MONTANA ADMINISTRATIVE REGISTER

1977 ISSUE NO. 8

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 59, Chapter 10, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (SICK LEAVE)

TO: To all interested persons

1. On September 7, 1977, at 7:30 p.m. a public hearing will be held in the Department of Highways Auditorium, Sixth & Roberts, Helena, Montana to consider adoption of Rules providing sick leave to State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

3. DEFINITIONS. (a) "Employee means any person employed by the state, county or city governments." This does not include individuals under contract as independent contractors.

(b) "Full-time employee means an employee who normally works forty (40) hours a week."

(c) "Part-time employee means an employee who normally works less than forty (40) hours a week."

(d) "Permanent employee means an employee who regularly works for more than six (6) months in any twelve (12) month period."

(e) "Seasonal position means a position which, although temporary in nature, regularly occurs from season to season or from year to year." This employment is less than permanent, but is considered to be of a recurrent nature within the confines of management's needs.

(f) "Temporary Position means a position created for a definite period of time but not to exceed six (6) months and the position is not renewable."

(g) "Transfer means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than five (5) working days." Over five (5) working days in a non-pay status or an unauthorized leave of absence will consititue a break in service. The transfer action and salary of the new position must have documented approval of the appointing power prior to being considered a bona fide transfer.

(h) "Sick Leave means a leave of absence with pay for a sickness suffered by an employee or his immediate family."

4. Sick leave is the necessary absence from duty caused when an employee has suffered illness, injury, pregnancy-related or other medical disability, exposure to a contagious disease that requires quarantine, or the necessary

absence from duty to receive a medical or dental examination or treatment, or for a death or to attend a funeral. Those instances of family illness or death which qualify the employee for approved sick leave time will be discretionary to the employee as long as the approving authority is reasonably satisifed that the request is justified.

5. Bona fide sick leave is a legal benefit of each employee; however, the abuse of sick leave is cause for dismissal. Agency directors are responsible for the administration of the use of sick leave within their agency. Records of sick leave earnings and usage must be maintained in each agency on an appropriate form (such as Example A, attached). These records should contain sufficient detail so that problems such as improper or repetitious use of sick leave credits can be discovered and corrected. Requests to utilize accumulated sick leave credits should be reviewed and approved by the employee's supervisor and/or agency director. Improper absences should be charged to annual leave (with the employee's approval) or to compensatory time or leave without pay. Accumulated sick leave credits should be regarded by supervisors and employees alike as valuable free health insurance that maintains the employee's income during a period of personal illness or family medical emergencies or illness. Controversial use of sick leave should be thoroughly discussed by the employee and his/her immediate supervisor before final approval or disapproval.

6. Calculating Sick Leave Credits. Full-time employees (including full-time seasonal and full-time temporary employees) earn sick leave credits from the first full pay period of employment. For calculating sick leave credits, two thousand eighty (2,080) hours (52 weeks X 40 hours) shall equal one (1) year. Proportionate sick leave credits shall be earned and credited at the end of each pay period. Sick leave credits shall be earned at a rate not exceeding twelve (12) working days for each year of service.

7. An employee whose continuous employment is interrupted by the seasonal nature of the position shall earn sick leave credits while in a pay status. In order to qualify, such an employee must immediately report back for work, if called, when operations resume in order to avoid a break in service. If a seasonal employee has a three-month employment period during one year, it would not be necessary for him/her to again work the three-month qualifying period in any ensuing year as long as the employee does not receive a lump sum payment for accrued sick and vacation leave credits. These sick leave credits could be carried over and held for the employee from season to season, if management has a continual need for seasonal employees.

Notice No. 2-2-9

(a) Monthly Pay Periods. If the employee is in a pay status a full month, he/she accrues eight (8) sick leave credits. If the employee is in a pay status less than a full month, he/she accrues .046 sick leave credits for each hour in a pay status.

(b) Bi-Weekly Pay Period. If the employee is in a pay status eighty (80) hours or more in a pay period, he/she accrues 3.69 hours sick leave credits per pay period. If the employee is in a pay status less than eighty (80) hours, he/she accrues .046 sick leave credits for each hour in a pay status. Such leave credits for bi-weekly employees are to be rounded to two digits beyond the decimal point (3.69) and carried in the employee's account in that configuration.

7. Permanent Part-Time Employees. Permanent part-time employees (including part-time seasonal and part-time temporary employees) are also entitled to sick leave credits, prorated as shown below, if they have a regularly scheduled work assignment and normally work at least twenty (20) hours per week or 86.67 hours in a monthly pay period. Example: Sick Leave Credits = .046 X Hours worked.

8. Sick Leave Accumulation. Employees may accumulate sick leave credits without limitation.

9. Qualifying Period. Employees must work continuously for ninety (90) calendar days before they qualify to use earned sick leave or are eligible for a lump sum payment for unused sick leave credit.

10. Sick Leave Credits Earned Prior to July 1, 1971. Employees do not lose sick leave credits earned prior to July 1, 1971, if recorded by the employing agency prior to July 1, 1971, and as long as the employee remains employed in the same state, county or city jurisdiction. Sick leave credits earned prior to July 1, 1971, shall be transferred within the same jurisdiction, but are not eligible for payment upon termination.

11. Sick Leave Accrual During Leaves of Absence Without Pay. Employees taking an approved leave of absence without pay which exceeds fifteen (15) calendar days shall only accrue sick leave credits for the first fifteen (15) days of the absence.

12. Rate of Compensation. Employees on authorized sick leave will receive their normal gross salary.

13. Absences. Employees will inform their immediate supervisor of their absence as soon as practical, and not wait until they return to work. Agencies must document in writing any sick leave charges made against an employee's account on his/her employee leave record, a sample of which is attached (Example A). Agencies will provide a standard request for leave form for their employees. A suggested example is attached (Example B). Employee Request forms

used in the example may be ordered from the Department of Administration, General Services Division, Mitchell Building, Helena.

14. Medical, Dental and Eye Examinations Appointments. Medical, dental and eye examination appointments may be charged to sick leave. Each absence shall be reported separately and authorized in advance by the employee's immediate supervisor.

15. Maternity. Sick leave may be charged for absences due to pregnancy, including childbirth, miscarriage, abortion and prenatal and postnatal care, with no restrictions as to the amount of earned sick leave credits that may be approved subject to medical certification, if requested by the employee.

16. Advancing Sick Leave Credits Prohibited. Advancing sick leave credits after an employee's earned sick leave credits have been exhausted is expressly prohibited.

17. Written Substantiation. The employee's immediate supervisor or the designated authority may, at their discretion, require written substantiation of sick leave charged against any sick leave credits in the form of a physician's statement. Supervisors are encouraged to request the statement on the day the employee reports the illness; however, there is a time limit of five (5) working days after the employee returns to work in which the supervisor or designated authority may request such physician's statement.

18. Sick Leave on Holidays. Sick leave taken over a legal holiday shall not be charged to an employee's sick leave account for that day.

19. Workers' Compensation. Workers' Compensation payments administered by the Division of Workers' Compensation of the Department of Labor and Industry are for the purpose of offsetting the loss of income suffered by an employee who is injured on the job. Inasmuch as an employee's pay continues while he/she is on sick leave, he/she is not entitled to both paid sick leave and workers' compensation payments. An employee who is injured on the job has the option of taking either sick leave or workers' compensation payments, but not both concurrently.

20. Transfers. When an employee transfers or is transferred between State agencies, he/she shall not be entitled to lump sum payment for accrued sick leave credits. In such a transfer, the receiving agency shall assume the liability for the accrued sick leave credits transferred with the employee. In transferring to another agency, more than five (5) days not in a pay status or an unauthorized leave of absence constitutes a break in service for an employee. When this condition occurs, the employee must receive a lump sum payment for accrued sick leave credits, earned after July 1, 1971, and the employee must begin anew

the qualifying period at the new agency. If an employee transfers to a different jurisdiction, e.g., county or city government, the employee must receive a cash-out for sick leave credits.

21. Lump Sum Payment Upon Termination. Eligible employees are entitled by law to receive a lump sum payment upon termination equal to one-fourth of the pay attributed to the unused sick leave accrued after July 1, 1971. The computation of the value of the unused sick leave is based on the employee's most recent salary rate. Employees shall not be credited with sick leave for which they have previously been compensated.

22. Abuse of Sick Leave. Abuse of sick leave is cause for dismissal and forfeiture of the lump sum payment. Abuse of sick leave occurs when an employee misrepresents the actual reason for charging an absence to sick leave; or when an employee uses sick leave for unauthorized purposes. If a supervisor has reason to believe that an employee is abusing sick leave, the immediate supervisor or other designated authority may request written documentation to substantiate a sick leave charge. This requirement for documentation should be made at the time the employee requests sick leave, or as soon as the employee reports back to work; however, the request for documentation must be made within five (5) working days after the employee returns to work. If an employee is unable to provide the documentation, he/she must be able to explain to management's satisfaction the use of the sick leave. Administrators must be able to substantiate any charges of sick leave abuse that results in an employee's dismissal and forfeiture of the lump sum payment.

23. Employee Leave Record. The Employee Leave Record is to be used to record an employee's leave activities (sick leave, vacation, compensatory time and other). At the end of each biennium, in the case of monthly employees, or at the end of each fiscal year, in the case of biweekly employees, new employee leave record sheets must be created. Each applicable balance will be posted to an appropriately headed column. The outdated employee leave records are to be permanently filed in the employee's personnel file. Once a year at a specified time, the employee should be notified of the amount of sick leave accrued and used and the employee should verify that the balance is accurate.

24. This Rule shall be utilized unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

25. The rationale for this rule is as follows: There is critical need to provide uniform rules to be consistently applied in the administration of sick leave benefits for all State employees. Adoption of these Rules will lessen the possibility of individual interpretation of the statutes and

lessen the possibility of charges of discriminatory or unfair regulation of sick leave benefits by state agencies.

26. Interested parties may submit their data, views, or arguments, whether orally or in writing at the hearing.

27. David W. Stiteler, Attorney, Personnel Division, Mitchell Building, Helena, Montana 59601 has been designated by the Director of the Department of Administration to preside over and conduct the hearing.

28. The authority of the department to make the proposed Rule is based on Section 59-913 and 59-1008, R.C.M. 1947.

Laurence E. D'Arcy for
Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, August 15, 1977.

EXAMPLE A

STATE OF MONTANA

EMPLOYEE LEAVE RECORD

From July 1, 19 76 To June 30, 19 77 | NUMBER:

Name (Last, First, Middle Initial): Doe, John J.

Social Security No.	Sex	Position No.	Class. No.	Classification Title	
336-20-3010	M	2261	017004	Draftsman I	Grade 7

EMPLOYMENT DATE

	MO	DAY	YR
Agency	9	8	1975
State	9	8	1975

EMPLOYMENT BASE:
Status: [X] Full-Time [ ] Part Time [ ] Seasonal
Condition: [X] Permanent [ ] Temporary [ ] Emergency

Agency Code	Agency Name	Position or Location
9025	Public Works	Helena

ELIGIBLE FOR ▶ SICK LEAVE As of December 8 19 75 | ANNUAL LEAVE As of _____ 19 | COMPENSATORY TIME: [ ] Yes [X] No

RECORD IN HOURS

PAY PERIOD ENDING	SICK LEAVE (1)					VACATION LEAVE (2)			COMPENSATORY TIME			OTHER (3) LEAVE	
	Prior to 7-1-71		After 7-1-71			Max. allowed at 12/31 ____ hrs							
Mo/Day	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Code	Hrs.
Balance Forward					10.40								
July 16			3.69		14.09								
July 30			3.69		17.78								
Aug 13			3.69		21.47								
Aug 27			3.69		25.16								
Sept 10			3.69		28.85								
Sept 24			3.69	16	16.54								
Totals													

EXPLANATIONS:

(1) SICK LEAVE – Time used shall be charged first against leave balance prior to 7-1-71.

(2) VACATION LEAVE – Balance carried into the next calendar year shall not exceed two (2) times the maximum number of hours earned annually.

(3) OTHER LEAVE – Record leave code as follows: 11 - Military Training; 12 - Jury Duty; 13 - Disability - Workmen's Comp.; 14 - LWOP - first 15 continuous working days; 15 - Maternity; 19 - Other In Pay Status Leave (specify); 20 - Leave of Absence (specify)

TRANSFER (Forward copy to new agency.) TERMINATION (Attach copy to Payroll Termination.)

CERTIFICATION:

I hereby certify that the above information is proper and based on documents signed by the employee or as required by statutes or regulations.

Date _____ Certifying Officer _____ Title _____

Form P-2 Rev. 6-75

Notice No. 2-2-9

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EXAMPLE B

STATE OF MONTANA

EMPLOYEE REQUEST: [X] FOR A LEAVE OF ABSENCE [ ] TO WORK COMPENSATORY TIME

EMPLOYEE

EMPLOYEE NAME Doe (Last) John (First) J. (Middle Initial) SOCIAL SECURITY NUMBER 336-20-3010

DEPARTMENT Public Works DIVISION Design

UNIT _____ POSITION TITLE Draftsman I

REQUEST FOR A LEAVE OF ABSENCE

DATES OF ABSENCE (Record in Hours) MONTH: September YEAR: 1976

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Vacation																																
Sick Leave																					8	8										16
Military Leave																																
Jury Duty																																
Comp. Time Off																																
Leave without Pay																																
Other																																

EXPLANATION: Illness with flu

REASON FOR ABSENCE (Check One)

- [ ] 1. VACATION
- [X] 2. ILLNESS
- [ ] 3. INJURY - OFF DUTY
- [ ] 4. INJURY - ON DUTY
- [ ] 5. EMERGENCY SICK LEAVE
- [ ] 6. MILITARY LEAVE
- [ ] 7. JURY DUTY
- [ ] 8. PERSONAL BUSINESS
- [ ] 9. OTHER (Specify) _____

MEDICAL STATEMENT

NOTE: Medical statement to be completed upon request of agency.

DATE OF TREATMENT _____ 19 ___

DISCHARGE FROM TREATMENT _____ 19 ___

EMPLOYEE MAY RESUME WORK? YES NO

CERTIFICATION OF ILLNESS, INJURY, or TREATMENT:

_____

_____

_____

(Signature of Attending Physician)

(Date)

Employee's Signature and Date: _____ Signature _____ Date

Supervisor's Approval and Date: _____ Signature _____ Date

REQUEST TO WORK COMPENSATORY TIME

TIME TO BE WORKED MONTH: YEAR:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Hours Requested																																

REASON: _____

Employee's Signature and Date: _____ Signature _____ Date

Supervisor's Approval and Date: _____ Signature _____ Date

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Notice No. 2-2-9

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 59, Chapter 10, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (ANNUAL VACATION LEAVE)

TO: To all interested persons

1. On September 7, 1977, at 7:30 p.m. a public hearing will be held in the Department of Highways Auditorium, Sixth & Roberts, Helena, Montana to consider adoption of Rules providing military leave to State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

Rule I. DEFINITIONS. (a) "Employee means any person employed by the state, county or city governments." This does not include a person under contract with the State as an independent contractor.

(b) "Full-time employee means an employee who normally works forty (40) hours a week."

(c) "Part-time employee means an employee who normally works less than forty (40) hours a week."

(d) "Permanent employee means an employee who regularly works for more than six (6) months in any twelve (12) month period."

(e) "Seasonal position means a position which, although temporary in nature, regularly occurs from season to season or from year to year." This employment is less than permanent, but is considered to be of a recurrent nature within the confines of management's needs.

(f) "Temporary position means a position created for a definite period of time but not to exceed six (6) months and the position is not renewable."

(g) "Transfer means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than five (5) working days." Over five (5) working days in a non-pay status or an unauthorized leave of absence will constitute a break in service. The transfer action and salary of the new position must have documented approval of the appointing power prior to being considered a bona fide transfer.

(h) "Vacation leave means a leave of absence with pay for the purpose of rest, relaxation or personal business at the request of the employee and with the concurrence of the employer."

Rule II. CALCULATING ANNUAL LEAVE CREDITS. (1) Full-time employees (including full-time seasonal employees) earn vacation leave credits from the first full pay period of

employment. Proportionate vacation leave credits shall be earned and credited at the end of each pay period. Annual vacation leave may be accumulated to a total not to exceed two (2) times the current maximum number of days earned annually as of the last day of any calendar year.

(2) An employee whose continuous employment is interrupted by the seasonal nature of the position shall earn vacation leave credits while in a pay status. In order to qualify, such an employee must immediately report back for work, if called, when operations resume in order to avoid a break in service. If a seasonal employee has a six-month employment period during one year, it would not be necessary for him/her to again work the six-month qualifying period in any ensuing year as long as the employee does not receive a lump sum for accrued vacation and sick leave credits. These vacation leave credits can be carried over and held for the employee from season to season, if management has a continual need for seasonal employees.

(3) Vacation leave credits shall be earned in accordance with the following schedule:

(a) From one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service.

(b) After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service.

(c) After fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service.

(d) After twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.

(4) MONTHLY PAY PERIODS. If the employee is in a pay status the entire month, he/she accrues ten (10) hours of vacation leave credits or the appropriate number of hours as per the schedule below. If the employee is in a pay status less than the entire month, he/she accrues the amount indicated in the following schedule:

No. of Yrs. Employment	In pay status for entire month	Not in pay status for entire month
0-10 Yrs	10 hours	.058 x No. hrs.
10-15 yrs.	12 hours	.069 x No. hrs.
15-20 yrs.	14 hours	.081 x No. hrs.
20 on	16 hours	.092 x No. hrs.

(5) BI-WEEKLY PAY PERIODS. If the employee is in a pay status eighty (80) hours or more in a pay period, he/she accrues the appropriate number of hours of vacation leave credits as per the following schedule. If the employee is in a pay status less than eighty (80) hours in a pay period,

he/she accrues the appropriate number of vacation leave credits as per the following schedule for each hour in a pay status.

No. of Yrs. of employment	80 hrs. in pay status per pay period	Less than 80 hrs. in pay status per pay period
0-10 Yrs.	4.62	.058 x No. hrs.
10-15 Yrs.	5.54	.069 x No. hrs.
15-20 Yrs.	6.46	.081 x No. hrs.
20 on	7.38	.092 x No. hrs.

(6) Such leave credits for bi-weekly employees are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

Rule III. PERMANENT PART-TIME EMPLOYEES. Permanent part-time employees (including part-time seasonal and part-time temporary employees) are also entitled to vacation leave credits from the first full pay period of employment, prorated as shown below, if they have a regularly scheduled work assignment and normally work at least twenty (20) hours each week of the pay period or 86.67 hours in a monthly pay period. EXAMPLE: Vacation Leave Credits = applicable amount from above schedule multiplied by hours worked.

Rule IV. ACCELERATED EARNING SCHEDULE. After an employee has accumulated ten years or more of employment with state, county or city government, he/she will accrue annual leave according to the accelerated schedule. This is true regardless of whether he/she worked for more than one agency or department of the state, county or city government and whether his/her employment with the agency or department was continuous and contiguous. It will be the responsibility of the employee to acquire documentation of any previous employment time or military service time to be counted towards the accelerated schedule. Also, military service time shall be honored for computing employment time to earn annual leave credits at the accelerated rate, if the employee was employed by the State prior to serving with the armed forces and returned to State service within 90 days after discharge. This military service time accrual benefit is effective on July 1, 1977 and is not retroactive. Employees may use military service time to accrue vacation credits at the accelerated earning schedule beginning July 1, 1977.

Rule V. QUALIFYING PERIOD. An employee must be continuously employed for six (6) calendar months before he/she qualifies to use earned vacation leave or is eligible for a lump sum payment for unused vacation leave credit.

Rule VI. ADVANCING VACATION LEAVE CREDITS PROHIBITED. Advancing vacation leave credits after an employee's vacation

leave credits have been exhausted is expressly prohibited.

Rule VII. RATE OF COMPENSATION. An employee on authorized vacation leave will receive his/her normal gross salary. Absence while in a pay status (such as annual leave) during the workday is considered hours worked for the purpose of calculating compensatory or overtime payments.

Rule VIII. ABSENCES. To apply for vacation leave, an employee shall complete a standard request form (see attached example of suggested form) and submit it to his/her immediate supervisor. The leave must be approved or denied in writing by the immediate supervisor or designated authority. The suggested Employee Request forms may be ordered from the Department of Administration, General Services Division, Mitchell Building, Helena. Records of vacation leave earnings and usage must be maintained in each agency. Agencies must document in writing any vacation leave charges made against an employee's account on his/her employee leave record, a sample of which is attached. These forms may also be ordered from the Department of Administration, General Services Division, Mitchell Building, Helena.

Rule IX. DETERMINATION OF VACATION DATES. The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency, with best regard to the best interest of the state, as well as the best interest of each employee.

Rule X. VACATION LEAVE ON HOLIDAYS. Vacation leave taken over a legal holiday shall not be charged to an employee's vacation leave for that day.

Rule XI. ABSENCE BECAUSE OF ILLNESS. "Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee." (59-1005, R.C.M. 1947)

Rule XII. VACATION LEAVE ACCRUED DURING LEAVES OF ABSENCE WITHOUT PAY. Employees taking an approved leave of absence without pay which exceeds fifteen (15) calendar days shall only accrue vacation leave credits for the first fifteen (15) days of the absence.

Rule XIII. TRANSFERS. When an employee transfers or is transferred between state agencies, he/she shall not be entitled to a lump sum payment for accrued vacation leave credits. In such a transfer, the receiving agency shall assume the liability for the accrued vacation leave credits transferred with the employee. In transferring to another agency, five (5) days not in a pay status or an unauthorized leave of absence constitutes a break in service for an employee. When this condition occurs, the employee must receive a lump sum payment for accrued vacation leave credits and must begin anew the qualifying period at the new agency. If an employee transfers to a different jurisdiction, e.g.,

county or city government, the employee must receive a cash-out for vacation credits.

Rule XIV. LUMP SUM PAYMENT UPON TERMINATION. An eligible employee is entitled by law to receive a lump sum payment upon termination for all unused accrued vacation leave credits. The computation of the value of the unused vacation leave is based on the employee's salary rate at the time of termination. An employee shall not be credited with vacation leave for which he/she has previously been compensated. An employee may elect to use accrued vacation leave credits or compensation time to delay the effective date of termination and should advise the agency of this at least two weeks in advance. An employee who elects to remain on the agency payroll by taking accrued vacation leave shall continue to earn annual vacation leave credits, sick leave credits and applicable holiday pay until he/she receives his/her final paycheck. Once an employee has selected a final termination date, accrual of benefits stop after that date and the employee may not use any further vacation or compensatory time benefits. In some instances, the Department Director or designated authority may have to make a decision as to when an employee must receive a cash-out. "It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law." (Section 59-1001, R.C.M. 1947).

Rule XV. EMPLOYEE LEAVE RECORD. An employee leave record is to be used to record an employee's leave activities. At the end of each biennium, in the case of monthly employees, or at the end of each fiscal year, in the case of biweekly employees, new employee leave record sheets must be created. Once a year at a specified time, the employee should be notified of the amount of vacation leave accrued and used and verify that the balance is accurate. This rule shall be utilized unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

3. The rationale for this rule is as follows: There is a critical need to provide uniform rules to be consistently applied in the administration of annual vacation leave to all eligible State employees. Adoption of these rules will lessen the possibility of individual interpretation of the statutes and lessen the possibility of discriminatory or unfair regulation of annual vacation leave by State agencies.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, whether orally or in writing, at the hearing.

5. David W. Stiteler, Attorney, Personnel Division, Mitchell Building, Helena, Montana 59601 has been designated by the Director of the Department of Administration to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947.

Lawrence E. D'Arcy for
Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State August 15, 1977.

EXAMPLE

STATE OF MONTANA

EMPLOYEE REQUEST: [XX] FOR A LEAVE OF ABSENCE [ ] TO WORK COMPENSATORY TIME

EMPLOYEE

EMPLOYEE NAME Doe (Last) John (First) J. (Middle Initial) SOCIAL SECURITY NUMBER 336-20-3010

DEPARTMENT Public Works DIVISION Design

UNIT _____ POSITION TITLE Draftsman I

REQUEST FOR A LEAVE OF ABSENCE

DATES OF ABSENCE (Record in Hours) MONTH: August YEAR: 1976

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Vacation																8	8	8	8	8												40
Sick Leave																																
Military Leave																																
Jury Duty																																
Comp Time Off																																
Leave without Pay																																
Other																																

EXPLANATION: Annual vacation time off to go to Spokane

REASON FOR ABSENCE *(Check One)*

- [X] 1. VACATION
- [ ] 2. ILLNESS
- [ ] 3. INJURY - OFF DUTY
- [ ] 4. INJURY - ON DUTY
- [ ] 5. EMERGENCY SICK LEAVE
- [ ] 6. MILITARY LEAVE
- [ ] 7. JURY DUTY
- [ ] 8. PERSONAL BUSINESS
- [ ] 9. OTHER (Specify) _____

MEDICAL STATEMENT

NOTE: Medical statement to be completed upon request of agency.

DATE OF TREATMENT _____ 19 ___

DISCHARGE FROM TREATMENT _____ 19 ___

EMPLOYEE MAY RESUME WORK? YES NO

CERTIFICATION OF ILLNESS; INJURY, or TREATMENT:

(Signature of Attending Physician)

(Date)

Employee's Signature and Date: _____ (Signature) _____ (Date)

Supervisor's Approval and Date: _____ (Signature) _____ (Date)

REQUEST TO WORK COMPENSATORY TIME

TIME TO BE WORKED MONTH: YEAR:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Hours Requested																																

REASON: _____

Employee's Signature and Date: _____ (Signature) _____ (Date)

Supervisor's Approval and Date: _____ (Signature) _____ (Date)

Form P-1 Rev. 12/75

EXAMPLE

STATE OF MONTANA

EMPLOYEE LEAVE RECORD

From July 1, 19 76 To June 30, 19 77 NUMBER:

Name (Last, First, Middle Initial): Doe, John J.

Social Security No.	Sex	Position No.	Class. No.	Classification Title	
336-20-3010	M	2261	017004	Draftsman I	Grade 7

EMPLOYMENT DATE

	MO	DAY	YR
Agency	9	8	1975
State	9	8	1975

EMPLOYMENT BASE:

Status: [X] Full-Time [ ] Part Time [ ] Seasonal

Condition: [X] Permanent [ ] Temporary [ ] Emergency

Agency Code	Agency Name	Program or Location
9025	Public Works	Helena

ELIGIBLE FOR ▶ SICK LEAVE: As of _____ 19__ ANNUAL LEAVE As of March 8 1975 COMPENSATORY TIME: [ ] Yes [X] No

RECORD IN HOURS

PAY PERIOD ENDING	SICK LEAVE (1) Prior to 7-1-71		SICK LEAVE (1) After 7-1-71			VACATION LEAVE (2) Max. allowed at 12/31 ____ hrs			COMPENSATORY TIME			OTHER (3) LEAVE	
Mo/Day	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Code	Hrs.
Balance Forward								76.0					
July 16						4.62		80.62					
July 30						4.62		85.24					
Aug 13						4.62		89.86					
Aug 27						4.62	40.0	54.48					
Sept 10						4.62		59.10					
Sept 24						4.62		63.72					
Totals													

EXPLANATIONS:

(1) SICK LEAVE – Time used shall be charged first against leave balance prior to 7-1-71.

(2) VACATION LEAVE – Balance carried into the next calendar year shall not exceed two (2) times the maximum number of hours earned annually.

(3) OTHER LEAVE – Record leave code as follows: 11 - Military Training; 12 - Jury Duty; 13 - Disability - Workmen's Comp.; 14 - LWOP – first 15 continuous working days; 15 - Maternity; 19 - Other In Pay Status Leave (specify); 20 - Leave of Absence (specify)

TRANSFER (Forward copy to new agency.) TERMINATION (Attach copy to Payroll Termination.)

CERTIFICATION:

I hereby certify that the above information is proper and based on documents signed by the employee or as required by statutes or regulations.

Date _____ Certifying Officer _____ Title _____

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8-8/25/77 66

Notice No. 2-2-10

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 77, Chapter 21, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (MILITARY LEAVE)

TO: To all interested persons

1. On September 7, 1977, at 7:30 p.m. a public hearing will be held in the Department of Highways Auditorium, Sixth & Roberts, Helena, Montana to consider adoption of Rules providing military leave to State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

Rule I. As defined by statute (Section 77-2104, R.C.M. 1947), a state employee shall be given fifteen (15) working days in a calendar year for attending regular encampments, training cruises and similar training programs.

Rule II. DEFINITIONS. (a) Military Leave means annual encampments which usually occur for a two to three week period during the summer. This does not apply to inactive duty training, weekend National Guard training, or an emergency call-out for State or Federal emergencies or disasters.

(b) Employee means any individual employed by the State of Montana. This does not include individuals under contract as independent contractors.

(c) Military Leave Pay means a leave of absence with pay, not to exceed fifteen (15) working days in any one calendar year.

Rule III. QUALIFYING PERIOD. An employee must work continuously for six (6) months before he/she qualifies to use military leave.

Rule IV. RATE OF COMPENSATION. An employee on authorized military leave will receive his/her normal gross salary.

Rule V. SEASONAL AND PERMANENT PART-TIME EMPLOYEES. A permanent part-time employee or seasonal employee shall be eligible for military leave after six (6) continuous months of employment, which may be interrupted by seasonal work, but will only receive pro-rated leave for his/her normally scheduled hours of work.

Rule VI. ACCUMULATION. Military leave is not accumulative from one year to another. If an employee does not use all of his/her allotted fifteen (15) days, the unused days may not be carried over to the next calendar year.

Rule VII. ABSENCES. An employee shall complete an employee request form (example attached) and inform his/her immediate supervisor or designated authority of the length and date of the anticipated absence as soon as possible. Authorized military levave may not be charged against the employee's annual vacation time. An employee shall also submit, with the request

form, a copy of his/her military orders directing the employee to report for training.

Agencies must document in writing military leave charges made against an employee's account on his/her employee leave record (example attached).

Both the suggested Employee Request form and the Employee Leave Record form are available from the Department of Administration, General Services Division, Mitchell Building, Helena.

Rule VIII. MILITARY LEAVE DURING TIME IN A PAY STATUS. Military leave taken over a legal holiday shall not be charged to an employee's military leave account for that day.

Rule IX. This Rule shall apply to all employees who have been continuously employed by the State of Montana for six (6) months. The rule shall be followed unless it conflicts with negotiated labor contracts which shall take precedence to the extent applicable.

3. The reason for this rule is as follows: There is a critical need to provide uniform rules to be consistently applied in the administration of military leave to all eligible State employees. Adoption of these rules will lessen the possibility of individual interpretation of the statutes and lessen the possibility of discriminatory or unfair regulation of military leave by State agencies.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, whether orally or in writing, at the hearing.

5. David W. Stiteler, Attorney, Personnel Division, Mitchell Building, Helena, Montana 59601 has been designated by the Director of the Department of Administration to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947.

Laurence E. D'Acy for
Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State August 15, 1977.

EXAMPLE

STATE OF MONTANA

EMPLOYEE REQUEST: [X] FOR A LEAVE OF ABSENCE [ ] TO WORK COMPENSATORY TIME

EMPLOYEE

EMPLOYEE NAME Doe (Last) John (First) J. (Middle Initial) SOCIAL SECURITY NUMBER 336-20-3010

DEPARTMENT Public Works DIVISION Design

UNIT _____ POSITION TITLE Draftsman I

REQUEST FOR A LEAVE OF ABSENCE

DATES OF ABSENCE (Record in Hours) MONTH: July YEAR: 1976

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Vacation																																
Sick Leave																																
Military Leave						H	8	8	8	8			8	8	8	8	8															72
Jury Duty																																
Comp. Time Off																																
Leave without Pay																																
Other																																

EXPLANATION: Military leave to attend yearly Air Force Reserve training camp. (Military orders are attached)

REASON FOR ABSENCE (Check One)

- [ ] 1. VACATION
- [ ] 2. ILLNESS
- [ ] 3. INJURY - OFF DUTY
- [ ] 4. INJURY - ON DUTY
- [ ] 5. EMERGENCY SICK LEAVE
- [X] 6. MILITARY LEAVE
- [ ] 7. JURY DUTY
- [ ] 8. PERSONAL BUSINESS
- [ ] 9. OTHER (Specify) _____

MEDICAL STATEMENT

NOTE: Medical statement to be completed upon request of agency.

DATE OF TREATMENT _____ 19 ___

DISCHARGE FROM TREATMENT _____ 19 ___

EMPLOYEE MAY RESUME WORK? YES NO

CERTIFICATION OF ILLNESS, INJURY, or TREATMENT:

_____

(Signature of Attending Physician)

(Date)

Employee's Signature and Date: _____ Signature _____ Date

Supervisor's Approval and Date: _____ Signature _____ Date

REQUEST TO WORK COMPENSATORY TIME

TIME TO BE WORKED MONTH: YEAR:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Hours Requested																																

REASON: _____

Employee's Signature and Date: _____ Signature _____ Date

Supervisor's Approval and Date: _____ Signature _____ Date

Form P-1 Rev. 12/75

EXAMPLE

STATE OF MONTANA

EMPLOYEE LEAVE RECORD

From July 1, 19 76 To June 30, 19 77 NUMBER:

Name (Last, First, Middle Initial): Doe, John J.

Social Security No.	Sex	Position No.	Class. No.	Classification Title	
336-20-3010	M	2261	017004	Draftsman I	Grade 7

EMPLOYMENT DATE:

	MO	DAY	YR
Agency	9	8	1975
State	9	8	1975

EMPLOYMENT BASE:

Status: [X] Full Time [ ] Part Time [ ] Seasonal

Condition: [X] Permanent [ ] Temporary [ ] Emergency

Agency Code	Agency Name	Program or Location
9025	Public Works	Helena

ELIGIBLE FOR ▶ SICK LEAVE: As of _____ 19__ ANNUAL LEAVE: As of _____ 19__ COMPENSATORY TIME: [ ] Yes [X] No

RECORD IN HOURS

PAY PERIOD ENDING	SICK LEAVE [1]					VACATION LEAVE [2]			COMPENSATORY TIME			OTHER [3] LEAVE	
	Prior to 7-1-71		After 7-1-71			Max. allowed at 12/31 _____ hrs							
Mo/Day	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Code	Hrs.
Balance Forward													
July 16												11	72.0
July 30													
Aug 13													
Aug 27													
Sept 10													
Sept 24													
Totals													

EXPLANATIONS:

(1) SICK LEAVE – Time used shall be charged first against leave balance prior to 7-1-71.

(2) VACATION LEAVE – Balance carried into the next calendar year shall not exceed two (2) times the maximum number of hours earned annually.

(3) OTHER LEAVE – Record leave code as follows: 11 - Military Training; 12 - Jury Duty; 13 - Disability - Workmen's Comp.; 14 - LWOP - first 15 continuous working days; 15 - Maternity; 19 - Other In Pay Status Leave (specify); 20 - Leave of Absence (specify)

TRANSFER (Forward copy to new agency.) TERMINATION (Attach copy to Payroll Termination.)

CERTIFICATION:

I hereby certify that the above information is proper and based on documents signed by the employee or as required by statutes or regulations.

Date _____ Certifying Officer _____ Title _____

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8-8/25/77 66

Notice No. 2-2-11

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 19, Chapter 10, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (HOLIDAY PAY)

TO: To all interested persons

1. On September 7, 1977, at 7:30 p.m. a public hearing will be held in the Department of Highways Auditorium, Sixth & Roberts, Helena, Montana to consider adoption of Rules providing holiday pay to State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

Rule I. DEFINITIONS. (a) Employee means any person employed by the state of Montana on a permanent, temporary, full-time, part-time or seasonal basis. This does not include an individual under contract with the state as an independent contractor.

(b) Legal State Holiday means any one of those holidays provided by law to afford a day off with pay to State employees.

Rule II. State employees are entitled to receive a day off for each legal holiday, regardless of the day on which the holiday falls or the employee's work week (Opinion #27, Volume 34, Attorney General). State primary election days are not State holidays (Opinion #20, Volume 34, Attorney General).

Rule III. Pursuant to section 59-1009, R.C.M. 1947, any State employee who is scheduled for a day off on a day which is observed as a legal holiday shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

Rule IV. (a) Holidays, including those allowed in lieu of the actual holiday, occurring while an employee is in a pay status shall be earned by the employee and not charged as sick leave, vacation leave, etc.

(b) Holidays, including those allowed in lieu of the actual holiday, occurring while an employee is absent without pay will not be earned by the employee unless the employee is in a pay status on either the last working day immediately preceding the holiday or on the first scheduled working day immediately following the holiday. If qualified, the employee shall receive pay for those hours that he or she is normally scheduled to work. If the employee is allowed a day off for working on a holiday, the time off must be within the same pay period as the actual holiday.

(c) If an employee transfers from one state agency to another one immediately before a holiday, and providing that the employee is in a pay status the day immediately following the holiday the new employing agency shall be responsible for pay-

ing the employee for the holiday.

(d) If a new employee reports to work on the day immediately after a holiday, the employee does not receive pay for the holiday.

(e) When an employee works on a legal holiday and is given another day off in accordance with section 59-1009, the time worked should be recorded as regular time and the day off recorded as holiday time even though the day worked was actually the holiday.

(f) When an employee is entitled to a day off for a legal holiday but is required to work on that day and no time off is subsequently allowed, within the same pay period, the employee must be paid a minimum of double time and one-half for that day. This applies to non-exempt employees; exempt employees will earn compensatory time on an hour-for-hour basis. Example: If the employee works 8 hours on a legal holiday, eight hours are to be coded to SBAS expenditure identification code 1105 or 1205 (Holiday) at the employee's regular rate of pay and 8 hours coded to 1102 or 1202 (Overtime) at time and one-half. The attached table illustrates the applications of statutory provisions and Rules noted above.

Rule V. This Rule shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

3. The reason for this rule is as follows: There is a critical need to provide uniform rules to be consistently applied in the administration and pay of legal holidays provided all State employees. Adoption of these Rules will lessen the possibility of discriminatory or unfair regulation of holiday pay by State agencies.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, whether orally or in writing, at the hearing.

5. David W. Stiteler, Attorney, Personnel Division, Mitchell Building, Helena, Montana 59601 has been designated by the Director of the Department of Administration to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947.

Lawrence E. D'Arcy for
Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State August 15, 1977.

Notice No. 2-2-12

TABLE OF DAYS OFF FOR LEGAL HOLIDAYS

IF THE LEGAL HOLIDAY FALLS ON:	AND IF THE EMPLOYEE'S SCHEDULED DAYS OFF ARE:	THEN THE EMPLOYEE'S ALLOWED HOLIDAY IS:	PROVIDING THE EMPLOYEE WORKS* EITHER THE PRECEDING OR FOLLOWING:
MONDAY	Saturday and Sunday	Monday	Friday or Tuesday
	Sunday and Monday	Tuesday	Saturday or Wednesday
	Monday and Tuesday	Sunday	Saturday or Wednesday
	Tuesday and Wednesday	Monday	Sunday or Thursday
	Wednesday and Thursday	Monday	Sunday or Tuesday
	Thursday and Friday	Monday	Sunday or Tuesday
	Friday and Saturday	Monday	Sunday or Tuesday
TUESDAY	Saturday and Sunday	Tuesday	Monday or Wednesday
	Sunday and Monday	Tuesday	Saturday or Wednesday
	Monday and Tuesday	Wednesday	Sunday or Thursday
	Tuesday and Wednesday	Monday	Sunday or Thursday
	Wednesday and Thursday	Tuesday	Monday or Friday
	Thursday and Friday	Tuesday	Monday or Wednesday
	Friday and Saturday	Tuesday	Monday or Wednesday
WEDNESDAY	Saturday and Sunday	Wednesday	Tuesday or Thursday
	Sunday and Monday	Wednesday	Tuesday or Thursday
	Monday and Tuesday	Wednesday	Sunday or Thursday
	Tuesday and Wednesday	Thursday	Monday or Friday
	Wednesday and Thursday	Tuesday	Monday or Friday
	Thursday and Friday	Wednesday	Tuesday or Saturday
	Friday and Saturday	Wednesday	Tuesday or Thursday
THURSDAY	Saturday and Sunday	Thursday	Wednesday or Friday
	Sunday and Monday	Thursday	Wednesday or Friday
	Monday and Tuesday	Thursday	Wednesday or Friday
	Tuesday and Wednesday	Thursday	Monday or Friday
	Wednesday and Thursday	Friday	Tuesday or Saturday
	Thursday and Friday	Wednesday	Tuesday or Saturday
	Friday and Saturday	Thursday	Wednesday or Sunday
FRIDAY	Saturday and Sunday	Friday	Thursday or Monday
	Sunday and Monday	Friday	Thursday or Saturday
	Monday and Tuesday	Friday	Thursday or Saturday
	Tuesday and Wednesday	Friday	Thursday or Saturday
	Wednesday and Thursday	Friday	Tuesday or Saturday
	Thursday and Friday	Saturday	Wednesday or Sunday
	Friday and Saturday	Thursday	Wednesday or Sunday
SATURDAY	Saturday and Sunday	Friday	Thursday or Monday
	Sunday and Monday	Saturday	Friday or Tuesday
	Monday and Tuesday	Saturday	Friday or Sunday
	Tuesday and Wednesday	Saturday	Friday or Sunday
	Wednesday and Thursday	Saturday	Friday or Sunday
	Thursday and Friday	Saturday	Wednesday or Sunday
	Friday and Saturday	Sunday	Thursday or Monday
SUNDAY	Saturday and Sunday	Monday	Friday or Tuesday
	Sunday and Monday	Saturday	Friday or Tuesday
	Monday and Tuesday	Sunday	Saturday or Wednesday
	Tuesday and Wednesday	Sunday	Saturday or Monday
	Wednesday and Thursday	Sunday	Saturday or Monday
	Thursday and Friday	Sunday	Saturday or Monday
	Friday and Saturday	Sunday	Thursday or Monday

*Or is on paid leave status.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 25, Chapter 5, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (DECEDENT'S WARRANTS)

TO: To all interested persons

1. On September 7, 1977, at 7:30 p.m. a public hearing will be held in the Department of Highways Auditorium, Sixth & Roberts, Helena, Montana to consider adoption of Rules providing decedent's warrants to designees of State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

Rule I. Each State employee may designate a person to receive the employee's pay, benefits, and/or travel allowances due at the time of the employee's decease in connection with his/her State employment. By executing the standard State form, "Designation of Person Authorized to Receive Decedent's Warrants," an employee may be assured that warrants for monies due him/her or his/her estate will be reissued in the name of the designated person and will be delivered to that person without recourse to estate administration procedures if the form, properly completed, is on file with the employing agency at the time of the employee's decease.

Rule II. STANDARD STATE FORM, "DESIGNATION OF PERSON AUTHORIZED TO RECEIVE DECEDENT'S WARRANTS." The "Designation of Person Authorized to Receive Decedent's Warrants" form has been designed for uniform, Statewide usage. Forms may be obtained from the Department of Administration, General Services Division, Mitchell Building, telephone 449-3060. Please request a six (6) months' supply when ordering forms. (See attached, Example C.)

Rule III. DESIGNATIONS. The employee's supervisor should explain to the employee that the designation is a legally binding document. There is nothing in Section 25-507.7 that precludes a minor from being designated as the person to receive a decedent's warrants.

Rule IV. INSTRUCTIONS. The instructions on the form are fairly detailed. The employee prepares the form in duplicate. The form should be reviewed by the agency's personnel or payroll clerk for accuracy. The person making the review and the review date is to be recorded in the "For Agency Use Only" block provided in the lower righthand corner of the form. The original copy of the designation is retained by the employing agency's personnel office or payroll clerk. The duplicate may be returned to the employee

or kept in a central personnel file, depending on each agency's internal procedures.

Rule V. DECEASE OF AN EMPLOYEE. Upon the decease of an employee, the employing agency will immediately complete the information on the righthand margin of the designation form (employee's name, date decreased, and signature of certifying officer), and immediately forward the designation form to the State Auditor's Office. If an unnegotiated warrant or warrants are recoverable, they will be attached to the designation form and forwarded with it to the State Auditor's Office. The designation form and unnegotiated warrants should not be sent to the Central Payroll Division.

Rule VI. REVOCATIONS. An employee may revoke and/or change a designation at any time by filing a new designation form. When an employee changes a designation, the date of the revocation is recorded in the "For Agency Use Only" block and the revoked designation form will be filed in the employee's personnel file (which should be maintained by an agency for each employee). Upon termination and after all salary, benefits, and travel warrants made payable to the employee have been delivered to the employee and paid, the designation shall be automatically cancelled. The date of such cancellation is to be recorded in the appropriate box provided for in the "For Agency Use Only" block. The designation is then filed in the employee's personnel file.

Rule VII. DELIVERIES OF WARRANTS. Warrants delivered to a designee by a State agency shall be accompanied by a photocopy of the designation on file. Applicable warrants are to be identified by number, date, and amount on the reverse side of the designation. After all warrants have been delivered to the designee, the designation shall be cancelled and appropriately filed.

Rule VIII. REFUND OF RETIREMENT CONTRIBUTIONS OR DEATH BENEFITS. Refund of retirement contributions or death benefits are not covered by the designation document.

Rule IX. This Rule shall be utilized unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

3. The reason for this rule is as follows: To provide for the expedient payment of monies owed to a deceased State employee's pre-selected designee. Immediate payment to the designee may alleviate hardship or discomfort to the deceased employee's family.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, whether orally or in writing, at the hearing.

5. David W. Stiteler, Attorney, Personnel Division, Mitchell Building, Helena, Montana 59601 has been designated by the Director of the Department of Administration to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947.

Lawrence E. D'Arcy Jr.
Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State August 15, 1977.

EXAMPLE

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION

DESIGNATION OF PERSON AUTHORIZED TO RECEIVE DECEDENT'S WARRANTS

EMPLOYEE'S NAME (Last Name First)

DATE DECEASED

CERTIFYING OFFICER

INSTRUCTIONS TO EMPLOYEES

1. *Complete this form in duplicate (typewritten or in ink).*
2. *Show the designee's full name; for example, "Mary Jane Smith", not Mrs. John E. Smith.*
3. *Show relationship of person being designated such as; wife, husband, daughter, son, mother, father, friend, etc.*
4. *Erasures or corrections may not be made in the writing of designee's name. If an error has been made, complete a new set of forms.*
5. *Sign both copies in ink. Submit both copies to your personnel office or payroll clerk. The duplicate copy will be returned to you for your record or for you to give to the designee.*
6. *You may change your designation at any time by filing a new designation with your personnel office or payroll clerk.*
7. *You may completely revoke a designation at any time by a letter to your employer signed by you (submit in duplicate).*
8. *Inform your personnel office or payroll clerk when a change occurs in your designee's address.*

INSTRUCTIONS TO EMPLOYERS

1. *Review the prepared form to insure that the employee has completed it properly.*
2. *Advise the employee that this form is a legally binding document.*
3. *Upon the decease of an employee, fill in the information on the right-hand margin; certifying officer should be the agency head or personnel officer.*
4. *Forward the form immediately to the State Auditor's Office. DO NOT SEND IT TO CENTRAL PAYROLL.*
5. *If death occurs after a warrant has been issued but before it has been negotiated, recover the warrant (if possible) and submit it to the State Auditor's Office with this form.*
6. *Have your employees periodically review their designation.*

EMPLOYEE'S NAME (FIRST) (MIDDLE) (LAST) SOCIAL SECURITY NUMBER

DESIGNEE

Pursuant to Section 25-507.7, R.C.M. 1947, I hereby designate the following person who, notwithstanding any other provision of law, shall be entitled upon my death to receive all state warrants, excluding warrants for payment of death benefits and refund of employee retirement contributions, that would have been payable to me as a result of my employment with the State of Montana had I survived:

(FIRST NAME) (MIDDLE NAME) (LAST NAME) RELATIONSHIP AGE

DESIGNEE'S ADDRESS CITY, STATE, & ZIP CODE

STIPULATION

I hereby revoke any previous designation filed by me.

If the above-named designee cannot be contacted within sixty (60) days after the date of my death, this designation shall be void.

This designation will remain in full force and effect during my employment with the Montana State Agency identified below until revoked in writing by me. This designation will automatically terminate on the date final payment is received as the result of said employment.

NAME OF STATE AGENCY, BOARD OR COMMISSION FOR WHICH YOU ARE EMPLOYED ▶

EMPLOYEE

SIGNATURE DATE

ADDRESS

CITY STATE ZIP CODE

FOR AGENCY USE ONLY

REVIEWED BY AND DATE

DESIGNATION: DATE

Revoked

Automatically Cancelled

Form P-3 (Rev. 9-73)

FORWARD TO STATE AUDITOR'S OFFICE UPON EMPLOYEE'S DECEASE

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Notice No. 2-2-13

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 59, Chapter 10, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (JURY DUTY LEAVE) (AND) (WITNESS LEAVE)

TO: To all interested persons

1. On September 7, 1977, at 7:30 p.m. a public hearing will be held in the Department of Highways Auditorium, Sixth & Roberts, Helena, Montana to consider adoption of Rules providing sick leave to State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

Rule I. As defined by statute (Section 59-1010, R.C.M. 1947) a State employee shall be eligible to serve as a witness or to serve on jury duty when properly subpoenoed or summoned.

Rule II. DEFINITIONS. (a) Employee - means any person employed by the State of Montana on a permanent, temporary, full-time, part-time or seasonal basis. This does not include an individual under contract with the State as an independent contractor.

(b) Jury Duty Leave - means an approved leave of absence with pay for an employee who has been properly summoned to serve as a juror in a court or judicial proceeding.

(c) Witness Leave - means a leave of absence with pay for an employee who has been properly subpoenoed to serve as a witness in a court or judicial proceeding.

(d) Selection for Jury Duty - means an approved leave of absence with pay for an employee who has been properly summoned to appear before a court to determine whether or not the employee will serve as a juror.

Rule III. RATE OF COMPENSATION. (a) An employee on authorized jury duty or witness leave shall receive his/her normal gross salary or wage. An employee shall collect all fees and allowances payable as a result of serving on jury duty or as a witness and forward the fees to his/her payroll clerk within three days of receiving them. Any expense or mileage allowance paid by the court shall be retained by the employee if the employee is using his/her personal vehicle. If the employee chooses to charge his/her juror or witness time off against his/her annual leave, he/she shall also keep all juror fees paid by the court.

(b) A part-time employee will receive pro-rated compensation for those hours he/she is usually scheduled to work.

Rule IV. BENEFITS ACCRUAL. An employee who is properly serving as a witness or on jury duty will continue to earn and accrue all benefits that the employee would normally earn.

Rule V. ABSENCES. (a) An employee shall complete an employee request form (suggested example attached) and inform his/her immediate supervisor of the date and anticipated length of absence as soon as possible after being summoned or subpoenaed. An employee should also furnish a copy of the summons or subpoena with the leave request form. Authorized jury duty or witness leave may only be charged against the employee's annual vacation time or accrued compensatory time at the employee's option.

(b) Agencies must document in writing jury duty leave or service as a witness on the employee's leave record (suggested example attached).

(c) Both the employee request form and the employee leave record are available from the Department of Administration, General Services Division, Mitchell Building, Helena.

Rule VI. REQUEST TO BE EXCUSED FROM JURY DUTY. Agency heads or their designee may request the court to excuse their employees from jury duty if those employees are needed for the proper operation of the agency. In view of this provision, all requests to excuse an employee from jury duty for this reason should cite Section 59-1010 of the codes and must be signed by the employee's department director or agency head.

Rule VII. This Rule shall be followed unless it conflicts with negotiated labor contracts which shall take precedence to the extent applicable.

3. The reason for this Rule is as follows: There is a critical need to provide uniform Rules to be consistently applied in the administration of Jury Duty and Witness leave to all eligible State employees. Adoption of these Rules will lessen the possibility of individual interpretation of the statutes and lessen the possibility of discriminatory or unfair regulations of jury duty leave and witness leave by the State agencies.

4. Interested persons may submit their data, views or arguments concerning the proposed Rules, whether orally or in writing, at the hearing.

5. David W. Stiteler, Attorney, Personnel Division, Mitchell Building, Helena, Montana 59601 has been designated by the Director of the Department of Administration to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947.

Lawrence E. D'Arcy Jr.
Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State August 15, 1977.

EXAMPLE

STATE OF MONTANA

EMPLOYEE REQUEST: [X] FOR A LEAVE OF ABSENCE [ ] TO WORK COMPENSATORY TIME

EMPLOYEE

EMPLOYEE NAME Doe (Last) John (First) J. (Middle Initial) SOCIAL SECURITY NUMBER 336-20-3010

DEPARTMENT Public Works DIVISION Design

UNIT _____ POSITION TITLE Draftsman I

REQUEST FOR A LEAVE OF ABSENCE

DATES OF ABSENCE (Record in Hours) MONTH: August YEAR: 1976

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Vacation																																
Sick Leave																																
Military Leave																																
Jury Duty									8	8	8	8	8																			40
Comp. Time Off																																
Leave without Pay																																
Other																																

EXPLANATION: Summoned to serve jury duty in district court. Trial starts on August 9, 1976, and will last approximately one week, or more. (copy of summons is attached.)

REASON FOR ABSENCE (Check One)

- [ ] 1. VACATION
- [ ] 2. SICKNESS
- [ ] 3. INJURY - OFF DUTY
- [ ] 4. INJURY - ON DUTY
- [ ] 5. EMERGENCY SICK LEAVE
- [ ] 6. MILITARY LEAVE
- [X] 7. JURY DUTY
- [ ] 8. PERSONAL BUSINESS
- [ ] 9. OTHER (Specify) _____

MEDICAL STATEMENT

NOTE: Medical statement to be completed upon request of agency.

DATE OF TREATMENT _____ 19 ____

DISCHARGE FROM TREATMENT _____ 19 ____

EMPLOYEE MAY RESUME WORK? YES NO

CERTIFICATION OF ILLNESS, INJURY, or TREATMENT:

_____

_____

_____

_____

(Signature of Attending Physician)

_____ *(Date)*

Employee's Signature and Date: _____ Signature _____ Date

Supervisor's Approval and Date: _____ Signature _____ Date

REQUEST TO WORK COMPENSATORY TIME

TIME TO BE WORKED MONTH: YEAR:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
Hours Requested																																

REASON: _____

_____

_____

Employee's Signature and Date: _____ Signature _____ Date

Supervisor's Approval and Date: _____ Signature _____ Date

Form P-1 Rev. 12/75

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Notice No. 2-2-14

EXAMPLE

STATE OF MONTANA

EMPLOYEE LEAVE RECORD

From July 1, 19 76 To June 30, 19 77

NUMBER:

Name (Last, First, Middle Initial)

Social Security No.	Sex	Position No.	Class No.	Classification Title
336-20-3010	M	2261	017004	Draftsman I

EMPLOYMENT DATE — EMPLOYMENT BASE:

	MO	DAY	YR
Agency	9	8	1975
State	9	8	1975

Status: [X] Full Time [ ] Part Time [ ] Seasonal

Condition: [X] Permanent [ ] Temporary [ ] Emergency

Agency Code	Agency Name	Program or Location
9025	Public Works	Helena

ELIGIBLE FOR ▶ SICK LEAVE: As of _____ 19__ ANNUAL LEAVE: As of _____ 19__ COMPENSATORY TIME: [ ] Yes [X] No

RECORD IN HOURS

PAY PERIOD ENDING	SICK LEAVE (1)					VACATION LEAVE (2)			COMPENSATORY TIME			OTHER (3) LEAVE	
	Prior to 7-1-71		After 7-1-71			Max. allowed at 12/31 _____ hrs							
Mo/Day	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Code	Hrs.
Balance Forward													
July 16													
July 30													
Aug 13												12	40
Aug 27													
Sept 10													
Sept 24													
Totals													

EXPLANATIONS:

(1) SICK LEAVE – Time used shall be charged first against leave balance prior to 7-1-71.

(2) VACATION LEAVE – Balance carried into the next calendar year shall not exceed two (2) times the maximum number of hours earned annually.

(3) OTHER LEAVE – Record leave code as follows: 11 - Military Training, 12 - Jury Duty; 13 - Disability - Workmen's Comp., 14 - LWOP – first 15 continuous working days; 15 - Maternity; 19 - Other In Pay Status Leave (specify); 20 - Leave of Absence (specify)

TRANSFER (Forward copy to new agency.) TERMINATION (Attach copy to Payroll Termination.)

CERTIFICATION:

I hereby certify that the above information is proper and based on documents signed by the employee or as required by statutes or regulations.

Date _____ Certifying Officer _____ Title _____

Form P-2 Rev. 6-75

8-8/25/77 dd

Notice No. 2-2-14

BEFORE THE DEPARTMENT OF ADMINISTRATION
AND THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.34(50)-S34410 relating to certification of eligibles and promotional examinations	NOTICE OF PROPOSED AMENDMENT OF THE MERIT SYSTEM COUNCIL CERTIFICATION RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 26, 1977, the Merit System Council proposes to amend Rule 2-3.34(50)-S34410 which now allows for certification of the three highest ranking available eligibles and which now provides for the use of promotional examinations.

2. The proposed amendment would allow for certification of all individuals who are ranked in the top three whole scores. The proposed amendment would eliminate the use of promotional examinations for permanent employees who apply and meet the minimum qualifications for the promotional vacancy. Rule 2-3.34(50)-S34410 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 2-3.34(50)-S34410 CERTIFICATION
(1) State Office Certification.
(a) Certification of eligibles will be made following receipt of a written request stating the number of positions to be filled, the class title, salary, location of the work, and other pertinent information. For a single vacancy the Administrator will certify ~~the three highest ranking available eligibles~~ all individuals who are ranked in the top three whole scores using the register set up for the class of position to be filled. For two or more vacancies in a class, ~~the Administrator will certify from the top of the register five thirds as many names as the number of vacancies to be filled with fractions counted as the next whole number. In cases of tied numerical scores the names of all individuals having a tied score will be certified.~~ the same certification used for a single vacancy will apply.
(b) Remains the same.
(c) Remains the same.
(d) Remains the same.

(e) ~~Upon receipt of the certificate the appointing authority must schedule interviews with the top three eligibles actually available for employment.~~ Within three days of the appointing authority's decision to appoint an eligible, those available eligibles not appointed to a position will be notified in writing that another eligible was appointed to the position.
(f) Remains the same.
(g) Remains the same.
(2) Remains the same.
(3) Certification from Promotional Registers. ~~When promotional examinations are given the registers established will be used only for certification to the agency for which the examinations were given. In using a promotional register, the Administrator will certify the five highest available eligibles when competitive promotion is requested.~~ When competitive promotion is requested registers established will be used only for certification to the requesting agency. Permanent employees who apply and meet the minimum qualifications for the promotional vacancy are not subject to written examination. Upon certification by the Administrator that a permanent employee meets the minimum qualifications for the involved position the employee's name will automatically be placed on the promotional register. Names on promotional registers will be unranked. The appointing authority shall have the right to appoint any individual whose name appears on the promotional register to the position involved. For non-competitive promotions any permanent employee of the agency who is on an appropriate promotional or open-competitive register may be certified.
(4) Remains the same.

3. The purpose of amendment of the Merit System rule is to allow for certification of all individuals who rank in the top three whole scores and to eliminate the use of promotional examinations for permanent employees who apply and meet the minimum qualifications for the promotional vacancy.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Clifford T. McGillvray, Administrator, Merit System Council, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 23, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing

and submit this request along with any written comments he has to Clifford T. McGillvray, Administrator, Merit System Council, on or before September 23, 1977.

6. If the department receives requests for a public hearing on the proposed rule from more than ten percent (10%) or twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the department to make the proposed rule amendment is based on Section 59-914, R.C.M. 1947.

Clifford T. McGillvray, Administrator
Merit System Council

Certified to the Secretary of State July 19, 1977.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 4-2.6(2)-S650 regarding Reports requred by the Department of Agriculture	))))	NOTICE OF PROPOSED ADOPTION OF RULE 4-2.6(2)-S650 NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On September 26, 1977, the Department of Agriculture proposes to adopt rule 4-2.6(2)-S650 of Chapter 6 to comply with the amended law in Section 3-227, R.C.M. 1947.

2. The proposed rule would read as follows:

4-2.6(2)-S650 REPORTS (1) Grain Merchandising Report forms will be provided by the Department of Agriculture to every person licensed to merchandise grain. These reports shall be completed and returned to the department after properly signing the sworn statement each and every month.

(a) all grain merchandisers shall file reports with the department on forms as prescribed by the department within 20 days after the close of the business for the month in which the report is being filed.

(b) these reports shall include but not be limited to the total weight of each kind of grain received and shipped, the amount of outstanding storage receipts on that date, and a statement of the amount of grain on hand to cover all outstanding storage receipts.

(c) additional sections of this form may be used to comply with Section 3-2913, R.C.M. 1947.

3. The rationale for adopting this NEW rule is created by the amendment of Section 3-227, R.C.M. 1947 in House Bill 234 during the 45th Legislative Session. Without this rule the department would not be able to require the grain, wheat and barley industries to submit forms necessary for enforcement of other laws of the State of Montana.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. W. Gordon McOmber, Director, Department of Agriculture, 1300 Cedar Street, Airport Way - Bldg. West, Helena, Montana 59601.

5. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to Mr. W. Gordon McOmber before September 22, 1977.

6. If the department receives requests for a public hearing on the proposed rule from more than ten percent (10%)

or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. You will be notified of a public hearing.

7. The authority of the Department to adopt the rule is based on Section 3-227, R.C.M. 1947.

W. GORDON McOMBER, DIRECTOR

Certified to the Secretary of State August 15, 1977.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the Matter of the Department of Agriculture Reviewing Rules for the Centralized Services Division of the Department of Agriculture	))))	NOTICE OF PUBLIC HEARING for Review of Rule 4-2.6(2)-S649 for the Centralized Services Division.

TO: All Interested Persons

1. On September 30, 1977, at 10:00 a.m., in the Highway Auditorium, on Sixth and Roberts Streets, Helena, Montana, a Public Hearing will be held by the Montana Department of Agriculture to review present handling charges and grain storage rates for public warehousemen.

2. Said hearing is being held pursuant to a formal request by 50 or more persons as prescribed in Section 3-208, R.C.M. 1947, and amended by House Bill 535 during the 45th Legislative Session.

3. Interested persons may present their data views, or arguments, whether orally or in writing at the hearing set forth above.

4. Mr. Gene J. Carroll, Administrator, Marketing and Transportation Division, Montana Department of Agriculture, 1300 Cedar Street, Airport Way, Building West, Helena, Montana has been designated as hearing officer, to preside over and conduct the hearing.

5. The authority of the department to review the proposed rules is based on Section 3-208, R.C.M. 1947, as amended in House Bill 535 of the 45th Legislative Session and signed by the Governor of the State of Montana on March 29, 1977.

W. GORDON McOMBER, Director

Certified to the Secretary of State August 8, 1977.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Department of Agriculture Amending ARM rules for the Centralized Services Division of the Department.	)))))	NOTICE OF PROPOSED AMENDMENT of ARM rules 4-2.6(6)-S660; 4-2.6(6)-S661 & 4-2.6(6)-S662 for the Centralized Services Division. No Public Hearing Contemplated.

TO: All Interested Persons

1. On September 26, 1977, the Department of Agriculture proposes to amend rules 4-2.6(6)-S660; 4-2.6(6)-S661 & 4-2.6(6)-S662 of Chapter 6 to clarify the language of these rules.

2. The proposed amended areas would be as follows:

4-2.6(6)-S660 EQUIPMENT STANDARDS (1)(b) an air screen cleaner with no less than three ~~(3)~~ screens or equivalent equipment (one screen must be grading screen);

(d) or may have a treater that will apply a uniform application of chemical to seed if seed is to be treated;

(e) all seed handling equipment such as augers, elevator legs, bins, ~~and~~, sprouts, floors accessible and capable of being cleaned and inspected to prevent crop or variety mixtures between lots;

(f) equipement and procedures ~~to uniformly~~ that acceptably blend a lot or lots of seed when seed is to be blended;

(2) (b) or may have a treater that will apply a uniform ~~coating~~ application of chemical to seed if seed is to be treated~~;~~, the seed treater must be located outside of the facility;

(d) equipment and procedures ~~to uniformly~~ that acceptably blend a lot or lots of seed when seed is to be blended;

(3) A Custom Cereal Seed Processing Plant shall:~~have:~~

(a) ~~be restricted to the cleaning of producer cereal crop seed;~~ have an air screen cleaner with no less than two screens; or a dimensional separator in combination with an air attachment;

(b) ~~operate the existing cleaning and processing equipment in the most efficient manner consistent with the equipment design and proper management for each kind of crop;~~ operate all seed processing equipment in the most efficient manner to prevent contamination of cleaned seed with other crop or weed seed;

(c) ~~prevent the contamination of seed being cleaned with other crop and/or weed seed by properly maintaining and cleaning the processing equipment, including flushing the equipment if necessary;~~ or may have a treater that will apply a uniform application of chemical to seed if seed is to be treated; the seed treater must be located outside of the facility;

~~(d) comply with the requirements of the Seed Dealers, Processers, and Warehousemen Act when cereal crop seed is sold, bartered or offered for sale.~~

(4) (a) ~~between July 1, 1976 and July 1, 1977, establish~~ enforce specific minimum equipment and/or purity standards for custom cereal processing plants. These plants shall comply with these standards by January 1, 1979. ~~Provided that,~~ The Department may issue a license variance not to exceed two years upon petition by the plant. The petition shall set forth that there are:

(i) significant economic problems ~~of the~~ for the plant in meeting the ~~standards~~ custom cereal processing plant standards;

(ii) contributing factors relative to the location of the plant ~~or~~ within a geographic area;

(iii) economic benefits provided by ~~the plant~~ custom cereal processing plants to ~~the area producers.~~ cereal crop producers within a geographic area.

(5) (a) provide appropriate storage space and storage conditions so that when agricultural seed is properly conditioned and placed in storage, it will not be contaminated nor deteriorated ~~beyond~~ under ~~that~~ normally ~~expected during~~ storage time;

(c) Custom Cereal Processing Plants shall comply with Section 3-803.2 when merchandising prelabeled and prebagged crop seed;

(d) apply methods and procedures for seed treating that shall meet Environmental Protection Agency Standards; Montana Department of Agriculture, Pesticide Standards for seed treating.

4-2.6(6)-S661 HANDLING PROCEDURES (4) ~~(aa) all storage and handling charges;~~

~~(bb)~~ (aa)
~~(cc)~~ (bb)
~~(dd)~~ (cc)
~~(ee)~~ (dd)

4-2.6(6)-S662 TYPES OF SEEDS THAT PROCESSING PLANTS ARE AUTHORIZED AND LICENSED TO CLEAN (3) Custom cereal processing plants ~~are~~ shall be restricted to the cleaning of non-certified producer cereal crop seed.

3. The reason for the changes in the above rules in to better clarify the language of the rules to comply with the pertinent sections of the law.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. W. Gordon McOmber, Director, Department of Agriculture, 1300 Cedar Street Airport Way - Bldg. West, Helena, Montana 59601.

5. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to Mr. W. Gordon McOmber before September 22, 1977.

6. If the Department receives requests for a public hearing on the proposed rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. You will be notified of a public hearing.

7. The authority of the Department to amend the rules is based on Section 3-805(2), R.C.M. 1947.

W. GORDON McOMBER, DIRECTOR

Certified to the Secretary of State August 15, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
FINANCIAL DIVISION

In the Matter of the Adoption of Rules 8-2.6(14)-S6100 and 8-2.6(14)-S6110 Relating to Applications under the Montana Electronic Funds Transfer Act	))))	NOTICE OF HEARING FOR ADOPTION OF RULES 8-2.6(14) -S6100 and 8-2.6(14)-S6110 (Application Procedure and Criteria for Authorization of Satellite Terminals)

TO: All Interested Persons

(1) On September 28, 1977, at 1:30 o'clock p.m., a public hearing will be held in the Governor's Reception Room of the State Capitol, Helena, Montana, to consider the adoption of Rules 8-2.6(14)-S6100 and 8-216(14)-S6110, relating to applications under the Montana Electronic Funds Transfer Act (Title 5, Chapter 17, R.C.M. 1947).

(2) The proposed rules do not replace or modify any sections currently found in the Montana Administrative Code.

(3) The proposed rules provide as follows:

8-2.6(14)-S6100 Application for Satellite Terminal Authorization

(1) Application for authorization to install and maintain an automated teller machine must be filed by a financial institution or a business entity owned by a financial institution or institutions. The application shall be made on forms provided by the Department and shall contain the following information in addition to any other information which the Department may determine to be necessary:

(a) The name and address of the financial institution making application.

(b) The proposed location of the automated teller machine.

(c) A general description of the area in which location is proposed and the manner of installation (e.g. free-standing, exterior wall, separate interior booth, etc.).

(d) The types of transactions which will be performed.

(e) The manner of operation, in detail, including whether the device is on-line or off-line.

(f) Whether it will be presently shared and the terms and conditions under which other financial institutions are participating or may participate in its use.

(g) The manufacturer and model of the machine.

(h) The distance from the proposed location to the principal places of business of each participating financial institution.

(i) The distance from the proposed location to the nearest facility or main banking house of a bank not sharing the machine.

(j) Safeguards against the possibility of error or fraud in the operation of the machine.

(k) Customer protection procedures, including disclosure of customer rights and liabilities.

(l) Insurance and security provisions protecting the machine and its users.

(m) Owner certification of compliance, as required by Section 5-1714, R.C.M. 1947.

(n) Completed specimen copies of all forms to be used in connection with the operation of the machine (e.g. transaction record, periodic account statement, customer information form, etc.)

(o) Statement of how personal identification numbers are selected for customers.

(2) Application for authorization to install, maintain and operate a point-of-sale terminal must be filed by the merchant whose place of business is the proposed location of the terminal. The application shall be made on forms provided by the Department and shall contain the following information in addition to any other information which the Department may determine to be necessary:

(a) The name and address of the merchant making application.

(b) A general description of the place of business where the terminal is to be located and a description of the location and manner of installation of the terminal within the place of business.

(c) The manner of operation in detail, including whether the terminal is on-line or off-line.

(d) The name, address and phone number of the person immediately responsible for supervision of use of the terminal.

(e) Whether it will be presently shared and the terms and conditions under which other financial institutions are participating or may participate in its use.

(f) The manufacturer and model number of the terminal.

(g) The distance from the proposed location to the principal places of business of each participating financial institution.

(h) Safeguards against the possibility of error or fraud in the operation of the machine.

(i) Customer protection procedures, including disclosure of customer rights and liabilities.

(j) Insurance and security provisions protecting the machine and its users.

(k) Evidence of compliance with Section 5-1715, R.C.M. 1947.

(l) Completed specimen copies of all forms to be used in connection with the operation of the machine (e.g. drafts and receipts).

(m) Statement of how personal identification numbers are selected for customers.

(3) Changes in the information required by this Section which occur subsequent to the receipt of authorization to maintain a satellite terminal shall be reported, before or at the time they occur, to the Department.

8-2.6(14)-S6110 Criteria for Authorization

The criteria for authorization of satellite terminals shall be whether installation, maintenance and operation of the terminal will conform to the requirements of Title 5, Chapter 17, R.C.M. 1947, and whether authorization will be consistent with the purposes expressed in Section 5-1702, R.C.M. 1947.

(4) These rules are proposed to implement Chapter No. 503, Laws of Montana 1977, as enacted by the 45th Legislature. The new law requires approval by the Department of Business Regulation for the installation, maintenance and operation of satellite terminals. The proposed rules establish the necessary application procedure and provide the criteria upon which Departmental rulings on applications will be based.

(5) James H. Wood, Esquire, 805 North Main, Helena, Montana 59601, has been designated by the Director of the Department to preside over and conduct the hearing.

(6) The authority of the Department to make the proposed rules is based on Section 5-1720, R.C.M. 1947.

Kent Kleinkopf, Director
Department of Business Regulation

Certified to the Secretary of State August 15, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
CONSUMER AFFAIRS DIVISION

In the Matter of the Adoption of Rules 8-2.4(18)-S4570 and 802.2(1)-P207, Relating to Notice of Cost of Hearing for Motor Vehicle Dealership Termination, Establishment or Noncontinuation	NOTICE OF PROPOSED ADOPTION OF RULES 8-2.4(18)-S4570 and 8-2.2(1)-P207 (Service and Costs of Hearing) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1977, the Department of Business Regulation proposes to adopt Rules 8-2.4(18)-S4570 and 8-2.2(1)-P207, relating to service of notice of hearing on parties to termination, establishment or noncontinuation of motor vehicle dealerships.

2. The proposed rules do not modify or replace any section currently found in the Montana Administrative Code.

3. The proposed rules provide as follows:

Section 8-2.4(18)-S4570 COSTS

Unless stated otherwise herein, costs of hearing shall be apportioned equally on the part of participants.

(1) Costs of calling witnesses, and costs of preparation of materials therefor, for the purposes of a hearing under this sub-chapter shall be borne by the party calling such witnesses.

(2) Costs of written transcriptions of testimony taken at the hearing shall be borne by the party requesting such transcriptions.

(3) All other costs shall be borne equally as stated herein.

Section 8-2.2(1)-P207 EXCEPTION - PERSONAL SERVICE

MAC 1-1.6(2)-P6310 provides for personal service. For the purposes of Section 51-605, R.C.M. 1947, relating to termination, noncontinuation or establishment of motor vehicle franchises, notice shall be provided as follows:

(1) Service by certified mail shall be given to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate or not continue;

(2) Service may be given by delivery of a copy of the franchisor's notice to such persons as the Department may determine appropriate;

(3) Service to all others shall be given by publication in a newspaper of general circulation in the county in which the franchisee sought to be established, terminated or not continued, is located and doing business.

4. These rules are proposed to implement Chapter Number 380 of the Laws of Montana 1977 as enacted by the 45th Legislative Session of the State of Montana. The new law requires that the Department of Business Regulation shall license motor vehicle manufacturers, distributors and importers doing business in the state of Montana, and provide for hearing in the case of protest in the event of a termination, establishment or noncontinuation of a motor vehicle dealership.

5. Interested persons may submit their data, views or arguments either orally or in writing to Mr. Kent Kleinkopf, Director, Department of Business Regulation, 805 North Main Street, Helena, Montana 59601, phone 449-3163. Written comments, in order to be considered, must be received by the Department not later than September 25, 1977.

6. If the Department receives requests for a public hearing on the proposed rules from more than ten percent (10%) or twenty-five (25) or more of the persons directly affected, a public hearing will be held at a later date. Notification will be made by publication in the Administrative Register and by direct notice to persons presenting timely requests for hearing.

7. The authority of the Department to make the proposed rules if based on Section 51-603, R.C.M. 1947.

Kent Kleinkopf

Kent Kleinkopf, Director
Department of Business Regulation

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

In the matter of the amendments to rules MAC 16-2.14(10)-S14340 and 16-2.14(10)-S14341, relating to subdivision review procedure and fees	))))	NOTICE OF PUBLIC HEARING FOR AMENDMENTS OF RULES MAC 16-2.14(10)-S14340 AND 16-2.14(10)-S14341 (Subdivisions — Review Procedure and Fees)

1. On Monday, September 26, 1977, at 9:00 a.m., a public hearing will be held in Rooms 142-143, Cogswell Building, Capitol Complex, Helena, Montana, to consider the amendments to MAC 16-2.14(10)-S14340 and 16-2.14 (10)-S14341 relating to subdivision review procedure and fees.

2. The proposed amendments replace the present language contained in the rules.

3. A complete copy of the proposed amendments may be obtained by contacting the Subdivision Bureau, Department of Health and Environmental Sciences, Board of Health Building, Capitol Complex, Helena, Montana, 59601 (phone: 449-3946). A summary of the proposed amendments follows:

(a) MAC 16-2.14(10)-S14340. This rule sets the standards utilized for subdivision review, and, as proposed, will include the following changes in language and substance:

(i) Definitions have been expanded. The definition of adequate water supply has been clarified; definition for the terms "lot", "parcel", multiple family sewerage and water supply systems and "usable area" have been added. [Subsection (1)].

(ii) The submittal requirements have been changed. The Department will require the following:

(aa) Lot layout including building locations and driveways where the lot has a questionable amount of usable area. [Subsection (2)(b)];

(ab) Two sets of plans of the lot layout, water supply and sewage and solid waste disposal systems. One copy will be reviewed and returned to the developer or agent. [Subsection (2)(e) and (6)(d)];

(ac) Evidence that an individual water system shall provide a sustained yield of at least eight (8) gallons per minute per dwelling. [Subsection (7)(d)];

(ad) Percolation test on every lot and drainfield replacement area. [Subsection (9)(c)];

(ae) Requested exceptions to be stated on the face of survey document. [Subsection (13)(i)].

(iii) Incomplete applications will be denied approval. The applicant can resubmit when the additional information becomes available. [Subsection (3)(b)].

(iv) The Department will enter into written agreements with local governing bodies having qualified personnel authorizing the latter to do local review of subdivisions of five (5) or fewer parcels. [Subsection (3)(d)].

(v) Mobile home trailer court and campground water supply, sewage disposal and solid waste disposal plans shall be reviewed under the requirements of this rule. [Subsection (4)].

The present rule states that review of the above will be pursuant to MAC 16-2.14(2)-S14160. Trailer Courts.

(vi) Maximum distance requirements for hooking up to a municipal system will be five hundred (500) feet and will apply to major subdivisions only. [Subsection (6)(a)].

(vii) Chemical tests of water need not be obtained from test wells on the property if typical results can be obtained from existing wells. [Subsection (7)(a)(iii)].

(b) MAC 16-2.14(10)-S14341. The proposed amendments increase the subdivision review fee and establish a schedule for reimbursement to local government. The local government reimbursement schedule will return approximately 40% of the review money to the local level.

4. The amendments to MAC 16-2.14(10)-S14340 are being proposed to incorporate amendments to the Sanitation in Subdivisions Act passed by the 1977 Legislature (specifically, Sections 69-5002, 69-5003, 69-5005 and the addition of Section 69-5010) to modify subdivision application requirements and to clarify the language.

The amendment to MAC 16-2.14(10)-S14341 is being proposed to take into account the increase in the allowable lot review fee to twenty-five dollars ($25) by the 1977 Legislature (Section 69-5005). The rule also addresses fee distribution to local governments as required by Section 69-5005.

5. Interested persons may present their data, views or arguments, whether orally or in writing to the Subdivision Bureau at the address noted in number 3 above, or at the hearing.

6. Dr. A. C. Knight, M.D., Director of the Department of Health and Environmental Sciences will preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on Section 69-5005, R.C.M., 1947.

A. C. Knight

A. C. KNIGHT, M.D., F.C.C.P.
Director

Certified to the Secretary of State August 15, 19 77

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

In the matter of the adoption of MAC 16-2.14(2)-S14101, relating to a statewide solid waste management program.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF MAC 16-2.14(2)-S14101 (Solid Waste Management Program - Grants and Loans to Local Governments)

1. On September 30, 1977, at 2:30 p.m., a public hearing will be held in Rooms 142-143, Cogswell Building, Capitol Complex, Helena, Montana, to consider the proposed adoption of MAC 16-2.14(2)-S14101 relating to a statewide solid waste management program.

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

3. The proposed rule provides as follows:

"MAC 16-2.14(2)-S14101 SOLID WASTE MANAGEMENT PROGRAM - GRANTS AND LOANS TO LOCAL GOVERNMENTS."

(1) Definitions.

(a) "Grants" means front-end planning funds as defined in Section 69-4013 (3), R.C.M. 1947.

(b) "Loans" means front-end organizational funds as defined in Section 69-4013 (4), R.C.M. 1947.

(2) Pre-application conference.

(a) Prospective applicants may request the department to schedule a pre-application conference to discuss the proposed solid waste management system before an application is filed with the department. The purpose of this conference is to facilitate the development of an application that meets the requirements of the Act and the rules. Also, any questions or comments relating to the proposed project can be discussed informally at this time to expedite the application and reduce the amount of correspondence that may otherwise be necessary. A statement made by any department official at the pre-application conference shall not be deemed an order or decision of the department.

(3) Application for loans and grants--general requirements.

(a) No application form will be provided. However, to facilitate uniformity, the application shall:

(i) be typed, printed, or otherwise legibly reproduced on 8 1/2 x 11 inch paper. Maps, drawings, charts, or other documents bound in an application should be cut or folded to 8 1/2 x 11 inch size. Maps, drawings, or charts may accompany an application as separate exhibits;

(ii) provide a one-inch margin on all typed or offset pages;

(iii) be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits should be identified as "Exhibit ____," and if comprising more than one sheet should be numbered "Sheet ____ of ____";

(iv) state the name, title, telephone number, and post office address of the person to whom communication in regard to the application should be made;

(v) contain a statement agreeing that all materials submitted by the applicant to the department are subject to public scrutiny; and

(vi) contain a statement agreeing to keep and maintain adequate financial records for the project in accordance with department accounting procedures.

(b) The department will review the application to determine whether it is in compliance with the Act and rules. If the department determines that the application is not in compliance with the Act and rules, the department will reject the application and notify the applicant in writing, listing the deficiencies. The application may be resubmitted after corrections are made.

(c) At the request of the department, the applicant shall provide any additional documentation or information as the department may deem necessary to insure compliance with the provisions of the Act and rules.

(d) If an applicant desires to change or add to an application after it is formally filed, the applicant shall inform the department in writing as soon as possible of the change or addition. If the change or addition will result in a substantial change in the amount of funding requested or the goals and objectives stated in the original application, the department will consider the change or addition to constitute a new application.

(e) Applications for grants or loans must be submitted to the department no later than October 31, 1978 in order to receive funding for the 1977-1978 biennium. The department may extend the deadline if a potential applicant shows good cause why the extension is necessary.

(f) If two or more local governments make application for a joint solid waste management system, a single application shall be executed by all participating local governments. In addition, such application shall be accompanied by a resolution of each local government setting forth their respective responsibilities and commitments.

(g) If the solid waste management system includes the processing or disposal of solid waste generated by any local government other than the applicant, documentation acceptable to the department shall be submitted to the department setting forth the respective responsibilities and commitments of all parties involved in the project.

(h) Only local governments are eligible to apply for loans or grants under the Act.

(4) Grant applications--front-end planning funds.

(a) Grant applications shall include a statement of project intent and scope.

(b) A proposed budget must be submitted showing how grant monies are to be expended.

(c) A statement of intent to implement the solid waste management system investigated shall be included if such planning shows the solid waste management system to be economically feasible.

(5) Criteria for review of front-end planning applications.

(a) The department will review applications on a first-come, first-serve basis, taking into consideration the plan that:

(i) includes the largest population;

(ii) encompasses the largest number of local governments;

(iii) to the fullest extent possible utilizes private enterprise for planning purposes; and

(iv) addresses the most pressing environmental and public health concerns.

(6) Eligibility for loan--general eligibility requirements.

(a) Before any loan will be granted by the department, the development agency must establish to the satisfaction of the department the following:

(i) that the proposed solid waste disposal/processing system or the proposed resource recovery system, or both, are compatible with the state solid waste management plan and the plan has been adopted by the development agency or all its constituents;

(ii) that the solid waste upon which the development project is based will be delivered to the project;

(iii) that the solid waste management system will not jeopardize the economic stability of existing solid waste disposal/processing systems or resource recovery systems which have already been approved by the department as part of an officially adopted solid waste management plan.

(iv) that all federal and state permits or approvals necessary to implement the solid waste management system have been obtained; and

(v) that to the fullest extent possible private enterprise will be utilized for design, management, construction and operation of the facilities required to implement areawide solid waste management systems.

(b) If studies indicate a type of resource recovery is more feasible than a landfill program, a local government may choose not to implement the resource recovery alternative and still be eligible for a loan pursuant to the Act provided the local government has held a public meeting to discuss its decision.

(c) Receipt of a loan by a local government under the Act will not relieve the local government of the obligation of complying with all federal and state laws, regulations, and standards applicable to the project.

(7) Loan application.

(a) Loan applications shall include but not be limited

to the following:

(i) a proposed budget showing how loan monies will be expended;

(ii) an economic analysis of the proposed solid waste management system;

(iii) a project timetable;

(iv) a statement of the project's environmental compatibility;

(v) institutional arrangements relating to ownership, operational participation, legal authority by which the system is developed, acknowledgement letters from the governing pollution control agencies, contractual arrangements listing performance bonds, damages, termination or agreements, and all other contractual arrangements;

(vi) system coordination of participants, noting collection and transport systems, pre-processing requirements, final disposal responsibility, and any other systems necessary for the systematic control of the waste processing; and

(vii) management systems delineating an organizational structure, establishing necessary technical services for operation, creating a project monitoring and evaluation system, and any other management requirements for the control of the complete system.

(8) Order of funding projects--front-end planning and organizational funds.

(a) Application for loans. The department will establish and maintain a tentative approval list of applications from local governments requesting loans which represent the candidates for funding. Applicants which are on the tentative approval list will be funded in the order in which they complete the necessary documentation and secure all permits and approvals and commitments for loan.

(b) Application for grants. The department will apply the criteria and guidelines set forth in the Act and rules and will rank those grant applications which it has determined to merit funding on a priority list.

(9) Project changes--department approval requirements.

(a) After a project has been given tentative approval, or placed on a priority list, whichever is applicable, written approval of the department is required for project changes which:

(i) alter the approved scope of the project;

(ii) substantially alter the design of the project; or

(iii) increase the amount of funds needed to complete the project.

(b) Approval of project changes pursuant to this section shall not commit or obligate the state to increases in the amount of the grant or loan or both or disbursements thereunder unless such increase is agreed to by the department.

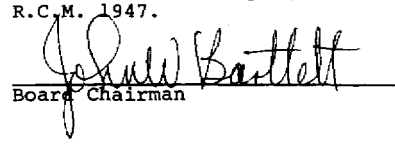
(10) Withholding of payment. If the local government, prior to receipt of the total disbursement for a loan or grant, fails to comply with the Act, rules, or any other law of the

state applicable to the development project, the department may, after giving reasonable notice to the local government and contractor, withhold all or any portion of further disbursements to the local government pending compliance. However, payments to the contractor shall be authorized for all work approved by the local government and performed by the contractor prior to the date of such notice.

4. Senate Bill 175, passed by the 1977 legislature authorizes grants and loans to local governments to set up solid waste management systems consistent with the statewide plan developed by the department. That legislation requires the department to adopt rules governing the procedure for, granting, and making agreements concerning grants and loans to local governments, as well as rules governing submission of plans for local solid waste management systems. The above rules are intended to fulfill that requirement.

5. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it to the Solid Waste Management Bureau, 1400-11th Avenue, Helena, Montana (Telephone: 449-2821).

6. The authority of the board to make the proposed rule is based on Section 69-4015, R.C.M. 1947.



Board Chairman

Certified to the Secretary of State August 15, 1977

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

In the matter of the adoption of the state plan for solid waste and hazardous waste management and resource recovery	)))))	NOTICE OF PUBLIC HEARING ON ADOPTION OF STATEWIDE SOLID WASTE MANAGEMENT PLAN

1. On September 30, 1977, at 1:30 p.m., a public hearing will be held in Rooms 142-143, Cogswell Building, Capitol Complex, Helena, Montana, to consider the proposed adoption of the statewide plan for management of solid waste, including hazardous waste, and for resource recovery.

2. Complete copies of the state plan are available from the Solid Waste Management Bureau, 1400 Eleventh Avenue, Helena, Montana 59601 (phone: 449-2821). A summary of the proposed plan follows:

The 1977 Montana State Plan for Solid Waste and Hazardous Waste Management and Resource Recovery provides the planning and implementation procedures necessary to carry out a comprehensive statewide approach to areawide solid waste and hazardous waste management. The state plan identifies waste management planning regions and identifies both state and local agencies responsible for waste management planning and implementation.

The plan also considers alternative waste management systems and assures that they will be considered in any future solid waste management plan. These alternative systems include waste reduction and source separation/recycling.

The plan identifies the Department of Health and Environmental Sciences as the responsible agency for administering federal and state monies allocated for solid waste management planning and organizational activities. It also establishes the procedures for allocating these monies to local government entities.

The plan presents a schedule of remedial measures to assure that, within a set time period, all solid waste disposal sites in the state will qualify as properly operated sanitary landfills. Also, a model procedure for implementation is included in the plan. The model procedures are intended to clearly define the lines of responsibility during the process of planning and implementing solid waste management systems in Montana.

The hazardous waste portion of the state plan provides for the licensing of hazardous waste management facilities, control over the generation and transport of hazardous waste, defining of the state's waste pesticide disposal program, and explanation of services available from the state in the form of technical assistance in hazardous waste disposal.

3. Senate Bill 175, passed by the 1977 legislature,

requires the Department of Health and Environmental Science to develop a state solid waste management and resource recovery plan, to be adopted by the Board of Health and Environmental Sciences after circulation of the proposed plan and public hearings throughout the state. The law requires the Board as well to have a public hearing on the plan before adopting the final version. That hearing is to be pursuant to the rulemaking procedures outlined in the Administrative Procedure Act. This notice is to comply with that requirement.

4. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it by contacting the Solid Waste Management Bureau, 1400 Eleventh Avenue, Helena, Montana 59601 (Phone: 449-2821).

5. The authority of the board to adopt the state plan is based on section 69-4015, R.C.M. 1947.

John D. Bartlett
Board Chairman

Certified to the Secretary of State August 15, 1977.

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

In the matter of the adoption of Rule 16-2.14(10)-S14381, governing public water supplies.	)))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE 16-2.14(10)-S14381 (Public Water Supplies)

1. On September 30, 1977, at 10:00 a.m., a public hearing will be held in Rooms 142-143, Cogswell Building, Capitol Complex, Helena, Montana to consider the adoption of Rule 16-2.14(10)-S14381, setting standards for public water supply systems.

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

3. The proposed rule provides as follows:

Rule 16-2.14(10)-S14381, Public Water Supplies.

(1) Purpose. The purpose of this rule is to assure the safety of public water supplies with respect to bacteriological, chemical, and radiological quality and to further efficient processing through control tests, laboratory checks, operating records and reports of public water supply systems.

(2) Definitions. In this rule, the following terms shall have the meanings or interpretations indicated below and shall be used in conjunction with and supplemental to those definitions contained in Section 69-4902.

(a) "Act" means Title 69, Chapter 49, R.C.M. 1947.

(b) "Approved laboratory" means a laboratory certified and approved by the department to analyze water samples to determine their compliance with maximum allowable levels.

(c) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(d) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(e) "EPA" means the United States Environmental Protection Agency.

(f) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(g) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(h) "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-239.

(i) "Maximum contaminant level" means the maximum per-

missible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(j) "Person" means an individual, corporation, company, association, partnership, state, municipality, or federal agency.

(k) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(l) "Public water supply" or "public water system" means a system for the delivery to the public of piped water for human consumption, if such a system serves at least ten families or regularly serves at least 25 persons daily at least 60 days out of the calendar year.

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

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

(m) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

(n) "SDWA" means Safe Drinking Water Act (Pub.L. 93-523).

(o) "Sanitary survey" means an onsite review for the purpose of evaluating the adequacy for producing and distributing safe drinking water of the water source, facilities, equipment, operation and maintenance of a public water system.

(p) "Satisfactory bacteriological sample" means less than one coliform found per 100 ml sample.

(q) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(r) "State" means the agency of the state government which has jurisdiction over public water systems. During any period when a state does not have primary enforcement responsibility pursuant to section 1413 of the SDWA, the term "state" means the Regional Administrator, U.S. Environmental Protection Agency.

(s) "Supplier of water" means any person who owns or operates a public water system.

(3) Standards of chemical and radiological quality. All analyses to determine compliance shall be done in an approved laboratory according to methods established by "Standard Methods for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes", EPA, or approved equivalents. Analyses shall be made on

treated water as furnished to the consumer. The following shall be the maximum allowable levels for chemical and radiological quality.

(a) Maximum allowable levels for inorganic chemicals.

Constituent	Level, milligrams per liter
Arsenic	0.05
Barium	1.
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.
Selenium	0.01
Silver	0.05
Fluoride	0.05

(b) Maximum allowable levels for organic chemicals.

	Level, milligrams per liter
(i) Chlorinated hydrocarbons:	
Endrim (1,2,3,4,10,10-hexachloro-6, 7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1, 4-endo-5,8-dimethano naphthalene).	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclo-hexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxphenyl] ethane.	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine).	0.005
(ii) Chlorophenoxys:	
2,4-D (2,4-Dichlorophenoxy-acetic acid).	0.1
2,4,5-TP Silves (2,4,5-Tri chlorophenoxy-propionic acid).	0.01

(c) Maximum allowable levels for turbidity. This standard shall apply only to systems which use surface water. The maximum allowable levels for turbidity in drinking water, measured at a representative entry point(s) to the distribution system are:

(i) One turbidity unit (TU), as determined by a monthly average except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

(aa) interfere with disinfection;

(ab) prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(ac) interfere with microbiological determinations.

(ii) Five turbidity units based on an average for two consecutive days.

(iii) If results of turbidity analyses indicate the maximum contaminant level has been exceeded, a second sample shall be taken within one hour. The repeat sample, and not the

initial one, shall be used in calculating the monthly average.

(d) Maximum allowable levels for radiological contaminants.

Constituent	Level p Ci per liter
Combined radium-226 and radium-228	5
Gross alpha particle activity (including radium-226 but excluding radon and uranium)	15
Tritium	20,000
Strontium-90	8
Gross beta radioactivity	50

The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

(e) Verification of excessive chemical level. When the results of a chemical analysis indicate that the level of any constituent exceeds the maximum allowable level at least three additional samples shall be collected within one month of notification to the department to determine if the water served to the public exceeds the maximum allowable level.

(f) Water supply reporting and notification--community public water supply. Any community public water supply facility which:

(i) violates maximum allowable levels,
(ii) fails to use prescribed treatment techniques,
(iii) is granted a variance,
(iv) fails to comply with a variance schedule, or
(v) fails to perform monitoring

is required to issue a notice to its customers with the next water bill or by written notice if water bill is issued quarterly or not issued at all, and repeated at no less than quarterly intervals until corrected.

In the case of a failure to comply with a maximum contaminant level which is not corrected promptly after discovery, the supplier of water must give other general public notice, in a manner approved by the department. This notice may consist of newspaper advertisement, press release, or other appropriate means in a form approved by the department.

(g) Water supply reporting and notification--non-community public water supply system. Any non-community public water supply system which:

(i) violates maximum allowable levels,
(ii) fails to use prescribed treatment techniques,
(iii) is granted a variance,
(iv) fails to comply with a variance schedule, or
(v) fails to perform monitoring

is required to give conspicuous notice of same to the consumers served by the system in a form approved by the department.

Any notice given in compliance with this rule shall inform the consumers and shall not use unduly technical language or

unduly small print in a form approved by the department.

In the event of an imminent threat to public health, the department may require any measure necessary to protect public health.

(4) Control tests. These tests permit the operator of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. These control tests shall be performed in accordance with procedures approved by the department.

Tests for chlorine residual in the distribution system shall be made at selected points and changed regularly so as to cover the system completely at least each week.

A minimum of two tests daily shall be made for systems employing full time chlorination, one at the point of application and one in the distribution system.

(a) Surface supplies. Operators of water treatment plants utilizing in their operation coagulation, settling, softening, or filtration shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit monthly to the department:

Chlorine residual
Alkalinity--Phenolphthalein (P)
Alkalinity--Total
pH value
Hardness (where softening is utilized)
Turbidity
Stability to calcium carbonate (weekly)

Operators of water suppliers utilizing disinfection with or without sedimentation shall perform at least daily the following checmical control tests on the treated water, list them on a report form approved by the department and submit monthly to the department:

Chlorine residual
pH value
Turbidity

(b) Ground water supplies. A chlorine residual test (where chlorination is practiced) is required for water systems utilizing disinfection. It should be listed as indicated on forms approved by the department and submitted to the department monthly.

(c) Special tests. Special tests may be required for water supplies exceeding amounts specified below:

Constituent	Maximum amount
Iron	0.3 mg/l
Manganese	0.05 mg/l
Chloride	250 mg/l
Sulphate	250 mg/l
Total Dissolved Solids	500 mg/l

(d) Determining necessity of full time chlorination. Full time chlorination is mandatory where the source of water is from lakes, reservoirs, streams or springs. Full time chlorination of the water in a ground water supply system must be employed whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in subsections (5)(a) and (5)(b) of this rule. Full time chlorination is also mandatory for any new well in a system where the initial bacteriological tests of the well do not show a safe record with the department for three consecutive samples taken on different days after completion and testing of the well.

(e) Fluoridation. Where fluoridation is practiced, laboratory analysis shall be made at least three times daily of the water before and after fluoridation to assure an average fluoride content of not over 1.5 ppm in the finished water, using a control range from 0.7 ppm lower limits to 1.5 ppm upper limit. Proper records of the analyses shall be kept on file and a copy forwarded to the department monthly. One sample of treated water shall be submitted monthly to the department for analysis for fluoride content.

(5) Laboratory checks. In order to insure the safety of water delivered to the consumers, it is essential that there be a record of laboratory examinations of the water sufficient to show it is safe with respect to both bacteriological quality and other maximum allowable levels.

(a) Water samples for bacteriological quality. The minimum number of samples to be collected from a public water supply and submitted for examination shall be in accordance with the following table:

Population served:	Minimum number of samples per month
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 9,400	10
9,401 to 10,300	11
10,301 to 11,100	12
11,101 to 12,000	13
12,001 to 12,900	14
12,901 to 13,700	15
13,701 to 14,600	16
14,601 to 15,500	17
15,501 to 16,300	18
16,301 to 17,200	19
17,201 to 18,100	20

18,101 to 18,900	21
18,901 to 19,800	22
19,801 to 20,700	23
20,701 to 21,500	24
21,501 to 22,300	25
22,301 to 23,200	26
23,201 to 24,000	27
24,001 to 24,900	28
24,901 to 25,000	29
25,001 to 28,000	30
28,001 to 33,000	35
33,001 to 37,000	40
37,001 to 41,000	45
41,001 to 46,000	50
46,001 to 50,000	55
50,001 to 54,000	60
54,001 to 59,000	65
59,001 to 64,000	70
64,001 to 70,000	75
70,001 to 76,000	80
76,001 to 83,000	85
83,001 to 90,000	90
90,001 to 96,000	95
96,001 to 111,000	100

(i) Based on a history of no coliform bacterial contamination and on a sanitary survey by the department or its authorized representative showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a community water system serving 25 to 500 persons, with written permission from the department, may reduce the sampling frequency as follows:

25 to 100	1 sample per quarter
101 to 500	2 samples per quarter

(ii) The supplier of water is responsible for the proper collection and submission of these samples to an approved laboratory, or to the state laboratory at the times designated by the department. Department personnel, where their programs allow, may assist in the collection, submission and analysis of the samples. Where less than four samples are taken monthly, the sampling points shall be rotated so as to cover all of the system every three months.

(iii) The supplier of water for a non-community water system shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public. Such sampling shall begin June 24, 1979. If the department, on the basis of a sanitary survey, determines that some other frequency is more appropriate, that frequency shall be the frequency required under this rule. Such frequency shall be confirmed or changed on the basis of subsequent surveys.

(b) Maximum allowable micro-biological levels. The max-

imum allowable microbiological levels shall be as follows:

(i) When the membrane filter technique is used:

(aa) 4 per 100 ml in more than one sample when less than 20 samples are examined per month; or

(ab) 4 per 100 ml in more than 5% of the samples when 20 ore more samples are examined per month;

(ac) 1 per 100 ml as the arithmetic mean of all validated samples examined per month.

(ii) When the 10 ml fermentaiton tube method is used, coliform bacteria shall not be present in any of the following:

(aa) More than 1% of the portions in any month;

(ab) 3 portions in more than one sample when less than 20 samples are examined per month;

(ac) 3 portions in more than 5% of the samples when 20 or more samples are examined per month.

(iii) When coliform bacteria are found, daily samples from the same sampling point shall be collected and submitted promptly and sampling continued until the results obtained from at least two consecutive samples are shown to be satisfactory.

(c) Special samples. Under special conditions, additional samples may be required from time to time by the department. Such samples may be to determine adequacy of disinfection following line installation, replacement, or repair. Samples may also be required for determination of adequacy of source, storage, treatment or distribution of water to the public. These special samples shall not be used to determine compliance with bacteriological requirements.

(d) Water samples for chemical and radiological quality. Every new source of supply, both surface and ground, added to a public water system shall be analyzed for chemical and radiological content by an approved laboratory and the results submitted to the department before being connected to the system. Water as served to the consumers, which may be a mixture from several sources, shall be analyzed every three years for community ground water supplies and annually for community surface water supplies for chemical content.

Water as served to the consumer from community systems shall be analyzed initially by June 24, 1979, and every four years thereafter for radiological content by analyzing four consecutive quarterly samples or a composite of four consecutive quarterly samples.

Analysis for man-made beta and photon emitters shall be required for community systems using surface water sources and serving more than 100,000 persons and such other water systems as required by the department.

Nitrates shall be determined for non-community systems annually. Systems which purchase water from other systems shall be considered extensions of the original system and shall not be required to perform chemical or radiological analyses to determine compliance with maximum allowable levels unless

specifically required by the department due to known or potential problems.

The scope of the analysis shall include all parameters indicated in subsection (3) and in the following list. Surface water samples shall be collected during that portion of the year when pesticides are commonly in use in the area.

Calcium	Manganese
Magnesium	Sulfate
Sodium	Dissolved Solids
Potassium	Total Hardness
Chloride	Alkalinity Phenolphthalein (P)
Iron	
pH value	Alkalinity Total

Department personnel, where their programs allow, may assist in the collection, submission and analysis of the samples.

(e) Filing of records. The records of all laboratory checks and control tests shall be kept on file for a period of ten years by the supplier of water and shall be available for inspection by the department or its authorized representative. The records must indicate when, where, and by whom the tests were made.

(f) Laboratory fees.

(i) Fees for analysis made by the department laboratories are as follows:

Standard microbiological analyses (total coliform)	$4 per test
Standard inorganic analyses including metals--common cations and anions	$72 per test
Organic analyses (pesticides)	$45 per test
Radiological analyses	$60 per test

(ii) Annual billing will be made for the period July 1 through June 30 immediately following the year for which services were rendered. The supplier of water may have water samples analyzed by any laboratory certified by the department provided that at least 10% of the samples for bacteriological examination are tested by the department laboratory.

(iii) Charges for chemical analyses performed on less than an annual basis will be prorated as an annual charge over the time period between analyses.

(6) Operating records and reports. Accurate and adequate records must be maintained at all water plants and for all water systems. Complete records shall be made available upon request to managers, engineers, attorneys and others concerned with the needs and obligations to consumers.

(a) Preparation of records. A daily record must be kept of the control tests required in subsection (4). The bacteriological checks required in subsection (5) are to be listed on the dates samples. The records on report forms approved by the department should be prepared in duplicate by the person in charge of a water supply. The original shall be forwarded to the department no later than the tenth day of the

following month.

(b) Surface waters. Operators of water treatment plants utilizing conventional coagulation, settling, softening, or filtration shall keep a daily record of the operations performed in the treatment process together with observations, costs and occurrences related to the operation of the plant, in addition to the control tests and laboratory checks previously described.

(c) Ground water systems. Operators of ground water systems shall keep a daily record of all well operations and maintenance of the system, in addition to the control tests and laboratory checks required for ground water supplies.

(d) Systems which purchase water. Operators of community systems which purchase water shall keep a monthly record of the operation and maintenance of the system in addition to required laboratory checks.

(7) The supplier of water for community systems shall designate no later than thirty days after the effective date of this rule, a person or persons who shall be responsible for contact and communications with the department in matters relating to system alteration and construction, monitoring and sampling, maintenance, operation, record keeping, and reporting. The supplier of water for non-community systems shall designate and notify the department by June 24, 1979. The supplier of water shall notify the department of his designee no later than thirty days after the designation. Any change in assigned responsibilities or designated persons shall be promptly reported to the department.

(8) Variances. The owner of a water system may request a variance from the standards of chemical or radiological quality or control tests. Such variances may be issued, provided no great health risk is imposed on the users of the system, upon the following grounds:

(a) The department may authorize a variance from a maximum contaminant level or treatment technique when:

(i) The raw water sources which are reasonably available to the system cannot meet the maximum contaminant levels specified in these regulations despite application of the best technology, treatment techniques, or other means, which the department finds are generally available (taking costs into consideration);

(ii) The concentration of the contaminant, or contaminants, for which the maximum contaminant level is exceeded by granting such variance, will not result in unreasonable risk to health; and

(iii) Within one year of the date the variance is granted, a schedule for compliance, or increments of compliance, is issued and the owner of the supply agrees to implement such schedule.

(b) The department may issue a variance to any public water supply system from any requirement respecting a maximum

contaminant level or treatment technique, or from both upon finding that:

(i) due to compelling factors, which may include economic factors, the public water system is unable to comply with such contaminant level or treatment technique;

(ii) the public water system was in operation on the effective date of such contaminant level or treatment technique regulation;

(iii) the granting of the variance will not result in unreasonable risk to health, and

(iv) within one year of the date the variance is granted, a schedule for compliance, or increments of compliance, is issued and the supplier of water agrees to implement such schedule.

(c) Procedure for variance. Action to consider a variance from the requirements contained in this rule may be initiated by the department or by the supplier of water through a formal request submitted to the department. Before a variance proposed to be granted by the department may take effect, the department shall provide notice and opportunity for public hearing on the proposal. The conditions for issuing the variance must be no less stringent than conditions under which variances may be granted under the provisions of the SDWA.

Notice of a proposed variance must be published in a newspaper of general circulation in the geographical area affected and shall include the following:

(i) Statement of opportunity available to any interested member of the public to request a public hearing within 15 days after the above notice is published;

(ii) Address and phone of the Water Quality Bureau.

If a request for public hearing is made, notice of the hearing date must be published in the same newspaper at least 15 days prior to the hearing.

If the department denies a request for a variance, the applicant has the right to a hearing before the Board of Health and Environmental Sciences. If a hearing is desired, the applicant must request it in writing, sent to the Water Quality Bureau, Capitol Station, Helena, Montana 59601, within 15 days after receiving notice that the request for a variance was denied. Such a hearing will be subject to the rulesfor contested cases,as set out in the Montana Administrative Procedure Act.

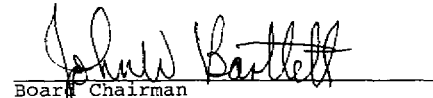
The above procedures shall apply to prescription of a compliance schedule for conforming to the requirements of these rules. In no case shall a variance schedule extend beyond January 1, 1981, unless the public water supply system has entered into an enforceable agreement to become part of a regional water system, in which case the variance may be extended for two additional years.

4. Senate Bill 269, passed by the 1977 legislature, re-

quires the Board of Health and Environmental Sciences to adopt rules and standards for public water supplies, concerning, but not limited to, maximum contaminant levels, laboratory fees, monitoring, variances, collection and analysis of drinking water. This rule complies with that mandate. Furthermore, this rule is being proposed so that the State of Montana may acquire primary enforcement responsibility for public water systems.

5. Interested persons may present their data, views, or arguments, whether orally or in writing, either at the hearing or prior to it to the Water Quality Bureau, Capitol Station, Helena, Montana 59601 (phone: 449-2407).

6. The authority of the board to make the proposed rule is based on section 69-4903, R.C.M. 1947.



Board Chairman

Certified to the Secretary of State August 15, 1977.

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

In the matter of the adoption of Rule 16-2.14(10)-S14321, requiring approval of plans for public water and sewer systems, and the repeal of Rule 16-2.14(10)-S14320, plans for sewer systems.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE 16-2.14(10)-S14321 (Plans for Public Water and Sewer Systems) AND REPEAL OF RULE 16-2.14(10)-S14320 (Plans for Sewer Systems)

1. On September 30, 1977, at 10:00 a.m., a public hearing will be held in Rooms 142-143, Cogswell Building, Capitol Complex, Helena, Montana, to consider the adoption of Rule 16-2.14(10)-S14321, setting standards for approval of public water and sewer systems, and repeal of Rule 16-2.14(10)-S14320, requiring plans for sewer systems.

2. The proposed rule replaces entirely the rule to be repealed and adds coverage of water as well as sewer systems. The rule for consideration for repeal is found on page 16-332 of the Administrative Rules of Montana.

3. The rule proposed for adoption provides as follows:

Rule 16-2.14(10)-S14321, Plans for Public Water and Sewer Systems.

(a) Before a person commences construction of a new public water or sewer system or major alteration or extension of an existing public water or sewer system, an engineering report along with necessary plans and specifications for the public water or sewer system shall be submitted to the department for review and approval.

(b) Upon receipt of plans and specifications, the department shall notify the person within sixty (60) days if the material is satisfactory, and if not, what additional information is required.

(c) If additional information is needed, no further processing will be made until all requested information is received.

(d) The comprehensive engineering report on proposed water or sewer systems shall be typewritten on letter-sized paper and the sheets firmly bound together. The comprehensive report and plans and specifications for a proposed water system shall be prepared in accordance with the format and criteria set forth in the Recommended Standards for Water Works prepared by the Great Lakes Upper Mississippi River Board of State Sanitary Engineers in 1974, or subsequent editions. The comprehensive report and plans and specifications for sewage systems shall be prepared in accordance with the format and criteria set forth in the 1971 Revised Version of the Recommended Standards for Sewage Works or subsequent editions.

(e) Small water systems for domestic supply without provisions for firefighting or irrigation flows may use an alter-

nate design for small water systems as set forth in "The Design of Small Water Systems" by Joseph A. Salvato, Jr., P.E., produced by the Health Education Service of the State of New York, in 1958.

(f) To the extent practicable, a person shall avoid locating part or all of the new or expanded facility at a site which:

(i) is subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or a portion thereof; or

(ii) except for intake structures and source wells, is within the flood plane of a 100-year flood. Water wells located in the 100-year flood plane shall have the casing extended at least four feet above the maximum highest flood elevation.

4. This rule is being proposed to cover plans for sewer systems, which are now covered by Rule 16-2.14(10)-S14320 (being considered for repeal), and plans for public water systems as well. The revisions pertaining to plans for sewer systems are extensive. Therefore, one new rule is being proposed to include both plans for public water systems and sewer systems.

5. Interested persons may present their data, views or arguments , whether orally or in writing, either at the hearing or prior to it to the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana 59601 (phone: 449-2407).

6. The authority of the board to make the proposed rule and to repeal the present rule is based on section 69-4903, R.C.M. 1947.

John W. Bartlett
Board Chairman

Certified to the Secretary of State August 15, 1977.

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

In the matter of the repeal of Rule 16-2.14(10)-S14350, concerning investigation of ground-water supplies, and the repeal of Rule 16-2.14(10)-S14360, concerning investigation of surface water supplies	NOTICE OF PUBLIC HEARING FOR REPEAL OF RULE 16-2.14(10)-S14350 (Groundwater Supply, Investigation) AND RULE 16-2.14(10)-S14360 (Surface Water Supply, Investigation)

1. On September 30, 1977, at 10:00 a.m., a public hearing will be held in Rooms 142-143, Cogswell Building, Capitol Complex, Helena, Montana, to consider the repeal of Rules 16-2.14(10)-S14350 and 16-2.14(10)-S14360, dealing with investigation of ground and surface water supplies.

2. The rules for consideration for repeal are found on page 16-343 of the Administrative Rules of Montana.

3. Departmental Notice No. 16-2-79, contained in this month's issue of the Montana Administrative Register, deals with the proposed adoption of a comprehensive rule dealing with public drinking water. The subject matter of the two rules proposed for repeal and named above has been incorporated into the rule proposed to be adopted. If the public drinking water rule is adopted (proposed Rule 16-2.14(10)-S14381), the above two rules would be superfluous and are therefore being considered for repeal.

4. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it to the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana, 59601 (phone: 449-2407).

5. The authority of the department to repeal the rule is based on Section 69-4903, R.C.M. 1947.

John W. Bartlett
Board Chairman

Certified to the Secretary of State August 15 1977

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement the Certification System of Alcohol and Drug Counselors.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (CERTIFICATION OF COUNSELORS)

TO: All Interested Persons

1. On September 15, 1977, at 1:00 p.m. at the Cascade County Courthouse, Great Falls, Montana; September 16, 1977, at 10:00 a.m. at the YMCA Building, Banquet Room, Butte, Montana; September 20, 1977, at 10:30 a.m. at the Courthouse, Glendive, Montana and at 2:00 p.m. at Library Conference Room, Billings, Montana; and September 22, 1977, at 2:00 p.m. at the County Courthouse, Polson, Montana a public hearing will be held to consider adoption of Rules providing certification of alcohol and drug counselors.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rules read as follows:

Rule I. HOW THE CERTIFICATION BOARD IS CREATED. The Substance Abuse Certification Board shall consist of appointees by the Director of the Department of Institutions. Appointees shall serve a minimum of one (1) year and a maximum of three (3) years.

This Board is created for the purpose of reviewing, maintaining, and making specific recommendations to and for the counselor certification program as maintained by the State Alcohol and Drug Abuse Division, Department of Institutions. Said Board shall review and make decisions regarding the appropriation of each applicant to be certified, either provisionally or fully. All applicant requests and subsequent material comes before the Board for a decision on the appropriateness and eligibility of the candidate.

This Board shall operate in concert with the Alcohol and Drug Abuse Division and/or its designees who shall supply the Board with all necessary applicant information or techincal assistance.

The above shall be provided at Board request and/or as necessary in the application procedure. This Board shall be seen as the final authority in all cases regarding counselor certification; however, all applicants shall have the right to request a variance or appeal a Board decision.

Rule II. CERTIFICATION BOARD MEMBERSHIP. This Board shall consist of six (6) members selected by the following criteria:

(1) A person, or persons on the Board, should have had prior experience with Montana's certification standards. (This can be done by recruiting one or two of the people from the original certification committee.)

(2) A person or persons on the Board should have had experience either with the chemically dependent or working in a program serving the chemically dependent (drug and/or alcohol abusers).

(3) A person or persons on this Board must be willing and able to attend monthly meetings. Additionally they should be willing and able to secure leave time for any and all necessary Board training. (Board training will be a necessary prerequisite, in order to insure that all Board members are fully versed in the certification procedures and requirements. Training shall be provided by the Alcohol and Drug Abuse Division.)

(4) A person or persons should have had prior experience with boards and/or committees. Having in the past served upon an advisory board or committee which exists or existed to serve a public interest. (All expenses, i.e., travel and per diem costs shall be paid by the Alcohol and Drug Abuse Division, Department of Institutions, State of Montana. They shall be paid at the current existing State rates for meals, lodging, and mileage.)

Rule III. FUNCTIONS OF THE CERTIFICATION BOARD. There will be three (3) primary functions of the Certification Board:

(1) The Certification Board will receive and/or review all applications and applicants. Persons seeking certification shall submit the required paperwork to the Addictive Diseases Division Certification Unit for review. This review is done to ensure that applicants meet the minimum requirements, and that all the necessary information accompanies the application. After the review by the Alcohol and Drug Abuse Division the application and applicant is presented to the Board for their review. The Board can make one of four primary decisions:

(a) Move to fully certify the individual, at a specific level, with no riders or stipulations.

(b) Move to provisionally certify an individual, at a specific level with stipulations and further requirements. All requirements put on the provisional certificate must be completely explained, and be a result of certification deficit. The provisional certificate must carry a time frame within which all requirements are to be fulfilled.

(c) Move not to certify the individual at any level. In all cases where this decision is rendered the Board must provide the applicant with its rationale for the decision in writing. Additionally, if an individual receives such a decision, they will have the right of appeal.

(d) Good cause appearing, the Certification Board may require a personal oral interview of any applicant. In the event of this occurence the Board shall be in agreement regarding the purpose for the interview and shall agree upon the questions to be asked of the applicant. If an applicant is required to meet with the Board he shall travel to said Board's meeting place at his own expense.

(2) The Certification Board will establish a fee for certification. This money shall be collected and administered by the Department of Institutions, Alcohol and Drug Abuse Division. (Currently fees of $20.00 for initial applicants and $10.00 for renewal applications are under consideration.) The money should be considered for use in partially deferring the Board's expenses and/or for use in reducing the overall costs of administering this certification system.

(3) The Certification Board will operate from a standard set of policies, procedures and guidelines. Additionally, the Board shall establish and maintain a counselor code of ethics. The violation of said code shall be due cause for a person to be brought to the attention of the Board for possible disciplinary action. Such disciplinary action can be in the form of revocation and/or suspension of a counselor's certificate.

(a) Suspension is the temporary removal of a certificate for an infraction of the code. The length of suspension must be specific regarding the beginning and ending dates, and all stipulations must be in writing.

(b) Revocation is the permanent withdrawal of a counselor certificate. It can be done only following a period of suspension. Once the Board has moved to revoke a person's certificate the decision is seen as permanent and final. (Decisions will be pending the outcome of any and all appeals to the Board which may effect a case.) In all cases involving a suspension and/or revocation the Board can act only in relation to its mandate. Additionally, all cases must be a clear violation of the code and brought to the attention of the Board by an individual or a program. Allegations shall be supported by evidence and all complainants shall appear before the defendant and the Board in the course of due Board process. All defendants have the right of appeal and shall be considered innocent until otherwise shown.

In general, the function of the Certification Board is to help maintain and operate the counselor certification system in the State of Montana. They (the Board) are to work in cooperation and conjunction with the Alcohol and Drug Abuse Division. The Division shall supply the Board with the necessary aid to the Board's regulatory and maintenance functions. Board decisions are considered final and binding, with all persons being given the right of appeal.

Rule IV. CERTIFICATION STANDARDS KEY. The Counselor Certification Standards contain four (4) classes or levels, 1 through 4, with each class having separate and minimum requirements. During 1977 we will only be certifying the Class II level. The following explains the use of the standards:

On the left hand side note the column or section labeled "Skill and Subject Areas". These are the specific required courses and skills that a counselor must have, written in terms of subjects. The next columns marked "Learning Requirements" and "Learning Methods" tell how the learning can be achieved. If, for instance, the words training or education occur, the learning will be in a formal environment such as a college, or in a training program which is specific to the subject. If the learning requirement is experience or on the job training, no formal education requirement is made. Whenever the standards only call for experience or on-the-job training, no other requirement exists. Experience in this specific definition is: Work in a drug or alcohol treatment program, as a full time paid counselor. Volunteer work does not count. The next columns are labeled "Minimum Requirements". The minimum requirements tell how much, of what subject an individual must have. For instance, as a Class II Counselor, a person will have one year's experience or a course in general psychology, either one would meet the Class II requirement for that subject. The three things being monitored by certification are training, education and experience, any of which may be seen as valid learning experiences. Some requirements are met by either experience or training, other requirements are fulfilled by having both training and experience (see standards for the specific requirements). The numbers in the minimum requirement columns translate in the following way: "Training Hours" are clock hours, i.e., 15-20 hours of training is the time spent in a formal training session. For the training hours, multiply the number of hours spent in training by the number of days the session lasted, this gives you the training hours. "Number of Courses" is the educational requirement measured in terms of a three (3) credit hour, college level course. In other words, one (1) course means it had to have been taken in a college or university and three (3) hours of credit will have been received. One (1) in the experience column means one (1) year experience.

To repeat then, read the columns from the left to the right. All information, from the specific title through the minimum learning requirements are available in the package labeled "Certification Standards."

CERTIFICATION STANDARDS

CLASS II — **ALCOHOL COUNSELORS**

SKILL & SUBJECT AREA	LEARNING REQUIREMENTS	LEARNING METHODS	MINIMUM REQUIREMENTS		
			Training Hours	Number of Courses	Experience
SUBSTANCE ABUSE INFORMATION					
Chemical Nature of Alcohol & Drugs	Training + Experience	Any (Inservice Training or College)	15-20	1	1
Medical Use of Drugs	Training + Experience	Any			
Phys. & Psych. Effects of Alcohol & Drugs	Training + Experience	Any			
PSYCHOLOGY					
Mental Health (General Psy.)	Training or Experience	Any	15	1	1
Intra-Personal Relations	Exp. or On-the-Job Training	Exp. or On-the-Job Training			1
Personality Development	Exp. or On-the-Job Training	Exp. or On-the-Job Training			1
Diagnosis	Exp. or On-the-Job Training	Exp. or On-the-Job Training			1
Overview of Treatment Process/ Treatment Plan Development	Training	Training	15		1
Treatment Methods/Inter. Discip.	Exp. (On-the-Job Training)	On-the-Job Training			1
GUIDANCE AND COUNSELING					
Interviewing	Exp. or On-the-Job Training	Exp. or On-the-Job Training			1
Individual Counseling	Exp. or On-the-Job Training	Exp. or On-the-Job Training			1
Group Counseling	Exp. or On-the-Job Training	Exp. or On-the-Job Training			1
MEDICINE					
Basic First Aid	Training	Formal Education or Training	15-20	1	
Emergency Medical Treatment	Training	Formal Education or Training	20-25	1	
SOCIOLOGY					
Interpersonal Relations	Experience or Awareness	Exp. or On-the-Job Training			1
Minorities and Social Conditions	Experience or Training	College or Exp. or Insvc. Training	15	1	1

CERTIFICATION STANDARDS

CLASS II — **ALCOHOL COUNSELORS**

SKILL & SUBJECT AREA	LEARNING REQUIREMENTS	LEARNING METHODS	MINIMUM REQUIREMENTS		
			Training Hours	Number of Courses	Experience
ENVIRONMENT					
Catchment Area Demographics	Awareness of Community	Exp. or On-the-Job Training			1
Catchment Area Social Structure	Awareness of Community	Exp. or On-the-Job Training			1
COMMUNITY RESOURCES					
Types & Uses of Resources	Experience	Exp. or On-the-Job Training			1
Availability of Resources	Experience	Exp. or On-the-Job Training			1
Linking Client to Resources	Experience	Exp. or On-the-Job Training			1
EVALUATION					
Concepts of Evaluation	Awareness	Inservice Training	15-20		
Measurement of Methods	Awareness	Inservice Training	15-20		
OTHER					
Confidentiality	Manual	Self-taught	Successful Completion of Manual		

CERTIFICATION STANDARDS

CLASS II — DRUG COUNSELORS

SKILL & SUBJECT AREA	LEARNING REQUIREMENTS	LEARNING METHODS	MINIMUM REQUIREMENTS		
			Training Hours	Number of Courses	Experience
PHARMACOLOGY					
Chemical Nature of Drugs	Training or Experience	Any	15-20	1	1
Medical Use of Drugs	Training or Experience	Any	15-20	1	1
Psych. & Phys. Effects of Drugs	Training or Experience	Any	15-20	1	1
PSYCHOLOGY					
Mental Health - General	Training or Experience	Any	15	1	1
Intra-Personal Relations	Awareness	Exp. or On-the-Job Training			
Personality Development	Awareness	Exp. or On-the-Job Training			
Diagnosis	Awareness	Exp. or On-the-Job Training			
Treatment Plan Development	Awareness	Exp. or On-the-Job Training			
Treatment Methods	Awareness	Exp. or On-the-Job Training			
GUIDANCE AND COUNSELING					
Vocational/Occupational	Awareness	Exp. or On-the-Job Training			
Education	Awareness	Exp. or On-the-Job Training			
Individual Counseling	Awareness	Exp. or On-the-Job Training			
Group Counseling	Awareness	Exp. or On-the-Job Training			
MEDICINE					
Basic First Aid	Training	Formal Education or Training	15	1	
Emergency Medical Treatment	Training	Formal Education or Training	15	1	
Diagnosis	Awareness	Exp. or On-the-Job Training			
Treatment Plan Development	Awareness	Exp. or On-the-Job Training			
Treatment Methods	Awareness	Exp. or On-the-Job Training			
SOCIOLOGY					
Interpersonal Relations	Awareness	Exp. or On-the-Job Training			
Changing Social Conditions	None				
Political Influence	None				

CERTIFICATION STANDARDS

CLASS II — **DRUG COUNSELORS**

SKILL & SUBJECT AREA	LEARNING REQUIREMENTS	LEARNING METHODS	MINIMUM REQUIREMENTS		
			Training Hours	Number of Courses	Experience
ENVIRONMENT					
Catchment Area Demographics	None				
Catchment Area Social Structure	None				
Geographical Characteristics	None				
COMMUNITY RESOURCES					
Types & Uses of Resources	Training or Experience	Any	15	1	1
Availability of Resources	Training or Experience	Any	15	1	1
Linking Clients to Resources	Training or Experience	Any	15	1	1
EVALUATION					
Concepts of Evaluation	None				
Measurement of Methods	None				
OTHER					
Overview of the Treatment Process	Training	Formal Training	15	1	
Decision Making in Treatment	None				
Inter-Disciplinary Orientation	Training	Formal Training	15	1	
Interviewing	None				

RATIONALE STATEMENT

4. To implement the alcohol counselor certification system at a Class II level, we believe certification to be both the beginning and end of the training system. In August, 1977 to file and publish the alcohol certification system. Conduct one hearing in each of the five regions to obtain public input into the proposed certification standards September, 1977. Review and act on citizen input to certification September, 1977, publish final certification date will either be in October or November, 1977.

WHAT IS CERTIFICATION? Certification is the procedure wherein a designated legal body says to the individual that they are qualified to do a specific job. It is a process whereby the individual must meet requirements in three specific areas: training, education and experience. In order to be certified in the State of Montana an individual must first choose whether he wishes to be certified as a drug counselor, an alcoholism counselor, or both. Once this decision is made they apply to the certification board to see if they meet the minimum requirements.

Certification is an evaluation of an individual's education, training and experience compared with the standards which are set minimum requirements. A person is then certifiable at a specific level. If a person does not fully meet the requirements they may be certified on a provisional basis. Provisional certification is for a specific period of time, and in that time frame the candidate carrying a provisional certificate must meet all specified requirements and conditions. At the end of the time period if a candidate has fulfilled all requirements he/she receives full certification. If, however, the candidate has not fulfilled said requirements the provisional certificate is revoked. All individuals working in the State of Montana, as a paid counselor in a drug or alcoholism treatment program, or in a program offering said services, must be certified.

During Fiscal Year 1978 the certification procedure will be implemented only for Treatment and Rehabilitation Counselor Class II.

CERTIFICATION PHILOSOPHY STATEMENT. Any statement of philosophy attempts to answer "why", as does this statement have the intent of answering "why". Why certify workers in the State of Montana and why certify, or attach credentials to alcoholism and drug counselors? The rationale put forth herein is an attempt to answer the "why", as stated previously.

As a legal, public entity the Montana Alcohol and Drug Abuse Division has the following mandate: To oversee all treatment agencies delivering services to the drug and/or alcohol users (abusers) in the State. In order to insure adequate

service delivery to those citizens who may be chemically addicted, or habitual users of substances (alcohol and/or drugs), it becomes necessary to place quality controls upon programs and their personnel. One way of regulating and providing for high quality staff is to initiate and maintain a counselor certification system. In this system requirements are established regarding counselor education, training, and experience. Persons who meet the minimum requirements become eligible to be certified and those who do not are either excluded from the system or re-routed through the system.

By placing requirements upon counselors in three areas - education, training, and experience - it is hoped that more effective services are rendered by these individuals to the persons they treat. The assumption being that all workers can be more effective by receiving training and education which is job related, as well as having experience specific to their field.

This, then is the underlying assumption about certification which the State makes as it responds to its mandate and missions.

5. Interested persons may present their data, view or arguments either orally or in writing at the hearings. Written statements may be submitted to the Department prior to September 30, 1977. Any written statement or questions can be made to Mike Murray, Addictive Diseases Bureau, 1539 11th Avenue, Helena, Montana, 59601, phone 449-2827.

6. A hearings officer will be appointed by the Department to preside over and conduct the hearings.

7. The authority of the Department to make the proposed adoption of rules is based on Sections 80-2710 and 80-2711, R.C.M. 1947.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State August 15, 1977.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of rule 32-2.6A(26)-S6025 relating to the testing of non producer owned cattle for Brucellosis at a change of pasture.	NOTICE OF PROPOSED AMENDMENT OF RULE 32-2.6A(26)-S6025 (Brucellosis testing of non producer owned cattle) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after September 24, 1977, the Board of Livestock proposes to amend Rule 32-2.6A(26)-S6025 to clarify brucellosis test requirements on non producer owned cattle moving from one pasture to a non contiguous pasture.

2. On March 17, 1977, the department amended this rule to require a change of pasture brucellosis test on otherwise test eligible cattle that were owned by an investment service or a corporation the majority of whose shareholders were not primarily engaged in the production of livestock. The amendment was proposed to insure that this class of cattle would be tested in circumstances of movement which were very similar to change of ownership transactions because outbreaks of brucellosis have occurred from such transactions in the recent past. The amendment proposed in this notice changes the test requirement to include only cattle owned by out-of-state investment services or corporations the majority of whose shareholders are not primarily engaged in the production of livestock. The exact language affects paragraph (4) (a) of this rule, and reads as follows (matter to be stricken is interlined, new matter is underlined):

> (4) (a) Cattle capable of breeding two years of age and over, owned or managed by an out-of-state investment service or ~~a~~ an out-of-state corporation the majority of whose shareholders are not primarily engaged in the production of livestock which are moved from one premise to another non contiguous premise shall be found negative to an official test for brucellosis made not more than thirty (30) days prior to such a movement. The owner or

manager of such cattle may petition the state veterinarian for a waiver of such test requirements. Upon a finding that the interests of animal disease control will not be harmed, the waiver may be granted.

3. The issues to be considered include whether or not this proposed amendment adequately protects the livestock industry.

4. The rationale of the amendment is based on a consideration that cattle of the class affected by paragraph (4) of this rule owned by in state investment services or corporations are able to be policed adequately without this additional test requirement.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Glenn C. Halver, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Capitol Station, Helena, MT. 59601. Written comments must be received by September 24, 1977, in order to be considered.

6. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Dr. Halver on or before September 24, 1977.

7. If the department receives requests for a public hearing from more than twenty five persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the department to make the proposed rules is based on section 42-208 R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State August 25, 1977.

NOTICE NO. 32-2-30 8-8/25/77

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM Rules 32-2.6A(118)-S6790, 32-2.6A(118)-S6830, 32-2.BI(1)-S670 and 32-2.6BI(10)-S6220, relating to testing for tuberculosis.	)	NOTICE OF PROPOSED AMENDMENTS OF ARM RULES 32-2.6A (118)-S6790, 32-2.6A(118) S6830, 32-2.6BI(1)-S670, and 32-2.6BI(10)-S6220.
	)	(T. B. Testing)
	)	NO PUBLIC HEARING CONTEMPLATED
	)	

TO: ALL INTERESTED PERSONS

1. On or after September 24, 1977, the Board of Livestock proposes to amend ARM Rules 32-2.6A(118)-S6790, 32-2.6A(118)-S6830, 32-2.BI(1)-S670, and 32-2.6BI(10)-S6220 to alter requirements relating to testing for tuberculosis.

2. The proposed amendments will accomodate the change in Montana's tuberculosis status from modified-accredited to accredited-free, and will eliminate some testing presently required. The exact language of the amendments follows:

(a) 32-2.6A(118)-S6790 TUBERCULIN TESTS OF CATTLE EXHIBITED AT FAIRS AND SALES (1) All cattle exhibited or offered for sale at any county or Montana state fair, or sold through any Montana auction or sale ring shall originate in a tuberculosis-free accredited herd, ~~or~~ in a herd not under quarantine in a modified-accredited tuberculosis-free area, in a herd not under quarantine in an tuberculosis accredited free area or shall originate in a herd in which the entire herd has given a negative reaction to an official tuberculin test within sixty days prior to exhibition or offer for sale.

(b) 32-2.6A(-18)-S6830 INDIVIDUAL ACCREDITED HERD PLAN (3) (h) Herd additions to an accredited herd must originate directly from tuberculosis-accredited herds; or herds (not in quarantine) in a modified-accredited area that were tested and found negative within a 12 month period immediately prior to being added to the herd; or directly from herds not under quarantine in modified-accredited or accredited free areas, pass a negative test not more than 30 days prior to entry, and be segregated from the accredited herd until retested and found negative at least 60 days after entering the premises.

(c) 32-2.6BI(1)-S670 ANIMAL HEALTH (1) Tuberculosis. (a) All milk produced for pasteurization shall be from animals and herds which ~~have been tested negative for tuberculosis at least once every six years or more often as the Board may direct~~ are located in a tuberculosis accredited-free area or a modified-accredited tuberculosis-free area. Such animals may be tested for tuberculosis as the Department directs.

(d) 32-2.6BI(10)-S6220 REQUIREMENTS FOR LICENSED FARMS PRODUCING MILK FOR MANUFACTURING (1) (b) The herd shall be located in an area within the State of Montana which meets the requirements of a Modified-Accredited Area as determined by Chapter 6A, Sub-Chapter 118, or a tuberculosis accredited free area as described in USDA's uniform methods and rules for tuberculosis eradication. If a herd is not located in such an area, it shall be tested annually. All additions to the herd shall be from an area or from herds meeting the same requirements.

(3) Among issues to be considered by the department are whether the reduced testing will adversely affect animal and human health as they relate to tuberculosis.

(4) These amendments are undertaken as a result of changes in Montana's official status regarding tuberculosis. For many years Montana has been designated by U.S.D.A. as a modified-accredited tuberculosis area. Because of the absence of the disease in the state, U.S.D.A. has recently upgraded Montana to an accredited-free status. The amendments are necessary in order to accomodate the new designation. Because of the changes the burden of testing for tuberculosis will be lightened.

(5) Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Glenn C. Halver, D.V.M. Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Captiol Station, Helena, MT. 59601. Written comments must be received by September 24, 1977, in order to be considered.

(6) If a person directly affected wished to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Dr. Halver on or before September 24, 1977.

(7) If the department receives requests for a public hearing from more than twenty-five persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

(8). The authority of the department to make the proposed rules is based on section 46-208, R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State August 15, 1977.

NOTICE NO. 32-2-31

BEFORE THE BOARD OF DENTISTS
OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING
OF THE
STATE OF MONTANA

IN THE MATTER of the Proposed Amendment of MAC 40-3.34(6)-S3430 Examinations and MAC 40-3.34(10)-S3470 Set and Approve Requirements and Standards.	NOTICE OF PROPOSED AMENDMENT of MAC 40-3.34(6)-S3430 Examinations, and MAC 40-3.34 (10)-S3470 Set and Approve Requirements and Standards. No Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On September 24, 1977 the Board of Dentists proposes to amend MAC 40-3.34(6)-S3430 Examinations and MAC 40-3.34 (10)-S3470 Set and Approve Requirements and Standards.

2. The amendment of MAC 40-3.34(6)-S3430 Examinations, will add the following language as subsection (7) to the existing rule:

> "Examinations will be given in June and December of each year. The June examination will be open to all qualified applicants. However, the December examination will be limited to a total of twenty (20) examinees (dentists and/or hygienists). The determination of which applicants shall qualify should there be more than twenty (20) will be made according to the first twenty (20) applicants the Board receives.
>
> If the Board receives less than ten (10) applications then the December exam will be cancelled and those applicants will be moved to the June examination."

The reason for this proposed amendment involves the cost of giving examinations. The Board has existing permanent facilities which will accommodate twenty (20) examinees. To examine any additional applicants requires considerable time and expense in obtaining a suitable facility and in moving additional equipment. The Board will incur this expense once a year at the June examination. However, the Board cannot so justify such expense more than once a year and has thus limited the December examination.

3. The amendment of MAC 40-3.34(10)-S3470 Set and Approve Requirements and Standards, as proposed will delete existing subsection (3)(g) and will add the following language as subsection (11) to the existing rule.

> "Section 66-921 R.C.M. 1947 exempts the function of dental hygiene instruction from the supervision requirements where such instruction is given in a public or private institution or under a Board of Health or in a public clinic authorized by the Board. Inherent in the Board's authorization under this section is the expectation that while the customary supervisory relationship is not required, the dentists who may be responsible to the institution and the hygienist performing the instruction shall meet, confer and review as they may determine the need dictates. Further inherent in the authorization is the obligation of the hygienist to comply with any instructions from the dentist as may be derived from any such consultations."

The reason for the deletion of subsection (3)(g) is to bring the rule into conformity with a statutory exemption. The reason for proposing subsection (11) is to make sure, for the recipient publics benefit, that while there may be no day to day supervision there remains the right of control in a dentist, should the hygienists need direction.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Dentists, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than September 22, 1977.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Dentists, LaLonde Building, Helena, Montana, on or before September 22, 1977.

6. If the Board of Dentists receives requests for a public hearing on the proposed amendment from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of such will be made in the Administrative Register.

7. The authority of the Board of Dentists to make the proposed amendment is based on Section 66-905 R.C.M. 1947.

DATED this 15th day of August, 1977.

BOARD OF DENTISTS
JOHN MADSEN, DDS
PRESIDENT

BY: Ed Carney
Ed Carney, ~~Director~~
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 8-15, 1977.

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

In the matter of the amendment of rule MAC 46-2.14(86)-S14830, pertaining to economic need criteria for Vocational Rehabilitation group services.	NOTICE OF PROPOSED AMENDMENT OF RULE PERTAINING TO ECONOMIC NEED CRITERIA FOR VOCATIONAL REHABILITATION GROUP SERVICES. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On September 24, 1977, the Department of Social and Rehabilitation Services proposes to amend Sub-Chapter 86, State Economic Need Policies, rule MAC 46-2.14(86)-S14830.

2. The proposed amendment would delete (2)(1) of rule MAC 46-2.14(86)-S14830 as follows:

"(2) Services contingent upon economic need include:

(a) Physical and mental restoration services.

(b) Maintenance.

(c) Transportation, except when necessary in connection with determination of eligibility or nature and scope of services.

(d) Occupational licenses, books and training supplies.

(e) Tools, equipment and initial stocks and supplies.

(f) Services to members of a handicapped individual's family.

(g) Interpreter services for the deaf.

(h) Reader services for the blind.

(i) Telecommunications, sensory, and other technological aids and devices.

(j) Post employment services.

(k) Other goods and services.

~~(i) Facilities and services for groups of handicapped individuals.~~ (History: Section 71-2105, R.C.M. 1947; NEW, MAC Notice No. 46-2-111; Order MAC No. 46-2-59; Adp. 12/15/76; Eff. 1/3/77.)"

3. The State Department does not wish to impose a requirement that groups of individuals demonstrate economic need as a prerequisite to the provision of group services. As with vocational rehabilitation services to the individual, group services are related to the presence of a physical or mental disability which constitutes a handicap to employment and the reasonable expectation that services may provide a benefit in terms of employability. It is the existence of an employment

handicap and not the financial status of an applicant which is critical.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to: Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601. Written comments in order to be considered must be received no later than September 24, 1977.

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to: Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601, on or before September 24, 1977.

6. If the Department receives requests for a public hearing on the proposed amendment by more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the Department to make this proposed amendment is based on Section 71-2105, R.C.M. 1947.

Patrick E. Malley
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 27, 1977.

DEPARTMENT OF FISH AND GAME BEFORE

THE MONTANA FISH AND GAME COMMISSION

1. Introduction. The Fish and Game Commission through the Department of Fish and Game has given notice, pursuant to the Montana Administrative Procedures Act, of its intent to amend Rule 12-2.22(1)-S22030 in MAC Not. No. 12-2-40 published in the Montana Administrative Register on June 24, 1977. No public hearing was held.

2. Statement of Reasons.

(a) To update the department's policy regarding grizzly bear in light of changing federal and state viewpoints on this species.

(b) To clarify the current policy with regard to management of the species.

(c) To provide department personnel with guidelines in dealing with the species.

3. Discussion of Comments.

Public comments were received:

(a) From John Baucus, representing the Montana Woolgrowers Association; Mr. Baucus supported efforts to maintain a grizzly bear population in Montana so long as its accomplishment is without substantial interference with other land uses.

(b) From Harold O'Connor, Deputy Associate Director, U. S. Fish & Wildlife Service; Mr. O'Connor said the policy seems reasonable. However, he suggests that parts (c) and (d) of subsection (1) be modified to avoid the possible interpretation of a conflict with federal regulations.

(c) From Fred Johnson, member of the Montana Livestock Board, as an individual; Mr. Johnson said that the policy appears reasonable.

No action was required as a result of comments of Mr. Baucus and Mr. Johnson. The comment by Mr. O'Connor does not require changing of the wording in this policy as the last part (e) of subsection (1) indicates the department shall consult with federal agencies and apply applicable rules and regulations.

4. Therefore the Commission has adopted for the Department the foregoing amendment to MAC Rule 12-2.22(1)-S22030 as proposed. The text of the rule as it appears in the published notice is unchanged.

Dated this 8th day of August, 1977.

Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Attest:

Secretary

STATEMENT OF REASONS FOR AND AGAINST THE AMENDMENTS

Rule MAC 16-2.14(1)-S1490 has been amended after hearing by the Board of Health and Environmental Sciences upon request of the Department of Health and Environmental Sciences and upon request of a number of Boards of County Commissioners.

The reasons given by the Department for the rule change was to clarify the language of the rule and to obviate uncertainty about obligations pursuant to the rule. The objection was raised that the Department's proposed amendments would outlaw slash burning. The Board overrode this objection on the basis that it would not outlaw slash burning.

The reasons given by the County Commissioners for their proposed amendment to the rule was that it would alleviate the inconvenience of the permit procedure in times of peak demand by providing for open burning without a permit in periods of good ventilation. The Department objected to this amendment because it relaxed Department controls and would contribute to an increase in the violations of the open burning rule. The Board overrode this objection on the basis that under the amendment as passed, open burning without a permit could only occur on a given day and time approved by the Department.

16-2.14(1)-S1490 OPEN BURNING RESTRICTIONS

(1) Except as specified in subsection (3), no person shall cause, suffer or allow an open outdoor fire unless an air quality permit has been obtained, and further provided that the fire authority for the area of the burn shall be notified of intent to burn giving location, time and material to be burned and that proper fire safety directions given by the fire authority be complied with. Reasonable precautions shall be taken to keep the area of the burn within the confines for which the permit was given. Reasonable measures shall be taken to eliminate smoke when the purpose for which the fire was set has been accomplished. A permit shall be allowed only under the following conditions:

(a) When such fire is set or permission for such fire is given in the performance of the official duty of the responsible fire control officer:

(i) for the purpose of the elimination of a fire hazard which cannot be eliminated by any other means;

(ii) for instruction in methods of fighting fires, provided the material burned shall not be allowed to smolder after the initial burn has been completed.

Facilities to put the fire completely out shall be on hand and used by the responsible fire control officer until all smoldering has ceased. The responsible fire control officer shall not leave the scene of the burn until all smoking

debris has been clearly extinguished and no smoking or smoldering occurs.

(b) When such fire is set in the course of an essential agricultural operation in the growing of crops or in the course of accepted forestry practices, provided no public nuisance is created.

(c) When fires are set for a clearing of land for new roads, power lines, subdivisions, dams, and other similar projects and no public nuisance is created.

(d) When materials to be burned originate on an individual's premises, excluding commercial, industrial and institutional establishments, where no provision is available by private hauler providing a public service or a tax supported service for collection of the material to be burned and no public nuisance is created.

(2) A control officer may require that alternate methods to open burning be practiced. The alternate method may be specified in the permit.

(3) An air quality permit is not required under the following conditions:

(a) When small fires are used for outdoor cooking and other recreational purposes and no public nuisance is created.

(b) When salamanders or other devices are used for heating by construction or other workers and no public nuisance is created and provided no tires, or oily rags, or other materials producing dense smoke are burned.

(c) When in a county without a local air pollution control program pursuant to Section 69-3919, R.C.M. 1947, an open burning control officer designated by the county commissioners of any county publicly announces that, on a given day and time approved by the department, open burning will be permitted without an air quality permit. All other provisions of the open burning rule shall remain in effect.

(4) No person shall cause, suffer, allow, or permit an open fire for the purpose of conducting a salvage operation.

(a) Persons conducting salvage operations where cutting torches or other procedures are employed that may cause a fire shall provide adequate fire control facilities at the site.

(5) No person shall cause, suffer, allow, or permit the disposal of trade waste by open burning, except that the department may permit such burning in a device or devices equivalent to an air curtain destructor, air swift pit incinerator or a similar device which can be demonstrated to emit smoke not darker than one Ringelmann or of equivalent opacity. The operator of such devices or system must show adequate knowledge of the procedure to assure correct starting, operation, and ending of the burn; not create a public nuisance or fire hazard; and must have applied for and received a permit from the department to construct and operate the destructor or pit.

(6) Reasonable precautions shall be taken to prevent ashes, soot, cinders, dust, or other particulate matter or odors incidental to burning from extending beyond the property line of the person allowed to burn under this rule.

(7) Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tarpaper, or toxic wastes shall not be disposed of by open burning.

(8) Reasonable precautions shall be taken to initiate and complete all burning under this rule during periods of good ventilation.

(9) All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.

(10) Reasonable precautions shall be taken to prepare and store all material to be burned under this rule in a clean, dry condition. (History: Sec. 69-3909, 69-3913, R.C.M. 1947; Order MAC No. 16-1; Adp. 12/31/72; Eff. 12/31/72; AMD, MAC Not. No. 16-2-75; Order MAC No. 16-2-33; Adp. 7/22/77; Eff. 8/26/77; PRIOR p. 16-62.)

STATEMENT OF REASONS IN SUPPORT OF THE ADOPTION OF ARM RULE 32-2.6A(2)-S611 RELEASE FROM PSEUDORABIES QUARANTINE.

On July 25, 1977, the Board of Livestock adopted Rule 32-2.6A(2)-S611 relating to release from quarantine for swine quarantined for pseudorabies. This action followed notice of the proposed rules published in the Montana Administrative Register June 24, 1977. The rule was adopted without public hearing and in response to a resolution of the Pork Producers Association. The reason for adopting this rule is to protect the swine industry from the spread of pseudorabies, an encephalitic disease of swine, while at the same time providing other options than slaughter for the release of a quarantined swine herd.

No adverse written comments were received.

Therefore, the department adopted the rule as proposed in Notice No. 32-2-29; 6-6/24/77; with one minor variation. The word "or" will be added as the last word in paragraph (2) and the period at the end of that section shall be changed to a comma.

STATEMENT OF REASONS IN SUPPORT OF THE ADOPTION OF AMENDMENTS TO ARM RULES 32-2.6A(26)-S6020, DEFINITIONS OF TERMS USED; 32-2.6A (26)-S6050, MOVEMENT AND DISPOSITION OF ANIMALS OTHER THAN REACTORS IN A QUARANTINED HERD; AND 32-2.6A(26)-S6150, BRUCELLOSIS TESTS TO BE REPORTED.

On July 25, 1977, the Board of Livestock adopted amendments to ARM Rules 32-2.6A(26)-S6020, 32-2.6A(26)-S6050, and 32-2.6A(26)-S6150, relating to the following aspects of brucellosis control: (1) Proper permanent identification of heifers officially vaccinated for brucellosis; (2) "S" branding of non reactor cattle leaving a herd quarantined for brucellosis; (3) the release to any destination (from herds quarantined for brucellosis) of calves up to 8 months of age, rather than the previous 6 months of age; and (4) the description of the forms used to report brucellosis testing.

This action followed notice of the proposed amendments published in the Montana Administrative Register June 24, 1977. The amendments were adopted without public hearing, as no requests for such a hearing were received.

The reasons for the amendments were to bring our rules into conformity with national requirements, and to remove references to obsolete forms.

There was an adverse comment regarding the mandatory use of vaccination eartags in all cases, particulary where the cattle to be vaccinated were registered purebreds or it appeared the tags would cause infection or other problems.

Therefore the proposed amendment to Rule 32-2.6A(26)-S6020 was changed to permit the use of identification other than the metal eartags in certain circumstances and as changed appears below.

No other comments were received, and the amendments to the other rules were adopted as proposed in Notice No. 32-2-28;

6-6/24/77.

32-2.6A(26)-S6020 DEFINITIONS OF TERMS USED.

(7) "Proper permanent identification" of officially vaccinated animals shall include the following forms of identification recorded on form SV-64;

(a) The United States registered "Shield and V" applied in the right ear of the animal. The "Shield and V" shall be preceded by a numeral indicating the quarter of the year and followed by the last digit of the year in which the official vaccination was performed; and

(b) The U.S.D.A. approved metal vaccination eartag placed in right ear, and/or where the vaccination eartag is considered unsatisfactory as secondary identification, then the U notch underbit shall be used in the right ear.

(c) The ear tattoo of a registered animal used for registration purposes may be used as proper permanent identification in lieu of the identification required in subsections (a) and (b) of this rule provided the tattoo number is placed on the vaccination certificate.

(d) In the event that the right ear is of insufficient size to accomodate the tattoo and eartag, because of injury or identification ear marking, they may be placed in the left ear. (History: Sec.46-208 and 46-211, R.C.M. 1947; Order 32-1; Adp. 10/1/70; Eff. 12/31/72; EMERG, AMD. Order No. 32-2-15; Adp. 8/11/75; Eff. 8/15/75; AMD. Not. No. 32-2-7; Order No. 32-2-16; Adp. 9/18/75; Eff. 11/4/75; AMD. Not. No. 32-2-21; Order No. 32-2-26; Adp. 3/17/77; Eff. 4/4/77; AMD. Not. No. 32-2-28; Order No. 32-2-30; Adp. 7/25/77; Eff. 8/26/77.)

STATEMENT OF REASONS IN SUPPORT OF THE ADOPTION OF ARM RULES 32-2.10(3)-S1022, PRESENTATION OF LIVESTOCK FOR BRAND INSPECTION--LENGTH OF TIME INSPECTION EFFECTIVE 32-2.10(3)-S1023 REQUIREMENTS FOR OBTAINING COUNTY LINE GRAZING PERMITS; AND 32-2.10(3)-S1024 IMPORT TRANSPORTATION PERMIT.

On July 25, 1977, the Board of Livestock adopted Rules 32-2.10(3)-S1022, 32-2.10(3)-S1023, and 32-2.10(3)-S1024, relating to brand inspections and certain kinds of transportation permits. This action followed notice of the proposed rules published in the Montana Administrative Register June 24, 1977. No public hearing was conducted, and no requests for such a hearing were received. The reasons for the adoption of these rules were to clarify brand inspection procedures, and to implement legislation enacted by the Forty-Fifth Legislature regarding the movement of cattle across a county line or into the state without inspection.

No comments were received. Therefore the Board has adopted these rules as found in Notice 32-2-26; 6-6/24/77.

STATEMENT OF REASONS IN SUPPORT OF THE ADOPTION OF ARM RULE 32-2.10(7)-S10025 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS AND ARM RULE 32-2.10(7)-S10026 RENEWAL REQUIREMENTS.

On June 24, 1977 the Board of Livestock published Notice No. 32-2-27 in the Montana Administrative Register. The rules there proposed for adoption relate to fees for filing notices of security agreements, renewals, assignments and satisfactions on brand mortgages and the length such filings would be effective. Pursuant to the notice a public hearing was held in Billings, Montana on July 15, 1977. At the hearing three statements were presented, two by letter and one in person. The statements variously opposed the increase in fee from $2 to the proposed $8 per filing, the imposition of a renewal period, and the imposition of the fee increase upon satisfactions, the filing fee for which had already been collected by the lender at the $2 rate.

The Board in acting upon the comments reduced the fee from eight dollars to seven dollars. This was done because further review of cost figures indicated that while the department's expense for filing notices of security agreements, assignments and renewals exceeded eight dollars the costs for filing notices of satisfactions was somewhat less. Because of the convenience of a single fee the approximate average cost of seven dollars was selected.

The Board was not able to act upon the other requests for changes because of legislatively established policies. The brand mortgage filing system involving the Department of Livestock is an adjunct to the Uniform Commercial Code, which in section 87A-9-403 sets five years as the maximum period a security interest is valid without renewal. Finally, Chapter 11, Laws of Montana, 1977, mandates that the cost of these filings approximate actual cost, and so the board could not accede to the request that the imposition of the fee on satisfactions be delayed.

These rules were proposed and adopted by the Board on July 25, 1977 to comply with the provisions of Chapter 11, Laws of Montana, 1977. Therefore section 32-2.10(7)-S10025 is adopted as it appears below. Section 32-2.10(7)-S10026 is adopted as it appears in Notice No. 32-2-27; 6-6/24/77.

32-2.10(7)-S10025 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS. Every person filing notice of a security agreement, assignment, renewal or satisfaction pursuant to section 52-319 shall pay a fee of seven dollars for each brand listed. The fee shall be paid by check or money order made payable to the Department of Livestock. No filing with the department shall be processed without the fee being paid. (History: Sec. 46-104, 52-322, R.C.M. 1947; NEW Not. No. 32-2-27; Order No. 32-2-33; Adp. 7/25/77; Eff. 9/1777.)

SUPERINTENDENT OF PUBLIC INSTRUCTION

Adoption of Chapter 18, Title 48, SPECIAL EDUCATION UNIT.

The Superintendent of Public Instruction published Notice No. 48-2-1 of proposed amendments to the special education rules promulgated by the Superintendent in March 1975 on May 25, 1977, in the Montana Administrative Register.

In compliance with Section 75-7813.1(2) as amended by HB 816 of the 45th Legislature which mandates that the Superintendent of Public Instruction shall, prior to September 1, 1977, revise the Rules and Regulations and sections 75-7802 and 75-7811, R.C.M. 1947.

On June 18, 1977, representatives of the Superintendent of Public Instruction conducted a public hearing under the authority of the Montana Administrative Procedure Act, Title 82, Chapter 42, R.C.M. 1947, to receive testimony concerning the proposed special education rules and regulations. The proposed regulations, developed through the efforts of a number of people representing generally all Montanans interested in education of the handicapped, have been revised slightly as a result of written and oral testimony received at the hearing and written testimony received after the hearing.

The proposed rules, changed as noted below, were adopted August 10, 1977, and became effective August 25, 1977.

RATIONALE FOR THE ADOPTION OF SPECIAL EDUCATION RULES AND REGULATIONS. Written testimony concerning Section 2--"The Responsibilities of the Superintendent of Public Instruction" suggested the addition of a new Section 2.3 (renumbered 48-2.18(2)-S1840) which would inform school districts of the availability of funding for personnel who are needed for child assessment work. As a result of this suggestion, Section 2.3 has been added which reads as follows:

"48-2.18(2)-S1840 APPROVAL OF SPECIAL ASSESSMENT FUNDING. (1) In the event a school district encounters difficulty in assessing children on a timely basis with staff employed by the district, funds may be approved for hiring staff to perform assessment of children during the summer if the following conditions are met:

(a) evidence of a need for assessment during the summer is provided.

(b) a special request is made by the district to the Superintendent of Public Instruction indicating the number and type of person(s) to be employed during the summer; the estimated number of children to be assessed; the estimated length of time assessment person(s) is required and the total cost of the summer assessment program. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)"

During the testimony a request was made concerning Section 5.4 (renumbered 48-2.18(6)-S1880). The request was specifically to change the definition of "hard-of-hearing" by including those children whose hearing impairment affected a child's interpersonal relationships as well as his educational performance. The definition found in the proposed rules and regulations is quoted from Montana state law and the regulations on P.L. 94-142 (November 29, 1975). Because this is the accepted definition of hard-of-hearing both at the federal and state level, Section 5.4 will not be changed.

During the testimony a request was made that Section 6.5.1 (renumbered 48-2.18(18)-S18290(1)) be revised to allow a current psychological evaluation report to be used in lieu of the actual presence of a school psychologist on the child study team for a mentally retarded handicapped child. Inspection of Section 6.4 (renumbered 48-2.18(18)-S18280), which describes the child study team process indicates that the process requires the participation of various professional people in determining that a child is or is not handicapped. Physical presence of each member of the child study team simultaneously at a meeting is not always necessary. For example, a doctor's report indicating that a child is in good physical health may be in fact sufficient from that particular professional, and likewise, a current psychological evaluation report may in some instances be adequate input from a school psychologist. There may, however, be times when it is highly desirable that all members of the child study team are present simultaneously at a given meeting. Because of the great variation found in handicapped children both in terms of degree, complexity and type of handicap, judgment concerning the necessity of the presence of any team member must be made by the team chairman and those study team members present at a given meeting. Because the child study team process is in fact a process, we feel that no change is necessary in the current regulations and are making no change in Section 6.5.1.

Testimony was given concerning Section 6.5.4 (renumbered 48-2.18(18)-S18290(4)) dealing with the composition of a child study team for deaf and hard-of-hearing handicapped children. It was suggested that a consultant for the hearing impaired, an audiologist and a speech pathologist be mandated as members of such child study team. Because of severity of hearing impairment may vary drastically, it is felt that mandating in addition to the core team the three professionals cited might in some cases be unreasonably prescriptive and require personnel present at the child study team meeting which may in fact be unnecessary. No change, therefore, is being made in Section 6.5.4.

Written testimony concerning 6.5.7 (renumbered 48-2.18(18)-S18290(7)) requested that the mandated membership of a speech therapist on the child study team for a learning

disabled child be revised to indicate that the membership of the speech therapist be made optional depending upon the recommendation of the speech therapist. Because there are learning disabled children who in fact have no speech or language problem, a change in Section 6.5.7 is being made. Section 6.5.7--Specific Learning Disabilities--now reads as follows:

"48-2.18(18)-S18290(7) Specific Learning Disabilities.

(a) Core team plus school psychologist, a teacher or administrator with training or knowledge in the area of specific learning disabilities, a speech therapist when the speech therapist considers participation necessary and other appropriate professional individuals."

A request was made to change language in Section 6.5.5 (renumbered 48-2.18(18)-S18290(5)). Although the language change makes no substantive difference, the suggested change may serve to clarify the meaning of this section. Section 6.5.5 has been revised to read as follows:

"48-2.18(18)-S18290(5) Speech/Language Impaired.

(a) In addition to the core team, a speech pathologist is a required member of the Child Study Team. The speech pathologist may be the special education person on the core team."

Additional testimony concerning Section 6.5.7 suggests that school psychologist and other appropriate professional resources should be made optional members of the team. Since it is felt that a school psychologist is an important member of a team identifying a learning disabled child, the revision cited in earlier comments indicates that the school psychologist is a mandated member of this team, and that other professional individuals based upon the judgment of the team may be necessary to serve on that team. Therefore, no specific change is being made with regard to this suggestion.

Written testimony on Section 6.12 (renumbered 48-2.18(18)-S18360) requested that the second paragraph be revised to include a definition of non-graded and to allow members of the elementary district to share in the decision of the placement of children over 14 years old with the representatives of the high school district. Therefore, the second paragraph of Section 6.12--Promotion of Students from Elementary to Secondary Programs--has been revised to read as follows:

(2) If a student is in a non-graded educational program (children who are not classified by the school district as being in grades 1,2,3. . .and doing the work customarily assigned to children in grades 1,2,3. . .), the school district's responsibility will change from the elementary to the high school beginning the school year which follows the fourteenth (14) birthday of the student. The high school district must then determine, based upon the recommendations of a child study team composed of appropriate

high school personnel as determined under Rule 48-2.18(18)-S18270 plus elementary personnel who have provided direct services to the student in the past, the most appropriate educational placement for the student."

Testimony revealed that Item 3 under Section 8.5.6 (renumbered 48-2.18(26)-S18480(1)(f)(i)(ac) was incomplete. Section 8.5.6--Rental of Facilities--Item No. 3--is therefore revised to read as follows:

48-2.18(26)-S18480(1)(f)(i)(ac) Specific written authorization must be given by the Superintendent of Public Instruction if the facility is not to be shared between the regular and special education programs."

Several suggestions concerning Section 8.5.9 (renumbered 48-2.18(26)-S18480(9)) were given by several people who testified at the hearing. Several of those testifying or who submitted written testimony felt the percent limitation on the number of learning disabled who may be served by special education funds was an unreasonably low figure. One person suggested that most recognized estimates placed the number of learning disabled children at around 10%. One written testimony supported two percent as a realistic figure for the number of learning disabled students. Testimony also requested that the regulations should provide information on how the regular educational program is to help children with mild learning problems. The testimony also indicated that using a two percent limitation was not in compliance with P.L. 94-142 which requires an appropriate education for all handicapped children. Because the proposed regulations for the Education of the Handicapped Act as amended by P.L. 94-142 limit the allocation of funds to states based upon no more than two percent of the eligible children being counted as learning disabled and because only children who have a severe discrepancy between achievement and intellectual ability in one or more of several areas (oral expression, written expression, listening comprehension or reading comprehension, basic reading skills, mathematic calculations, mathematic reasoning or spelling) may be counted as learning disabled, the two percent limitation is considered by many authorities as a most reasonable prevalence rate for the learning disabled. The figure of two percent is reasonable, particularly if you define a severe discrepancy, as defined in the regulations, as achievement at or below fifty percent of a child's expected achievement level. It should be noted that the term "learning disabled" does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation or of environmental, cultural or economic disadvantage. It should also be noted that federal regulations require correct classification of handicapped children and that over-identification of children as learning disabled particularly if they are mildly or moderately

retarded could result in a loss of federal funds allocated to Montana. Children in excess of two percent identified incorrectly as learning disabled will be excluded from the child count upon which federal funds are allocated to states.

The testimony concerning Section 8.5.9 suggested that additional information be provided regarding methods to be used by general education teachers in providing appropriate services to children with mild learning problems and who do not meet the criteria to be identified as learning disabled. We believe such information is more appropriately provided through inservice workshops or best practices manuals and should not be included in special education rules and regulations.

In response to testimony suggesting that a two percent limitation on learning disabilities results in regulations in conflict with P.L. 94-142, we do not agree that a conflict exists. In our opinion, the problem is one of defining a handicapping condition, specifically learning disabilities rather than a problem of serving less than all handicapped children.

While we believe that children in excess of two percent of the school population have learning problems which require special adjustment in their instructional program, we do believe that two percent is a reasonable estimate of those who can meet the criteria for classification as handicapped in the learning disabilities category. We are, therefore, making no change in Section 8.5.9.

Testimony was given at the hearing requesting that the last paragraph of Item 5 of Appendix D (renumbered 48-2.18(38)-S18680) be deleted from the regulations. That paragraph now indicates that a part-time special education supervisor, based upon the fraction of a 12-teacher base the supervisor is serving, may be employed by a school district. We believe that employment of part-time supervisors is generally neither economically or educationally sound and are, therefore, deleting the last paragraph of Item 5, Appendix D.

A written request was received regarding Section 7.1.1 (renumbered 48-2.18(22)-S18390) to reduce from 8 to 6 the caseload of students required for approval of the employment of a full-time resource teacher. The caseload required for employment of a full-time resource teacher was discussed at length by the review and validation team who developed the regulation and consensus was strong that the requirement of 8 students was appropriate. No change is being made in Section 7.1.1.

During testimony several questions were asked regarding the definition of the emotionally disturbed in Section 5.8 (renumbered 48-2.18(6)-S18020). The questions were of a technical nature and, in our opinion, should not be addressed in the rules and regulations but should be discussed during

inservice training sessions or workshops conducted by the state and local educational agencies. Another question regarding the meaning of "qualified psychologist" referenced in Section 6.5.8 (renumbered 48-2.18(18)-S18290(8)) was asked by the same individual. A qualified psychologist as used in these regulations means a psychologist approved to work as a school psychologist by the Superintendent of Public Instruction.

Another person giving testimony on Section 5.9 (renumbered 48-2.18(6)-S18030) asked why the emotionally disturbed was not included under the definition of learning disabled as it was in the Federal Register. We have studied the definitions of learning disabled and seriously emotionally disturbed and do not agree with the interpretation given in testimony. We will make no change in Section 5.9 and will continue to use the definition found in the regulations which is in complete accord with the definition found in the Federal Register.

Written testimony was received suggesting an additional section be added to Section 9 (renumbered Sub-Chapter 30, beginning with Rule 48-2.18(30)-S18490) which would allow an opportunity for a hearing with the Superintendent of Public Instruction or her representative before final action is taken on an application for funding a district special education program.

Section 9.3.13 (renumbered 48-2.18(30)-S18510(13)) has been added to provide an opportunity for discussion of any reduction of a budget during approval procedures.

During the testimony a number of suggestions for changes in phraseology were suggested and a number of changes in the wording of various sections were made when the suggestions served to clarify the meaning or increase the clarity of expression.

The rules adopted by the Superintendent on August 10, 1977, are as follows:

CHAPTER 18

SPECIAL EDUCATION UNIT

Sub-Chapter 1

Introduction

Section 48-2.18(1)-S1800 Board of Public Education Policy Statement

48-2.18(1)-S1810 Rationale for Service

Sub-Chapter 2

Responsibilities of the Superintendent of Public Instruction

Section 48-2.18(2)-S1820 Compliance with Board Policies

48-2.18(2)-S1830 Approval of Programs

48-2.18(2)-S1840 Approval of Special Assessment Funding

Sub-Chapter 6

Definitions

Section 48-2.18(6)-S1850 Special Education

48-2.18(6)-S1860 Handicapped Child

48-2.18(6)-S1870 Deaf

48-2.18(6)-S1880 Hard-of-Hearing

48-2.18(6)-S1890 Mentally Retarded

48-2.18(6)-S18000 Orthopedically Impaired

48-2.18(6)-S18010 Other Health Impaired

48-2.18(6)-S18020 Emotionally Disturbed

48-2.18(6)-S18030 Specific Learning Disability

48-2.18(6)-S18040 Speech/Language Impaired

48-2.18(6)-S18050 Visually Handicapped

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Sub-Chapter 10

Establishment of Special Education

Section	48-2.18(10)-S18060	Compulsory Attendance and Exceptions
	48-2.18(10)-S18070	Establishment of Special Education Program
	48-2.18(10)-S18080	Establishment of Individual District Special Education Program
	48-2.18(10)-S18090	Petition of Parents for Establishment of Special Education Program

Sub-Chapter 14

Responsibility to the Handicapped

Section	48-2.18(14)-S18100	Parental Notification of District Identification, Location, Referral and Screening Procedures
	48-2.18(14)-S18110	Parental Notification and Approval for Testing, Formal Evaluation and Interviewing
	48-2.18(14)-S18120	Written Notification Before Change in Education Placement/ Program
	48-2.18(14)-S18130	School Records and Confidentiality
	48-2.18(14)-S18140	Storage of Pupil Records and Custody of Assessment Data
	48-2.18(14)-S18150	Protection in Evaluation Procedures
	48-2.18(14)-S18160	Independent Education Evaluation
	48-2.18(14)-S18170	Review/Reevaluation
	48-2.18(14)-S18180	Surrogate Parents
	48-2.18(14)-S18190	Aversive Treatment Procedures

	48-2.18(14)-S18200	Protection from Labeling Process
	48-2.18(14)-S18210	Informal Negotiations
	48-2.18(14)-S18220	Opportunities to Present Complaints
	48-2.18(14)-S18230	Impartial Due Process Hearing
	48-2.18(14)-S18240	Civil Action

Sub-Chapter 18

Discovering the Handicapped

Section	48-2.18(18)-S18250	Screening and Referral Process and Child Find
	48-2.18(18)-S18260	Evaluation by the Child Study Team
	48-2.18(18)-S18270	Composition of a Core Child Study Team
	48-2.18(18)-S18280	Child Study Team Process
	48-2.18(18)-S18290	Composition of Specific Child Study Teams
	48-2.18(18)-S18300	Record of Child Study Team
	48-2.18(18)-S18310	Development of Individualized Education Program
	48-2.18(18)-S18320	Record of Individualized Education Program
	48-2.18(18)-S18330	Periodic Review of Individualized Education Program
	48-2.18(18)-S18340	Duration of Placement
	48-2.18(18)-S18350	Student Transfers
	48-2.18(18)-S18360	Promotion of Students from Elementary to Secondary Programs
	48-2.18(18)-S18370	Parental Involvement

Sub-Chapter 22

Kinds of Service for the Handicapped

Section	48-2.18(22)-S18380	Services in General
	48-2.18(22)-S18390	Resource Instruction and Service
	48-2.18(22)-S18400	Self-Contained Instruction
	48-2.18(22)-S18410	Services to Homebound and/or Hospitalized Students
	48-2.18(22)-S18420	Contracted Services
	48-2.18(22)-S18430	Out-of-District Services

Sub-Chapter 26

Program Applications

Section	48-2.18(26)-S18440	Submission Dates and Approval Timelines
	48-2.18(26)-S18450	Program Narrative
	48-2.18(26)-S18460	Program Units
	48-2.18(26)-S18470	Evaluation
	48-2.18(26)-S18480	Budget and Program Approval by the Superintendent of Public Instruction

Sub-Chapter 30

Special Education Budget

Section	48-2.18(30)-S18490	Relationship to the General Fund
	48-2.18(30)-S18500	Definitions and Explanations
	48-2.18(30)-S18510	Computation and Limitations

Sub-Chapter 34

Qualifications of Personnel

Section	48-2.18(34)-S18520	Special Education Teachers
	48-2.18(34)-S18530	Teachers of Homebound and/or Hospitalized Students
	48-2.18(34)-S18540	Speech Pathologists and Audiologists
	48-2.18(34)-S18550	School Psychologists
	48-2.18(34)-S18560	Supervisors of Special Education
	48-2.18(34)-S18570	Social Workers
	48-2.18(34)-S18580	Counselors
	48-2.18(34)-S18590	Nurses
	48-2.18(34)-S18600	Physical Therapists
	48-2.18(34)-S18610	Occupational Therapists
	48-2.18(34)-S18620	Vocational Education Instructors
	48-2.18(34)-S18630	Teacher Aides

Sub-Chapter 38

Caseload for Auxiliary and Supportive Personnel
Serving Special Education Programs

Section	48-2.18(38)-S18640	Auxiliary Personnel
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	48-2.18(38)-S18660	Audiologist
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Sub-Chapter 42

Hearings Before School District Trustees
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Section 48-2.18(42)-P18720 Hearings Before the Trustees of a School District

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Sub-Chapter 46

Federal Programs

Section 48-2.18(46)-S18750 Federal Programs Generally

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Sub-Chapter 50

Transportation

Sub-Chapter 1

Introduction

48-2.18(1)-S1800 BOARD OF PUBLIC EDUCATION POLICY STATEMENT. (1) The Board's policy statement regarding special education services is cited below:

(a) "In accordance with the provisions of Chapter 78 of Title 75, R.C.M. 1947, and in keeping with the federal Education of All Handicapped Children Act, P.L. 94-142, this policy, as recommended by the Superintendent of Public Instruction, and adopted by the Board of Public Education, requires a planned and coordinated program of special education in the state.

(b) The special education program operating in Montana shall provide opportunities for comprehensive services to handicapped children and youth. The program, supervised and coordinated by the Superintendent of Public Instruction, shall be developed in cooperation with school district personnel and others from the educational community. The program shall incorporate the many educational arrangements

which can be designed to integrate young handicapped persons, whenever possible, into the regular educational program and eventually into the mainstream of society. The program shall assure that careful and systematic procedures are used to identify and diagnose young handicapped persons. Finally, the special education program shall include measures to assure fiscal accountability of funds provided for the operation of special education.

(c) Consistent with Section 1 of Article X of the Montana Constitution adopted in 1972, the Board of Public Education maintains that the special education program shall assist all handicapped children and youth in developing their maximum education and social potential. In addition, the Board of Public Education encourages special education programs that enable handicapped youth to become partially or completely self-sufficient in our increasingly complex society. It is the intent of the Board of Public Education in adopting this policy that young handicapped persons will be given opportunities to become contributing, confident, dignified and self-reliant human beings. This Board of Public Education policy is based on the premise that the right of a young handicapped person to the special education he or she needs is as basic as the right of any other young citizen to an appropriate education in the schools of Montana." (History: Board of Public Education Policy Adopted Dec. 11, 1972, Revised Oct. 12, 1976; Sec. 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(1)-S1810 RATIONALE FOR SERVICE. (1) Special education should be considered one component of the regular education program. Services provided through special education should supplement rather than supplant the regular education program. Equal opportunity to an education does not mean identical programs for all individuals; rather, it means the use of special methodologies and strategies to develop the full educational potential of a handicapped individual. The handicapped student may require the assistance of special professionals, unique curriculum content, and alternative procedures and materials to develop this full potential and to be assured equal educational opportunity. (History: Sec. 75-7803, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 2

Responsibilities of the Superintendent of Public Instruction

48-2.18(2)-S1820 COMPLIANCE WITH BOARD POLICIES. (1) The conduct of special education in the public schools must

comply with the policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education. (History: Sec. 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(2)-S1830 THE APPROVAL OF PROGRAMS. (1) Authority for approval and disapproval of programs is given to the Superintendent of Public Instruction. Programs must be in compliance with the laws of the State of Montana, Board of Public Education policies and regulations of the Superintendent of Public Instruction.

(2) Trustees of local school districts cannot operate any special education program without approval from the Superintendent of Public Instruction.

(3) In the event that special circumstances exist which prohibit a local district from following the regulations of the Superintendent of Public Instruction, a special request must be sent to, and approved by, the Superintendent of Public Instruction prior to implementation. (History: Sec. 75-7803(8), 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(2)-S1840 APPROVAL OF SPECIAL ASSESSMENT FUNDING. (1) In the event a school district encounters difficulty in assessing children on a timely basis with staff employed by the district, funds may be approved for hiring staff to perform assessment of children during the summer if the following conditions are met:

(a) evidence of a need for assessment during the summer is provided.

(b) a special request is made by the district to the Superintendent of Public Instruction indicating the number and type of person(s) to be employed during the summer; the estimated number of children to be assessed; the estimated length of time assessment person(s) is required and the total cost of the summer assessment program. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 6

Definitions

48-2.18(6)-S1850 SPECIAL EDUCATION. (1) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions. The term includes but is not limited to speech pathology,

audiology, occupational therapy and physical therapy. (History: Sec. 75-7801(1), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S1860 HANDICAPPED CHILD. (1) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services. (History: Sec. 75-7801(2), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S1870 DEAF. (1) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance. (History: Sec. 75-7801(3), R.C.M. 1947; Order MAC No. 48-1, Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S1880 HARD-OF-HEARING. (1) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of "deaf". (History: Sec. 75-7801(4), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S1890 MENTALLY RETARDED. (1) "Mentally retarded" refers to a person with significant subaverage general intellectual functioning, which originated during the developmental period and who does not exhibit acceptable adaptive behavior. All three criteria must be met before a person is so classified. Subaverage general intellectual functioning is regarded as approximately 1.6 standard deviations below the population mean (I.Q. of approximately 75) for the age group involved as determined by an individual test of general intellectual functioning. (History: Sec. 75-7801(5), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S18000 ORTHOPEDICALLY IMPAIRED. (1) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis) and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy). (History: Sec. 75-7801(6), R.C.M. 1947; Order MAC No. 48-1, Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S18010 OTHER HEALTH IMPAIRED. (1) "Other health impaired" means limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes. (History: Sec. 75-7801(6), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S18020 EMOTIONALLY DISTURBED. (1) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as autistic, psychotic, sociopathic or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required, these behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment. (History: Sec. 75-7801(8), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S18030 SPECIFIC LEARNING DISABILITY. (1) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical

calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, mental retardation or environmental, cultural or economic disadvantages.

(2) A learning disabled person is a person who has been identified as having the following characteristics:

(a) Functional. There must be a significant discrepancy between the person's potential or capacity and actual performance in one or more of the basic academic areas (reading, writing, language, spelling, mathematics, etc.).

(i) The discrepancy (difference) is typically measured in terms of: grade levels (years and months), specific deficits in skills assigned to a particular grade level or scores, or achievement performance data compared to actual grade placement, chronological or mental age, or some other indicator of capacity or potential.

(aa) The learning disabled child's competencies and individual strengths and weaknesses must be reviewed for discrepancies; however, the learning disabled student may not show discrepancies in all academic areas.

(ii) Assessment of discrepancy is accomplished through use of formal, informal and observational tools--all three processes are considered necessary.

(iii) Individual evaluation data must indicate that the child is capable of performing near, within or above the average range of learning potential (intellectual functioning).

(b) Psychological Process. "Psychological process" refers to receptive, integrative and/or expressive skills. A dysfunction in the psychological process must be shown in perception, discrimination, understanding, attention, recall, concept formation and the use of spoken and/or written language, and the ability to listen, think, read, speak, write and perform mathematical calculations.

(i) Comprehensive evaluation by qualified medical examiners may assign diagnostic labels such as dyslexia, aphasia, minimal brain dysfunction, perceptual impairment, etc. These medical evaluations may provide assistance in the determining process but are not required. (History: Sec. 75-7801(9), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S18040 SPEECH/LANGUAGE IMPAIRED.

(1) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance. (History: Sec. 75-7801(10), R.C.M. 1947; Order MAC No. 48-1, Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(6)-S18050 VISUALLY HANDICAPPED. (1) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children. (History: Sec. 75-7801(11), R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 10

Establishment of Special Education

48-2.18(10)-S18060 COMPULSORY ATTENDANCE AND EXCEPTIONS. (1) The compulsory attendance law applies to all children including handicapped children. Exceptions to compulsory attendance for handicapped children are cited below:

(a) Excused from School Attendance. An excuse is issued at the request of a parent or guardian to exempt a handicapped child from compulsory attendance. The request must provide specific rationale demonstrating that the child cannot attend school because of the child's present bodily or mental condition. The excuse may be issed by the district superintendent or county superintendent when there is no superintendent employed by the district. (History: Sec. 75-7802, 75-6303, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(10)-S18070 ESTABLISHMENT OF SPECIAL EDUCATION PROGRAM. (1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and 18 inclusive. After September 1, 1980, such services shall be provided for all handicapped children between the ages of 3 and 21, inclusive.

(3) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program or by participating in a regional services program. (History: Sec. 75-7802,

75-7805, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(10)-S18080 ESTABLISHMENT OF INDIVIDUAL DISTRICT SPECIAL EDUCATION PROGRAM. (1) The trustees of any district, upon obtaining the approval of the Superintendent of Public Instruction shall establish and maintain a special education program whenever, in the judgment of the trustees and the Superintendent of Public Instruction:

(a) There are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication or other individual programs.

(2) Prior to September 1, 1980, programs may be established for handicapped children ages 3 through 5 and after September 1, 1980, children ages 0 through 2 may be provided service when the Superintendent of Public Instruction and the trustees have determined that such programs will:

(a) assist a child to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the child with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the child.

(3) Prior to September 1, 1980, programs may be established for handicapped persons between the ages of 18 and 21 inclusive when the Superintendent of Public Instruction and the trustees have determined that such programs will contribute to the educational development of those persons.

(4) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services. (History: Sec. 75-7802, 75-7806, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(10)-S18090 PETITION OF PARENTS FOR ESTABLISHMENT OF SPECIAL EDUCATION PROGRAM. (1) The parents of persons requiring special education may petition the board of trustees to establish an individual district special education program. Parents residing in several districts may petition the board of trustees of each district to cooperatively establish a special education program. The interlocal cooperative agreement authorized in Chapter 49 of Title 16, R.C.M. 1947; may be used to establish a multi-district special education program. (History: Sec. 75-

7802, 75-7807, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 14

Responsibility to the Handicapped

48-2.18(14)-S18100 PARENTAL NOTIFICATION OF DISTRICT IDENTIFICATION, LOCATION, REFERRAL AND SCREENING PROCEDURES. (1) "Parent" includes a parent, a guardian, a surrogate parent appointed under Rule 48-2.18(14)-S18180 or a person acting as a parent of a child in the absence of a parent or guardian. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

(2) Local school districts shall advise parents annually of the procedures for identification, location, referral and screening of preschool and schoolage population. Such notice must be given through newspapers, student handbooks or letters to parents to ensure that parents of all children are informed of the procedures.

(3) All written notices must be in language understandable to the general public and provided in the native language of the parents, unless it is clearly not feasible to do so. Where the native language of the parents is not in written form, interpretation shall be provided in the native language. When necessary, arrangements shall be made to facilitate communications with hearing and visually impaired parents. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18110 PARENTAL NOTIFICATION AND APPROVAL FOR TESTING, FORMAL EVALUATION AND INTERVIEWING. (1) If there is reason to believe that a preschool or school age child is in need of special education services, written permission must be obtained by the local agency from the parents before the process of individual evaluation, interviewing or formal testing can begin. This shall also apply when a reevaluation is planned. The annual review of the Individualized Education Program as defined in Rule 48-2.18(18)-S18330 of the manual is exempt from the requirement for parental approval for evaluation.

(2) Written parental approval applies only to those procedures used selectively with an individual child (e.g., individual intelligence measures, audiometric evaluation, speech, voice, language evaluation, diagnostic skill testing) and not to basic tests administered to all children in school (e.g., yearly achievement measures, vision screening, hearing screening, speech screening).

(3) Prior to an evaluation or a reevaluation, the parent shall be provided with a written notice of intent to conduct an evaluation/reevaluation (Rule 48-2.18(42)-S18740, Sample Forms). The written notice must be written in language understandable to the general public and provided in the native language of the parents. Where the native language of the parents is not in written form, interpretation shall be provided orally in the native language. The written notice will be delivered to the parent during a personal conference or by certified mail. Oral interpretation shall always be made available in the native language of the home and in English. When necessary, arrangements shall be made to facilitate communication with hearing and visually impaired parents.

(a) The notice of Intent to Conduct an Evaluation must include:

(i) A full explanation of all of the procedural safeguards available to the parents under this chapter.

(ii) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.

(iii) A description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal.

(iv) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice of Intent to Conduct an Evaluation must be:

(i) Written in language understandable to the general public.

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the local educational agency shall take steps to insure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication.

(ii) That the parent understands the content of the notice.

(iii) That there is written evidence that the requirements in paragraph (3), (a) and (b) of this section have been met.

(4) Written parental consent to conduct the evaluation must be obtained prior to the evaluation process (Rule 48-2.18(42)-S18740, Sample Forms). In addition to written parental permission to evaluate/reevaluate, the local agency

should obtain written parental acknowledgment of receipt and understanding of the notice of intent. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18120 WRITTEN NOTIFICATION BEFORE CHANGE IN EDUCATION PLACEMENT/PROGRAM. (1) Parental Notification and Approval.

(a) Within 30 days after completion of the Child Study Team evaluation, a designated school district official shall inform the parent in writing, orally or by other appropriate mode that a change in the educational status of the child is proposed or that a requested change in placement is denied. Notification shall be made by personal conference, if it is possible for parents to come in, or else by certified mail. Written notification must be written in language understandable to the general public and provided in the native language of the parents. The child should be informed of and helped to understand, if capable, the educational change. The parent must be invited to participate in the conference for developing the individualized education plan if the child is to be placed in a special education program. (See Rule 48-2.18(18)-S18310 of this manual.)

(b) The form to be used to notify parents of the proposed change in the educational placement/program or to deny initiation of a requested program should be included. (Rule 48-2.18(42)-S18740, Sample Forms.)

(c) The notice of placement/program change should include the following:

(i) A description of the proposed educational program, the reasons why the proposed placement is deemed appropriate or the reasons why the requested program is being denied and the reasons why it is the least restrictive program setting appropriate for the education of the child.

(ii) A description of any tests, reports or evaluation procedures on which the proposed education placement is based or the requested educational program is being denied.

(iii) A statement that the school reports, files and records pertaining to the child shall be available for inspection to the parents or their designee as indicated in writing. Copies of such records may be obtained on request at no more than the actual cost of such copying.

(iv) A description of the right of the parent to obtain a hearing if there are objections to the proposed action or nonaction. This notice should emphasize that the parent need not accept the proposed decision to change or not to change the status of the child when there is disagreement with the proposed alternative program. (See Sub-Chapter 42.)

(v) A detailed description of the procedures the parent should use to appeal a hearing decision. (See Sub-Chapter 42.)

(vi) An explanation stating that if the proposed action is rejected by the parent, the child shall continue, temporarily, in the current placement unless the current placement endangers the health or safety of the child or other children and/or substantially disrupts the education programs of other children. In this instance, the local educational agency shall notify the parent of the interim change in writing by certified mail.

(aa) This notice should specify:

(aaa) The manner in which the health and safety of the child or other children is endangered or the manner in which the educational program of other children is being disrupted.

(aab) The nature, duration and location of the interim placement, which must not exceed 15 school days.

(aac) The fact that the interim placement may be extended beyond 15 school days only on the decision of the trustees and that in no case may it extend beyond the duration of the entire due process procedures.

(aad) The name of the person responsible for the interim placement and the date the interim placement will begin.

(vii) An explanation that in the case where a complaint involves a child who is applying for initial admission to a public school, the child shall, with the consent of the parents, be placed in the public school program until the completion of due process proceedings. In this case, the local education agency shall notify the parents of the type of interim placement in writing by certified mail using procedures established and written in item (vi) immediately preceding this item.

(aa) This notice should specify:

(aaa) The nature, duration and location of the interim placement, which must not exceed 15 school days.

(aab) The fact that interim placement may be extended beyond 15 school days only on the decision of the hearing officer and that in no case may it extend beyond the duration of the entire due process procedures.

(aac) The name of the person responsible for the interim placement and the date the interim placement will begin.

(2) Placement/Program Maintained.

(a) A child shall continue, temporarily, in the current placement whenever parents do not give written consent for a change in their child's educational program, except in a case where the current placement endangers the health or safety of the child or other children and/or substantially disrupts the educational programs of other children or if applying for initial admission to a public school, shall with the consent of parents or guardian, be placed in the public school program until all such legal proceedings have been completed. In this case, Rule 48-

2.18(14)-S18120(1), items (vi) and (vii) shall be followed. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18130 SCHOOL RECORDS AND CONFIDENTIALITY. (1) School records and confidentiality of information must follow the same provisions established for regular education under the Family Educational and Privacy Rights Act. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18140 STORAGE OF PUPIL RECORDS AND CUSTODY OF ASSESSMENT DATA. (1) Superintendent of Public Instruction.

(a) The Superintendent of Public Instruction shall, through the five major newspapers in the state of Montana, advise the public of policies and procedures that have been established by the Superintendent's office to protect confidentiality of child identification data collected and maintained through the state's annual identification and location of handicapped children and youth.

(b) Data items to be collected and maintained by the Superintendent of Public Instruction on an ongoing basis will be limited to the children's initials, birthdates, sex, school district and handicapping condition except for programs in state-operated schools under P.L. 89-313.

(2) Local School Districts.

(a) Educational agencies shall provide public notices advising the public of procedures that have been established by the local school district board of trustees to protect confidentiality of the children's records.

(b) Data items to be collected and maintained by local school districts will include, in addition to those required in Standard 161, Standards for Accreditation of Montana Schools, professional diagnostic information, services needed and provided and items related to cost accounting. If other personally identifiable information is to be collected in the future, the district shall advise parents.

(c) All data shall be used only for the purpose for which it is collected unless parental consent is obtained.

(3) Safeguards.

(a) Each participating school district and/or other participating agencies will be required to provide the Superintendent of Public Instruction with a written notice which will assure the Superintendent that personally identifiable data collected by that agency will be maintained in a confidential manner. In addition to the requirements found in Standards 161 and 162, Standards for Accreditation of Montana Schools, this notice must include:

(i) The name and position of the persons assigned by the agency responsible for maintaining all personally identifiable student information in a confidential manner.

(ii) That all data forms are maintained in secure storage.

(iii) That the agency annually maintains a list of all persons who legitimately have access to those data.

(iv) That the agency provides training for persons having access to these data. Such training shall relate to the confidentiality of the records, existing local, state and federal regulations relating to access and dissemination of records, rights of the child and parents to the confidential maintenance of records.

(4) Destruction of Data.

(a) In accordance with local board of trustees policies, each educational agency must establish written procedures to ensure that parents or the student after reaching the age of majority (currently 18) shall have the option to request destruction of their or their child's confidential records five years after termination of special education services, after reviewing them. Otherwise the LEA shall keep the records for five years beyond legal school age (21). Reasonable effort shall be taken by the agency maintaining personally identifiable data to provide parents with notification 60 days prior to its destruction and the parents will be offered the opportunity to receive a copy of such records.

(b) The information to be destroyed shall not include those data which are routinely collected and maintained on all school children (e.g., student's name, address, phone number, his/her grades, attendance record, classes attended, grade level completed and year completed), but shall be data collected for identification, location, evaluation and related to special education services the child has received from the agency.

(c) Standards 161 and 162, Standards for Accreditation of Montana Schools, shall also be followed by Montana schools. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18150 PROTECTION IN EVALUATION PROCEDURES.

(1) Each educational agency shall establish procedures to assure that testing and evaluation materials and procedures used for evaluation and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory.

(2) The procedures that are developed by each educational agency shall be established in accordance with the following criteria:

(a) Evaluation and placement procedures are administered in accordance with the procedural safeguards in Rule 48-2.18(14)-S18140(3).

(b) The determination of a child's need for special education and related services is based on a comprehensive evaluation, which may include but is not limited to:

(i) an individual psychological examination,

(ii) relevant physical information,

(iii) appropriate achievement testing and evaluation of classwork,

(iv) direct observations in a variety of functioning environments,

(v) assessment of the social skills and emotional status and

(vi) interviews with, or information provided by, important and involved persons in the child's life.

(c) Tests and other materials and procedures used for evaluating a child's abilities have been properly and professionally evaluated for the specific purposes for which they are to be used and meet the test of reasonableness in the eyes of competent professional personnel.

(d) The evaluation materials and procedures are provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(e) Steps are taken to assure that a test administered to a student with a sensory, motor, speech, hearing, visual or other communicative disability or to a student who is bilingual, accurately reflects the child's ability in the area tested and not the child's impaired communication skill or the fact that the child is not skilled in English.

(f) Whenever individual intelligence tests are administered, steps are taken to assure that judgments about the child's placement are not based solely on an I.Q. score, that a behavioral description and an interpretation of the child's functioning on the various subtests are made by the qualified examiner who administered the test, and that the results of the evaluation are expressed in terms of the child's strengths, weaknesses and needs.

(g) The cultural differences of a child are taken into account in interpreting the assessment information.

(h) No single test or type of test or procedure is used as the sole criterion for determining an appropriate educational program for the child.

(i) The interpretation of the assessment information and the subsequent determination of the educational placement of the child is made by a team or group of persons.

(j) All relevant information with regard to the functional abilities of the child is utilized in the placement determination. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18160 INDEPENDENT EDUCATION EVALUATION.

(1) Parents shall have the right to an independent educational evaluation of their child when those parents have reason to question the appropriateness of the school's educational evaluation and proposed program recommendations.

(2) Requests by parents for an independent educational evaluation should be made to the district superintendent or county superintendent when there is no district superintendent. The parents must state the reason(s) for their request for an independent evaluation. The local school district utilizing special education funds is responsible for the financial expense of the independent evaluation. Advance approval of any contract for an independent evaluation must be obtained from the Superintendent of Public Instruction.

(3) The following is a delineation of responsibility of the parents, district or county superintendent and the Office of Public Instruction in an independent educational evaluation:

(a) Parents.

(i) The parents must direct a request for an independent educational evaluation in writing to the district superintendent or the county superintendent when there is no district superintendent. The parents must state the reason(s) for such an evaluation.

(ii) The parents must allow the local school district to complete a current evaluation (assessment during that school year) before requesting an independent evaluation.

(iii) The parents must sign a consent for evaluation to be conducted by the independent evaluator(s).

(iv) The parent must sign a release of information between the school district and the independent evaluator(s). The school district and the independent evaluator(s) must exchange all records concerning the child. All records and information from the independent evaluation become part of the child's school record.

(b) District Superintendent.

(i) Within 10 to 15 days of a request by parents for an independent evaluation of their child, the school district must submit a letter to the Office of Public Instruction stating the child's birthdate, initials, handicapping condition (if known), dates of evaluations and instruments used and the parents' reason for an independent evaluation.

(ii) When necessary, the school district will contract for the independent evaluation. This contract must have the prior approval of the Office of Public Instruction.

(c) Superintendent of Public Instruction.

(i) The Superintendent of Public Instruction will assist the school district and parents in securing an appropriate independent evaluation(s).

(ii) The Superintendent of Public Instruction will approve or disapprove the contract for independent educa-

tional evaluation. If the contract is disapproved, an alternative independent evaluation(s) will be offered. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18170 REVIEW/REEVALUATION. (1) Each educational agency shall set forth procedures to assure:

(a) That each child's individualized education program is reviewed and revised periodically, but not less than annually.

(b) That a comprehensive educational reevaluation of the child, which is based on Rules 48-2.18(14)-S18150 and 48-2.18(18)-S18260 of this chapter, is conducted whenever conditions warrant, but no less than once every three years. A comprehensive educational evaluation will be made at the request of the child's parents or teachers. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18180 SURROGATE PARENTS. (1) General.

(a) The state educational agency shall insure that the rights of a child are protected when the parents of the child are not known, unavailable or the child is a ward of the state, including the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

(2) Criteria for selection of surrogates.

(a) The state or local educational agency may select a surrogate parent in any way permitted under state law.

(b) State and local educational agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interests of the child he or she represents and

(ii) Has knowledge and skills that insure adequate representation of the child.

(3) Nonemployee requirement; compensation.

(a) A person assigned as a surrogate must not be an employee of the state or local educational agency which is involved in the education or care of the child.

(b) A person who otherwise qualifies to be a surrogate parent under paragraph (2) and (3)(a) of this rule, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(4) Responsibilities. The surrogate may represent the child in all matters relating to:

(a) The identification, evaluation and educational placement of the child and

(b) The provision of a free appropriate public education to the child. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18190 AVERSIVE TREATMENT PROCEDURES. (1) Individual programs involving the use of aversive stimuli (i.e., restraint, shock, seclusion) shall be conducted only with the written consent of the affected student's parents and at the recommendation of the child study team and shall be described by specific behavioral objectives. Chemical restraint may never be used for punishment, for staff convenience or as a substitute for a program. Each use of physical restraint, aversive techniques or environmental seclusion shall be recorded in the student's file. This record shall include:

(a) description of behavior to be modified;

(b) evidence that less aversive measures have been tried;

(c) expected behavioral outcome;

(d) actual behavioral outcome;

(e) if relevant list possible secondary effects;

(f) date for review or termination;

(g) written parental permission. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18200 PROTECTION FROM LABELING PROCESS. (1) Child Study Teams shall assign a diagnostic label for each handicapped child following comprehensive evaluation. The label shall relate to various handicapping conditions defined in this manual. The diagnostic label is to be used for reports required by the Office of Public Instruction. Educational agencies should not refer to students, teachers or rooms by diagnostic labels as such practices do not facilitate treatment and are often harmful to the individual labeled. Parents shall be informed of the diagnostic category as it relates to the handicapping condition of their child. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18210 INFORMAL NEGOTIATIONS. (1) When parents question or express dissatisfaction with the details set forth in the notices that an educational agency provides them, the local education agency and Superintendent of Public Instruction shall attempt to clarify the question or resolve the difference directly with the parents by informal negotiation or some procedure other than a formal due process hearing.

(2) Dissatisfaction could be with, but is not limited to, the proposed educational placement/program changes; refusals to initiate or change the identification, evaluation or educational placement of the child; or the provision of a free appropriate public education.

(3) If such efforts fail, the procedures for complaints in Rules 48-2.18(14)-S18220 and 48-2.18(14)-S18230 of this manual shall be followed. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18220 OPPORTUNITIES TO PRESENT COMPLAINTS. (1) Each agency shall establish written procedures which provide for parental presentation of complaints with respect to any matter relating to the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education for the child. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18230 IMPARTIAL DUE PROCESS HEARING. (1) Whenever a complaint has been received as outlined in Rule 48-2.18(14)-S18220, the parents shall have an opportunity for an impartial due process hearing. The hearing process as outlined in Sub-Chapter 14 of this manual shall be followed. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(14)-S18240 CIVIL ACTION. (1) Any party who has exhausted all administrative appeals and who has been aggrieved by the findings and decisions made in the hearing, or any party aggrieved by the decision of the reviewing officer, shall have the right to bring civil action with respect to the complaint presented pursuant to this subpart.

(2) Such action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(3) In any action brought under this section, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(4) The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 18

Discovering the Handicapped

48-2.18(18)-S18250 SCREENING AND REFERRAL PROCESS AND CHILD FIND. (1) Each school district must screen and

develop criteria for further assessment for its students annually to determine potential candidates for special education and report the screening process to the Superintendent of Public Instruction. (For further clarification, see Rule 48-2.18(26)-S18450, the program narrative rule.)

(2) Each school district is responsible for developing a referral process. Children and youth who have been or are being considered for retention, delayed admittance or exclusion from school in the regular program shall be considered as a possible referral to a Child Study Team.

(3) Each school is responsible for establishing a child find process. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18260 EVALUATION BY THE CHILD STUDY TEAM. (1) No child shall receive special education services until a Child Study Team has performed an appropriate comprehensive assessment which yields evidence that the child has learning and/or behavioral problems requiring a specialized service not afforded by the regular program.

(a) Areas of assessment shall include, when appropriate but not limited to, the following categories:

(i) Scholastic - this area shall include assessment of the intellectual, language and communication, academic and self-help skill status of the child.

(ii) Physical - this area shall include a review of general health status of the child, with particular attention to the visual, auditory, musculo-skeletal, neurological and developmental modalities.

(iii) Adjustment - this area shall include assessment of the social skills and emotional status of the child.

(b) Assessment results shall be summarized in writing, dated and signed by the individual(s) responsible for conducting the assessments. The report shall be kept with the child's permanent records as required in Standard 161, Standards for Accreditation for Montana Schools.

(c) Summaries shall include procedures and instruments used, results obtained and apparent significance of findings as related to the child's instructional program.

(d) Assessments in each of the areas stated shall take into account, but not be limited to, the age, maturation and cultural background of the child.

(e) Since conditions which cause a child to be handicapped can have the effect of depressing or distorting standardized intelligence and achievement test scores, these scores should not be used as the only criterion in determining a child's need for services. Therefore, a Child Study Team in conjuction with the parents will determine the appropriate educational program for a handicapped child.

(f) Individual tests of mental measurement (I.Q. results) done by an agency may be utilized by a Child Study Team if that agency is recognized by the Superintendent of Public Instruction (i.e., Child Development Center, Mental Health Center, Boulder River State School and Hospital). Psychologists participating on a Child Study Team must be approved by the Superintendent of Public Instruction. When a school psychologist and Child Study Team utilize the test results of another agency or person, that school district assumes responsibility for accuracy of the psychological information.

(g) An evaluation of the child, based on procedures which meet the requirements under Rule 48-2.18(18)-S18290, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18270 COMPOSITION OF A CORE CHILD STUDY TEAM. (1) A Child Study Team shall consist of a regular classroom teacher, principal, or designee, and the special education person who may serve the child. Parents shall be afforded the opportunity to participate in the child study process. Generally, school psychologists and speech pathologists will complement any team.

(2) In addition to the required professional members on a particular Child Study Team utilization of other expertise is recommended and required in many instances. The Child Study Team may determine what other specialities may be needed to complete an appropriate evaluation.

(3) Secondary school Core Child Study Team will require other individuals at the discretion of the parents or agency to accommodate a particular student's needs (i.e., vocational rehabilitation counselor, psychologist, nurse, special needs counselor, etc.). (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18280 CHILD STUDY TEAM PROCESS. (1) The child evaluation relates to a process which involves a group of persons including the parents, who are charged with the responsibility of gathering all of the pertinent data possible regarding an individual child to determine the child is handicapped, what the child's education needs are and what service options might be best utilized to deliver the services to the child.

(2) The process or procedures that each Child Study Team utilizes to gain the important information relating to a particular child will vary depending on the needs of the child, organization of the agency(s) providing educational services and unique situations related to availability of resources.

(3) Individual members of each Child Study Team are charged with the responsibility of conducting their part of the evaluation as appropriate to their professional skills and training, and to summarize in writing their evaluation results, identify the instruments or methods used to gain the data, and make recommendations to providing services to the child. They are responsible for using non-discriminatory testing and evaluation procedures as outlined in Rule 48-2.18(14)-S18150 of this manual. The summary of the evaluation and recommendations are to be filed in the student's educational records, interpreted to parents and made available to the chairperson of the Child Study Team for educational planning.

(4) Once a decision is made by the Child Study Team that a child is handicapped and is not receiving an appropriate education in the present educational program, the district has 30 days in which to initiate the appropriate changes in the child's program. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18290 COMPOSITION OF SPECIFIC CHILD STUDY TEAMS. (1) Mentally Retarded.

(a) In addition to the core team a school psychologist is a required member of the Child Study Team.

(2) Orthopedically Impaired.

(a) In addition to the core team, a physician's report and pertinent medical information shall be obtained and utilized in the development of the child's individualized education program.

(b) The Child Study Team shall determine the child's educational needs resulting from the orthopedic handicap including the need for changes in the physical environment, physical therapy and occupational therapy. Physical and occupational therapy are the school's responsibility only if the orthopedic probelm interferes with the students ability to acquire academic and vocational skill. Generally, orthopedically handicapped children should be accommodated in the regular classrooms, unless there is a significant orthopedic handicap.

(3) Visually Handicapped.

(a) In addition to the core team, a vision consultant should be utilized by the Child Study Team when indicated by the severity of the handicap. The team shall also utilize a current evaluation from an ophthalmologist or optometrist.

(b) The team must develop an appropriate educational program based on a comprehensive team assessment. District and state services should be coordinated to ensure comprehensive services without unnecessary duplication.

(4) Deaf and Hard-of-Hearing.

(a) In addition to the core team, a consultant for the hearing impaired, audiologist and speech pathologist may be needed. The team shall also utilize a physician's report and pertinent medical information. The team will develop an appropriate educational program based on a comprehensive team assessment. District and state services should be coordinated to ensure comprehensive services without unnecessary duplication.

(5) Speech/Language Impaired.

(a) In addition to the core team, a speech pathologist is a required member of the Child Study Team. The speech pathologist may be the special education person on the core team.

(6) Other Health Impaired.

(a) The team shall consist of a core team plus other personnel as determined necessary for health impaired. In addition, eligibility for homebound program must be documented by a physician.

(7) Specific Learning Disabilities.

(a) Core team plus school psychologist, a teacher or administrator with training or knowledge in the area of specific learning disabilities, a speech therapist when the speech therapist considers participation necessary and other appropriate professional individuals.

(8) Emotionally Disturbed.

(a) Core team plus a qualified psychologist and/or a (licensed/certified) psychiatrist. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18300 RECORD OF CHILD STUDY TEAM. (1) Each Child Study Team member shall sign the Child Study Report and file in the child's folder. If a team member(s) disagrees with the majority in a placement decision, then a statement is to be prepared, signed, dated and included in the child's folder by the dissenting member(s). The statement is to be viewed as a potentially helpful alternative for the child. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18310 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM. (1) Services provided directly to a child via special education shall begin only when a comprehensive Child Study Team evaluation has been conducted and when written parental/guardian approval of the written individualized education program has been developed. Written parental consent for special education placement shall also be obtained annually prior to placing the child in the program.

(2) The data gathered from the comprehensive educational evaluation conducted by the Child Study Team shall be utilized in the development of the individualized education program.

(3) The term "individualized education program" means a written statement for each handicapped child developed in a meeting by a representative of the local educational agency who shall be qualified to supervise the provision of the specially designed instruction to meet the unique needs of handicapped children, regular and/or special education teacher(s) who have direct responsibility for implementing the child's individualized program, the parents or guardian of the child and, whenever appropriate, the child.

(4) The statement shall include at least these items:

(a) a statement of the present levels of educational performance of such child (baseline date);

(b) a statement of annual goals;

(c) short term instructional objectives (in addition to the basic academic and life skills objectives, psychomotor objectives also must be considered);

(d) a statement of the specific educational services to be provided to such child and the extent to which such child will be able to participate in regular educational programs;

(e) the projected date for initiation and anticipated duration of such services;

(f) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(5) When individualized education plans are developed for secondary special education students, the following points should carefully be considered:

(a) whether a total basic skills focus is still realistic;

(b) whether the service thrust and focus should be development of compensatory and adjustment skills; and

(c) whether utilization of a vocational program is appropriate. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18320 RECORD OF INDIVIDUALIZED EDUCATION PROGRAM. (1) Each agency shall maintain records of the individualized educational program for each handicapped child and such program shall be established, reviewed and revised as provided in Rule 48-2.18(18)-S18330 of this manual. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18330 PERIODIC REVIEW OF INDIVIDUALIZED EDUCATION PROGRAM. (1) Each agency and parents shall establish or revise an individualized education program for each handicapped child before the beginning of each school year. They will then review and, if appropriate, revise its provisions periodically but not less than annually. Parents

shall have the opportunity to review their child's individualized education program and be given the opportunity to assist in scheduling the meetings at a mutually agreed time and place.

(2) The notice of the meeting should include the following information:

(a) The date, time and place of review conference.

(b) A core team will participate in the review.

(c) A description of procedures to be used in the review.

(d) A statement that the parents will receive the findings and recommendation of the staff's review within 10 days after completion of the review.

(3) The conference shall be summarized in writing, dated and signed by persons present. Content of the summary shall follow the outline of the individualized education program. A copy of the summary shall be provided to parents. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18340 DURATION OF PLACEMENT. (1) A child may not receive service under special education without an annual review which determines the program's appropriateness for the child.

(2) Short-term placement (six week maximum) is permissible for diagnostic teaching and/or trial speech therapy. Written parental approval, in addition to an evaluation by the appropriate Child Study Team, is required for short-term placement. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18350 STUDENT TRANSFERS. (1) If a student transfers to a school district and has previously been in a self-contained special education program, the district may place the child in a similar program on a temporary basis provided parental consent is obtained. The temporary placement is only to provide the school district time to complete a comprehensive evaluation and establish the Child Study Team process to determine the handicapping condition as well as the most appropriate placement. This temporary placement shall only extend to a maximum of six weeks. (History: Sec. 75-7802, 57-7811, R.C.M 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18360 PROMOTION OF STUDENTS FROM ELEMENTARY TO SECONDARY PROGRAMS. (1) Promotion of handicapped students from elementary to junior high and from junior high to senior high requires that systems of communication and information exchange are developed and function between each level of educational instruction. Chronological age and physical development should be a strong

factor in the decision to move a student from the junior to the senior high. Consideration also must be given to the least restrictive educational principle in planning for promotion.

(2) If a student is in a non-graded educational program (children who are not classified by the school district as being in grades 1, 2, 3. . .and doing the work customarily assigned to children in grades 1, 2, 3. . .), the school district's responsibility will change from the elementary to the high school beginning the school year which follows the fourteenth (14) birthday of the student. The high school district must then determine, based upon the recommendations of a child study team composed of appropriate high school personnel as determined under Rule 48-2.18(18)-S18270 plus elementary personnel who have provided direct services to the student in the past, the most appropriate educational placement for the student. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(18)-S18370 PARENTAL INVOLVEMENT. (1) Parents shall be afforded the opportunity to participate in the Child Study Team process (see Rule 48-2.18(18)-S18270 of this manual), individual planning conferences (see Rule 48-2.18(18)-S18310 of this manual) and periodic educational program reviews (see Rule 48-2.18(18)-S18330 of this manual). They also shall be afforded the opportunity to assist in scheduling the meetings at a mutually agreed on time and place.

(2) The Child Study Team may evaluate the child, providing they have written parental consent. Planning conferences and periodic program reviews may be conducted without the parent in attendance only if there is sufficient documentation of attempts/efforts to arrange a mutually agreed on time and place or if the parents waive their right to participate, in accordance with due process procedures.

(3) In cases where it is not possible or practical for the parent to attend, other alternatives may be attempted including individual or conference telephone calls.

(4) To assure active parent participation, an interpreter may accompany the parents to allow communication in their native or primary language.

(5) The responsibility for initiating and conducting the individual planning conference rests with the local educational agency.

(6) No parent of a child placed in a special education program will be required to perform duties not required of any other parent whose child is enrolled in the public schools unless specifically agreed to by both parties in writing. (History: Sec. 75-7802, 75-7811, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 22

Kinds of Service for the Handicapped

48-2.18(22)-S18380 SERVICES IN GENERAL. (1) Individual assistance for a handicapped student shall be accomplished through utilization of the least restrictive educational alternative. Under the least restrictive educational alternative, handicapped students shall be educated, whenever possible, with students who are not handicapped. Removal of handicapped children from the regular educational environment (e.g., placement in special classes housed in separate school facilities) will only occur when the nature or severity of the handicap is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.

(2) To meet the needs of each handicapped person, districts should afford children access to a variety of instructional and service options. Every district cannot be expected to have all the necessary resources to develop as many services as are necessary to meet the needs of handicapped children in the district. Services will be developed as availability of qualified staff permits. Small school districts with a minimal number of handicapped students should seek to serve those students with programs and services coordinated with nearby districts and/or through regional resources. (History: Sec. 75-7802, 75-7805, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(22)-S18390 RESOURCE INSTRUCTION AND SERVICE. (1) Generally.

(a) Instruction from a resource service requires that the special education teacher be available to provide direct service to handicapped students who are enrolled in the regular instructional program. Resource instruction may be provided by a resource teacher working with handicapped students in the regular classroom or by removing the students to a separate resource room for some part of the school day. A student should not be removed from the regular classroom to a separate resource room unless the move is essential in meeting the specific needs of a child. The resource teacher is responsible for ongoing consultation and communication with the child's regular classroom teacher(s) regarding specific needs and recommendations of materials and instructional procedures and to exchange information for parent conferences. The resource teacher and the regular instructional staff should coordinate their efforts and expertise frequently and systematically to best serve the student.

(b) The special education teacher assigned to a resource program is responsible for assisting in Child Study Team assessment, translating strategies, preparing materials,

providing instruction, maintaining appropriate records of progress and conferring with parents and regular teachers. The resource teacher should periodically follow-up on children who have been phased out of special education programs to determine their progress in the regular classroom.

(2) Caseload of a Resource Service.

(a) A teacher of a resource service should have a minimum caseload of eight handicapped students before establishing a full-time service. The maximum number of handicapped students assigned to each resource service is to be determined by the school administration utilizing the recommendations of the Child Study Teams. The recommended maximum is 15 students per day. In situations where fewer than eight can be documented, the Full-Time Equivalent to be approved is to be negotiated with the Office of Public Instruction based on special education needs of the children.

(3) Adding Resource Services.

(a) If a school district is considering adding resource services, the district must first establish the maximum number of handicapped students able to be accommodated in existing services. Once each resource service is filled to the maximum, the school may provide service on a part-time basis by prorating the number of additional handicapped students until the minimum of eight is reached. At that time, an additional full-time resource service may be utilized.

(4) Resource Service is Non-Categorical.

(a) A resource service may serve a combination of handicapping conditions as long as the needs of the children assigned to the service are appropriately met through this option.

(5) Facilities.

(a) Space and equipment needed to support the resource service must be provided.

(6) Itinerant Resource Speech and Hearing Services.

(a) Itinerant Resource Models.

(i) Speech and hearing services traditionally operate on an itinerant resource model. Personnel requirements may be found in Sub-Chapter 38.

(b) Speech Pathologist.

(i) The caseload for a speech pathologist depends on the severity of the handicapped students to be served. The suggested range is from 15 to 60 children. The caseload must be verified by a fully-licensed speech pathologist (see Sub-Chapter 38) before it will be approved by the Superintendent of Public Instruction. If the caseload includes primarily hearing handicapped students, then the caseload must be verified by a fully-licensed audiologist and coordinated with the Child Study Team for hearing impaired students.

(ii) A full-time speech pathologist's suggested minimum student base population is one clinician per 1,000 students. Exceptions are to be negotiated with the Superintendent of Public Instruction.

(c) Audiologist.

(i) When an audiologist is working in a therapeutic capacity, that individual has the caseload recommended for a speech pathologist. (See Related Services Sub-Chapter 38 for diagnostic screening and testing services.) (History: Sec. 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(22)-S18400 SELF-CONTAINED INSTRUCTION. (1) Service through special self-contained instruction results when the Child Study Team determines that a child exhibits an intellectual, adaptive, learning, social and/or emotional impairment so severe that removal from the regular instructional program for more than fifty percent of the school day is essential and that education in a regular instructional program with the assistance of resource instruction will not provide an appropriate education.

(2) The teacher in a self-contained program is responsible for assisting in the Child Study Team assessment, translating assessment findings into appropriate educational objectives and implementing and evaluating instructional procedures necessary to achieve these objectives. To ensure that capable students have an opportunity to return to the regular instructional program, it is important that a thorough system of referral, assessment, programming and termination be developed. Communication with the regular instructional staff, particularly with the regular classroom teacher, is of utmost importance and requires careful planning by all concerned.

(3) The age range of children assigned to a self-contained classroom should be considered in establishing the composition of the class. Chronological age range greater than six years is not recommended. The actual range should be determined by the school administration utilizing the recommendations of the Child Study Team.

(4) Caseload of a Self-Contained Class.

(a) A minimum of four handicapped students needing removal from the regular instructional program for more than fifty percent of the school day is required for a self-contained class. The school administration shall determine the number of students assigned to the program by utilizing the recommendations of the Child Study Team. The type and severity of the handicapping conditions of the students should be considered in recommending class size. It is recommended that self-contained classes not exceed 12 students.

(b) When there are fewer than four students who require removal from the regular program for more than fifty percent of the school day, an existing resource program may be utilized to provide full-time, self-contained services.

(5) Adding Additional Self-Contained Classes.

(a) Once a self-contained class reaches the maximum number of students as recommended by the Child Study Team, the school administration must give consideration to providing the teacher with additional child management help, such as an aide, so that the class may accommodate more handicapped students. Dividing the class after these alternatives have been utilized is an administrative decision which must take the Child Study Team recommendations into consideration, as well as the recommendations for student/teacher ratios given in Rule 48-2.18(22)-S18400(4) in this manual.

(b) If a self-contained class is at minimum levels, consideration should be given to utilizing the class so it provides resource instruction accommodating other handicapped students.

(6) Self-Contained Service is Non-Categorical.

(a) A self-contained service may serve a combination of handicapping conditions as long as the needs of the children assigned to the service are appropriately met through this program option.

(7) Facilities.

(a) Space and equipment needed to support the self-contained class must be provided. The classroom should be in a school building and should be comparable to regular classrooms in that school district. Handicapped children shall not be discriminated against because of the lack of appropriate facilities. Any deviation of special education classrooms must receive approval from the Superintendent of Public Instruction.

(8) Length of School Day.

(a) The length of the school day follows provisions established in 75-7403, R.C.M. 1947, unless the child, for physical reasons, cannot attend for the standard school day. This determination will be made by the Child Study Team. (History: Sec. 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(22)-S18410 SERVICES TO HOMEBOUND AND/OR HOSPITALIZED STUDENTS. (1) Services to any homebound and/or hospitalized students may be provided when a medical doctor verifies that a student is hospitalized or provides medical documentation and reasons for the students' need to remain out of school.

(2) When the Child Study Team has completed a comprehensive education evaluation as outlined in Rule 48-2.18(18)-S18260, the service may be extended to the student. However, the procedure in Rule 48-2.18(26)-S18480(1) must be followed. (History: Sec. 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(22)-S18420 CONTRACTED SERVICES. (1) A school district may serve a handicapped child through

contracted services. The contracted services may be diagnostic and/or instructional. When instructional services are to be contracted, the educational objectives must be stated in the proposed contract and sent to the Superintendent of Public Instruction for approval. (See Rule 48-2.18(26)-S18480(1), Contracted Services.) (History: Sec. 75-7802, 75-7809, 75-7809.1, 75-7811, R.C.M. 1947; Order MAC No. 48-1, Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(22)-S18430 OUT-OF-DISTRICT SERVICES. (1) If a school district is unable to provide services for its resident handicapped students or unable to provide services through cooperative services or regional services, the school district may have to use out-of-district placement. The decision to place a child out-of-district must be recommended by the resident district Child Study Team and approved by the resident district board of trustees. Placement made independently of the public school by the parents and/or other agencies relieves the public school of all financial obligations.

(2) When a child is handicapped to such a degree that a totally controlled environment is needed, residential school placement may be essential. Room and board and tuition costs are considered allowable costs in the district's special education budget. The public school is only responsible for room and board and the educational kinds of costs. Other services such as psychiatric therapy and/or medical treatment must be deleted from the special education costs and assumed by parents and/or other agencies. When an out-of-district placement involves the payment of tuition or board and room, the placement must be approved by the Superintendent of Public Instruction. (See Rule 48-2.18(26)-S18480(1)).

(3) A district must, first, make a reasonable attempt to secure and utilize in-state resources before out-of-state placement will be approved.

(4) It is the resident district's responsibility to convene the Child Study Team and set the time and place for conducting a review of the child's needs and educational placement. The receiving district is responsible for providing program monitoring and assisting the resident district with conducting an annual review of the child's program and progress. The receiving district shall provide pertinent data regarding the child's program and progress to the resident district and parents.

(5) The resident district and receiving district should form a Joint Child Study Team to consider the evaluation data and explore program options.

(6) Travel funds to facilitate this process must be approved by the Office of Public Instruction prior to the two districts convening a joint Child Study Team.

(7) A regional service staff may provide supportive services when such services are not available through the local district. Please refer to Rule 48-2.18(18)-S18270, Composition of a Child Study Team.

(8) The resident school district is required to budget for room and board costs (0555-Transportation) in its special education budget. Budget approval does not mean the school district has authorization to send a specific child out of the district. Approval shall also be obtained from the school district or agency which is providing the services. Program evaluation is the responsibility of both the resident school district and the providing school district or agency.

(9) If a handicapped child is placed out-of-state, tuition charges are covered under Contracted Services 01-01-0280.

(10) It is the responsibility of the resident school district to ensure that an out-of-district living facility is an appropriately licensed facility. An inquiry should be made to the local Social and Rehabilitation Services Division in order to secure appropriate facilities. The local division can provide the school district with a list of homes which are licensed and/or procedures by which a home can be licensed. Payment schedules should follow rates set by Social and Rehabilitation Services Division. Any deviation from that schedule should be based on severity of handicap and shall receive concurrence from Social and Rehabilitation Services and approval from the Superintendent of Public Instruction.

(11) To ensure that the request for an out-of-district placement is appropriate and follows the Special Education Rules and Regulations, the following items must be addressed:

(a) Resident School District Responsibility.

(i) The resident school district will assure that all students considered for out-of-district placement shall be processed by a resident Child Study Team and approved by the board of trustees.

(ii) The resident school district will assure that the Child Study Team, in recommending out-of-district placement, has:

(aa) Identified service options outside of the district.

(ab) Outlined reasons why services cannot be provided by the resident district.

(ac) Specified date requested for placement.

(iii) The resident school district will investigate placement options and assure that the selection of placement is in keeping with the least restrictive alternative.

(iv) The resident school district will make transportation arrangements.

(v) The resident school district will specify criteria for the student's return to the resident district.

(vi) The resident school district will outline provisions for program monitoring and annual review.

(b) Receiving School District Responsibility.

(i) The receiving school district will form a Child Study Team to determine acceptance and whether appropriate services can be offered.

(ii) The receiving school district will conduct periodical review and report results to the appropriate official of the resident district.

(c) Resident School District Continuing Responsibilities.

(i) The resident school district will conduct an annual review of each child placed out-of-district.

(ii) Through the Child Study Team, the resident school district will make recommendations, annually, for either continued out-of-district placement or termination.

(iii) Based on the Child Study Team reports, the resident school district will submit a recommendation to the Superintendent of Public Instruction for continued out-of-district placement. (History: Sec. 75-7802, 75-7808, 75-7809, 75-7809.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 26

Program Applications

48-2.18(26)-S18440 SUBMISSION DATES AND APPROVAL TIMELINES. (1) On or before:

(a) March 1 - Submission of proposed budget, supplementary budget data, statement of assurances and revisions to the program narrative. If the school is establishing a special education program for the first time, a complete program narrative must accompany the proposed budget.

(b) April 1 - Approval of budget authority.

(c) June 20 - Submission of current end-of-year report.

(d) October 1 - Child count for federal requirements.

(e) November 15 - Program unit approval.

(f) February 1 - Child count for federal requirements.

(g) February 10 - Submission of child count to Office of Public Instruction. (History: Sec. 75-7811, 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(26)-S18450 PROGRAM NARRATIVE. (1) The program narrative must describe the total special education program within a given district and shall include the following components:

(a) Identification.

(i) Screening
(ii) Number of students receiving services
(b) Referral.
(i) Sources of student performance information
(ii) Referral contact
(c) Staffing.
(i) Pre-staffings
(ii) Child Study Team
(iii) Staffing format
(d) Personnel.
(i) Administration (Special Education)
(ii) Teachers
(iii) Supportive personnel
(e) Evaluation.
(i) Student
(ii) Program
(f) Facilities.
(g) Needs or Deficiencies.
(h) Additional Information.

(2) If a school district does not provide special education services and does not submit a budget, it still must screen its students annually for handicapping conditions. This process must be described in narrative form and submitted to the Superintendent of Public Instruction for approval. (History: Sec. 75-7811, 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(26)-S18460 PROGRAM UNITS. (1) Program units must be received by the Superintendent of Public Instruction on or before October 10. Current information regarding enrollment, as well as the status of professional personnel, is required to ensure that each district is meeting the service needs of handicapped students.

(2) Any staff increases beyond the approved FTE established within the budget must have approval of the Office of Public Instruction. Approved program units will be matched to the approved FTE established within the budget. If a district exceeds FTE approved, regardless of the availability of monies, the excess FTE will be disapproved. The Office of Public Instruction will consider any request to increase approved FTE if there is justification provided. (History: Sec. 75-7811, 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(26)-S18470 EVALUATION. (1) All special education programs must be evaluated with both objective and subjective measures. Objective measures must be appropriate in terms of reliability and validity to assure reasonably accurate information. Subjective data also may be used to substantiate, clarify or enrich the evaluation results. The evaluation design must be concise and measure the degree to

which the stated educational objectives have been accomplished. Results should be reported in a manner that is conducive to decision making by all educational agencies and evaluators.

(2) Evaluation should be an ongoing process with reporting completed at least once a year. The district should make these reports available to the public on request. (History: Sec. 75-7811, 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(26)-S18480 BUDGET AND PROGRAM APPROVAL BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) Special approval from the Superintendent of Public Instruction is required before certain programs may be operated. Situations which require additional approval are cited below.

(a) Homebound and/or Hospitalized Service.

(i) Although monies may be available in the approved special education budget or under emergency budgeting procedures, a program for homebound or hospitalized students must be approved by the Superintendent of Public Instruction before expenditures may be made.

(ii) Approval procedures for programs for homebound or hospitalized students are as follows:

(aa) The school district is to submit, to the State Superintendent's office, a program unit application, Part B, requesting permission to operate a program for homebound or hospitalized students.

(ab) The homebound service may be started as soon as a Child Study Team has evaluated the child's needs, developed an individualized educational program and obtained parental consent for program placement. (See Rule 48-2.18(18)-S18310.) A statement from a medical doctor must be on file in the district verifying that the students remain at home during a convalescent period.

(ac) If the homebound service consist only of equipment, the child should be listed on the caseload of one of the district's resource teachers. That teacher will be assigned, along with the regular teacher, to monitor the child's program to assure that the child's needs are being met.

(ad) If a district does not have approved budget authority to cover expenditures of the homebound and/or hospitalized services, the district must seek approval under emergency budgeting provisions as outlined in Sections 75-6723 and 75-6730, R.C.M. 1947.

(b) Room and Board Approval.

(i) Room and board expenditures must be approved by the Superintendent of Public Instruction. This approval is in addition to budget authority approval. The school district must submit a written request to the Superintendent of Public Instruction to send a special education student(s) to another district (or agency). This request must include

the student(s) initials and date of birth, the name of the receiving agency, and an explanation which includes a statement of the problem and the reason services cannot be provided by the district. The foster home or the agency must be licensed to receive room and board funds. (See Rule 48-2.18(22)-S18430 of this manual.)

(c) Preschool Programs.

(i) Educational programs may be developed for preschool handicapped children age three through five providing the district obtains prior written approval from the Office of Public Instruction.

(ii) Approval procedures for preschool handicapped children are:

(aa) The school district is to submit a letter to the Office of Public Instruction requesting permission to operate a program. The letter should briefly describe the program, identification process, and/or number of handicapped children and the types of handicapping conditions to be treated.

(ab) A program unit application, Part B, is to be submitted for each professional staff member.

(ac) The program must be included in the district's approved budget.

(d) Extended Year Programs.

(i) School districts may provide extended year special education programs providing the district obtains prior written approval from the Office of Public Instruction.

(ii) Extended year programs consist of those instructional sessions which provide a pupil with special education service in excess of the regular school year. Extended year programs should only be considered for a small percentage of handicapped students who require concentrated assistance to prevent skill regression.

(iii) Extended year programs should clearly focus on the maintenance of skills and should not generally be considered as an ongoing developmental program.

(iv) Before an extended year program can be started, the following information must be provided:

(aa) Dates for the program.

(ab) A brief outline of the program.

(ac) An estimate of cost for the program.

(ad) An explanation of how children are selected for the program.

(ae) A list of staff members for the proposed program. Under each staff member's name, write the initials and birthdates of the children to be served by that staff member. Also, for each child list the type of handicapping condition, severity of the handicap (mild, moderate, severe/profound) and number of hours of service to be given each week.

(af) A letter of program approval from the Office of Public Instruction.

(ag) Proof that the budget authority has been established in the school year in which the program is to be operated.

(e) Post High School Programs.

(i) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services. Funds received under these contracts shall be deposited in Fund XX and utilized to provide the services specified in the contract.

(f) Rental of Facilities.

(i) To use special education monies for rental of land or buildings, the following requirements must be met:

(aa) Premises must meet all requirements of the Board of Public Education as established in the Standards for Accreditation of Montana Schools and the Department of Health and Environmental Sciences.

(ab) If possible, all rented facilities are to be shared between regular and special education programs. (See Rule 48-2.18(30)-S18510--01-01-1057.)

(ac) Specific written authorization must be given by the Superintendent of Public Instruction if the facility is not to be shared between the regular and special education programs.

(ad) Compliance with Section 75-7813.1, R.C.M. 1947, of Montana School Law.

(g) Remodeling Facilities for Physically Handicapped.

(i) A request submitted for remodeling facilities for the handicapped must include complete justification for the remodeling and projected costs. If the request is approved by the Superintendent of Public Instruction, actual costs may be covered under the special education budget.

(h) Contracted Services.

(i) All contracts must be approved by the Superintendent of Public Instruction before the provisions in the contract become effective. (See Rule 48-2.18(30)-S18510--01-01-0280.)

(i) Learning Disabled, Exceeding Two Percent.

(i) Services for the learning disabled, like all special education services, are not to conflict with the regular instructional programs and existing remedial services. Programs for the learning disabled have a primary responsibility for providing instruction and services to meet the educational needs of the most seriously handicapped, while the regular program of instruction has the responsibility to provide the kinds of individualized remedial instruction needed to meet the needs of students with mild learning problems.

(ii) Generally, the incidence of learning disabled students will not exceed two percent of the district's school population. In some cases, school districts may find

that they have unusual numbers of learning disabled students. When a district plans a program which is designed to serve more than two percent of the district's school population, the Superintendent of Public Instruction may review the records of the children being classified as learning disabled to verify the need for additional program.

(iii) The staff of the Superintendent of Public Instruction will examine the records of the identified learning disabled to determine that each identified child has:

(aa) had a comprehensive educational evaluation by the Child Study Team and is diagnosed as learning disabled;

(ab) had a written individualized education plan based on the specific needs of the child as determined by the Child Study Team's evaluation; and

(ac) written parental consent for program placement, parental involvement in the development of the individualized education plan and parental concurrence with the diagnosis of the child's problem and the plan for delivery of services.

(iv) The district is required to fulfill the above criteria regardless of whether or not the request to exceed two percent is acted on. The budget limitation is to ensure that funds for learning disabled programs are used to assist handicapped children rather than to supplement the general curriculum of a school district. (History: Sec. 75-7811, 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 30

Special Education Budget

48-2.18(30)-S18490 RELATIONSHIP TO THE GENERAL FUND.

(1) Although the budget for a district's special education program is developed as a distinct budget, it is folded into and becomes a part of the maximum budget without a voted levy portion of the district's total general fund budget. The special education budget follows the same provisions of operation as the general fund except:

(a) Funds approved to support the special education budget may be expended only for special education purposes as approved by the Superintendent of Public Instruction in accordance with the special education budgeting provisions.

(b) For accounting purposes, a separate register, in addition to the general fund register, shall be kept which will provide accurate information regarding the expenditure of special education allowable costs. Allowable costs will be construed to mean revenue or monies. The trustees' annual report to the Superintendent of Public Instruction will include provisions for reporting special education expenditures separately.

(c) If a school district has a balance left in the special education subfund of the general fund after the completion of a school year, those monies will be identified on the "Budget and Application for Tax Levies. . ." (Application for Payment of State Equalization Aid) under the statement of cash balances. Cash for reappropriation in special education cannot be used to reduce local levies or to increase the district reserve, but must go to reduce the state equalization aid payment of the district. In those cases where state equalization payments are not made, the county superintendent will be notified to make the adjustment within the county equalization payment. The cash balance will be deducted from the district share of any equalization payment to which the district would be entitled. This cash balance has no effect on the budgeting authority of the school district. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(30)-S18500 DEFINITIONS AND EXPLANATIONS. (1) Full-Time Special Education Pupil.

(a) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in the regular program and the balance of his time in the special education program, he shall be considered regularly enrolled for ANB purposes. The number of full-time special education students for the current year will be used in establishing the ensuing year's special education budget. This definition is applicable to those line items which are determined by C and D calculations as defined in Rule 48-2.18(30)-S18490(8).

(b) The specific number of full-time special education pupils is determined by using class assignments as of February 1 of the current year. Documentation of this determination must be reduced to writing and kept within the special education files for reference.

(2) Current and Ensuing Year.

(a) The current year refers to the fiscal year which is in progress during budget preparation. The ensuing year refers to the period of time for which the budget is being prepared.

(3) School District Budget Limitation.

(a) Special education comes under the provisions of Section 75-6923, R.C.M. 1947, which limits the growth of the general fund budget during the current year. The limitations do not apply to new or additional special education programs which are approved by the Superintendent of Public Instruction.

(4) Transfer of Line Item Amounts.

(a) The trustees of any district may transfer amounts between line items in the special education budget, except that transfer into a line item that has reached the maximum statutory limitation is not allowed. All items that are determined by either C, D or E calculations (see Rule 48-2.18(30)-S18490(8)) have limitations. Transfer out of these items is permissible.

(b) Although the law provides that a district may transfer between line items with board approval, it also states that this applies to excess appropriations. If a school district budgets for a contract or a staff position in special education and does not fill that contract or position, the unexpended monies left in that line item are not considered excess and not subject to transfer without the Office of Public Instruction's approval.

(5) Expansion or Implementation of Program During a Given School Term.

(a) Provisions exist for adoption of emergency budgets under Section 75-6905(21), R.C.M. 1947, for a school district which must initiate or expand programs during a school term to serve handicapped children not previously identified. Regular emergency budgeting procedures must be followed under provisions established in Sections 75-6723 and 75-6730, R.C.M. 1947.

(6) Cooperative Special Education Programs.

(a) Each application for a cooperative special education program shall be submitted through a single district. The applicant district, on submission of both the budget and program applications, will identify the districts to be served as well as the projected population and caseloads. A written agreement explaining how services will be provided must be submitted to the Superintendent of Public Instruction and signed by all involved school districts. This procedure also applies to services which are provided for under the contracted services portion of the special education budget.

(7) Special Education Child Eligibility for Transportation.

(a) With the approval of the Superintendent of Public Instruction, any special education child shall be eligible for transportation which shall be provided by the resident district when:

(i) he is enrolled in a special education class or program operated by the district of such child's residence;

(ii) he is enrolled in a special education class or program operated by a Montana district other than the child's resident district;

(iii) he is enrolled under an approved tuition agreement in a special education class or program operated outside of the state of Montana;

(iv) he is enrolled under an approved tuition agreement in a private institution.

(b) Special student transportation for handicapped children to and from school is not an allowable cost under the special education budget in the general fund. Budget authority for transportation of handicapped children must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the School Finance and Statistics Reference Manual, Topic 13, pages 5 and 23, and in accordance with Section 75-7815, R.C.M. 1947.

(c) The regulations and schedule of payment are found in Sub-Chapter 50 of this manual.

(8) Calculations for Budgeting Purposes.

(a) "A" Calculation--Entire Cost.

(b) "B" Calculation--Portion of the entire cost corresponding to the portion of the entire time which each person and/or equipment is assigned to the special program.

(c) "C" Calculation--The amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year. The current general fund budget item divided by the number of regular ANB equals per ANB cost. Per ANB cost times the number of full-time special eucation students equals total special education amount allowable in the special education budget. In the trustees annual report, the district must report actual expenditures but cannot report an amount in excess of these line items.

(d) "D" Calculation--The amount allowed for budget purposes for full-time special pupils may not exceed the amount budgeted for the current year per regular ANB (same as the C Calculation) times a 1.75 factor.

(e) "E" Calculation--The amount allowed for budgeting purposes is determined by dividing the number of special education classrooms by the total number of classrooms in the school district. If the size of classrooms is substantially diverse, the district must use a ratio to make the classroom size comparable. Classrooms include all instructional space used by the school district. The resulting percentage times the current year's general fund budget line item will determine the maximum amount allowable on the special education budget. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(30)-S18510 COMPUTATION AND LIMITATIONS. (1) Administration.

(a) 01-01-0111 Salaries, Professional: B Calculation

(i) Documentation of administration charges against the special education program may be verified by finding the percentage of special education professional staff of the total professional staff of the school district. This percentage is verification of time spent on the special education program. The special education budget amount is

determined by multiplying the ensuing administrative budget by the determined percentage figure. No other verification of time in this line item is necessary unless the school claims more than the percentage allowed. In this case, all individuals claimed must then maintain time records to substantiate their claims.

(ii) If a school district employs a supervisor of special education under 01-01-0215, this line item may not exceed five percent of the amount budgeted on the projected general fund budget 01-01-0111 line item.

(b) 01-01-0113 Salaries, Clerical: C Calculation

(c) 01-01-0150 Supplies, Administrative: C Calculation

(2) Supervision and Instruction.

(a) 01-01-0211 Salaries, Principals: D Calculation

(i) Rather than keeping time records, verification of time district wide, up to the maximum allowable, is calculated based on the percentage of special education professional staff to the total professional staff of the district. Whichever is smaller, the percentage times the current year's general fund line item 01-01-0211 or the D Calculation will be the authorized amount.

(b) 01-01-0212 Salaries, Teachers (Tutorial): B Calculation

(c) 01-01-0213 Salaries, Clerical: D Calculation

(i) Verification of time is same as 01-01-0211.

(d) 01-01-0214 Aides: B Calculation (Teacher aides, playground aides, transportation aides, etc.)

(e) 01-01-0215 Salaries, Special Education Teachers, Clinicians and Supervisors: A Calculation

(f) 01-01-0218 Travel, Mileage: A Calculation

(i) Travel expenses for special education personnel who must travel on an itinerant basis from school to school or district to district.

(ii) Travel expenses for resident district Child Study Teams are allowable costs as approved by the Office of Public Instruction. (See Rule 48-2.18(22)-S18430, Resident District Responsibilities.)

(g) 01-01-0232 Supplies, Instruction Shared: C Calculation

(h) 01-01-0233 Supplies, Instruction, Special Education: A Calculation

(i) Included in this line item are all supplies consumed in the teaching/learning process.

(i) 01-01-0241 Textbooks: C Calculation; Special Education Textbooks: B Calculation

(j) 01-01-0250 Other Expenses (including minor equipment less than $200): B Calculation

(k) 01-01-0280 Contracted Services: A Calculation

(i) This line item includes fees paid for professional advice and consultation regarding special students or the

special education program and for the delivery of special education services by public or private agencies. All contracts must be approved by the Superintendent of Public Instruction prior to contracting for services.

(ii) The Superintendent of Public Instruction must approve all fees charged and may place limitations on the amount that can be charged.

(3) Library Services.

(a) 01-01-0310 Salaries: C Calculation

(b) 01-01-0342 Books and Periodicals: C Calculation

(c) 01-01-0350 Other Expenses: C Calculation

(4) Supportive Services.

(a) 01-01-0410 Salaries, Professional: B Calculation

(i) Assignment to the special education program can be documented either by schedules or time records. Eligible personnel are listed in Sub-Chapter 38.

(b) 01-01-0413 Salaries, Clerical: B Calculation

(i) Documentation by time records or schedules.

(c) 01-01-0418 Travel, Mileage: A Calculation

(i) The same provisions outlined in 01-01-0218 apply to supportive personnel travel.

(d) 01-01-0450 Other Expenses: C Calculation

(5) Transportation.

(a) 01-01-0555 Room and Board: A Calculation

(i) (See out-of-district placement in Rules 48-2.18(22)-S18430 and 48-2.18(26)-S18480(1)(b) of this chapter.)

(6) Operation of Plant.

(a) 01-01-0600 Operation: E Calculation

(7) Maintenance of Plant.

(a) 01-01-0700 Maintenance: E Calculation

(8) School Food Services.

(a) 01-01-0800 School Food: C Calculation

(9) Student Body and Auxiliary Services.

(a) 01-01-0900 Salaries and Other Expenses: C Calculation

(10) Other Charges.

(a) 01-01-1021 Social Security: A Calculation

(b) 01-01-1022 Teacher Retirement Service: A Calculation

(c) 01-01-1023 Public Employee Retirement System: A Calculation

(d) 01-01-1024 Unemployment Compensation: A Calculation

(e) 01-01-1056 Rental of Land and Buildings: C Calculation

(i) (See Rule 48-2.18(26)-S18480(1)(f)(i)(ac) of this manual for an exception to the C Calculation. If exception is approved, it is an A Calculation.)

(f) 01-01-1057 Insurance: E Calculation

(i) Use E Calculation except when insurance is considered an employee benefit (such as workman's compensation or

sickness and accident insurance). If insurance is considered an employee benefit, use actual cost--A Calculation.

(g) 01-01-1072 Interest on Warrants: A Calculation

(11) Capital Outlay.

(a) 01-01-1163 Remodeling and Improvements, General: C Calculation

(b) 01-01-1164 Equipment, Special Education, Major ($200 or more): B Calculation

(i) Only equipment essential to operation of the special education program is allowable. A school district must submit with its proposed budget an inventory of existing equipment in the special education program as well as projected equipment needs. The Superintendent of Public Instruction has authority to delete any pieces of equipment from the projected inventory list and disapprove them as an allowable cost. If any equipment is shared, that cost is distributed equally, by use, among the programs using the equipment. General equipment costs should be calculated using the C Calculation.

(c) 01-01-1165 Remodeling, Special Equipment for School Buses: A Calculation. Other Expenses: C Calculation.

(i) Remodeling for handicapped and special equipment for district owned and/or contracted school buses is an A Calculation. All other expenses are a C Calculation. (Authorization for approval of expenditures under this line item must be pre-approved by the Superintendent of Public Instruction.)

(12) Previously Approved Emergency Special Education Budget Expenditures.

(i) This line item must have had specific authorization and approval from the Superintendent of Public Instruction under emergency budgeting provisions in order to be included on the ensuing year's budget. The actual expenditures or budget authority approved under this line item must have occurred during the current year but not included on the current year's budget. In the trustees annual report, the actual expenditure under the emergency budget must be reported.

(13) Discussion of Budget Adjustments.

(i) To provide for better communication between the Office of Public Instruction and school districts concerning the special education rules and budgeting procedures, the Superintendent of Public Instruction will meet, upon request, with school district officials to discuss any reduction in a school district's special education budget request within a reasonable time after the district is notified of any budget reduction. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 34

Qualifications of Personnel

48-2.18(34)-S18520 SPECIAL EDUCATION TEACHERS. (1) Any teacher providing instruction in special education must be endorsed in special education regardless of time assigned to the special education program. During the time assigned to the special education program, the teacher may not be assigned to work with regular students.

(2) A special education teacher must be certified with an endorsement in special education. Special education endorsement is granted upon completion of a program approved by an accredited college or university.

(3) Provisional approval, until July 1, 1978, to teach special education may be granted by the Superintendent of Public Instruction to an individual who has a valid teaching certificate and at least 15 quarter hours in special education and is on a planned program with an accredited college or university to complete that institution's approved major or minor in special education.

(4) A teacher of the hearing impaired will not be approved for funding if the teacher only has provisional approval for a special education endorsement. The teacher's training must be in the area of hearing impaired through an approved program with an accredited college or university. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18530 TEACHERS OF HOMEBOUND AND/OR HOSPITALIZED STUDENTS. (1) A Teacher of homebound and/or hospitalized students need only hold a valid teaching certificate. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS. (1) All public school personnel employed as speech pathologists and audiologists must have their license number on file with the Special Education program in the Office of the Superintendent of Public Instruction. Supervision shall be in accord with the provisions of the individual's license. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18550 SCHOOL PSYCHOLOGISTS. (1) The Superintendent of Public Instruction will approve persons to administer, score and interpret individual tests of learning aptitude (I.Q.) insofar as these persons present an acceptable transcript of university or college courses adhering to the criteria set forth below:

(a) Master's degree or fifth year in the pupil personnel services area that include the work set out below.

(i) Twenty-one quarter hour credits of undergraduate and graduate course work in the area of psychological foundations. These courses of which not more than 12 hours may be undergraduate, should include but are not restricted to

(aa) general psychology
(ab) educational psychology
(ac) developmental psychology
(ad) social psychology
(ae) learning
(af) physiological psychology
(ag) personality
(ah) abnormal psychology
(ai) statistics
(aj) research methods

(ii) Twenty-one quarter hour credits, of which not more than 12 hours may be undergraduate, in the area of psychological methods and techniques, including but not restricted to

(aa) individual intelligence testing (REQUIRED)
(ab) group intelligence and achievement testing
(ac) personality assessment
(ad) educational evaluation measurement
(ae) interviewing and counseling
(af) behavior modification and precision teaching
(ag) school psychology practicum (STRONGLY RECOMMENDED--6 hours or letter of endorsement required)
(ah) mental hygiene

(iii) Seventeen quarter hour credits, of which no more than 12 hours may be undergraduate, in the area of educational foundations and school organization and programs, including but not restricted to

(aa) history of education
(ab) social foundation of education
(ac) educational philosophy
(ad) remedial instruction--speech, arithmetic, reading
(ae) school administration or supervision or curriculum
(af) school practices and methods of teaching
(ag) school guidance programs
(ah) education programs for exceptional children--organization, methods and materials
(ai) mental retardation

(b) The college or university person responsible for the applicant's learning aptitude testing program must submit a letter of endorsement to the Superintendent of Public Instruction if the individual does not have a minimum of six quarter hours in a school psychology practicum. A person who has met all of the aforementioned requirements is authorized to perform psychological services for exceptional children with written approval from the Superintendent of Public Instruction.

(c) Persons satisfying these criteria will receive a letter of authority from the State Superintendent's office to administer, score and interpret individual tests of learning aptitude and to participate on child study teams as a school psychologist. Their authority to test is contingent upon confining their services to students enrolled in districts in which they are providing services. In no way is this authority to be construed as licensure of psychologists or an endorsement for the private practice of psychology or for contracting directly with parents to test a child or children. This authorization to administer, score and interpret individual tests will be valid for six years and renewed upon evidence of satisfactory performance. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18560 SUPERVISORS OF SPECIAL EDUCATION. (1) Supervisors of special education must have a Class III administrators certificate with supervisors endorsement in special education. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18570 SOCIAL WORKERS. (1) A social worker employed to serve a special education program must have a minimum of a Master's of Social Work degree with verification to be submitted to the Superintendent of Public Instruction. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18580 COUNSELORS. (1) In order for a counselor to be funded by special education, the counselor must have a counselor's endorsement. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18590 NURSES. (1) A school nurse funded by special education must meet the requirements for a Public Health Nurse I as defined by the Montana Department of Health and Environmental Sciences and hold current licensure in the State of Montana. Verification of license must be on file with the Superintendent of Public Instruction. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18600 PHYSICAL THERAPISTS. (1) Physical therapists must have completed an American Medical Association/American Physical Therapy Association approved educational program, have the required clinical experience and hold a current physical therapy license issued by the Montana Board of Medical Examiners. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18610 OCCUPATIONAL THERAPISTS. (1) Occupational therapists must have completed an American Medical Association/American Occupational Therapy Association approved educational program, have required field work experience and be certified as a registered occupational therapist. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18620 VOCATIONAL EDUCATION INSTRUCTORS. (1) If a vocational education teacher is working in a special education program and does not have a special education endorsement, then that person must work under the supervision of certified special education personnel. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(34)-S18630 TEACHER AIDES. (1) There are no certification requirements for teacher aides. School districts may establish any requirement felt necessary for these positions. It should be recognized that aides are not trained teaching personnel and should be under the supervision of professional staff and not in the primary teaching role. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 38

Caseload for Auxiliary and Supportive Personnel Serving Special Education Programs

48-2.18(38)-S18640 AUXILIARY PERSONNEL. (1) When specific curriculum area teacher (i.e., music, physical education) are assigned full-time to special education as a supplement to the special education program, the school district must obtain prior approval from the Superintendent of Public Instruction to consider that position as part of the special education program. The teacher must have a teaching certificate with an endorsement in the specific curricular area of instruction. In addition, the local school district should require that each teacher obtain specific skills which enable the teacher to deal effectively with handicapped children. These skills may be obtained through formal training or inservice training. Special education supervision must be provided to any auxiliary personnel.

(2) Auxiliary personnel will usually service at least ten to fifteen special education instructional units. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18650 SPEECH PATHOLOGIST. (1) The caseload for a speech pathologist depends on the severity of

the handicapped students to be served. The suggested range is from 15-60 children. The caseload must be verified by a fully licensed speech pathologist (Rule 48-2.18(34)-S18540) before it will be approved by the Superintendent of Public Instruction. If the caseload is primarily hearing handicapped, then the caseload must be verified by a fully licensed audiologist and coordinated with the hearing impaired child study team.

(2) For budget purposes a full-time speech pathologist's minimum student base population is one pathologist per 1,000 students. In special circumstances, sutdent base may not be appropriate. Exceptions may be negotiated with the Office of Public Instruction. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18660 AUDIOLOGIST. (1) A full-time audiologist must serve a minimum school population base of approximately 10,000 regular students. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the Office of Public Instruction. Individual school districts that request funding of an audiologist must identify the service area of the audiologist to be covered. A population of less than 10,000 children will be considered for approval by the Superintendent of Public Instruction in consideration of the size of the area to be served. When an audiologist is working in a therapeutic capacity, that individual has the caseload recommended for a speech and hearing pathologist. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18670 SCHOOL PSYCHOLOGIST. (1) A full-time school psychologist must serve a minimum population base of approximately 1,500 regular students. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the Office of Public Instruction. School districts that do not meet the minimum population base should consider cooperative programs between districts. Partial assignment of school psychologists to programs will be determined by prorating the minimum figure stated to the actual enrollment of the schools served. Approval to serve less than the minimal base may be considered by the Superintendent of Public Instruction when a request is made. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18680 SUPERVISOR OF SPECIAL EDUCATION. (1) For budgeting approval, a full-time supervisor of special education must have a minimum of at least twelve full-time special education personnel or a regular student population of 3,000 regular students. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the Office of Public Instruction.

School districts are encouraged to establish cooperative special education programs under the direction of one supervisor of special education in order to meet minimum approval levels. Consideration should be given to include rural schools under this individual's supervision even though the rural school may not have a special education teacher.

(2) For school districts that have special education personnel in excess of the minimum stated, additional supervisors may be added upon request to and approval of the Superintendent of Public Instruction. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18690 SOCIAL WORKERS. (1) A full-time social worker must serve a minimum population base of approximately 3,000 regular students and/or have an assigned caseload of 25 to 60 families per year. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the Office of Public Instruction. The social workers shall serve children requiring special education through group or individual casework practice, consultation with school personnel and counseling with parents and students. The social worker shall be available to participate in child study teams when the need is indicated. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18700 COUNSELOR. (1) A full-time counselor serving only special education must serve a minimum population base of approximately 3,000 regular students. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the Office of Public Instruction. The counselor must have a full-time assigned caseload of special education students requiring counseling on an instructional, behavioral or emotional adjustment related to the students' handicaps. The counselor should be available to participate in child study teams when the need is indicated.

(2) If a school district budgets for and provides counseling services to handicapped students under special education, all of the students involved must also receive instructional special education service. Students needing only counseling are not eligible for special education counseling. These students are considered regular pupils and receive their total support from the regular program including counseling. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(38)-S18710 OTHER. (1) Before a school district employs full-time nurses, physical therapists or occupational therapists to serve special education programs,

that district must justify the position to receive approval from the Superintendent of Public Instruction. (History: Sec. 75-7813.1, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 42

Hearings Before School District Trustees and County Superintendents

48-2.18(42)-P18720 HEARINGS BEFORE THE TRUSTEES OF A SCHOOL DISTRICT. (1) Scope. A parent or employee of a school district may apply for a hearing under this section in the following cases:

(a) a child residing in the district or being served by the district is being considered by employees of the district for evaluation and permission has not been granted by the parents.

(b) a change in the educational placement of a child is planned by a district or has been requested by the parent and the parents and district disagree concerning the proposed change.

(c) a request for an extension of a temporary placement of a child being served by a district has been filed.

(d) the parents desire to present complaints with respect to any matter relating to the identification, evaluation or educational placement of the child or the provision of a free appropriate education to such child.

(2) Request for Hearing. Either the personnel serving a district or a parent of a child residing in or served by the district may request a hearing before the board of trustees. All requests shall be in writing and addressed to the chairman of the board.

(3) Access to Information. The parent or his designee established in writing shall be allowed access to school reports, files and records pertaining to the child and shall be allowed to obtain copies at the actual cost of copying.

(4) Conference and Informal Disposition. Upon receipt of a request for a hearing, the chairman of the board shall direct the appropriate special education personnel serving the district to schedule a conference within five (5) days with the parent for the purpose of settling the controversy and, if possible, avoiding the hearing.

(5) Notice of Hearing.

(a) If attendance of the parent at an informal conference cannot be obtained within five (5) days of receipt of request for a hearing or the school district personnel and the parent cannot agree at the conference, a hearing shall be scheduled by the chairman of the board. The chairman shall set a date, time and place for the hearing convenient

for all parties. The hearing shall take place no later than ten (10) days after receipt of the request for a hearing, unless the parent agrees in writing to a later date. In no event shall the hearing take place later than twenty (20) days after receipt of request.

(b) The chairman shall notify all other trustees, the special education personnel serving the district and the parents of the child of the date, time and place of the hearing. Notice to the parent shall be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Notice shall be sent by certified mail. If the native language or other mode of communication is not a written language, the chairman shall direct the notice to be translated orally or by other means to the parent in his native language or other means of communication.

(6) Witnesses. The chairman shall, at the request of the parent, require the attendance at the hearing of any officer or employee of the district who may have evidence or testimony relevant to the needs, abilities, proposed programs or status of the child.

(7) Placement. The child shall remain in his current educational placement until the board enters a decision following the hearing, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120(1)(c)(vi).

(8) Hearing. At the hearing the board shall hear witnesses and take evidence.

(a) The parent and the personnel serving the district may present testimony and other evidence and may be represented by legal counsel.

(b) The hearing shall be closed to the public unless the parents request an open hearing.

(c) The parent and the personnel serving the district, or their representatives, shall have the right to cross examine all witnesses presenting testimony.

(d) If the child has not reached the age of majority, the parents shall have the right to determine if the child shall attend the hearing, except upon a finding by the board that attendance of the child would be harmful to the child's welfare. The child may then be excluded from all or part of the hearing.

(e) The burden of proof as to the adequacy and appropriateness of the proposed course of action shall be upon the personnel serving the district. In the case of a placement question, the personnel must demonstrate why placement is being recommended or denied and why less restrictive placement alternatives would not adequately and appropriately serve the child's educational needs.

(f) No transcript need be made of the hearing.

(g) At all stages of the hearing, interpretation for the deaf and interpreters in the primary language of the home shall be provided, when necessary, at public expense.

(h) After all the witnesses have been heard, the board shall render its decision.

(9) Decision. Within ten (10) days of the hearing, the chairman shall send a copy of the decision and the reasons entered in the minutes to the parent in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. The decision shall be sent by certified mail. If the native language or other mode of communication is not a written language, the chairman shall direct the decision to be translated orally to the parent in his native language or other means of communication.

(10) Appeal from Decision of the Board.

(a) Within ten (10) days of receipt of the decision of the board, the parents may appeal the decision to the county superintendent. Appeal shall be made in writing addressed to the county superintendent. The county superintendent shall promptly send a copy of the notice to the chairman of the board whose decision is being appealed.

(b) Upon receipt of the notice of appeal, the chairman of the board shall cause to be sent to the county superintendent two copies of the decision of the board after hearing and reasons as entered in the minutes. The decision of the board shall be adhered to pending outcome of the appeal unless the board grants a specific waiver to the parent. (History: Sec. 75-5709, 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(42)-P18730 HEARINGS BEFORE THE COUNTY SUPERINTENDENT. (1) Scope. The County Superintendent shall hear appeals from the decisions of boards on any matter concerning the provision of a free appropriate public education to a handicapped child as provided in the procedures for a hearing before the board of trustees.

(2) Notice of Hearing.

(a) Upon receipt of a notice of appeal the county superintendent shall determine a date, time and place for the hearing convenient to all parties. The hearing shall be held within ten (10) days of receipt of the appeal, unless the parent agrees in writing to a later date. In no event shall the hearing take place later than thirty (30) days after receipt of request.

(b) The county superintendent shall notify the person appealing and the board which rendered the decision of the date, time and place of the hearing not less than two (2)

days before the date of the hearing. Notice to the parent shall be written in language understandable to the general public and in the native language of the parent unless it is clearly not feasible to do so. Notice shall be sent by certified mail. If the native language or other mode of communication is not a written language, the county superintendent shall direct the notice to be translated orally or by other means to the parent in his native language or other means of communication.

(3) Consultations. After receipt of a notice of appeal, the county superintendent shall not communicate with any of the parties or their representatives concerning any matter at issue in the appeal without giving notice and the opportunity to be present to all parties. This does not apply to procedural matters.

(4) Conference and Informal Disposition. Upon written notice to all parties, the county superintendent may informally confer with the parties to an appeal or request for the purpose of defining issues, determining witnesses, agreeing upon stipulations of facts or informally resolving the controversy. To be effective, any agreement made at such a conference must be reduced to writing and signed by all parties. An agreed resolution of the controversy shall end the proceedings and bar further proceedings.

(5) Conduct of the Hearing. The county superintendent shall preside over and conduct the hearing in a fair and impartial manner so that all parties have the opportunity to present evidence relevant to the appeal.

(a) In the hearing of an appeal, the parties shall be heard in the following order:

(i) statement and evidence by the board in support of the decision appealed,

(ii) statement and evidence against the decision by the person appealing,

(iii) statement and evidence by board in rebuttal.

(b) At all stages of the hearing, interpretation for the deaf and interpreters in the native language of the parent shall be provided, when necessary, by the board whose decision has been appealed.

(c) The burden of proof as to the adequacy and appropriateness of the proposed course of action shall be upon the board whose decision has been appealed. In the case of a placement question, the board must demonstrate why placement is being recommended or denied and why less restrictive placement alternatives could not adequately and appropriately serve the child's educational needs.

(6) Witnesses. All witnesses shall be examined upon oath or affirmation. The county superintendent, parties of the hearing and their representatives may examine and cross examine witnesses. The board at the request of the parent, shall require the attendance at the hearing of any officer

or employee of the district who may have evidence or testimony relevant to the needs, abilities, proposed programs or status of the child.

(7) Recesses. The county superintendent may recess the hearing to another time or date.

(8) Evidence. All testimony and evidence shall be received unless excluded by the county superintendent upon objection or upon his or her own motion in accordance with the following rules:

(a) Questions: No witness shall be required to answer a question which is intended to harass or degrade the witness, which is so complex as to confuse the witness or which is argumentative or repetitive. Questions which call for answer which is irrelevant or immaterial to the issues need not be answered.

(b) Answers: Answers by a witness which are not responsive to the question asked, which do not state facts within the personal knowledge of the witness or are irrelevant or immaterial to the issues may be excluded. However, the testimony of a witness of a prior statement by himself or another to him may be received as evidence that the statement was made but not of the truth of the facts asserted in the statement.

(c) Physical evidence: Physical evidence shall be marked as to the party offering it. Copies or excerpts of documents may be admitted provided that the parties have the opportunity to examine the original and compare it with the copy or excerpt.

(d) In so far they are not inconsistent with the above, the rules of evidence established by common law and state statute should be followed.

(e) All objections to questions or answers shall be ruled upon at the time made.

(9) Proposed Findings of Fact, Conclusions of Law and Order. The county superintendent may request the parties to propose findings of fact, conclusions of law and an order with supporting memorandums. If such a request is made, the parties shall submit the proposals and memorandums within seven (7) days of the end of the hearing.

(10) Findings of Fact, Conclusions of Law and Order.

(a) The county superintendent shall decide the appeal within ten (10) days of the end of the hearing. The written decision shall include findings of fact, conclusions of law and an order. If a decision is to disapprove an educational plan, it shall state what would be an adequate and appropriate educational plan for the child. If the decision is to approve a proposed educational plan, it shall state why less restrictive placement alternatives could not adequately and appropriately serve the child's educational needs. The decision shall inform the parties of the right to appeal the decision to the State Superintendent.

(b) Upon making a decision, the county superintendent shall send a copy of the findings of fact, conclusions of law and order to the parent in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. The copies shall be sent by certified mail. If the native language or other mode of communication is not a written language, the county superintendent shall direct the findings of fact, conclusions of law and order to be translated orally to the parent in his native language or other means of communication.

(11) Record of Hearing. The county superintendent shall cause a record to be made of each hearing. This record shall contain:

(a) the record submitted by the board in an appeal

(b) a copy of the notice of appeal and all intermediate notices and rulings

(c) all exhibits offered into evidence

(d) a verbatim record of the hearing. Such record shall be placed in typewritten form at the request of either party or if either party appeals to the Superintendent of Public Instruction

(e) proposed findings of fact, conclusions of law and orders if requested

(f) the findings of fact, conclusions of law and order of the county superintendent.

(12) Appeal.

(a) A person or board may appeal a decision of the county superintendent to the Superintendent of Public Instruction by sending a notice of appeal to the Superintendent within fifteen (15) days of the receipt of the decision.

(b) A copy of the notice of appeal shall be sent to the county superintendent and any other parties to the controversy. The notice of appeal shall contain the following information:

(i) the name of the party appealing

(ii) the name(s) and address(es) of the other parties to the hearing

(iii) a copy of the findings of fact, conclusions of law and order being appealed

(iv) a brief statement of the grounds for the appeal

(v) the signature and address of the party appealing or representatives.

(13) Appeals to the Superintendent of Public Instruction. Appeals to the Superintendent of Public Instruction shall be conducted in accordance with the rules governing contested cases before the Superintendent listed in Chapter 2 of this title. (History: Sec. 75-5709, 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(42)-P18740 SAMPLE FORMS. (1) School districts and county superintendents implementing Sub-Chapter 42 of this Chapter shall use forms substantially similar to the following forms, copies of which follow this Rule and by reference are made a part of this Rule. (History: Sec. 75-5709, 75-7802, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

EDUCATIONAL PLAN: REQUEST FOR PARENT'S APPROVAL

ORIGINATOR: Special Education Administrator

PURPOSE: To present the proposed educational objectives to the parents and obtain their approval for the recommended placement.

Name of Special Education Administrator: _____

Address _____

Date _____

Dear Parent:

The evaluation of your child has been completed. All papers relevant to the evaluation, including the actual results of each assessment, are available for your inspection. All school reports, files and records pertaining to your child are available to you for copying.

Your child's educational plan and placement and the services that will be provided to attain the prescribed objectives of the plan are described in the enclosed forms. Please review this information carefully.

Do you approve of the proposed educational objectives?
Yes _____ No _____
Do you approve of the proposed educational placement?
Yes _____ No _____

Signature _____ Date _____
Parent

If you have not approved this plan, we would like to discuss this with you formally sometime during the next 30 days. During this period, you have the right to meet with any member of the evaluation team or with the entire team to try to resolve any differences. If we cannot resolve any disagreement informally, then you have the right to obtain a hearing before the school board. During any period of disagreement over placement, your child will continue in his current educational placement.

If you have signified that you accept the plan as presented, your child's proposed educational program will start immediately after receipt of this form.

Signed: Special Education Administration
Enclosure: Educational Plan

SUPERINTENDENT OF
PUBLIC INSTRUCTION

NOTICE OF THE FILING OF A REQUEST FOR A HEARING

ORIGINATOR: Special Education Administrator

PURPOSE: To inform the parents that the local education agency has filed for a hearing on response to a parent's refusal to permit an evaluation or placement or in response to a disagreement with the proposed education plan.

Date:

Dear Parent:

Since we have been unable to reach agreement on the proposed educational evaluation (educational placement) of your child, this agency has today filed a request for hearing before the school board. It is hoped that this hearing will enable a fast and speedy resolution of our differences.

You have the right to an independent evaluation of your child from an agency at public expense and with the consent of the Superintendent of Public Instruction and the right to be represented at the hearing at your expense by any person or persons of your choice. You are entitled to review and photocopy all of your child's school files and records. The complete record of an independent evaluation must be made available to this school district.

A description of the hearing procedure and a list of your rights relative to the hearing are enclosed. A list of agencies in the community from which legal counsel may be obtained is also enclosed. Should you have any questions or concerns, please feel free to contact me.

We are looking forward to settling this quickly so that we are all assured that your child is receiving an appropriate education.

Sincerely,

_____
Special Education Administrator

_____
Telephone number

Enclosures

REVIEW OF EDUCATIONAL PLACEMENT

ORIGINATOR: Special Education Administrator

PURPOSE: No later than 8 months after a child's educational status has been changed and during each school year thereafter, the local education agency must conduct a review of the program to evaluate its effectiveness in meeting the child's educational needs. This form letter is to invite the parents to a conference when the review is scheduled.

Dear Parent:

It has been almost 8 months (1 year) since _____ was placed in his current educational program. In order to evaluate how well suited the program is, we have scheduled a conference to review your child's program.

The conference will take place on _____ at _____ at _____
Place

I would like to invite you to participate in this conference. If the scheduled time is not convenient, please contact me immediately so that we might rearrange it.

The following procedures will occur:

Within 10 days after the review, you will receive notice of the findings and recommendations made.

It is very important for your child's program that you know how our records and personnel diagnose your child's progress and that you are fully informed of the results of the reevaluation.

If you should have any questions or concerns about the review, it is most appropriate for you to raise them at the review conference.

_____
Special Education Administrator

_____
Telephone Number

SUPERINTENDENT OF
PUBLIC INSTRUCTION

PARENTAL PERMISSION FORM

Name of Special Education Director _____
Address _____

Date
Dear (Director of Special Education):

I am in receipt of the Notice of Intent to Conduct an Evaluation for my child, _____.
I understand the reasons and the description of the evaluation process that you provided and have checked the appropriate box below.

☐ Permission is given to conduct the evaluation as described.

☐ Permission is denied.

Parent's Signature _____ Date _____

EVALUATION SCHEDULE AND PROCEDURES
(Optional)

ORIGINATOR: Chairperson of the Evaluation Team

PURPOSE: To keep the parent thoroughly informed about the evaluation process and to encourage parental participation.

Date
Dear Parent:

Thank you for responding promptly and granting permission for _____ to be evaluated.
The evaluation will be conducted exactly as it was described to you in the Notice of Intent to Conduct an Evaluation.

We have scheduled the evaluation for:

Date	Time	Place

If for some reason this schedule is not acceptable to you, please contact me as soon as possible. The evaluation will be completed within 30 days of the date of this letter unless you submit a written request for a delay.

If you have any questions, please feel free to call me at any time.

Chairperson of the Evaluation Team
Telephone Number

NOTICE OF INTENT TO CONDUCT AN EVALUATION

ORIGINATOR: Special Education Administrator

PURPOSE: To inform parents that a referral for an evaluation has been made and to inform parents of their rights.

Name of Special Education Administrator _____

Address _____

Date
Dear Parent:

_____ recently filed a referral form requesting that your child, _____, be evaluated by this office. The reasons for requesting an evaluation are

The evaluation procedures and their associated instruments that will be used in each of the following areas are:

Intelligence:
Achievement:
Behavior:
Physical:
Other:

The findings of the evaluation will be used by the following people to develop a set of program recommendations for your child.

_____ _____
(Name) (Date)

_____ _____
(Name) (Date)

_____ _____
(Name) (Date)

It is very important that you are aware of and understand that you have the following rights:

1) To review all records related to the referral for evaluation.
2) To review the procedures and instruments to be used in the evaluation.
3) To refuse to permit the evaluation (in which case the local education agency can request a hearing to try to

overrule you).

4) To be fully informed of the results of the evaluation.

5) To get an independent educational evaluation either from another public agency with the fee determined on a sliding scale and the consent of the Superintendent of Public Instruction or privately at full cost to the parent.

6) Your child's educational status will not be changed without your knowledge and consent.

Enclosed is a Parent Permission Form which must be completed by you and returned to this office within 10 school days.

Should you have any questions, please do not hesitate to call me.

Sincerely,

_____ (Name)

_____ (Title)

_____ (Telephone Number)

Enclosure: Parental Permission Form

Sub-Chapter 46

Federal Programs

48-2.18(46)-S18750 FEDERAL PROGRAMS GENERALLY. (1) There are several federal programs which have a portion of the program charged to serve handicapped children. Specific regulations published by each program must be followed as well as the Special Education Rules and Regulations. If the Special Education Rules and Regulations are in conflict with the federal requirements, then the federal requirements supercede. The Office of the Superintendent of Public Instruction staff assigned to the federal program as well as the special education program staff will work cooperatively to assist districts to design a program which optimizes resources for children and takes into account both federal and state program regulations. If the handicapped portion of the federal program is not to be funded federally on an ongoing basis and is eventually going to be assumed by the local district utilizing special education funding, particular attention should be made to following the Special Education Rules and Regulations to assure smooth conversion from the federal program to the state program.

(2) Federal programs that have set aside provisions for handicapped children include ESEA Title IV and Vocational Education Special Needs. School districts which are making application under these two programs for service to handicapped children should submit their proposal to the Special Education Regional Council for the council's recommendation. (History: Sec. 75-7802, 75-7303, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(46)-S18760 ELEMENTARY AND SECONDARY EDUCATION ACT, TITLE I. (1) ESEA Title I has a specific responsibility to handicapped children being provided an education in a state institution through Public Law 89-313. Public Law 89-313 provides that when a handicapped child leaves an educational program operated by a state institution for handicapped children in order to participate in a program operated by a school district, funds belonging to that institution may be transferred to the school district if additional funds are needed by the district to provide an appropriate program for the handicapped children.

(a) If the handicapped child's individualized educational program requires resources which cannot be provided by the school district, the district administration should contact the ESEA Title I Supervisor in the Office of the Superintendent of Public Instruction for assistance and information relating to Public Law 89-313.

(b) Local school districts cannot count handicapped children who have been counted for Public Law 89-313 purposes

in their Public Law 94-142 Child Count. The ESEA Title I Supervisor will provide a list of handicapped persons by initial and birthdate who are residing in a given school district and who were counted in the annual Public Law 89-313 count.

(2) The regular ESEA Title I program should not be confused with the Public Law 89-313 portion of the federal program. The regular ESEA Title I program is not to serve handicapped children who have specific needs because of a handicapping condition. Cooperation between the ESEA Title I and Special Education is necessary to assure proper placement of children with learning difficulties.

(a) Even though special education screening is an ongoing process throughout the year, a cooperative needs assessment (annual screening) may be conducted in conjunction with ESEA Title I to identify children with learning difficulties. The school district must further diagnose the identified population to determine the handicapped students. If children are identified as handicapped, then their needs must be met through the special education program, not ESEA Title I. A child cannot be served by special education and Title I concurrently with the exception of a child who is only speech impaired and qualified for Title I as well. However, a child may be transferred from one program to another based on each program's qualifying criteria. (Section 116.40 and 116.41 of Part 116, Title 45 of the Code of Federal Regulations, dated September 28, 1976.) (History: Sec. 75-7802, 75-7303, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

48-2.18(46)-S18770 EDUCATION OF ALL HANDICAPPED CHILDREN ACT, PART B. (1) Education of All Handicapped Children Act, Part B monies are to be used for projects which will initiate, expand and improve special education and related services to handicapped children through local education agencies.

(2) It is the goal of the Superintendent of Public Instruction to insure that all unserved (out of school) handicapped children between the ages of 6 through 21 will be guaranteed full education opportunities. Those EHA-B monies not utilized for unserved children age 6 through 21 will then be utilized to expand pre-school programs for the children ages 3 through 5. Children who are enrolled in private schools may participate in projects sponsored under this Act, but funds cannot be made available directly to such schools.

(3) All proposals submitted will be read and rated by a reading team using the following criteria:

(a) Are the children that are identified for services in the proposal unserved and within the age range of 6 through 21?

(b) Are the children that are identified for services in the proposal in school, but not getting an appropriate education?

(c) Is the proposal centered on children rather than personnel, materials and equipment?

(d) Can the children identified as needing service in the proposal be served reasonably in an existing school program?

(e) Are the services to be delivered in the least restrictive setting as possible?

(f) Are the objectives for the program measureable?

(g) Can the objectives be met through the activities that are proposed?

(h) Is the proposed program evaluation adequate?

(i) Are staff members who will provide the services for the children appropriately trained to deliver the services as outlined?

(j) Is the proposed budget reasonable in terms of number of children to be served?

(k) Is the proposed timeline for providing services reasonable?

(l) Does proposal show evidence of long-range planning in meeting the state's full educational services goal for the handicapped by 1979?

(m) How does the district/agency plan to finance the program in the future?

(n) Does the proposal show evidence of consideration being given to the eight dimensions of a Basic Quality Education program in a realistic way? (History: Sec. 75-7802, 75-7303, R.C.M. 1947; Order MAC No. 48-1; Adp. 8/10/77; Eff. 8/25/77.)

Sub-Chapter 50

Transportation

INTERPRETATION SECTION

VOLUME 37 OPINION NO. 41

SUBDIVISIONS - Subdivision and Platting Act, lands purchased under contract for deed, intent to circumvent Act, affidavit of good faith;

CONTRACTS FOR DEED - Subdivisions, intent to circumvent Subdivision and Platting Act; Affidavit of good faith.

HELD:

1. A transaction involving a contract for deed which allows the purchaser to acquire title to a portion of the land is subject to the requirements of the Montana Subdivision and Platting Act, Section 11-3859 et seq., R.C.M. 1947, if the transaction is undertaken for the purpose of evading the Act.

2. The local governing body may adopt a regulation requiring a person wishing to claim the exemption granted by Section 11-3862(9), R.C.M. 1947, to file an affidavit that the transaction is being undertaken in good faith and not with the intent to circumvent the Act.

18 July 1977

Patrick M. Springer, Esq.
Flathead County Attorney
P.O. Box 121
Kalispell, Montana 59901

Dear Mr. Springer:

You have requested my opinion on the following questions:

1. Where a purchaser of land under a contract for deed exercises a release provision of the contract and obtains title to a portion of the land, is the transaction subject to the surveying and recording requirements of Section 11-3862, R.C.M. 1947?

2. May the purchaser be required to file an affidavit under Section 11-3862(8), R.C.M. 1947, that the transfer was not undertaken for the purpose of evading the Montana Subdivision and Platting Act?

As related by your letter, people are buying land under contracts for deed which contain a release provision which allows them to obtain title to a portion of the land upon payment of a stated portion of the purchase price. This allows the purcaser to mortgage that portion of the land to obtain financing for building or other improvements. The apparent problem is that this arrangement might also enable the purchaser to sell the released portion of the land and thereby create a subdivision in contravention of the statute.

The Montana Sudivision and Platting Act, Sections 11-3859 through 11-3876, R.C.M. 1947, governs the surveying and platting of subdivisions. Section 11-3862(3) prohibits the recording of any instrument purporting to transfer title to or possession of land unless a certificate of survey or subdivision plat has also been filed. Section 11-3862(9) then provides:

> Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:
>
> ***
>
> (b) which is created to provide security for construction mortgages, liens, or trust indentures;

Therefore, a bona fide transaction such as the one described above is exempted from the Act, even though the seller actually parts with legal title to a portion of the land. This transaction must be stated as an exception, because the legal effect is in fact to create a division of land since the seller holds legal title to the larger portion and the purchaser holds title to the smaller (Section 11-4861(2.1).

If the purchaser then sells the deeded portion to a third party there are technically no subdivision consequences attached. There is simply a transfer of a single undivided parcel of land.

However, if the whole undertaking was for the purpose of allowing the original owner to dispose of two tracts of land without complying with the Subdivision Act, then plainly the Act has been unlawfully circumvented. This situation obviously presents difficult problems of proof. For example, the purchaser may have a legitimate need to sell the deeded portion outright, which arose after the contract for deed was entered. In such a situation no intent to circumvent the Act is present. However, the wording of Section 11-3862(9), quoted above, appears to create at least an inference of an intent to circumvent the Act when the purchaser does anything besides create a mortgage, lien or trust indenture "to provide security for construction."

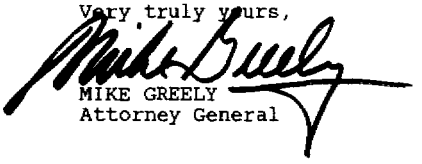
The Act thus places a burden upon the local governing body to determine whether the arrangement was entered for the purpose of evasion. Therefore, it would be a legitimate and proper exercise of the local body's duties to require anyone wishing to claim the exemption granted by Section 11-3862(9) to provide some justfication for entitlement thereto. The local governing body is empowered under Section 11-3862 to adopt reasonable regulations governing the orderly development of its jurisdictional area. Such a regulation could require an affidavit that the transaction is being undertaken in good faith and not with the intent to circumvent the statute. Under Rule MAC 22-2.4B(30)-S4090(4), transactions exempted by Section 113862(9) may already be filed as certificates of survey, since that is required by many lending institutions, and that filing must state the basis of its exemption.

THEREFORE, IT IS MY OPINION:

1. A transaction involving a contract for deed which allows the purchaser to acquire title to a portion of the land is subject to the requirements of the Montana Subdivision and Platting Act, Section 11-3859 et seq., R.C.M. 1947, if the transaction is undertaken for the purpose of evading the Act.

2. The local governing body may adopt a regulation requiring a person wishing to claim the exemption granted by Section 11-3862(9), R.C.M. 1947, to file an affidavit that the transaction is being undertaken in good faith and not with the intent to circumvent the Act.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 45

COUNTY WATER AND SEWER DISTRICTS - Elections, General election laws, applicability.

ELECTIONS - County Water and Sewer Districts, General election laws, applicability.

19 July, 1977

Jack Yardley, Esq.
Park County Attorney
Box 482
Livingston, Montana 59047

Dear Mr. Yardley:

You have requested my opinion on the following questions:

1. Do the voting requirements specified in Section 16-4505, R.C.M. 1947, as amended relating to County Water and Sewer Districts and the reference in Section 16-4508 as amended to the general voting laws, require the closing registration for an election to create a County Water or Sewer District.

2. Must the time limitation provided in Section 23-3016, R.C.M. 1947, as amended, be followed concerning Notice of Closing Registration, since the district election must be held within sixty (60) days of the date of the final hearing of the petition under Section 16-4505 of the County Water and Sewer District Law?

3. In the event that the provisions of Section 23-3016 do not apply, is close of registration and Notice of Close of Registration required in preparation for the election?

The organization of county water and sewer districts is governed by Section 16-4501, et seq., R.C.M. 1947. A district may be organized by presentation of a petition to the board of county commissioners, Section 16-4503, which must then hold a hearing, Section 16-4504. Upon completion of the hearing the board must make a final determination of the district boundaries and then give notice of an election to be held to determine whether the district should be incorporated. The election must be held within 60 days from the date of the final hearing before the board, Section 16-4505. That Section further provides:

> And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. (Emphasis added).

Section 16-4508 reiterates the applicability of the general election laws:

> The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all districts except as in this act otherwise provided; (Emphasis added).

These last quoted Sections make it clear that the general election laws govern water and sewer district elections unless those laws conflict with specific requirements of the district statutes.

The Section of the general election laws at issue here is Section 23-3016 which provides, as applicable to this opinion:

> The registrar shall:
> (a) Close registrations as follows:

***

(iii) for forty (40) days before any election other than hereinabove provided.
(b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county.

Sixty (60) days before the election publish notice in a newspaper of general circulation in the county specifying the day registrations will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

There are two potentially applicable requirements: closing registration 40 days prior to the election and giving notice of closure 60 days prior to the election.

It is clear that the requirement of 60 days notice of the closure of registration for the election is inapplicable to water and sewer district elections. The board is required by Section 16-4505 to hold the election within 60 days of its hearing on the petition. Thus, in order to comply with Section 23-3016 the board would have to close registration on the hearing date, which may be prior to the final decision on the proposed district boundaries and therefore prior to the notice of the election itself. This would result in foreclosing electors from voting before they were notified that an election would be held. Thus, the 60-day notification of the closure of registration required by Section 23-3016 conflicts with, and cannot apply to water and sewer district elections.

The other requirement of Section 23-3016, that registration be closed 40 days prior to the election, does not, on its face, conflict with the water and sewer district statutes. Under Section 16-4505 the board must hold the election within 60 days of its hearing on the petition. Notice of the election must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly paper, and the first publication must be at least two weeks prior to the date of the election (Section 16-4505).

Since Section 23-3016 requires that notice of closure of registration be given 60 days prior to the election, and that registration actually be closed 40 days prior to the election, there is a clear intent that persons be given at least 20 days in which to register. Within the context of

the requirements of Section 16-4505 this cannot practically be done. In order to have the 20 day opportunity to register, closure would once again have to be announced on the same day as the board's hearing. Therefore, neither the notice nor the closure requirements of Section 23-3016 are applicable to water and sewer elections. In statutory construction, where a particular and a general provision on the same subject are in conflict, the particular prevails. Section 93-401-16, R.C.M. 1947. The plain, specific requirements of the water and sewer districts statutes prevail over the requirements of the general election laws.

While the time limits for the closure and notice requirements of Section 23-3016 do not apply, the requirement for closure and notice thereof does apply. The district law does specifically provide that voters must possess "all the qualifications required of voters under the general election laws" and at least 40% "of all registered voters" must vote to validate the election. Section 16-4505. Therefore, the Board must require registration and closing of registration, and may adopt reasonable time periods therefore in light of the circumstances that arise. The twenty-day period between notice of closure and closure suggested by Section 23-3016 should serve as a guide.

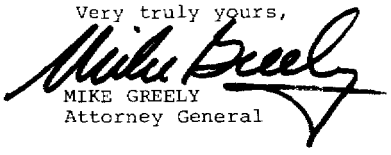
THEREFORE IT IS MY OPINION:

1. The specific provisions governing water and sewer district elections in Section 16-4501, et seq., R.C.M. 1947, prevail over the requirements of the general election laws when the two conflict.

2. The requirements of Section 23-3016, R.C.M. 1947, for 60 days notice of closure of registration at least 40 days prior to an election do not apply to water and sewer district elections held pursuant to Section 16-4501 et seq., R.C.M. 1947.

3. The Board must require registration of voters, and must close registration prior to the election. Reasonable time limitations can be adopted by the Board, giving electors at least twenty days notice prior to closing registration.

Very truly yours,



MIKE GREELY
Attorney General

COUNTIES - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

PUBLIC OFFICERS - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

COUNTY COMMISSIONERS - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

OFFICES AND OFFICERS - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

SECTION 25-601, R.C.M. 1947.

HELD: The Board of County Commissioners must pay the salaries of county officers and assstants monthly and cannot pay salaries semi-monthly.

19 July, 1977

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

Dear Mr. Bourdeau:

You have requested my opinion concerning the interpretation of Section 25-601, R.C.M. 1947, on the following specific question:

> Is it mandatory that the Board of County Commissioners pay the salaries of county officers and assistants monthly or may salaries be paid semi-monthly?

Section 25-601, R.C.M. 1947, provides:

> PAYMENT OF SALARIES OF COUNTY OFFICERS AND ASSISTANTS. The salaries of the several county officers and their assistants must be paid monthly out of the General Fund of the county, upon the order of the Board of County Commissioners, ...

This language has not been interpreted by the Montana Supreme Court. However, the Court has discussed the legislature's use of the word "must" when imposing a duty upon a public officer. Merchants Credit Service v. Choteau Co. Bank, 112 Mont. 229, 114 P.2d 1074 (1941); State ex rel. O'Connor v. McCarthy, 86 Mont. 100, 282 P. 1045 (1929). In both instances the Court adhered to the following interpretation:

> Throughout these sections, it will be noted in each reference to an act, with the exception of the finding as to the correctness of the claim presented to the council, the legislature used the verb "must", which denotes "obligation"

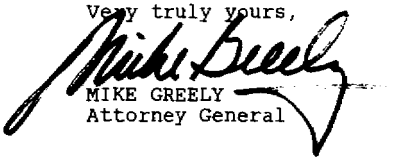
> as "we must obey the laws" (Webster), and, when used to impose a duty, it is mandatory and peremptory, excludes discretion, and imposes upon the officer an "absolute duty to perform the requirements of the statute in which it is employed." (Emphasis supplied)

The legislature has used the verb "must" when imposing a duty upon the county commissioners to pay county officers and assistants monthly out of the general fund. Section 25-601, R.C.M. 1947. Consequently, the county commissioners have an absolute duty to perform the requirements of Section 25-601, R.C.M. 1947, in which the verb "must" is employed.

THEREFORE, IT IS MY OPINION:

> The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 47

COUNTY COMMISSIONERS - Counting protests to creation of zoning districts;

FREEHOLDERS - Protests to creation of zoning districts;

ZONING DISTRICTS - Protests of freeholders;

SECTIONS 11-3830, 16-4705, 93-401-16, R.C.M. 1947.

HELD: For purposes of counting protests pursuant to Section 16-4705(b), R.C.M. 1947, all freeholders within a zoning district whose names appear on the last completed assessment role of the county are entitled to one vote without regard to the number of parcels they own within the district.

20 July 1977

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion concerning the following question:

> When counting zoning protests under Chapter 47, Title 16, R.C.M. 1947, does a person owning property have a "vote" for each parcel of land within the zoning district or does a person have only one vote within a zoning district without regard to the number of parcels owned?

Chapter 47, Title 16 of the Revised Codes of Montana provides the authorization and procedures for county commissioners to adopt zoning regulations for jurisdictional areas created pursuant to Sections 11-3830 or 11-3830.2, R.C.M. 1947.

When establishing or revising boundaries of zoning districts and/or adopting or amending zoning regulations, the commissioners are directed to follow procedures outlined in Section 16-4705, R.C.M. 1947. These include notice of a public hearing on the proposals and the holding of a hearing at which the public is afforded an opportunity to express its views. After reviewing the proposals of the planning board, the commissioners may pass a resolution of intention to create a zoning district and adopt zoning regulations for the district. After notice of the passage of a resolution of intention is published, the commissioners are required to receive written protests for 30 days from persons owning real property within the district as determined by the last completed county assessment roll.

The statute directly applicable to the question is Section 16-4705(6):

> Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year. (Emphasis supplied.)

Your question is whether this statute should be construed as forty percent of persons owning real property within a district or forty percent of the freehold parcels within a district.

In the construction of a statute, the intention of the Legislature is to be pursued if possible. Section 93-401-16, R.C.M. 1947. The intention of the Legislature must in the first instance be determined from the plain meaning of the words used. Dunphy v. Anaconda Co., 151, Mont. 76, 80, 438 P.2d 66, (1968).

The plain meaning of "...forty (40) percent of the freeholders within such district..." is simply forty percent of

those persons who can be defined as freeholders within the district. A "freeholder" is one who holds an estate in real property, either of inheritance or for life. Warren v. Chouteau County, 82 Mont. 115, 125, 265 P. 676, (1928). It is evident that the legislative intent was to restrict protests to a particular class of persons. The language does not refer to the quantity of interest within the class of freeholders.

Beyond a reading of the plain meaning of the statute, legislative intent may also be determined by the legislative history of the statute. State ex rel. Federal Land Bank v. Hays, 86 Mont. 58, 63, 282 P.32 (1929).

Section 16-4705(6) enacted as Section 5(6), Chapter 246, Session Laws, Thirty-eighth Legislative Assembly, originated as House Bill 262. The only amendments to H.B. 262 were those involving the language under scrutiny here.

As introduced and passed by the House, H.B. 262 precluded adoption of the zoning resolution of the county commissioners where timely protests were filed by "owners of forty (40) percent of the taxable valuation of the real property" within a district. House Journal, Thirty-eighth Legislative Assembly of Montana, p. 664. The Senate, however, abandoned the original statutory scheme of "weighing" protests according to quantity of interest by striking the phrase "owners of forty (40) percent of the taxable valuation of the real property" and substituting "thirty-five (35) percent of the freeholders." Journal, supra, p. 664. A final amendment was made by Conference Committee before passage of H.B. 162 which adjusted the percentage figure to forty. Journal, p. 664.

The rejection of the original weighted protest scheme of H.B. 162 in favor of simply "forty (40) percent of the freeholders" as shown by the legislative history supports the determination of legislative intent from analysis of the plain meaning of the statute as discussed above.

THEREFORE, IT IS MY OPINION:

> For purposes of counting protests pursuant to Section 16-4705(6), R.C.M. 1947, all freeholders within a zoning district whose names appear on the last completed assessment role of the county are entitled to one vote without regard to the number of parcels they

own within the district.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 48

PENSIONS - Police officers;

POLICE OFFICERS - Surviving Spouse;

MARRIAGE - Affect of Annulment;

Section 11-1844, R.C.M. 1947.

HELD: A police officer's surviving spouse, who remarries and whose remarriage is annulled ab initio, is entitled to reinstatement of her pension benefits under Section 11-1844(2), R.C.M. 1947.

21 July, 1977

Mr. W. G. Gilbert, Jr.
City Clerk and ex-officio City Attorney
City of Dillon
Dillon, Montana 59725

Dear Mr. Gilbert:

You have requested an opinion from this office based upon the following factual situation:

The City of Dillon has elected to adopt the Metropolitan Police Law, Section 11-1801 et seq, R.C.M. 1947, and provide a police pension fund, which the City administers itself. The surviving spouse of a former Chief of Police was receiving pension benefits following her husband's death subsequent to his retirement, and continued to do so until her remarriage on May 1, 1976. At that time her pension benefits were terminated. Subsequently, her remarriage was annulled on April 19, 1977 by a district court decree declaring the remarriage void ab initio, and she has made demand upon the City to reinstate her pension benefits, as of the date of the annulment decree.

The question presented is what effect the annulment of the surviving spouse's remarriage has upon her claim to pension benefits.

The statute governing the payment of a pension to a surviving spouse, Section 11-1844(2), R.C.M. 1947, does not address this issue. The only language in the statute addressing the length of time for which benefits must be paid is the phrase "as long as such spouse remains the surviving spouse."

This same issue was discussed in relation to the Fire Department Relief Association in 28 Op. Att'y Gen. 80 (1959). Therein, the former Attorney General held that a fireman's surviving spouse, who remarries and whose remarriage is annulled ab initio, is entitled to reinstatement of her pension benefits.

The issue has not been decided by the Montana courts, however, other jurisdictions have addressed the issue and reached the conclusion that such a situation warrants reinstatement of the surviving spouse's pension benefits. Cottam v. Los Angeles, 184 Cal App 2d9523, 7 Cal Rptr 734 (1960); Clark v. City of Los Angeles, 187 Cal App 2d 792, 9 Cal Rptr 913 (1960); Boyle v. Philadelphia Police Widows Pension Fund Assoc., 219 Pa Super 230, 280 A 2d 577 (1970). As stated in Annot. 85 ALR2d 242 (1962), the general rule is that "an annulment of a widow's remarriage restores her to the pension rights held by her as the widow of the first husband, prior to the remarriage."

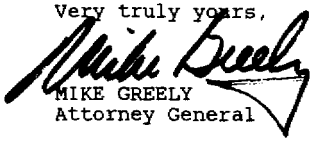
The primary reason for this rule, and the one stated in each of the above cited decisions is that an annulment decree declaring the marriage void ab initio, as in the present situation, has the effect of placing the parties in the position of never having been married. This, combined with the liberal interpretation given to pension legislation to promote the benefits for which it is designed, is the foundation for each of the decisions previously cited. Furthermore, as stated in Boyle and Clark, such a finding does not prejudice the payor of the pension benefits. The obligation to pay the pension benefits arises by contract between the city and the police officer. This obligation does not increase by reason of the surviving spouse's purported remarriage or its annulment. All payments to the pension fund have been made and cannot be increased.

Therefore, the funds to pay the pension and their availability cannot be affected by the remarriage or its annulment.

THEREFORE, IT IS MY OPINION:

A police officer's surviving spouse, who remarries and whose remarriage is annulled ab initio, is entitled to reinstatement of her pension benefits under Section 11-1844(2), R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 49

CITIES AND TOWNS - Nepotism, appointment of son-in-law by Mayor;

NEPOTISM - Appointment of son-in-law by mayor of city or town prohibited.

SECTION 59-519, R.C.M. 1947.

HELD: The appointment of the son-in-law of an appointing mayor to the position of Chief of Police would violate the nepotism prohibition of Section 59-519, R.C.M. 1947, even though he may be the most qualified applicant for the position.

25 July 1977

Olive R. Hagadone
Mayor
Town of Boulder
Boulder, Montana 59632

Dear Mayor Hagadone:

You have requested my opinion concerning the appointment of a police chief for Boulder. Specifically, you have asked whether the appointment of your son-in-law, who is the only full-time peace officer on the Boulder police force whose salary is paid by the town, would violate the nepotism prohibitions of Section 59-519, R.C.M. 1947. I understand that your son-in-law is well qualified and merits the promotion and that his application is favored by other town officials and aldermen. Boulder City Attorney Allen LeMieux, to whom I am authorized to render an official opinion under Section 82-401, R.C.M. 1947, joins in requesting my opinion

concerning this question.

Section 59-519, R.C.M. 1947, provides:

> It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree, or by affinity within the second degree; except that the provisions of this section shall not apply to sheriffs in the appointment of persons as cooks and/or attendants. It shall further be unlawful for any person or any member of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree.

This statute has been a part of Montana laws since 1933. See Chapter 12, Laws of 1933. The purpose of the provision "is to eliminate abuses by public officials appointing relatives to the public payrolls (on the basis of relationship rather than merit)." 37 Official Opinions of the Attorney General, No. 6. That purpose has been effected through a broad and flat prohibition against public officials appointing their relatives to office or public employment. No exceptions are set forth and none can be interpolated by me. See Security Bank & Trust Co. v. Connors, 550 P.2d 1313 (1976). The statute bars the appointment of a relative even if he or she is the most qualified candidate for the position. The prohibition is a comprehensive one. It prohibits not only a direct appointment of relatives but also proscribes agreements and schemes designed to effect an appointment without the direct appointive action of the appointing officer. 37 Official Opinions of the Attorney General, No. 6, (wherein it was held that the promotion of a school board

trustee's sister-in-law violated the nepotism statute where the trustee resigned her position and the remaining trustees promoted the sister-in-law and then appointed the original trustee to the vacant trustee's position).

Section 59-519 applies to the appointment of a police chief by the mayor of a city or town. Cities and towns are "political subdivisions" of the State. See 62 C.J.S. Municipal Corporations, §3, p. 69 and City of Billings v. Herold, 130 Mont. 138, 141, 296 P.2d 263 (1956). In the case of a police chief, the mayor is authorized to make the appointment. Sections 11-703, 11-802(1), 11-810 and 11-1802, R.C.M. 1947. For purposes of Section 59-519, the mayor is considered the appointing officer even though selection must be confirmed by the City Council. See State ex rel. Kurth v. Grinde, 96 Mont. 608, 614-615, 32 P.2d 15 (1934). The word "emolument" includes the job of police chief: It is a comprehensive term meaning the profit arising from any office or employment, whether received in the form of salary, fees or other advantage. It comprehends even laborers employed at will on an hourly basis. 19 Official Opinions of the Attorney General, No. 201 (1941).

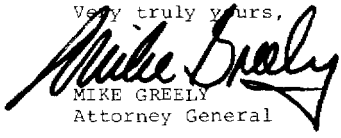
I further conclude that the relationship of son-in-law and mother-in-law is one of affinity within the first or second degree. The word "affinity" is commonly employed to signify the relationship which, upon marriage, arises between the husband and his wife's blood relatives and the wife and her husband's blood relatives. 24 Official Opinions of the Attorney General, No. 49; 2A C.J.S., Affinity p. 512-513. The usual rule for determining the degree of affinity is that the husband is related by affinity to his wife's blood relatives in the same degree as his wife is related to her blood relatives by consanguinity. Id. Thus, a mother is related by consanguinity to her daughter in the first degree and therefore to her daughter's husband by affinity in the first degree. See 24 Opinions of the Attorney General, No. 49; and see also Sections 91-406 through 91-410, R.C.M. 1947. However, at least one Montana Supreme Court decision has applied a modified rule of determining degree of affinity, counting the relationship of a husband to his wife as affinity within the first degree, State ex rel. Hoagland v. School District No. 13 of Prairie County, 116 Mont. 294, 298, 151 P.2d 168 (1944) (compare with 24 Opinions of the Attorney General, No. 49); this method would make the son-in-law relationship one of affinity within the second degree. Employing either method of counting, it is clear that son-in-law is at least a second degree relation by affinity

whose appointment is prohibited by Section 59-519.

THEREFORE, IT IS MY OPINION:

> The appointment of the son-in-law of an appointing mayor to the position of Chief of Police would violate the nepotism prohibition of Section 59-519, R.C.M. 1947, even though he may be the most qualified applicant for the position.

Very truly yours,



MIKE GREELY
Attorney General

cc: City Attorney Allen LeMieux

VOLUME NO. 37 OPINION NO. 50

BILLS AND NOTES - Delinquency charges on overdue monthly installment payments;

DEPARTMENT OF AGRICULTURE - Delinquency charges on overdue monthly installment payments on loans made by the department;

EDUCATIONAL INSTITUTIONS - Delinquency charges on overdue monthly installment payments on federally insured student loans.

HELD: The Montana Department of Agriculture can assess delinquency charges on overdue monthly installment payments as provided in notes evidencing loans taken by that department.

26 July 1977

Eldon R. Fastrup
Acting Director
Department of Agriculture
1300 Block Cedar Street
Airport Way Building West
Helena, Montana 59601

Dear Mr. Fastrup:

You have requested my opinion concerning the following question:

Can the Montana Department of Agriculture assess deliquency charges on overdue monthly installment payments as provided in notes evidencing loans which:
(1) bear simple or compound interest and;
(2) are nonfederally insured loans or federally insured student loans?

It is my understanding that the question arose when you were informed that officers of some commercial banks in Montana did not believe they were authorized under the Montana Uniform Commercial Code-Commercial Paper (hereinafter UCC) to assess delinquency charges on overdue monthly installment payments. However, the UCC does authorize the assessment of delinquent charges on negotiable instruments.

A negotiable instrument is a writing signed by the maker or drawer, which contains an unconditional promise or order to pay a sum certain in money, and is payable on demand or at a definite time to order or to bearer. Section 87A-3-104, R.C.M. 1947. The chapter concerning negotiable paper applies to an instrument which is otherwise negotiable but which is not payable to order or bearer, except that there can be no holder in due course of such an instrument. Section 87A-3-805, R.C.M. 1947.

A delinquency charge provision in a note does not destroy its negotiability since "[t]he sum payable is a sum certain even though it is to be paid ... (b) with stated different rates of interest before and after default or a specified date ...." Section 87A-3-106(1), R.C.M. 1947. Most loans made by the Department thus will be subject to the UCC provision that "[a] cause of action against a maker ... accrues (a) in the case of a time instrument on the day after maturity ...", Section 87A-3-122(1), R.C.M. 1947; and "[u]nless an instrument provides otherwise, interest runs at the rate provided by law for a judgment ... (b) ... from the date of accrual of the cause of action." (Emphasis added.) Section 87A-3-122, R.C.M. 1947.

By excepting those instruments which establish a rate of interest other than that provided by law for a judgment, Section 87A-3-122 impliedly upholds the validity of a contractual promise to pay delinquency charges. The UCC makes no distinction on the basis of whether a note bears simple or compound interest.

In addition, since 1872, a provision for interest after the maturity of a promissory note can be enforced in Montana as an agreement between the parties to liquidate damages for a breach of contract. Davis v. Hendrie, 1 Mont. 499 (1872). Accord, Copek v. Monahan, 117 Colo. 131, 184 P.2d 501, 502 (1947); Hays v. Underwood, 196 Kan. 265, 411 P.2d 717, 723 (1966). Under this rule the negotiability of the note appears to be irrelevant.

Federally insured student loans may provide for delinquency charges under express authority of 45 CFR 177.6(c). A charge

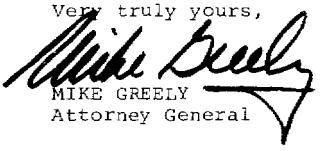
may be assessed for failure of the borrower to pay all or any part of an installment within 10 days after its due date in an amount not to exceed five cents for each dollar of each installment due or $5 for each installment, whichever is less. Id.

A delinquency charge cannot be attacked for usury. State usury laws do not apply to federally insured student loans. 20 U.S.C.A. 1078(d); and in any event, a delinquency charge provision does not render a note usurious. Union Bank v. Kruger, 1 Wash. App. 622, 463 P.2d 273 (1969); United Am. Life Ins. Co. v. Willey, 444 P.2d 755, 21 Utah 2d 279 (1968).

THEREFORE, IT IS MY OPINION:

The Montana Department of Agriculture can assess delinquency charges on overdue monthly installment payments as provided in notes evidencing loans taken by that department.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 51

AGRICULTURE - Hail insurance, reserve fund, amount required to raise coverage rates;

GRAIN - Hail insurance coverage of, reserve fund, amount required to raise coverage rates;

HAIL INSURANCE - Reserve fund, amount required to raise coverage rates;

INSURANCE - Hail insurance, reserve fund, amount required to raise coverage rates.

SECTIONS - 82-1502; 82-1507(4), R.C.M. 1947.

HELD: The state board of hail insurance has authority to increase the maximum coverage on each non-irrigated acre of grain for the 1978 hail season from $12 to $18 only if its reserve fund contains a minimum of three million dollars after payment of administrative expenses, interest owed on registered warrants, and claims for losses sustained during the 1977 hail season.

29 July 1977

Mr. Jim Stephen, Chairman
State Board of Hail Insurance
1300 Cedar Street
Airport Way, Building West
Helena, Montana 59601

Dear Mr. Stephens:

You have requested my opinion concerning the following question:

Is the state board of hail insurance authorized to increase the maximum coverage on each non-

irrigated acre of grain for the 1978 hail season from $12 to $18?

Section 82-1502, R.C.M. 1947, outlines the authority of the board to set coverage rates. When the reserve fund is determined actuarily sound, as provided in Section 82-1502, R.C.M. 1947, the board may write not more than $24 insurance on each acre of grain, which is on nonirrigated land. Section 82-1502, R.C.M. 1947. The fund is actuarily sound when it contains an amount determined by an actuary sufficient to absorb all reasonably anticipated catastrophic losses. Section 82-1507(4), R.C.M. 1947.

The meaning of these statutes is clear, unambiguous, direct and certain. Under such circumstances the statutes speak for themselves and there is nothing to construe or interpret. State v. Lanagan, 151 Mont. 558, 562, 445 P.2d 565 (1968). We need only apply the statute to the peculiar, present actuarial standing of the reserve fund to ascertain the condition precedent which must occur before authority arises in the board to increase the rate of coverage.

According to records submitted to this office by the board's administrator, an actuarial valuation was conducted in 1975 to ascertain catastrophic reserve requirements as of the end of 1974. That valuation determined that at the existing $12 rate of coverage per acre on nonirrigated land, a reserve of $1,956,106.30 was necessary to absorb all reasonably anticipated catastrophic losses. The valuation further determined that if the coverage on each acre was increased to $24, a reserve of $3,912,212.60 would be necessary.

The actuarial valuation was based upon claims experience of the board from 1917 to 1974, with particular emphasis on the years 1930 to 1974. Since it is unlikely that the risk would change significantly during the last three years from that calculated in 1975 based upon a minimum period of forty-four years, that valuation continues to be reliable for purposes of calculating the reserve necessary in 1978.

Estimating from the 1975 actuarial valuation, we find that before the board may raise the coverage to $18 per acre, the reserve must reach approximately $3,000,000.00, after payment of administrative expenses and claims for losses sustained during the previous hail season.

THEREFORE, IT IS MY OPINION:

The state board of hail insurance has authority to increase the maximum coverage on each non-

irrigated acre of grain for the 1978 hail season from $12 to $18 only if its reserve fund contains a minimum of three million dollars after payment of administrative expenses, interest owed on registered warrants, and claims for losses sustained during the 1977 hail season.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 52

COUNTIES - Rural Special Improvement Districts;

COUNTY COMMISSIONERS - Designation of RSID engineer;

RURAL SPECIAL IMPROVEMENT DISTRICTS - Approximate estimate of cost of improvement;

RURAL SPECIAL IMPROVEMENT DISTRICTS - Engineering fees;

RURAL SPECIAL IMPROVEMENT DISTRICTS - Resolution of intention to create;

SECTIONS - 16-1601, 16-1602, 16-1611, 16-1616, 16-1626, R.C.M. 1947.

HELD: 1. The approximate estimate of engineering fees set forth in the resolution of intention does not operate as an absolute limitation upon the liability of the district for payment of engineering costs actually incurred.

2. The engineer designated by the board of county commissioners to supervise the work of an RSID has no authority to incur costs substantially in excess of the approximate estimate of the total cost of the improvement as stated in the resolution of intention to create such district.

3 August 1977

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion concerning the following question:

> Whether the county must pay all engineering fees for a Rural Special Improvement District [RSID] as apparently contemplated by Section 16-1616, R.C.M. 1947, or if the total engineering fees for an RSID are limited to the amounts set out in the Resolution of Intent specified in Section 16-1602, R.C.M. 1947.

Chapter 16, Title 16 of the Revised Codes of Montana contains the provisions authorizing the board of county commissioners to create Rural Special Improvement Districts [RSID] for the purpose of providing improvements petitioned for by residents of thickly populated localities outside the limits of incorporated towns and cities. Section 16-1601, R.C.M. 1947. As a part of their duties in creating an RSID, the commissioners are required to designate an engineer who is to have charge of the work involved in making the improvement. Section 16-1602, R.C.M. 1947. The compensation to the engineer for work done by him/her is denominated an incidental expense and required to be considered a part of the cost of making the improvement. Sections 16-1626(3) and 16-1616, R.C.M. 1947. Except for that part of the cost of any street, avenue or alley intersection that the board may elect to pay out of funds available for that purpose, the entire cost of the improvement is to be assessed against the entire district. Section 16-1611(1), R.C.M. 1947. It follows that the district is liable for the certified costs and expenses incurred by the district engineer in connection with the special improvement district. Section 16-1616, R.C.M. 1947.

Your question is whether the amounts set out for engineering fees in the resolution of intention operate as an absolute limitation upon the liability of the district for actual engineering costs of the district.

Section 16-1602, R.C.M. 1947, states:

> Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and

> state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. (Emphasis supplied.)

The Montana Supreme Court, in determining the meaning of "approximate estimate" in the resolution of intention creating special improvement districts for cities and towns, stated:

> The purpose of the estimate is to notify the property owner that the improvements will cost a certain amount of money ... If the estimate should bear no reasonable relation to the actual cost of the improvements without giving any subsequent notice of intention to revise, then the whole purpose and intent of that portion of section 11-2204 which requires that an estimate of the cost be contained in the resolution of intention is lost. (Emphasis supplied.) Koich v. City of Helena, 132 Mont. 194, 200, 315 P.2d 811 (1957).

The Koich court went on to hold that the city council was without jurisdiction to accept bids for the construction of an improvement which would represent a "material deviation" from the resolution of intention of 7.5 percent over the approximate estimate of the total cost of the improvement. Koich, supra, pp. 202-203. In order to authorize such a substantial departure from the approximate estimate of the resolution of intention, the court found that the city would be required to publish a new resolution containing a revised estimate. Koich, supra, p. 203.

The RSID engineer is an appointee of the county commissioners who is statutorily empowered to incur costs incidental to his office. Section 16-1616, R.C.M. 1947. His/her ability to act is conferred by the implied acceptance (through failure to protest) of the resolution of intention by the property owners within the RSID. He/she may not incur costs of such magnitude as to defeat the notice function of the resolution of intention.

THEREFORE, IT IS MY OPINION:

1. The approximate estimate of engineering fees set forth in the resolution of intention

does not operate as an absolute limitation upon the liability of the district for payment of engineering costs actually incurred.

2. However, the engineer designated by the board of county commissioners to supervise the work of an RSID has no authority to incur costs substantially in excess of the approximate estimate of the total cost of the improvement as stated in the resolution of intention to create such district.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 53

CITIES AND TOWNS - Authority to regulate parking on private lots;

SECTIONS 32-2114; 32-2124.2 and 32-2130, R.C.M. 1947

HELD: The Uniform Act Regulating Traffic on Highways as adopted by the State of Montana precludes a municipal corporation from enacting an ordinance to regulate parking upon privately owned lots.

5 August 1977

Robert L. Jovick, Esq.
Acting City Attorney
City of Livingston
Livingston, Montana 59047

Dear Mr. Jovick:

You have requested my opinion regarding the following question:

> May a municipal corporation, under Montana law, enact an ordinance to regulate parking upon privately owned lots and issue parking citations to the registered owner of vehicles improperly parked on such lots?

There are no Montana statutes which grant local governmental units authority to regulate parking on private property. Prior to the enactment of the 1972 Constitution, it was well

settled that municipalities had only those powers specifically granted them by state law. Leischner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959). However, Article XI, Section 6, of the Montana Constitution now provides otherwise, at least as to local units that might adopt self-government charters. The convention notes to that section indicate that local governmental units, with self-government charters, have all powers not specifically denied. The section does make it clear however, that the state has the power to specifically deny certain powers. See also: Sections 47A-7-105 and 47A-7-203, R.C.M. 1947.

In that regard, Montana has adopted the Uniform Act Regulating Traffic on Highways. Section 32-2130, R.C.M. 1947 precludes municipalities from enacting ordinances in conflict with that act. The section provides:

> ...No local authorities shall enact or enforce any ordinance, rule, or regulations in conflict with provisions of this act unless expressly authorized herein.

Further, by its terms the act specifically precludes regulation of motor vehicles on private property. Section 32-2124.2, R.CM. 1947 provides in pertinent part:

> The authority to regulate motor vehicles... shall only be exercised as to vehicles operated on the public roads and highways of this state.

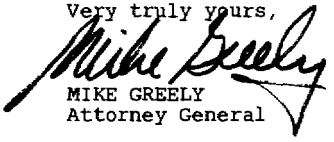
The definition of public roads and highways contained in Section 32-2114, R.C.M. 1947 does not include privately owned parking lots. In addition, Section 32-21-102, R.C.M. 1947, which grants local government certain authority regarding parking, does not provide for the exercise of authority over private lots.

THEREFORE, IT IS MY OPINION:

> The Uniform Act Regulating Traffic on Highways as adopted by the State of Montana precludes a municipal

corporation from enacting an ordinance to regulate parking upon privately owned lots.

Very truly yours,



MIKE GREELY
Attorney General