

RESERVE

RESERVE

9035

1973

.A245a

**MONTANA
ADMINISTRATIVE
REGISTER**

STATE LAW LIBRARY

DEC 14 1986

OF MONTANA

**DOES NOT
CIRCULATE**

1986 ISSUE NO. 23

DECEMBER 11, 1986

PAGES 1994-2035



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-30-17 (Board of Morticians) Notice of Proposed
Amendment - Disciplinary Actions. No Public Hearing
Contemplated. 1994-1995

8-62-9 (Board of Speech Pathologists and Audiologists)
Notice of Public Hearing on Proposed Amendment -
Definitions - Continuing Education Required - When -
Education Activities Acceptable for Credit. 1996-1997

8-97-21 (Montana Economic Development Board) Notice
of Proposed Amendment - Rates, Service Charges and
Fee Schedule. No Public Hearing Contemplated. 1998-1999

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-315 Notice of Public Hearing on Proposed Amendment
- Air Quality - Testing and Air Quality Permits. 2000-2003

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-485 Notice of Public Hearing on Proposed Amendment
- Medically Needy Income Standards. 2004-2005

RULE SECTION

COMMERCE, Department of, Title 8

AMD (Board of Professional Engineers and Land
Surveyors) Notice of Addition of Authority
Extension. 2006

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD Air Quality - Monitoring and Data Requirements for
NEW Ambient Air Quality. 2007-2009

	<u>Page Number</u>
<u>STATE LANDS, Department of, Title 26</u>	
NEW Shut-In Oil Royalties for Oil and Gas Leases on State Land.	2010
<u>REVENUE, Department of, Title 42</u>	
AMD Energy Related Tax Incentives.	2011
TRAN	
NEW	
REP	
READOPT Gasoline Tax Distributor's Bond.	2012
<u>SECRETARY OF STATE, Title 44</u>	
AMD Scheduled Dates - Montana Administrative Register.	2013
<u>SOCIAL AND REHABILITATION SERVICES, Department of, Title 46</u>	
AMD Supplemental Payments to Recipients of Supplemental Security Income.	2014
AMD AFDC Deprivation Requirements and Continuation of Assistance.	2015-2016
AMD Home Health Services.	2017-2020
AMD Low Income Energy Assistance Program Method of Payment.	2021

INTERPRETATION SECTION

Opinions of the Attorney General.

93 Property, Real - Surviving Spouse's Entitlement to Property Tax Exemption - Taxation and Revenue - Veterans.	2022-2025
---	-----------

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	2026
How to Use ARM and MAR.	2027
Accumulative Table.	2028-2035

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.30.707 con-) OF 8.30.707 DISCIPLINARY
cerning disciplinary actions) ACTIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 12, 1987, the Board of Morticians proposes to amend the above-stated rule.

2. The proposed amendment of 8.30.707 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-946 and 8-947, Administrative Rules of Montana)

"8.30.707 DISCIPLINARY ACTIONS (1) through (2) (h) will remain the same.

(3) Subsections (2) (a) through (e) are provided for in section 37-1-136(1), MCA.

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

Auth: 37-1-136, 37-19-202, MCA, AUTH Extension, Sec. 4, Ch. 510, L. 1985 Imp: 37-1-136, 37-19-311, 312, MCA

3. The amendment is being proposed to identify that part of the rule that is statutory and that part that is an amplification of the statute implemented according to the MAPA requirements.

4. The statement of reasonable necessity for the original rule is that the disciplinary action rules were proposed by the board to allow other means of disciplining licensees in addition to those allowed in 37-19-311 and 37-19-404, MCA.

5. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 8, 1987.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 8, 1987.

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

directly affected has been determined to be 32 based on the
320 licensees in Montana.

BOARD OF MORTICIANS
DENNIS DOLAN, CHAIRMAN

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

Certified to the Secretary of State, December 1, 1986.

-1996-

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendments of 8.62.702 con-	)	ON THE PROPOSED AMENDMENTS
cerning definitions, 8.62.	)	OF 8.62.702 DEFINITIONS,
703 concerning continuing	)	8.62.703 CONTINUING EDUCA-
education, 8.63.704 concern-	)	TION REQUIRED - WHEN, 8.62.
ing education activities	)	704 EDUCATION ACTIVITIES
	)	ACCEPTABLE FOR CREDIT

TO: All Interested Persons.

1. On Friday, January 16, 1987, at 3:00 p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the amendments of the above-stated rules.

2. The proposed amendment of 8.62.702 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1719, Administrative Rules of Montana)

"8.62.702 DEFINITIONS (1) through (1)(c) will remain the same.

(d) 'board approved programs' means any continuing education programs sponsored by a nationally recognized association, organization, or other entity which provides or offers continuing education programs in the fields of speech pathology and audiology.

(e) through (f) will remain the same but will be renumbered."

Auth: 37-1-131 (1), 37-15-202(1), MCA Imp: 37-15-309, MCA

3. This amendment is being proposed to allow continuing education units to be approved by the board as well as ASHA and non-sponsored programs.

4. The proposed amendment of 8.62.703 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1719 and 8-1720, Administrative Rules of Montana)

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN (1) will remain the same.

(a) 40 continuing education units, at least 25 26 of which must be obtained through approved sponsor programs, board approved programs, or academic course work, for all renewals due July 1, 1984, October 31, 1986, and thereafter, as set out in ARM 8.62.704. Dual licensees will be required to submit 60 CEU's. Of the 60 CEU's no more than 40 may be accrued in one area or field.

(b) For renewals starting October 31, 1986, each licensee will be required to submit evidence of 40 hours of continuing education units, as set out in ARM 8-62-704.

(c) will be renumbered and will remain the same.

(2) will remain the same."

Auth: 37-1-131 (1), 37-15-202(1), MCA Imp: 37-15-308,
MCA

5. This amendment is being proposed to conform the rule to legislative amendments in section 37-18-308, MCA.

6. The proposed amendment of 8.62.704 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1720, Administrative Rules of Montana)

"8.62.704 EDUCATION ACTIVITIES ACCEPTABLE FOR CREDIT

(1) The board will accept a maximum of eight continuing education units for renewals on July 1, 1983 and a maximum of ~~15~~ 14 continuing education units for renewals thereafter for educational activities that are directly oriented to continuing education and improving the licensee's professional competence and are not obtained through approved sponsor programs or academic course work. ~~In no event will more than~~ Only one continuing education unit will be allowed for each hour of direct learning experience.

(2) Licensees who serve as instructors in board approved sponsor programs, approved sponsor programs or academic courses may be allowed appropriate credit for the program's first presentation only. No credit will be allowed for repeat sessions."

Auth: 37-1-131 (1), 37-15-202(1), MCA Imp: 37-15-309,
MCA

7. This amendment is being proposed to further define standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continuing education before renewing any license more than twice.

8. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Board of Speech Pathologists and Audiologists, 1424 9th Avenue, Helena, Montana, no later than January 8, 1986.

9. Geoffrey L. Brazier of Helena, Montana will preside over and conduct the hearing.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
PATTI DuBRAY, CHAIRMAN

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

Certified to the Secretary of State, December 1, 1986.

23-12/11/86

MAR Notice No. 8-62-9

-1998-

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.97.308 con-) OF 8.97.308 RATES, SERVICE
cerning fee schedule) CHARGES AND FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 12, 1987, the Montana Economic Development Board proposes to amend the above-stated rule.

2. The proposed amendment of 8.97.308 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3475 through 8-3477, Administrative Rules of Montana)

"8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULE (1) through (9) will remain the same.

(10) Rate reduction fee. The board, upon receipt of an interest rate reduction fee calculated as set forth below, may lower its investment rate on the board's portion of an outstanding loan to the board's current buy rate in effect at the time the fee is received by the board, if the board determines that such rate reduction is in the best interest of the board's programs. The applicable buy rate will be calculated based upon the remaining term of the loan rounded to the nearest year. Any rate reduction will take effect as of the next payment due date after the fee is received by the board.

(a) If a lender has charged a fixed rate on the lender's portion of the loan, the lender must also reduce the interest rate on the lender's portion of the loan in conjunction with any rate reduction made by the board. The lender may also charge a fee to do so. The lender's fee may not exceed the fee charged by the board calculated as set forth below. The borrower's historical payment record on the loan must meet the satisfaction of the board before any rate reduction will be considered.

(b) The fee is calculated based upon the following applicable percentage multiplied times the outstanding principal balance of the board's portion of the loan at the time the fee is received by the board.

<u>Remaining Term of Loan</u>	<u>Fee</u>
60 Months or Less	1%
61 Months through 120 Months	1 1/2%
121 Months or More	2%

Auth: 17-6-324, MCA Imp: 17-6-315 (1), MCA

3. This additional rule is being considered to allow good borrowers, during times of declining interest rates, to take benefit of a lower interest rate by paying a rate reduction fee. Through payment of such a fee, the board and

lender are able to retain a good loan customer and the borrower is able to receive the benefits of a lower current rate on the loan, without experiencing many of the charges and problems associated with refinancing.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Economic Development Board, 1520 East Sixth Avenue, Helena, Montana, 59620-0401, no later than January 8, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Economic Development Board, 1520 East Sixth Avenue, Helena, Montana, 59620-0401, no later than January 8, 1987.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD

D. PATRICK MCKITTRICK, CHAIRMAN

BY:

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

Certified to the Secretary of State, December 1, 1986.

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

In the matter of the	)	NOTICE OF PUBLIC
amendment of rules 16.8.704,	)	HEARING ON PROPOSED
16.8.1101, 16.8.1102,	)	AMENDMENT OF RULES
16.8.1109, 16.8.1113, and)	
16.8.1114, concerning testing)	
and air quality permits	)	(Air Quality)

To: All Interested Persons

1. On January 16, 1987, at 9:00 a.m. or as soon thereafter as may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.8.704, 16.8.1101, 16.8.1102, 16.8.1109, 16.8.1113, and 16.8.1114, concerning rule changes necessary for conformance with federal requirements and clarification of existing rules pertaining to testing requirements and permitting.

2. The amendments are being proposed in order to clarify the existing rules and to adopt rules in conformance with federal rules.

3. The rules, as proposed to be amended, provide as follows (new matter is underlined, and matter to be stricken is interlined).

16.8.704 TESTING REQUIREMENTS (1) Any person or persons responsible for the emission of any air contaminants into the outdoor atmosphere shall upon written request of the director department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the director department. Such emission or ambient tests shall include, but not be limited to, a determination of the nature, extent, and quantity and degree of air contaminants which are or may be emitted as a result of such operation at all sampling points designated by the director department and the data shall be recorded on a permanent tag at least once each hour, if applicable. These data shall be maintained for a period of not less than one year and shall be available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

(2) All sources subject to the requirements of 40 CFR Part 50 Appendix P must install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions. All subject sources must have installed all necessary

equipment and shall have begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988.

(3) The board hereby adopts and incorporates by reference 40 CFR Part 50 Appendix P, which is a federal agency regulation setting forth the continuous emission monitoring requirements for existing major stationary sources. A copy of 40 CFR Part 50 Appendix P may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA

IMPLEMENTING: 75-2-203, MCA

16.8.1101 DEFINITIONS For the purpose of this subchapter:

(1)-(8) Same as existing rule.

(9) "Major emitting facility" means a stationary source or stack associated with a source which directly emits, or has the potential to emit 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Montana Clean Air Act.

AUTHORITY: 75-2-111 and 75-2-204, MCA

IMPLEMENTING: 75-2-204 and 75-2-211, MCA

16.8.1102 WHEN PERMIT REQUIRED -- EXCLUSIONS

(1) Except as hereafter specified, no person shall construct, install, alter, or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit shall not be required for the following:

(a)-(j) Same as existing rule.

(k) Drilling rig stationary engine and turbines of less than

443--2000-HP--44-burning-natural-gas--or

443--4000-HP--44-burning-liquid-fuels--

which do not have the potential to emit more than 100 tons per year of any pollutant regulated under the Montana Clean Air Act.

(1)-(o) Same as existing rule.

AUTHORITY: 75-2-111 and 75-2-204, MCA

IMPLEMENTING: 75-2-204 and 75-2-211, MCA

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT

(1)-(5) Same as existing rule.

(6) Any owner or operator of a new or altered source or stack proposing construction or alteration within any area designated as non-attainment in 40 CFR 81.327 for any air contaminant must demonstrate that all major stationary sources--as defined in ARM-46-8-924(22)--emitting facilities, owned or operated by such persons, or by an entity controlling, controlled by, or under common control with such persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in this chapter.

(7) Same as existing rule.

(8) Any owner or operator proposing to construct or alter a stationary source in any area designated as non-attainment must comply with the requirements of 40 CFR 51.18(j) as appropriate. The board hereby adopts and incorporates by reference 40 CFR Part 52, Subpart BB, which is a federal agency regulation describing Montana's state implementation plan for control of air pollution in Montana; 40 CFR 81.327, which is a federal agency regulation setting forth air quality attainment status designations for the state of Montana; and ARM-16-8-921(22) which defines "major stationary source" 40 CFR 51.18(j), which sets forth the permit requirements for new or altered sources proposed to be constructed or altered in any non-attainment area. Copies of 40 CFR Part 52, Subpart BB, 40 CFR 81.327, and ARM-16-8-921(22) 40 CFR 51.18(j) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.
AUTHORITY: 75-2-111 and 75-2-204, MCA
IMPLEMENTING: 75-2-204 and 75-2-211, MCA

16.8.1113. MODIFICATION OF PERMIT (1) An air quality permit may be modified for the following reasons:

(a) Same as existing rule.

(b) Changed conditions of operation at a source or stack which do not involve the construction, installation or use of a new source or stack. A determination of whether a permit should be modified because of changed conditions of operation shall be based upon a determination of whether total emissions from a source or stack will be increased as a result of the changed operations. result in an increase in emissions because of the changed conditions of operation. A source may not increase its emissions beyond those found in its permit unless the source applies for and receives another permit in accordance with the procedures found in ARM 16.8.1103 through 16.8.1109 and with all applicable requirements in Title 16, Chapter 8, Subchapter 9.

(2) Same as existing rule.

AUTHORITY: 75-2-111 and 75-2-204, MCA

IMPLEMENTING: 75-2-204 and 75-2-211, MCA

16.8.1114. TRANSFER OF PERMIT (1) An air quality permit may be transferred from one location to another if:

(a) Same as existing rule.

(b) the source is temporary will operate in the new location for a period less than one year; and

(c) the source will not have any significant impact as defined by 40 CFR Part 51, Appendix S, Section IIIA, upon any non-attainment area as defined by 40 CFR 81.327 nor upon any of the following areas:

(i)-(xiv) Same as existing rule.

(xv) Fort Peck Reservation.

(2)-(3) Same as existing rule.

(4) The board hereby adopts and incorporates by reference 40 CFR 81.327, which sets forth air quality attainment status designations for the state of Montana; and 40 CFR Part 51,

Appendix S, Section IIIA, which is a federal agency regulation that sets forth the definition of "significance levels" when applied to sources impacting various areas. Copies of 49-6FR 84-827 this federal regulatory material may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-204, MCA
IMPLEMENTING: 75-2-204 and 75-2-211, MCA

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the hearing officer, Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than January 14, 1987.

5. 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., Director

Certified to the Secretary of State December 1, 1986.

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

In the matter of the amend-)
ment of Rule 46.12.3803)
pertaining to medically)
needy income standards)
NOTICE OF PUBLIC HEARING ON
THE PROPOSED AMENDMENT OF
RULE 46.12.3803 PERTAINING
TO MEDICALLY NEEDY INCOME
STANDARDS

TO: All Interested Persons

1. On January 6, 1987, 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 Rule 46.12.3803 pertaining to medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) Notwithstanding the provisions found in subchapter 2, the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

<u>Family Size</u>	<u>Monthly</u> <u>Income Level</u>	<u>Quarterly</u> <u>Income Level</u>
1	6336.00 \$340.00	617000.00 \$1,020.00
2	383.00	17125.00 1,149.00
3	404.00	17200.00 1,212.00
4	426.00	17275.00 1,278.00
5	501.00	1,503.00
6	570.00	17692.00 1,710.00
7	642.00	17872.00 1,926.00
8	713.00	27055.00 2,139.00
9	785.00	27232.00 2,355.00
10	857.00	27412.00 2,571.00
11	929.00	27592.00 2,787.00
12	1,001.00	27796.00 3,003.00
13	1,073.00	27949.00 3,219.00
14	1,145.00	37126.00 3,435.00
15	1,217.00	37306.00 3,651.00
16	1,289.00	37486.00 3,867.00

Subsection (1) (a) remains the same.

AUTH: Sec. 53-6-113 MCA

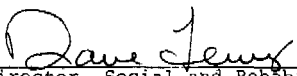
JMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. This change is necessary to comply with federal cost of living adjustments in the Supplemental Security Income (SSI) program and to correct outdated income standards.

The proposed amendment will be implemented retroactively to January 1, 1987, to meet federal requirements.

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 January 8, 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 December 1, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

In the matter of the proposed) NOTICE OF ADDITION OF
addition of authority extensions) AUTHORITY EXTENSIONS

TO: All Interested Persons.

On November 28, 1986, at page 1958 of the Montana Administrative Register, the Board of Professional Engineers published a notice of adoption of rules. The Legislative Council made a comment that Authority Extension, Sec. 20, Ch. 553, L. 1985, should be added to ARM 8.48.501, 8.48.502, 8.48.604, 8.48.801 and 8.48.802. The Board concurred and the change has been made.

BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
DICK GUENZI, CHAIRMAN

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

Certified to the Secretary of State, December 1, 1986.

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

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

To: All Interested Persons

1. On October 16, 1986, the department published notice of proposed amendments of rules 16.8.701, 16.8.806, and 16.8.809, and adoption of new rules I and II (to be codified as 16.8.807 and 16.8.810, respectively), concerning the collection and validity of ambient air quality data, at page 1658 of the 1986 Montana Administrative Register, issue number 19.

2. The department has amended the rules and adopted the two new rules with the following changes (text stricken in this notice is interlined, new matter underlined):

16.8.701 DEFINITIONS Same as proposed.

16.8.806 DEFINITIONS Same as proposed.

16.8.809 METHODS AND DATA (1) 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 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. 1984 Jan. 1983, vol. II; and EPA-600/4-77-027b, revised Jan. 1984 1982, vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) 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 a second exceedance of the same ambient air quality standard.

23-12/11/86

Montana Administrative Register

(2) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (Sept. 1986 ed.) and 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 Jan. 1983, Vol. III; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G, which are state and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Coatswell Building, Capitol Station, Helena, Montana 59620.

16.8.807. (NEW RULE 1) AMBIENT AIR MONITORING

(1) Same as proposed.

(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 Assurance 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. 1984 Jan. 1983, Vol. III; and EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV), 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) Same as proposed.

(4) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (Sept. 1986 ed.) and 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 Jan. 1983, Vol. III; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G, which are state and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Coatswell Building, Capitol Station, Helena, Montana 59620.

16.8.810 (NEW RULE 11) PROCEDURES FOR REVIEWING AND REVISING THE MONTANA QUALITY ASSURANCE MANUAL (1) The department shall review the Montana Quality Assurance Manual ~~annually~~ at least biennially 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)-(3) Same as proposed.

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

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

3. Comments received by the department in prefiled testimony at the hearing, and the department's responses, follow:

Comment: It was suggested that the relatively new addition of Volume IV to EPA's Quality Assurance Manual dealing with meteorological monitoring also be adopted by reference in rule 16.8.809 and in New Rule 1 (16.8.807).

Response: The department agrees, and has added Volume IV to the list of manuals in the specified rules and has incorporated the manuals by reference in order to comply with current code requirements (ARM 1.2.210).

Comment: It was pointed out that Volumes II and III of the EPA Quality Assurance Manual have newer revision dates than is indicated in rule 16.8.809 and New Rule 1 (16.8.807).

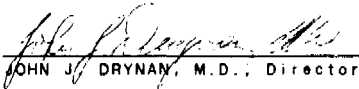
Response: The department has updated these references to indicate revision dates of January 1983 for Volume II and January 1982 for Volume III.

Comment: It was suggested that an every-two-year review of the Montana Quality Assurance Manual is more than adequate to assure an up-to-date document while, at the same time, significantly reducing the workload on the department.

Response: This suggestion was accepted, and section (1) of New Rule 11 (16.8.810) was amended accordingly.

Comment: The suggestion was made that the public participation provided for in sections (2) and (3) of New Rule 11 (16.8.810), not to mention the public participation provided for by the formal rulemaking hearing process, is more than adequate. Deletion of section (4) in 16.8.810 would expedite the revision process and would not affect the public's opportunity to participate.

Response: The department agrees and has deleted section (4) of New Rule 11 (16.8.810).


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State December 1, 1986.

23-12/11/86

Montana Administrative Register

BEFORE THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	
ADOPTION OF A RULE RELATING	)	NOTICE OF THE ADOPTION OF
TO SHUT-IN OIL ROYALTIES	)	RULE 26.3.211A, SHUT-IN
FOR OIL AND GAS LEASES ON	)	OIL ROYALTIES FOR OIL AND GAS
STATE LAND.	)	LEASES ON STATE LAND
)	

TO: All Interested Persons:

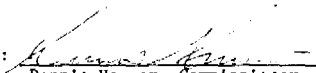
1. On July 17, 1986, the Department of State Lands published notice of the proposed adoption of a rule concerning shut-in royalties for oil and gas leases on state land at page 1144 of the 1986 Montana Administrative Register, issue number 13.

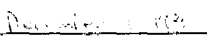
2. The Department of State Lands has adopted the rule as proposed.

3. No comments or testimony were received within the comment period.

4. The authority for the rule is Section 77-3-402, MCA, and the rule implements Section 77-1-202, MCA.

5. This rule is reasonably necessary to effectuate the purpose of Section 77-1-202, MCA.

By: 
Dennis Hemmer, Commissioner
Department of State Lands

Certified to the Secretary of State 

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT and
and TRANSFER of rules 42.15.511)	TRANSFER of rules 42.15.511
(42.4.102) and 42.19.1101)	(42.4.102) and 42.19.1101
(42.4.103); the ADOPTION of)	(42.4.103); the ADOPTION of
rules I (42.4.101), II through)	rules I (42.4.101), II
IV (42.4.104 through 42.4.106))	through IV (42.4.104 through
the REPEAL of 42.15.512 re-)	42.4.106); the REPEAL of
lating to energy related tax)	42.15.512 relating to energy
incentives.)	related tax incentives.

TO: All Interested Persons:

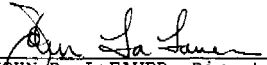
1. On October 16, 1986, the Department published notice of the proposed amendment and transfer of rules 42.15.511 (42.4.102) and 42.19.1101 (42.4.103); the adoption of rules I (42.4.101), II through IV (42.4.104 through 42.4.106); and the repeal of 42.15.512 relating to energy related tax incentives in the 1986 Montana Administrative Register, issue no.19, page 1675.

2. The Department has amended and adopted these rules as proposed.

Rule 42.15.512 is hereby repealed.

3. No comments or testimony were received.

4. The authority for the rules is §§ 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 12/01/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE READOPTON)	NOTICE OF THE READOPTON of
of Rule I (42.27.116) relating)	Rule I (42.27.116) relating
to gasoline tax distributor's)	to gasoline tax distributor's
bond.)	bond.

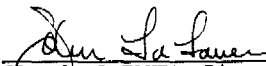
TO: All Interested Persons:

1. On October 16, 1986, the Department published notice of the proposed readoption of Rule I (42.27.116) relating to gasoline tax distributor's bond at pages 1673 and 1674 of the 1986 Montana Administrative Register, issue no. 19.

2. The Department has readopted rule I (42.27.116) as proposed.

3. No comments or testimony were received.

4. The authority for the rule is 15-70-104, MCA, and the rule implements 15-70-202, MCA.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/01/86

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of a rule pertaining to	)	ARM 1.2.419
scheduled dates - Montana)	
Administrative Register)	

T0: All Interested Persons.

1. On October 16, 1986, the Secretary of State published notice of a proposed amendment to rule 1.2.419 concerning the filing, compiling, printer pickup and publication for the Montana Administrative Register, at page 1682 of the Montana Administrative Register, issue number 19.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.


JIM WALTERMIRE
Secretary of State

Dated this 1st day of December, 1986.

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

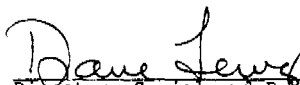
In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.5.1202,	)	RULES 46.5.1202, 46.5.1203
46.5.1203 and 46.5.1204	)	AND 46.5.1204 PERTAINING TO
pertaining to supplemental	)	SUPPLEMENTAL PAYMENTS TO
payments to recipients of	)	RECIPIENTS OF SUPPLEMENTAL
supplemental security	)	SECURITY INCOME
income)	

TO: All Interested Persons

1. On October 16, 1986, the Department of Social and Rehabilitation Services published notice of 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 at page 1693 of the 1986 Montana Administrative Register, issue number 19.

2. The Department has amended Rules 46.5.1202, 46.5.1203 and 46.5.1204 as proposed.

3. The Department received one letter supporting the proposed rule changes from Doug Blakely, State Long Term Care Ombudsman. No other written or oral comments were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 1, 1986.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.10.303 and	)	RULES 46.10.303 AND
46.10.306 pertaining to AFDC	)	46.10.306 PERTAINING TO
deprivation requirements and	)	AFDC DEPRIVATION REQUIRE-
continuation of assistance	)	MENTS AND CONTINUATION OF
	)	ASSISTANCE

TO: All Interested Persons

1. On October 16, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.10.303 and 46.10.306 pertaining to AFDC deprivation requirements and continuation of assistance at page 1690 of the 1986 Montana Administrative Register, issue number 19.

2. The Department has amended the following rules as proposed with the following changes:

46.10.303 AFDC DEPRIVATION REQUIREMENTS Subsections (1) through (1)(b)(i) remain as proposed.

(ii) A parent who is a convicted offender living at home while serving a court-imposed sentence BY PERFORMING UNPAID PUBLIC WORK OR UNPAID COMMUNITY SERVICE DURING THE WORK DAY shall be considered absent.

Subsections (1)(c) through (2) remain as proposed.

(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. EVIDENCE.

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, OR

incapacity OF A PARENT or unemployment OF THE PARENT WHO IS THE PRINCIPAL WAGE EARNER, IN ACCORDANCE WITH ARM 46.10.304A, are being overcome.

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

3. The Department has thoroughly considered all commentary received:

COMMENT: The proposed changes to ARM 46.10.303(1)(b)(ii) should be consistent with federal requirements at 45 CFR 233.90(c)(1)(iii) and clarify that only court imposed sentences to perform unpaid public work or unpaid community service during the work day will qualify a parent to be considered absent for AFDC purposes.

RESPONSE: The Department agrees and has incorporated the suggested change.

COMMENT: The wording of ARM 46.10.303(3) should be broadened to allow establishment of a person's incapacity by not only testimony but also by competent medical evidence.

RESPONSE: The Department agrees and has incorporated the suggested change.

COMMENT: The wording of ARM 46.10.306 should be consistent with ARM 46.10.304A and clarify that only unemployment of the parent who is the principal wage earner need be proven in addition to the other eligibility requirements to qualify a family for a three month continuation of AFDC assistance payments.

RESPONSE: The Department agrees and has incorporated the suggested change.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 1, 1986.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.550,	)	RULES 46.12.550, 46.12.551
46.12.551 and 46.12.552	)	AND 46.12.552 PERTAINING TO
pertaining to home health	)	HOME HEALTH SERVICES
services)	

TO: All Interested Persons

1. On October 16, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.550, 46.12.551 and 46.12.552 pertaining to home health services at page 1687 of the 1986 Montana Administrative Register, issue number 19.

2. The Department has amended Rules 46.12.550 and 46.12.551 as proposed.

3. The Department has amended the following rule as proposed with the following changes:

46.12.552 HOME HEALTH SERVICES, REIMBURSEMENT

Subsections (1) through (2)(c) remain as proposed.

(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 5.6 percent, 1985 at 7.2 4.6 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:

Subsections (3)(a) through (7) remain as proposed.

AUTH: Sec. 53-6-113 MCA

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

4. The Department has thoroughly considered all commentary received:

COMMENT: Commenters voiced concern that the definition of "homebound" would prevent or interfere with developmentally

disabled (DD) clients or mentally ill clients who require skilled intermittent care, particularly in the area of personal care attendant services.

ANSWER: A personal care attendant is not a covered home health service under the current home health rule. The supervision of personal care attendants will be managed under a contract effective January 1, 1987.

The definition of "homebound" applies to any client who is confined to his place of residence for medical reasons and home health services are necessary to assist the client in obtaining necessary medical services.

The Department feels the definition will not create any significant changes in the delivery of services to clients in need.

COMMENT: Clarification was requested regarding which Medicare Rate would be used to establish reimbursement limits for home health services.

ANSWER: Medicaid will use information from the most current Medicare cost reporting periods. The Medicare fee used by Medicaid will be the lesser of the average cost per visit or the program cost limit per service category.

COMMENT: A commenter asked whether the anticipated savings of \$25,000 was for the state fiscal year ending 1986.

ANSWER: This does require a clarification because the anticipated savings will be for the state fiscal year ending June 30, 1987.

COMMENT: It was pointed out that providers without a cost settlement report ending 6/30/84 and providing services prior to 7/1/86 were uncertain which indexed rate will be applied to them.

ANSWER: The Department's intention is for these providers to receive the "averaged indexed fee". ARM 46.12.552(3) has been modified to read, "For home health agencies which are located within the borders of the state and began providing services on or after July 1, 1985, the medicaid reimbursement fee per service will be lesser of: a) billed charges; b) the medicare rate; or c) the 1986 averaged medicaid fee."

COMMENT: How will future increases in the DRI rate be reflected and how will the Department compute future increases in reimbursement rates?

ANSWER: The Department may not commit the State to any future rate increases after the fiscal year ending 6/30/86. The

Department intends to use the DRI inflation rate in making recommendations for appropriations.

COMMENT: The 1984 cost settlement rate does not adequately reflect the rapid change in costs which have occurred within the home health industry in the last two years. There is concern the indexed rates will not be adequate and reasonable, thus creating a financial hardship on providers.

ANSWER: The Department's efforts to establish cost containment methods within this area of service must meet legislative mandates set forth in the special session of June, 1986. The most current financial information available to the Department are the final settlements for 1984 which contain Medicare reimbursement limits established for each service category. By utilizing the DRI market basket inflation index, the Department is allowing a margin of inflation to occur within this area of service. The market basket inflation factor currently reflects the average change in the price of goods and services purchased by medical providers to furnish the health care services. The Department will replace the interim rate fee currently used with the indexed fee. The cost settlement will then be completed with each provider at the end of the provider's fiscal year in the same manner currently outlined in the contract.

COMMENT: The rules are unclear about when the Department intends to implement the proposed changes.

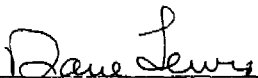
ANSWER: On January 1, 1987, the Department will implement the change to using the indexed rate in place of the interim rate with all providers under contract. Contracts requiring modifications due to expiration dates will be generated to accommodate the change. The Department believes the proposed rules meet the requirements set forth by the Legislature and avoid automatically penalizing the current home health providers. The indexed fee does account for an inflationary factor in the delivery of services. Reimbursement by the Department continues to provide a reasonable and adequate fee for economically and efficiently operated facilities.

COMMENT: A commenter was concerned that the proposed rules would allow out-of-state providers to deliver home health services within the boundaries of the state, thus coming in conflict with current certificate of need regulations and contractual agreements with the Department.

ANSWER: The Department's intent is to allow reimbursement of home health services when a recipient is in need of such services while outside the boundaries of the state. The Department will require any out-of-state home health services

to obtain prior authorization on a case-by-case basis. For example, a client may be referred out-of-state for specialized care not currently provided within the state. The client may then be released from the hospital, but may not be able to return to this state because of his medical status. In this case, the services may be reimbursed if authorized by the Department under the proposed rules.

5. These rules will be effective January 1, 1987.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 1, 1986.

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

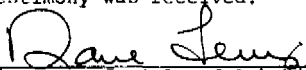
In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.13.403 per-	)	RULE 46.13.403 PERTAINING
taining to the Low Income	)	TO THE LOW INCOME ENERGY
Energy Assistance Program	)	ASSISTANCE PROGRAM METHOD
method of payment	)	OF PAYMENT

TO: All Interested Persons

1. On October 30, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.13.403 pertaining to the Low Income Energy Assistance Program method of payment at page 1812 of the 1986 Montana Administrative Register, issue number 20.

2. The Department has amended Rule 46.13.403 as proposed.

3. The Department submitted written testimony supporting the proposed changes for reasons specified in the first notice. No other comments or testimony was received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 1, 1986.

VOLUME NO. 41

OPINION NO. 93

PROPERTY, REAL - Surviving spouse's entitlement to property tax exemption;
TAXATION AND REVENUE - Surviving spouse's entitlement to property tax exemption;
VETERANS - Surviving spouse's entitlement to property tax exemption;
MONTANA CODE ANNOTATED - Section 15-6-211.

- HELD: 1. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, terminates upon remarriage and is not reinstated upon conclusion of the second marriage.
2. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, applies only to the residence as to which the veteran was granted the exemption immediately prior to death.
3. A condition of a surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, is a determination that the veteran was 100 percent disabled due to a service-connected disability prior to death and was otherwise eligible for the exemption.

26 November 1986

Major General James W. Duffy
The Adjutant General
Department of Military Affairs
P.O. Box 4789
Helena MT 59604-4789

Dear General Duffy:

You have requested my opinion concerning three questions:

1. Is the surviving spouse of a deceased veteran entitled to reinstatement of the property tax exemption under section

15-6-211, MCA, upon termination of a subsequent marriage?

2. Is the surviving spouse of a deceased veteran entitled to the property tax exemption under section 15-6-211, MCA, as to a residence other than that to which the exemption applied at the time of the veteran's death?
3. Is the surviving spouse of a veteran entitled to the property tax exemption under section 15-6-211, MCA, when such veteran dies of a service-related disability but, prior to death, was not rated 100 percent disabled due to that disability?

Based on the unambiguous language of section 15-6-211, MCA, I must answer each question negatively.

Section 15-6-211, MCA, states:

(1) A residence, including the lot on which it is built, owned and occupied by a disabled veteran is exempt from property taxation under the following conditions. The owner must:

(a) have been honorably discharged from active service in any branch of the armed services;

(b) be rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor; and

(c) have an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$15,000 for a single person and \$18,000 for a married couple.

(2) If a veteran whose property has been eligible for this exemption dies, the property shall continue to be exempt so long as the surviving spouse:

(a) remains unmarried;

(b) is the owner and occupant of the house;
and

(c) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$15,000.

The property tax exemption provided above is purely a state-granted right and is not required by federal statute.

The entitlement of a surviving spouse to the exemption must be measured against the literal language of section 15-6-211(2), MCA. The first entitlement condition is that the spouse remain unmarried. Consequently, upon remarriage the exemption is forfeited, and no provision is made for reacquisition upon termination of the second marriage. I recognize that 38 U.S.C. § 103 permits the widow of a deceased veteran to receive surviving spouse benefits upon conclusion of a remarriage, but the federal statute is inapplicable here. Again, the exemption is granted as a matter of state law, and entitlement to it must be decided with reference to the legislation creating that right.

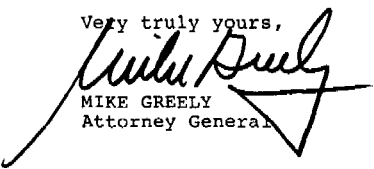
Equally clear is that the surviving spouse exemption applies only to the residence as to which the exemption operated at the time of the veteran's death. The words "the house" in subsection (2)(b) can thus be fairly read only as relating back to the residence subject to the exemption under subsection (1) and not to homes acquired after the veteran's death. Whether such a limitation is equitable or prudent is an issue for the Legislature to resolve.

Finally, section 15-6-211(2), MCA, unquestionably requires the veteran to have been entitled to the exemption before death as a condition of the surviving spouse's entitlement. The veteran must therefore have been rated 100 percent disabled due to a service-connected disability prior to death before the surviving spouse may qualify for the exemption. Simply put, the surviving spouse's entitlement is derivative and arises only if the veteran was entitled to it during his or her lifetime.

THEREFORE, IT IS MY OPINION:

1. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, terminates upon remarriage and is not reinstated upon conclusion of the second marriage.
2. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, applies only to the residence as to which the veteran was granted the exemption immediately prior to death.
3. A condition of a surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, is a determination that the veteran was 100 percent disabled due to a service-connected disability prior to death and was otherwise eligible for the exemption.

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 September 30, 1986. This table includes those rules adopted during the period September 30, 1986 through December 31, 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 September 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.

ADMINISTRATION, Department of, Title 2

- I Blind Vendors' Bidding Preference, p. 1750
- I-IX Emergency Telephone Service, p. 1523, 1889
- I-X Leaves of Absence Due to Disability, p. 1423, 1815
- I-XII Administration of a Sick Leave Fund for State Employees, p. 864, 1297
- 2.4.101 and other rules - Regulating Travel Expenses of State Employees While on Official Business, p. 1124, 1581
- (Public Employees' Retirement Board)
- 2.43.301 and other rules - Administration of Public Retirement Systems and the State Social Security Program, p. 702, 1454
- (State Tax Appeal Board)
- 2.51.307 and other rules - Operation of and Public Participation in the County and State Tax Appeals Process, p. 862, 1174

AGRICULTURE, Department of, Title 4

- I-VI Emergency Rules - Cropland Insect Detection and Spraying Program, p. 1175
- I-VIII Establishing Civil Penalties for Pesticide Act Violations, p. 618, 1013
- I-X and other rules - Commodity Dealers and Public Warehousemen - Grain Rules - Dry Beans, p. 872, 1178, 1825

- I-XLIII Establishing Standards for Anhydrous Ammonia
Facilities, p. 1231, 1820
4.10.101 and other rules - Pesticide Sale and Use, p. 589,
1007
4.10.1501 Definition of Terms in the Pesticide Act, p. 725,
1071

STATE AUDITOR, Title 6

- I-IX Montana Insurance Assistance Plan, Commercial
Liability, p. 879, 1460

COMMERCE, Department of, Title 8

- (Board of Architects)
8.6.405 and other rules - Reciprocity - Individual Seal-
Standards of Professional Conduct and Activities
Constituting Misconduct, p. 1648
(Board of Chiropractors)
8.12.601 Applications, Educational Requirements - Renewals -
Continuing Education Requirements, p. 730, 1182
(Board of Cosmetologists)
8.14.603 and other rule - School Requirements - Application
- Out-of-state Cosmetologists/Manicurists, p. 1132
(Board of Dentistry)
8.16.602 and other rules - Allowable Functions for Dental
Hygienists and Dental Auxiliaries - Prohibition -
Permit Required for Administration of Facility -
Minimum Qualifying Standards - Facility Standards,
p. 1654
(Board of Dentistry)
I-XVIII Licensing - Procedure - Unprofessional Conduct -
Inspections - Disciplinary Issues - Complaint
Procedures, p. 732, 1498
8.17.404 and other rules - Examination - Fee Schedule -
Renewal-Continuing Education, p. 1532, 1897
(Board of Horse Racing)
8.22.610 and other rules - Stewards - Trainers -
Veterinarians - General Requirements - Types of
Bets - Twin Trifecta - Alcohol and Drug Testing -
Pick (N) Wagering, p. 1732
(Board of Landscape Architects)
8.24.405 and other rule - Examinations - Fee Schedule, p.
1856
(Board of Medical Examiners)
8.28.904 and other rules - Implementation of an EMT
Defibrillation Training and Certification Program
for EMT - Basic Personnel, p. 626, 1073
(Board of Morticians)
I
8.30.606 Disciplinary Actions, p. 740, 1304
Pre-arranged, Pre-financed or Prepaid Funerals, p.
1358

- (Board of Occupational Therapists)
I-XVI Procedures - Licensing and Discipline, p. 412, 943
- (Board of Optometrists)
8.36.403 and other rules - Application for Examination - General Practice Requirements - Unprofessional Conduct - Violations - Disciplinary Actions - Requirements, p. 1269, 1582
- (Board of Pharmacy)
8.40.403 and other rule - Examination for Licensure - Approved Programs, p. 305, 945
8.40.1215 Additions, Deletions and Rescheduling of Dangerous Drugs, p. 1534, 1957
- (Board of Professional Engineers and Land Surveyors)
8.48.501 and other rules - Applications - Licensing - Comity - Disciplinary Action - Emeritus Status - Applications by Partnerships and Corporations, p. 1536, 1958
- (Board of Private Security Patrolmen and Investigators)
8.50.423 and other rules - Definitions - Temporary Employment - Experience Requirements - Insurance Requirements - Fees - Probationary Investigators - Assessments, p. 419, 946
8.50.423 and other rule - Definitions - Fee Schedule, p. 1428, 1697
8.50.431 and other rule - Insurance Requirements - Fee Schedule, p. 1488, 1898
- (Board of Public Accountants)
8.54.612 and other rules - Confidential Client Information - Enforcement Against Permit Holders - Enforcement Procedures - Investigators - Credit for Service as Lecturer, Discussion Leader, or Speaker - Reviewers Under the Positive Enforcement Program - Profession Monitoring, p. 998, 1500
- (Board of Radiologic Technologists)
8.56.409 and other rule - Fee Schedule - Permit Fees, p. 1490, 1899
- (Board of Realty Regulation)
I Continuing Education, p. 1545
8.58.414 Trust Account Requirements, p. 1492, 1858
- (Board of Veterinary Medicine)
8.64.501 and other rules - Applications - Examinations - Disciplinary Actions, p. 316, 948
- (Milk Control Bureau)
8.79.101 Transactions Involving Purchase and Resale of Milk Within the State, p. 883, 1183
- (Board of Milk Control)
8.86.301 Class I Price Formula to Establish a Special Wholesale Price for Retail Grocery Stores, p. 495, 1016
8.86.301 Pricing Rules - Class I Price Formula to Change On-the-farm Retail Prices, p. 1134, 1504
- (Local Government Assistance Division)
I-III Approval and Administration of Contracts for Audits of Local Government Units, p. 1745

- (Montana Economic Development Board)
8.97.308 Rates, Charges and Fee Schedule, p. 1430, 1698
8.97.404 Permissible Investments and Deposits, p. 636, 1074
(Hard Rock Mining Impact Board)
I Board Review of Impact Plans for Compliance with
Statutory Requirements and Board Rules, p. 1748
8.104.203 and other rules - Format of Plan - Content of
Objection to Plan - Implementation of an Approved
Plan - Definitions - Waiver of Impact Plan
Requirement - Modification of Plan - Financial
Guarantee of Tax Prepayments - Evidence of the
Provision of Service or Facility - Contents of
Petition for Plan Amendment, p. 1052, 1826, 1900

EDUCATION, Title 10

- (Superintendent of Public Instruction)
I-III Special Education Transportation, p. 1003, 1383
(Board of Public Education)
I Minimum Scores on the National Teacher Examination
Core Battery, p. 158, 1020
10.55.101 Accreditation Standards: Procedures, p. 649, 1305
10.55.202 Board of Trustees, p. 161, 1019, 1075
10.55.203 District Superintendent, p. 1859
10.55.204 Principal - Defining the Requirements for the
Administrative Assistant Program, p. 1360, 1901
10.55.205 Professional Development, p. 1859
10.55.302 Certificates, p. 162, 1019
10.55.303 Teaching Assignments, p. 1362, 1901
10.55.402 Basic Instructional Program: High School, Junior
High, Middle School and Grades 7 and 8 Budgeted at
High School Rates, p. 1750
10.55.505 Safety, p. 163, 1020
10.57.101 Review of Policy, p. 647, 1305
10.57.102 Definitions - Accredited, p. 1861
10.57.301 Endorsement Information, p. 1363, 1902
10.57.403 Class 3 Administrative Certificate, p. 637, 1306
10.57.405 Class 5 Provisional Certificate, p. 639, 1306
10.57.501 School Psychologists, Social Workers, Nurses and
Speech Therapists, p. 642, 1307
10.58.103 Visitations, p. 644, 1307
10.58.303 Professional Education, p. 645, 1308
10.58.511 Foreign Languages, p. 1364, 1902
10.64.301 and other rules - Minimum Standards for School
Buses, p. 1752
10.64.601 Four-wheel Drive Vehicles, p. 1756
10.65.101 Policy Governing Pupil Instruction Related Days
Approved for Foundation Program Calculations, p.
1863
(Montana State Library Commission)
I-III and other rule - State Coal Severance Tax Funding
to Federations and Grant Programs, p. 324, 1506

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Prohibition of Shooting on a Portion of the Clark Fork and Bitterroot Rivers near Missoula, p. 888
- I Abandoning Teton - Spring Creek Bird Preserve, p. 424, Decision Not to Adopt, p. 1461
- I Fish Plants by the Department or Commercial Hatcheries, p. 429, 497, 949
- I Closing a Part of the Ruby River to Public Access, p. 1494
- I-IV Transplant of Nuisance Animals and the Introduction of Peregrine Falcons, p. 885, 1462
- 12.8.202 and other rules - Public Use Regulations on Department Lands and Waters, p. 425, 952

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I Subdivisions - Authorizing Local Departments or Boards of Health to Review Minor Subdivisions, p. 1139, 1509
- I-III Water Quality - Regulation of Phosphorous Compounds Used for Cleaning Purposes, p. 1137, 1464
- 16.6.303 Recording of Delayed Birth Records, p. 1432
- 16.8.701 and other rules - Air Quality - Monitoring and Data Requirements for Ambient Air Quality, p. 1658
- 16.8.1404 and other rules - Air Quality - Limiting Visible Air Contaminants - Prohibiting Wood Stove Combustion of Certain Materials - Setting Standards for Stack Heights, p. 20, 91, 1021
- 16.10.207 and other rules - Regulation of Food Service Establishments, p. 501, 1076
- 16.18.201 and other rule - Water Treatment Operators Requirement to Earn Continuing Education Units, p. 498, 1078
- 16.32.328 Minimum Standards for a Hospital - Retention of Medical Records, p. 1061, 1583
- 16.44.104 and other rules - Hazardous Waste Management - Updating State Regulations to Bring Them into Conformance with the Federal Hazardous Waste Program, p. 890, 1309

JUSTICE, Department of, Title 23

- 23.4.101 and other rules - Alcohol Analysis, p. 1945 (Board of Crime Control)
- 23.14.407 and other rules - Requirements for the Advance Certificate - The Basic Course - The Intermediate Course - The Advance Course, p. 507, 1023
- 23.14.416 and other rules - Basic Course - Intermediate Course - Advance Course, p. 1434

LABOR AND INDUSTRY, Department of, Title 24

- 24.16.9007 Changing the Annual Effective Date of the Standard Rate of Wages Applicable to Public Works from October 1st to December 1st, p. 1141, 1466
- 24.16.9007 Adoption by Reference of Standard Prevailing Rates of Wages Effective December 1, 1986 through November 30, 1987, p. 1669, 1960
- (Human Rights Commission)
- Public Hearing and Petition for Declaratory Ruling as to whether Montana Department of Institutions, a State Governmental Agency may Employ only Female Cottage Life Attendants at its Correctional Facility for Female Youth under Certain Circumstances, p. 1495
- I-IX Sex Equity in Education under the Montana Human Rights Act, p. 1663
- (Workers' Compensation Division)
- 24.29.702 Self-Insurers, p. 1273, 1903
- 24.29.803 Payment of Compensation, p. 1671

STATE LANDS, Department of, Title 26

- I Shut-in Oil Royalties for Oil and Gas Leases on State Land, p. 1144
- I-XI Consultation of the Department of State Lands with the State Historic Preservation Office Under the Antiquities Act, p. 1849, 953
- 26.3.101 and other rules - Surface Leasing of State Land, p. 1547

LIEUTENANT GOVERNOR, Title 30

(Montana Statehood Centennial Commission)

- I-IX Sanctioning Official Centennial Commemorative Products and Projects, p. 1437

LIVESTOCK, Department of

- 32.2.401 Department of Livestock Fees and Licenses, p. 1950

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

- 36.16.101 and other rules - Water Reservations - Applications in the Yellowstone River Basin - Applications in the Missouri River Basin - Reservation Changes and Transfers, p. 920, 1584

(Board of Water Well Contractors)

- 36.21.410 Examinations, p. 1146, 1601
- 36.21.601 and other rules - Current Construction Standards - Minimum Construction Standards for Water Wells in Montana, p. 1148, 1699

(Board of Oil & Gas Conservation)

36.22.1242 Increasing the Oil and Gas Privilege and License Tax, p. 742, 1063, 1384

REVENUE, Department of, Title 42

- I Gasoline Distributor's License Tax, p. 1673
- I Commercial Personal Property Audits, p. 1784
- I-II Industrial Machinery and Equipment Trend Factors - Industrial Machinery and Equipment Depreciation Schedules, p. 1779, 1956
- I-III Adjusting a Jointly Filed Tax Return, p. 509, 1026
- I-IV Seven Day Credit Limit of Cigarette and Tobacco Products, p. 940, 1320
- I-IV Child Support Debt Tax Offsets, p. 1864
- I-V Emergency Telephone Service, p. 1574, 1963
- I-IX Disclosure of Child Support Information, p. 1065, 1832
- I-XI Classification Requirements for Class 18 Property for Nonproductive, Patented Mining Claims - Classification Requirements for Class 19 Property, p. 1806
- 42.11.104 Retail Liquor/Wine Price Restructuring, p. 1952
- 42.15.511 Energy Related Tax Incentives, p. 1675
- 42.17.105 Computation of Withholding Taxes, p. 1867
- 42.17.120 Individual Liability for State Withholding Taxes, p. 1443, 1835
- 42.21.101 and other rules - Personal Property Taxes, p. 1786, 1956
- 42.22.1101 and other rules - Net Proceeds On Miscellaneous Mines, p. 1762
- 42.22.1102 and other rule - Net Proceeds Reclamation Costs, p. 1604, 30, 1080
- 42.22.1201 Net Proceeds Tax on Oil and Gas Production, p. 1770
- 42.22.2101 and other rules - Gross Proceeds Tax on Coal Production, p. 1757

SECRETARY OF STATE, Title 44

- I Fees for Clerks and Recorders for Filing Certified Copies of Agricultural Liens and Continuations and Prescribing a Method of Payment, p. 744, 1082
- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 1682
- 44.3.1737 and other rules - Processing and Counting of Computer Election Services Votomatic Punchcard Ballots, p. 1445, 1703

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Interstate Compact on the Placement of Children, p. 1290, 1602

- I-IX Residential Alcohol and Drug Treatment for Indigent Juveniles, p. 585, 911, 1251
- 46.5.621 and other rules - Child and Youth Care Facilities, p. 511, 1579, 1814
- 46.5.1202 and other rules - Supplemental Payments to Recipients of Supplemental Security Income, p. 1693
- 46.8.701 and other rules - Certification of Developmental Disabilities Professional Persons - Service Program Funding, p. 752, 1083
- 46.10.303 and other rule - AFDC Deprivation Requirements and Continuation of Assistance, p. 1690
- 46.10.304A Unemployed Parents in the AFDC Program, p. 1577, 1910
- 46.10.324 and other rule - AFDC Eligibility of Minor Custodial Parents and AFDC-related Medicaid Eligibility, p. 1379, 1604
- 46.12.102 and other rules - Medical Assistance Reimbursement for Outpatient Drugs, p. 1684, 1967
- 46.12.401 and other rules - Provider Sanctions in the General Relief Medical Assistance Program, p. 1005, 1321
- 46.12.550 and other rules - Home Health Services, p. 1687
- 46.12.575 Family Planning Services, p. 449, 970
- 46.12.801 Prosthetic Devices, Durable Medical Equipment and Medical Supplies, p. 755, 1911
- 46.12.1434 and other rules - Home and Community Services Program, p. 1870
- 46.13.302 and other rules - Low Income Energy Assistance, p. 1365, 1606
- 46.13.403 Low Income Energy Assistance Program Method of Payment, p. 1812
- 46.25.101 and other rules - Structured Job Search and Training Program - Workfare, p. 746, 1084
- 46.25.711 and other rules - General Relief Assistance and General Relief Medical Programs, p. 1292, 1615