI DRY OR INADEQUATE WELL HOLES (1) Water wells which have been constructed and do not provide an adequate supply of water for the use for which they were drilled (dry hole) are not to be considered completed until the well driller either:

(a) removes the casing and fills the hole with cement grout, concrete, or bentonite clay grout, or

(b) constructs the well in accordance with minimum well construction standards and welds a ¼-inch thick steel plate fully covering the top of the casing providing a watertight seal.

(2) A water well log report must be completed and filed with each dry hole, within 60 days after moving the drilling equipment from the drill site".

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

"XLVII VARIANCES (1) When, due to special circumstances beyond the control of the contractor, compliance with these minimum construction standards is impossible or otherwise unreasonably difficult, a variance may be requested from the board of water well contractors prior to beginning or continuing construction of the well. The request for a variance shall be in writing and shall include:

(a) the purpose of the well construction;

(b) the location of the well;

(c) name and address of the owner;

(d) distance to the nearest well, septic tank, drainfield, or other hazardous wastes--surface or subsurface;

(e) the unusual conditions existing at the well site;

(f) the reasons that compliance with the rules for minimum standards will not result in a satisfactory well;

(g) the proposed standards that the water well contractor believes will be adequate for his particular well; and

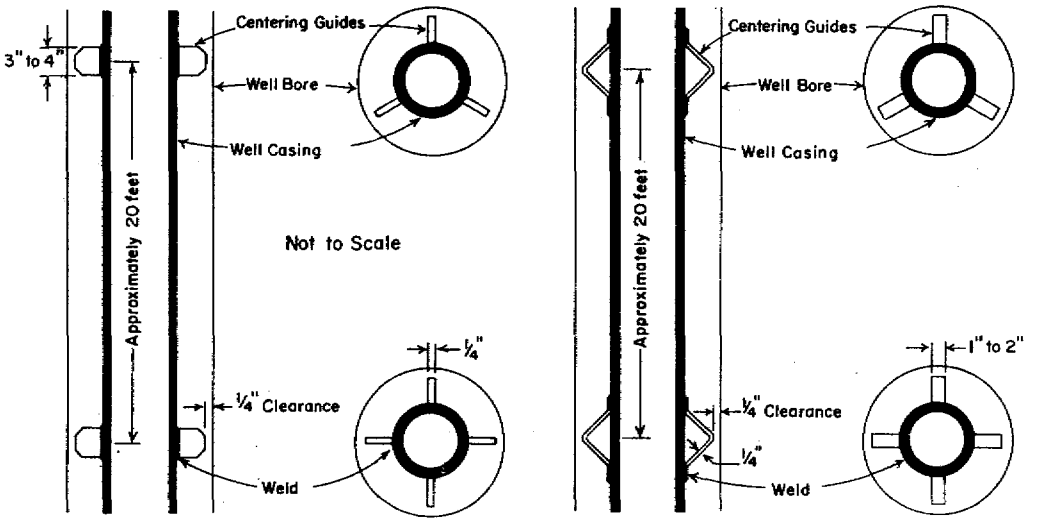
(h) a drawing with written explanation showing the pertinent features of the proposed well design and construction.

(2) If the board finds that special circumstances beyond the control of the contractor make compliance with existing standards impossible or otherwise unreasonably difficult, and finds that the proposed variance will adequately protect the public and the ground water resources, the board may approve the proposed construction by prescribing a variance for the particular well under consideration.

(3) The board shall act in writing on any requests for variances within 30 days after receipt of the request."

Auth: 37-43-202 (3), MCA Auth. Extension, Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Imp: 37-43-202 (3), MCA

CENTERING GUIDES



NOTE: Well casing, to be sealed into an oversize drillhole, should be equipped with a series of centering guides to insure proper centering of casing. Guides should be constructed of steel, at least ¼" in thickness, evenly spaced in groups of 3 or 4, and welded to the casing.

Figure 1.

SEALING OF CONSOLIDATED FORMATIONS

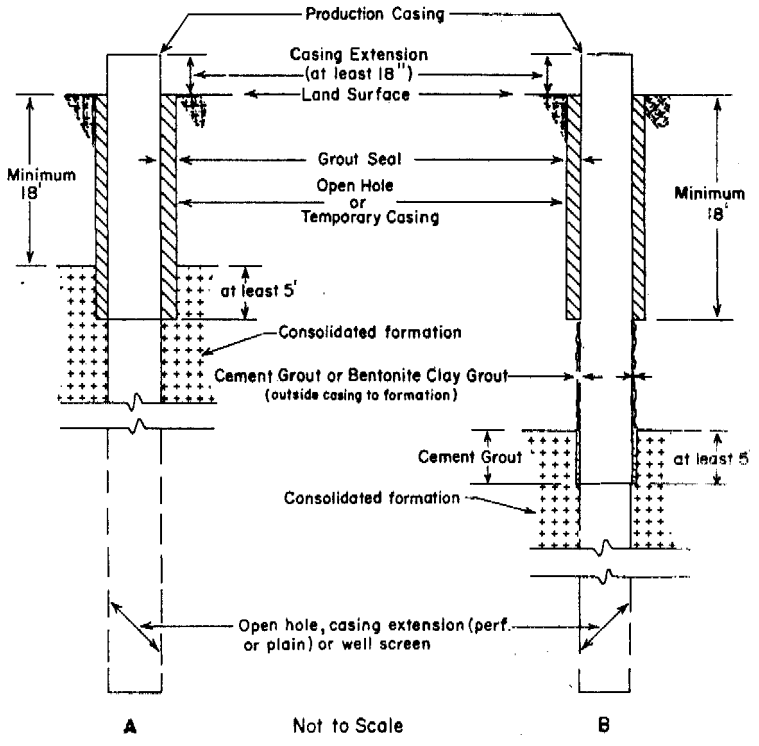


Figure 2.

CEMENT GROUT PLACEMENT

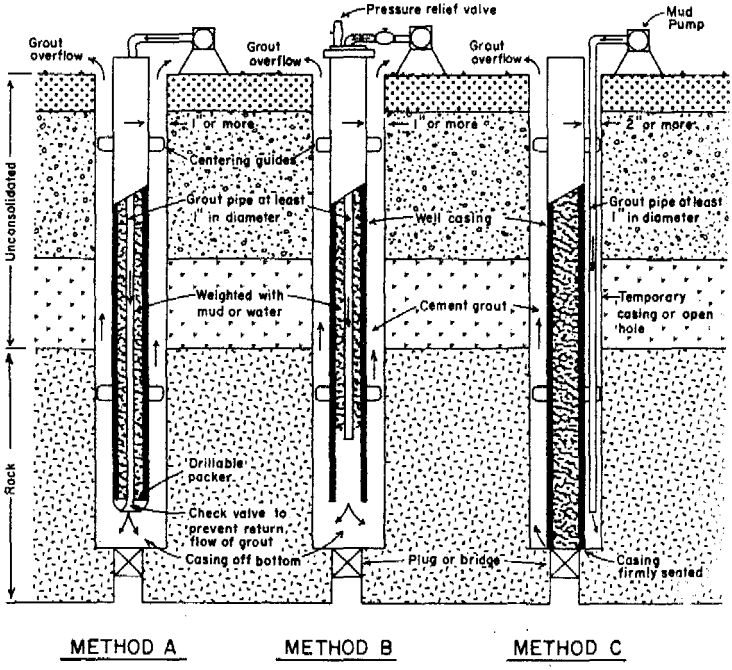
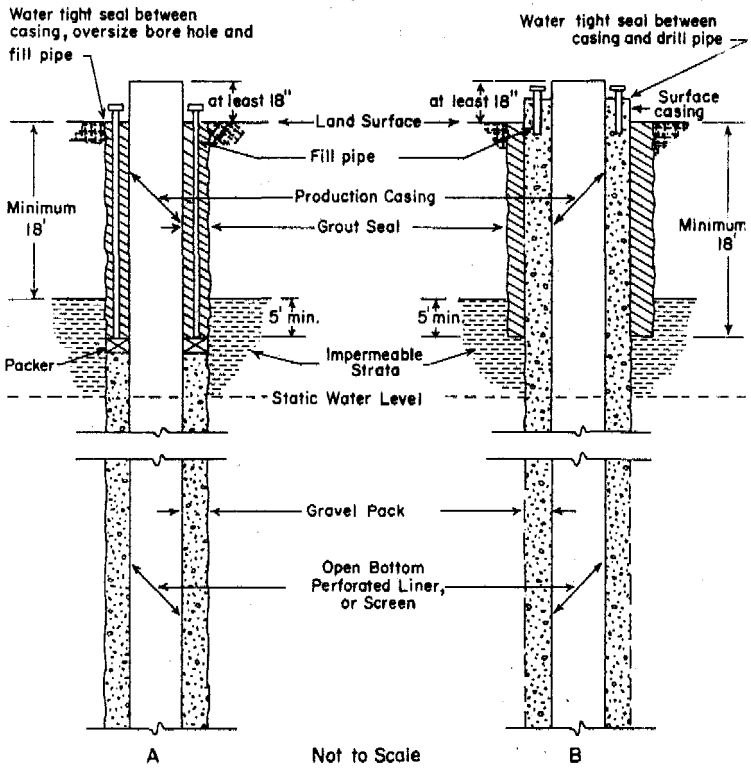


Figure 3.

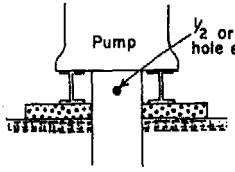
SEALING OF GRAVEL-PACKED WELLS



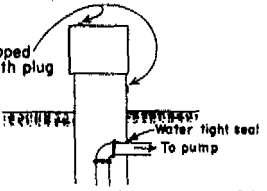
A - Well constructed without surface casing.
B - Well constructed with surface casing.

Figure 4.

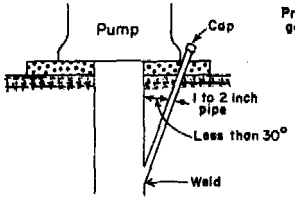
SUGGESTED METHODS OF INSTALLING ACCESS PORTS, PRESSURE GAUGES, AND AIR LINES FOR MEASURING WATER LEVELS IN WELLS



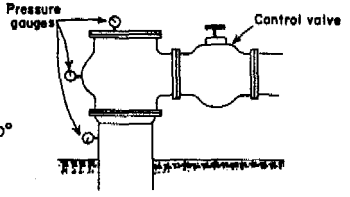
ACCESS PORT FOR MEASURING DEVICE



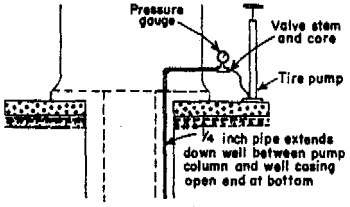
ACCESS PORT FOR MEASURING DEVICE



ACCESS PORT FOR MEASURING DEVICE



POSSIBLE LOCATION FOR PRESSURE GAUGES ON AN ARTESIAN WELL

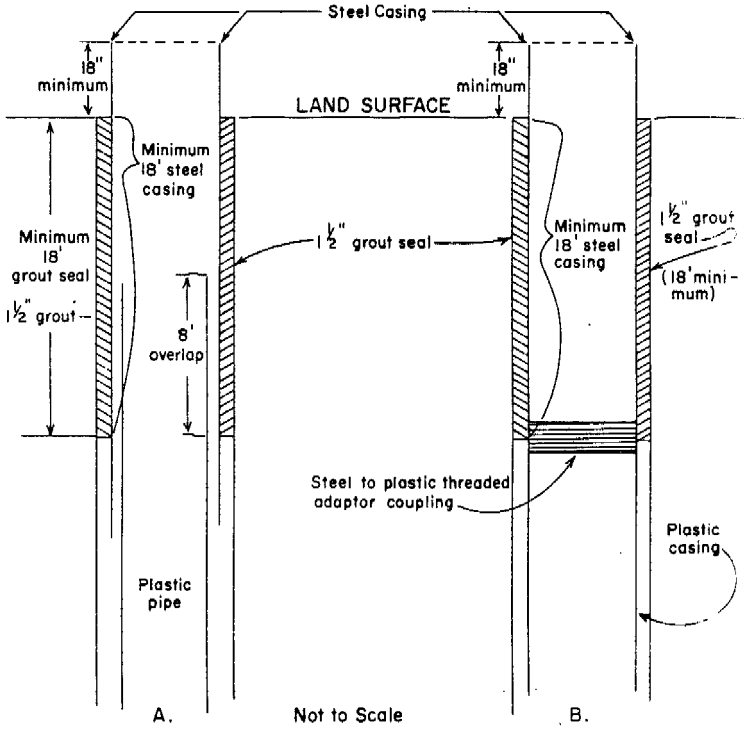


AIR LINE INSTALLATION

An air line installation is recommended where the water level lies at a considerable depth below land surface. The amount of air pressure that can be built up inside the air line will be equal to the depth of water standing above the bottom of the air line. The exact depth to the bottom of the air line is required to obtain an accurate measurement of the water level in the well. One pound per square inch pressure equals 2.31 feet of water.

Figure 5.

STEEL TO PLASTIC TRANSITION CONNECTIONS REQUIRED WITH USE OF PLASTIC



A. Well cased with plastic showing 8 foot overlap between steel and plastic.

B. Well cased with plastic using steel to plastic threaded adaptor coupling.

Figure 6.

5. Chapter 728, Laws of 1985 requires that the Board of Water Well Contractors adopt mandatory water well construction standards prior to January 1, 1987. The statement of intent that accompanied the bill stated the board should consider the United States Environmental Protection Agency's construction standards, as well as those recommended by the Montana Association of Water Well Drillers when drafting the rules. In November of 1985, the board appointed a committee to draft proposed standards. The committee was composed of board members, Ron Guse, DNRC; Wayne Van Voast, Montana Bureau of Mines and Geology; William Osborne, water well contractor from Kalispell; Diana Cutler, Program Specialist for the board; and Ted Benes, representing the state association. Seven meetings were held, attended by the committee members, as well as an average of three additional water well drillers from the association. The EPA and the state association standards, as well as rules from neighboring states, were reviewed and considered during the drafting. After the full board reviewed the recommended draft presented by the committee, copies of the draft were mailed to all Montana licensed water well drillers and other interested parties for their comments. Four public meetings were held around the state to receive additional comments. The board has reviewed all comments submitted and made changes in the draft. The rules as proposed in this notice are the cumulation of six months of effort to draft rules which are in the best interests of the public, the protection of the ground water resource, the well drilling industry and which comply with the legislative mandate.

6. Interested parties may present their data, views and arguments, either orally or in writing, at the hearing. Written data, comments or arguments may also be submitted to the Board of Water Well Contractors, 1520 East Sixth Avenue, Helena, Montana, no later than August 14, 1986.

7. Jim Madden, Attorney, DNRC, Helena, will preside over and conduct the hearing.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, July 7, 1986.

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of Proposed Repeal and Amendment of Various Tax Appeal Board Rules	) NOTICE OF REPEAL OF RULES) 2.51.301 ORGANIZATION,) MEETINGS, AND DUTIES) GENERALLY; 2.51.302) APPLICATION FOR HEARING;) 2.51.303 NOTICE OF HEARING) AND HEARING ON APPLICATION;) 2.51.304 RECORD OF HEARING;) 2.51.305 EVIDENCE; 2.51.306) EX PARTE CONSULTATIONS) PROHIBITED; 2.51.308 APPEALS;) 2.51.401 APPEALS-NOTICES;) 2.51.402 ORDER OF THE BOARD;) AND AMENDMENT OF RULE) 2.51.307 ORDERS OF THE) BOARD

TO: All Interested Persons.

1. On May 29, 1986, the State Tax Appeal Board published notice of proposed repeal and amendment of rules regarding the operation of and public participation in the county and state tax appeals process on page 862, issue number 10 of the 1986 Montana Administrative Register.

2. The Board has repealed and amended the rules as proposed.

3. No comments or testimony were received by the Board.

STATE TAX APPEAL BOARD

By: Robert S. Raundal
Robert S. Raundal
Chairman

Certified to the Secretary of State July 7, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of emergency rules pertaining to the Cropland Insect Detection and Spraying Program	)))	NOTICE OF THE ADOPTION OF EMERGENCY RULES PERTAINING TO THE CROPLAND INSECT AND SPRAYING PROGRAM

TO: All interested Persons.

1. On June 20, 1986 Governor Schwinden declared a state of emergency regarding a grasshopper infestation in the state of Montana. This declaration utilizes Title 80, Chapter 7, Part 5, Montana Code Annotated (MCA), to provide a mechanism for the equitable distribution of funds to counties that participate in an insect pest control program.

The Department of Agriculture has determined that grasshoppers exist in such numbers that they are destroying, substantially damaging, or threatening to destroy agricultural crops.

The department must adopt the following rules immediately, without prior notice or hearing, in order to ensure equity in the distribution of the funds to participating counties. The department finds that an imminent peril to the public welfare requires adoption of these rules.

2. The text of the rules is as follows:

RULE I DECLARATION OF INFESTATION (1) The department shall make a declaration of infestation in a county before that county may participate in the cropland spraying program with the state.

(2) This declaration shall be based upon sampling standards acceptable to the department that demonstrate that grasshoppers exist in sufficient numbers so as to cause an economic impact on the crops in the county.

AUTH: 80-7-507, MCA IMP: 80-7-502, MCA

RULE II MANAGEMENT AGREEMENT (1) The department and county may enter into a crop insect management agreement upon the county's demonstration that it meets all necessary requirements for participation in the program, including any requirement specified for the use of the state's available funding.

(2) The department shall enter into an agreement with each participating county which shall include the following provisions:

(a) The target pest is grasshoppers.

(b) Specify that the county shall obligate the expenditure of the 2 mill levy required by 10-3-405, MCA for this program prior to participation by the state.

(3) Specify that all applicators participating in the program must use federal/state registered pesticides specifically approved for grasshopper control.

(4) Specify the time for which all applicator operations must be completed in order to be part of the program.

(5) Specify the maximum dollar amount per acre of the state's share which shall not exceed $1.25 per acre of the acres that may qualify for state financial participation.

(6) Specify the deadline for parties to submit claims for reimbursement of payments.

(7) Designate the person(s) administering the program for the county.

(8) Specify any other provisions necessary to fulfill the requirements of the program.

AUTH: 80-7-507, MCA IMP: 80-7-503, 80-7-504, MCA

RULE III CONTRACT DATES (1) The agreement with the county shall specify that all contracts for purchasing and/or applying the pesticide must be made on or before July 9 and all applications shall be completed on or before July 19 of the year.

AUTH: 80-7-507, MCA IMP: 80-7-503, 80-7-504, MCA

RULE IV LANDOWNER APPLICATION OF PESTICIDES (1) For the purpose of these rules, the definition of landowner includes the person responsible for the crop.

(2) In the event the county elects to have the landowner conduct the application of pesticides or have the landowner contract to have the pesticides applied on his lands, then:

(a) The landowner must comply with all requirements of these rules and he must pay for all chemical and application costs incurred on or before September 1 of the year.

(b) The landowner must:

(i) Submit proof of payment for the pesticide and/or the applicator services demonstrating that the application occurred on or before July 19 and that the contract for these services occurred on or before July 9.

(ii) Verify by affidavit that the application was made if the landowner applied the pesticide.

(iii) Specify the number of acres sprayed.

(iv) Specify the type of pesticide applied and if it was mixed with any other nontarget pesticide.

(v) Submit all the claims to the county on or before September 1.

(3) In the event the landowner fails to meet the requirements of these rules, then any application of pesticides to his land shall be considered outside of the program and he shall be ineligible for reimbursement.

AUTH: 80-7-507, MCA IMP: 80-7-503, 80-7-504, MCA

RULE V DETERMINATION OF THE STATE'S PAYMENT TO THE COUNTY (1) The county shall submit to the department on or before October 1 the number of acres sprayed in that county, number of participating landowners, and total costs submitted under the program.

(2) The department shall determine the total number of acres sprayed in the state under the program.

(3) The state shall pay each participating county a pro rata share, as stipulated in these rules, from the emergency appropriation fund. The state's financial participation in the program with each county that has qualified is limited to an amount up to 1/3 of the total cost of the qualified acres in that county. However, the state participation on a per acre cost basis shall not exceed $1.25, nor shall the state's participation exceed $350,000 for all the treated acres within the qualified counties. The county pro rata share of the $350,000 shall be divided on the basis of comparing the total statewide program costs to the cost for each county.

(4) In the event the combination of the state's funding and the county's funding exceeds the total cost of the program in that county, then the state's contribution to that county shall be reduced by an amount so that the total funding combination equals the program's cost in that county.

(5) In no event shall the state pay the counties an amount in excess of three hundred and fifty thousand dollars ($350,000).

AUTH: 80-7-507, MCA IMP: 80-7-503, 80-7-504, MCA

RULE VI REIMBURSEMENT TO LANDOWNERS (1) The landowner shall be reimbursed by the county following his compliance with Rule IV and the state's disbursement of money to the county.

(2) The county may determine the reimbursement of the landowners from the fund consisting of the state's share and the county's share.

(3) In no event shall the landowner be paid an amount greater than his cost of supplies and services.

(4) In the event the program funds fail to equal the actual costs of applying the pesticide, the added expenses shall be incurred by the landowner.

AUTH: 80-7-507, MCA IMP: 80-7-504, MCA

3. The rationale for the proposed rules are set forth in the statement of reasons for emergency.

4. These rules are authorized under section 80-7-507, MCA. They implement Title 80, Chapter 7, Part 5, MCA.

The emergency action is effective June 20, 1986.

W. Ralph Peck
Deputy Director

Certified to the Secretary of State June 20, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of rules concerning commodity dealers and public warehousemen and repealing certain rules	)))))))	NOTICE OF ADOPTION OF NEW RULES CONCERNING COMMODITY DEALERS AND PUBLIC WAREHOUSEMEN AND THE REPEAL OF RULES 4.12.1001 THROUGH 4.12.1010, AND 4.12.1015 THROUGH 4.12.1016 AND AMENDING 4.12.1017

TO: All Interested Persons.

1. On June 26, 1986 at 10:00 a.m. in room 225 Agriculture/Livestock Building, Sixth and Roberts, Helena, Montana, the Department of Agriculture conducted a hearing regarding the above stated rules published on pages 872 through 878 MAR issue number 10.

2. The department has adopted the rules with the following changes: (new matter underlined, deleted matter interlined).

RULE I (4.12.1018) TERM OF LICENSES - EXPIRATION No Changes

RULE II (4.12.1019) REPORTS TO THE DEPARTMENT (1) A public warehouseman and/or commodity dealer monthly report is required to be completed in full and filed with the department of agriculture (department) on a monthly basis. The report is due within thirty (30) days of the end of the reporting month. Reports must be submitted even if no business has been conducted. These reports shall include the following information:

(a) all stored commodities in which warehouse receipts have been issued, including those held by Commodity Credit Corporation (CCC), producers, etc.

(b) through (e) No Changes

(2) A special report may be filed with the department ~~Department of Agriculture~~ in lieu of a commodity report. Special reports ~~can include but are not limited to:~~ may be filed by: feedlot, poultry, dairy, swine, and dry edible bean operations. The special report is required to be completed in full and filed with the department of agriculture on a monthly basis. The report is due within thirty (30) days of the end of the reporting month. Reports must be submitted even if no business has been conducted. The report shall include the names of producers, elevators or other dealers from whom purchases were made. The report shall include all information that is ~~covered by~~ required of commodity dealers under this Grain Standards, Storage, and Merchandising Act (act).

(3) A grain movement monthly report shall be filed with the department by all licensed public warehousemen / or commodity dealers ~~licensed~~ who ship grain. The report is due within thirty (30) days of the end of the reporting month. Reports must be submitted even if no shipments have been made during that reporting period.

(a) Public warehouseman or commodity dealers ~~Grain businesses~~ having more than one business location shall submit separate reports for each business location.

(b) Public warehouseman or commodity dealers ~~Grain businesses~~ providing the department with internally generated computer reports shall comply with all requirements of this rule.

(c) No Changes

(4) A Montana wheat/barley assessment report shall be filed by the first purchaser, mortgagee, or ~~pledgor~~ pledgee, with the department, on forms prescribed by the department, within twenty (20) days after the end of the month in which he purchases a grower's wheat or barley as required by 80-11-207, MCA. The information provided by the licensed commodity dealer to the department shall comply with the requirements in section 80-11-207 MCA.

(5) No Changes

AUTH: 80-4-403, MCA IMP: 80-4-407, MCA
80-11-311, MCA

RULE III (4.12.1020) FINANCIAL STATEMENTS - FILING DATE No Changes

RULE IV (4.12.1021) BOND CONDITIONS - CANCELLATION No Changes

RULE V (4.12.1022) CERTIFICATES OF DEPOSIT OR OTHER BOND EQUIVALENTS

(1) through (8) No Changes

(9) If a licensee ~~under this act~~ desires to terminate a license and requests the return of a CD, the licensee filing the CD must return the license and make written request by registered or certified mail with return receipt for the return of the CD. Upon receipt of the written request and the submission of the license, the director shall hold the CD for a period of ninety (90) days before it is returned. If at the end of the ninety (90) days no claim against the CD has been made, the CD shall be returned, unless the director is of the opinion that claims against the CD may exist. Under these conditions, the director may hold the CD until it is determined that no claims against the CD exist.

(10) If a license issued ~~under this act~~ is revoked, the CD shall be held by the director for a period of one hundred and twenty (120) days or until the director is satisfied that no claims against the CD exist.

(11) If a licensee ~~under this act~~ desires to remain licensed and requests the return of a CD on file with the director, the licensee shall file with the director a replacement CD, bond, or bond equivalent in an amount required by the director in accordance with section 80-4-504 MCA, and 80-4-601 MCA. The replacement CD, bond, or bond equivalent must be received, become

effective and be in full force and effect on or before the date that the licensee's existing CD is to be returned. The director shall not return the CD until a replacement CD, bond or bond equivalent has been received.

(12) and (13) No Changes

AUTH: 80-4-403, MCA IMP: 80-4-425, MCA
80-4-504, MCA
80-4-505, MCA
80-4-538, MCA
80-4-601, MCA
80-4-604, MCA

RULE VI (4.12.1025) AGRICULTURAL SEED WAREHOUSE RECEIPTS - WRITTEN TERMS No Changes

RULE VII (4.12.1026) LOSS OF RECEIPTS - CONDITIONS OF REISSUE No Changes

RULE VIII (4.12.1027) DATE OF TERMINATION OF STORAGE CONTRACTS EVIDENCED BY WAREHOUSE RECEIPTS No Changes

RULE IX (4.12.1028) WAREHOUSE SHORTAGE - REMEDIES No Changes

RULE X (4.12.1029) ~~SEED-BUYER-CONTRACTS---RESPONSIBILITIES~~ CONTRACT FORM REQUIRED OF SEED DEALERS (1) Persons applying for a commodity dealer's license which includes seed shall:

(a) Use a contract form which clearly states the terms of purchase ~~and~~ basis for payment, and percentage of pure seed.

(b) No Changes

(c) ~~Determine the percentage of pure seed before transporting seed out of state.~~

AUTH: 80-4-403, MCA IMP: 80-4-422, MCA

4.12.1017 GRAIN STANDARDS (1) The Montana department of agriculture hereby adopts the United States department of agriculture's grain standards as reflected in the United States Grain Standards Act, as amended and the rules thereunder, found in Title 7, Chapter 1, Part 26 of the Code of Federal Regulations as well as the official United States Standards for Grain ~~and/or any subsequent amendments made thereto~~ as of July 1, 1986.

(2) Copies of these regulations may be obtained by contacting the Montana Department of Agriculture, Plant Industry Division, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59601.

AUTH: 80-4-403, MCA IMP: 80-4-704, MCA

(3) Dave Cogley of the Legislative Council made editorial suggestions which were incorporated by the department. He also recommended re-adopting 4.12.1014, ARM. The department accepted his recommendation.

(4) No other comments or testimony were received.

Keith Kelly

Certified to the Secretary of State July 7, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the amendments of 8.12.601 concerning applications and 8.12.606 concerning renewals	)))))	NOTICE OF AMENDMENT OF 8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS AND 8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

TO: All Interested Persons:

1. On May 15, 1986, the Board of Chiropractors published a notice of amendments of the above-stated rules at page 730, 1986 Montana Administrative Register, issue number 9.

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

3 No comments or testimony were received.

BOARD OF CHIROPRACTORS
PAT PARDIS, D.C., PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, July 7, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MILK CONTROL BUREAU

In the matter of the proposed amendment of Rule 8.79.101 (1) (n) regarding purchase and resale	))))	NOTICE OF ADOPTION OF RULE 8.79.101 (1)(n) DOCKET #75-86

TO: ALL INTERESTED PERSONS:

1. On May 29, 1986, the Milk Control Bureau of the Department of Commerce published a notice proposing to amend rule 8.79.101 regarding purchase and resale and reporting of those results at page 883 of the 1986 Montana Administrative Register, issue no. 10.

2. The Bureau has amended the rule exactly as proposed.

3. A letter was received from one individual protesting the proposed Bureau action. Upon further inquiry, it was ascertained the person writing the letter was not in opposition to the Bureau's proposed action, but was objecting to the action taken by the Board of Milk Control on May 16, 1986.

4. No further comments or testimony has been received.

KEITH COLBO, Director
MONTANA DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State July 7, 1986.

VOLUME NO. 41 OPINION NO. 69

EDUCATION - Responsibility for cost of medical examination required for certification of bus drivers and teachers;
EMPLOYEES, PUBLIC - Responsibility for cost of medical examination required for certification of bus drivers and teachers;
SCHOOL DISTRICTS - Responsibility for cost of medical examination required for certification of bus drivers and teachers;
TEACHERS - Responsibility for cost of physician's certificate required for certification;
MONTANA CODE ANNOTATED - Sections 20-3-324(1), (2), 20-4-101(1), 20-4-104(1), 20-4-201, 20-10-101(3)(a)(ii), 20-10-102(1), 20-10-103, 39-2-301;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 54 (1982).

HELD: 1. School bus contractors and school districts which employ school bus drivers are not responsible for paying the cost of the medical examination required for certification of school bus drivers.

2. School districts are not responsible for paying the cost of the physician's certificate required for the certification of teachers.

18 June 1986

Ed Argenbright
State Superintendent
Office of Public Instruction
State Capitol
Helena MT 59620

Dear Mr. Argenbright:

You have requested my opinion on the following questions:

1. Are school bus contractors responsible for paying the cost of the medical

examination required for certification of school bus drivers?

2. Are school districts which employ school bus drivers responsible for paying the cost of the medical examination required for certification of school bus drivers?

3. Are school districts responsible for paying the cost of the physician's certificate required for the certification of teachers?

These questions concern the scope and applicability of section 39-2-301, MCA, which provides:

> Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.
>
> (2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.
>
> (3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.
>
> (4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

I conclude that school bus contractors and school districts are "employers" as that term is used in section 39-2-301, MCA. However, I further conclude that the contractors and the districts do not require the medical examinations as a condition of employment and therefore are not responsible to pay the cost of the medical examinations.

School bus contractors are carriers who are under contract with school districts to provide transportation of pupils to and from school. School bus contractors privately own and operate the school buses which they use for the conveyance of the pupils. See §§ 20-10-101(3)(a)(ii), 20-10-102(1), MCA. While such contractors are probably private rather than common carriers (see In re Transportation of School Children, 117 Mont. 618, 161 P.2d 901 (1945)), they also engage in business as individuals or corporations and thus come within the definition of "employer" as that term is defined in section 39-2-301(2), MCA.

School districts are public corporations with limited powers exercised through boards of trustees. See Finley v. School District No. 1, 51 Mont. 411, 415, 153 P. 1010, 1011 (1915). The trustees of a school district have the authority to employ and dismiss school bus drivers and teachers. § 20-3-324(1), (2), MCA. Whether considered in the category of "corporation" or "trustee," a school district also comes with the definition of "employer" as that term is defined by section 39-2-301, MCA. Thus the provisions of section 39-2-301(1), MCA, apply to both private contractors who employ school bus drivers and school districts which employ school bus drivers and teachers.

However, section 39-2-301(1), MCA, provides that the employer may not require an employee or applicant for employment to pay the cost of a medical examination as a condition of employment. My review of the applicable statutes indicates that neither the school bus contractor nor the school district requires the medical examinations necessary for certification. Instead, the examinations are statutory requirements imposed by the Legislature upon persons who wish to be certified and considered for employment as school bus drivers or teachers. State law requires qualification and certification as a condition of employment; the employer contractors and districts are without authority to alter

or waive the qualification and certification requirements and cannot be viewed as requiring the medical examinations which are necessary for certification.

Section 20-10-103, MCA, provides in pertinent part:

> School bus driver qualifications. Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:
>
> ....
>
> (4) he has filed with the district a satisfactory medical examination report, on a blank provided by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;
>
> ....
>
> (7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section.

Violation of this statute by employing a nonqualified driver would subject a contractor or a school district to the penalties provided in sections 20-10-104 and 20-1-207, MCA.

Section 20-4-104(1), MCA, sets forth the qualifications for certification as a teacher:

> Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:
>
> ....
>
> (b) He has a certificate of a licensed physician attesting to his satisfactory health.

....

Except in an emergency, the trustees of a school district are authorized to employ as teachers only those persons who hold valid teacher certificates. § 20-4-201, MCA. The Legislature has required all teachers to obtain a certificate prior to teaching in the state's public schools. § 20-4-101(1), MCA.

These statutes make it clear that the medical examination for school bus drivers and the physician's certificate for teachers are requirements of certification rather than employment. I have previously distinguished between certification statutes and hiring practice statutes. See, e.g., 39 Op. Att'y Gen. No. 54 (1982). Since both contractors and districts as employers are bound by law to employ only certified persons as bus drivers and teachers, these employers cannot be said to require the medical examinations necessary for certification. The Legislature has established the qualification requirements for bus drivers and teachers, and the Legislature is not the employer.

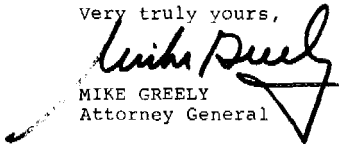
Local school districts have always been subject to legislative control and statutory requirements. See School District No. 12, Phillips County v. Hughes, 170 Mont. 267, 552 P.2d 328 (1976). If a district or a school bus contractor should require an employee or applicant for employment to submit to a medical examination other than the examination required for certification, the district or the contractor would have to pay the cost of the examination. But securing the medical examination and physician's certificate necessary for certification is a qualifying step separate and distinct from applying for employment, and the cost of that examination and certificate is the responsibility of the employee or applicant rather than the contractor or the district.

THEREFORE, IT IS MY OPINION:

1. School bus contractors and school districts which employ school bus drivers are not responsible for paying the cost of the medical examination required for certification of school bus drivers.

2. School districts are not responsible for paying the cost of the physician's certificate required for the certification of teachers.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 70

COUNTY GOVERNMENT - Transition provisions for holdover officers when a new form of government is approved; LOCAL GOVERNMENT - Transition provisions for holdover officers when a new form of government is approved; LOCAL GOVERNMENT STUDY COMMISSIONS - Transition provisions for holdover officers when a new form of government is approved;
MONTANA CODE ANNOTATED - Sections 2-16-213(1), 7-3-156, 7-3-158, 7-3-193(1), 7-3-193(2)(c);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 44 (1986).

HELD: "Holdover" officers of an existing governing body are not permitted to remain in office once a new form of local government has been adopted and the new governing body has been elected and qualified, unless the exclusive exceptions found in section 7-3-158(3), MCA, are implemented. Other elected or appointed officers and employees whose positions are not abolished by the new form of government continue to perform their duties unless special provisions are made for the discontinuance of those duties.

20 June 1986

Loren Tucker
Madison County Attorney
P.O. Box 36
Virginia City MT 59755

Dear Mr. Tucker:

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

> Is section 7-3-158(3), MCA, an exclusive list of exceptions to the general rules which provide for the transition of officers and employees who hold positions on the date that a new plan of government takes effect?

Your question involves the procedures to be followed in implementing an alternative form of local government proposed by a local government study commission and approved by the voters. Section 7-3-158, MCA, sets forth the transition provisions for "holdover" personnel, i.e., officers and employees who hold government positions at the time a new plan of government is adopted. That section applies to study commission proposals by operation of section 7-3-193(1), MCA, and is set forth below.

> 7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.
>
> (2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.
>
> (3) A charter or a petition proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced.

Section 7-3-158, MCA, was one of the statutes addressed in 41 Op. Att'y Gen. No. 44 (1986). In that opinion I concluded that, pursuant to section 7-3-158(1), MCA, "holdover" officers are not permitted to remain in office once the new governing body has been elected and qualified, unless the adopted study commission proposal

includes a specific provision that they be retained, pursuant to section 7-3-158(3), MCA. Subsection (1) sets forth the general rule that holdover officials continue in office only until the new officers are elected and qualified.

Two exceptions to this rule are permitted under subsection (3). A charter or petition proposing the change in government may provide that a holdover elected officer serve out his full term of office or that he be retained for his full term as a local government employee (in a different capacity), with no reduction in salary. If neither exception is provided for by charter or petition, then the general rule in subsection (1) would operate to abolish the prior governing body at the time the new body is elected and qualified for office. This interpretation is consistent with section 7-3-193(2)(c), MCA, which provides that study commissions "may provide for existing elected officers under 7-3-158(3)." (Emphasis added.)

The statutes provide for no other exceptions to the general rule, and I conclude that no other exceptions are authorized. Where there is an express mention of certain authority, the mentioning of it implies the exclusion of any other. Reed v. Reed, 130 Mont. 409, 413, 304 P.2d 590, 592 (1956).

The general rule set forth in subsection (1) of section 7-3-158, MCA, applies to officers of an existing governing body. Subsection (2) is the general rule for all other elected or appointed officers and employees. These officers and employees continue in the performance of their duties "until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions."

The exact meaning of section 7-3-158(2), MCA, is not clear. The minutes of the House and Senate Local Government Committees, which considered the language in 1979 during hearings on House Bill 851 (enacted as 1979 Mont. Laws, ch. 675, § 23), are not helpful. The language of subsection (2) suggests the following. An elected or appointed officer or employee in the existing government who is not a member of the governing body itself loses his position if that position is abolished by the adoption of a new form of government. If this occurs, the position would end at the time the officers

of the new governing body take office. §§ 7-3-156, 7-3-158(1), MCA. Of course the two exceptions provided for in section 7-3-158(3), MCA, could operate to permit an elected officer to continue to work for the local government, either in his elected position or in a different capacity, without a reduction in salary.

If, however, the position is not abolished by the adoption of a new form of government, then the elected or appointed officer or employee in the existing government continues to fulfill the duties of his position unless his term of office expires or some provision is made for the discontinuance of his duties. The latter situation could occur in one of several ways, depending upon whether the officer or employee serves by election or appointment. If the individual is an elected official whose position has not been eliminated by the new form of government, a charter or petition may provide that he serve in a different capacity with no reduction in salary, pursuant to section 7-3-158(3), MCA. If the individual is an appointed official whose position has not been abolished by the new form of government, the appointing power may act to discontinue the duties of that position. Every office of which the duration is not fixed by law is held at the pleasure of the appointing power. § 2-16-213(1), MCA. See Conboy v. State, 42 St. Rptr. 120, 123, 693 P.2d 547, 550 (1985).

THEREFORE, IT IS MY OPINION:

> "Holdover" officers of an existing governing body are not permitted to remain in office once a new form of local government has been adopted and the new governing body has been elected and qualified, unless the exclusive exceptions found in section 7-3-158(3), MCA, are implemented. Other elected or appointed officers and employees whose positions are not abolished by the new form of government continue to perform their duties unless special provisions are made for the discontinuance of those duties.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 71

COUNTY OFFICIALS AND EMPLOYEES - County superintendent of schools, contracting with former superintendent for services;
COUNTY OFFICIALS AND EMPLOYEES - County superintendent of schools, qualifications for office;
ELECTIONS - County superintendent of schools, qualifications for office;
SCHOOL DISTRICTS - County superintendent of schools, qualifications for office;
MONTANA CODE ANNOTATED - Sections 20-3-201(2), 20-3-201(3), 20-3-210;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 145 (1978).

HELD: 1. A candidate for county superintendent of schools may not assume office unless at the time he assumes office he holds a valid teacher certificate.

2. A former superintendent of schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards.

23 June 1986

Arnie A. Hove
McCone County Attorney
McCone County Courthouse
Circle MT 59215

Dear Mr. Hove:

You have asked my opinion on the following questions:

1. May a candidate for county superintendent of schools assume office in January 1987, if his or her teaching certificate expired in June 1986?

2. May a former superintendent of schools with a valid teaching certificate be hired by a county to conduct hearings in regard to teacher and school board disputes, etc.?

Your first question involves an interpretation of section 20-3-201(2), MCA. That section provides the qualifications for county superintendents of schools.

> (2) Any person shall be qualified to assume the office of county superintendent who:
>
> (a) is a qualified elector;
>
> (b) holds a valid teacher certificate issued by the superintendent of public instruction; and
>
> (c) has not less than 3 years of successful teaching experience. [Emphasis added.]

The section lists qualifications that a county superintendent of schools must possess in order to assume office. Because the statute addresses qualifications for assuming office, rather than for nomination or election, I conclude that all of the qualifications must be possessed on the date that a person takes over the position of county superintendent. Therefore, a candidate whose teaching certificate has expired in June 1986 would not possess the necessary qualifications to assume the office of county superintendent of schools in January 1987.

This interpretation is consistent with the Montana Supreme Court's opinion in State ex rel. Flynn v. Ellis, 110 Mont. 43, 98 P.2d 879 (1940). In Flynn, the Court noted that where there are no explanatory words indicating that eligibility requirements have reference to the time of the election, then they have reference to the qualifications to hold office, rather than the qualifications to be elected to office. 98 P.2d at 882. See also the discussion of eligibility requirements for a school trustee in 37 Op. Att'y Gen. No. 145 (1978).

Your second question involves an interpretation of section 20-3-201(3), MCA. That section provides, in pertinent part:

> The officeholder may contract for the services of another county superintendent to perform other duties required by law of a county superintendent. The superintendent of public

> instruction shall prescribe a contract form to be used. [Emphasis added.]

One of the duties of a county superintendent is to hear and decide controversies involving the trustees of school districts in the county and employment actions involving teachers. § 20-3-210, MCA. Under section 20-3-201(3), MCA, the superintendent may contract with another county superintendent to hear and decide these disputes. The statute specifically refers to county superintendents and does not mention former superintendents. The language was drafted as a part of Senate Bill 168 (enacted as chapter 550, 1985 Mont. Laws). The minutes of the House Education and Cultural Resources Committee for March 18, 1985, reflect arguments by the proponents of the legislation that the services performed by a county superintendent should be contracted out to "full-time county superintendents." I conclude from the clear language of the statute as well as the testimony on Senate Bill 168 before the legislative committees, that a former superintendent may not be hired to perform the services of a county superintendent of schools.

THEREFORE, IT IS MY OPINION:

1. A candidate for county superintendent of schools may not assume office unless at the time he assumes office he holds a valid teacher certificate.

2. A former superintendent of schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 72

EDUCATION - Community college boards of trustees, authority to lease, lease/purchase, or sell property;
EDUCATION, HIGHER - Community college boards of trustees, authority to lease, lease/purchase, or sell property;
MUNICIPAL CORPORATIONS - Community college boards of trustees, authority to lease, lease/purchase, or sell property;
SCHOOL BOARDS - Community college boards of trustees, authority to lease, lease/purchase, or sell property;
MONTANA CODE ANNOTATED - Sections 20-6-603, 20-6-604, 20-6-609, 20-6-621, 20-6-625, 20-15-102, 20-15-107, 20-15-301, 20-15-404;
OPINIONS OF THE ATTORNEY GENERAL - 26 Op. Att'y Gen. No. 84 (1956), 36 Op. Att'y Gen. No. 73 (1976).

HELD: A community college board of trustees has authority to lease and/or lease/purchase property for school purposes and to sell unused school property.

30 June 1986

Ted O. Lympus
Flathead County Attorney
Flathead County Courthouse
Kalispell MT 59901

Dear Mr. Lympus:

You have requested my opinion concerning the following question:

> Does a community college board of trustees have the authority to lease and/or lease/purchase real property and to sell property?

The Montana Supreme Court has recognized that "[u]nder our statutes, the community college legal status is a hybrid." Rippey v. Board of Trustees of Flathead Valley Community College, 41 St. Rptr. 1117, 1118, 682 P.2d

1363, 1364 (1984). As a hybrid, community college districts have certain unique characteristics but, in many respects, have the same powers and limitations as elementary and high school districts. Burlington Northern, Inc. v. Flathead County, 176 Mont. 9, 11-12, 575 P.2d 912, 913-14 (1978); Sibert v. Community College of Flathead County, 179 Mont. 188, 587 P.2d 26 (1978). In this instance, I find that community college districts should be treated as are other school districts.

In Montana, school and community college districts are public corporations with limited powers. They may exercise, through their boards, only such powers as are conferred through law, either expressly or by necessary implication. Finley v. School District No. 1, 51 Mont. 411, 415, 153 P. 1010, 1011 (1915); Abshire v. School District, 124 Mont. 244, 247, 220 P.2d 1058, 1060 (1950). Although the powers you ask about are not enumerated among the authorized types of capital expenditures which community college trustees may make pursuant to section 20-15-301, MCA, the Legislature has generally given community college districts those powers granted to other types of school districts. Section 20-15-102, MCA, thus states in relevant part:

> [T]he community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law. [Emphasis added.]

This statute has been held, with respect to authority to grant tenure, as according to community college districts the same powers as other school districts. Sibert v. Community College of Flathead County, 179 Mont. at 190, 587 P.2d at 27. I find that section 20-15-102, MCA, also authorizes community college trustees to acquire and dispose of property in the same ways as other types of school districts are statutorily permitted.

The express power to lease buildings or land for school purposes is granted to school district trustees by section 20-6-625, MCA. I would, in any event, necessarily infer that community college districts have this power from sections 20-15-107, 20-15-404(3), and

20-6-621(4), MCA, which, taken together, authorize other school districts, as well as the state land board, to lease unused property and land to community college districts. The power to acquire property through a lease-purchase agreement is granted to school district trustees under section 20-6-609, MCA, recently enacted by 1985 Mont. Laws, ch. 144. The power to sell property is granted to school district trustees under sections 20-6-603 and 20-6-604, MCA. Sections 20-6-603, 20-6-604, 20-6-609, and 20-6-625, MCA, are, again, made applicable to community college boards of trustees by section 20-15-102, MCA.

Finally, I caution that section 20-15-404, MCA, directs community college trustees to adhere to sections 20-6-603, 20-6-604, and 20-6-625, MCA, including their procedural requirements. Moreover, as the Montana Supreme Court stated long ago and recently reaffirmed:

> As a public corporation the school district is a municipal or quasi-municipal body and the statute granting its power must be regarded both as a grant and a limitation upon the powers of the board. State ex rel. Bean v. Lyons, et al. (1908), 37 Mont. 354, 96 P. 922.

Sibert v. Community College of Flathead County, 179 Mont. at 191, 587 P.2d at 28. Strict compliance with the procedures applicable to the lease, lease/purchase, or sale of school district property is therefore necessary. Cf. 36 Op. Att'y Gen. No. 73 (1976), 26 Op. Att'y Gen. No. 84 (1956).

THEREFORE, IT IS MY OPINION:

> A community college board of trustees has authority to lease and/or lease/purchase property for school purposes and to sell unused school property.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1986. This table includes those rules adopted during the period March 31, 1986 through June 30, 1986, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1986, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1986 Montana Administrative Register.

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