MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the proposed amendments of 8.6.405 concerning reciprocity, 8.6.409 concerning seals, and 8.6.412 concerning professional conduct	)))))	NOTICE OF PROPOSED AMENDMENTS OF 8.6.405 RECIPROCITY, 8.6.409 INDIVIDUAL SEAL, AND 8.6.412 STANDARDS OF PROFESSIONAL CONDUCT AND ACTIVITIES CONSTITUTING MISCONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 17, 1986, the Board of Architects proposes to amend the above-stated rules.

2. The proposed amendment of 8.6.405 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-208, Administrative Rules of Montana)

"8.6.405 RECIPROCITY (1) will remain the same.

(a) The address of the office of the N.C.A.R.B. is

N.C.A.R.B. Boards
1735 New York Avenue, North West
Suite 700
Washington, DC 20006

(2) All applicants for licensure by reciprocity who were licensed in their respective jurisdiction prior to 1964 shall submit evidence of having successfully completed a N.C.A.R.B. approved seminar on seismic forces or have taken and passed Division E, Structural Lateral Forces of the Architectural Registration Examination."

Auth: 37-65-204, MCA Imp: 37-65-305 (1), MCA

3. NCARB approved seminars are no longer being offered as of April, 1986, therefore, this amendment provides reciprocity applicants with an alternative qualification route for meeting seismic requirements in the state of Montana.

4. The proposed amendment of 8.6.409 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-210, Administrative Rules of Montana)

"8.6.409 INDIVIDUAL SEAL The text of this rule will remain the same. The illustration of the seal is being deleted."

Auth: 37-65-204, MCA Imp: 37-65-308, MCA

5. The seal illustration is being deleted based on the rule amendment certified to the Secretary of State on March 17, 1986, wherein the amendment deleted verbage referring to the seal illustration. The illustration no longer applies to the current rules.

6. The proposed amendment of 8.6.412 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-211 through 8-213, Administrative Rules of Montana)

"8.6.412 STANDARDS OF PROFESSIONAL CONDUCT AND ACTIVITIES CONSTITUTING MISCONDUCT ~~(1) The architect is obligated to act with complete integrity in professional matters for each client or employer as a faithful agent or trustee, shall be honest and impartial, and serve the public, his client and his employer with devotion.~~

~~(2) The architect shall protect the safety, health and welfare of the public in the performance of his professional duties. Should the case arise where he faces a situation where the safety, health and welfare of the public is not protected, he shall:~~

~~(a) sever his relationship with his employer or client, and refuse to accept the responsibility for the design, report or statement involved;~~

~~(b) undertake to perform assignments only when he and/or his consulting support are qualified by training and experience in the specific technical fields involved;~~

~~(c) be completely objective in any professional report, statement or testimony and include all relevant and pertinent information in the report, statement or testimony when the result of omission would, or reasonably could, lead to a fallacious conclusion; and~~

~~(d) express an opinion as a technical or expert witness before any court, commission or other tribunal, only when it is founded upon adequate knowledge of the facts at issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.~~

~~(3) The architect will issue no public statements, criticisms or arguments on architectural matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he has prefaced his remark by explicitly identifying himself, by disclosing the identities of the party, or parties, on whose behalf he is speaking and by revealing the existence of any pecuniary interest he may have in the matter.~~

~~(a) He will publicly express no opinion on an architectural subject unless it is founded upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.~~

~~(4) The architect shall conscientiously avoid conflict of interest with his employer or client, but when unavoidable, the architect shall forthwith disclose the circumstances to his employer or client.~~

~~(a) The architect shall promptly inform his client or employer of any business association, interests, or~~

circumstances which could influence his judgment or the quality of services to his client or employer.

(b) The architect shall not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their duly authorized agents.

(c) If the circumstances are such that at the time of accepting employment, full disclosure of all aspects of the employment would be impossible, or if there is a probability that the architect is, or may be advancing a proposition or decision for one party which may not be in the best interests of another party, then the architect should not accept employment or compensation from both.

(d) The architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.

(e) The architect shall not solicit or accept gratuities directly or indirectly from contractors, their agents or other parties dealing with his client or employer in connection with work for which he is responsible.

(f) As an elected, retained or employed official, an architect in his capacity as a public official, shall not review or approve work that he performed, or that was performed under his direction, on behalf of another employer or client.

(5) The architect shall not pay, solicit nor offer directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(a) The architect shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work.

(b) The architect shall not falsify or permit misrepresentation of his or his associates' academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(c) Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint-ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

(6) The architect shall not:

(a) sign or seal professional work for which he does not have personal professional knowledge and direct supervisory control and responsibility, or

(b) knowingly associate with, or permit the use of his name or firm name in a business venture by any person or firm

~~which he knows, or has reason to believe is engaging in business or professional practices of a fraudulent or dishonest nature.~~

~~(7) If the architect has knowledge or reason to believe that another person or firm is guilty of violating any of the provisions of Title 37, Chapter 65, MCA, or any of these Rules of Professional Conduct (Code of Ethics) he shall be obligated to present this information to the board in writing.~~

(1) For the purpose of implementing the provisions of sections 37-65-321 (1)(d) and (3), MCA, the following standards of professional conduct are adopted. Violation of any of these standards by a licensee constitutes a violation of standards of professional conduct and misconduct and are grounds for disciplinary action:

(a) being incompetent or negligent, or using any practice or procedure in the practice of the profession which creates an unreasonable risk of physical harm or serious financial loss to the client or to the public;

(b) practicing beyond the scope of practice of the profession as defined by law;

(c) failing to supervise staff to the extent that the public's safety or the client's safety is at risk;

(d) accepting compensation for his or her services from more than one party on a project, unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties;

(e) soliciting or accepting compensation from material or equipment suppliers in return for specifying or endorsing their products;

(f) misrepresenting to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with work for which he or she is claiming credit or being compensated;

(g) offering or making any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested;

(h) offering or making any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested;

(i) making public statements on architectural questions, without disclosing that he or she is being compensated for making such statements;

(j) knowingly injuring or attempting to injure, falsely or maliciously, directly or indirectly, the professional reputation, prospects, or practice of another licensed architect;

(k) representing the work of others as his or her own;

(l) using or altering material prepared by another person without the knowledge and consent of that person;

(m) performing professional services which have not in general been authorized by the client or his or her legal representative;

(n) wilfully making or filing false reports or records;

(o) advertising which is false, fraudulent or misleading;

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

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

(r) failure to cooperate with an investigation by the board by:

(i) Not furnishing requested papers or documents;

(ii) Not furnishing a full and complete explanation of matters referred to in a complaint filed with the board;

(iii) Not responding to subpoenas issued by the board;

(iv) Wilfully misrepresenting facts to a board investigator;

(v) Using threats, harassment, extortion or bribery on potential witnesses to discourage them from cooperating with an investigation or from testifying;

(s) having his or her license to practice the profession suspended, revoked or restricted by competent authority of any state, federal or foreign jurisdiction for any of the above reasons."

Auth: 37-65-204, MCA Imp: 37-65-321 (1)(d), MCA

7. This amendment is to bring current with the standards in the profession nationally the board's Standards of Professional Conduct. Experience has indicated that the existing standards are archaic. Many of them are inapplicable or so vague as to be unenforceable.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than November 13, 1986.

9. 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 Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than November 13, 1986.

10. 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 80 based on the 800 licensees in Montana.

BOARD OF ARCHITECTS
ROBERT C. UTZINGER, CHAIRMAN

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

Certified to the Secretary of State, October 6, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed amendments of 8.16.602 concerning dental hygienists and dental auxiliaries, 8.16.901 concerning prohibition, 8.16.902 concerning permits, 8.16.903 concerning qualifying standards, and 8.16.905 concerning facility standards	)))))))	NOTICE OF PROPOSED AMENDMENTS OF 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS AND DENTAL AUXILIARIES, 8.16.901 PROHIBITION, 8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY, 8.16.903 MINIMUM QUALIFYING STANDARDS, AND 8.16.905 FACILITY STANDARDS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 17, 1986, the Board of Dentistry proposes to amend the above-stated rules.

2. The proposed amendment of 8.16.602 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-509 through 8-511, Administrative Rules of Montana)

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS AND DENTAL AUXILIARIES (1) through (6) will remain the same.

(7) The requirements for expanded duty certification shall be as follows:

(a) the applicant shall have successfully completed a training program for dental assistants approved by the commission on accreditation of the American dental association or shall have completed the Colorado dental assistants training program prior to July 1, 1986; and

(b) the applicant shall sit for and successfully pass a written and practical examination administered by the Montana dental association under agreement with the board.

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

Auth: 37-1-131, 37-4-205, 37-4-408, MCA Imp: 37-4-408, MCA

3. The Colorado program is no longer offered in the State of Montana. The amendment clarifies that those who took the Colorado program are eligible. However, no future Colorado programs will be offered.

4. The proposed amendment of 8.16.901 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-529, Administrative Rules of Montana)

"8.16.901 PROHIBITION (1) Dentists licensed in this state may not apply general anesthesia or conscious sedation techniques, unless and until they have met all of the requirements set forth in these rules. To "apply" general anesthesia or conscious sedation means to administer the agent

to the patient and does not include performing dental procedures upon a patient to whom another person, qualified under 37-4-511, MCA, has given the agent.

(2) and (3) will remain the same."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

5. At the request of the MDA, the Board proposes the amendment to clarify that administering does not include the act of performing dental procedures. One person may apply general anesthesia while another person may perform the dental procedure. It is the Board's intention to issue a permit to a dentist to administer anesthesia and to issue a separate permit to an approved facility.

6. The proposed amendment of 8.16.902 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-529, Administrative Rules of Montana)

"8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY

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

(3) ~~Permits may be limited to facilities in which the permit holder may administer general anesthesia or conscious sedation.~~ The owner of the facility in which general anesthesia or conscious sedation is employed during dental procedures must hold a valid permit issued by the Board upon finding the facility to meet the standards in ARM 8.16.905. The fee for a facility permit is the inspection or reinspection fee provided in ARM 8.16.908.

(4) In order to administer local anesthetic agents under the direct supervision and authorization of a licensed dentist, a dental hygienist must possess a permit from the board to do so. Such a permit must be renewed every year.

(5) In order to obtain a permit the dental hygienist must make application to the board office and meet the minimum qualifying standards set forth in ARM 8.16.903 (3)."

Auth: 37-1-131, 37-4-205, 37-4-401, 37-4-511, MCA Imp: 37-4-401, 37-4-511, MCA

7. At the request of the MDA, the rule proposed clarifies the Board's intention that the approved facility will be issued a permit separate from the permit which will be issued to the person applying general anesthesia or conscious sedation. The amendment also authorizes the issuance of a local anesthetic permit to qualified dental hygienists.

8. The proposed amendment of 8.16.903 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-529 and 8-530, Administrative Rules of Montana)

"8.16.903 MINIMUM QUALIFYING STANDARDS (1) through (2)(a) will remain the same.

(b) This requirement does not apply to the administration of an oral drug for the purpose of providing mild relaxation, ~~regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than mild relaxation. Otherwise all requirements for the use of conscious sedation or general anesthesia will apply as indicated.~~

(c) All requirements for the use of conscious sedation or general anesthesia will apply as indicated, regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than mild relaxation.

(3) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or dental-surgical procedure unless and until he or she possesses a local anesthetic permit issued by the board. Application for a local anesthetic permit shall be made by letter to the board with proof of possession of a WREB local anesthetic certificate and a current CPR certificate.

~~(3)~~ (4) . . .

(a) . . ."

Auth: 37-1-131, 37-4-205 (1), 37-4-401, 37-4-511, MCA
Imp: 37-4-511, 37-4-401, MCA

9. The amendment clarifies the Board's intention that all requirements will apply when a level of depression greater than mild relaxation is to be achieved. The amendment also establishes qualifications and procedures for qualified dental hygienists to make application for a permit to administer local anesthetic agents.

10. The proposed amendment of 8.16.905 will read as follows: (new matter underlined, delete matter interlined) (full text of the rule is located at pages 8-531 and 8-532, Administrative Rules of Montana)

"8.16.905 FACILITY STANDARDS (1) through (3)(iii) will remain the same.

(iv) The dentist and the anesthesia monitor must be certified in ACLS (advanced cardiac life support).

(b) With respect to light general anesthesia, in addition to the dentist and dental assistant, there must be one person present whose duties are to monitor vital signs. This person must be certified in basic life support and have been examined by the board or its agents in life support skills and have demonstrated a level of proficiency satisfactory to the board. The dentist using light general anesthesia must also be ACLS (advanced cardiac life support) certified.

(c) When conscious sedation is used, the dentist should be qualified and permitted to administer the drugs and appropriately monitor the patient, and be basic life support certified.

(4) will remain the same."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

11. The amendment will require that the dentist and monitor person be ACLS certified if general anesthesia is administered. If light general anesthesia is administered, only the dentist need be ACLS certified. If conscious sedation is used, both the dentist and the monitor must be basic life support certified.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than November 13, 1986.

13. 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 Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than November 13, 1986.

14. 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 115 based on the 1150 licensees in Montana.

BOARD OF DENTISTRY
JOHN T. NOONAN, D.D.S.
CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 6, 1986.

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

In the matter of the amendment of rules 16.8.701, 16.8.806, 16.8.809 and the adoption of new rules I and II regarding monitoring and data requirements for ambient air quality	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION OF RULES Air Quality

To: All Interested Persons

1. On November 14, 1986, at 9:00 a.m., or as soon thereafter as may be heard, in the Board of Health and Environmental Sciences Conference Room, Room C209, 1400 Broadway, Helena, Montana, a public hearing will be held to consider the amendment of rules 16.8.701, 16.8.806, and 16.8.809, and the adoption of new rules I and II concerning the collection and validity of ambient air quality data.

2. The amendments and new rules are being proposed in order to make uniform the process and methods of collecting and validating ambient air quality data performed by the Department and other persons and businesses. The rules would also recognize the effect of equipment malfunction on data validity and would offer a substitute method of validating data in such cases. Minor housekeeping changes are also proposed.

3. The rules, as proposed to be amended, provide as follows (new matter is underlined, and matter to be stricken is interlined; existing definition numbers will be changed as required to maintain alphabetical order):

16.8.701 DEFINITIONS As used in this and subsequent subchapters, unless indicated otherwise, the following definitions apply:

(1) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(2) "Ambient air monitoring" means measurement of any air contaminant, odor, meteorological or atmospheric characteristic, or any physical or biological condition resulting from the effects of air contaminants or meteorological atmospheric conditions provided the measurement is performed in an area constituting ambient air.

(1)-(19) (to be renumbered) Same as existing rule.

~~(20)---"Ringelmann Smoke Chart" means the chart published and described in the latest applicable U.S. Bureau of Mines Information Circular used in estimating the light obscuring power of smoke.~~

(21)-(26) (to be renumbered) Same as existing rule.

AUTHORITY: 75-2-111, MCA
IMPLEMENTING: 75-2-201 and 75-2-202, MCA

16.8.806 DEFINITIONS In this subchapter, the following words and phrases shall have the following meanings:

(1) Same as existing rule.

~~(2) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.~~

(3) Same as existing rule.

(4) "Annual average" means an arithmetic average of all ~~valid recorded averages of any 12 consecutive calendar months provided that~~ any four consecutive valid calendar quarterly averages, where calendar quarterly averages are determined as specified in (a) and (b) below; except that for hourly data at least 6,570 valid hourly averages must be contained in the four consecutive calendar quarters.

(a) ~~at least forty-five 24-hour average recorded values are necessary and each of these values must be separated from the previous value by at least 6 days, or~~ For hourly data, the calendar quarterly average is the arithmetic average of all valid hourly averages collected during the quarter, except that the minimum number of valid hourly averages necessary to determine a valid quarterly average is 65 percent of the hourly averages contained in the quarter.

(b) ~~at least 6,570 hourly average valid recorded values are necessary with a minimum of 400 of such values recorded in each of the 12 consecutive calendar months.~~ For twenty-four hour data, the calendar quarterly average is the arithmetic average of all valid interval averages, except that the minimum number of valid interval averages necessary to determine a valid quarterly average is 80 percent of the interval averages contained in the quarter.

(5)-(15) (to be renumbered) Same as existing rule.

(16) "Interval average" means the arithmetic average of all valid twenty-four hour averages collected during a specific scheduled sampling interval, except that the minimum number of valid twenty-four hour averages necessary to determine a valid interval average is one. If a scheduled sampling interval extends into two calendar quarters or two ninety-day averaging periods, the interval average shall be assigned to the calendar quarter or ninety-day averaging period containing the start date of the interval.

(16)-19) (to be renumbered) Same as existing rule.

(20) "Ninety day average" means an the arithmetic average of all valid ~~recorded values~~ interval averages recorded during any 90 consecutive days. ~~The~~ except that the minimum number of valid ~~recorded values shall be 10 provided that each of these values must be separated from the previous value by at least 6 days.~~ interval averages necessary to determine a valid ninety-day average is 80 percent of the interval averages contained in the 90 days.

(21)-(27) (to be renumbered) Same as existing rule.

(28) "Scheduled sampling interval" means the time period commencing with the start of one scheduled sampling day and ending at the start of the next scheduled sampling day, where "scheduled" means a predetermined routine sampling frequency. If the sampling schedule is changed during any calendar quarter or ninety-day averaging period the scheduled sampling interval shall be the largest possible time period based on any of the sampling schedules.

(28)-(33) (to be renumbered) Same as existing rule.

AUTHORITY: 75-2-111, MCA
IMPLEMENTING: 75-2-201 and 75-2-202, MCA

16.8.809 METHODS AND DATA Except as otherwise provided in this subchapter or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual (Sept. 1986 ed.), all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in ~~Title 40, Part 58, Appendices A through G, Code of Federal Regulations (1979)~~ the Montana Quality Assurance Manual (Sept. 1986 ed.) except when more stringent requirements are contained in the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, vol. I; EPA-600/4-77-027a, revised Dec. 1981, vol. II; and EPA-600/4-77-027b, revised Jan. 1981, vol. III) or 40 CFR, Part 50 including appendices A through E, Part 53 including appendix A, and Part 58 including appendices A through G. Any valid recorded value at any one monitoring device which exceeds the applicable ambient air quality standard shall constitute an exceedance at that monitoring location but not at any other monitoring location and permitted exceedances shall be applicable to each monitoring location. If a valid recorded value comprises in whole or in part an exceedance of an ambient air quality standard, such recorded value shall not comprise in whole or in part ~~an~~ a second exceedance of the same ambient air quality standard.

AUTHORITY: 75-2-111, MCA
IMPLEMENTING: 75-2-201 and 75-2-202, MCA

4. The new rules, as proposed to be adopted, provide as follows:

NEW RULE I AMBIENT AIR MONITORING (1) The requirements of this rule apply to any ambient air monitoring performed by the department or any other entity as required by this chapter, including any ambient air monitoring performed as a result of any condition of any permit issued under subchapters 9 or 11 regardless of the date of issuance, or any other ambient air monitoring by any entity in order to determine compliance with subchapter 8 or 9.

(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assur-

ance Manual (Sept. 1986 ed.), all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Manual (Sept. 1986 ed.) except when more stringent requirements are determined by the department to be necessary pursuant to the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984 Vol. I; EPA-600/ 4-77-027a, revised Dec. 1981, Vol II; and EPA-600/4-77-027b, revised Jan. 1981, Vol. III), or 40 CFR, Part 50 including appendices A through E, Part 53 including appendix A, and Part 58 including appendices A through G, at which time the latter two documents shall be adhered to for the specific exception.

(3) Failure to comply with this rule is grounds to partially or totally invalidate the appropriate ambient air monitoring data which subsequently could result in:

(a) a violation of the conditions of a permit issued under subchapters 9 or 11; or

(b) a determination by the department that a permit application submitted under subchapters 9 or 11 is incomplete; or

(c) a determination that insufficient ambient air quality data is available to determine compliance with any ambient air quality standard contained in subchapter 8 or a prevention of significant deterioration increment contained in ARM 16.8.925.

AUTHORITY: 75-2-111, MCA
IMPLEMENTING: 75-2-201 and 75-2-202, MCA

NEW RULE II PROCEDURES FOR REVIEWING AND REVISING THE MONTANA QUALITY ASSURANCE MANUAL (1) The department shall review the Montana Quality Assurance Manual annually and determine if any changes or revisions are necessary to assure that all ambient monitoring data to be collected and summarized as required under this chapter is of sufficient quality, representativeness, and completeness to meet the monitoring objectives of this chapter.

(2) If, upon completion of the review described in section (1) above, the department determines that changes or a revision are necessary, the department shall prepare a draft revision to the Montana Quality Assurance Manual and, upon completion, notify interested parties that copies of the draft revision will be available for review at the Montana Air Quality Bureau, Cogswell Building, Helena, Montana 59620, or if requested, the department will mail a copy to an interested party at a reasonable charge. The department shall accept comments on the draft revision for 60 days after the notification date.

(3) The department shall review the comments received in accordance with section (2) above and, after considering the need for quality ambient air monitoring data, shall prepare

any appropriate revisions to the Montana Quality Assurance Manual and a schedule of when the revision or parts of the revision become effective. (After considering the availability of the equipment and supplies necessary to comply with the revision as well as the economic impact on the organizations conducting the ambient air monitoring, the department may include different effective dates for specific parts of the revision and for specific categories of ambient air monitoring programs, such as existing, proposed, gaseous, particulate, meteorological, or any other identifiable category of the ambient air monitoring program.)

(4) The revisions so prepared shall be circulated for a period of at least 30 days among interested parties for additional comment.

(5) Following the completion of the requirements of sections (1), (2), (3), and (4) above, the department shall propose for board action any revisions to the Montana Quality Assurance Manual that are appropriate.

AUTHORITY: 75-2-111, MCA
IMPLEMENTING: 75-2-201 and 75-2-202, MCA

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the hearing officer, Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 14, 1986.

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

JOHN J. McGREGOR, M.D., Chairman
BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

by John J. Drynan, M.D.
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 6, 1986.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules governing sex equity in education under the Montana Human Rights Act.	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF RULES GOVERNING SEX EQUITY IN EDUCATION

To: All Interested Persons

1. On November 21, 1986, at 1:00 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, 1401 Lockey, Helena, Montana, to consider the adoption of proposed rules governing sex equity in education.

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

3. The proposed rules provide as follows:

RULE I PURPOSE (1) The purpose of this sub-chapter is to establish standards that will enable educational institutions to prevent and eliminate discrimination on the basis of sex.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE II DEFINITIONS (1) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by an educational institution.

(2) "Auxiliary services" for students includes but is not limited to: health care, food services, playing fields, public accommodations on campus, speech therapy, remedial programs, mental health programs, and special programs.

(3) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical or vocational school; or agent of an educational institution.

(4) "Extracurricular activity" includes school-sponsored or supported clubs, teams, or activities of general or specific interest not part of classroom instruction.

(5) "Housing accommodation" means a building or portion of a building whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(6) "Person" means one or more individuals, and includes applicants for admission as well as students.

(7) "Physical education activities involving bodily contact" means boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(8) "Public accommodation" means a place which is operated by an educational institution as defined in section 49-2-101(17), MCA.

(9) "Sex bias" means behavior or written materials which, taken as a whole, portray one sex in a role or status inferior to or more limited than that of the other; assign abilities, traits, interests, or activities on the basis of sex stereotypes; denigrate or ridicule one sex; ignore or substantially underrepresent the numerical existence of one sex for reasons not necessitated by the subject matter of the work; or otherwise treat persons in a discriminatory way on the basis of sex.

(10) "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

(11) "Sexual Intimidation" means any behavior, verbal or nonverbal, which has the effect of subjecting members of either sex to humiliation, embarrassment or discomfort because of their gender.

(12) "Student" means a person who has gained admission and is currently engaged in the program of an educational institution.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE III TREATMENT OF STUDENTS (1) No student shall, on the basis of sex, be denied equal access to programs, activities, services or benefits or be limited in the exercise of any right, privilege, advantage, or opportunity.

(2) No student shall be discriminated against because of his or her actual or potential marital or parental status.

(a) Pregnancy shall be treated as any other temporary disability.

(b) Pregnancy or parenthood shall not be considered cause for dismissal or exclusion from any program or activity.

(c) Participation in special programs provided for pregnant students or students who are parents shall be at the student's option.

(d) Systems shall eliminate administrative and programmatic barriers to school attendance and school completion by pregnant students or students who are parents.

(e) No student shall be subjected to sexual intimidation or harassment by any school employee, by other students, or by the effect of any school policy or practice.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE IV ADMISSIONS (1) No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by an educational institution.

(2) In determining whether a person has satisfied any policy or criterion for admission, or in making any offer of admission, an educational institution shall not:

(a) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(b) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(c) Otherwise treat one individual differently from another on the basis of sex.

(3) An educational institution shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(4) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, an educational institution shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes.

(5) An educational institution may make pre-admission inquiry as to the sex of an applicant for admission, but only if the inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used in connection with discrimination prohibited by this part. Information relating to the sex of an individual that is obtained by the educational institution for statistical purposes may not be used in any admission determination.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE V GUIDANCE AND COUNSELING SERVICES (1) School personnel assigned to provide guidance and counseling services, and all materials used in the provision of those services, shall encourage students to explore and develop their individual interests in vocational programs, employment, and educational opportunities without regard to sex. This may include encouraging students to consider nontraditional occupations, careers and educational courses or programs.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE VI ACCESS TO COURSE OFFERINGS AND ACTIVITIES (1) An educational institution shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business,

vocational, technical, home economics, music and adult education courses.

(2) This rule does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports, the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the educational institution shall use appropriate standards which do not have such effect.

(5) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Educational institutions may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE VII TEXTBOOKS AND INSTRUCTIONAL MATERIALS (1) Textbooks and instructional materials, including but not limited to reference books and audiovisual material, which portray people, or animals having identifiable human attributes, must portray males and females in a wide variety of occupational, emotional, and behavioral situations, and present both in the full range of their human potential to avoid sex bias. Nothing in this rule shall be construed to prohibit the study of instructional material deemed appropriate by the instructor for educational purposes.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE VIII EXTRACURRICULAR AND ATHLETIC ACTIVITIES (1) Unless based on reasonable grounds, no person, on the basis of sex, shall be denied participation in extracurricular activities and athletics sponsored by an educational institution.

(2) Factors to be considered in insuring that athletic activities available to each sex are equal:

(a) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of both sexes;

(b) The provision of equipment, supplies and services;

(c) Scheduling of games and practice times;

(d) Travel and per diem allowances;

(e) Opportunity to receive coaching and academic tutoring;

(f) Qualifications, assignment and compensation of coaches, officials, and tutors;

(g) Provision of locker rooms, practice and competitive facilities;

(h) Provision of medical and training facilities and services;

(i) Provision of housing and dining facilities and services;

(j) Publicity.

(k) Funding.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE IX FINANCIAL AID (1) No person shall, on the basis of sex, be limited or denied financial assistance from an educational institution

(2) To the extent that an educational institution awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE X HOUSING AND AUXILIARY SERVICES FOR STUDENTS (1) An educational institution shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements or different services or benefits related to housing and auxiliary services.

(2) An educational institution may provide separate housing and auxiliary services on the basis of sex so long as the housing and auxiliary services provided to students of one sex, compared to that provided to students of the other sex, be, as a whole, and to the extent reasonably attainable by the institution, proportionate in quantity and comparable in quality and cost to the student. Students shall be provided equal access and equal treatment.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

RULE XI EMPLOYMENT ASSISTANCE/PLACEMENT (1) An educational institution which assists an agency, organization or person in making employment available to any of its students:

(a) Shall ascertain that such employment is made available without unlawful discrimination on the basis of sex; and

(b) Shall not render services to any agency, organization or person which unlawfully discriminates on the basis of sex in its employment practices.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

4. The Commission proposes the rules in order to establish procedures and guidelines to govern the Commission's enforcement of the provisions of the Montana Human Rights Act prohibiting discrimination in education on the basis of sex.

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 Anne L. MacIntyre, 1236 6th Avenue, P.O. Box 1728, Helena, Montana 59624, no later than November 21, 1986.

6. Margery H. Brown has been designated to preside over and conduct the hearing.

7. The authority of the Commission to make the proposed rules is based on Section 49-2-204, 49-3-106, MCA, and the rules implement Sections 49-2-307 and 49-3-203, MCA.

HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
Anne L. MacIntyre
Administrator
Human Rights Division

Certified to the Secretary of State October 6, 1986.

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

In the matter of the amendment of rule 24.16.9007	)	NOTICE OF PUBLIC HEARINGS ON THE PROPOSED AMENDMENT OF RULE 24.16.9007; ADOPTION BY REFERENCE OF STANDARD PREVAILING RATES OF WAGES EFFECTIVE DECEMBER 1, 1986 THROUGH NOVEMBER 30, 1987

TO: All Interested Persons

1. Public hearings will be held to consider the amendment of Rule 24.16.9007, adopting by reference the standard prevailing rates of wages to be effective December 1, 1986 through November 30, 1987, as follows:

November 5, 1986, 7:00 p.m., Eastern Montana College, Liberal Arts Library Building, Library 152, Billings, Montana; November 6, 1986, 7:00 p.m., Wolf Point High School, Auditorium, Wolf Point, Montana; November 10, 1986, 7:00 p.m., Great Falls Civic Center, Commission Chambers, Great Falls, Montana; November 12, 1986, 7:00 p.m., Montana State University, Strand Union Building, Ballroom A, Bozeman, Montana; November 13, 1986, 7:00 p.m., Outlaw Inn, Colt 44 and 45 Rooms, Kalispell, Montana.

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

24.16.9007 ANNUAL ADOPTION OF STANDARD PREVAILING RATES 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, 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 30 to 45 days prior to adoption according to regular publication dates scheduled in 1.2.419.

(b) Such minimum wage rates shall become effective on the first day of 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.

(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.

(d) The wage rates proposed and the wage rates adopted shall be incorporated by reference in respective notices published in the Montana Administrative Register.

(2) The commissioner will maintain a mailing list of interested persons and agencies. A copy of any notice, proposed rates 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.~~

(3) The standard prevailing rates of wages, effective December 1, 1986 through November 30, 1987, are hereby adopted and incorporated by reference. Copies of the rates are available upon request from the Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P.O. Box 1728, Helena, MT 59624, (406) 444-5600. (AUTH: Sec. 18-2-431 MCA; IMP, Sec. 18-2-402 MCA)

3. The Department is proposing this amendment in order to update the standard prevailing rates of wages. The Commissioner sets these rates pursuant to 18-2-402, MCA, and has determined that they must be updated annually effective December 1 of each year.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearings. Written data, views or arguments may also be submitted to the Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P.O. Box 1728, Helena, MT 59624, no later than November 13, 1986.

5. Eugene Huntington will preside over and conduct the hearings.

DEPARTMENT OF LABOR AND INDUSTRY

Eugene Huntington

EUGENE HUNTINGTON
Commissioner

Certified to the Secretary of State this 6th day of October, 1986.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule ARM 24.29.803, regarding payment of compensation	)))	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 24.29.803 (No Public Hearing Contemplated)

TO: All Interested Persons:

1. On November 17, 1986, the Workers' Compensation Division proposes to amend its rule regarding payment of compensation.

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

24.29.803 COMPENSATION TO BE PAID (1) Compensation shall be paid every 14 days and a compensation report ~~advice (form 64)~~ shall be furnished to the claimant ~~with the payment~~ for any initial payment of compensation and for any change in eligibility, including termination and reinstatement of benefits, classification, rate, name, address, and payment of any award or settlement of benefits, and a copy submitted to the division. Compensation should be paid directly to the claimant, unless otherwise directed by the division.

(2) Reports of compensation benefits status for any purpose shall be furnished the division upon request.

~~(2)~~(3) Notification of suspension of compensation payments shall be made to the claimant and the division promptly with supporting evidence justifying the action.

3. The rationale for amending ARM 24.29.803 is to simplify the process and reduce paperwork in the documentation of payment of compensation benefits under Section 39-71-740, MCA. This rule is authorized by 39-71-203, MCA, and implements 39-71-740, MCA.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to Steven J. Shapiro, Chief Legal Counsel, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by November 17, 1986.

5. If a person who is directly effected by the proposed amendment wishes to express data, views, and arguments, orally or in writing, at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Steven J. Shapiro at the address above no later than November 17, 1986.

6. If the Division receives requests for a public hearing on the proposed amendment from 25 persons who are directly effected by the proposed amendment or 10% of the

population of the State of Montana, 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. The rule will affect insurers and adjusters who pay workers' compensation benefits. If a hearing is requested, notice of a hearing will be published in the Montana Administrative Register at a later date.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 6, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE READOPTION) of Rule I relating to gasoline) distributor's license tax.)	NOTICE OF THE PROPOSED RE-ADOPTION of Rule I relating to gasoline distributor's license tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1986, the Department proposes to readopt new rule I relating to gasoline distributor's license tax.

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

RULE I INCIDENCE OF THE GASOLINE TAX (1) The incidence of the gasoline distributor's license tax is on the distributor and not on the user. Gasoline is not exempt from taxation because the ultimate user or consumer is an agency of the United States government, including the United States armed forces, Montana, or other states, counties, incorporated cities and towns, and school districts of this state, or any other tax exempt entity, group, or individual.

AUTH: 15-70-104 MCA; IMP: 15-70-202 MCA.

3. On February 27, 1986, the Department of Revenue published MAR Notice No. 42-2-316, in Issue No. 4 of the 1986 Administrative Rules of Montana relating to the proposed adoption of the above-referenced rule, and adopted the rule in Issue 9 of the 1986 Administrative Rules of Montana. It has been brought to the Department's attention that the notice contained an inadequate statement of why the rule is reasonably necessary to effectuate the purpose of the statute implemented. The Department is renoticing the rule for adoption at this time with an adequate statement.

The rule is an interpretative rule which codifies and explains several decisions of the Montana Supreme Court, e.g., **Harvey v. Blewett,** 151 Mont. 427, 443 P.2d 902 (1968), and changes in the basic gasoline license tax, i.e., in 1969, the provision for tax exemption of gasoline purchased by governmental units was repealed by Chapter 369, § 20, L. 1969. The rule is necessary for the public's information because of confusion on this issue vis-a-vis the special fuels (diesel) tax which exempts from taxation special fuels (diesel) used by governmental agencies, i.e., § 15-70-322(1), MCA.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620-2702

no later than November 13, 1986.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Irene LaBare at the above address no later than November 13, 1986.

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

7. The authority of the Department to make the proposed adoption is based on § 15-70-104, MCA, and the rule implements § 15-70-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/06/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- MENT and TRANSFER of rules 42.15.511 and 42.19.1101; the ADOPTION of rules I through IV; and the REPEAL of rule 42.15.512 relating to energy related tax incentives.	NOTICE OF THE PROPOSED AMEND- MENT and TRANSFER of rules 42.15.511 and 42.19.1101; the ADOPTION of rules I through IV; and the REPEAL of rule 42.15.512 relating to energy related tax incentives.
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1986, the Department proposes to amend and transfer rules 42.15.511 & 42.19.1101; adopt new rules I through IV; and repeal 42.15.512 relating to energy related tax incentives.

2. Rules 42.4.102 and 42.4.103 amend and transfer 42.15.511 and 42.19.1101, respectively.

Rule 42.15.512 proposed to be repealed may be found on pages 42-1585 and 42-1586 of the Administrative Rules of Montana.

3. The Department proposes to amend and adopt the rules as follows:

~~42.15.511~~ 42.4.102 CREDIT FOR NONFOSSIL ENERGY GENERATION SYSTEM (1) A credit against tax liability is allowed to an individual who is a Montana resident and who either:

(a) places in use a qualified nonfossil energy system in a dwelling which is his or her principal place of residence; or

(b) purchases or otherwise acquires beneficial ownership of a dwelling to be used as his or her principal place of residence, which dwelling is equipped with a qualifying nonfossil energy system with respect to which this tax credit has not previously been claimed.

(2) The credit may be claimed only with respect to an installation made in the taxpayer's principal residence (including a principal place of residence acquired with an existing system) on or after January 1, 1977, but before January 1, 1993. The credit is allowed only once with respect to a particular installation. Once a tax credit has been given for a particular installation, it cannot be claimed again by a subsequent taxpayer who purchases the residence. It must be claimed against the taxpayer's tax determined for the year in which the residence is purchased or the installation is placed in use. In cases in which the residence is purchased in a year subsequent to installation, the credit is to be applied to the latter year. If the credit exceeds the taxpayer's tax liability for such taxable year, the unused portion may be carried over and applied against his or her tax liability for succeeding taxable years. However,

an unused credit may not be carried beyond the fourth taxable year succeeding the taxable year in which the installation was acquired.

(3) This credit must be claimed on Form 2-B, which may be obtained from the Montana Department of Revenue, Income Tax Division, Helena, Montana 59620. The completed form must be attached to the taxpayer's return for the year in which the credit is claimed. An application for credit which includes a low emission wood or biomass combustion device must include the manufacturer's name and model number of the device.

(4) The amount of credit claimed, except for a low emission wood or biomass combustion device, shall be five percent of the first $1,000 and two and one-half percent of the next $3,000 of the cost of such systems including installation costs less any grants received. The amount of credit claimed for a low emission wood or biomass combustion device shall be ten percent of the first $1,000 and five percent of the next $3,000 of the cost of the system plus installation costs less any grants received. AUTH: 15-32-203 MCA and § 4, Ch. 513, L. 1985; IMP: 15-32-201 and 15-32-202 MCA.

~~42.19.1101 CAPITAL INVESTMENT IN NONFOSSIL FORMS OF ENERGY GENERATION~~ 42.4.103 PROPERTY TAX EXEMPTION FOR NONFOSSIL ENERGY SYSTEM (1) The property owner of record or his agent must make application to the Property Assessment Division, Department of Revenue, Capitol Station, Helena, Montana ~~59601~~ 59620, for classification as a ~~non-fossil~~ nonfossil form of energy generation. Application will be made on a form available from the ~~division~~ local county appraisal office before April 1.

(2) ~~The department will review the application, and may perform a field evaluation. The department will approve or deny the application, return a copy of the form to the property owner or his agent, and inform the county assessor and appraiser of the decision rendered.~~ When a completed application is received by a county appraisal office, the appraiser will adhere to the following procedures:

(a) The application will be placed in the appropriate parcel file and a copy of the application will be sent to the property assessment division. (If the property assessment division first receives the application, it will be filed and a copy sent to the appropriate county.)

(b) The system will be inspected and the application considered in time to assure that any exemption will affect the property's value in the earliest possible tax year following the date of application.

(c) If the system is completed prior to April 1 of a year, the application must be filed by April 1 of that year in order for an exemption to apply for the full ten year period.

(d) If the system is completed after April 1 of a year, the application must be filed by April 1 of the next year in order for an exemption to apply for the full ten year period.

(e) If an applicant misses the deadlines outlined above, he will lose one year of exemption potential for every deadline date that passes. For example:

(i) If an individual completes installation of his energy system in February, 1980, but does not apply for exemption until May, 1980, he has a total exemption potential of only nine years.

(ii) If the individual completes installation of his energy system in July, 1980, but does not apply for exemption until May, 1982, he has a total exemption potential of only eight years.

(f) The maximum exemption for residential property is $20,000 and for nonresidential property, it is $100,000. If the value of the energy system appears to exceed those amounts, the property data and exemption application should be forwarded by the appraiser to the property assessment division for consideration.

(3) The following criteria must be satisfied in order for any energy system to receive exemption (all criteria must be satisfied for successful application):

(a) The system must be able to generate energy by use of "recognized nonfossil" means.

(b) The system's components must be unique to the system and not standard components of the structure for which it provides energy.

(c) The predominant use of the system must be energy generation.

AUTH: 15-1-201 MCA and § 4, Ch. 513, L. 1985; IMP: 15-6-201 MCA.

RULE I DETERMINATION OF APPROPRIATE SYSTEMS (1) In order to receive tax incentive treatment, the energy system must be one that fits the definitions in 15-32-104(4), (5), and (6), MCA.

(2) Except for the low emission wood burning stoves and fireplaces referred to in 15-32-102(5), MCA, wood burning stoves and fireplaces do not qualify for tax incentive treatment.

AUTH: 15-1-201, 15-32-203 MCA, and § 4, Ch. 513, L. 1985; IMP: 15-6-201(3), 15-32-201, and 15-32-202 MCA.

RULE II ENERGY GENERATING SYSTEMS INSTALLED TO EXISTING STRUCTURES (1) For energy generating systems installed to existing structures and not integral to the structure's original construction, the energy generating system must be one that fits the description in 15-32-102(4), (5), and (6), MCA, and one that is either generally recognized as a nonfossil energy generating system (recognized by the energy division of the department of natural resources and conservation or the alternative energy industry) or one that the applicant can demonstrate is energy generating.

(2) Systems determined to be acceptable include, but are not limited, to the following:

(a) Solar greenhouses, sun porches, and like structures that are properly situated, constructed, and ducted to the buildings for which they provide energy to be reasonably considered a complete or supplementary energy source for that building.

(b) Solar collectors with systems for providing energy to existing structures (example: solar energy panels).

(c) Components of a structure that have been altered for energy collection, storage, and/or distribution to benefit the rest of the structure. (Example: enclosed porches with the addition of triple glazed windows; the extra value added by the triple glazed windows is exempt.)

(d) Stoves or furnaces, or catalytic converters added to stoves or furnaces which burn wood or other nonfossil biomass and which have an emission rate of less than six grams per hour.

(3) Standard components of conventional structures are those that are generally necessary for structured support, shelter, ventilation, temperature control, lighting, or maintenance of the occupant's regular life style. Components recognized as nonstandard include, but are not limited to, the following:

(a) Windows installed in excess of "double-glazing".

(b) Thermal collection masses such as brick, stonework, and other types that were not present in the original structure and were not installed for a purpose other than energy storage.

(c) Energy collection, generation, and distribution equipment related solely to recognized nonfossil energy generation systems.

(4) The predominant use of an applicant's system will be determined as other than energy generating if it possesses any two of the following characteristics:

(a) It is a structure that will be occupied more than four hours in a day.

(b) It is a structure that serves as a regularly used entry way to the building for which it provides energy.

(c) It is a structure that receives heat from a source other than the energy it generates.

(d) It is a structure that contains more space than is reasonably necessary for energy collection, generation, and distribution (about 200 to 230 sq. ft. to provide heat to a building with at least 1,000 sq. ft. of living area).

(e) It is part of the living area of the structure for which it provides energy.

(5) In determining the amount of exemption for energy generating systems installed to existing structure, the following criteria must be met:

(a) The system must qualify for exemption.

(b) The system description should be recorded on the property diagram on the appraisal record card.

(c) No value for the system should be recorded on the appraisal record card.

(6) The exemption will apply by excluding the energy system from valuation for a period as determined in (2)(b) of this rule.

AUTH: 15-1-201 MCA and § 4, Ch. 513, L. 1985; IMP: 15-6-201 MCA.

RULE III ENERGY GENERATING SYSTEMS INTEGRAL TO A STRUCTURE'S ORIGINAL CONSTRUCTION (1) For energy generating systems that are integral to a structure's original construction, the energy generating system must be one that fits the description in 15-32-102(4), (5), and (6), MCA, and one that is either generally recognized as a nonfossil energy generating system (recognized by the energy division of the department of natural resources and conservation or the alternative energy industry) or one that the applicant can demonstrate is energy generating.

(2) Systems that have been determined to be acceptable are those in:

(a) "Envelope houses" using a recognized nonfossil form of energy generation.

(b) Structures with energy systems qualifying under rule II which have been installed as part of the original construction. (Example: solar greenhouses.)

(3) Standard components of conventional structures are those that are generally necessary for structural support, shelter, ventilation, temperature control, lighting, or maintenance of the occupant's regular life style.

(4) Components which have been recognized as nonstandard are:

(a) The components necessary for energy generation and distribution in an "envelope house". (Example: The "envelope" area devoted solely to energy collection, storage, and distribution.)

(b) Components as described in rule II.

(5) The predominant use of an applicant's system will be determined as other than energy generating if it does not meet the requirements described in rule II.

(6) In determining the amount of exemption for energy generating systems that are integral to a structure's original construction, the following criteria must be met:

(a) The system must qualify for exemption.

(b) The size, quality, grade, condition, and other characteristics of the structure should be determined and the structure valued as a conventional building with the energy system excluded from the appraisal.

(c) The energy components should be recorded on the property diagram on the appraisal record card.

(d) A notation should be made on the appraisal record card that an exemption for the energy generating portion of the system has been applied.

(7) The exemption will apply by excluding the energy system from valuation for a period as determined in rule 42.4.103. AUTH: 15-1-201 MCA and § 4, Ch. 513, L. 1985; IMP: 15-6-201 MCA.

RULE IV OTHER ENERGY GENERATING SYSTEMS (1) Some systems will not be specifically suited to the language in rule II. In such cases, the three general criteria outlined in rule II, and any other language in rules II and III that is relevant, should be applied. The department will provide additional assistance on specific problems.
AUTH: 15-1-201 MCA and § 4, Ch. 513, L. 1985; IMP: 15-6-201 MCA.

4. The Department is proposing the amendments, adoptions of new rules, and repeal because the rules for energy credit are presently intermixed with the income tax and property tax rules. In order to make the rules easier for the public to access and understand, these rules are being moved to chapter 4 which will be devoted solely to energy credits.

Amendment and Replacement of ARM 42.15.511 - The Department proposes the amendment and replacement of this rule because the language which is now contained in this rule does not reflect that the credit for low emission wood or biomass combustion devices are at a higher rate than other alternative energy systems. The reason for this higher rate is because the federal government does not provide for a substantially similar credit. Without the changes, the rule would conflict with the law.

Amendment and Replacement of ARM 42.19.1101 - The Department is proposing the amendment and replacement of this rule in order to set forth the definitions, criteria, and procedure which it will employ in order to determine whether a taxpayer's investment in nonfossil forms of energy generation projects will qualify for the tax benefits set forth in 15-6-201(3), MCA.

New rules I through IV are being proposed in order to consolidate in one subchapter all administrative rules pertaining to the income tax and property tax incentives for investments in nonfossil energy systems.

New rule I is being proposed to replace ARM 42.15.512 which is being repealed because this rule specifically disallowed wood burning stoves and fireplaces from the alternate energy credit. Senate Bill No. 309, Ch. 513, Laws 1985, changed the credit to allow some of these devices. The Department is proposing new rules II through IV to set forth the definitions, criteria, and procedure which it will employ in order to determine whether a taxpayer's investment in nonfossil forms of energy generation projects will qualify for the tax benefits set forth in 15-6-201(4), (5), and (6), MCA.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620-2702
no later than November 13, 1986.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Irene LaBare at the above address no later than November 13, 1986.

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

8. The authority of the Department to make the proposed amendments and adoptions is based on §§ 15-1-201, 15-1-203, 15-32-203, MCA, and § 4, Ch. 513, L. 1985. The rules implement §§ 15-6-201, 15-32-201, and 15-32-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/06/86

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 1.2.419 pertaining to scheduled dates for the Montana Administrative Register	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION FOR THE MONTANA ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 31, 1986, the Secretary of State proposes to amend the rule pertaining to the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

19867 Schedule

Filing	Compiling	Printer Pickup	Publication
January 65	January 76	January 87	January 1615
January 2019	January 2120	January 2221	January 3029
February 32	February 43	February 54	February 13
February 1413	February 1017	February 1918	February 2726
March 32	March 43	March 54	March 1312
March 1716	March 1017	March 1918	March 2726
~~March 31~~			
April 6	April 17	April 28	April 1016
April 1420	April 1521	April 1622	April 2430
May 54	May 65	May 76	May 1514
May 1918	May 2019	May 2120	May 2928
June 21	June 32	June 43	June 1211
June 1615	June 1716	June 1817	June 2625
July 76	July 87	July 98	July 1716
July 2120	July 2221	July 2322	July 3130
August 43	August 54	August 65	August 1413
August 1817	August 1918	August 2019	August 2827
August 2931	September 21	September 32	September 1110
September 1514	September 1615	September 1716	September 2524
October 65	October 76	October 87	October 1615
October 2019	October 2120	October 2221	October 3029
November 32	November 53	November 64	November 1412
November 1716	November 1817	November 1918	November 2827
~~December 1~~			
November 30	December 21	December 32	December 1110
December 1514	December 1615	December 1716	December 2624

(2) remains the same.

AUTH: 2-4-312, MCA IMP: 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1987.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Kathy Lubke, Office of the Secretary of State, State Capitol, Helena, Montana, 59620 no later than November 20, 1986.

JIM WALTERMIRE
Secretary of State

Dated this 6th day of October, 1986.

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

In the matter of the amendment of Rules 46.12.102 and 46.12.703 pertaining to medical assistance reimbursement for outpatient drugs	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.102 AND 46.12.703 PERTAINING TO MEDICAL ASSISTANCE REIMBURSEMENT FOR OUTPATIENT DRUGS

TO: All Interested Persons

1. On November 12, 1986, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.102 and 46.12.703 pertaining to medical assistance reimbursement for outpatient drugs.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (20) remain the same.

(21) Maximum allowable cost (MAC) is the upper limit the department will pay for multi-source drugs in accordance with 42 CFR 447.331 which is a federal regulation dealing with limits of payment. The department hereby adopts and incorporates 42 CFR 447.331 by reference. A copy of the above-cited regulation may be obtained from the department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana, 59601.

(22) Estimated acquisition cost (EAC) is the cost ~~for~~ of drugs for which no MAC price has been determined. ~~The--estimated-acquisition-cost-is-established-and-adjusted--monthly-by-the-department-upon-notification-of-drug-prices-by--pharmacies-or-legitimate-pharmacy-supplies.~~ The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is the direct price (DP) charged by manufacturers to retailers. If there is no available DP for a drug or the department determines that the DP is not available to providers in the state, the EAC is the average wholesale price (AWP). The department uses the DP and AWP as weekly reported or calculated by the American druggist blue book data center or any other industry accepted data center under contract with the department or its fiscal agent.

(a) Notwithstanding the above, effective December 1, 1986, the EAC for those drugs determined by the department to be unavailable at direct prices will mean the AWP calculated

by the American druggist blue book data center for November 30, 1986. This EAC will remain in effect until such time as the increases in the AWP for a drug exceed 10 percent of the AWP in effect on November 30, 1986. After the increases in the AWP exceed the 10 percent limit, the EAC of the drug will be allowed to increase by the amount that the sum of the increases exceeds the 10 percent of the AWP determined for November 30, 1986.

Subsections (23) through (37) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.703 OUTPATIENT DRUGS, REIMBURSEMENT Subsections (1) and (2) remain the same.

(3) Notwithstanding subsection (2) above, effective December 1, 1986, the dispensing fee for filling prescriptions shall be maintained at the amount participating pharmacies have in effect on November 30, 1986. All in-state and out-of-state pharmacies which become providers after November 30, 1986, will be assigned an interim $3.50 dispensing fee until a dispensing fee survey, as provided for in subsection (2) above, can be completed for six months of operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with subsection (2) for the pharmacy or the $3.50 dispensing fee. Failure to comply with the six months dispensing fee survey requirement will result in a dispensing fee of $2.00 being assigned.

Subsections (3) through (6) remain the same in text but will be renumbered (4) through (7).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141

3. The Legislature has directed that the Department not expand or reduce the amount, scope or duration of the benefits available to recipients under the medicaid-other program during the 1987 biennium. It has also directed that, with the exception of nursing home rates, provider reimbursement increases be limited. The Department has determined that the rule as proposed will limit increases in the cost of drugs and dispensing fees while assuring the availability of necessary drugs.

The Department expects an annual general fund savings through this rule change of approximately $150,000.00.

Copies of this notice can be obtained at human services offices throughout Montana.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 13, 1986.

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

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 6, 1986.

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

In the matter of the amendment of Rules 46.12.550, 46.12.551 and 46.12.552 pertaining to home health services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.550, 46.12.551 AND 46.12.552 PERTAINING TO HOME HEALTH SERVICES

TO: All Interested Persons

1. On November 12, 1986, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.550, 46.12.551 and 46.12.552 pertaining to home health services.

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

46.12.550 HOME HEALTH SERVICES, DEFINITION (1) Home health services are the following services provided by a licensed home health agency on a part-time or intermittent basis to a recipient considered homebound in his place of residence:

Subsections (1)(a) through (1)(f) remain the same.

(i) Homebound means the attending physician certifies on the physician order sheet that the recipient is confined to his home for medical reasons. The homebound status exists when there is a general part-time or intermittent inability to leave home without considerable and taxing effort.

(A) The department hereby adopts and incorporates by reference section 208 of chapter two of the medicare home health manual dated June, 1977. This section defines generally the conditions under which patients are confined to their own homes. A copy of the incorporated section may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, Helena, Montana 59601.

Subsections (2) and (3) remain the same in text but will be recategorized as (1)(f)(ii) and (1)(f)(iii).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.551 HOME HEALTH SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in 46.12.301 through 46.12.308.

(1a) A home health agency must be licensed by the Montana department of health and environmental sciences and be medicare certified.

(~~2~~b) Home health services are available only through those home health agencies within the borders of the state of Montana that have a contract with the department.

(c) Home health services meeting the provisions of ARM 46.12.503(3) are available through providers located outside of the borders of the state of Montana by requesting prior authorization on a case by case basis.

Subsections (3) through (6) remain the same in text but will be recategorized as (1)(d) through (1)(g).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.552 HOME HEALTH SERVICES, REIMBURSEMENT

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

~~(2)--Reimbursement--will-be-paid--through--interim--rates during-a-cost-report-period--as-determined--by-the-home-health agencies'--Title--XVIII--of--the--Social--Security--Act--fiscal intermediary,--with--retroactive--settlement--for--actual-allowable-costs-at-the-conclusion-of-the-report-period.~~

~~(3)--Reimbursement-for-home-health--services--will-be-the lesser-of-usual-and-customary-charges-which-are--reasonable-or the-maximum-amount-payable-by-medicare.~~

(2) For home health agencies located within the borders of the state and having provided services prior to July 1, 1986, the reimbursement fee per service will be the lesser of:

(a) billed charges;

(b) the Medicare rate; or

(c) the indexed fee for state fiscal year ending June 30, 1986.

(i) The 1986 indexed fee per category of service will be determined from the settled cost reports ending state fiscal year June 30, 1984, which will be indexed by the DRI market basket index percentage established for 1984 at 6.8 percent, 1985 at 7.2 percent, and 1986 at 3.6 percent. The final sum will become the 1986 indexed reimbursement fee. The department hereby adopts and incorporates by reference the DRI market basket rate which is a forecast model of market basket increase factors prepared by Data Resources, Inc., 1750 K Street N.W., 9th Floor, Washington, D.C., 20006. A description of the general methodology and variables used in formulating this model is available from the Department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana 59601.

(3) For home health agencies which are located within the borders of the state and began providing services on or after July 1, 1986, the medicaid reimbursement fee per service will be the lesser of:

(a) billed charges;

(b) the medicare rate; or

(c) the 1986 averaged medicaid fee.

(i) The averaged medicaid fee will be derived by combining the total charges within each category of service from all participating in-state home health providers and dividing that sum by the total number of delivered services. The final sum will be indexed by an inflation factor for 1984, 1985 and 1986 to become the averaged fee.

(4) For home health agencies located outside the borders of the state and having met the requirements set forth in ARM 46.12.502(3), the reimbursement fee per service will be the lesser of:

(a) billed charges;

(b) the 1986 averaged medicaid fee.

Subsections (4) through (6) remain the same in text but will be renumbered (5) through (7).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. Home health services are provided to Medicaid recipients to assist them in managing their medical care outside a hospital or nursing home setting. Currently, Home Health agencies contract with the department and an interim payment system based on the Medicare fiscal intermediary is then established. A cost settlement is then made with each agency at the end of their cost reporting period. The payment method currently used is a reasonable cost system in which the Home Health agency receives the lesser of their usual and customary charges that are reasonable or their allowable cost. The proposed prospective reimbursement system will enable the department to control future cost increases in this rapidly expanding service area.

The department anticipates that a savings of $25,000 will be made in the state fiscal year ending June 30, 1986, by implementing a prospective payment method.

Copies of this notice can be obtained at human services offices throughout Montana.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 13, 1986.

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

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 6, 1986.

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

In the matter of the amendment of Rules 46.10.303 and 46.10.306 pertaining to AFDC deprivation requirements and continuation of assistance.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.303 AND 46.10.306 PERTAINING TO AFDC DEPRIVATION REQUIREMENTS AND CONTINUATION OF ASSISTANCE

TO: All Interested Persons

1. On November 13, 1986, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.10.303 and 46.10.306 pertaining to AFDC deprivation requirements and continuation of assistance.

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

46.10.303 AFDC DEPRIVATION REQUIREMENTS (1) A dependent child ~~must~~ is considered to be deprived of ~~the support of a parent or both parents~~ parental support due to:

(a) death;

(b) continued absence of the parent(s);

(i) A parent who is absent solely due to the performance of active duty in the uniformed services of the United States (as defined in section 101(3) of title 37, United States Code) shall not be considered absent.

(ii) A parent who is a convicted offender living at home while serving a court-imposed sentence shall be considered absent.

~~(b) separation or divorce;~~

~~(c) desertion;~~

~~(d) parents not married to each other;~~

~~(e) institutionalization;~~

~~(f) military service of one parent;~~

(~~g~~c) physical or mental incapacity~~;~~ of the parent(s);

~~(h) unemployed parent;~~

(d) in accordance with ARM 46.10.304A, unemployment of the parent who is the principal wage earner.

(2) Continued absence of a parent from the home, when the nature of the absence ~~causes a disruption of family ties~~, is such as to either interrupt or terminate the parent's functioning as a provider of maintenance, physical care or guidance for the child, and the known or definite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child, constitutes the basic reason for deprivation of parental support in (b) ~~(a) through (f)~~ above~~;~~ above.

(3) ~~Physical or mental incapacity of a parent, or unemployment of a parent constitutes deprivation though family ties are not destroyed.~~ Physical or mental incapacity of a parent exists when the person has a physical or mental defect, illness or impairment. The incapacity must be of such a debilitating nature as to reduce substantially or eliminate the person's ability to support or care for the child. The incapacity must be expected to last at least 30 days. Consideration should be given to the limited employment opportunities available to that person due to the handicap condition. The incapacity of a person must be established through competent medical testimony.

AUTH: Sec. 53-4-212 MCA; AUTH Extension, Sec. 3, Ch. 53, L. 1985, Eff. 3/11/85
IMP: Sec. 53-4-211, 53-4-201 and 53-4-231 MCA

46.10.306 CONTINUATION OF ASSISTANCE ~~AFTER RETURN OF ABSENT PARENT~~ If the family is otherwise eligible, AFDC assistance payments may be continued for ~~90 days after the date of return of an absent parent if the family is otherwise eligible for payments during that time.~~ a period of three (3) months while the effects of a parent's continued absence, incapacity or unemployment are being overcome.

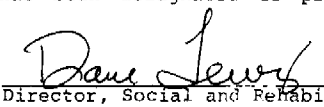
AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

3. ARM 46.10.303 is being amended to conform the provision with the language of the federal rules governing AFDC. The four categories of deprivation recognized in Montana (death, continued absence of the parent, physical and mental incapacity of the parent, and unemployment of the principal wage earning parent) are specifically stated. Language from the federal rules which further defines these categories is provided by the amendment.

The amendment to ARM 46.10.306 is necessary to comply with the federal regulation at 45 CFR 233.10(b)(4) which requires that deprivation factors be waived and assistance be temporarily continued in certain situations.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 13, 1986.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 6, 1986.

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

In the matter of the amendment of Rules 46.5.1202, 46.5.1203 and 46.5.1204 pertaining to supplemental payments to recipients of supplemental security income.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.5.1202, 46.5.1203 AND 46.5.1204 PERTAINING TO SUPPLEMENTAL PAYMENTS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME

TO: All Interested Persons

1. On November 13, 1986, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.5.1202, 46.5.1203 and 46.5.1204 pertaining to supplemental payments to recipients of supplemental security income.

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

46.5.1202 INDIVIDUAL ELIGIBILITY FOR STATE SUPPLEMENT

(1) Aged, blind and disabled persons residing in Montana who were, for December, 1973, recipients of assistance or had filed an application and were otherwise eligible for assistance under a state plan approved by the federal government for title I, X, XIV or XVI of the social security act, are eligible for mandatory state supplemental payments as required by sections 211 and 212 of P.L. 93-66 and by P.L. 93-233.

(a) Eligibility for mandatory state supplemental payments is subject to the limitations of 20 CFR § 416.2040 which describes limitations on eligibility. The department hereby adopts and incorporates by reference 20 CFR § 416.2040. A copy of the incorporated regulation may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana 59601.

(b) The amount of mandatory state supplement to be provided is determined in accordance with 20 CFR § 416.2050, § 416.2055, § 416.2060, § 416.2065, § 416.2070, § 416.2085 and § 416.2097 which are federal regulations governing payments under state supplemental programs. The department hereby adopts and incorporates by reference the above cited sections. A copy of the above cited regulations may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana 59601.

~~(1) Recipients of federal supplemental security income who reside in one of the facilities described in ARM 46.5.1203 are eligible for state supplement.~~

(2) Persons eligible for optional state supplemental payments are those persons who:

(a) are recipients of federal supplemental security income or who would be eligible to receive federal supplemental security income except for the amount of their income;

(b) reside in one of the facilities described in ARM 46.5.1203;

(c) are not ineligible under the provisions of 20 CFR § 446.2040 governing limitations on participation in state supplementation programs. The department hereby adopts and incorporates by reference the above cited section. Copies of 20 CFR § 446.2040 can be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana 59601;

(d) are financially eligible as provided for in 20 CFR § 416.2001, § 416.2025 and § 416.2047, the federal regulations governing financial eligibility state supplemental payments. The department hereby adopts and incorporates by reference the above cited sections. Copies of the above cited sections can be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana 59601.

(3) The amount of optional state supplement to be provided is determined in accordance with 20 CFR § 416.2025, § 416.2030, § 416.2045, § 416.2095 and § 416.2097, which are federal regulations governing state supplement benefit calculations. The department hereby adopts and incorporates by reference the above cited sections. Copies of the above cited sections can be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana 59601.

(~~2~~4) Applications for optional state supplemental payments are made to the county welfare department. Determination of eligibility is made by the social worker based on ~~formal assessment of the appropriateness of the placement for the applicant,~~ residential status. Eligibility shall be redetermined ~~every six months~~ annually.

Subsection (3) remains the same in text but will be renumbered as (5).

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-204 MCA

46.5.1203 ELIGIBILITY BASED ON LIVING ARRANGEMENT

Subsection (1) remains the same.

(a) ~~Residential~~ Personal care facilities ~~licensed by the department of health and environmental sciences either as personal care facilities (50-5-101(20)(a)(iii), MCA) or as rooming houses or retirement homes (50-51-103(5), MCA)~~ defined by sections 50-5-101(19)(e), 50-5-225 and 50-5-226 MCA, and licensed by the department of health and environmental sciences in accordance with section 50-5-227 MCA, and ARM 16.32.380 through 16.32.388 and which for the purposes of this rule the department of social and rehabilitation services determines:

(i) provide ~~residential~~ personal care to five or more persons;

Subsections (1)(a)(ii) and (1)(a)(ii)(A) remain the same.

~~(B)--individual-beds-and-sleeping-areas-available;~~

Subsections (1)(a)(ii)(C) through (1)(a)(ii)(E) remain the same in text but will be renumbered as (1)(a)(ii)(B) through (1)(a)(ii)(D).

(~~F~~E) preparation of special diets if required by the physician; and

(~~G~~F) assistance with personal daily living activities as needed, e.g., eating, dressing, shaving, hair care, bathing, and getting in and out of bed.~~;--and~~

~~(H)--supervision--of--self-administered--medication--prescribed-for--the-recipient-by--a-physician-or-dentist;--Supervision-includes-observing-and--recording-that--the--medication was-taken;~~

~~(iii)-Provide--care-only--to-residents-who-are-ambulatory or-ambulatory--with--assistance-from-a-personal--attendant--or mechanical-devices;~~

Subsections (1)(a)(iv) through (1)(e) remain the same in text. Subsection (1)(a)(iv) will be renumbered (1)(a)(iii).

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-204 MCA

46.5.1204 PAYMENT STANDARDS (1) The department of social and rehabilitation services has set the following monthly maximum payment standards of state supplement per client for each of the five facilities listed in ARM 46.5.1203:

(a) ~~residential~~ personal care facilities - $94.00

Subsections (1)(b) through (4) remain the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-204 MCA

3. The purpose of these proposed amendments is to conform the state supplemental payment program eligibility criteria generally with governing federal statutes and rules and specifically with recent state statutory and rule changes in the personal care licensing. Historically, persons residing in licensed personal care homes or rooming houses and/or retirement homes and receiving personal care as defined by the Department were one of the categories eligible for state supplemental payments. The legislative authority and implementing rules governing the licensing of personal care homes by the Department of Health and Environmental Sciences has been significantly modified. As a consequence, personal care is now defined in detail by rule. Personal care may no longer be provided in rooming houses and retirement homes.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 13, 1986.

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

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 6, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY PATROLMEN
AND INVESTIGATORS

In the matter of the amendment of 8.50.423 concerning definitions and 8.50.437 concerning fees	))))	NOTICE OF AMENDMENT OF 8.50.423 DEFINITIONS AND 8.50.437 FEE SCHEDULE

TO: All Interested Persons:

1. On August 28, 1986, the Board of Private Security Patrolmen and Investigators published a notice of public hearing on the amendments of the above-stated rules at page 1428, 1986 Montana Administrative Register, issue number 16. The hearing was held on September 17, 1986, at 1:00 p.m., in the upstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

2. One letter was received by the Montana Association of Private Investigators and Security Operators (MAPISO) in support of the proposed amendments. They did oppose the assessment. The Board's response was that the assessment would only be in effect until December 31, 1986 and would be dropped in 1987.

3. One person appeared at the hearing and expressed concern over the unarmed private investigator employee fee and the renewal fee for unarmed private investigator employees. He thought they were ambiguous. The Board is going to discuss this at a later meeting.

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

5. No other comments or testimony were received.

BOARD OF PRIVATE SECURITY
PATROLMEN
AND INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY

Certified to the Secretary of State, October 6, 1986.

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

In the matter of the amendment of 8.97.308 concerning rates, service charges and fee schedule	))))	NOTICE OF AMENDMENT OF 8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULE

TO: All Interested Persons:

1. On August 28, 1986, the Montana Economic Development Board published a notice of amendment of the above-stated rule at page 1430, 1986 Montana Administrative Register, issue number 16.

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

3. No comments or testimony were received.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK
CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY

Certified to the Secretary of State, October 6, 1986.

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

In the matter of the repeal of rules 36.21.601, 36.21.631 through 36.21.633, current construction standards and adoption of new rules under sub-chapter 6 setting minimum construction standards for water wells in Montana	NOTICE OF REPEAL OF RULES 36.21.601, 36.21.631, 632 AND 633 UNDER SUB-CHAPTER 6 AND ADOPTION OF NEW RULES UNDER SUB-CHAPTER 6, SETTING MINIMUM CONSTRUCTION STANDARDS FOR WATER WELLS IN MONTANA 36.21.634 THROUGH 36.21.680

TO: ALL INTERESTED PERSONS:

1. On July 17, 1986, the Board of Water Well Contractors published a notice of public hearing on the proposed repeal and adoption of the above-stated rules at page 1148 through 1173, 1986 Montana Administrative Register, issue number 13.

2. On August 7, 1986, the public hearing was held in the main conference room of the Department of Natural Resources and Conservation (DNRC) Building, 1520 East Sixth Avenue, Helena, Montana. Jim Madden, Attorney, presided over and conducted the hearing. Present were board members, Wesley Lindsay, Don Willems, Bill Osborne, Wayne Van Voast, and Ron Guse; DNRC staff members, Diana C. Cutler, Program Specialist for the Board and Rich Brasch, Hydrosciences Section Supervisor. In addition to staff and board members, seven persons attended the hearing. Five persons offered testimony in opposition to portions of the rules. Two persons were neither proponents, nor opponents of the rules. Two letters of comment were received. A telephone call from the Administrative Code Committee with several comments was received.

3. Based on comments, which will be addressed at the end of this notice, and the reasons stated in the notice of proposed repeal and adoption, the board has repealed and adopted the rules as proposed with the following exceptions:

Rule III now 36.21.636 is changed to read as follows: (deleted matter interlined, new matter underlined)

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

(2) The drilling agreement, if used, should ~~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~~ should be maintained by the water well contractor for a period of three years.
(4) As part of a disciplinary action, the board may require a licensee to make use of written drilling agreements."

Rule V, now 36.21.638 is changed to read as follows: (deleted matter interlined, new matter underlined)

"36.21.638 LOCATION OF WELLS (1) Water wells ~~shall~~ should 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~~ should contact local flood plain administrators for rules pertaining to wells in flood plain areas."

Rule VII, now 36.21.640 is changed to read as follows: (deleted matter interlined, new matter underlined)

"36.21.640 WELL CASING (1) ...
(4) Casings of other specifications may be considered under the provisions of variances ~~(rule XLVIII)~~ ARM 36.21.680."

Rule VIII, now 36.21.641 is changed to read as follows: (deleted matter interlined, new matter underlined)

"36.21.641 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~~ ARM 36.21.640. 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 F4 480-81 ~~or latest~~

~~revision as~~ per ~~rule XII~~ ARM 36.21.646. 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) ..."

Rule XXVI, now 36.21.659 is changed only in the fact that the hyphen between "Gravel" and "Packed" has been dropped.

Rule XLII, now 36.21.675 is changed to read as follows: (deleted matter interlined, new matter underlined)

"36.21.675 CEMENT GROUT (1) Cement grout for use in abandonment operations shall conform to the requirements of ~~rule XVIII~~ ARM 36.21.634 (22)(b)."

Rule XLIII now 36.21.676 is changed to read as follows: (deleted matter interlined, new matter underlined)

"36.21.676 CONCRETE (1) Concrete for use in abandonment operations shall conform to the requirements of ~~rule XXI~~ ARM 36.21.634 (13).

Comments from persons testifying and the board responses are as follows:

Comment: 5 persons spoke in opposition to the mandatory drilling agreement. One letter was received in support of the drilling agreement. (Rule III)

Response: The board, having considered the arguments for and against the drilling agreement, has decided to recommend that agreements be used, but will not mandate an agreement be used except as a disciplinary measure when the board deems the agreement would serve to protect the public. The rule has been amended accordingly.

Comment: Grouting of the entire inner liner casing was not necessary. (Rule VIII)

Response: The rules do not require the entire inner casing be grouted.

Comment: It should not be the responsibility of the driller to correctly locate the well in relationship to property lines, septic tanks, etc. It should be that of the well owner. (Rule V)

Response: The board agreed that it should be the well owner's responsibility to determine where the property lines, septic systems, etc. are located and has amended the rule to "should" rather than "shall".

Comment: A variance should be provided to eliminate the use of steel casing to a specific depth in a well, as well as the extension of casing in a flood plain area to less than 3 feet above known flood level.

Response: The variance to address problems such as these already exists in rule XLVII.

Comment: One party objected to mandatory retention of drilling records for 3 years. (Rule III)

Response: The rule is now amended to make retention of drilling agreements advisory rather than mandatory.

Comment: Comments were received from the Administrative Code Committee. (1) The last sentence in Rule VII refers to Rule XLVIII, but should refer to Rule XLVII.

(2) Rule VIII contains an adoption by reference which included the statement "or latest revision". Because revisions of materials adopted by reference cannot be adopted without proper notice, this statement should be taken out.

(3) Rule XXVI contains a hyphen between "Gravel" and "Packed" in the catchphrase. "Gravel packed" contains no hyphens in the rest of the rules.

(4) Rules XLII and XLIII contain citations of other rules which appear to be incorrect citations.

Response: All comments of the code committee were considered and acted upon as reflected in this notice.

Comment: The rules were too extensive and perhaps not necessary.

Response: The legislature has specifically required the board to adopt rules concerning these areas. See §37-43-202(3), MCA.

Comment: Why should the inner casing telescope or overlap 8 feet (Rule VIII) and why should sealing be done when changing casing sizes?

Response: The 8-foot overlap has been decreased to 4 feet. It is good drilling practice to maintain an overlap, as well as sealing the casing when changing casing size.

Comment: A graph was presented showing a graduated scale for the oversized drill holes in relationship to the casing size.

Response: A graduated scale is beyond the scope of the present rulemaking, but the board will take it into consideration for a possible future rule.

Comment: Disinfection of the well and materials placed within the well is not necessary. (Rule XXIX)

Response: This rule is important to adequately protect the public and the ground water resources.

Comment: #160 plastic pipe should not be allowed in wells. (Rules VII and XII)

Response: The current rule that limits the use of #160 pipe to a specific depth sufficiently covers any problems with this type of pipe to protect the pump.

No other comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, October 6, 1986

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the AMENDMENTS OF RULES 44.3.1737, thru 44.3.1741; 44.3.1743 thru 44.3.1746 and 44.3.1749 and the adoption of 44.3.1737A relating to procedures governing the processing and counting of Computer Election Services Votomatic punchcard ballots.	NOTICE OF ADOPTION OF AMENDMENTS OF RULES 44.3.1737 THRU 44.3.1741; 44.3.1743 THRU 44.3.1746 AND 44.3.1749; AND ADOPTION OF RULE 44.3.1737A RELATING TO PROCEDURES GOVERNING THE PROCESSING AND COUNTING OF COMPUTER ELECTION SERVICES VOTOMATIC PUNCHCARD BALLOTS.

TO: All Interested Persons.

1. On August 28, 1986, the Secretary of State published notice of a proposed adoption of amendments to rules related to procedures governing the processing and counting of Computer Election Services Votomatic punchcard ballots.

2. The agency has adopted amendments to Rules 44.3.1743, Central Counting Center Procedures and Duties-Receiving Board, 44.3.1744, Central Counting Center Procedures and Duties-Inspection Board, 44.3.1745, Central Counting Center Procedures and Duties-Duplication Board, 44.3.1746, Central Counting Center Procedures and Duties-Write-In Tally Board, and 44.3.1749, Central Counting Center Procedures and Duties-Election Results Board as proposed.

3. The agency has adopted the following amendments with the following changes:

44.3.1737 DEFINITIONS - COMPUTER ELECTION SYSTEMS VOTOMATIC (CES) Subsections (1) through (d)(ii) remain the same.

(e) "Ballot Labels" means the ~~white~~ pages attached to the ballot assembly. In a primary election, these pages ~~can~~ MAY be colorcoded to differentiate between the non-partisan, Democrat, Republican and any other party ballots. In the primary they are marked ~~on the right-hand edge~~ to indicate to the elector the party ballot he wishes to vote or the nonpartisan ballot. Ballot labels for the general election ~~are also white.~~ ~~They~~ have the party affiliation, or independent, or statement "nominated without party affiliation" printed IN THE TITLE BOX OR immediately behind the name of the candidate. Ballot labels for absentee voting shall be printed identical to the pages printed for the ballot assembly but shall be in booklet form.

Subsections (1)(f) through (i) remain the same.

(j) "Test Ballot Card" means a yellow prescored data processing card which is distinctly marked DEMONSTRATION on its face and is assigned a number corresponding to a number assigned to a device. This card is used by the election judges to test a votomatic prior to the opening of the polls

and throughout the day to insure that the device is in good working order.

Subsection (1)(k) remains the same.

~~(1)(l) "Voting Authority Slip" means a prenumbered slip issued to an elector giving him access to a voting device.~~ Subsection (1)(m) remains the same except it shall be renumbered.

AUTH: Sec. 13-17-107(2), MCA
IMP: Sec. 13-17-107, MCA

44.3.1737A PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) PRIMARY ELECTION (1) The order of the ballot label for a primary election shall be as follows:

(a) non-partisan, judicial;
(b) local ballot issues.
(c) party punch;
(d) democrat;
(e) republican; AND
(f) any other party with ballot access.~~, and~~

(2) Counties using the Ballot Tab Vote tabulator shall program CES Option 52 and shall include a printout of the option card with the return of the official canvass to the secretary of state.

AUTH: Sec. 13-17-206, MCA
IMP: Sec. 13-17-206, MCA

44.3.1738 PROCEDURES FOR USE OF COMPUTER ELECTION-SYSTEMS VOTOMATIC - (CES) - BEFORE THE POLLS OPEN Sections (1) through (5) remain the same.

(6) Election administrator shall furnish return sheets and certificates to the precinct judges for posting of paper and absentee ballot totals, as applicable. The return sheets shall:

(a) have each candidate's name designated by the same reference that the name bears on the ballot labels and MAY allow for writing in votes for a candidate,

(b) provide for the return of the vote on ballot issues,

(c) have a blank for indicating the precinct, and ~~the number of devices used, and other necessary information,~~

(d) ~~have a certificate to be executed before the polls open by the election judges,~~

~~(e)~~(d) have a ~~second~~ certificate ~~closing the polls~~ and verifying the returns~~, and~~

~~(f) have the certificate and attestation of the election judges on each return sheet.~~

(7) Election judges shall set up votomatics at polling place as per instructions of the election administrator.

(8) Election judges shall complete appropriate sections of the Ballot Security Log prior to the opening of the polls verifying the number of unused ballots sent to the polling place and sign the first certificate provided by the

election administrator on the return sheets. After the polls close, the election judges shall sign a second certificate ON THE BALLOT SECURITY LOG to signify that the number of ballots to be transported and counted has been reconciled with the poll book list of the number of people who voted.

(9) Election judges, one from each party having ballot access, shall compare ballot labels in the votomatics against an ~~sample~~ absentee ballot for that precinct to make sure the ~~names and numbers are the same~~ pages and voting positions assigned each candidate and each issue match exactly.

(10) Election judges, as assigned by the chief election judge, shall vote a test ballot card in each votomatic by punching all possible positions to insure the device is in proper working order. Election judges shall indicate time and number of device on test ballot card and place in an envelope marked "Test Ballot Cards".

~~(11) Election judges, as assigned by the chief election judge, shall check to make sure precinct number is on every ballot label page if it is not pre-printed on the pages.~~

AUTH: Sec. 13-17-107(2), MCA
IMP: 13-12-201 through 13-12-208, 13-13-115 and 13-17-206, MCA

44.3.1739 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - WHILE THE POLLS ARE OPEN (1) Each elector upon entering the polling place ~~shall~~ may be given a demonstration, by an election judge designated by the chief judge, on how to use the votomatic device and be allowed to practice. The demonstration ballot labels, provided by the election administrator for demonstration purposes, shall have no relationship to any Montana election.

~~(2) After signing the precinct register an elector shall be issued a numbered voting authority slip. His name need not be entered in the poll and tally book but the number of the voting authority slip shall be written to the right of the elector's name in the register.~~

~~(3) Elector shall give his voting authority slip to the election judge in charge of ballots and the election judge shall issue him a ballot and a gray secrecy envelope.~~

(2) Providing the elector with the option to vote a paper ballot is required if more than 5% of the electors voting in the last preceding general election voted using paper ballots.

~~(4)~~(3) An elector may request a paper ballot under the conditions specified in subsection (2) above. He shall be issued a paper ballot and the stub shall be numbered consecutively, beginning with paper ballot number one through the total number of paper ballots printed for that precinct. A separate poll book shall be used for the paper ballots. UNLESS THE EXISTING POLL BOOK PROVIDES ADDITIONAL COLUMNS. ~~sequential number under the conditions specified in subsection (2) above on the next ballot card shall be placed on the paper ballot stub. The ballot card having that number~~

~~shall be marked "spoiled" and be placed in the ballot box.~~ The paper ballot shall be cast and counted as provided by law.

Subsections (5) through (10) remain the same except that they shall be re-numbered.

~~(11)~~(10) Election judges, assigned by chief election judge, shall test vote each votomatic every two hours, one booth at a time. A test exactly like the one before the polls opened shall be conducted, all test cards shall have the time and device number indicated on them and shall be inserted in the envelope provided. The judges shall check ballot pages to see if any are damaged, or if any alterations or markings have been made on the ballot label pages. They shall remove any ~~pencils or~~ campaign literature from the booth and check the stylus for broken tip.

~~(12)~~(11) Election administrator may provide for early pickup of ballots for transfer to the computer center. Upon arrival of persons authorized to pick up the ballots, the following procedures shall be used:

(a) election judges, one from each party having ballot access, shall ~~open the ballot box and all ballot envelopes containing ballot cards shall be removed.~~ exchange a new poll book and a ballot box for the poll book and ballot box in use at the time of exchange.

(b) the box containing ballots shall not be opened until all electors who are voting at the time of exchange have deposited their ballots in that box;

(c) the first number in the new poll book shall be in sequential order with the last number in the old poll book;

(d) those electors whose names are entered in the new poll book shall have their ballots deposited in the new ballot box which was checked and locked;

~~(b)~~(e) the judges shall open the original ballot box, quickly but accurately count all ballot envelopes containing ballot cards, reconcile the total with the number of names in the pollbook, and enter the total on the Early Pickup Transfer Case Control Log and on the Ballot Security Log; ~~attached to final transfer case.~~

(f) when the number of ballot envelopes with ballot cards still inside is reconciled with the number of names on the poll book they shall be returned, with the poll book and the Transport Carrier Control Log, to the original ballot box;

~~(c)~~(g) the ballot box ~~envelopes with ballot cards still inside shall be placed in the early pick up transfer case which~~ shall be sealed with a ballot box seal. The seal shall be signed by the chief judge and at least two judges assigned to prepare the early pickup of ballots, and

~~(d) the ballot box and be locked and put back into service.~~

~~(e)~~(h) the ~~early pickup transfer case~~ original ballot box containing ballots shall not be surrendered until a receipt signed by the persons authorized to pick up ballots has been received.

AUTH: Sec. 13-17-107(2), MCA
IMP: Secs. 13-12-209, 13-13-114, 13-13-115, 13-15-103 and 13-17-305, MCA

44.3.1740 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - AFTER THE POLLS CLOSE (1) The election administrator shall choose the most appropriate method of securing the ballot ~~pages~~ FRAME WITH PAGES INTACT from each votomatic in each precinct.

~~(1)~~(2) If ~~E~~election judges ~~shall~~ remove ballot assemblies from the votomatics~~,~~ they shall dismantle the assemblies~~,~~ wrap ballot pages or place the pages in a manila envelope and seal with an official seal signed by all judges. ~~The votomatics shall have an official seal placed on each of them and signed by the election judges.~~

~~(2) Certificate No. 2 shall be completed and signed by all judges.~~

(3) If the votomatics are transported to the election office for dismantling at a later time, they shall first be sealed with a small, numbered plastic seal secured by pressing together interlocking parts as with an ordinary padlock. A log recording the seal numbers and signed by the election judges shall be transported to the election office with the votomatics.

~~(3)~~(4) All unused official ballot cards ~~shall~~ MAY be ~~placed in the envelope provided for that purpose.~~ PLACED IN THE ENVELOPE PROVIDED FOR THAT PURPOSE OR left in the container in which they were delivered. The container shall be sealed, placed in a ballot box and locked.

Subsections (4) and (5) remain the same except that they shall be renumbered.

~~(5)~~(7) The judges shall count all ballots and reconcile the total number of ballots cast with total number of ~~voting authority slips issued.~~ electors recorded in the poll book. The Ballot Security Form shall be completed and signed by all election judges.

~~(7)~~(8) Election judges shall place all voted ballot cards and write-in envelopes, with ballot cards enclosed, and the completed Ballot Security Form, including the number of the plastic seal, in the transfer case. The transfer case shall be sealed and two judges, possibly one from each party having ballot access, but a minimum of two representing different parties, shall immediately deliver the transfer case to the counting center.

~~(8)~~(9) The ~~two~~ election judges delivering the transfer case shall return to the precinct and join the other judges in counting of paper ballots and closing of the polls.
AUTH: Sec. 13-17-107(2), MCA
IMP: Secs. 13-13-115, 13-17-117, 13-15-101, 13-15-201, 13-15-202, 13-15-204 and 13-15-205, MCA

44.3.1741 CENTRAL COUNTING CENTER FOR TABULATION OF COMPUTER ELECTION SYSTEMS - VOTOMATIC (CES) BALLOTS Subsections (1) through (4) remain the same.

(5) The procedures set forth in 44.3.1741 through 44.3.1750 are designed to ensure total ballot security throughout the processing and counting of votomatic ballot cards. Within such guidelines, the election administrator is allowed to deviate from the letter of the rules and determine the specific methods, supplies and arrangements that carry out the intent of the rules.

~~(5)~~ (6) Boards (b) through (g) shall have for their use a log for recording of their activities. Board (g) shall also be provided with election return forms designed for use with the Computer Election System.

AUTH: Sec. 13-17-107(2), MCA
IMP: Secs. 13-17-107, MCA

44.3.1743 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD Subsections (1)(a)(b) and (d) remain the same except (d) shall be renumbered.

(c) The Receiving Board shall open the container and ensure that the seal number matches the number recorded on the Ballot Security Form inside the container and shall then deliver the container, ~~unopened,~~ to the Inspection Board.

(d) If the Ballot Security Form is absent, incomplete, or the seal number does not agree with that shown on the seal, the election administrator shall be called for disposition.

AUTH: Sec. 13-17-107(2), MCA
IMP: Sec. 13-17-107, MCA

44.3.1744 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - INSPECTION BOARD (1) It shall be the responsibility of the Inspection Board to examine all ballot cards and prepare them for processing by the computer. There shall be as many inspection boards as deemed necessary by the election administrator. The duties are as follows:

(a) When the transfer case containing ballots arrives at the Inspection Board, the following information shall be written on the Inspection Board Log:

(i) precinct name,
(ii) time of receipt,
(iii) seal number.

~~(b) Seal shall be broken and the ballot container opened.~~

~~(c) The Ballot Security Form attached to the container shall be inspected and checked to see that the seal number is the same as shown on the log. If the Ballot Security Form is absent, incomplete, or the seal number does not agree with that shown on the Inspection Board log, the election administrator shall be called for disposition.~~

~~(d)~~(b) The two types of ballots to be processed shall be separated into:

(i) voted ballot cards, and

(ii) write-in envelopes with ballots still inserted in the inner fold or pockets.

~~(e)~~(c) Voted ballot cards shall be checked for:

(i) incomplete stub removal - remove stub pieces,

(ii) hanging chad - remove chad,

(iii) damaged ballots - The precinct number shall be written on the ballot card and the damaged ballots shall either be set on end in the transfer case to signify the need for duplication or they shall be placed in the manila envelope marked "From: Inspection Board To: Duplication Board". ~~and~~ T~~t~~he precinct number shall be written on the face of the manila envelope in the upper right-hand corner. The envelope shall not be sealed.

Subsections (1)(f) through (m) shall remain the same except that they shall be re-numbered.

AUTH: Sec. 13-17-107(2)
IMP: Secs. 13-13-117, 13-15-203 and 13-17-107, MCA

44.3.1745 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - DUPLICATION BOARD Subsections (1) through (1)(e) remain the same.

(f) The unpunched duplicate ballot can be seen through the holes of the original ballot.

(i) If ~~The~~ ballot identification positions ~~which~~ appear at the bottom of the ballot, they shall be punched out.

(ii) Using the stylus provided, each chad seen through the original ballot shall be punched out. This shall be done by beginning on the left side of the ballot and going down the entire row.

(iii)This shall be done for each row in which holes appear.

Subsections (1)(g) through (l) remain the same.

AUTH: Sec. 13-17-107(2), MCA
IMP: Sec. 13-17-107, MCA

44.3.1746 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD (1) Each board shall consist of a minimum of three and a maximum of five members and those members shall be appointed from each party as evenly as possible. It shall be the responsibility of the Write-In Tally Board to tally write-in votes received from the Inspection Board. The duties are as follows:

Subsections (1)(a) through (e) remain the same.

AUTH: Sec. 13-17-107(2), MCA
IMP: Secs. 13-13-117, 13-15-202 and 13-17-107, MCA

44.3.1749 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD (1) It shall be the responsibility of the Election Results Board to prepare the final unofficial election results, for votes cast by ballot card, ~~report~~ for posting ~~at each precinct and~~ at the computer center. The duties are as follows:

Subsection (1)(a) shall remain the same.

~~(b) The Election Results Board shall make a copy of the Election Results Sheet and give to a runner to post beside the election judges' results sheet in the precinct, upon completion of the tabulation and certification.~~

Subsection (1)(c) shall remain the same, but shall be renumbered.

AUTH: Sec. 13-17-107(2), MCA
IMP: Secs. 13-15-101 and 13-17-107, MCA

44.3.1750 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - CLOSING OF COUNTING CENTER (1) It shall be the duty of the election administrator to collect all tabulated ballot card boxes, ~~logs and materials~~ used for in counting center and place them in storage upon completion of the tabulation of ballots and certification of the results of the election.

AUTH: Sec. 13-17-107(2), MCA
IMP: Secs. 13-1-303 and 13-17-101, MCA

3. The rule amendments are proposed for the purpose of deleting unnecessary language, complying with current election laws and ensuring uniformity in the processing and counting of punchcard ballots.

4. The rationale for the proposed amendments to these rules is as follows: the rules were originally drafted and adopted several years ago and before the CES Votomatic was actually used in Montana. In fact, the rules were basically copied from the CES manual. The amendments proposed for adoption delete certain procedures that are not used by Montana election administrators because those procedures are clearly not applicable to our elections. (One example is the "Voting Authority Slip" that is a tool for very large jurisdictions but unnecessary for even the largest in Montana.)

In addition, some new material is necessary to reflect changes in Montana election law that has occurred during the interim.

5. The amendments proposed for adoption are necessary so the rules governing the procedures used for the CES Votomatic punchcard system actually reflect both Title 13, MCA and the conduct of elections in Montana.

Comment: All of the amendments to the proposed amendments have been suggested by a majority of the election administrators who use the CES Votomatic.

Response: The Secretary of State concurs in all of the proposed amendments.

6. No other comments or testimony were received.

Dated this 6th day of October, 1986.

Jim Waltermire
Secretary of State

VOLUME NO. 41 OPINION NO. 86

LAND USE - Nonsuitability determinations under the Subdivision and Platting Act as to access and easements;
POLICE DEPARTMENTS - Whether police department services may be prohibited by a nonsuitability determination under the Subdivision and Platting Act;
PROPERTY, REAL - Obligation of an owner to pay taxes as to property subject to nonsuitability determination under the Subdivision and Platting Act;
SHERIFFS - Whether sheriff's department services may be prohibited by a nonsuitability determination under the Subdivision and Platting Act;
SUBDIVISION AND PLATTING ACT - Nonsuitability determinations as to access and easements;
TAXATION AND REVENUE - Obligation of real property owner to pay taxes as to real property subject to nonsuitability determination under the Subdivision and Platting Act;
MONTANA CODE ANNOTATED - Section 76-3-609(2);
MONTANA LAWS OF 1985 - Chapter 579;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 43 (1986).

HELD: 1. A nonsuitability determination under section 76-3-609(2)(a), MCA, with respect to an access or easement prohibits any political subdivision from providing those services specified by the governing body as inappropriate.

2. The term "similar services" in section 76-3-609(2)(a)(ii)(E), MCA, may include, under appropriate circumstances, certain of those services provided by sheriff's or police departments.

3. An owner of real property affected by a nonsuitability determination under section 76-3-609(2)(a), MCA, is not relieved of his obligation to tender all taxes otherwise required of property owners--including those taxes which support governmental services prohibited by the determination.

29 September 1986

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning the following questions:

1. When a determination of nonsuitability has been made under section 76-3-609(2)(a), MCA, are the involved county, school districts, and other political subdivisions prohibited from providing the services as to which access or easements have been found inappropriate?

2. May services provided by sheriff's or police departments constitute "similar services" under section 76-3-609(2)(a)(ii)(E), MCA?

3. Does the payment of taxes by an owner of real property subject to a nonsuitability determination under section 76-3-609(2)(a), MCA, entitle him to those services financed by such taxes?

4. Do proposed amendments to the Teton County subdivision regulations, which predicate a suitability determination on contiguity with a publicly "maintained" road, contain an appropriate standard for making such determination under section 76-3-609(2)(a), MCA?

Your questions relate to an amendment to section 76-3-609, MCA, of the Montana Subdivision and Platting Act (the Act), made by the 1985 Montana Laws, chapter 579. As amended, section 76-3-609(2)(a), MCA, reads:

> For divisions of land consisting exclusively of parcels 20 acres and larger, the governing body shall review the division of land within 35 days of the submission of an application for review. The governing body's review must be limited to a written determination that appropriate access and easements are properly provided. The review shall provide either:
>
> (i) that the access and easements are suitable for the purposes of providing appropriate services to the land; or
>
> (ii) that the access and easements are not suitable for the purposes of providing appropriate services to the land, in which case the county, the school district or districts, and other authorities and districts in which the land is located will not provide services that involve use of the unsuitable access and easements. Such services include:
>
> (A) fire protection;
> (B) school busing;
> (C) ambulance;
> (D) snow removal; and
> (E) similar services as determined by the governing body.

I have previously held that review under the above is mandatory. 41 Op. Att'y Gen. No. 43 (1986).

The recent statutory change to section 76-3-609(2)(a), MCA, derived from HB 791. The bill, as initially drafted and passed by the House of Representatives, provided in material part that, for subdivisions consisting exclusively of parcels 20 acres or larger, "[t]he governing body's review and approval [of such subdivisions] must be limited to a written determination that appropriate access and easements are properly provided." The effect of disapproval under the original bill was prohibition of the proposed subdivision. The bill, however, was amended during Senate consideration to that form eventually codified into law. See Senate Journal, 49th Sess., 1228-29. The substantive impact of the amendment was to limit the effect of disapproval to nonprovision of services involving use of access roads or easements found to be unsuitable. The Senate

amendment served to emphasize the bill's principal concern: the ability of counties and other political subdivisions to provide vehicular-related services when an access road was, for one or more reasons, inadequate. See Mar. 21, 1985 Minutes of Senate Local Government Committee. The Act, as amended, thus encourages any division of land consisting of parcels 20 acres or larger to be associated with access roads and other easements which permit safe and expeditious provision of important governmental services.

First, the unquestionable intent of the Legislature was to allow local-review governing bodies under the Act to make determinations as to access suitability which, if negative, prohibit the provision of those public services substantially dependent upon adequate roadways. Once such determination is made, the affected services may not be offered. Any other result effectively negates the governing body's decision and vitiates the underlying purpose of the review process. Consequently, upon issuance of a nonsuitability determination, none of the involved local political subdivisions may extend those services described in the determination.

Second, because the focus of a suitability determination is on the need for adequate access in order that public vehicles can be safely utilized, sheriff's or police department protection may be added by the governing body under section 76-3-609(2)(a)(ii)(E), MCA, when warranted. Careful consideration must, of course, be given to whether an access road is unsuitable for this or any other type of governmental service, and a determination of nonsuitability must be made with particularized reference to the nature of the access road and the demands of the involved service. I note, however, that HB 791 is generally concerned with provision of governmental services which, by their nature, bestow a focused benefit on the landowner. Consequently, even if police or sheriff's department services of this kind are proscribed under a nonsuitability determination, the involved department retains jurisdiction to discharge those functions which relate to general law enforcement; such functions extend beyond the mere provision of benefit to a particular landowner and directly relate to maintenance of overall societal order. A nonsuitability determination including police or sheriff's department services should

therefore carefully specify those found inappropriate so as to preserve this distinction.

Third, the mere payment of required taxes does not, in itself, mandate the provision of all governmental services. See generally 71 Am. Jur. 2d State & Local Taxation § 6 (1973) ("even though the duty or obligation to pay taxes by the individual is founded in his participation in the benefits arising from their expenditure, this does not mean that a man's property cannot be taxed unless some benefit to him personally can be pointed out"). The Montana Supreme Court accordingly rejected the contention in State ex rel. Woodahl v. Straub, 164 Mont. 141, 149-51, 520 P.2d 776, 781, cert. denied, 419 U.S. 845 (1974), that one county's taxpayers were impermissibly discriminated against because their school system received less direct financial benefit from a statewide tax than the amount of those taxpayers' payments. Similarly here, the mere fact that an owner of a real property parcel subject to a nonsuitability determination under section 76-3-609(2)(a), MCA, is prohibited from receiving certain public services does not relieve him of the duty to tender those taxes uniformly imposed on other property owners since such obligation is not grounded on a quid pro quo relationship between payments made and benefits received. That owner, moreover, is not improperly discriminated against in connection with prohibition of the affected services, if the nonsuitability determination complies with section 76-3-609(2)(a), MCA, in view of the rational basis for such action; i.e., the absence of an access road suitable for the provision of the involved services. See, e.g., White v. State, 40 St. Rptr. 507, 511, 661 P.2d 1272, 1275-76 (1983); Linder v. Smith, 38 St. Rptr. 912, 919, 629 P.2d 1187, 1193 (1981); State v. Jack, 167 Mont. 456, 461, 539 P.2d 726, 729 (1975). Simply stated, by choosing to reside on land subject to a nonsuitability determination under section 76-3-609(2)(a), MCA, the owner has voluntarily forfeited any claim of entitlement to the proscribed public services.

Your final question involves substantial factual issues and is an inappropriate matter for my opinion. As stated above, the determination of whether access is suitable for the provision of various governmental services must be made after consideration of all

relevant circumstances. The Legislature, by leaving undefined the term "unsuitable access and easements," clearly intended that each governing body exercise its informed discretion as to what access should be deemed unsatisfactory. See 41 Op. Att'y Gen. No. 43. The model procedure adopted by the Department of Commerce for review under section 76-3-609(2)(a), MCA, thus defers to county standards for deciding whether suitable access exists. Nonetheless, while individual governing body discretion is presumably broad in establishing and applying suitability standards, it must be exercised with an objective of ensuring a safe environment for the operation of public vehicles and not solely to discourage divisions of land. In the absence of a fully-developed factual record, therefore, I decline to issue an opinion on whether Teton County's proposed definition of suitability--which requires parcels to be adjacent to or contiguous with a road "maintained" on a year-around basis by a public entity--is a proper standard under section 76-3-609(2)(a), MCA.

THEREFORE, IT IS MY OPINION:

1. A nonsuitability determination under section 76-3-609(2)(a), MCA, with respect to an access or easement prohibits any political subdivision from providing those services specified by the governing body as inappropriate.

2. The term "similar services" in section 76-3-609(2)(a)(ii)(E), MCA, may include, under appropriate circumstances, certain of those services provided by sheriff's or police departments.

3. An owner of real property affected by a nonsuitability determination under section 76-3-609(2)(a), MCA, is not relieved of his obligation to tender all taxes otherwise required of property owners--including those taxes which support governmental services prohibited by the determination.

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 June 30, 1986. This table includes those rules adopted during the period June 30, 1986 through September 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 June 30, 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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