RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule 2.55.326 pertaining to minimum yearly premium.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On May 18, 1994, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 303 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendment to ARM 2.55.326 pertaining to minimum yearly premium.

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

2.55.326 MINIMUM YEARLY PREMIUM (1) Remains the same.
~~(2) In calculating a minimum yearly premium, the state fund staff shall identify the direct and indirect costs associated with the administration of all insurance policy contracts. The costs then must be divided by the number of employers insured by the state fund. Each employer insured by the state fund must be assessed and pay no less than the minimum yearly premium.~~

AUTH: Sec. 39-71-2315 and 2316 MCA; IMP: Sec. 39-71-2311 and 39-71-2316 MCA.

Rationale: The amendment of ARM 2.55.326 is necessary because the board of directors determined that the current language in (2) has the potential to interfere with the board's authority in Sec. 39-71-2315, MCA, of exercising full power, authority, and jurisdiction over the state fund, and therefore, may reduce flexibility in determining the minimum yearly premium in the covering of administrative costs for coverage of a small employer pursuant to Sec. 39-71-2316, MCA.

3. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Dwan Ford, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., May 11, 1994, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, Helena, Montana 59604-4759, and must be received no later than May 26, 1994.

5. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State April 18, 1994.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.6.407 EXAMINATION
to examination

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Board of Architects proposes to amend the above-stated rule.

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

"8.6.407 EXAMINATION (1) through (4) will remain the same.

(5) An applicant failing to pass the examination is entitled to re-examination on divisions of the examination that he failed to pass. Re-examination may be at the next scheduled examination. A re-examination fee will be charged. If the entire examination is not successfully completed within 4 consecutive years, the applicant must reapply and retake the entire examination. However, if an applicant is prevented, through no fault of his/her own, from taking a scheduled examination, he/she may, at the discretion of the board, within two years, be examined without submitting a new application."

Auth: Sec. 37-1-131, 37-65-204, 37-65-303, MCA; IMP, Sec. 37-65-303, MCA

REASON: This rule provides the Board of Architects with a hardship exception from the requirement that license examination candidates complete all portions of the examination within four years of the first examination.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or

subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 3 based on the approximately 25 examinees in Montana each year.

BOARD OF ARCHITECTS
KEITH RUPERT, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensing requirements, contracts and penalties, fees, and promoters	))))))	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO 8.8.2804 LICENSING REQUIREMENTS, 8.8.2805 CONTRACTS AND PENALTIES, 8.8.2806 FEES AND 8.8.3301 PROMOTER-MATCHMAKER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Board of Athletics proposes to amend rules pertaining to the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.8.2804 LICENSING REQUIREMENTS (1) through (4) will remain the same.

(5) Prior to issuance of a promoters license, the promoter shall provide a surety bond in the amount of $5,000, on forms provided by the board, ~~to guarantee payment of all taxes and fees to the state of Montana.~~ for the purposes set forth at 23-3-502, MCA.

(6) will remain the same.

(7) The promoter shall provide insurance to adequately protect the contestants, the officials and the attending public, and shall furnish proof of such insurance to the board before sanction shall be granted.

(8) through (11) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-501, 23-3-502, MCA

REASON: The proposed change to subsection (5) is necessary to eliminate a conflict between statutory purpose for the bond and the purpose set forth in the rule. The proposed change to subsection (7) is necessary to protect the public from investing money in a boxing match before licensure has been granted.

"8.8.2805 CONTRACTS AND PENALTIES (1) through (3) will remain the same.

(4) In all cases in which performance under a contract has begun, if either party to the contract finds it impossible or inconvenient to carry out the terms of the contract, or intends, for other reasons, to violate a condition of his or her contract with another licensee, he or she shall notify the board ~~must be notified at once~~ immediately. Failure to provide such information ~~may~~ shall result in disciplinary action by the board.

(5) through (6) will remain the same.

(7) If a ~~wrestler is booked to wrestle for a promoter and~~ contestant fails, without good cause, to ~~appear~~ comply with his or her contract with a promotor, he shall be subject to disciplinary action by the board.

(8) If a promotor fails, without good cause, to comply with his or her contract with a contestant, he shall be subject to disciplinary action by the board."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-603, MCA

REASON: The proposed changes to this rule are necessary to increase the likelihood of prompt board notification of a promotor's financial instability, and to increase protection of the public in cases where one licensee or the other decides to breach a contract.

"8.8.2806 FEES

(1)	Promoters/matchmakers	$~~100~~ 250, plus bonding requirements
(2)	Boxers/kickboxers	~~10~~ 25
(3)	Wrestlers	~~10~~ 25
(4)	Referees	~~10~~ 25
(5)	Managers/Trainers	~~10~~ 25
(6)	Seconds	~~5~~ 15
(7)	Judges	~~5~~ 15
(8)	Timekeeper/knockdown judge	~~5~~ 15
(9)	Minimum kicking requirement officials"	~~5~~ 15

Auth: Sec. 23-3-405, 37-1-134, MCA; IMP, Sec. 23-3-405, 23-3-501, 37-1-134, MCA

REASON: The proposed fee increases are necessary to allow the board to continue to function under its current budget as set by the 1993 legislature. The program will cease to operate without an increase in the license fees.

"8.8.3301 PROMOTER-MATCHMAKER (1) Promoters shall be responsible for permit applications and other requirements. All license fees must be paid ~~prior to the athletic event~~ before sanction will be granted. Within 24 hours after the conclusion of any live or televised athletic event, the promoter shall report on the total number of tickets sold, the total of gross receipts and such other information as prescribed on forms provided by the board.

(2) will remain the same.

(3) Promoters shall receive sanction from the board before any publicity is issued. Sanction will not be granted until all requirements of ARM 8.8.2804 and this rule are met. All substitutions shall be announced as soon as substitutions are known.

(4) through (6) will remain the same.

(7) Prior to issuance of a permit to a Licensee to conduct or promote an athletic event, Licensee must, at least twenty-one days prior to the commencement of the athletic event, provide to the Board either of the following:

(a) A certified cashier's check or money order for each purse, payable to each contestant not waiving such protection under subsection (b) below, in an amount not less than the total purse to be paid to such contestant; or

(b) a written statement, signed by each contestant for which a check is not provided, waiving protection under subsection (a) above."

Auth: Sec. 23-3-405, MCA; IMP, 23-3-404, 23-3-405, 23-3-501, 23-3-601, MCA

REASON: The proposed changes to this rule are necessary to ensure that a promotor obtains a board decision on his or her license application sufficiently in advance of an athletic event to avoid financial loss to investors taking a risk on whether the license will be granted. The proposed addition of subsection (7) is necessary to ensure that contestants are not put in the position of fighting for a promotor and then not getting paid what they are due under contract with the promotor.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Athletics, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Athletics, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5 based on the approximately 50 licensees in Montana.

BOARD OF ATHLETICS
ANDY VANDOLAH, CHAIRMAN

Annie M. Bartos
ANNIE M. BARTOS
RULE REVIEWER

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to continuing education and requirements and restrictions	)))	NOTICE OF PROPOSED AMENDMENT OF 8.16.1002 AND 8.16.1003 PERTAINING TO DENTISTS AND DENTAL HYGIENISTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Board of Dentistry proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.16.1002 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION (1) The board of dentistry shall determine the acceptability or unacceptability of hours that are claimed for continuing education credit. Determination of course acceptability rests with the board, and all decisions are final. ~~Licensees are urged to obtain board approval of courses offered by entities not recognized by the board as approved sponsors, prior to taking the course. The "continuing education approval request form" is designed to collect data for the board to make an informed decision regarding the acceptability of continuing education courses. The form must be submitted a minimum of 60 days prior to the course date.~~ The burden of proof regarding the acceptability of any continuing education course lies entirely with the licensee.

(2) Upon approval ~~of a sponsor~~ by the board, an organization shall be exempt from the requirement of applying for approval of individual programs. ~~The board, at any time, may re-evaluate and revoke the status of an approved sponsor. A list of organizations or groups which are approved as sponsors will be maintained in the office of the board.~~

(3) The following ~~organizations~~ are currently recognized as ~~board approved course sponsors~~ organizers of quality continuing education:

(a) through (e) will remain the same.

(f) ~~Sponsoring~~ organizations of the recognized specialty certifying boards.;

(g) study groups that fulfill the following criteria:

(i) the group consists of a minimum of four members;

(ii) the group submits to the board:

(A) copy of charter or constitution,

(B) roster of officers,

(C) schedule of meeting dates,

(D) duration of meetings,

(E) brief summary of content of meetings, and

(F) method by which attendance is recorded and authenticated.

(h) government agencies.

(4) ~~Additional organizations who wish to be course sponsors, are urged to apply for approval prior to course presentation. Application must be made to the board office a minimum of 60 days prior to the course date.~~ A primary consideration in the evaluation of ~~applications~~ organizations, shall be their previous experience ~~of the organization in sponsoring and~~ presenting continuing dental education activities.

(5) through (5)(e) will remain the same."

Auth: Sec. 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-407, MCA

REASON: The Board wishes to clarify that licensees are responsible for certifying that the continuing education attended, pursuant to 8.16.1002(5), is pertinent to and directly related to the particular license held by the licensee. The Board recognizes organizations that have historically provided quality continuing education for dental health professionals and has deleted the term "sponsor", which appeared to be causing confusion among licensees. Study groups that meet the Board's criteria are considered an acceptable organization to present continuing education. The rules regarding study groups were moved to a more logical section in order to reflect that consideration. The Board received requests from licensees to consider recognizing government agencies such as the Veteran's Administration or the Public Health Department as an acceptable means of obtaining continuing education. The Board agrees with the requests.

"8.16.1003 REQUIREMENTS AND RESTRICTION (1) through (3) will remain the same.

(a) ~~L~~lectures ~~and/or clinical sessions offered by approved sponsors~~;

(b) ~~Courses having received prior board approval~~ clinical sessions;

(c) study groups ~~that fulfill the following criteria:~~;

~~(i) The group consists of a minimum of four members;~~

~~(ii) Submits to the board:~~

~~(A) copy of charter or constitution,~~

~~(B) roster of officers,~~

~~(C) schedule of meeting dates,~~

~~(D) duration of meetings,~~

~~(E) brief summary of content of meetings, and~~

~~(F) method by which attendance is recorded and authenticated.~~

(d) A maximum each three year cycle of 24 credits for dentists, and 12 credits for dental hygienists is allowed for group study~~.~~;

(e) ~~P~~presentation (instruction) of ~~approved~~ dental or dental hygiene continuing education:

(i) through (ii) will remain the same.

(f) ~~A maximum each three year cycle of six credits for practice management.~~ practice management courses not to exceed six credits per 3 year cycle;

(g) live interactive telecommunication.

(4) through (4)(e) will remain the same.

~~(f) Advanced cardiac life support;~~

~~(g)~~ (f) home study (~~i.e.~~ e.g. videotapes, journals, self-tests, etc.)."

Auth: 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-406, MCA

REASON: These amendments are being proposed for clarification purposes. Subsection 8.16.1003(c) has been reworded and moved. The Board recognizes that live interactive communication can be a valid method of obtaining quality continuing education. "Interactive" meaning that there is communication between the educator(s) and participants, allowing immediate feedback and communication.

The Board has received inquiries regarding the acceptability of home study programs that include a self-test and has added the term to clarify and reiterate that home study is unacceptable.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 120 based on the 1200 licensees in Montana.

BOARD OF DENTISTRY
SCOTT ERLER, DDS, PRESIDENT

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees and renewals	)))	NOTICE OF PROPOSED AMENDMENT OF 8.24.409 FEE SCHEDULE AND 8.24.406 RENEWALS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Board of Landscape Architects proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.24.409 FEE SCHEDULE (1) through (3)(c) will remain the same.

(d) License renewal ~~110.00~~ 175.00

(e) through (4) will remain the same."

Auth: Sec. 37-1-134, 37-66-202, MCA; IMP, Sec. 37-1-134, 37-66-202, 37-66-305, 37-66-307, MCA

REASON: To increase the renewal fee in order to properly fund the activities of the Board for FY 94-95. The Board currently has an inadequate cash balance. The Board will be unable to conduct necessary Board business without this increase in fees.

"8.24.406 RENEWALS (1) It shall be the duty of the board to notify every person registered under the act, of the date his certificate is required to be renewed for the 1 year period and the fee required for renewal. Such notice shall be mailed no later than ~~May 30~~ June 10 of the current renewal year. Renewal may be affected at any time during the month of June by payment of the fee.

(2) will remain the same."

Auth: Sec. 37-66-202, MCA; IMP, Sec. 37-1-134, 37-66-307, MCA

REASON: This amendment is necessary to provide staff adequate time to prepare the mailing of renewals. One staff member currently administers six licensing boards, four of which renew during the same time period. This amendment will give staff additional time to prepare the mailing of renewals to all boards.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments

orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Landscape Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to 7 based on the 71 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS
TED WIRTH, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to application for examinations) NOTICE OF PROPOSED AMENDMENT) OF 8.34.414A APPLICATION) FOR EXAMINATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Board of Nursing Home Administrators proposes to amend the above-stated rule.

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

8.34.414A APPLICATION FOR EXAMINATION (1) will remain the same.

(2) An application for examination shall be filed at least ~~30~~ 45 days prior to the examination date and must be accompanied by the required fee, which shall not be refunded.

(3) will remain the same.

(a) A maximum of five years of experience will be ~~considered~~ accepted for categories set out in subsections (~~i~~ii) through (vii) below. Designated points are given based upon 40 hours or more per week. Documented part-time employment will be prorated on a full-time employee (40 hours per week) status. Such experience must have been gained in the five years immediately preceding the date of application in order to qualify for credit under this section.

(i) administration of health care facility(ies), when conducted in compliance with any applicable licensure requirements, ~~to include administrator and/or director of nursing, full-time equivalency,~~ where the individual has the ability to hire or fire, and has primary responsibility for the day-to-day operation of the facility, no more than 1200 points/year;

(ii) director of nursing in a health care facility, who is responsible for the administration of nursing services and management of the nursing department, no more than 1200 points/year;

(iii) middle management in health care facility(ies) who ~~has the ability~~ delegate the authority to hire~~/~~ or fire within a department of a health care facility, and who supervises at least three staff persons of a health care facility within that department, but who also receives general supervision from the administration of the health care facility, ~~full time equivalency,~~ no more than 400 points/year;

(~~iii~~iv) direct services experience in health care facility(ies), as a licensed or certified individual providing health care services with direct patient contact, ~~full time equivalency,~~ no more than 200 points/year;

(~~iv~~v) support services experience in health care facility(ies) with indirect patient contact, ~~full time~~

~~equivalency,~~ no more than 100 points/year;

~~(v) casual (indirect) experience in health-care facility(ies), full-time equivalency, no more than 50 points/year;~~

(vi) non-health care related administrative/management experience, where the individual supervises all employees of the business, who has the ability to hire or fire, and has primary responsibility for the day-to-day operation of the business, no more than 300 points/year; ~~and~~ or

(vii) non-health care related supervisory/business experience, where the individual supervises at least three staff persons of the business, but also receives general supervision from the business manager, no more than 100 points/year.

(b) ~~Education requirements shall be obtained through the following.~~ Credit for educational training will be given as set forth in subsections (i) through (v) below. In the case where multiple degrees have been attained, credit shall be given for one degree only, according to the degree designated for credit by the license applicant.

(3)(b)(i) through (4) will remain the same.

Auth: Sec. 37-9-203, MCA, IMP, Sec. 37-9-203, MCA

REASON: The proposed changes are necessary in order to give applicants further clarification of experience, education and training requirements for licensure. Applicants have complained that the existing rule does not sufficiently detail the kinds of employment and training that qualify toward the 3600 point total necessary for licensure.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Nursing Home Administrators, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Nursing Home Administrators, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25

members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF NURSING HOME ADMINISTRATORS
MOLLY MUNRO, CHAIRMAN

BY:

ANNIE M. BARTOS
RULE REVIEWER

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examinations, fees, licensure by endorsement and foreign-trained applicants	)))))	NOTICE OF PROPOSED AMEMDMENT OF 8.42.402 EXAMINATIONS, 8.42.403 FEES, 8.42.406 LICENSURE BY ENDORSEMENT AND 8.42.410 FOREIGN-TRAINED APPLICANTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Board of Physical Therapy Examiners proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.42.402 EXAMINATIONS (1) through (5) will remain the same.

(a) All applicants who have previously taken the NPTE, in any jurisdiction, shall submit a request for test history verification and fee to the testing service, on a form prescribed by the board.

(6) will remain the same."

Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-11-303, 37-11-304, MCA

REASON: The proposed amendment will allow the board to verify test histories from candidates who have previously taken the NPTE in other jurisdictions, as the current system may miss previous attempts and failures before coming to Montana.

"8.42.403 FEES (1) through (1)(i) will remain the same.

(j) NPTE test history verification 55.00

(2) will remain the same."

Auth: Sec. 37-1-134, 37-11-201, MCA; IMP, Sec. 37-11-201, 37-11-304, 37-11-307, 37-11-308, 37-11-309, MCA

REASON: The proposed amendment will set the fee for test history verification that is currently being charged by PES to provide this service.

"8.42.406 LICENSURE BY ENDORSEMENT (1) through (2)(b) will remain the same.

(c) recent photograph of the applicant within the last six months;

(d) and (e) will remain the same.

(f) verification of all current licenses ~~in another~~ from other states;

(g) through (4) will remain the same."

Auth: Sec. 37-11-201, 37-11-303, 37-11-307, MCA; IMP, Sec. 37-11-101, 37-11-303, 37-11-307, MCA

REASON: The proposed amendments will require a photograph to be submitted that was taken within the last six months, as some applicants are now submitting photos that are too old to be useable for examination security. The amendments will also clarify that endorsement applicants must submit license verification from all states in which they are licensed, as the board may overlook license discipline from other jurisdictions if all are not reported.

"8.42.410 FOREIGN-TRAINED APPLICANTS (1) through (1)(f) will remain the same.

(g) pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist.

(i) All applicants who have previously taken the NPTE, in any jurisdiction, shall submit a request for test history verification and fee to the testing service, on a form prescribed by the board."

Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-11-310, MCA

REASON: The proposed amendment will allow test history verifications from foreign-trained candidates as well as original licensure candidates, in keeping with ARM 8.42.402, amended above, so that previous attempts and failures may be brought to the board's attention.

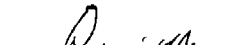
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Physical Therapy Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Physical Therapy Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF PHYSICAL THERAPY
EXAMINERS
THOMAS MEAGHER, CHAIRMAN

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to report filing fees paid by local government entities, financial statements and incorporation by reference of various standards, accounting policies and federal laws and regulations under the Montana Single Audit Act	)))))))	NOTICE OF PROPOSED AMENDMENT OF 8.94.4102 REPORT FILING FEE, 8.94.4110 REVIEW OF FINANCIAL STATEMENTS AND 8.94.4111 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Local Government Assistance Division proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.94.4102 REPORT FILING FEE (1) As provided by ~~section~~ 2-7-514(2), MCA, each local government entity required to have an audit under ~~section 2-7-502~~ 2-7-503, MCA, shall pay an annual filing fee to the department.

(2) through (7) will remain the same."

Auth: Sec. 2-7-514, MCA; IMP, Sec. 2-7-514, MCA

REASON: This proposed amendment references a more specific statute in Title 2, Chapter 7, part 5, to define which local government entities are subject to audit. It does not make any substantive change in the requirement.

"8.94.4110 REVIEW OF FINANCIAL STATEMENTS (1) will remain the same.

(2) A "financial review" is defined as:

~~(a) a review of financial statements conducted in accordance with standards established by the American institute of certified public accountants (see ARM 8.94.4111(5)); and~~

~~(b) such tests of legal compliance as the department may prescribe in a contract for the type of local government to be reviewed, or, in the case of a school district or associated cooperative, such tests of legal compliance as the department may prescribe in a contract at the request of the superintendent of public instruction.~~ an engagement in which the independent auditor applies agreed-upon procedures to specified elements, accounts, or items of a financial statement or statements in accordance with standards established by the American institute of certified public accountants [see ARM 8.94.4111(5)]. The procedures to be performed during the financial review of a specific type of

local government entity are prescribed by the department and are specified in the contract referred to in subsection (4) below.

(3) through (6) will remain the same.

(7) Reports on financial reviews must be prepared in accordance with reporting standards established by the American institute of certified public accountants for ~~reviews of financial statements (see ARM 8.94.4111(5)), and in addition must include a report on compliance with the legal compliance matters referred to in (2)(b) above~~ special reports in which agreed-upon procedures are applied to specified elements, accounts, or items of a financial statement or statements [see ARM 8.94.4111(5)], and in addition must include any schedules specified in the contract referred to in subsection (4) above.

(8) through (10) will remain the same."

Auth: Sec. 2-7-503, MCA; IMP, Sec. 2-7-503, MCA

"8.94.4111 INCOROPRATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS (1) through (4) will remain the same.

(5) The department hereby adopts and incorporates by this reference the standards ~~for a review of financial statements as~~ established by the American institute of certified public accountants for special reports in which agreed-upon procedures are applied to specified elements, accounts, or items of a financial statement as standards under which financial reviews of local government entities must be conducted, as provided by ARM 8.94.4110.

(a) The standards adopted by reference in subsection (5) above contain standards regarding the determination of procedures to be performed, the applicability of other auditing standards, ~~a definition of a review of financial statements, the accountants reporting obligation, standards for conducting a review of financial statements,~~ and reporting requirements ~~for a review of financial statements~~.

(b) The standards for ~~a review of financial statements~~ special reports in which agreed-upon procedures are applied to specified elements, accounts, or items of a financial statement incorporated by reference in subsection (5) above are contained in section 622 of the Codification of Statements on ~~Standards for Accounting and Review Services~~ Auditing Standards, which may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box ~~1003~~ 2209, ~~New York, NY 10100-1003~~ Jersey City, NJ 07303-2209."

Auth: Sec. 2-7-503, 2-7-505, 2-7-506, MCA; IMP, Sec. 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

REASON: The proposed amendments to ARM 8.94.4110 and 8.94.4111 change the definition of a financial review of a local government entity from a review of financial statements conducted in accordance with standards established by the American Institute of Certified Public Accountants in the Codification of Statements on Auditing Standards, plus such tests of legal compliance as the

department may prescribe in a contract, to an engagement in which the independent auditor applies agreed-upon procedures to specified elements, accounts, or items of a financial statement or statements in accordance with standards established by the American Institute of Certified Public Accountants in section 622 of the Codification of Statements on Auditing Standards. The procedures to be performed during the financial review of a specific type of local government entity will be prescribed by the Department and specified in the contract.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Local Government Assistance Division, 1424 - 9th Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Local Government Assistance Division, 1424 - 9th Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., May 26, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7 based on the 65 auditors currently on the department's roster of independent auditors authorized to conduct audits of local government entities in Montana.

LOCAL GOVERNMENT ASSISTANCE DIVISION

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to retailer commissions and sales staff incentive plan	))))	NOTICE OF THE PROPOSED AMENDMENT OF 8.127.407 RETAILER COMMISSION AND 8.127.1007 SALES STAFF INCENTIVE PLAN

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1994, the Montana Lottery Commission proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.127.407 RETAILER COMMISSION (1) will remain the same.

(a) Each retailer is assigned ~~a weekly~~ an instant ticket sales base created by using ~~his own average weekly instant and/or on line sales over at least six months~~ historical sales data collected by the lottery for similar retailer types and situations.

(b) For each instant ticket ~~game~~ quarterly sales period, the retailer's sales less returned tickets is measured against the assigned based.

(c) When a retailer's sales during the ~~game~~ quarterly sales period reach 20% over his established base sales, the retailer's commission shall be 6%.

(d) through (h) will remain the same."

Auth: Sec. 23-7-202, 23-7-301, MCA; IMP, Sec. 23-7-301, MCA

"8.127.1007 SALES STAFF INCENTIVE PLAN (1) and (1)(a) will remain the same.

(b) Field sales staff, the sales manager, ~~and~~ the marketing accounts manager and tel-sell assistants will receive incentive pay, up to ~~3~~ 8% of their annual salaries based on incremental increases in ticket sales.

(i) The sales period will be ~~the instant ticket sales period established for each new game introduction, a period generally running six weeks~~ calendar quarters. For the field sales staff, each employee's individual base will be calculated by totalling the retailer bases within his respective sales regions. The sales manager ~~and accounts manager's bases~~ will be the total of all retailer bases within the state. The marketing accounts manager and tel-sell assistants' bases will be the combined total of all retailer bases assigned to each.

(ii) When an employee's sales increase by ~~10~~ 5% or more over his base sales, the employee will receive incentive pay of 1% of his annual salary.

(iii) When an employee's sales increase by ~~20~~ 10% or more over his base sales, the employee will receive incentive pay of 2% of his annual salary.

(iv) When an employee's sales increase by ~~30~~ 15% or more over his base sales, the employee will receive incentive pay of 3% of his annual salary.

(v) When an employee's sales increase by 20% or more over his base sales, the employee will receive incentive pay of 4% of his annual salary.

(vi) When an employee's sales increase by 25% or more over his base sales, the employee will receive incentive pay of 5% of his annual salary.

(vii) When an employee's sales increase by 30% or more over his base sales, the employee will receive incentive pay of 6% of his annual salary.

(viii) When an employee's sales increase by 35% or more over his base sales, the employee will receive incentive pay of 7% of his annual salary.

(ix) When an employee's sales increase by 40% or more over his base sales, the employee will receive incentive pay of 8% of his annual salary.

(c) will remain the same."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202, MCA

REASON: As the Lottery implements its marketing and sales reorganization plan, sales functions will be impacted most dramatically:

1. Cutting back on number of regions and moving positions in-house to provide breadth and depth of support not currently available. This will:

(a) Impact telemarketing - greater sales skills will be required because many retailers will not be visited by reps as often. Tel-sell will become their primary contact with the Lottery.

(b) Impact field sales staff - will require them to spend more time maximizing sales where potential is greatest, and assigning up to the bottom 20-30% of our accounts as primary tel-sell/UPS.

2. Field reps will be required to develop their sales and marketing skills, moving away from former roles centered primarily in the delivery function. More will be asked of them both in the number of retailers each covers, and in the quality of their retailer calls.

Since roles will be changing dramatically, it is proposed to implement the increased ceiling which will:

1. Create a greater incentive which parallels the greater expectations of both field reps and tel-sell.

2. Give reps a ceiling which is not as easily attained.

3. Encourage greater productivity. Reps currently have no incentive to produce more than the ceiling allows.

4. 5% increments are more appropriate for the longer, quarterly periods and are more attainable, thereby encouraging

field reps to attempt the next sales level after they have achieved the previous one.

	Salary	CY'93 Current Liab @ 3% 9/yr.	CY'93 Actual Bonuses Paid	Proposed Liab @ 8% Quarterly
Sales Manager	$30,016	$8,104	$ -	$9,605
Tel-sell Supervisor	23,670	6,391	-	7,574
Tel-sell II	14,836	-	-	4,748
Region 1	23,670	6,391	236	7,574
Region 2	23,670	6,391	236	7,574
Region 3	23,670	6,391	2,349	7,574
Region 4	23,670	6,391	6,117	7,574
Region 5	23,670	6,391	-	-
Region 6	23,670	6,391	942	7,574
Region 7	23,670	6,391	471	7,574
Region 8	23,670	6,391	707	-
Region 9	23,670	6,391	235	7,574
		$72,014	$11,293	$74,945
			(used 15.7%)	

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Lottery Commission, 2525 North Montana, Helena, Montana 59620, to be received no later than 5:00 p.m., May 26, 1994.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Montana Lottery Commission, 2525 North Montana, Helena, Montana 59620, to be received no later than 5:00 p.m., May 26, 1994.

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

percent of those persons directly affected has been determined to be 80 based on the 797 licensees in Montana.

MONTANA LOTTERY COMMISSION
BECKY ERICKSON, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1994.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed repeal, amendment and adoption of rules relating to school funding and tuition	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL, AMENDMENT AND ADOPTION OF RULES RELATING TO SCHOOL FUNDING & TUITION

To: All interested persons

1. On May 24, 1994, at 9:00 a.m., in Room 104, State Capitol Building, Helena, Montana, a public hearing will be held to consider the proposed repeal, amendment and adoption of rules pertaining to school funding.

2. The proposed rules for repeal follow. Full text of the rules is found at pages 10-109, 10-245.6, 10-301, 10-310.1, 10-313, 10-315, 10-325, 10-329, 10-331.1, 10-335, 10-417, and 10-423, ARM.

10.10.301A DEFINITIONS (IS HEREBY REPEALED)
(AUTH: 20-9-102, MCA; IMP: 20-9-102, MCA)

10.16.1312 ELIGIBLE TUITION CATEGORIES (IS HEREBY REPEALED)
(AUTH: 20-5-305, 20-5-312, MCA; IMP: 20-5-305, 20-5-312, MCA)

10.20.101 DEFINITIONS (IS HEREBY REPEALED)
(AUTH: 20-9-102, 20-9-346, 20-9-369, MCA; IMP: 20-9-313, 20-9-314, MCA)

10.20.203 FOUNDATION PROGRAM SCHEDULES FOR ADDITIONAL STAFF (IS HEREBY REPEALED)
(AUTH: 20-3-106, MCA; IMP: 20-9-318, 20-9-322, MCA)

10.21.101 DEFINITIONS (IS HEREBY REPEALED)
(AUTH: 20-9-369, MCA; IMP: 15-23-607, 15-23-703, 20-9-366 -- 20-9-369)

10.21.103 CALCULATION OF MILL VALUES PER ANB AND GTB AID PAYMENTS (IS HEREBY REPEALED)
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-369)

10.22.101 DEFINITIONS (IS HEREBY REPEALED)
(AUTH: 20-9-102, MCA; IMP: 20-9-104, 20-9-315, MCA)

10.22.106 PETITION TO INCREASE A DISTRICT'S GENERAL FUND BASE FOR THE PURPOSE OF CALCULATING THE GENERAL FUND BUDGET LIMITATION (IS HEREBY REPEALED)
(AUTH: 20-9-102, MCA; IMP: 20-9-147, MCA)

10.22.203 RESOLUTION FOR A BUDGET AMENDMENT (IS HEREBY REPEALED)

(AUTH: 20-9-102, 20-9-163, MCA; IMP: 20-9-163, MCA)

10.23.101 DEFINITIONS (IS HEREBY REPEALED)
(AUTH: 20-9-102, MCA; IMP: 20-9-145, 20-9-353, MCA)

10.30.401 DEFINITIONS (IS HEREBY REPEALED)
(AUTH: 20-3-106, MCA; IMP: 20-6-701, MCA)

10.30.407 DISSOLUTION OF K-12 DISTRICTS (IS HEREBY REPEALED)
(AUTH: 20-3-106, MCA; IMP: 20-6-712, MCA)

3. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is found at pages 10-103 through 10-120, 10-245.7, 10-302 through 10-307, 10-309 through 10.310.1, 10-313 through 10-318, 10-325 through 10-331.2, 10-335 through 10-339, 10-411, 10-417 through 10-422, ARM.

10.10.101 VALID OBLIGATION CRITERIA FOR ENCUMBRANCES (1) The district may encumber current year appropriations for valid obligations existing as of June 30th. Encumbrances outstanding at year end shall be added to current year expenditures to arrive at the budgetary basis expenditures for the year. Expenditures shall be reported ~~in~~ on the trustee's ~~annual~~ financial ~~report on~~ summary using the budgetary basis.

(2) - (2)(b) remains the same.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-201, 20-9-209, MCA)

10.10.207 TRANSFERS-NONBUDGETED FUNDS (1) Transfers to clearing accounts and warrants issued cannot be made from non-budgeted funds in excess of the cash available. Cash available shall include cash on hand and receivables to be collected within thirty (30) days.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-201, 20-9-210, 20-9-220, MCA)

10.10.208 VOIDED WARRANTS (1) - (1)(a) remains the same.

(b) If the voided warrant was issued against a prior year's budget, the appropriate revenue account as provided in the School Accounting Manual should be increased by the amount of the voided warrant.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-201, 20-9-220, MCA)

10.10.301 ~~FORMULA FOR CALCULATING REGULAR EDUCATION~~ TUITION RATES ~~(1) The following formulas shall be used by school districts to calculate maximum tuition charges for regular education as of March 15 of each school year. Sources for data used in the formula shall be the trustees' annual financial summary for the previous fiscal year, the pupil data reports used for the previous fiscal year, and the school accreditation fall report of student enrollment from the previous fiscal year.~~

~~(2) The formula for calculating elementary tuition shall be as follows:~~

		In County	Out of County
~~A)~~	~~Total Fund 101 Expenditures (last FY)~~		
~~B)~~	~~Total Fund 114 Expenditures (last FY)~~	XXXXXXX	
~~C)~~	~~Total Fund 150 Expenditures (last FY)~~		
~~D)~~	~~Total (line A + B + C)~~		
~~E)~~	~~Enrollment (last FY)~~		
~~F)~~	~~Line D divided by line E~~		
~~G)~~	~~County Equalization Revenue (last FY) (Revenue Code 101 2110)~~		
~~H)~~	~~State Equalization Revenue (last FY) (Revenue Code 101 3110 and 101 3111)~~		
~~I)~~	~~Guaranteed Tax Base for General Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY) * =~~		
~~J)~~	~~Guaranteed Tax Base Revenue for Retirement Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of Retirement Fund mills levied (last FY)~~	XXXXXXX	
~~K)~~	~~Total (line G + H + I + J)~~		
~~L)~~	~~ANB (last FY)~~		
~~M)~~	~~Line K divided by line L~~		
~~N)~~	~~Line F minus line M~~		

~~(3) The formula for calculating high school tuition shall be as follows:~~

		In County	Out of County
~~A)~~	~~Total Fund 201 Expenditures (last FY)~~		
~~B)~~	~~Total Fund 214 Expenditures (last FY)~~	XXXXXXX	
~~C)~~	~~Total Fund 250 Expenditures (last FY)~~		
~~D)~~	~~Total (line A + B + C)~~		
~~E)~~	~~Enrollment (last FY)~~		
~~F)~~	~~Line D divided by line E~~		
~~G)~~	~~County Equalization Revenue (last FY) (Revenue Code 201 2110)~~		
~~H)~~	~~State Equalization Revenue (last FY) (Revenue Code 201 3110 and 201 3111)~~		
~~I)~~	~~Guaranteed Tax Base for General Fund [Statewide mill value per high school ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY) * =~~		
~~J)~~	~~Guaranteed Tax Base Revenue for Retirement Fund [Statewide mill value per high school ANB (last FY) * ANB] * number of Retirement Fund mills levied (last FY)~~	XXXXXXX	
~~K)~~	~~Total (line G + H + I + J)~~		
~~L)~~	~~ANB (last FY)~~		
~~M)~~	~~Line K divided by line L~~		
~~N)~~	~~Line F minus line M~~		

~~(4) The formula for calculating elementary and high school tuition for K-12 districts in the second year after formation of a K-12 district and thereafter, shall be as follows:~~

		In	Out of

		County	County
A)	Total Fund 201 Expenditures (last FY)		
B)	Total Fund 214 Expenditures (last FY)	XXXXXXX	
C)	Total Fund 250 Expenditures (last FY)		
D)	Total (line A + B + C)		
E)	Percent established in ARM 10.30.406(1)(b)(i)		
	(i) elementary ____%		
	(ii) high school ____%		
F)	Total		
	(i) elem. line D) times E)(i)		
	(ii) high school line D) times E)(ii)		
G)	Enrollment (last FY)		
	(i) elementary (K through 8)		
	(ii) high school (9 through 12)		
H)	Elementary line F)(i) divided by G) (i)		
I)	High School line F)(ii) divided by G)(ii)		
J)	Foundation Program revenue (last FY)		
	(i) elementary level		
	(ii) high school level		
K)	GTB for General Fund		
	(i) [statewide mill value per elementary ANB (last FY) * elementary ANB] * number of GF permissive mills levied for elementary permissive (last FY)		
	(ii) [statewide mill value per high school ANB (last FY) * high school ANB] * number of GF permissive mills levied for high school permissive (last FY)		
L)	GTB for Retirement Fund [statewide mill value per high school ANB (last FY) * district ANB] * number of Retirement Fund mills levied (last FY)		
	(i) line L times elementary ANB	XXXXXXX	
	(ii) line L times high school ANB	XXXXXXX	
M)	Total		
	(i) elem. line J)(i) + K)(i) + L)(i)		
	(ii) HS line J)(ii) + K)(ii) + L)(ii)		
N)	ANB (last FY)		
	(i) elementary		
	(ii) high school		
O)	Elementary line M)(i) divided by N)(i)		
P)	H School line M)(ii) divided by N)(ii)		
Q)	Elementary maximum tuition rate line H) minus line O)		
R)	High school maximum tuition rate line I) minus line P)		

(5) The calculations used to determine the maximum elementary or high school tuition rate, pursuant to subsections (3) and (4), shall be provided by the trustees as part of the tuition reports to the county superintendents, provided pursuant to sections 20-5-306 and 20-5-312, MCA. The county superintendent shall provide a copy of the calculations to the superintendent of each county in which the reported pupils reside. In turn, each county superintendent shall provide a copy of the calculations to each district in his county which owes tuition

~~amounts to other districts, and to each parent who owes tuition payments to a district.~~

(1) The maximum tuition rate a district may charge for the ensuing school year is 40% of the maximum per ANB entitlement established in section 20-9-306, MCA, as of March 15th.

(2) No later than March 15th, the superintendent of public instruction may change the tuition rate established in subsection (1).

(3) Pursuant to section 20-5-323, MCA, the maximum tuition rate for a student without disabilities who has been placed in a youth care facility or a group home may exceed the regular tuition rate calculated in subsection (1) but may not exceed the actual individual costs of providing that program, if:

(a) the student has unique needs which require a district to provide a program specifically designed to meet those needs; and

(b) the costs of the program can be documented and exceed the receiving school district's average general fund budget per ANB in the year preceding the year of attendance.

(4) The maximum tuition rate for a student with disabilities may exceed the regular tuition rate calculated in subsection (1) but may not exceed the rates established in ARM 10.16.1314.

(~~6~~5) The calculations in ~~subsections (2), (3), and (4)~~ this rule are the maximum ~~regular education~~ tuition ~~charges; if the calculations result in zero or a negative number, the charge will be 0 zero~~ rates that a district may charge.

(a) Pursuant to sections ~~20-5-303, 20-5-306, and 20-5-312,~~ 20-5-320 and 20-5-321, MCA, the trustees may waive any or all of the calculated tuition amount, but any waiver must be applied equally to all students.

(b) Tuition amounts shall be adjusted for the portion of the year the student is enrolled, based on the percentage calculated by dividing the number of days the student is enrolled, divided by 180.

(7) remains the same.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: Title 20, ch. 5, pt. 3, MCA)

10.10.304 STUDENT EXTRACURRICULAR ACTIVITY FUNDS

(1) remains the same.

(2) To allow the superintendent of public instruction to comply with reporting requirements by the national center for education statistics of the U.S. department of education, school districts shall report all the financial activity relating to student extracurricular activity funds on the ~~annual~~ trustees' financial ~~report forms~~ summary provided by the superintendent of public instruction.

(3) The student extracurricular fund must not be used as a petty cash fund for district expenditures.

(4) Cash balances in the student extracurricular fund may not be loaned to other district funds, may not be used to finance district expenditures for purposes other than student extracurricular activities, and may not be used as a convenience

to pay the district's liabilities pending reimbursement from the appropriate district fund, except when student extracurricular expenditures are subsidized by the general fund.

(5) Student extracurricular expenditures subsidized by the district general fund may be paid from the student extracurricular fund and later reimbursed from the general fund. The claim against the general fund must be properly authorized, completely documented and easily traced into the extracurricular fund records. For example, meal and motel costs for students and advisors may be paid from the student extracurricular fund and later reimbursed from the general fund upon filing a properly authorized claim.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-201, MCA)

10.10.308 COUNTY INVESTMENT OF SCHOOL DISTRICT FUNDS - PENALTY (1) As required by section 20-9-212, MCA, county treasurers shall invest, within three days of receipt, money received from the basic county tax in support of the elementary school ~~foundation~~ BASE funding programs, ~~and money received from~~ the basic special tax in support of high school ~~foundation programs~~ BASE funding programs, the county levies in support of district retirement obligations, and the county levy in support of transportation schedules. The taxes must remain invested until one working day before they are distributed to school districts within the county or remitted to the state.

(2) County treasurers shall allocate proportionately to, and deposit investment income received, in the funds established to account for the basic county tax ~~and~~, the basic special tax, the county levies for retirement, and the county levy for transportation.

(3) If a county treasurer fails to invest these ~~basic~~ county taxes ~~or basic special tax~~ within three days of receipt, the board of trustees or the superintendent of public instruction may, after informing the county commissioners, require the county treasurer to pay a penalty ~~to the district~~ from the county general funds. The amount of penalty to be paid will be calculated using the following formula:

$$\frac{[\text{Taxes collected} \times 10\%] \times \#\text{ days taxes not invested}}{365 \text{ days}}$$

(4) The county treasurer shall allocate the penalty payment proportionately to, and deposit it in the ~~district's~~ appropriate county-wide funds in the same manner as investment income.

(AUTH: 20-9-102, MCA; IMP: 20-9-212, 20-9-213, MCA)

10.10.309 DISTRIBUTION AND REAPPROPRIATION OF COUNTY-WIDE FUNDS (1) The county superintendent of schools shall distribute the cash balance in the county-wide retirement fund to district and cooperative funds on a monthly basis in the proportion each district's or cooperative's net ~~district~~ requirement bears to the total of all net district and cooperative requirements. Net ~~district~~ requirement is defined as the total district or cooperative retirement budget less estimated ~~district~~ revenues.

(2) ~~The cash balance in the elementary and high school county-wide equalization funds must be distributed based on the~~

~~calculation provided in section 20-9-347, MCA.~~ The cash balance in the county transportation fund must be distributed as provided in section 20-10-146, MCA.

~~(3) When distributing county equalization money for a given year, the county superintendent must ensure that no district receives equalization payments in excess of that year's foundation schedule amount for the district as provided in sections 20-9-318 and 20-9-319, MCA.~~

~~(4) Counties which anticipate funding 100% of their foundation program with the basic elementary or high school county equalization levies shall remit surplus county equalization funds to the state treasurer as required by section 20-9-331 and 20-9-333, MCA.~~

(5~~3~~) Counties which, during the current year, collect county equalization revenues that were budgeted to fund a ~~prior year's~~ foundation program for years beginning prior to July 1, 1991, must distribute those revenues to districts, funding up to 100% of the districts' foundation program for that prior year.

(a) remains the same.

(b) Once the foundation programs for all subsequent years have been funded 100%, additional collections must be ~~reappropriated to reduce state equalization payments to the county in the following fiscal year~~ remitted to the state treasurer.

(6) remains the same, renumbered (4).

(AUTH: 20-9-102, MCA; IMP: 20-9-213, MCA)

10.10.310 UNOBLIGATED ~~SPECIAL EDUCATION AND~~ TUITION MONEY IN THE MISCELLANEOUS PROGRAMS FUND (1) If, for any given year, special education money deposited in the miscellaneous programs fund under section ~~20-9-321~~ 20-5-324, MCA, remains unobligated at year end, the money shall be transferred to the general fund prior to closing of the accounts for that fiscal year.

~~(2) If, for any given year, tuition money deposited in the miscellaneous programs fund under section 20-9-507, MCA, remains unobligated at year end, the money shall be transferred to the general fund prior to the closing of the accounts for that fiscal year.~~

(AUTH: 20-9-102, MCA; IMP: 20-5-324, MCA)

10.10.407 FIXED ASSET INVENTORY (1) All school districts shall maintain fixed asset inventory records to allow reporting of fixed assets in conformity with generally accepted accounting principles ~~no later than June 30, 1993. Earlier implementation is recommended and strongly encouraged~~.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-103, MCA)

10.10.501 COUNTY TREASURER'S FINANCIAL REPORTS (1) - (1)(b) remains the same.

(2) The county treasurer's monthly report will also include information on investments, bonds and interest paid, and taxes receivable by type, year and by fund or district. The county treasurer's report for June 30th should include accrued interest receivable by fund and the amount of unpaid matured and

unmatured outstanding bonds and matured interest payable.

(3) remains the same.

(4) Before closing the accounts for each fiscal year, each school district shall reconcile ending cash, investments, taxes receivable balances, accrued interest receivable, unpaid matured and unmatured outstanding bonds, and matured interest payable reported by the county treasurer with the district records for all funds. Significant cash differences shall be explained ~~in~~ on the ~~annual~~ trustees' financial ~~reports~~ summary submitted to the superintendent of public instruction. Adjustments to the school district records shall be made prior to closing the accounts. Adjustments to the county treasurer's records shall be made as necessary in the current fiscal year or next fiscal year.

(5) remains the same.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-121, 20-9-212, 20-9-442, MCA)

10.10.502 FINANCIAL REPORTS FILED WITH THE SUPERINTENDENT OF PUBLIC INSTRUCTION (1) Monthly, quarterly, and annual financial reports shall be prepared by the administration of each school district and the county superintendent of schools ~~as required and~~ on ~~the~~ paper forms or electronically as provided by the superintendent of public instruction. If a district or county superintendent chooses to generate their own paper forms, they will be accepted only if format and color coding duplicate the pre-printed forms provided by the superintendent of public instruction.

(2) For electronic reporting of monthly, quarterly, and annual financial reports, the school district shall be in compliance with the specification requirements as provided by the superintendent of public instruction.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-213, MCA)

10.10.503 REPORTS - NOTIFICATION TO BOARD OF PUBLIC EDUCATION (1) According to section 20-9-344, MCA, the board of public education may order the superintendent of public instruction to withhold distribution of ~~state equalization aid~~ BASE aid, ~~and may order the county superintendent of schools to withhold county equalization aid,~~ from a district when the district fails to submit reports or budgets as required by law or rule.

(2) The purpose of withholding distribution of a district's ~~equalization aid~~ BASE aid is to ensure that required reports and budgets are prepared properly and are submitted ~~timely~~ on time. Therefore, the office of public instruction will notify the board of public education if a district or county repeatedly: ~~fails to submit reports or budgets:~~

(a) fails to submit reports or budgets in accordance with prescribed deadlines, or

(b) ~~that have been prepared incorrectly, including reports and budgets~~ fails to prepare reports or budgets correctly. This section applies to reports and budgets that are necessary for the office of public instruction to determine the district's

~~equalization aid entitlement~~ BASE aid or are necessary for the office of public instruction to monitor a district's compliance with statutory restrictions.

(3) - (11) remains the same.

(12) If a district's ~~state or county equalization aid~~ BASE aid is withheld because district or county reports or budgets were not submitted to the office of public instruction as required by law or rule, the office of public instruction will notify the board of public education and the district when such reports are received and all reporting requirements have been met and will request approval from the board to release withheld ~~state equalization aid~~ funds.

(13) Upon receiving approval from the board, the office of public instruction will release any ~~state equalization moneys~~ BASE aid being held from the district with the next regular distribution of ~~state equalization aid~~ BASE aid.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-344, MCA)

10.10.504 FUNDING ADJUSTMENTS FOR PRIOR/CURRENT YEAR REPORTING ERRORS (1) The office of public instruction conducts several checks on the accuracy of data reported by trustees, county treasurers, county superintendents of schools and school districts. If errors are found in data reported as a result of these checks, or if an error is brought to the office of public instruction's attention by the district, county or another outside party, the office of public instruction ~~will~~ may require an amended report or budget to be submitted and will make any necessary adjustment to the district's prior year and/or current year state ~~equalization aid~~ payments.

(2) Regardless of the year the report or budget error occurred, whenever possible, any resulting adjustment to the district's ~~state equalization aid~~ prior or current year state payment will be made in the year the error is discovered. The adjustment will be made by increasing or decreasing, as appropriate, current year state ~~equalization aid~~ payments remaining to be distributed to the district.

(3) If the amount remaining to be distributed to the district in the current year is less than the amount of an adjustment decreasing the district's state ~~equalization aid~~ payment, the balance of the adjustment will be made by reducing state ~~equalization aid~~ payments to the district in the following year or years until all prior year over-distributions of state ~~money~~ payments have been recovered.

(4) The superintendent of public instruction may require a district to provide reasonable documentation supporting the amount of additional state ~~equalization aid~~ payments to be distributed to the district due to errors in financial or ANB data reported in the prior or current year. Examples of reasonable supporting documentation include copies of district accounting records, copies of county accounting records and official audit opinions.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-344, MCA)

10.16.1314 ~~FORMULA FOR~~ SPECIAL EDUCATION TUITION RATES

(1) ~~The following formula shall be used by school districts to calculate maximum special education tuition rates to be paid in the ensuing school fiscal year, using data available on March 15 of the current school fiscal year.~~

~~(a) The total district foundation program funding for the prior school fiscal year, without special education payments, shall be divided by the ANB number used to determine that foundation program amount. This is the district foundation program funding per ANB.~~

~~(b) The figure calculated in (a), district foundation program funding per ANB, shall be used to determine the maximum special education tuition rates as follows:~~

~~(i) Category 1: District foundation program funding per ANB times 1.00;~~

~~(ii) Category 2: District foundation program funding per ANB times 1.50;~~

~~(iii) Category 3: District foundation program funding per ANB times 2.00.~~

~~(c) Nothing within the rules for calculating the maximum special education tuition rates shall prevent school districts from agreeing to lesser rates.~~

~~(d) Higher special education tuition rates may be negotiated between the school districts if the county superintendent determines that at least one of the following conditions is met:~~

~~(i) The calculated tuition amount under represents the additional costs of services for the student due to the unique nature of the student's Individualized Educational Program (IEP).~~

~~(ii) The services necessary for implementation of the student's IEP require program expansion.~~

~~(iii) The lack of special education contingency funds necessitates the addition of services without supplemental state special education funding.~~ To be eligible to charge tuition for special education services, a district must provide a special education program that complies with board of public education policies and is approved by the superintendent of public instruction.

(2) ~~The calculations used to determine the special education tuition rate and documentation of the number of hours of special education services to each student per week shall be provided by the trustees as part of the tuition reports to the county superintendent, pursuant to sections 20-5-306 and 20-5-312 20-5-324, MCA. The county superintendent shall provide a copy of the calculations and documentation of the number of hours of special education services to each student per week to the superintendent of each county in which the reported students reside. In turn, each county superintendent shall provide a copy of the calculations and documentation of the number of hours of special education services to each student per week to each school district in the county which owes tuition amounts to other school districts for special education students, and to each parent who owes tuition payments for a special education~~

~~student.~~ The maximum tuition rate for students with disabilities is the regular education tuition rate established in ARM 10.10.301, reduced by any waivers that a district must apply equally to all students, plus the additional charges as calculated in subsection (3), that apply to districts only.

(3) ~~The special education tuition rate calculation should be adjusted for the portion of the year the student is enrolled in special education services in the receiving school district.~~ A responsible school official of the receiving school district shall use one of the options defined below to determine the maximum amount which may be charged to the resident district in addition to the regular education rate for students with disabilities:

(a) Option A: The additional charge shall be calculated by determining the number of hours during which direct special education and related services are being provided each week, as established on the student's individualized education program (IEP). If the total hours are less than 15, tuition may not exceed regular education tuition rate. If the total hours per week are 15 or more, the total hours will be divided by 30 (the average number of school hours per week), and multiplied by the maximum regular education tuition rate in ARM 10.10.301 to determine the amount which may be added to the rate in ARM 10.10.301.

(b) Option B: The actual costs of services provided to the student as per the individualized education program (IEP), minus the maximum per ANB entitlement and per ANB special education block grants, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) the district charges regular education tuition;

(ii) the allowable special education costs for that student exceed the rate determined under Option A;

(iii) the costs are for special education and related services unique to the student, excluding the costs for removal of architectural barriers.

(4) The special education tuition rate calculation should be adjusted for the portion of the year the student is enrolled in special education services in the receiving school district, based on the percentage of the number of days the student was enrolled divided by 180.

(5) Districts may not charge a parent or guardian more than the regular education tuition rate calculated in ARM 10.10.301 for a student with disabilities under discretionary out-of-district attendance agreements.

(6) Districts may not discriminate on the basis of disability in their approval or disapproval of discretionary out-of-district attendance agreements.

(AUTH: 20-5-323, MCA; IMP: 20-5-323, 20-5-324, 20-9-306, MCA)

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) A school must receive accreditation from the board of public education before the regularly enrolled, full-time pupils attending the school are eligible for ANB calculation purposes

and for determining the ~~foundation~~ BASE funding program for the district ~~(section 20-9-311, MCA)~~.

(2) The superintendent of public instruction shall determine the appropriate budget units for the ANB calculation and the ~~foundation~~ BASE funding program for the district.

~~(a) Districts with separate budget units in school year 1990-91 that will be required to aggregate ANB with another district budget unit in accordance with section 20-9-311, MCA, and ARM 10.20.101(3) will receive phased-down foundation program reductions for school fiscal years 1992 through 1996 based on the following annual calculations:~~

~~(i) for school fiscal year 1992, one-fifth of the foundation foundation program difference between the amount calculated using the aggregation of ANB required by section 20-9-311, MCA, and the amount calculated using the separate budget units as established in 1990-91,~~

~~(ii) for school fiscal year 1993, two-fifths of the foundation program difference between the amount calculated using the aggregation of ANB required by section 20-9-311, MCA, and the amount calculated using the separate budget units as established in 1990-91,~~

~~(iii) for school fiscal year 1994, three-fifths of the foundation program difference between the amount calculated using the aggregation of ANB required by section 20-9-311, MCA, and the amount calculated using the separate budget units as established in 1990-91,~~

~~(iv) for school fiscal year 1995, four-fifths of the foundation program difference between the amount calculated using the aggregation of ANB required by section 20-9-311, MCA, and the amount calculated using the separate budget units as established in 1990-91,~~

~~(v) for school fiscal year 1996, 100% of the reduction in foundation program difference between the amount calculated using the aggregation of ANB required by section 20-9-311, MCA, and the amount calculated using the separate budget units as established in 1990-91.~~

~~(b)~~ The ANB generated by a budget unit that is subsequently closed, shall be added to the ANB of another budget unit of the district ~~in~~ for the first ~~two~~ years after the closing of a budget unit, if students are enrolled in the other budget unit.

(3) If the school district budget report indicates calculation of ~~foundation program~~ BASE funding for a separate budget unit ~~because of location more than 3 miles on the shortest passable road beyond the incorporated limits of a city, town, or another school of the district,~~ but the school does not meet the criteria for a separate budget unit as set out in ~~ARM 10.20.101~~ RULE I DEFINITIONS, the superintendent of public instruction shall aggregate the regularly enrolled, full-time pupils with the appropriate budget unit.

(4) If the school district ~~budget report indicates calculation of foundation program for students in grades 7 and 8 funded at the high school rate (sections 20-9-312 or 20-9-320, MCA) but the school~~ has not received accreditation by the board of public education for students in grades 7 and 8 funded at the

high school rate the office of public instruction shall ~~consider~~ certify the regularly enrolled 7th and 8th grade students as elementary pupils for ANB purposes. The school district must budget accordingly.

(5) As indicated in section 20-9-311, MCA, a student will be dropped from the rolls for ANB calculation purposes following the 10th consecutive school day of absence, with or without excuse, unless the student meets the criteria in this rule.

(6) remains the same.

(7) After a student is dropped from the rolls ~~as~~ in accordance with subsections (5) or (6), student absences will not be included for ~~ANB~~ absence and attendance calculations, and student enrollment may not be considered in ANB calculations ~~until~~ unless attendance is resumed ~~at school~~ on or before the date of the official count.

(8) A maximum of one-half ~~ANB for pupil instruction days~~ pupil enrollment for ANB purposes and attendance for "average daily attendance" purposes will be allowed for each kindergarten pupil in an approved five-year-old schooling program.

(a) ~~The ANB enrollment will be reported by each semester and computed in accordance with any variance which was granted as provided in section 20-3-302, MCA, if the approved variance does not exceed a total of 90 kindergarten pupil instruction days in one school year.~~

~~(b)~~ If the ~~approved~~ variance approved in accordance with section 20-3-302, MCA, exceeds a total of 90 kindergarten pupil-instruction days in one school year, the district shall not report ~~for the purposes,~~ any kindergarten attendance ~~or absence~~ that exceeds a total of 90 pupil-instruction days. ~~If the variance exceeds a total of 90 kindergarten pupil instruction days in the first semester, the district shall report only the first 90 pupil instruction days for kindergarten students. Kindergarten attendance and absences for pupil instruction days in excess of 90 for the school year shall be reported separately and will not be counted for ANB purposes.~~

(9) ~~An equivalent ANB for 11th or 12th grade high school students~~ A student enrolled on a part-time basis ~~may~~ must be ~~calculated by counting the student's presence or absence for each enrolled class period as a fraction of the total number of instructional periods in one day (a student enrolled for one period of a seven class period day would be considered as present or absent for 1/7 of a pupil instruction day).~~ counted as part-time enrolled for purposes of determining ANB if the student is enrolled for less than the minimum amount of pupil-instruction (PI) time considered a half-day for an elementary or high school student as defined in RULE I DEFINITIONS.

(10) Homebound students, as defined in ~~ARM 10.20.101(6)~~ RULE I DEFINITIONS, and students who are confined to a treatment, medical, or custodial facility ~~must not~~ may be counted as enrolled for ANB purposes after the 10th consecutive day of absence ~~unless~~ if the student:

(a) - (c) remains the same.

(11) Extenuating circumstances for ~~homebound~~ students who do not meet the criteria in subsections (10)(a) through (c) but

which would support a variance should be submitted to the superintendent of public instruction by a responsible school official prior to the ~~10th day of absence~~ official enrollment count date for consideration of inclusion of the student in the enrollment count for ANB purposes beyond the 10th day of absence.

(12) ~~When high school districts provide early graduation after 175 pupil instruction days in the 12th grade for a class of students who have completed the requirements for graduation (section 20-9-313(7), MCA), the district trustees shall:~~

~~(a) report the days between graduation and the last pupil instruction day of the school fiscal year as days of absence for those students who completed the requirements for graduation and who graduated after 175 pupil instruction days; and;~~

~~(b) include the days of absence in (12)(a) with the aggregate district attendance data which is provided to the office of public instruction.~~ Trustees may apply for increased ANB for early graduates who complete the graduation requirements in less than 8 semesters in accordance with section 20-9-313, MCA, by filing a request with the office of public instruction stating the names of pupils which were not included in the February 1 enrollment count because they graduated early and the date of graduation. The application must be submitted by May 10 of the year preceding the year for which ANB is being calculated. Early graduates must be counted as absent for "average daily attendance" purposes.

(13) ~~For ANB calculations the days of attendance for a regularly enrolled pupil may not exceed 180 pupil instruction days and 7 pupil instruction related (PIR) days (section 20-9-313(1), MCA) approved by the office of public instruction and conducted by the school district.~~

~~(14) The 180 pupil instruction days for ANB calculations will include 90 days from the first semester, as defined for ANB purposes in ARM 10.20.101(9), of the school year immediately preceding the year for which the foundation payments will be received, and 90 days from the second semester, as defined for ANB purposes in ARM 10.20.101(5), of the school year prior to the preceding school year.~~

~~(15)~~ The PIR days used for calculating ANB will be the number of PIR days, not to exceed 7, which were approved by the office of public instruction and conducted by the school district in the school fiscal year immediately preceding the school year for which the ~~foundation~~ BASE funding program payment will be received.

(16) remains the same, renumbered (14).

(~~17~~15) ~~Effective July 1, 1990 (section 20-1-304, MCA), a~~ A minimum of three of the PIR days must be planned for the entire staff for instructional and professional development meetings or appropriate inservice training.

(~~18~~16) If the school district fails to conduct the 3 PIR days for professional development required by section 20-1-304, MCA, or does not conduct the approved PIR days for the purposes set out in ARM 10.65.101, the superintendent of public instruction shall:

(a) ~~reduce the state and county equalization~~ adjust the

direct state aid and guaranteed tax base subsidy payments to reflect the actual number of PIR days conducted which may be counted for ANB calculations.;

(b) adjust the general fund budget of the ensuing year, if needed, to comply with legal budget limitations and requirements; and

(c) adjust the guaranteed tax base aid payment to reflect the amount which the district would be eligible for based on the budget recalculated in (b).

(~~1~~917) If the school district fails to conduct 180 days of pupil instruction, the superintendent of public instruction will reduce the ~~state and county equalization payments~~ direct state aid and guaranteed tax base subsidy payments by 1/90th for each school day less than 180 school days (section 20-1-301, MCA).

(~~20~~18) For purposes of determining the ~~foundation~~ BASE funding program of a district, ANB will be calculated using the following method:

(a) the ~~total aggregate days present and absent for the second and the first semesters~~ enrollment reported by the school district on the fall and February enrollment report forms to the office of public instruction, pursuant to section 20-9-311, MCA, will be ~~added together~~ averaged by budget unit. After subtracting the prekindergarten enrollment and one-half of the kindergarten enrollment and adjusting for part-time enrollment from each report, the average will be multiplied by the total of PIR days plus PI days and ~~then~~ divided by 180 to determine an ~~attendance~~ enrollment ANB;

~~(aggregate days present for 2 semesters for PI days) + (aggregate days absent) for 2 semesters for PI days) - (total aggregate days present and absent for PI days) divided by 180 = (attendance ANB)~~

By budget unit: [(enrollment by grade for first Monday in October + enrollment by grade for February 1) - (one-half the kindergarten enrollment) - (pre-kindergarten enrollment) - (one-half of part-time enrollment by grade category)] divided by 2 to get the average of the two enrollment counts by grade category;

Then: average of two enrollment counts by grade category, multiplied by the sum of PIR days plus PI days, divided by 180, equals enrollment ANB.

(b) additional approved ~~ANB~~ enrollment, as determined in ARM 10.20.103, will be added to the enrollment used to calculate the ~~average~~ final ANB for ~~PI days;~~ BASE Funding.

~~(attendance ANB)~~

~~+ (average ANB for PI days)~~

~~(c) the average ANB for PI days, calculated in (20)(b), will be multiplied by the approved number of PIR days to determine the calculated aggregate PIR days;~~

~~(average ANB for PI days) X (number of PIR days) =~~

~~(calculated aggregate PIR days)~~

~~(d) the calculated aggregate PIR days from (20)(c) will be added to the total aggregate days present and absent for PI days (4)(a) and divided by 180 to determine the PIR PI days ANB;~~

~~(calculated aggregate PIR days)~~

~~+ (total aggregate days present and absent for PI days)~~

~~(aggregate PIR and PI days) divided by 180~~
~~(PIR PI days ANB)~~
~~(c) additional approved ANB in (20)(b) will be added to the PIR PI days ANB to obtain the ANB calculation for foundation program payments.~~
~~(PIR and PI days ANB)~~
~~+ (additional approved ANB)~~
~~(ANB calculation for foundation program payments)~~
(AUTH: 20-9-102, MCA; IMP: 20-9-311, 20-9-313, 20-9-314, MCA)

10.20.103 CIRCUMSTANCES UNDER WHICH THE REGULAR AVERAGE NUMBER BELONGING MAY BE INCREASED (1) The ~~average number belonging (ANB)~~ of a school, calculated in accordance with ARM ~~10.20.101~~, 10.20.102 and section 20-9-311, MCA, may be increased upon approval of the superintendent of public instruction. The ANB of a school for a given school year will be determined from enrollment data obtained in ~~two different~~ the school years preceding the year the ANB is used for funding~~, therefore an ANB increase may be requested for both semesters, or may be requested for only one semester, depending on the circumstances of the requested increase~~.

(2) - (2)(c) remains the same.

(d) an anticipated unusual enrollment increase in the ensuing school fiscal year (section 20-9-314, MCA); or

(e) the initial year of operation of a five-year-old schooling program, established under section 20-7-117 (1), MCA~~;~~.

~~(f) a special full-time pupil, as defined in section 20-9-311(2), MCA, who will no longer be considered as a special full-time pupil, and will be considered as a regular student for ANB calculations;~~

~~(g) early graduation for any student who completes graduation requirements in less than 8 semesters or the equivalent amount of secondary school enrollment; or~~.

~~(h) special unanticipated circumstances resulting from the application of section 20-9-318, MCA.~~

(3) Application for increased ANB will be made to the superintendent of public instruction by~~:~~

~~(a) June 1 for situations (2)(a), (b), and (c). The superintendent will approve, disapprove, or adjust the application by the fourth Monday in June; or~~

~~(b)~~ May 10 for situations (2)~~(d)~~, (a) through (e)~~, (f), (g) and (h)~~. The superintendent will approve, disapprove, or adjust the application by the first Monday in June.
(AUTH: 20-3-106, MCA; IMP: 20-9-313, 20-9-314, MCA)

10.20.104 UNUSUAL ENROLLMENT INCREASE - ~~FOUNDATION PROGRAM~~ DIRECT STATE AID PAYMENT (1) remains the same.

(a) Eligibility to receive additional direct state ~~public school equalization~~ aid for unusual elementary or high school enrollment increases will be computed using the following calculations pursuant to section 20-9-314, MCA:

(i) If a final budget amendment resulting from an unanticipated increased enrollment has been adopted pursuant to sections 20-9-161 through 20-9-166, MCA, the calculations are as

follows:

~~(A) enrollment as submitted on budget amendment~~

~~(B) enrollment (Oct 1) for FY preceding year in (A)~~

~~(C) ANB for funding current fiscal year~~

~~(D) ANB for FY preceding year in (C)~~

~~(E) enrollment increase (A - B)~~

~~(F) 6% of preceding FY enrollment (B * .06)~~

~~(G) increased ANB for unusual enrollment increase (E - F)~~

(A) Determine the enrollment on the date of the most recent official enrollment count for Kindergarten, grades 1 through 6 if there is an accredited 7-8 grade program, grades 1 through 8 if there is no accredited 7-8 grade program, grades 7-8 if there is an accredited 7-8 grade program, and grades 9 through 12.

(1) The enrollment determined from the enrollment reported on the fall report (Form FR-4) or the spring enrollment form for official reporting is defined as the "current enrollment" for purposes of this calculation.

(2) Enrollment must be adjusted by subtracting the pre-kindergarten enrollment, one-half of the kindergarten enrollment and one-half of the part-time enrolled students reported. However, kindergarten enrollment for a variance which provides 90 full days of instruction in a single semester may be counted as one instead of one-half.

(B) Determine the prior year enrollment in the same grade categories used in (A). For purposes of this calculation, "prior year enrollment" will mean the average enrollment used for ANB purposes calculated from the official October and February counts of the year preceding the year the increase of enrollment is being calculated, adjusted as described in (A)(2) above.

(C) Subtract (B) from (A) in the same grade categories used in (A).

(D) Determine the enrollment increase exceeding 6 percent of the prior year's enrollment by subtracting the prior year enrollment by grade category in (B) multiplied by 0.06 from the enrollment increase by grade category in (C). Round the calculation for each grade level to the nearest hundredth of a whole number.

(E) Determine the current year's adjusted ANB for funding by:

(1) Summing the prior year enrollment in (B) and the enrollment increase over 6 percent calculated in (D) by grade category;

(2) Multiplying the sum in (E)(1) by the total of PI days and PIR days approved for the current year, and dividing the total by 180; and

(3) Rounding the ANB up to the nearest whole number.

(ii) If the anticipated unusual enrollment increase has been approved by the superintendent pursuant to section 20-9-313, MCA, the calculations are as follows:

~~(A) enrollment (Oct 1) for current fiscal year~~

~~(B) estimated enrollment (Oct 1) for ensuing year~~

~~(C) ANB for current year~~
~~(D) ANB for ensuing year~~
~~(E) enrollment increase (B - A)~~
~~(F) 6% of current enrollment (A * .06)~~
~~(G) increased ANB for unusual enrollment increase (E - F)~~

(A) Estimate the enrollment expected on the date of official enrollment count in the ensuing October for kindergarten, grades 1 through 6 if there is an accredited 7-8 grade program, grades 1 through 8 if there is no accredited 7-8 grade program, grades 7-8 if there is an accredited 7-8 grade program, and grades 9 through 12.

(1) The estimate of enrollment must be based on specific information known at the time the estimate is made. This is defined as the "estimated ensuing year's enrollment" for purposes of this calculation.

(2) Estimated enrollment must be adjusted by subtracting the pre-kindergarten enrollment, one-half of the kindergarten enrollment, and one-half the part-time enrolled students estimated. However, kindergarten enrollment for a variance which provides 90 full days of instruction in a single semester may be counted as one instead of one-half.

(B) Determine the current year enrollment in the same grade categories used in subsection (A). For this calculation, "current year enrollment" will be the average enrollment used for ANB purposes calculated from the official October and February counts of the current year, adjusted as described in subsection (A)(2) above.

(C) Subtract (B) from (A) in the same grade categories used in (A).

(D) Determine the estimated enrollment increase exceeding 6 percent of the current year's enrollment by subtracting the current year enrollment by grade category in (B) times 0.06 from the enrollment increase by grade category in (C). Round the calculation for each grade level to the nearest hundredth of a whole number.

(E) Determine the ensuing year's adjusted ANB for funding by:

(1) Summing the current year enrollment in (B) and the enrollment increase over 6 percent calculated in (D) by grade category;

(2) Multiplying the sum in (E)(1) by the total of PI days and PIR days approved for the current year, and dividing the total by 180; and

(3) Rounding the ANB up to the nearest whole number.

(4) In accordance with section 20-9-314(6), MCA, a district's ANB which was increased for an anticipated enrollment increase will be reviewed by the office of public instruction after the October enrollment count in the ensuing year. The calculation in ARM 10.20.104(1)(a)(ii) will be recalculated using actual enrollment in place of estimated enrollment for the ensuing year. If the recalculated ANB for the current year is less than the ANB used for funding:

(a) the general fund budget of the current year will be

adjusted, as needed, to comply with legal limitations and requirements based on the actual ANB as recalculated; and

(b) direct state aid and guaranteed tax base subsidies will be adjusted to reflect the amount which should be paid on the adjusted budget.

(AUTH: 20-3-106, MCA; IMP: 20-9-166, MCA)

10.20.201 APPLICATION FOR INCREASED STATE ~~FOUNDATION~~ AID

(1) The trustees of a district may apply to the superintendent of public instruction for ~~an increased payment for foundation program~~ additional direct state aid when the district experiences an enrollment increase of 6 percent or greater.

(2) When a district, in the current year, anticipates an ~~unusual~~ enrollment increase ~~for~~ in the ensuing school fiscal year, the trustees may apply to the superintendent of public instruction for ~~an increase in the district foundation program amount~~ additional BASE aid in accordance with the provisions of section 20-9-314, MCA.

(a) An application for additional BASE aid in the ensuing year may not be made until, or after, February 1st of the current year.

(b) To determine whether the anticipated enrollment increase is six percent (6%) or greater, the total enrollment anticipated for the ensuing year (with kindergarten students and part-time students being counted as one-half pupil), will be compared to the average of enrollment counts taken on the first Monday of October and February 1st of the current school year.

(c) If the district's anticipated enrollment increase is at least 6%, the anticipated increase over 6% will be added to the current year's enrollment, by budget unit, for purposes of calculating ANB for the ensuing year.

(3) Any ~~entitlement~~ anticipated ANB increases ~~paid by the state to the district~~ approved in the prior year under section 20-9-314, MCA, must be reviewed by the office of public instruction ~~at the end of the school fiscal year for which the payments are provided~~ following the current year's October enrollment count. If the actual enrollment ~~increase~~ by budget unit, ~~as calculated~~ using the October 1 enrollment count, is less than ~~the average number belonging used for the foundation program and entitlement calculations~~ the anticipated enrollment used to calculate the current school year's ANB, the superintendent shall revise the ~~calculations~~ district's ANB using the current year's actual October enrollment ~~increase~~ count and recalculate the district's BASE aid entitlements, including both direct state aid and guaranteed tax base aid. All payments received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of section 20-9-344, MCA.

(4) A district ~~with~~ that experiences an unanticipated ~~unusual~~ enrollment increase after the beginning of the school fiscal year may apply to the superintendent of public instruction for an increase in the district ~~foundation program~~ direct state aid amount if:

(a) ~~the current enrollment exceeds~~ the enrollment count

taken ~~on~~ in October ~~1~~ or the enrollment count taken on February 1st exceeds the enrollment count used to calculate the current fiscal year's ANB ~~of the most recently completed school fiscal year~~ by more than 6 percent; and

(b) the district has adopted a budget amendment for the ~~unusual~~ unanticipated enrollment increase.

(5) Requests for an increase in the district's direct state aid ~~foundation program~~ amount under the provisions of subsection (4) must be received by the superintendent of public instruction no later than May 1 of the school fiscal year to which the enrollment increase applies.

(AUTH: 20-9-314, 20-9-166, MCA; IMP: 20-9-314, 20-9-166, MCA)

10.20.202 PROCEDURE FOR COMPUTING ADDITIONAL STATE ~~FOUNDATION~~ AID (1) For districts that anticipate an ~~unusual~~ enrollment increase in the ensuing school year and apply for additional ~~foundation program~~ BASE aid under section 20-9-314, MCA, the superintendent of public instruction shall calculate the additional district entitlement in the following manner:

(a) Determine the district's increased average number belonging for the ~~unusual~~ anticipated enrollment increase in accordance with ARM 10.20.104(1)(a)(ii).

~~(b) Determine the enrollment increase in each budget unit by subtracting the number of pupils enrolled in each budget unit on October 1 of the current school fiscal year from the number of pupils estimated to be enrolled in each budget unit in the ensuing school fiscal year.~~

~~(c) Compute the share of the enrollment increase attributable to each budget unit by dividing the enrollment increase in each budget unit by the district's anticipated enrollment increase.~~

~~(d) Compute the additional ANB for each budget unit by multiplying the share of the enrollment increase attributable to each budget unit by the increase in the district ANB calculated in ARM 10.20.104(1)(a)(ii). Round the ANB calculation for each budget unit to the nearest whole number. For each budget unit, add the result to the ANB used to compute the direct state aid foundation program amount for the budget unit for the ensuing school year.~~

~~(e) Recalculate the district foundation program amount using the ANB counts as adjusted for each budget unit.~~

~~(f) Calculate the foundation program increase for the district by subtracting the foundation program amount which the district is scheduled to receive for the ensuing school fiscal year from the foundation program amount determined in subsection (e).~~

~~(g) Calculate the additional state equalization aid for the district by multiplying the amount determined in subsection (f) by the basic county equalization level and subtracting the result from the amount determined in subsection (f).~~

(2) For districts with an unanticipated enrollment increase that apply for additional ~~foundation program~~ direct state aid under section 20-9-166, MCA, the superintendent of public instruction shall calculate the amount of additional district

entitlement in the following manner:

(a) ~~Determine the district's increased average number belonging for the unusual enrollment increase calculated in accordance with ARM 10.20.104(1)(a)(i).~~

~~(b)~~ Determine the enrollment increase in each budget unit by subtracting the number of pupils enrolled in each budget unit ~~on October 1 of the most recently completed school fiscal year~~ as of the October or the February enrollment count from the ~~number of pupils currently enrolled in each budget unit~~ enrollment count used to calculate the budget unit's ANB for the current fiscal year.

~~(c) Compute the share of the enrollment increase attributable to each budget unit by dividing the enrollment increase in each budget unit by the district's enrollment increase.~~

(~~d~~b) Compute the adjusted ANB for each budget unit by ~~multiplying the share of the enrollment increase attributable to each budget unit by the increase in the district ANB calculated in accordance with ARM 10.20.104(1)(a)(i). Round the ANB calculation for each budget unit to the nearest whole number.~~ subtracting 6% of the enrollment count used to calculate the budget unit's ANB for the current fiscal year from the amount calculated in subsection (2)(a). For each budget unit, add the result to the ~~budget unit's ANB used to compute the foundation program amount for the current school year~~ enrollment used to calculate the budget unit's current year ANB.

(e~~c~~) Recalculate the district ~~foundation program~~ direct state aid amount using the adjusted ANB counts for each budget unit.

(~~f~~d) Calculate the ~~foundation program~~ direct state aid increase for the district by subtracting the ~~foundation program~~ direct state aid amount for which the district is presently receiving funding from the ~~foundation program~~ direct state aid amount determined in subsection ~~(c)~~ (c).

(~~g~~e) The district is entitled to the ~~foundation program~~ direct state aid increase calculated in subsection ~~(f)~~ (d) or the amount of the budget amendment adopted for the ~~unusual~~ unanticipated enrollment increase, whichever is less.

(3) remains the same.

~~(4) For districts requesting additional foundation aid after January 31 for the current school fiscal year, additional state financial assistance will be provided to eligible districts at one-half the amount calculated in subsection (2)(g).~~

(AUTH: 20-9-166, 20-9-314, MCA; IMP: 20-9-166, 20-9-314, MCA)

10.21.104 DISTRIBUTION AND REVERSION OF GTBA (1) ~~The following rule is effective for GTB reversion calculations relative to school fiscal year 1990 1991 and subsequent years.~~ To calculate a county's GTBA on retirement fund mills and a district's GTBA for general fund mills, OPI will use the mill levies certified by county clerk and recorders unless the certified mills exceed the mills allowed by Title 20, chapter 9 MCA. If the certified mills are greater than the mills allowed by Title 20, MCA, OPI will only distribute GTBA on the mills allowed by Title 20, MCA.

(2) OPI will distribute GTBA ~~aid~~ to districts and counties that meet the requirements of section 20-9-367, MCA, and ~~ARM 10.21.103~~ RULE VIII CALCULATION OF MILL VALUES PER ANB AND GTB RATIOS in the manner provided by section 20-9-344, MCA.

(3) County officials shall distribute GTBA ~~aid~~ received in support of elementary and high school retirement levies to all school districts within the county in the same manner as other revenues deposited in the elementary and high school retirement fund are distributed as provided in ARM 10.10.309.

(4) In accordance with section 20-9-368, MCA, ~~districts will revert guaranteed tax base aid in proportion to the permissive amount budgeted in the general fund but not expended.~~ Counties will revert guaranteed tax base aid for retirement expenditures in proportion to the total district amounts budgeted but not expended by the districts.

(a) ~~For purposes of calculating the general fund GTB reversion, "permissive amount budgeted" includes the foundation program amount as defined in ARM 10.22.101, and the permissive amount as defined in ARM 10.23.101.~~

~~(b)~~ Formula to calculate amount of GTBA reversion:

~~General Fund Reversion~~	~~Retirement reversion~~ County Retirement GTBA Reversion
~~A) foundation program amount~~	A) total retirement budget
~~B) permissive amount~~	B) total ret. expenditures
~~C) total permissive budget (A + B)~~	C) percent expended (B / A)
~~D) total GF expenditures~~	D) percent of GTBA reverted (1 - C)
~~E) percent permissive expended (D / C)~~	E) total retirement GTBA subsidy
~~F) percent of GTB reverted (1 - E)~~	F) total ret. GTBA reversion (D x E)
~~G) total GF GTB subsidy~~	
~~H) total GF GTB reversion (F x G)~~	

(c) OPI will adjust expenditures~~/transfers out~~ for disbursements illegally made from the ~~general fund or~~ retirement fund.

(5) To ensure that GTBA ~~aid~~ reversions are being made in accordance with section 20-9-368, MCA, OPI will calculate the amount of the reversion from data contained in reports districts and counties are required to submit to OPI. OPI will deduct the amount of the reversion from the ~~equalization and~~ GTBA ~~aid~~ payments made to the ~~district or~~ county during the next fiscal year. In the instance where a ~~district or~~ county must revert GTBA ~~aid~~ but will not receive GTBA ~~aid~~ in the next fiscal year ~~and no cash is immediately available to districts or counties for direct reversion, the GTB reversion liability shall carry forward until paid~~, the county will pay the reversion amount due to the OPI by county warrant.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

10.21.105 RECORDS OF GTBA CALCULATIONS AND ~~AID~~ PAYMENTS

(1) OPI must keep records of:

(a) the data used in calculating district, county, and statewide mill values per ANB and guaranteed tax base ratios;

(b) the data used in calculating the amount of GTBA ~~aid~~ paid to each eligible district and county; and

(c) GTBA ~~aid~~ payments made each year.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

10.22.102 SPENDING LIMITS (1) ~~When setting the general fund budget of a school district for the ensuing school year, the trustees may not adopt a general fund budget amount in excess of the greater of:~~

~~(a) 135% of the foundation program amount for the ensuing school fiscal year; or~~

~~(b) 104% of the district's general fund budget for the current school fiscal year.~~

The trustees of an equalized district must adopt a general fund budget for the ensuing year that is at least equal to the BASE budget, but not greater than the maximum general fund budget. (a)With voter approval, the trustees may adopt a general fund budget up to the greater of 104% of the current year's general fund budget or 104% of the current year's general fund budget per-ANB times the ensuing year's ANB, but not more than the maximum general fund budget.

(2) For a school district that was not equalized in the current year and whose current year general fund budget is below the current year BASE budget, the trustees of the district must adopt a budget for the ensuing year that is at least equal to the greater of:

(a) the minimum budget required by 20-9-308(2)(a)(i), computed by first identifying the percentage applicable to the current year under 20-9-308(2)(a)(i), multiplying that percentage times the difference between the ensuing year's BASE budget and the current year's budget, then adding the result to the current year's budget; or

(b) the minimum budget required to maintain the district's percentage distance from BASE, computed by first dividing the current year's budget by the current year BASE budget, rounding the result up to the next whole percentage, but not exceeding 100%, then multiplying the result times the ensuing year BASE.

(c) In no case is the minimum budget greater than the BASE budget for the ensuing year.

(d) With voter approval, the trustees may increase the general fund budget beyond the minimum required budget, but not by more than the greater of 104% of the current year's budget or 104% of the current year's budget per-ANB times the ensuing year's ANB. The district may not adopt a budget that exceeds the maximum general fund budget.

(3) For a school district that was not equalized in the current year and whose current year general fund budget is at or between the BASE budget and maximum general fund budget established for the ensuing fiscal year, the trustees of the district must adopt a general fund budget that is at least equal

to the ensuing year BASE budget and not more than the maximum budget. With voter approval, the trustees may adopt a general fund budget up to the greater of 104% of the current year's budget or 104% of the current year's budget per-ANB times the ensuing year's ANB, but not more than the maximum general fund budget.

(4) For a school district that was not equalized in the current year and whose current year general fund budget is greater than the maximum general fund budget established for the ensuing fiscal year, the trustees of the district must adopt a general fund budget that is at least equal to the BASE budget but not more than the current year general fund budget.

~~(2)~~ (5) For purposes of determining the spending limit:

(a) For a school ~~districts~~ district participating in a full service cooperative for special education programs, ~~"foundation program amount"~~ the BASE budget amount and maximum general fund budget shall include a portion of the payments received by the full service cooperative in support of special education programs. ~~This apportionment will be weighted based on each participating district's student enrollment and special education child count. By March 1 of each year,~~ OPI will notify each school district participating in a cooperative of its ~~apportioned~~ payments for use in setting its ~~spending limits~~ BASE budget and maximum general fund budget for the ensuing school fiscal year.

~~(b) Districts receiving Public Law 81-874 funds may exceed the spending limits in paragraph (1) by the amount of Public Law 81-874 funds the district anticipates receiving during the ensuing school fiscal year.~~

~~(3)~~(6) OPI shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in section ~~20-9-315~~ 20-9-308, MCA. The superintendent shall request a revised budget from the chairman of the board of trustees of any district whose general fund budget is in excess of the ~~limit~~ limits. When making this request, the superintendent shall also notify the county superintendent of the county in which the district is located.

~~(4)~~(7) Within 30 days after receiving a request for a revised budget from the superintendent, the chairman of the board of trustees shall submit a budget in compliance with the limits established in ~~20-9-315~~ section 20-9-308, MCA, to both the county superintendent and the superintendent of public instruction.

~~(5)~~(8) If the superintendent does not receive the revised budget within 35 days after initial notice to the district, ~~he~~ the superintendent shall give written notice of the violation to the board of public education and the county attorney of the county in which the district is located.

(AUTH: 20-9-102, MCA; IMP: 20-9-315, MCA)

10.22.103 RESERVE LIMITS (1) In accordance with section 20-9-104, MCA, the trustees of each school district shall designate the portion of the end-of-the-year general fund balance that is to be earmarked as operating reserve ~~for the~~

~~purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school year~~.

(2) The amount of general fund end-of-year balance designated as operating reserve may not exceed 10% of the adopted general fund budget for the ensuing school fiscal year or $10,000.00, whichever is greater.~~:~~

~~(a) 35% of the final general fund budget of the district for the ensuing school year if the district did not receive state equalization aid during the current school fiscal year;~~

~~(b) 30% of the final general fund budget of the district for the ensuing school year if the district received state equalization aid equal to 25% or less of its foundation program schedule entitlement in the current school fiscal year; and~~

~~(c) 20% of the final general fund budget of the district for the ensuing school year if the district received state equalization aid equal to more than 25% of its foundation program schedule entitlement in the current school fiscal year.~~

~~(3) The percent of state equalization aid received by a district in relation to the district's foundation program entitlement is calculated by dividing the amount of state equalization aid received by the district for the current school fiscal year by the foundation program entitlement of the district for the current school fiscal year.~~

~~(a) Formula:~~

~~state equalization aid/foundation program entitlement = % of equalization aid received from the state~~

~~(i) for purposes of calculating the percentage of state equalization aid received, state equalization aid includes revenue received by a district from the state to equalize revenue raised at the county level in support of the foundation program schedules plus special education allowable cost payments.~~

~~(4) The limits in subsection (2) does not apply when the amount earmarked as operating reserve is:~~

~~(a) $10,000 or less; or~~

~~(b) fund balance reappropriated meeting the requirements of ARM 10.22.104.~~

(5) remains the same, renumbered (3).

~~(a) any amount received under Public Law 81-874;~~

(b) remains the same, renumbered (a).

(c) - (e) remains the same, renumbered (b) - (d).

(~~6~~4) OPI shall monitor the general fund budgets of each school district to ensure compliance with the reserve limits established in section 20-9-104, MCA. The superintendent shall request a revised budget from the chairman of the board of trustees of any district whose ~~cash reserve is~~ reserves are in excess of the limit. When making this request, the superintendent shall also notify the county superintendent of the county in which the district is located.

(7) - (8) remains the same, renumbered (5) - (6).

(AUTH: 20-9-102, MCA; IMP: 20-9-104, MCA)

10.22.104 UNRESERVED FUND BALANCE REAPPROPRIATED (1) Any unreserved general fund end-of-the-year balance must be

reappropriated to be used for property tax reduction, in accordance with sections ~~20-9-315~~ 20-9-308 and 20-9-141, MCA.

(2) The amount reappropriated must be used to reduce the amount of additional financing required to fund a district's general fund budget in excess of the ~~foundation program amount~~ direct state aid and the special education payment for the district.

(3) remains the same.

(a) first, to reduce the revenue needed to be raised to fund the ~~permissive amount, as defined in ARM 10.23.101(1)~~ BASE budget as defined in section 20-9-306, MCA; and

(b) second, to reduce the amount needed to be raised to fund ~~the voted amount, as defined in ARM 10.23.101(3)~~ any over-BASE budget amount.

(4) Subsection (3) ~~of this section~~ does not apply if the amount ~~designated as unreserved fund balance~~ reappropriated is less than or equal to ~~the amount established as excess reserves in the prior year~~ any unspent amount of excess reserves identified on the final budget of the prior year as provided in ARM 10.22.103.

~~(a)~~ If the trustees of a district elect to use excess reserves to reduce property taxes in the ensuing school fiscal year, the ~~revenue~~ reappropriated amount may be used to reduce the ~~permissive and/or voted amount~~ levy for any portion of the general fund budget.

(5) If a district has unreserved fund balance reappropriated remaining after fully funding the general fund budget amount in excess of ~~the foundation program~~ direct state aid and the special education payment for the district, the amount remaining must be accounted for in a separate reserve account and reappropriated ~~to be used~~ for property tax relief in the subsequent school fiscal year. The balance in this separate reserve account may, when combined with the balance in the ~~cash~~ operating reserve account, exceed the reserve limit established in ARM 10.22.103.

(AUTH: 20-9-102, MCA; IMP: 20-9-104, MCA)

10.22.107 PETITION TO APPROPRIATE REVENUE TO FUND A PRIOR YEAR BUDGET AMENDMENT (1) A district may petition the superintendent of public instruction for approval to appropriate revenue in the ensuing school year to fund a ~~prior~~ current year general fund budget amendment adopted under section 20-9-161, MCA, if expenditures authorized by the budget amendment resulted in a negative ending fund balance. The petition is necessary only when the district wishes to appropriate revenue in excess of the limitations in section ~~20-9-315~~ 20-9-308, MCA. The amount appropriated under this subsection may not exceed the amount expended for the ~~prior~~ current year budget amendment. If the ~~prior year~~ budget amendment is to be funded from a property tax levy, ~~voter approval is required for any general fund levies in excess of the permissive levy authorized by section 20-9-145, MCA~~ the trustees of a district must comply with the requirements for voter approval in sections 20-9-308 and 20-9-353, MCA.

(AUTH: 20-9-102, MCA; IMP: 20-9-161, 20-9-308, 20-9-353, MCA)

10.22.201 AUTHORIZATION FOR BUDGET AMENDMENT ADOPTION

(1) remains the same.

(2) Whenever the trustees of a district decide that a budget amendment is necessary, they shall proceed as follows:

(a) Proclaim the need for a budget amendment in accordance with section 20-9-162, MCA;

(b) Petition the state superintendent for permission to adopt a resolution for a budget amendment if the amendment is for an enrollment increase;

(c) Provide public notice of the budget amendment resolution in accordance with section 20-9-164, MCA;

(d) Adopt the budget amendment resolution by a majority vote at a public meeting; and

(e) Provide copies of the adopted budget amendment resolution to the county superintendent, county treasurer and state superintendent of public instruction in accordance with section 20-9-165, MCA.

(~~2~~3)A budget amendment for an ~~unusual~~ unanticipated enrollment increase may not be adopted until after October 1, but must be adopted within the fiscal year to which the ~~unusual~~ unanticipated enrollment increase applies.

(~~3~~4) A budget amendment for any reason other than an ~~unusual~~ unanticipated enrollment increase may be adopted at any time after the final budget is adopted and before June 30 of the school fiscal year.

(~~4~~5) The trustees of a school district may adopt a budget amendment without petitioning the superintendent of public instruction if the budget amendment is for the reasons provided in section 20-9-161~~(1) through (4)~~ (2) through (6), MCA.~~, and does not cause the district general fund budget to exceed the limitations in section 20-9-315, MCA. The district trustees must comply with the statutes concerning the process for adoption of a budget amendment resolution and the public notice requirements.~~

(~~5~~6) The trustees of a school district must petition the superintendent of public instruction for approval to adopt a budget amendment for the reasons provided in section 20-9-161(1) ~~(5) 20-9-161(6), MCA, or if adoption of the budget amendment causes the district general fund budget to exceed the budget limitation in section 20-9-315~~, MCA.

(6) remains the same, renumbered (7).

(AUTH: 20-9-102, MCA; IMP: 20-9-161 -- 20-9-165, MCA)

10.22.202 PETITION TO SUPERINTENDENT OF PUBLIC INSTRUCTION

(1) The petition to the superintendent of public instruction for approval to adopt a budget amendment under section 20-9-161 (1), MCA, must set forth in writing:

(a) the ~~reason(s)~~ facts purported to establish the need for the budget amendment~~, cited from the reasons listed in section 20-9-161, MCA~~;

(b) the district funds affected by the budget amendment;

(c) the estimated amount of money required ~~for~~ to fund the budget amendment for each affected fund;

(d) remains the same.

(e) ~~in the case of a budget amendment for an enrollment increase, any enrollment increases for which a budget amendment was adopted in the most recently completed school fiscal year~~ the current year enrollment as determined in October and, when available, in February; and

(f) remains the same.

~~(2) If the budget amendment petition is sent to the superintendent of public instruction after the final budget is adopted and prior to September 1, the petition must include a copy of the district's final budget as adopted for the current school fiscal year.~~

(3) remains the same, renumbered (2).

(3) The superintendent of public instruction shall adjust the district's maximum general fund budget based on the enrollment increase approved in accordance with ARM 10.20.104. Upon approval of the petition, the district may not adopt a budget amendment for an enrollment increase that will cause the district to exceed the maximum general fund budget as adjusted by the superintendent of public instruction.

(4) If the petition is approved by the superintendent of public instruction, the trustees may ~~adopt a resolution for a budget amendment and~~ proceed with the steps required for the adoption of a budget amendment.

(AUTH: 20-9-102, MCA; IMP: 20-9-163, MCA)

10.22.204 BUDGET AMENDMENT LIMITATION (1) When the budget amendment is for increased enrollment, the maximum amount of the budget amendment for all funds ~~is limited in the following manner~~ must be determined in the following manner:

(a) ~~Sum the final budgets for the current school fiscal year for all funds affected by the enrollment increase. Subtract any amounts appropriated for capital outlay and any amounts appropriated for addition to the operating reserve.~~ Determine the final budget for the current school fiscal year of each fund affected by the enrollment increase (less any amounts appropriated for capital outlay and any amounts appropriated for addition to the operating reserve).

(b) ~~Divide the number of pupils enrolled in the district on October 1 of the most recently completed school year into the amount determined in (a).~~ Divide the amount determined in subsection (a) by the prior fiscal year enrollment used to calculate current fiscal year ANB in accordance with section 20-9-311, MCA, and ARM 10.20.102. The resulting per-pupil cost is the maximum permissible per-pupil expenditure for the budget amendment.

(c) Determine the enrollment increase for the current year by subtracting the ~~number of pupils currently enrolled from the number of pupils enrolled on October 1 of the most recently completed school year~~ enrollment of the prior school fiscal year used for the purpose of calculating the ANB for the current school fiscal year from the number of pupils currently enrolled. The enrollment count for the current year that will be used to calculate an increase in enrollment will be the October enrollment count as reported to OPI on the fall report (FR-4)

or, for petitions received after February 1, the February count reported to OPI on the spring enrollment report.

(d) Multiply the cost per pupil determined in subsection (b) by the enrollment increase determined in subsection (c). The result is the maximum limitation on a budget amendment for amendments resulting from enrollment increases. In no case may the district adopt a budget amendment for an enrollment increase that causes the district to exceed the maximum general fund budget as adjusted by the superintendent of public instruction in accordance with section 20-9-163, MCA, and ARM 10.22.201.

(2) remains the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

10.22.205 BUDGET AMENDMENT PREPARATION AND ADOPTION

(1) - (3) remains the same.

(4) The adopted budget amendment must be signed by the chairman of the trustees and the clerk of the district. Copies must be sent to the county superintendent, the county treasurer, and the superintendent of public instruction within 30 days after the adoption of the budget amendment. The adopted budget amendment resolution submitted to the office of public instruction must be accompanied by an expenditure detail showing budgeted expenditures by program, function, and object for each fund affected by the budget amendment.

(5) remains the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

10.23.102 ~~PERMISSIVE AMOUNT AND PERMISSIVE LEVY~~ FUNDING THE BASE-BUDGET LEVY ~~(1) In accordance with section 20-9-145, MCA, the trustees in each district may adopt a general fund budget containing a permissive amount. The permissive amount may not exceed 35% of the district's foundation program amount as defined in ARM 10.22.101(1)(a) for the year in which the budget is adopted.~~

~~(a) For school districts participating in full service cooperatives for special education programs, the "foundation program" includes a portion of the payments received by the full service cooperatives in support of special education programs. This apportionment will be weighted based on each participating district's student enrollment and special education child count. By March 1 of each year, OPI will notify each school district participating in a cooperative of its apportioned payments for use in calculating its permissive amount for the ensuing school year.~~

(~~2~~1) The ~~permissive amount~~ BASE-budget is funded by:

(a) guaranteed tax base aid for eligible districts, as provided in section 20-9-368, MCA;

(b) property tax revenue generated by ~~permissive mills imposed by resolution of the trustees; and~~ the BASE-budget levy and the levy in support of a school not approved as an isolated school under the provisions of section 20-9-302, MCA;

(c) ~~other revenue available to the district for other than foundation program support.~~ state and county equalization aid;

(d) special education allowable cost payments;

(e) nonlevy revenue; and

(f) reappropriated fund balance.

(~~3~~2) To determine the ~~permissive net~~ BASE-budget levy requirement needed to help fund the ~~permissive amount~~ BASE-budget area, the county superintendent shall first subtract the other revenues available ~~to the district for other than foundation program support~~ to fund the district's BASE-budget. The remaining amount is the ~~permissive net~~ BASE-budget levy requirement.

(a) For purposes of calculating the general fund BASE-budget levy requirement, non-levy revenues must be estimated at an amount equal to the current year's actual collections, with the following exceptions:

(i) Revenue from local government severance taxes and from coal gross proceeds shall be estimated by the DOR and reported to districts and county superintendents, by fund, by May 1. Districts must use the May 1 estimate provided by the DOR as the ensuing year's revenue budget for these two funding sources.

(ii) Revenue from one-time funding sources, including prior year protested taxes, tax audit receipts, penalties and interest on taxes, distributions of prior year county equalization revenues, state consolidation/annexation bonus payments, and federal payments in lieu of tax, may be estimated in the ensuing year's budget in an amount that is based on the most current information available to the district.

(~~4~~3) To determine the ~~permissive~~ BASE-budget mills needed, the ~~permissive net~~ BASE budget levy requirement is divided by:

(a) - (a)(i) remains the same.

(ii) the ~~difference between the statewide mill value per ANB as defined in ARM 10.21.101(1)(c) or (d) and the district mill value per ANB as defined in ARM 10.21.101(2)(c) or (d) multiplied by the district's ANB that is being used to calculate the district's foundation schedule payment for the school year for which the GTB funding is being sought.~~

~~Formula:~~

~~Per FY 92 net levy requirement/{[district taxable value/1000] x [(statewide mill value per ANB - district mill value per ANB) X FY92 ANB]}~~ district's guaranteed tax base subsidy per mill.

(b) for districts that are not eligible for GTB aid, the district's taxable valuation divided by 1000~~, as defined in ARM 10.23.101(7)~~.

~~Formula:~~

~~net levy requirement/(district taxable value/1000) = permissive mills~~

~~(5) Except as provided in subsection (6) of this section and ARM 10.22.104(4), all districts, including those eligible for GTB aid and those not eligible for GTB aid, must use total "other revenue" as defined in ARM 10.23.101(5) to fund the permissive amount.~~

~~(6) Districts that receive Public Law 81-874 funds are not required to use these funds to finance the permissive amount. Trustees of the district may determine how these funds are spent, in accordance with federal law.~~

~~(7) Permissive mills are imposed by resolution of the~~

~~trustees and may not be submitted to the electorate for approval. Trustees must send a copy of the resolution imposing the permissive amount to the county superintendent with the final budget, filed in accordance with section 20-9-113, MCA. The trustees' resolution imposing the permissive amount must state:~~

~~(a) the reasons and purposes for exceeding the foundation program amount; and~~

~~(b) the amount of the net levy requirement for permissive mills.~~

(8~~4~~) When reporting the ~~net~~ general fund BASE-budget levy requirements to the county commissioners in accordance with section 20-9-141, MCA, each county superintendent must report the following information for each district eligible for GTB aid:

(a) the final district ~~mill value/ANB~~ GTB ratio and the statewide ~~mill value/ANB~~ GTB ratio for the current fiscal year, as provided by OPI in accordance with ARM 10.21.103~~(5)~~; and

(b) the calculation used to determine the mills needed to fund the ~~net~~ levy requirement for the ~~permissive amount~~ BASE-budget.

(AUTH: 20-9-102, MCA; IMP: 20-9-141, MCA)

10.23.103 VOTED AMOUNT ~~AND VOTED LEVY~~ (1) ~~If a district's spending limit established in accordance with section 20-9-315, MCA, exceeds the permissive amount, the trustees may adopt a general fund budget containing a voted amount.~~ The highest general fund budget that the trustees of an equalized district may adopt without a vote of the electorate is as follows:

(a) If the district's current year budget is less than the ensuing year's BASE-budget, the highest budget that can be adopted without a vote is the ensuing year's BASE-budget.

(b) If the district's current year budget is between the ensuing year's BASE-budget and maximum general fund budget, inclusive, the highest budget that can be adopted without a vote is the lesser of:

(i) the current year's budget, or

(ii) the current year's budget divided by current year ANB, times the ensuing year's ANB.

(c) If the district's current year budget is above the ensuing year's maximum general fund budget, the highest budget that can be adopted is the ensuing year's maximum general fund budget. No vote is required.

~~(2) The voted amount is funded by:~~

~~(a) other revenue (except that listed in ARM 10.22.103(5) and 10.22.104(5) that has not been used to fund the permissive amount; and~~

~~(b) property tax revenue generated by mills approved by the electorate, in accordance with section 20-9-353, MCA.~~

~~(c) GTB aid may not be used to fund the voted amount.~~

(2) The highest general fund budget that the trustees of a district that is not equalized may adopt without a vote of the electorate is as follows:

(a) If the district's current year budget is less than the

ensuing year's BASE budget, the highest budget that can adopted without a vote is the minimum budget as calculated in accordance with ARM 10.22.102(2).

(b) If the district's current year budget is between the ensuing year's BASE budget and maximum general fund budget, inclusive, the highest budget that can be adopted without a vote is the lesser of:

(i) the current year's budget, or

(ii) the current year's budget divided by current year ANB, times the ensuing year's ANB.

(c) For the school fiscal year beginning July 1, 1995, if the district's current year budget is greater than the ensuing year's maximum general fund budget, the highest budget that can be adopted without a vote is the ensuing year's maximum general fund budget.

~~(3) The amount of the voted net levy requirement is calculated by subtracting from the voted amount any other revenue (except that listed in ARM 10.22.103(5) and 10.22.104(5) that has not been used to fund the permissive amount. This net levy requirement is then divided by the district's taxable valuation, as defined in ARM 10.23.101(7), divided by 1000, to determine the voted mills needed to help finance the voted amount.~~

(3) The portion of the budget that, in order to be adopted must be approved by voters, is the difference between the district's proposed budget, as limited by ARM 10.22.102, and the district's highest budget without a vote, as determined under subsections (1) and (2).

~~(4) The amount of the voted net levy requirement must be approved by voters in accordance with section 20-9-353, MCA.~~

(AUTH: 20-9-102, MCA; IMP: 20-9-353, MCA)

10.23.104 RETIREMENT LEVIES (1) - (2)(b) remains the same.

(i) the difference between the statewide mill value per ANB as defined in ~~ARM 10.21.101(1)(c) or (d)~~ RULE I DEFINITIONS and the county mill value per ANB as defined in ~~ARM 10.21.101(3)(d) or (e)~~ RULE I DEFINITIONS multiplied by the sum of all the county's elementary or high school ANB that is being used to calculate the districts' ~~foundation schedule payment~~ direct state aid for the school year for which the GTB funding is being sought.

(3) - (4)(b) remains the same.

(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-501, 20-9-368, MCA)

10.23.105 EXEMPTION FROM I-105 (1) - (1)(d) remains the same.

(e) ~~county and district~~ tuition;

(f) - (i) remains the same.

(AUTH: 20-9-102, MCA; IMP: 15-10-412, MCA)

10.23.107 BASIC EQUALIZATION LEVY SHORTFALL (1) ~~In accordance with sections 20-9-331 and 20-9-333, MCA, OPI will increase the state equalization aid to districts in a county if the revenue received from the sources listed in 20-9-331(2) and~~

~~20-9-333(2), MCA, is insufficient to fully fund the percentage determined in 20-9-347(1)(b), MCA, and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), MCA.~~ The county superintendent may make distributions to schools from the elementary and high school county-wide equalization funds for outstanding obligations incurred prior to fiscal year 1990-91. Such obligations may still exist because of a deficiency in county equalization revenues received for the year the payment was due.

(2) ~~If a county is eligible for an apportionment of state equalization aid, the county superintendent must assume when distributing county equalization money to districts each year that the revenue received from the sources listed in sections 20-9-331(2) and 20-9-333(2), MCA, is sufficient to fully fund the percentage determined in 20-9-347(1)(b), MCA, and make the distribution on that basis.~~ No county equalization payments may be made to schools for obligations remaining from a prior year unless the outstanding obligation was reported to the superintendent of public instruction as requested on a survey of counties during fiscal year 1993.

(3) ~~In each county eligible for an apportionment of state equalization aid, the county superintendent must notify OPI by July 31 of the following fiscal year if the revenues received for the previous fiscal year from the sources listed in sections 20-9-331(2) or 20-9-333(2), MCA, were insufficient to fund the percentage determined in section 20-9-347(1)(b), MCA. In the notification to OPI the county superintendent must state the amount of the shortfall for each school district.~~ County equalization revenues received for the year of the deficiency may be distributed for that year to fulfill the outstanding obligation. Once the obligation for a particular year has been satisfied, additional revenue received for that year may be carried forward to pay the obligation of the following year or a subsequent year. Once the county's obligations for all years prior to fiscal year 1990-91 are fully paid, county equalization revenues received for a prior year must be deposited to the county equalization funds and submitted to the state treasurer.

~~(a) The shortfall calculated in July of the current fiscal year (e.g., July 19X4) to determine whether a county experienced a shortfall in county equalization revenue for the previous fiscal year (i.e., fiscal year 19X3), should include all distributions of penalties and interest during fiscal year 19X3. However, the shortfall calculation for 19X3 should not include distributions of delinquent/protested taxes levied prior to 19X3 (i.e., 19X2, 19X1, 19X0... taxes), unless the foundation programs for those tax years have already been funded 100%. See ARM 10.10.309.~~

(4) ~~After reviewing the notification and concurring with the amount of the shortfall, OPI will increase the state equalization aid to all the districts in the county in the amount necessary to fully fund the percentage. This additional state equalization aid must be deposited to each school district's general fund by the county treasurer as ordered by the county superintendent.~~ In no case may the county

superintendent distribute more money to schools as prior year county equalization aid than is required to fully pay the county's obligation for that prior year, as it was reported to the office of public instruction.

~~(5) OPI will notify the county superintendent of the additional state equalization aid sent to the county treasurer as a result of the shortfall. In distributing county equalization money in subsequent months, the county superintendent must ensure that no district receives state equalization payments in excess of the foundation schedule amount for the district as provided in sections 20-9-318 and 20-9-319, MCA. If revenues received from the sources listed in 20-9-331(2) and 20-9-333(2), MCA, when combined with state equalization aid payments to the district would exceed a district's foundation schedule amount, the county superintendent must reduce county equalization aid payments accordingly and reappropriate the total of the excess amount to reduce state equalization aid payments to the county in the next fiscal year.~~

~~(6) The office of public instruction will not fund the shortfall in a previous year's county equalization revenues if the county superintendent fails to notify the office of public instruction of the shortfall by November 30 of the following fiscal year; if the county superintendent understates his county's shortfall and fails to notify the office of public instruction of the error by November 30 of the following fiscal year; or if the amount of shortfall reported for all districts in the county totals less than $25.~~

(AUTH: 20-9-102, MCA; IMP: 20-9-331, 20-9-333, MCA)

10.30.102 APPROVAL CRITERIA (1) remains the same.

(a) an application form has been completed by the trustees, received by the county superintendent on or before May 1, approved by the board of county commissioners (budget board), ~~received by the county superintendent on or before May 1~~ on or before May 15, and received by the superintendent of public instruction ~~on or~~ before June 1;

(b) - (e) remains the same.

(AUTH: 20-3-106, MCA; IMP, 20-9-302, MCA)

10.30.402 CREATION OF K-12 DISTRICTS (1) A request to the county superintendent or, if the districts involved are joint districts, to the county superintendent of the located district to order ~~an election to consider~~ the attachment of an elementary district and a high school district with the same boundaries, may be introduced by:

(a) a single resolution by the joint board of trustees of an elementary and high school district with the same boundaries; or

(b) resolutions by each of the boards of trustees of the districts that would become part of a K-12 district, if the boards are not joint; ~~or~~

~~(c) a single petition by 20% of the voters entitled to vote as determined in section 20-20-301, MCA, in both the elementary and high school district elections~~.

(2) Each resolution ~~and petition~~ must include the legal name of each of the districts, a statement that the two districts share the same boundaries, a statement of the combining of the bonded indebtedness of the districts through the assumption by the high school district of the bonded indebtedness of the elementary district upon attachment, and the effective fiscal year of the attachment~~, and a call for an election~~.

(3) Each resolution ~~and petition~~ must be filed in time to allow the trustees to ~~hold an election in conjunction with a regular school election, and~~ prepare the budgets and hold mill levy elections within the legal statutory timeframes. ~~In most instances the latest date for filing would be early February.~~

(4) ~~A single proposition will be placed on the ballot for consideration by the electors who are eligible to vote in both the elementary and high school district elections. The proposition will be considered approved if the conditions of this section and Title 20, chapter 20, MCA, have been met; and if the canvass of the vote determines a majority of the electors casting ballots favor the proposition.~~ Each elementary district with the same district boundaries as a high school district must attach to the high school district to establish a K-12 district by the school fiscal year beginning July 1, 1995.

(a) School districts currently receiving P.L. 81-874 funding that would receive less P.L. 81-874 money as a result of attachment, are exempt from the requirement to attach.

(b) After July 1, 1995, if for any reason an elementary district's boundaries become the same as a high school district's boundaries, it must attach to the high school district to establish a K-12 district by July of the ensuing fiscal year.

(AUTH: 20-3-106, MCA; IMP: 20-6-701, MCA)

10.30.403 TRANSITION TO K-12 DISTRICTS (1) remains the same.

(a) The board of county commissioners and the board of trustees of the elementary district will proceed to prepare all instruments necessary to convey title to the real and personal property of the elementary district to the high school district, so that these instruments may be executed and effective as of July 1 of the ~~effective~~ fiscal year of the attachment;

(b) The officials of the elementary district trustees shall entrust the district official records and all district property and materials to the high school district trustees on July 1 of the ~~effective fiscal~~ year of the attachment ~~of the districts~~;

(c) The county treasurer, in accordance with procedures established by the department of commerce and the office of public instruction, shall transfer all elementary district fund balances~~,~~ to the high school district's funds ~~accounts to be~~ effective ~~as of~~ July 1 of the ~~effective fiscal~~ year of the attachment ~~of the districts~~. The K-12 school district will assume the cash and liabilities of the attached elementary district, and will maintain a single budgeted or nonbudgeted fund for each of the authorized funds of the K-12 district for the costs of operating all grades and programs of the district,

pursuant to accounting and reporting procedures prescribed by the office of public instruction.

(2) The board of trustees of the high school district will become the trustees of the K-12 district ~~as of~~ effective July 1 of the ~~effective fiscal~~ year of the attachment ~~resolution~~.

(3) End-of-year elementary district fiscal and non-fiscal reporting will be completed as required for the elementary district for the school year prior to the ~~effective fiscal year of~~ formation of a K-12 district. If the end-of-year elementary reporting is due after the effective date of the formation of the K-12 district, the reports shall be completed and filed by the officials of the newly formed K-12 district.

(4) remains the same.

(a) The school district general fund budget limitations established by section 20-9-~~315~~ 308, MCA, shall be determined for K-12 districts in the following manner:

(i) The ~~104%~~ budget limitations shall be applied to the combined total of the elementary and high school budgets ~~and approved base building petitions from~~ for the fiscal year prior to the effective fiscal year of the attachment ~~of the districts~~. For each year thereafter, the ~~104%~~ budget limitations shall be applied to the prior year K-12 district budget ~~and approved base building petitions. The limitation shall be determined using the following calculation:~~

~~Elementary H School K-12 Total~~

~~(A) Prior year approved budget~~

~~(B) Approved base building petition amounts~~

~~(C) Total limit base (A)+(B)~~

~~(D) 104% budget limit [1.04 * total (C)]~~

~~(ii) The 135% limitation for the K-12 district shall be determined as the total of the calculations of 135% of the foundation program amounts attributed separately to the elementary and high school programs of the K-12 district. This method shall be used annually for K-12 budget limitations and shall be determined using the following calculation:~~

~~Elementary H School K-12 Total~~

~~(A) Foundation program payments~~

~~(1) foundation schedules~~

~~(2) allowable special ed~~

~~(3) Total (1) + (2)~~

~~(B) 1.35 times (A)(3)~~

~~(C) Prorated special ed payment to Coops~~

~~(D) 0.35 times (C)~~

~~(E) Permissive budget limit Total (B) + (D)~~

~~(F) Total K-12 Permissive limit Sum of Elementary and H School (E)~~

(ii) In order to determine equalized status of a transition K-12 school district for the ensuing fiscal year, the district

shall make the following calculation:

Current FY 199X Elementary BASE Budget Limit	1a
Current FY 199X High School BASE Budget Limit	1b
Combined BASE Budget Limit (1a+1b)	1c
Current FY 199X Elementary Maximum General Fund Budget Limit	2a
Current FY 199X High School Maximum General Fund Budget Limit	2b
Combined Maximum General Fund Budget Limit (2a+2b)	2c
FY199X Elementary Adopted General Fund Budget	3a
FY199X High School Adopted General Fund Budget	3b
FY199X Combined Adopted General Fund Budget (3a+3b)	3c

If 3c is greater than or equal to the BASE Budget (line 1c) and less than or equal to the Maximum General Fund Budget (line 2c), the K-12 district will be considered "equalized" in the ensuing school year (FY 199X + 1). If not, then the K-12 district will be considered "not equalized" for the ensuing school year.

(b) For the purpose of determining guaranteed tax base aid, the ~~permissive~~ BASE budget levy amount for a K-12 district~~, as well as the available non levy revenue and unreserved fund balance which must be applied to reduce the permissive levy amount,~~ will be prorated between elementary and high school programs using the ratio of the elementary ~~foundation schedule and special education amounts~~ GTBA budget area to the high school ~~foundation schedule and special education amounts~~ GTBA budget area.

(i) The ratio for prorating the ~~permissive~~ BASE budget levy will be determined in the following manner:

~~| | Elementary | H School | K 12 Total |~~
~~|---|---|---|---|~~
~~| (A) Foundation program payments | | | |~~
~~| (1) foundation schedules | | | |~~
~~| (2) allowable special ed | | | |~~
~~| (B) Prorated spec ed payment to Coops | | 20.9306 | |~~
~~| (C) Total foundation and special ed amounts | | | |~~
~~| (D) Percent of total Elem and H School (C) totals divided by K 12 total | % | % | 100% |~~
~~| (E) Permissive Levy Amount | | | |~~
~~| (F) Prorated Permissive Levy Amount (E) times % established in (D) | | | |~~
~~| (G) Non Levy Revenue to be applied to Permissive Amount | | | |~~

~~(H) Prorated Non Levy Revenue Amounts in (G) times % established in (D)~~

~~(I) Fund Balance Unreserved~~

~~(J) Prorated Fund Balance Unreserved Amounts in (I) times % established in (D)~~

Calculation of ratio for proration of GTBA budget area

	Elem.	H.S.	K-12
(A) 80% of Basic Entitlement			
(B) 80% of Per-Student Entitlement			
(C) Special Education Allowable Cost Payments			
(D) Related Services Payment to Co-op			
(E) UP TO 40% of Special Education Allowable Costs & Related Services Payment to Co-op [.40 times (C)+(D)]			
(F) BASE Budget Limit [(A)+(B)+(C)+(E)]			
(G) Direct Aid Payment [(A+B) divided by 2]	G1	G2	G3
(H) GTBA Budget Area [(G)+(E)]	H1	H2	H3
(I) Prorated GTBA Budget Area	H1/H3	H2/H3	100%

(ii) The eligibility for guaranteed tax base aid will be determined for the elementary prorated portion and for the high school prorated portion using the procedures established for elementary and high school districts set out in ARM 10.21.102, on the office of public instruction budget forms. The K-12 district will be eligible to receive the sum of the amounts of guaranteed tax base aid determined for both the elementary and high school prorated portions, or for a single portion if eligibility is determined only for the elementary or the high school portion of the ~~permissive~~ BASE budget amount.

(c) ~~In the year prior to the effective date of formation of the K-12 district, the trustees will continue to submit general fund levies separately for the elementary and high school districts, pursuant to section 20-9-353, MCA.~~ After the ~~effective date of the approved~~ resolution to attach and establish a K-12 district ~~proposition~~, the trustees of the K-12 district will submit a single proposition to the voters for the amount of the K-12 general fund budget that must be submitted to the electorate.

(5) - (6) remains the same.

(AUTH: 20-3-106, MCA; IMP: 20-6-703, 20-6-711, MCA)

10.30.404 DISTRICT EQUALIZATION FUNDING (1) remains the same.

(a) the ~~foundation program schedule~~ direct state aid payments will be distributed to the K-12 district based on calculations pursuant to sections ~~20-9-312 and 20-9-316 through 20-9-320~~ 20-9-306, MCA, determined by grade level program for budget units of the district.

(b) remains the same.

(c) for purposes of determining budget limits and eligibility for GTB aid, state special education payments provided to cooperatives for related services will be ~~prorated~~ added with the payment granted directly to the K-12 districts based on separate elementary and high school program calculations as set out in ARM 10.22.102.

(d) the school facility reimbursement will be distributed to K-12 districts per ARM 10.21.201 with each bond identified with date of issue and level of indebtedness.

(2) The basic county tax for the elementary ~~foundation~~ BASE funding program and the basic special tax for the high school ~~foundation~~ BASE funding program will continue to be assessed based on the elementary district and the high school district taxation structure.

(3) ~~The county superintendent will distribute~~ eCounty equalization funds will be distributed to K-12 districts from the county basic special tax for high schools account. In the event all elementary and high school districts in one county are K-12 districts, ~~the county superintendent shall also distribute~~ equalization funds will also be distributed to K-12 districts from the basic county tax for ~~the~~ elementary ~~foundation~~ programs.

(AUTH: 20-3-106, MCA; IMP: 20-6-702, MCA)

10.30.405 K-12 DISTRICT ISSUANCE OF BONDS (1) A K-12 district may become indebted by the issuance of bonds, including all outstanding bonds and registered warrants assumed at the time of formation of the K-12 district, up to 90% of the taxable value of the property subject to taxation, pursuant to section 20-9-406, MCA. The bonded indebtedness may not exceed 45% of the taxable value for elementary program purposes and 45% for high school purposes. The exception to this limit is an elementary or high school that qualifies for guaranteed tax base aid under provisions of section 20-9-367, MCA. For these K-12 districts, the maximum indebtedness is 45% of the sum of the statewide mill value per elementary ANB times 1000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1000 times the high school ANB of the district.

(a) - (b)(iii) remains the same.

(iv) taxable value of district or 45% of the statewide mill value per ANB times 1000 times the ANB of the district

(v) - (c) remains the same.

(AUTH: 20-3-106, MCA; IMP: 20-9-406, MCA)

10.30.406 EXCEPTIONS TO HIGH SCHOOL PROVISIONS

(1) - (1)(a) remains the same.

(b) Tuition calculations will be determined separately for high school and elementary pupils using the ~~formulas~~ rates established in ARM 10.10.302. The expenditures for the general fund, the retirement fund, and debt service fund will be determined based on the following:

(i) - (ii) remains the same.

(iii) Tuition will be budgeted in a single K-12 district fund and payment financed as set out in section 20-5-~~307~~ 324, MCA, for the elementary ~~tuition amounts and section 20-5-312, MCA, for~~ and high school tuition amounts.

(c) - (d) remains the same.

(AUTH: 20-3-106, MCA; IMP: 20-6-702, MCA)

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

RULE I DEFINITIONS The following definitions apply to Title 10, chapters 16, 20, 21, 22, and 23:

(1) "Absent" means the student is enrolled and not in attendance.

(2) "Attachment" means the combining of functions of a public elementary and a public high school district with the same boundaries.

(3) "Attendance" means a student is present for at least a minimum amount of pupil-instruction (PI) time.

(4) "Average daily attendance" or "ADA" is the average number of students present on the dates used to report fall and spring enrollment. The total number of students present, as reported on the October and February enrollment counts and used to determine ANB, will be added together and divided by two to determine the average daily attendance for that school year.

(5) "Average number belonging" or "ANB" means a student count for each school district that is used for school funding purposes. The count is performed according to 10.20.102, et seq., ARM.

(6) "BASE" means the acronym for Base Amount for School Equity.

(7) "BASE aid" means direct state aid plus guaranteed tax base aid where applicable.

(8) "BASE budget" means the minimum general fund budget a district is allowed to adopt. It is the sum of: 80% of the district's basic and per-ANB entitlements; up to 140% of the district's special education allowable cost payment; and up to 40% of the district's related services block grant payment to cooperatives. Until FY 1998 some districts may adopt a general fund budget that is less than their BASE budget.

(9) "BASE budget levy" means the mills levied to fund a district's BASE budget amount.

(10) "Basic entitlement" means the minimum dollar amount as defined in section 20-9-306, MCA, that each high school, elementary or K-12 district will receive if in operation. Elementary districts that have an accredited 7th-8th grade

program receive a prorated basic entitlement. A district's total per-ANB entitlement and its basic entitlement determine its general fund budget limits.

(11) "Budget unit" means the unit for which the ANB of a district is aggregated for all enrolled students.

(12) "Certified county-wide elementary ANB" or "certified county-wide high school ANB" means the number certified by OPI on or before the fourth Monday in July using the previous fiscal year countywide enrollment count and used to calculate mill values per ANB.

(13) "Certified state-wide elementary ANB" or "certified state-wide high school ANB" means the number certified by OPI on or before the fourth Monday in July using the previous fiscal year statewide enrollment count.

(14) "County mill value" means a county's taxable valuation divided by 1,000. It is a measure of how much property tax revenue can be raised in the ensuing fiscal year by levying one countywide mill.

(15) "County mill value per countywide elementary ANB" or "County mill value per countywide high school ANB" means the county mill value divided by the certified countywide elementary or high school ANB. It is a measure of how much property tax revenue per student is raised by levying one countywide mill.

(16) "Current fiscal year" or "Current FY" means the period between July 1 and June 30th during which calculations for the ensuing fiscal year are made. For purposes of these rules the current fiscal year is referred to as FY 199X, the ensuing fiscal year is referred to as FY 199X+1 and the prior fiscal year or prior calendar year is referred to as FY 199x-1 or CY 199X-1.

(17) "Date of official enrollment count" for purposes of determining the enrollment used for calculating ANB means the first Monday in October or February 1, or the nearest pupil instruction day if those dates do not occur on a pupil instruction day.

(18) "Debt service fund" means the budgeted fund authorized by section 20-9-437, MCA to pay interest and principal on outstanding bonds and special improvement district assessments.

(19) "Direct state aid" means state equalization aid paid to each district. The amount paid is equal to 40% of the district's basic entitlement and 40% of the district's per-ANB entitlement.

(20) "District GTB ratio" means the measure for determining if a district is eligible for general fund GTBA from the state to help fund the district's BASE budget. The ratio compares the district's taxbase to the portion of its general fund BASE budget that must be funded with local revenue. As defined at section 20-9-366, MCA, for the FY 199X+1 general fund budget the GTB ratio is the district's CY 199X-1 taxable valuation divided by the sum of the district's FY 199X direct state aid, 40% of its special education allowable cost payment and 40% of its related service block grant payment to cooperatives.

(21) "District mill value" means the district's taxable valuation divided by 1,000. It is a measure of how much

property tax revenue can be raised in the ensuing fiscal year by levying one district-wide mill.

(22) "District mill value per district ANB" for FY 199X+1 means the district's CY 199X-1 mill value divided by the district's 199X ANB.

(23) "DOR" means the department of revenue.

(24) "Eligible voters" are the voters who are eligible to vote in elections in both the elementary district and the high school district with the same boundaries, pursuant to the provisions of section 20-20-301, MCA.

(25) "Enrolled student" means a student is assigned to receive organized instruction in public school and is in attendance, or is absent because of illness, bereavements, or other reasons prescribed by the policies of the trustees. In no event shall a school district calculate ANB for a student who has not been in attendance during a semester.

(26) "Ensuing fiscal year" or "Ensuing FY" means the fiscal year for which a calculation is being made. Calculations for the ensuing fiscal year are made during the current fiscal year. For purposes of these rules the ensuing fiscal year is referred to as FY 199X+1.

(27) "Equalized" refers to a district that has adopted a general fund budget at least equal to the BASE-budget as defined in section 20-9-306, MCA, but not greater than the maximum general fund budget as defined in section 20-9-306, MCA.

(28) "First semester for ANB purposes" means the first 90 pupil-instruction days of the school year.

(29) "General bonus payment" means the amount of financial assistance received during a fiscal year by a school district that reorganized under the voluntary consolidation and annexation incentive plan, in accordance with sections 20-6-401 through 20-6-408, MCA.

(30) "General fund" means the budgeted fund used to account for the financing of a district's operation and maintenance costs not accounted for in another fund. The general fund is the primary budgeting fund of a district.

(32) "GTBA budget area" means the portion of a district's general fund budget between 40% and 80% of the basic and per-ANB entitlement, plus up to 40% of the district's special education allowable cost payment and related services block grant payment to cooperatives. For districts with lower than average taxbases GTBA is paid to subsidize mills levied to fund the GTBA budget area.

(31) "Guaranteed tax base aid" or "GTBA" means the state subsidy paid on mills levied by taxing authorities with taxbases less than the statewide averages. GTBA is paid to school districts with a GTB ratio less than the statewide GTB ratio on mills levied to support the general fund. GTBA is also paid to counties with a county mill value less than the statewide mill value on mills levied to support the county retirement fund. GTBA calculations are also used to determine the school facility reimbursement.

(33) "Homebound students" means those students who are receiving instructional services who were in the education

program and due to medical reasons, certified by a medical doctor, are unable to be present for pupil-instruction.

(34) "Inactive elementary district" means the elementary district that has combined with a high school district having the same boundaries for purposes of program, budgeting, and reporting, but retains its legal structure for taxing and specific revenue purposes.

(35) "K-12 school district" means a high school district which has an elementary district attached through the provisions of section 20-6-101, MCA, and provides educational services for both elementary and high school programs.

(36) "Maximum general fund budget" or "Maximum GFB" means the maximum general fund budget a district is allowed to adopt. It is the sum of: 100% of the district's basic and per-ANB entitlements; up to 153% of the district's special education allowable cost payment; and up to 53% of the district's related services block grant payment to cooperatives.

(37) "Minimum amount of pupil-instruction (PI) time for an elementary student" means the student must be present for 2 hours of either a morning or afternoon session or the entire morning or afternoon session, whichever is less, in order to be counted as being in attendance for one-half day. Attendance for the entire morning and afternoon sessions, or at least 2 hours of the morning session and at least 2 hours of the afternoon session, will be counted as attendance for a whole day.

(38) "Minimum amount of pupil instruction (PI) time for a high school student" means the student must be present for 2 periods of either a morning or afternoon session or the entire morning or afternoon session in order to be counted as being in attendance for one-half day. Attendance for the entire morning and afternoon sessions, or at least 2 hours of the morning session and at least 2 hours of the afternoon session, will be counted as attendance for a whole day.

(39) "Non-levy revenue" means the tax and fee revenue available to a district from sources other than property taxes based on levied mills. Non-levy revenue includes motor vehicle fees, recreational vehicle fees, out-of-state equipment fees, local government severance taxes and net proceeds taxes paid on oil and gas production, coal gross proceeds taxes, personal property tax reimbursements, corporation license taxes paid by financial institutions, tuition, investment earnings and any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(40) "OPI" means the office of public instruction.

(41) "Over-BASE budget" refers to the adopted general fund budget amount that is in excess of the "BASE budget."

(42) "Per-ANB entitlement" means the dollar amount defined in section 20-9-306, MCA, as the general fund budget authority a district acquires per ANB.

(43) "Present" means those days the student is in attendance, as defined in (subsection (3)), for pupil-instruction days.

(44) "Pupil-instruction (PI) days" are those days when

school districts provide organized instruction for pupils enrolled in public schools while under the supervision of a teacher. Districts are required to conduct a minimum of 180 PI days in a school year.

(45) "Pupil-instruction-related (PIR) days" are those days of teacher activities, approved by the office of public instruction for the school year preceding the year to be funded, which are devoted to improving the quality of instruction. For calculation of ANB the PIR days may not exceed 7. Once approved, PIR days may not be rescheduled without written approval of the office of public instruction.

(46) "Regularly enrolled full-time pupil" means a student who meets the definition of "enrolled student", and is on a full-time basis.

(47) "Related services block grant payment to cooperatives" means the district's share of the related services block grant payment paid directly to the cooperative in which the district participates. The payment to the cooperative is used by participating districts for budgeting purposes only. When used in ARM Title 10, the term "special education allowable cost payment" does not include the related services block grant payment to cooperatives.

(48) "Retirement fund" means the district fund authorized by section 20-9-501, MCA, for financing the employer's contribution to the teachers' retirement systems, the public employees retirement system, unemployment compensation and social security.

(49) "Retirement mill levy" means the mills levied under section 20-9-501, MCA, to support a county's elementary or high school retirement fund.

(50) "School facility reimbursement" means the amount distributed to each school district for the state share of the district's school facility entitlement as defined in section 20-9-370, MCA.

(51) "Second semester for ANB purposes" means the last 90 pupil-instruction days of the school year.

(52) "Special education allowable cost payment" means the amount of the state special education appropriation distributed to a district for its special education program. It includes the district's instructional block grant payment, the related service block grant payment if the district is not a member of a cooperative, and the district's reimbursement for excess costs. When used in ARM Title 10, the term "special education allowable cost payment" does not include the related services block grant payment if a district is a member of a cooperative.

(53) "State payments" means direct state aid, GTBA paid to districts and to counties, state transportation aid, special education allowable cost payments, and related services block grant payments to cooperatives.

(54) "State reimbursement for school facilities" means the amount appropriated by the legislature for school facility reimbursements.

(55) "Statewide elementary GTB ratio" or "statewide high school GTB ratio" for GTBA funding of eligible districts' FY

199X+1 BASE budgets means the ratio of 175% of the CY 199X-1 statewide taxable valuation to the statewide elementary or high school total of FY 199X direct state aid plus 40% of 199X special education allowable cost payments plus 40% of related services block grant payments to cooperatives.

(56) "Statewide mill value" for calculating the FY 199X+1 GTBA entitlement means the CY 199X-1 state taxable valuation divided by 1,000.

(57) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the CY 199X-1 statewide mill value multiplied by 1.21, then divided by the statewide FY 199X high school or elementary ANB.

(58) "Superintendent" means the state superintendent of public instruction.

(59) "Taxable value" means the value of all the taxable property in the area of a district, county or the state as reported to the DOR. Taxable value is based on information delivered to the county clerk and recorder as required in section 15-10-305, MCA, for the prior calendar year.

(60) "Total per-ANB entitlement" means the sum of a district's per-ANB entitlements based on the previous fiscal year enrollment count certified by OPI on or before the fourth Monday in July.

(61) "Total school facility entitlement" is the district's total entitlement based on the per-ANB amounts defined in 20-9-370(1), MCA. For the purpose of calculating a district's total school facility entitlement, the rate set in section 20-9-370(1)(c), MCA, applies only to 7th and 8th grade ANB in middle school, grades 7 and 8, and junior high programs approved and accredited by the board of public education.

(AUTH: 20-9-102, MCA; IMP: Title 20, chapter 9, MCA)

RULE II BUDGET UNIT (1) Each budget unit will budget the basic entitlement as provided in section 20-9-306, MCA. All the schools of one district will aggregate their enrollment for purposes of determining ANB and will form a single budget unit, except:

(a) any school located at least 20 miles on the shortest passable road from another school of the district and more than 20 miles beyond the incorporated limits of a city or town, if a city or town is located in the district, will calculate ANB as a budget unit separate from the other schools of the district;

(b) any school that is located in a district that does not include an incorporated city or town and is at least 20 miles from another school of the district will be considered a separate budget unit and will cause the district to include a separate basic entitlement in the budget of the district;

(c) those students in the 7th and 8th grade who are enrolled in programs which were approved and accredited by the board of public education will be considered high school pupils for ANB purposes and for determining the total per-ANB entitlement as provided in section 20-9-306, MCA. The basic entitlement for the budget unit which includes those students will be prorated based on the percentage of total enrollment ANB

in grade K-6 times the elementary basic entitlement and the percentage of total enrollment ANB in grades 7 and 8 in the accredited program times the high school basic entitlement. For purposes of the proration of the basic entitlement, the percentages of ANB will be rounded to the nearest whole percentage point before multiplying by the entitlement amount;

(d) any other budget unit approved by application by the superintendent of public instruction when conditions of transportation or other conditions would result in undue hardship to the pupils if they were transported to another school will be considered a separate budget unit in accordance with section 20-9-311, MCA.

(AUTH: 20-9-102, MCA; IMP: 20-9-311, 20-9-313 and 20-9-314, MCA)

RULE III INTERNAL SERVICE, ENTERPRISE, TRUST, AND AGENCY FUNDS (1) School districts may establish internal service, enterprise, trust, and agency funds if approved by the superintendent of public instruction. These funds shall be operated and accounted for as nonbudgeted funds.

(2) If a district's application to establish a particular fund type is approved, the superintendent of public instruction will provide the district guidance on the application of generally accepted accounting principles to that type of fund. If a district fails to comply with generally accepted accounting principles or with accounting policies established by the superintendent of public instruction, the superintendent may rescind approval.

(3) Working capital needed to begin operations of an internal service fund may be derived from contributions of non-cash assets from other funds or an interfund loan from the general fund. Interfund loans must be repaid before the end of the fiscal year.

(4) The intended purpose of an internal service fund is to provide services within a district and to be self-supporting without accumulating a profit. For example, a district's centralized purchasing operation may be accounted for in an internal service fund. Total costs of the services being provided, such as the costs of supplies, operation and maintenance of machinery, salaries and benefits for personnel responsible for providing the services, etc., should be recouped through user charges.

(a) The fund balance of an internal service fund must be kept within a range sufficient to maintain the operation without accumulating excess resources. If the balance becomes too high, charges to the funds receiving the services should be reduced. Excess balances in an internal service fund are not available for other purposes and must not be transferred to other funds.

(b) Charges must be made to all funds which receive services. Charges to the user funds must be reasonably determined and must be paid within the budgets of the user funds in the year services were provided. Expenditures charged to the user funds must be supported by invoices. Charges must be supported by documentation of actual usage.

(c) Services provided to users outside the district should be occasional in nature and the cost of such services must not be charged to district funds. Instead, such costs must be charged to those outside users and their payments recorded as revenue in the internal service fund.

(5) The intended purpose of an enterprise fund is to provide services to users outside the district. District enterprise operations are financed and operated in a manner similar to private business enterprises. Total costs of the services being provided, such as the costs of supplies, operation and maintenance of machinery, salaries and benefits for personnel responsible for providing the services, etc., should be recouped through user charges.

(a) The fund balance of an enterprise fund must be kept within a range sufficient to maintain the operation without accumulating excess resources. If the balance becomes too high, charges to outside users receiving the services should be reduced. Excess balances in an enterprise fund are not available for other purposes and must not be transferred to other funds.

(b) Charges must be made to all users which receive services. Charges to outside users or district funds must be reasonably determined and must be paid within the budgets of the district funds in the year services were provided. Expenditures charged to the district funds must be supported by invoices. Charges must be supported by documentation of actual usage.

(c) The cost of services provided to users outside the district must not be charged to district funds. Instead, such costs must be charged to those outside users and their payments recorded as revenue in the enterprise fund.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-103, 20-9-208, MCA)

RULE IV COMPENSATED ABSENCE LIABILITY FUND (1) If the ending fund balance in the compensated absence liability fund (CALF) on June 30 exceeds 30% of the maximum liability on June 30 of the preceding school fiscal year as defined in section 20-9-512, MCA, the excess balance shall be transferred back to the general fund.

(2) In accordance with generally accepted accounting principles, transfers due to/from the CALF are to be accrued prior to year's end in the district's accounting records as operating transfers. The actual cash transfer to/from the CALF shall be made before September 30th of the next fiscal year.

(AUTH: 20-9-102, MCA; IMP: 20-9-512, MCA)

RULE V BUILDING RESERVE FUND (1) As provided in section 20-9-503, MCA, the trustees may, with voter approval, establish a building reserve fund and impose a levy to raise a specific amount of money in annual, equal installments for future construction, equipping, or enlarging of school buildings or to purchase land needed for school purposes. Expenditures from the building reserve fund are limited to the cash balance available in the fund.

(2) Short-term interfund loans from other funds may be used

to fund expenditures in advance of tax collections in the building reserve fund. Such interfund loans must be repaid by year-end.
(AUTH: 20-9-102, MCA; IMP: 20-9-503, MCA)

RULE VI DISTRICT REVENUE AND EXPENDITURE REPORTS (1) The district clerk shall provide revenue and expenditure reports to the board of trustees on a monthly or, at a minimum, quarterly basis.

(2) Revenue and expenditure reports for budgeted funds should be presented in the following format:

(a) The revenue budget report shall show by revenue account the amount budgeted by fund for each revenue account, the amount collected to date, and the amount remaining to be collected.

(b) The expenditure budget report shall show by line item the amount budgeted by line item or function, the amount expended to date by line item or function, and the amount of budget authority remaining.

(c) If the budget status report indicates a material revenue shortfall has or will occur, or a material budget overdraft has or will occur in a particular expenditure line-item or function category, the trustees shall take appropriate action to address the situation. Expenditures may not be moved or charged to an inappropriate line-item or function category with budget authority remaining to avoid or correct budget overdrafts. As required by section 20-9-208, MCA, when the trustees authorize a transfer between appropriation item, the transfer must be entered in the permanent accounting records.

(3) Revenue and expenditure reports for non-budgeted funds should include, at a minimum, the amount collected to date for each revenue account and the amount expended to date by expenditure line item or expenditure function category.

(4) Copies of these reports shall be retained for audit purposes.
(AUTH: 20-9-102, MCA; IMP: 20-9-133, 20-9-213, MCA)

RULE VII GTBA ON GENERAL FUND AND RETIREMENT MILLS AND SCHOOL FACILITY AID (1) In addition to direct state aid and special education payments, the state pays:

(a) GTBA on general fund mills of qualifying districts;

(b) GTBA on retirement fund mills of qualifying counties; and,

(c) school facility reimbursement to qualifying districts.

(2) A district qualifies for GTBA or school facility reimbursement if its taxable value relative to its funding obligation that must be met by local effort is less than the corresponding statewide mill value. A county qualifies for retirement fund GTBA and a district qualifies for school facility reimbursement if its mill value per ANB is less than the corresponding statewide mill value.

(3) General fund GTBA is paid to qualifying districts on the mills levied to support their general fund GTBA budget area. A district qualifies for general fund GTBA if its GTBA ratio as calculated in RULE XII CALCULATION OF DISTRICT RATIO is less

than the statewide GTBA ratio as calculated in RULE X (1) CALCULATION OF STATEWIDE RATIOS.

(4) Retirement fund GTBA is paid to qualifying counties on the mills levied to support their countywide school retirement funds. A county qualifies for retirement fund GTBA if its mill value per ANB as calculated in RULE XI CALCULATION OF COUNTY MILL VALUES PER ANB is less than the corresponding statewide mill value per ANB as calculated in RULE X(2) CALCULATION OF STATEWIDE RATIOS.

(5) School facility reimbursement is paid to qualifying districts to reduce the ensuing fiscal year levy requirement of the debt service fund.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE VIII CALCULATION OF MILL VALUES PER ANB AND GTB RATIOS (1) By March 1 OPI will calculate preliminary state, county, and district mill values per ANB and preliminary state and district GTB ratios.

(2) By March 1 OPI will send:

(a) Each school district its preliminary figures for:

(i) the district's mill value per ANB,

(ii) the district's GTB ratio,

(iii) the county's mill value per ANB,

(iv) the statewide mill value per ANB, and

(v) the statewide GTB ratio;

(b) Each county its preliminary figures for:

(i) the county's mill value per ANB and

(ii) the statewide mill value per ANB.

(3) The notice to each district and county will show:

(a) DOR's determination of taxable value; and,

(b) The ANB used to calculate the mill value per ANB and per-ANB entitlement.

(4) The notice to each district will also show the direct state aid and special education instructional and related-services block grant amounts used in the numerator of the GTB ratio for the district.

(5) Between March 1 and April 15 school districts and counties must review the preliminary figures. If a school or county official believes there is an error the procedure to follow is:

(a) If the alleged error involves ANB data, GTB mill values, or GTB ratios, OPI must receive written notification, documentation establishing the error, and all information necessary to make corrections by April 15. OPI will review its calculation and make necessary corrections. Any notification of error received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB and the final district and statewide ratios;

(b) If the alleged error involves taxable valuation, the official must notify the appropriate county assessor in writing by April 1. The notification must include details of the error and request correction. Copies of the letter to the county assessor must be mailed to OPI and the Property Assessment Division, Department of Revenue, Steamboat Block Building,

Helena Avenue, Helena, MT 59601. DOR will make any necessary change and notify OPI of the change, in writing, prior to April 15. Any changes received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB and the final district and statewide ratios.

(6) By April 25 OPI must be notified if two or more districts intend to consolidate or annex in the ensuing fiscal year. OPI will combine the districts' ANB, direct state aid, special education entitlements, and taxable values to calculate the combined district's final GTB ratio and mill value per ANB.

(7) By May 1 OPI will calculate and notify all districts and counties of the final state, county, and district mill values per ANB and final state and district GTB ratios.
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE IX EXPLANATION OF THE PURPOSE OF STATEWIDE, AND DISTRICT GTB RATIOS (1) The Legislature mandated 80% of the basic and ANB entitlement plus up to 140% of special education allowable cost payment as the minimum dollar amount a district can set as its general fund budget. This is the BASE-budget that all districts must fund by FY 1998. The state funding obligation is direct state aid and the district's special education allowable cost payment. Local tax effort must fund the remaining portion of every district's BASE-budget but the state will subsidize the mills of a district whose GTB ratio is less than the corresponding statewide GTB ratio.

(2) Districts with GTB ratios below the corresponding statewide GTB ratio are eligible for GTBA on mills levied to fund their general fund GTBA budget area.

(3) The statewide GTB ratio is the indicae for comparing all districts' taxable values relative to their funding needs.

(4) A district's GTB ratio compares its taxable value to the amount of its general fund budget that must be funded locally. Direct state aid to the district is a more accurate measure of a district's regular education BASE-budget funding obligation because, until 1998, not all districts will be adopting BASE-budgets. The district's special education BASE-budget funding obligation is measured as 40% of its special education allowable cost payment and 40% of its related service block grant payment to cooperatives, if any.
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE X CALCULATION OF STATEWIDE RATIOS (1) The statewide elementary or high school GTB ratio for purposes of calculating FY 199x+ 1 general fund GTBA is:
1.75 * calendar year 199X-1 statewide taxable valuation/
[Total FY 199X elementary or high school direct state aid + .40 (total FY 199X elementary or high school special education allowable cost payments + related-services block grant payments to cooperative.)]

(2) The statewide elementary or high school mill value per ANB for purposes of calculating FY 199x+1 retirement fund GTBA is:

[(CY 199x-1 statewide taxable value x 1.21)/1,000]/
199x statewide elementary or high school ANB
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XI CALCULATION OF COUNTY MILL VALUES PER ANB (1) A county ratio for GTBA on retirement mills compares the county mill value per ANB to statewide mill value per elementary or high school ANB. This is a measure of how much tax revenue per student can be raised by a county's mill in comparison to how much revenue per student statewide could be raised on a statewide taxable value.

(2) The county elementary or high school GTB mill value per ANB for purposes of calculating FY 199X+1 retirement fund GTBA is:

(CY 199X-1 county taxable value/1,000)/199X county elementary or high school ANB
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XII CALCULATION OF DISTRICT RATIO (1) A district's GTB ratio for purposes of calculating FY 199x+1 eligibility is: CY 199x-1 district taxable value/ [District's FY 199X direct state aid + 40% (district's FY 199X special education allowable cost payment and related-services block grant payment to cooperatives)].
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XIII WHICH DISTRICTS QUALIFY FOR GTBA ON GENERAL FUND MILLS (1) If a district's GTB ratio is less than the statewide ratio the district qualifies for GTBA on the mills levied to fund the GTBA budget area of its general fund budget.

(2) In order to receive GTBA for general fund BASE budget funding purposes, a district must:

(a) have a GTB ratio less than the corresponding statewide elementary or high school GTB ratio; and

(b) have set its BASE mill levy in accordance with the requirements of section 20-9-141, MCA.

(3) Districts that adopt general fund budget amendments in accordance with section 20-9-168, MCA, are eligible for GTBA aid on mills levied to pay the amount of the budget amendment, if:

(a) the district is eligible for GTBA in the year the budget amendment mill levy is imposed; and

(b) the amount to be raised by the budget amendment mill levy when combined with the district's general fund budget for the current school year is less than or equal to the district's current year BASE budget.
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XIV CALCULATION OF GTBA TO QUALIFYING DISTRICTS (1) After receiving the certified BASE budget levies and budget amendment mill levies meeting the requirements of RULE VIII CALCULATION OF MILL VALUES PER ANB AND GTB RATIOS, OPI will determine the amount of general fund GTBA a qualifying district will receive in FY 199X+1 using the following calculations:

(a) 199X+1 state elementary or high school GTB ratio * (District's 199X direct state aid + 40% of district's 199x special education allowable cost payment and related services block grant to cooperatives) = "A"

(b) "A" - district taxable value = "B"

(c) "B"/1000 = Dollar amount of 199X+1 GTBA per mill levied.

The product will be rounded to the nearest whole dollar to determine the amount of the subsidy payment.

(2) A district must fund its budget with funds available for reappropriation and non-levy revenues before it levies property taxes to fund the GTBA budget area.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XV WHICH DISTRICTS QUALIFY FOR GTBA ON GENERAL FUND MILLS (1) If a district's GTB ratio is less than the statewide ratio the district qualifies for GTBA on the mills levied to fund the GTBA budget area of its general fund budget.

(2) In order to receive GTBA for general fund BASE budget funding purposes, a district must:

(a) have a GTB ratio less than the corresponding statewide elementary or high school GTB ratio; and

(b) have set its BASE mill levy in accordance with the requirements of section 20-9-141, MCA.

(3) Districts that adopt general fund budget amendments in accordance with section 20-9-168, MCA, are eligible for GTBA aid on mills levied to pay the amount of the budget amendment, if:

(a) the district is eligible for GTBA in the year the budget amendment mill levy is imposed; and

(b) the amount to be raised by the budget amendment mill levy when combined with the district's general fund budget for the current school year is less than or equal to the district's current year BASE budget.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XVI WHICH COUNTIES QUALIFY FOR GTBA ON RETIREMENT MILLS (1) A county with a mill value per ANB, as calculated in RULE XI(2) CALCULATION OF COUNTY MILL VALUES PER ANB, less than the statewide mill value per ANB, as calculated in RULE X(2) CALCULATION OF STATEWIDE RATIOS, will receive GTBA on the countywide mills levied to support the county retirement funds.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XVII CALCULATION OF GTBA TO QUALIFYING COUNTIES (1) After receiving the certified county retirement levies, OPI will determine the amount of retirement fund GTBA a qualifying county will receive in FY 199X+1 using the following calculations:

(a) statewide mill value per ANB - county mill value per ANB ="A"

(b) "A" * County elementary or high school 199X+1 ANB = "B"

(c) "B" * certified elementary or high school FY 199X+1 county retirement fund mills levied = Dollar amount of 199X+1 GTBA a county will receive in support of the elementary or high

school county retirement fund.
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XVIII FUNDING FOR OVER-BASE BUDGET (1) The over-BASE budget is funded by:

(a) any amount of reappropriated fund balance and nonlevy revenue remaining after the BASE-budget is funded;

(b) excess general fund reserves established in accordance with ARM 10.22.103 and reported on the final budget for the current year; and

(c) a district property tax levy.

(2) Guaranteed tax base aid may not be used to fund the over-BASE budget.
(AUTH: 20-9-102, MCA; IMP: 20-9-308, MCA)

RULE XIX JOINT DISTRICTS AND CO-OPS (1) Net retirement levy requirements for joint districts and districts that are members of full service education cooperative agreements are calculated in accordance with section 20-9-501, MCA. GTBA available to the retirement funds of the counties in which these districts are located is calculated based on the county mill value per elementary or high school ANB for each county involved and the retirement mills levied in that county.
(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XX CALCULATION OF DEBT LIMITS (1) For an elementary or high school district that is ineligible to receive guaranteed tax base aid under the provisions of section 20-9-367, MCA, the maximum amount for which the district may become indebted by the issuance of bonds is 45% of the taxable valuation of the property within the district.

(2) For an elementary or high school district that is eligible to receive guaranteed tax base aid under the provisions of section 20-9-367, MCA, the maximum amount for which the district may become indebted by the issuance of bonds is calculated as follows:

(a) For an elementary district,
Statewide mill value per elementary ANB x Elementary ANB x 1000 x 45%

(b) For a high school district,
Statewide mill value per high school ANB x High School ANB x 1000 x 45%

(3) The statewide mill value per ANB applicable to the calculation in subsection (2) is the statewide mill value per ANB for the school fiscal year in which the bonds are sold.

(4) The district average number belonging (ANB) applicable to the calculation in subsection (2) is the district ANB for the school year in which the bonds are sold. Enrollment increases approved under section 20-9-166, MCA after October 1 do not constitute an increase in ANB for the purpose of calculating the district's maximum bonded indebtedness.

(5) For a K-12 district, formed pursuant to section 20-6-701, MCA, the maximum amount for which the district may become indebted is the sum of the amounts computed separately for the

elementary and high school programs.

(a) The maximum amount for which a K-12 district may become indebted for elementary school program purposes is limited to the amount calculated for the elementary program under subsections (1) and (2).

(b) The maximum amount for which a K-12 district may become indebted for high school program purposes is limited to the amount calculated for the high school program under subsections (1) and (2).

(AUTH: 20-9-102, MCA; IMP: 20-9-406, MCA)

RULE XXI SCHOOL DISTRICT BOUNDARY CHANGES (1) If the boundaries of a school district will change in the ensuing year, the office of public instruction must be notified by April 25th of the year prior to the change. Upon notification of the change OPI will recalculate the district mill value per ANB for the ensuing year using the sum of the current year taxable valuations of the territories within the district and the sum of the current year ANB of the territories within the district. (AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XXII SCHOOL FACILITY REIMBURSEMENTS (1) (Effective July 1, 1993. Terminates June 30, 1995.) A school facility reimbursement will be provided to an eligible district to meet the district's debt service obligation for bonds sold after July 1, 1991 for school facility construction or renovation. A district may not receive a school facility reimbursement to meet its obligation for a special improvement district or for debt service for refunding bonds sold for projects that began construction prior to July 1, 1991.

(Effective July 1, 1995.) A school facility reimbursement will be provided to an eligible district to meet the district's debt service obligation for any bonds sold for school facility construction or renovation. A district may receive a school facility reimbursement to meet its debt service obligation for any refunding bonds associated with school facility construction or renovation. A school district may not receive a school facility reimbursement to fund an assessment for a special improvement district.

(2) A district is eligible to receive a school facility reimbursement for debt service obligations on bonds described in subsection (1) if the district mill value per ANB is less than the statewide mill value per ANB. For a K-12 district, the eligibility of the elementary and high school programs for a school facility reimbursement is determined separately for each program.

(3) A school district must report its annual debt service obligation for each bond issued by the district on the final budget form provided by the office of public instruction. The office of public instruction will calculate the school facility reimbursement for a district using the amounts reported for debt service obligations on the budget form.

(4) The maximum reimbursement a district may receive is the lesser of the district's school facility entitlement or its

current year debt service obligation for the bonds that qualify under subsection (1).

(5) A district qualifies for a school facility reimbursement in the amount of the maximum reimbursement for the district multiplied by [1-(district mill value per ANB/statewide mill value per ANB)].

(6) If the legislative appropriation for the state reimbursement for school facilities is less than the amount for which districts qualify in subsection (5), the office of public instruction will calculate the percentage that the appropriation represents of the total amount for which districts qualify. To determine the school facility reimbursement for each district, the office of public instruction will apply that percentage to the amount calculated in subsection (5).

(7) On or before May 1, the office of public instruction shall distribute the state reimbursement for school facilities to qualifying districts for deposit in the district's debt service fund.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 -- 20-9-371, MCA)

RULE XXIII STATE FINANCIAL AID FOR BUDGET AMENDMENTS (1) Whenever a budget amendment has been adopted for the general fund or the transportation fund to finance the cost of increased enrollment, the trustees may apply to the superintendent of public instruction for an increase in direct state aid as defined in section 20-9-306, MCA, or an increase in state transportation aid, or both.

(2) An application for additional state assistance must be submitted at the time the adopted budget amendment resolution is submitted to the office of public instruction.

(3) The superintendent of public instruction shall approve or disapprove each application for increased direct state aid made in accordance with section 20-9-314, MCA, and ARM 10.20.104.

(4) If the application for additional state assistance is approved, the superintendent of public instruction shall determine the additional amount of direct state aid or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment.

(5) The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of the additional state aid that will be made available for the general fund or the transportation fund.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

RULE XXIV OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) For purposes of this section:

(a) a child's family is defined as being the family of parents or legal guardians;

(b) placement by a court of competent jurisdiction includes tribal courts, and placement by state agency includes tribal agencies;

(c) an emancipated minor is defined as set out in sections

20-25-501 and 41-3-102, MCA.

(2) Out-of-district attendance agreements must establish the charges, if any, for both tuition and transportation, and the parties who will be responsible for payment. Tuition charges must comply with ARM 10.10.301.

(3) Discretionary out-of-district agreements must be signed by the student's parent or guardian who initiates the request, a responsible official of the receiving district, and an official of the resident district, if the resident district is to be responsible for tuition or transportation costs.

(a) The resident district is not obligated for the tuition or transportation costs if they have not agreed to the out-of-district attendance. However, they may agree to pay one of the costs without agreeing to pay for the other.

(b) If the resident district has not agreed to allow the out-of-district attendance, the receiving district may allow the student to attend, and the parent or guardian may be charged for tuition and transportation costs. The resident district may not be held responsible for paying costs of tuition or transportation for discretionary attendance if the district has not agreed to allow the out-of-district attendance.

(4) Pursuant to 20-5-321, MCA, the resident district and the receiving district must accept the parent or guardian's request for the student to attend out-of-district if the mandatory conditions set out in section 20-5-321, MCA, are present, unless:

(a) accreditation of the receiving district would be adversely affected; or

(b) the district of attendance is in the same county as the district of residence, and the district of residence provides transportation.

(5) The exceptions in (4) do not apply if the student is a pupil with disabilities who lives in the district where he wishes to attend. If the student is a pupil with disabilities who lives in the district of attendance, the district of attendance must accept the request for out-of-district attendance, regardless of the legal residence of the student.

(6) Statutes in effect at the time the out-of-district attendance agreement was signed govern the conditions of the attendance agreement.

(7) When the county is obligated to pay tuition or transportation costs for mandatory out-of-district attendance agreements, those payments will be made from the county equalization funds.

(8) When the district is obligated to pay tuition or transportation costs for out-of-district attendance agreements, the tuition will be paid from the district's tuition fund, and the transportation costs will be paid from the district's transportation fund.

(9) The county of residence is financially responsible for out-of-county tuition and may be charged transportation costs as established under 20-5-323, MCA, for a child with disabilities, as defined in 20-7-401, MCA, who has been placed by a state agency in a foster care or group home licensed by the state.

(AUTH: 20-5-323; IMP: 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA)

RULE XXV NEW TUITION REPORTS (1) For the purpose of determining state and county responsibility for tuition payment, by July 15 of each year, the trustees of a district shall provide an out-of-district attendance report to the county superintendent. That report shall list, for the most recent school year, students who attended a school of the district under an approved mandatory agreement, resident students who attended a public school out-of-state for which the district is responsible for payment of the tuition charges, and students for whom tuition rates were charged which exceed the maximum regular education tuition rate as established in ARM 10.10.301. The rates which exceed the maximum regular education tuition rate may be special education rates, out-of-state rates, or rates for students without disabilities who require unique programs.

(2) By July 30, the county superintendent shall submit out-of-district attendance reports to the superintendent of public instruction for those districts that are responsible for payment of out-of-state tuition charges and districts that charge tuition which exceeds the maximum regular education tuition rates established in ARM 10.10.301.

(AUTH: 20-5-323, MCA; IMP: 20-5-324, 20-7-431, MCA)

RULE XXVI OUT-OF STATE ATTENDANCE AGREEMENTS (1) The superintendent of public instruction is authorized to establish reciprocal agreements for out-of-state attendance with border states or provinces. The tuition charge for a Montana student attending school in a state or province with a reciprocal agreement is governed by the conditions of the reciprocal agreement.

(2) The amount of tuition paid by a Montana district for a regular education student attending school in a state or province not governed by a reciprocal tuition agreement cannot exceed the annual average cost per student in the student's district of residence.

(a) The average cost per student will be calculated by totaling the expenditures from the preceding school fiscal year for the following funds: 01-General, 10-Transportation, 13-Tuition, 14-Retirement, 19-Nonoperating, and 50-Debt Service, and dividing that total by the October 1 enrollment from the preceding school fiscal year.

(b) If the tuition rate charged by the receiving district is less than the Montana district's annual average cost per student, the tuition payment may not exceed the lesser of the two amounts.

(3) Districts may agree to pay tuition charges that are less than the maximum allowed rates.

(4) If a Montana school district receives a tuition payment for a regular education out-of-state student from a state or province that does not have a reciprocal tuition agreement with Montana, and that payment exceeds the rate established in ARM 10.10.301, the Montana school district will reimburse the state

of Montana for the amount received in excess of the maximum regular education tuition rate for the school year of out-of-state attendance.

(5) School districts that are responsible for paying tuition charges for a resident student who attends an out-of-state public school may receive the state per-ANB entitlement for that student.

(a) Based on the county superintendents' reports submitted in accordance with RULE XXV NEW TUITION REPORTS, the superintendent of public instruction will calculate the per ANB entitlement amount the district would have received if that student had been enrolled in the resident district.

(b) The superintendent of public instruction shall provide payment of the amount calculated in (a) in the year the out-of-district attendance report is submitted, provided it is submitted in the year following the year of attendance.

(6) The county of residence is financially responsible for tuition for a student without disabilities placed by a state agency in an out-of-state residential psychiatric treatment facility.

(AUTH: 20-5-323, MCA; 20-5-314, 20-5-316, 20-5-323, 20-5-324, MCA)

5. Revision of school finance and budgeting rules are necessary to implement the changes in Title 20, MCA, resulting from the enactment of Ch. 563, L. 1993, Ch 633, L. 1993, and Ch. 38, Sp. L. November 1993.

6. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, P.O. Box 202501, Helena, Montana 59620-2501, no later than 5:00 p.m. on May 26, 1994.

7. An official of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

Kathleen F. Holden
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State April 18, 1994.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE & PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through X pertaining to block management.) NOTICE OF PUBLIC HEARINGS

TO: All interested persons

1. On May 24, 1994, at 7:00 p.m. a public hearing will be held at the War Bonnet Inn, 2100 Cornell, Butte, Montana, to consider the adoption of new Rules I through X providing for the block management program. There will be two hearings on May 26, 1994, at 7:00 p.m. at the Yogo/Park Inn, 211 East Main, Lewistown, Montana, and at Miles Community College, Room 316, 2600 Dickinson, Miles City, Montana.

2. The new rules are proposed as follows:

RULE I OVERVIEW OF BLOCK MANAGEMENT RULES (1) Rules I through X regulate the block management program administered by the department.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE II ADMINISTRATION OF BLOCK MANAGEMENT PROGRAM (1) Under 87-1-301(1)(c), MCA and 87-1-303, MCA, the fish, wildlife and parks commission has authority to develop rules governing the use of lands controlled by the department or that it operates under agreement with federal, state or private landowners. These statutes are the basis for the block management program administered by the department.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE III DEFINITIONS Wherever used in Rules I through X, unless a different meaning clearly appears from the context:

(1) "Accessible state lands" means those state lands under the jurisdiction of the Montana department of state lands which are accessible as described in Rule II(2)(b) which is proposed in MAR Notice No. 26-2-72 as published in issue No. 8.

(2) "BMA" means block management area. A BMA is a specified area on which, by cooperative agreement between the landowner, other resource management agencies and the department, public hunting is permitted with certain restrictions or use rules.

(3) "Block management tabloid" means the document printed annually which provides statewide information on the block management program and describes means through which hunters

may get specific information on block management opportunities.

(4) "Commercial hunting activity" means any activities in which a consideration is required as a condition for hunting.

(5) "Department" means the Montana department of fish, wildlife and parks.

(6) "Cooperator" means a private or public landowner or land management agency with which the department enters into an agreement for the purposes of the allowing hunting access on a BMA.

(7) "Director" means director of the Montana department of fish, wildlife and parks.

(8) "DSL" means Montana department of state lands.

(9) "Hunting season" means the time during which game birds and game animals may be legally taken as defined by the commission regulation under 87-1-304, MCA.

(10) "Livestock loss insurance" means a program which provides reimbursement to livestock owners whose animals are injured or killed as the direct result of allowing public hunting on their property.

(11) "Outfitting" means the act of providing hunting-related services for a consideration as defined in 37-47-101 (5), MCA.

(12) "Regional office" means the headquarters of a department administrative region.

(13) "Regional supervisor" means the supervisor of a regional office.

(14) "Use season" means the period of time during which a BMA is open and functioning, allowing public hunting.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE IV CRITERIA FOR PARTICIPATION (1) A BMA may be established for any of the following reasons:

(a) the land is a high-priority resource and habitat area as defined by statewide and regional management objectives;

(b) a potential exists for a cooperative relationship between the department and private landowner or landowners for long-term management projects and programs;

(c) establishment of the BMA will result in sustained or increased hunter opportunity, access and hunter days on private lands;

(d) implementation of the BMA will open up access to inaccessible federal and state lands; or

(e) implementation of a BMA can improve management of wildlife populations or address other resource issues associated with hunting.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE V USE OF BLOCK MANAGEMENT AREAS (1) The following governs use of BMAs:

(a) Use restrictions for each BMA shall be established by negotiation between department personnel and the cooperator. Restrictions may include but may not be limited to:

(i) restrictions on vehicle use or off-road travel for access or downed game retrieval;

(ii) number of hunters or hunting parties utilizing a BMA per day;

(iii) times and places at which permission slips or other instructions are provided on-site to the public; and

(iv) duration of the use season.

(b) When lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion.

(c) On BMAs which restrict hunter numbers, a cooperator may allow additional hunters at his or her discretion.

(d) The cooperator and the department reserve the right to deny access to a BMA for cause, including but not limited to: intoxication, violation of BMA rules or previous misconduct on a BMA. Willful violation of BMA regulations on private property which set the terms for entrance on a cooperator's property can be grounds for terminating privileges on a BMA and a misdemeanor citation under 87-3-304, MCA, hunting without landowner permission. BMAs may also be temporarily closed by the cooperator in conjunction with the department due to weather, fire danger or other conditions or circumstances which would place public safety or resources in jeopardy.

(e) Priority consideration for block management enrollment will be given for lands that are open to all species and gender of game birds and animals. Any restrictions on the gender or species available for hunting on a BMA, other than those established by the commission, must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions before implementation of the BMA. Species and gender restrictions, other than those established by the commission, may not be imposed on state or federal land.

(f) BMAs which impose daily hunter number limits will allow free, equitable opportunities for access to all hunters requesting use of the BMA based on a daily hunter number capacity agreed upon by the cooperator and the department. The allocation of this hunter capacity will be on a first come, first served basis. In the event that hunting demand for a certain BMA is greater than supply, similar hunting opportunities may be offered on other days on the BMA or on other BMAs. On BMAs where hunter demand regularly exceeds available opportunity, the department will develop equitable methods of allocation such as telephone reservations or drawings.

(g) During periods when a BMA is not in operation and commission-established hunting seasons are in effect, access to private land is at the discretion of the landowner. These periods will be duly noted on enrollment forms as well as in

information distributed to the public. During such non-block management periods, accessible federal and state lands will remain open to the public for recreation under rules and regulations adopted by the appropriate land management agency.

(h) Enrollment in the block management program may be terminated by the department if the terms of the contract or enrollment form are violated; or, by the department or the cooperator within 30 days following the end of the hunting season. DSL may withdraw state lands from inclusion in a BMA under Rule IV(6) which is proposed by DSL in MAR Notice No. 26-2-72 as published in issue No. 8. Any such notice must be in writing. A contract or enrollment may be canceled and a cooperator's property withdrawn from the program at any time due to circumstances beyond the control of the cooperator or the department, such as death, illness, natural disaster, or acts of nature.

(i) Cooperators may enroll in or contract to participate in the block management program for up to 5 years at a time. However, this will be contingent on the annual availability of funds to operate the BMA.

(j) Reservations for hunting opportunities on BMAs which restrict hunter numbers may not be accepted by cooperators or department personnel operating a BMA on behalf of a cooperator before September 1 preceding the opening of a use season.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE VI COMPENSATION TO COOPERATORS (1) Cooperators in the program may receive various forms of compensation for their participation including, but not limited to, the following:

(a) department oversight and supervision of hunting on a BMA;

(b) supplying of permission books, signs or hunting-season related supplies; and

(c) monetary compensation based on an estimate of the hours spent by a cooperator attending to hunters utilizing the BMA. Payments to cooperators will be made immediately following the close of the use season.

(2) Additional forms of compensation may also include:

(a) livestock loss insurance payable at full market value of any loss;

(b) the supplying of wildlife damage materials and supplies; and

(c) participation in other department cooperative programs.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE VII OUTFITTING AND COMMERCIAL HUNTING ACTIVITY (1) Outfitting and commercial hunting activities on BMAs are not consistent with the intent of providing free public access

to recreational opportunities on private lands. Outfitting and other forms of commercial hunting activity may not take place on BMAs. This rule does not regulate licensed outfitters legally operating on federal or state lands under license or permit obtained from the bureau of land management, forest service, department of state lands or other resource management agency.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE VIII INFORMATION DISSEMINATION (1) Information concerning specific BMAs will be available at department regional offices in the region that the BMA operates. Information will be made available to the public upon request, either in person, by mail, telephone or FAX. Each region will have available to the public on or before September 1 of each year:

(a) copies of the statewide block management tabloid; and

(b) a list of BMAs in that region for the current year. This list may be expanded if more BMAs are enrolled closer to the opening of the general hunting season.

(2) Block management information on specific areas available to the public will consist of printed materials which include at least the following:

(a) map of BMA showing location and clearly identifying the boundaries of the BMA. The map will be dated with the year it was produced;

(b) hunting opportunities available;

(c) use restrictions of the area;

(d) method of gaining access;

(e) dates BMA is in effect;

(f) telephone number of regional office for information; and

(g) indication of the location of any state lands in the BMA and notification of the requirement to possess a state lands recreational use license to hunt state lands administered by DSL.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE IX INCLUSION OF STATE LANDS IN BLOCK MANAGEMENT AREAS (1) State lands administered by DSL may be included in BMAs. Whenever a proposed BMA includes accessible state lands, the procedures set forth in Rules I through V proposed by DSL in MAR Notice No. 26-2-72 as published in issue No. 8 shall be followed.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE X COMPLAINT RESOLUTION SYSTEM (1) BMA cooperators or hunters may make complaints to the department of problems

they have encountered on a BMA. The department shall use the following procedure to investigate and resolve complaints.

(a) Block management personnel are encouraged to work on-site to address problems before they reach the complaint stage.

(b) Formal complaints must be in writing, signed by the complainant and may be presented to any department employee. Complaints need to include information describing the events that transpired, the BMA involved, and the names, addresses and, if possible, phone numbers of all individuals involved.

(c) Complaints will be turned in immediately to the regional supervisor of the region in which the problem occurred and documented for tracking purposes.

(d) The regional supervisor is responsible for assessing complaints and initiating the appropriate level of investigation. If the complaint involves state lands or federal lands, the supervisor will involve the appropriate management agency in resolving the complaint.

(e) At the conclusion of the investigation, the regional supervisor will provide written notification to the complainant and the department field services administrator of the results of the investigation as well as any action taken as a result of the investigation. Other parties directly involved with the complaint (cooperator, land management agencies, etc.) will also be notified.

(f) A complainant may appeal the action taken by a regional supervisor to the director. The director will review the complaint and investigation and issue a written decision.

(g) Following the close of the hunting season, the field services division of the department will review and summarize all complaints lodged during the preceding hunting season. Each regional office will get a copy of this summary as well as identification of problem areas and suggested solutions.

(h) For BMAs with any complaints which remain unresolved after having been investigated through this process, the complaints will be reviewed as set forth in Rule V proposed by DSL in MAR Notice No. 26-2-72 as published in issue No. 8 to determine if a public review is necessary to assess if continued enrollment in the program is appropriate.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

3. Proposed Option on Outfitting and Commercial Hunting. The department is also asking for public comment on the alternative of deleting Rule VII (Outfitting and Commercial Hunting Activity). The rules would then be silent on outfitting and commercial hunting activities on BMAs. Private land, where a portion of the available hunting is set aside for outfitted hunting, could be included in a BMA if the private land would still provide a sufficient opportunity for public hunting under the criteria of subsection (1)(c) of Rule IV. The rationale of this option is to reconcile the interests of sportsmen and the outfitting industry while

recognizing the contribution of private landowners in providing wildlife habitat. The reasoning is that prohibiting establishment of BMAs where outfitting takes place may preclude opportunities for public hunting.

4. Rationale: These rules are intended to provide guidance to the block management program which is a department program to provide free public hunting on private land. The program has grown from a small informal relationship between landowners and the department to a large and popular program for providing hunting access to private land. These rules formalize the program, address landowner and hunter benefits, and establish the responsibilities of the department. The rules are necessary to provide fair and nondiscriminatory treatment of both members of the public hunting in block management areas and the landowner-cooperators who have agreed that their land will be in a block management area. The rules describe the criteria for establishing block management areas, the conditions and restrictions for use of block management areas, compensation to cooperators, the information to be provided about block management areas, a prohibition on outfitting and commercial hunting activity on block management areas, and a process for handling and resolving complaints. Comment is requested on an alternative that would not prohibit outfitting and commercial hunting activity.

5. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearings. Written data, views or arguments may also be submitted to Jerry Wells, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, P.O. Box 200701, Montana 59620, no later than May 26, 1994.

6. Bob Lane and Jerry Wells, Department of Fish, Wildlife and Parks, have been designated as hearing examiners for these hearings.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State April 19, 1994.

BEFORE THE DEPARTMENT OF STATE LANDS
AND THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules and amendment of 26.3.186 and 26.3.193 authorizing and regulating enrollment of state lands in block management areas.	)))))	NOTICE OF PUBLIC HEARINGS

TO: All Interested Persons

1. On May 24 and 26, 1994, the Department of State Lands and Board of Land Commissioners will hold hearings to consider adoption of new rules and amendment of 26.3.186 and 26.3.193 authorizing and regulating enrollment of state lands administered by those agencies in block management areas established under the Department of Fish, Wildlife and Parks' block management program. The hearings will be held at the following locations on the following dates and times:

- Butte at the Warbonnet Inn, 2100 Cornell, on May 24, 1994, at 7:00 p.m.
- Lewistown at the Yogo/Park Inn, 211 East Main, on May 26, 1994, at 7:00 p.m.
- Miles City at the Miles City Community College, 2600 Dickenson, Room 316, on May 26, 1994, at 7:00 p.m.

2. The proposed new rules provide as follows:

RULE I BLOCK MANAGEMENT AREAS: GENERAL RULES FOR INCLUSION OF STATE LAND

(1) State lands may be enrolled in block management areas established by the department of fish, wildlife and parks under the procedures contained in Rule II. For general recreational use on land so enrolled, a recreational use license is required and motorized vehicle use by a recreationist is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use. A recreationist shall obey all restrictions imposed pursuant to the block management agreement.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

RULE II BLOCK MANAGEMENT AREAS: PROCEDURES FOR INCLUSION OF STATE LANDS

(1) The department shall commence review of a proposal to include state land within a block management agreement when the department receives from the department of fish, wildlife and parks a proposal that includes:

(a) a complete legal description of the state land affected by the proposal, with a description of the legal access status of each tract of land;

(b) a listing of all terms, conditions and restrictions of the proposal; and

(c) a map that clearly identifies the boundaries of the proposed block management area, locations of state lands, adjoining public land, and public roads.

(2) The provisions of (3) apply to the review of a block management agreement that:

(a) would impose restrictions on recreational use that are more stringent than those contained in ARM 26.3.186; and

(b) contain state land that is:

(i) contiguous at some point to land that is not within the proposed block management area;

(ii) accessible by dedicated public road, public right-of-way, or easement;

(iii) accessible by public waters; or

(iv) accessible from contiguous federal, state, county or municipal land that is open for public use.

(3) Before land that meets the criteria in (2) may be included in a block management agreement, the department of fish, wildlife and parks and the department must have:

(a) given public notice of the proposal in a newspaper of general circulation in the area of the proposed block management area;

(b) provided a 21-day period for written public comment following the public notice; and

(c) if, during the public comment period a request for public hearing was received that in the department's opinion raises a significant question as to whether the proposal is in the best interests of the public or the trust, held a public hearing in the area.

(4) After close of the public comment period, the department shall review and prepare written responses to all substantive comments. The department shall send copies of those responses to each person who submitted a substantive comment.

(5) No public review is required for proposals that do not meet the criteria contained in (2).

(6) The department shall notify the department of fish, wildlife and parks whether it will enter into the agreement. No block management agreement is effective as to state land until it is executed by the department. The department may not enter an agreement that does not meet the criteria contained in Rule III.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

RULE III BLOCK MANAGEMENT AREAS: CRITERIA FOR INCLUSION OF STATE LANDS

(1) The department may include state land in a block management area only if it finds that:

(a) inclusion is in the best interests of the public and the trust;

(b) the block management agreement does not conflict with rights of holders of leases, licenses, and easements; and

(c) inclusion would not result in damage to the land.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

RULE IV BLOCK MANAGEMENT AREAS: TERMS OF AGREEMENT

(1) A block management agreement that includes state lands must contain the following provisions:

(a) Motorized vehicle use on state lands is restricted to federal, state and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(b) If the state land meets the criteria of Rule II(2), or if the agreement includes hunter limits, requires permission, or contains other restrictions that are more stringent than the restrictions contained in ARM 26.3.186, the department of fish, wildlife and parks shall post the state land at customary access points with signs that include the period that the block management restrictions are effective and describe how access may be obtained.

(c) If a complaint is not resolved to the satisfaction of the department, the department may withdraw the state land from the block management area.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

RULE V BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT

(1) A block management agreement that contains state lands may be renewed.

(2)(a) Subject to (b), renewal of a block management agreement that meets the criteria of Rule II(2) may be subject to the review procedures contained in Rule II(3) only if:

(i) during the term of the agreement, the department or department of fish, wildlife and parks have received public comments or complaints tending to:

(A) raise significant concerns regarding compliance with the agreement;

(B) indicate that continued enrollment in the block management program may not be in the best interests of the public or the trust; or

(ii) there will be changes in the agreement that impose more stringent restrictions than those contained in the existing agreement.

(b) If the department or department of fish, wildlife and parks has received complaints under the department of fish, wildlife and parks' complaint resolution system regarding a block management area that is being considered for renewal and those complaints have not been resolved to the department's satisfaction, the commissioner may not renew the agreement without public review until receiving a recommendation from the recreational use advisory council as to whether public review is appropriate.

(3) The renewal of a block management agreement that does not contain state land meeting the criteria in Rule II(2) or does not meet the criteria of (2)(a) above is not subject to public review under Rule II(3).

(4) A block management agreement that was in effect on September 20, 1993, and was terminated in protest of the board's decision to expand the definition of "general

recreational use" to include hiking and bird-watching may be renewed prior to October 1, 1994, under this rule.

(5) The department may renew a block management agreement that includes state land only if it meets the criteria for approval contained in Rule III and contains the provisions of Rule IV.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

RULE VI RECREATIONAL USE ADVISORY COUNCIL

(1) The board shall, pursuant to 2-15-122, MCA, appoint from a list of persons nominated by recreationist and lessee groups a recreational use advisory council consisting of three recreationists and three lessees. The members shall serve without compensation, but they are entitled to reimbursement for travel expenses pursuant to 2-15-122, MCA.

(2) The advisory council shall gather information and advise the commissioner on whether to hold a public hearing on renewal of a block management agreement pursuant to Rule V.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

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

26.3.186 GENERAL RECREATIONAL USE OF STATE LANDS: RESTRICTIONS (1) The following restrictions apply to persons engaging in general recreational use of state lands except for general recreational use subject to block management restrictions pursuant to [Rule I]:

(a) through (e) Remain the same.

(f) For state lands included within a wildlife management ~~or block management~~ area administered by the department of fish, wildlife and parks, recreational access and activities must be conducted in accordance with rules, regulations, and procedures specific to that management area.

(g) Remains the same.

(2) Remains the same.

AUTH: 77-1-804, MCA, IMP: 77-1-804, MCA.

26.3.193 GENERAL RECREATIONAL USE OF STATE LANDS: CIVIL PENALTIES (1) Pursuant to 77-1-804(8), MCA, the department may assess against a recreationist, lessee or other person a civil penalty of up to $1,000 for each day of violation of ARM 26.3.183(3), (4), (5), (6), or (7), ARM 26.3.186, ARM 26.3.187, ARM 26.3.188, ~~or~~ ARM 26.3.189, or [Rule I]. The department may waive the civil penalty for minor or technical violations and shall waive the civil penalty if a criminal penalty has been assessed for the violation.

(2) through (5) Remain the same.

AUTH: 77-1-804, MCA, IMP: 77-1-804, MCA.

4. Adoption of the new rules and amendment of the existing rules is reasonably necessary to provide procedures and criteria for inclusion of state lands administered by the Department of State Lands into block management areas administered by the Department of Fish, Wildlife and Parks.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearings. Written data, views or arguments may also be submitted to Arthur R. Clinch, Commissioner, Department of State Lands, PO Box 201601, Helena, MT 59620-1601 no later than May 31, 1994. To guarantee consideration, written data, views or arguments must be postmarked no later than May 31, 1994.

6. The hearings will be conducted in conjunction with Department of Fish, Wildlife and Parks' hearings being conducted at the same dates, times and locations regarding proposed general rules for administration of its block management program pertaining to private, state and federal lands. These proposed rules appear in this issue in MAR Notice No. 12-2-209. The following personnel have been designated to preside over and conduct the portion of the hearings pertaining to the Department of State Lands rules:

- M. Jeff Hagener, Administrator, Land Administration Division
- Craig Roberts, Area Manager, Northeastern Land Office
- Dwayne Andrews, Area Manager, Eastern Land Office

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State April 18, 1994.

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

In the matter of the amendment of rules 46.12.503, 46.12.504, 46.12.505, 46.12.506, 46.12.507, 46.12.508 and 46.12.509 pertaining to medicaid coverage and reimbursement of inpatient and outpatient hospital services	))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.503, 46.12.504, 46.12.505, 46.12.506, 46.12.507, 46.12.508 and 46.12.509 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF INPATIENT AND OUTPATIENT HOSPITAL SERVICES

TO: All Interested Persons

1. On May 26, 1994, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.503, 46.12.504, 46.12.505, 46.12.506, 46.12.507, 46.12.508 and 46.12.509 pertaining to medicaid coverage and reimbursement of inpatient and outpatient hospital services.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 16, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITION

(1) "Inpatient hospital services" means services that are ordinarily furnished in a hospital for the care and treatment of an inpatient under the direction of a physician or dentist and that are furnished in an institution that:

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

(5) "Distinct part rehabilitation unit" is a unit of an acute care general hospital that meets the requirements in 42 CFR 412.25 and 412.29 (1990~~2~~).

Subsections (6) through (11)(c)(ii) remain the same.

(12) "Medicaid inpatient utilization rate" means the hospital's percentage rate computed by dividing the total number of medicaid inpatient days in the hospital's fiscal year by the total number of the hospital's inpatient days in that same period. The period used will be the most recent calendar year

for which final cost reports are available for all hospital providers~~, including psychiatric inpatient hospital facilities~~.

Subsection (13) remains the same.

(a) [(A + B)/C] + (D/E) where:

Subsections (13)(a)(i) through (14) remain the same.

(15) "Large referral hospital" means an acute care hospital located in the state of Montana that serves as a referral center and has been determined by the department as of April 1, 1993 to have a case mix with a statistically demonstrated level of intensity of care which is higher than the norm for Montana acute care hospitals. Such facilities are Columbus Hospital (Great Falls), Deaconess Medical Center (Billings), ~~Missoula~~ Community ~~Hospital~~ Medical Center (Missoula), Montana Deaconess Medical Center (Great Falls), St. James Hospital (Butte), St. Patrick's Hospital (Missoula) and St. Vincent's Hospital (Billings).

Subsections (16) through (18) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.504 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

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

~~(3) Services must be determined medically necessary by the designated review organization.~~

~~(a) No medicaid payment will be made unless the following conditions are met:~~

~~(i) The provider must obtain authorization for inpatient services rendered on or after February 1, 1989, from the department or its designee prior to payment.~~

~~(ii) Hospitals or hospital units not reimbursed under the prospective payment system by medicaid must also obtain authorization for the entire length of stay for each admission if the stay exceeds the initial authorization. This authorization must be obtained prior to payment.~~

~~(iii) This authorization is not a guarantee of payment as medicaid rules and regulations, client eligibility, or additional medical information on retrospective review may cause the department to refuse payment.~~

Subsections (4) through (4)(b) remains the same in text but are renumbered (3) through (3)(b).

AUTH: 53-6-113 MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, and 53-6-141 MCA

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

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

(iv) certified registered nurse anesthetist costs as provided in subsection (~~15~~7); ~~and~~

(v) catastrophic case payments as provided in subsection (8)~~.~~; and

(vi) disproportionate share hospital payments as provided in subsections (15) and (16).

(b) Inpatient hospital services provided in hospitals located outside the state of Montana, but no more than 100 miles from the border ~~and not in Canada~~, referred to in these rules as "border hospitals", will be reimbursed under the DRG prospective payment system described in subsection (2). In addition to the prospective rate, border hospitals will be reimbursed for day or cost outliers as set forth in subsections (6) and (7), and for capital costs as set forth in subsection (5), but shall not be reimbursed in addition to the DRG payment for medical education costs, neonatal intensive care, stop-loss reimbursement, ~~or~~ certified registered nurse anesthetist costs or catastrophic cases.

(c) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana ~~and not in Canada~~ will be reimbursed their actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 46.12.509(2). The department may waive retrospective cost settlement for such facilities which have received interim payments totalling less than $100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for such period.

(i) Hospitals located more than 100 miles outside the borders of Montana ~~and not in Canada~~ will be reimbursed on an interim basis during each facility's fiscal year. The interim rate will be a percentage of usual and customary charges. The percentage shall be the provider's cost to charge ratio determined by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report necessary to determine the cost to charge ratio, the provider's interim rate will be 60% of its usual and customary charges.

(ii) Hospitals located more than 100 miles outside the borders of Montana ~~and not in Canada~~ must notify the department within 60 days of any change in usual and customary charges that will have a significant impact on the facility cost to charge ratio. A significant impact is a change in the facility cost to charge ratio of 2% or more. The department will adjust reimbursement rates to account for adjusted charges which have a significant impact on the facility cost to charge ratio. The department may adjust interim reimbursement rates to account for such increased or decreased charges.

(d) Inpatient hospital services provided ~~in hospitals located in Canada~~ outside the borders of the United States will not be reimbursed ~~at 60% of usual and customary charges, converted at the current rate from Canadian to U.S. dollars~~ by the Montana medicaid program.

Subsection (2) through (2)(a)(vi) remain the same.

(b) For each DRG, the department determines a relative weight, depending upon whether or not the hospital is a large referral hospital, which reflects the cost of hospital resources used to treat cases in that DRG relative to the statewide average cost of all medicaid hospital cases. The relative weight for each DRG is available upon request from the Medicaid Services Division, Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(c) The department computes a Montana average base price per case. This average base price per case is ~~$1,811.77~~ $1,887.86, effective beginning July 1, 199~~3~~4.

Subsection (2)(d) through (2)(d)(ii) remain the same.

(3) For those Montana hospitals designated by the department as of April 1, 1993 as having neonatal intensive care units, reimbursement for neonatal DRG's 385 through 390 shall be ~~at~~ actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 46.12.509(2). Such facilities shall be reimbursed on an interim basis during each facility's fiscal year. The interim rate shall be a percentage of usual and customary charges, and the percentage shall be the facility-specific cost to charge ratio, determined by the department in accordance with medicare reimbursement principles. Such hospitals shall not receive any day or cost outlier payment or other add-on payment with respect to such discharges or services.

Subsections (4) through (4)(a)(i) remain the same.

(ii) All out-of-state hospitals~~, except those located in Canada,~~ that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per case as an interim capital-related cost payment. The statewide average capital cost per case is $298.92. Such rate shall be the final capital-related cost reimbursement for facilities' cost reporting periods with respect to which the department waives retrospective cost settlement in accordance with these rules.

Subsections (4)(a)(iii) through (7)(b)(iii) remain the same.

(8) In addition to the DRG payment, providers reimbursed under the DRG prospective payment system may request payment for catastrophic cases out of the catastrophic case funds available for the rate year for patients admitted on or after July 1 of the rate year.

Subsection (8)(a) remains the same.

(b) A written request for catastrophic case reimbursement must be mailed or delivered to the Department of Social and

Rehabilitation Services, Medicaid Services Division, Hospital Services Section, 111 North Sanders, P.O. Box 4210, Helena, Montana 59604-4210. The request must include:

(i) a copy of the claim and remittance advice identifying the DRG reimbursement paid for the same case; and

(ii) a copy of the patient's medical records, including but not limited to admission summary notes, physician orders, progress notes and discharge summary notes, necessary to document the medical necessity of the length and cost of the inpatient hospital stay. The medical necessity of the days and services of the inpatient hospital stay may be reviewed by the department or its designated agent prior to payment of the catastrophic case.

(c) The department determines the maximum catastrophic case reimbursement for all DRG hospitals ~~and distinct part units~~ by:

Subsections (8)(c)(i) through (8)(d) remain the same.

(i) Providers will receive the base DRG payment and any appropriate outlier payments for each catastrophic case through the regular claims payment process, and, subject to settlement as provided in subsections (ii) and (iii), shall also receive ~~in addition within 15 days of submission of a catastrophic case claim~~ an amount equal to 60% of the estimated cost for the inpatient hospital stay less the base DRG payment amount and any applicable outlier payment amounts.

Subsections (8)(d)(ii) through (10)(b) remain the same.

(11) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 46.12.303. The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing to the principal diagnosis, secondary diagnoses, and names of procedures performed. The following statement must immediately precede the physician's signature: "I certify that the narrative descriptions of the principals and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge." In addition, when the claim is submitted, the hospital must have on file a current signed acknowledgement from the attending physician that the physician has received the following notice: "Notice to physicians: medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of federal funds, may be subject to fine, imprisonment, or civil penalty under applicable federal laws." The acknowledgement must have been completed within the year prior to the submission of the claim. The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state

and federal requirements. In addition, ~~the~~ except for distinct part rehabilitation units and hospital resident cases, providers may not submit a claim until the recipient has been either:

Subsections (11)(a) through (13) remain the same.

(14) The Montana medicaid DRG relative weight values, average length of stay (ALOS), outlier thresholds and stop loss thresholds are contained in the DRG table of weights and thresholds (~~April~~ 1993~~4~~ edition). The DRG table of weights and thresholds is published by the department of social and rehabilitation services. The department hereby adopts and incorporates by reference the DRG table of weights and thresholds (~~April~~ 1993~~4~~ edition). Copies may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

Subsections (15) through (15)(c) remain the same.

(16) Disproportionate share hospital payments will be limited to the cap established by the federal Health Care Financing Administration for the state of Montana. The adjustment percentages specified in subsections (15)(a), (15)(b) and (15)(c) shall be ratably reduced as determined necessary by the department to avoid exceeding the cap.

Subsection (16) remains the same in text but is renumbered (17).

AUTH: 53-2-201 and 53-6-113 MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.506 OUTPATIENT HOSPITAL SERVICES, DEFINITION

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

(2) Medicaid shall not make any payment or reimbursement for outpatient hospital services provided in satellite or branch facilities of provider hospital facilities that are not physically located within a licensed and certified hospital facility unless the satellite or branch facility meets the licensure and certification requirements of subsection (1).

(a) Services provided in satellite or branch facilities of provider hospital facilities will be considered to be provided by an institution that is licensed or formally approved as a hospital for purposes of subsection (1)(a) only if the satellite or branch facility itself has been inspected, surveyed or otherwise determined by the licensing authority to meet applicable standards and:

(i) the satellite or branch office is independently licensed or formally approved as a hospital, or

(ii) the provider hospital's license or formal approval documents specifically indicate that the satellite or branch office is licensed or formally approved as part of the provider facility's hospital license or formal approval.

(b) Services provided in satellite or branch facilities of provider hospital facilities will be considered to be provided by an institution that meets the requirements for participation in medicare for purposes of subsection (1)(b) only if the satellite or branch facility itself has been inspected, surveyed or otherwise determined by the certification or accreditation entity to meet applicable standards and:

(i) the satellite or branch office is independently certified or accredited as a hospital, or

(ii) the provider hospital's certification or accreditation documents specifically indicate that the satellite or branch office is certified or accredited as part of the provider facility's hospital certification or accreditation.

Subsection (2) remains the same in text but is renumbered as subsection (3).

AUTH: 53-6-113 MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.507 OUTPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) These requirements are in addition to those found in ARM 46.12.301~~-308~~ through 46.12.309.

Subsections (2) through (3)(a) remain the same.

(b) services provided in a hospital that would also be covered by medicaid in a non-hospital setting; ~~and~~

(c) air transport ambulance services for neonates and women with high risk pregnancies, as provided in ARM 46.12.1025~~.~~; and

(d) chemical dependency treatment services.

AUTH: 53-2-201 and 53-6-113 MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.508 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsection (1) remains the same.

(a) All facilities ~~except those located in Canada~~ will be reimbursed on a retrospective basis. Allowable costs will be determined in accordance with ARM 46.12.509(2) and subject to the limitations specified in ARM 46.12.509(2)(a), (b) and (~~b~~c). The department may waive retrospective cost settlement for such facilities which have received interim payments totaling less than $100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for the period.

(b) Outpatient hospital services provided ~~in facilities located in Canada~~ outside the borders of the United States will

not be reimbursed ~~at 60% of the usual and customary charges, converted at the current rate from Canadian to U.S. dollars~~ by the Montana medicaid program.

(2) All facilities ~~except those located in Canada~~ will be reimbursed on an interim basis during the facility's fiscal year. The interim rate will be a percentage of usual and customary charges. The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be 60% of its usual and customary charges.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA;

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL

Subsection (1) remains the same.

(a) The department may require providers of inpatient or outpatient hospital services to obtain authorization from the department or its designated review organization either prior to provision of services or prior to payment. To be effective, any department prior authorization requirement must be set forth in Title 46, chapter 12, in the department's provider manual applicable to the service category or in a written notice mailed to all providers in the affected service category at least 30 days in advance of the effective date of the prior authorization requirement.

(b) Prior authorization is not a guarantee of payment as medicaid rules and regulations, client eligibility, or additional medical information on retrospective review may cause the department to refuse payment.

(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"), subject to the exceptions and limitations provided in the department's administrative rules. The department hereby adopts and incorporates herein by reference Pub. 15, which is a manual published by the United States department of health and human services, ~~social security administration~~ health care financing administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Social and Rehabilitation

Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(a) Inpatient and outpatient hospital services reimbursement under the retrospective cost-based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit, an isolated hospital or an out-of-state hospital located more than 100 miles outside the state of Montana is subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (1992). The department hereby adopts and incorporates herein by reference 42 CFR 413.30 through 413.40 (1992). A copy of 42 CFR 413.30 through 413.40 (1992) may be obtained through the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

Subsections (2)(a) and (2)(b) remain the same in text but are renumbered (2)(b) and (2)(c).

(3) ~~Facilities described in~~ All hospitals reimbursed under ARM 46.12.505 or ARM 46.12.508~~(1)(a) will be required to~~ must submit, as provided in ARM 46.12.509(4), an annual medicare cost report in which costs have been allocated to the medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

~~(4) Facilities located outside the state of Montana and not in Canada must upon department request submit a cost report for their fiscal year ending in 1991 to the Montana medicare intermediary by September 1, 1993. Upon receipt of the cost report, the department will instruct the medicare intermediary to perform a desk review or audit for the purpose of setting a base allowed cost per discharge for each facility.~~

(45) ~~Facilities described in~~ All hospitals reimbursed under ARM 46.12.505 or ARM 46.12.508~~(1)(a) will be required to~~ must file the cost report with the Montana medicare intermediary within 90 days of the facility's fiscal year end or receipt of the department cost settlement detail reports, whichever is later. In the event a provider does not file within 90 days, or files an incomplete cost report, an amount equal to 10 percent of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20 percent shall be withheld. For each succeeding month the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a maximum limitation of one 30-day extension.

(5) For inpatient hospital services provided on or after July 1, 1993, facilities reimbursed on a retrospective cost basis must submit a cost report in accordance with the applica-

ble subsection below to determine a base year for purposes of applying rate of increase ceilings and settling costs.

(a) For facilities located outside the state of Montana and more than 100 miles from the Montana border, the base year is the facility's cost report for the first cost reporting period ending during or after calendar year 1991 that both covers 12 months and includes Montana medicaid inpatient hospital costs. No exceptions to this rule will be granted. Exception provisions contained in HCFA Pub. 15 and 42 CFR 413.40 do not apply for purposes of determining the base period under these rules.

(b) For distinct part rehabilitation units identified in ARM 46.12.503(5), the base year is the facility's cost report for the first cost reporting period ending after June 30, 1985 that both covers 12 months and includes Montana medicaid inpatient hospital costs. No exception to this rule will be granted. Exception provisions contained in HCFA Pub. 15 and 42 CFR 413.40 do not apply for purposes of determining the base period under these rules.

(c) For isolated hospitals as identified in ARM 46.12.503 (17), the base year is the facility's cost report for the first cost reporting period ending after June 30, 1993 that both covers 12 months and includes Montana medicaid inpatient hospital costs. No exceptions to this rule will be granted. Exception provisions contained in HCFA Pub. 15 and 42 CFR 413.40 do not apply for purposes of determining the base period under these rules.

Subsections (6) through (7)(e) remain the same.

(8) Providers ~~contesting the computation of interim payments or final settlement for capital and medical education costs; coding errors resulting in incorrect DRG assignment; medical necessity determinations; outlier determinations; or, determinations of readmission and transfer shall have the opportunity for~~ may appeal adverse determinations by the department through the administrative review and fair hearing ~~in accordance with the~~ procedures set forth in ARM 46.12.509A.

AUTH: Sec. 2-4-201, 53-2-201, 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

3. The proposed changes to the medicaid hospital rules are necessary to address a number of areas of the medicaid inpatient and outpatient hospital programs.

The proposed changes are necessary to implement aggregate funding increases for hospital reimbursement appropriated by the 1993 Montana legislature for state fiscal year 1995. The 1993 legislature appropriated funds under House Bill 2 for increases in medicaid rates to hospitals. For fiscal year 1995, the funding increases will be implemented by increasing the average

diagnosis related group (DRG) base price by 4.2%, from $1,811.77 to $1,887.86. The 4.2% increase in the base price is based upon the medicare market basket update factor set according to the federal Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA). This proposed change is implemented by revising the DRG base price set forth in ARM 46.12.505(2)(c).

The proposed changes to ARM 46.12.505(14) are necessary to incorporate by reference an updated version of the department's table of diagnosis related groups (DRG) weights and thresholds. The DRG table of weights and thresholds must be modified to correct printing errors in the 1993 edition and to update the cost outlier thresholds to account for changes in charge factors that affect the costs of providing services to recipients, which are not controllable by the department. Depending upon whether charges increased more or less than the TEFRA index, it may be necessary to update the medicaid statewide average cost to charge ratio specified in ARM 46.12.505(13). The updated tables and, if changed, the updated cost to charge ratio, will be available from the department.

The proposed changes to ARM 46.12.504(3) through (3)(iii) and the addition of proposed ARM 46.12.509(1)(b) are necessary to correct the current rules to accurately specify the department's policy regarding review and prior authorization of inpatient and outpatient hospital services by a department designated review organization. The current rules require prior authorization of all inpatient hospital services but no outpatient hospital services. Since January 1, 1993, the department has not required prior authorization for all inpatient hospital services. Prior authorization currently is required for out-of-state inpatient hospital services, inpatient psychiatric hospital services, and inpatient rehabilitation hospital services. The proposed rule in ARM 46.12.509(1)(b) allows the department to require prior authorization of particular services by identifying the services in the appropriate provider manual or in a notice mailed to providers. Any specific prior authorization requirements included in the administrative rules, e.g., organ transplantation requirements in ARM 46.12.584, remain in effect.

A number of the proposed rule changes are necessary to specify that medicaid reimbursement is not available for inpatient or outpatient hospital services provided outside the United States and to remove references relating to reimbursement for hospitals located in Canada. The department has recently received notice from the federal Health Care Financing Administration (HCFA) that its interpretation of federal regulations at 42 CFR 431.52 preclude medicaid payment for medical services rendered to a medicaid recipient outside the United States. To comply with the federal requirements, the rules are modified to specifically

state that inpatient and outpatient hospital services provided in Canada will not be reimbursed. These changes are implemented by the proposed changes to ARM 46.12.505(1)(c), 46.12.505(1)(c)(i), 46.12.505(1)(c)(ii), 46.12.505(1)(d), 46.12.505(4)(a)(ii), 46.12.508(1)(a), 46.12.508(1)(b) and 46.12.508(2).

The proposed changes are necessary to accurately specify the current department practice regarding reimbursement of neonatal intensive care units. These facilities are reimbursed for certain DRGs on a retrospective cost basis, but receive interim payments determined based upon the hospital's cost to charge ratio. The current rule incorrectly indicates that the cost to charge ratio based reimbursement is the final reimbursement.

The proposed changes are necessary to more clearly specify or to revise department policy and procedures for reimbursement of catastrophic inpatient hospital cases. The proposed change to ARM 46.12.505(8) specifies that the date of admission determines the rate year to which the case will be tied for purposes of determining available catastrophic case funds. Where particular cases overlap rate years, cases will be reimbursed from catastrophic funds set aside for the rate year in which admission rather than discharge occurs. The new language in proposed ARM 46.12.505(8)(b) through 46.12.505(8)(b)(ii) specifies the procedure and documentation requirements for requesting catastrophic funds. The proposed amendment to ARM 46.12.505(8)(c) makes clear that catastrophic case reimbursement is not available to distinct part hospital units. The proposed amendment to ARM 46.12.505(8)(d)(i) removes the requirement that the interim catastrophic reimbursement, i.e., 60% of the case cost less DRG payments, payment be made within 15 days of the request. This timeline is impossible for the department to meet, considering the department's policy on two week payment cycles for claims processing.

The proposed rule changes are necessary to revise current rules regarding allowable costs, cost reimbursement limits, cost reporting and base year determinations to clearly specify department policy affecting cost based reimbursement. The proposed new ARM 46.12.509(2)(a) is necessary to specify that the certain medicare cost limits and rate of increase ceilings apply to certain hospital facilities reimbursed on the retrospective cost-based methodology. The application of these rules is current practice for rehab units and out-of-state hospitals, and is being added for isolated hospitals. The proposed rule is necessary to incorporate by reference the provisions of 42 CFR 413.30 through 413.40. The proposed changes to current ARM 46.12.509(3) and (5) are necessary to specify cost reporting requirements for all inpatient and outpatient hospital providers. The proposed changes to ARM 46.12.509(4) are necessary to specify the base year periods that the department

will use to determine base costs for purposes of applying the rate of increase ceilings imposed under proposed new ARM 46.12.509(2)(a).

The proposed changes to ARM 46.12.506 are necessary to address the use of satellite or branch facilities to provide outpatient hospital services. Some outpatient hospital service providers have indicated an intent to provide services in satellite or branch locations which themselves are not hospitals. Currently, the department has received no indication that the satellite or branch facilities have been or will be inspected or surveyed by licensing or certification agencies to determine whether applicable standards are being met. The proposed rule specifies that the department will not consider the satellite or branch facilities to be licensed or to meet medicare participation requirements unless certain requirements are met. These requirements are necessary to assure that medicaid recipients receive services in licensed and certified facilities that meet all applicable quality, safety and other standards. This rule does not apply to branch or satellite units of one licensed or certified hospital where the unit is physically located in another licensed and certified hospital facility, such as the St. Patrick's Hospital end stage renal disease unit located in St. James Community Hospital in Butte.

The addition of proposed ARM 46.12.505(16) is necessary to implement new federal provisions establishing a cap on disproportionate share hospital payments in each state.

The proposed changes to ARM 46.12.509(8) are necessary to specify that providers may appeal from any adverse determination of the department, not only those specifically listed in the current rule.

The remaining proposed changes are necessary to revise and update the rules to conform to federal requirements, delete obsolete provisions, make the rules requirements more clear and correct inaccuracies.

The estimated fiscal impact of the proposed changes for fiscal year 1995 will be approximately $9.5 million dollars. The Medical Care Advisory Committee will be notified of the proposed amendment on April 28, 1994. A copy of the proposed changes is available from the department or from local county offices of human services.

4. The proposed changes will become effective July 1, 1994.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written

data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 27, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1994.

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

In the matter of the amendment of rule 46.10.403 pertaining to AFDC income standards and payment amounts	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC INCOME STANDARDS AND PAYMENT AMOUNTS

TO: All Interested Persons

1. On May 18, 1994, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.403 pertaining to AFDC income standards and payment amounts.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 9, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) through (2) remain the same.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~553~~ 585	$ ~~202~~ 213
2	~~749~~ 783	~~326~~ 344
3	~~945~~ 980	~~446~~ 471
4	~~1,140~~ 1,177	~~564~~ 596
5	~~1,336~~ 1,374	~~675~~ 713
6	~~1,532~~ 1,572	~~779~~ 823
7	~~1,726~~ 1,769	~~884~~ 934
8	~~1,922~~ 1,966	~~991~~ 1,036

9	~~2,015~~ 2,064	~~1,073~~ 1,133
10	~~2,103~~ 2,158	~~1,162~~ 1,227
11	~~2,181~~ 2,240	~~1,240~~ 1,309
12	~~2,261~~ 2,324	~~1,319~~ 1,393
13	~~2,329~~ 2,396	~~1,388~~ 1,466
14	~~2,396~~ 2,466	~~1,454~~ 1,535
15	~~2,461~~ 2,535	~~1,519~~ 1,604
16	~~2,516~~ 2,593	~~1,574~~ 1,662

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~202~~ 213	$ ~~76~~ 80
2	~~396~~ 418	~~202~~ 213
3	~~594~~ 627	~~326~~ 344
4	~~790~~ 834	~~446~~ 471
5	~~986~~ 1,041	~~562~~ 593
6	~~1,184~~ 1,250	~~679~~ 717
7	~~1,382~~ 1,459	~~792~~ 836
8	~~1,576~~ 1,664	~~901~~ 951
9	~~1,671~~ 1,764	~~993~~ 1,049
10	~~1,759~~ 1,858	~~1,082~~ 1,143
11	~~1,846~~ 1,950	~~1,171~~ 1,237
12	~~1,930~~ 2,038	~~1,251~~ 1,321
13	~~2,015~~ 2,127	~~1,338~~ 1,413
14	~~2,092~~ 2,210	~~1,415~~ 1,494
15	~~2,170~~ 2,292	~~1,493~~ 1,577
16	~~2,242~~ 2,368	~~1,565~~ 1,653

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~299~~ 316	$ ~~109~~ 115
2	~~405~~ 423	~~176~~ 186
3	~~511~~ 530	~~241~~ 254
4	~~616~~ 636	~~305~~ 322
5	~~722~~ 743	~~365~~ 385
6	~~828~~ 850	~~421~~ 445
7	~~933~~ 956	~~478~~ 505
8	~~1,039~~ 1,063	~~530~~ 560
9	~~1,089~~ 1,116	~~580~~ 612
10	~~1,137~~ 1,166	~~628~~ 663
11	~~1,179~~ 1,211	~~670~~ 708
12	~~1,222~~ 1,256	~~713~~ 753
13	~~1,259~~ 1,295	~~750~~ 792
14	~~1,295~~ 1,333	~~786~~ 830
15	~~1,330~~ 1,370	~~821~~ 867
16	~~1,360~~ 1,402	~~851~~ 899

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~109~~ 115	$ ~~41~~ 43
2	~~214~~ 226	~~109~~ 115
3	~~321~~ 339	~~176~~ 186
4	~~427~~ 451	~~241~~ 254
5	~~533~~ 563	~~304~~ 321
6	~~640~~ 676	~~367~~ 388
7	~~747~~ 789	~~428~~ 452
8	~~852~~ 900	~~487~~ 514
9	~~903~~ 954	~~537~~ 567
10	~~951~~ 1,004	~~585~~ 618
11	~~998~~ 1,054	~~633~~ 668
12	~~1,043~~ 1,101	~~676~~ 714
13	~~1,089~~ 1,150	~~723~~ 763
14	~~1,131~~ 1,194	~~765~~ 808

15	~~1,173~~ 1,239	~~807~~ 852
16	~~1,212~~ 1,280	~~846~~ 893

Subsections (3) through (4) remain the same.

(a) Maximum payment amounts to be used when adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	~~With Shelter Obligation Per Day~~	Without Shelter Obligation Per Month	~~Without Shelter Obligation Per Day~~
1	$ ~~235~~ 248	$ ~~7.83~~	$ ~~86~~ 91	$ ~~2.87~~
2	~~310~~ 332	~~10.60~~	~~138~~ 146	~~4.60~~
3	~~401~~ 416	~~13.37~~	~~189~~ 200	~~6.30~~
4	~~484~~ 499	~~16.13~~	~~239~~ 252	~~7.97~~
5	~~567~~ 583	~~18.90~~	~~287~~ 303	~~9.57~~
6	~~650~~ 667	~~21.67~~	~~330~~ 348	~~11.00~~
7	~~732~~ 750	~~24.40~~	~~375~~ 396	~~12.50~~
8	~~816~~ 834	~~27.20~~	~~416~~ 439	~~13.87~~
9	~~855~~ 875	~~28.50~~	~~455~~ 480	~~15.17~~
10	~~893~~ 916	~~29.77~~	~~493~~ 521	~~16.43~~
11	~~926~~ 949	~~30.87~~	~~526~~ 554	~~17.53~~
12	~~959~~ 986	~~31.97~~	~~560~~ 591	~~18.67~~
13	~~988~~ 1,017	~~32.93~~	~~589~~ 622	~~19.63~~
14	~~1,017~~ 1,047	~~33.90~~	~~617~~ 652	~~20.57~~
15	~~1,044~~ 1,075	~~34.80~~	~~644~~ 680	~~21.47~~
16	~~1,068~~ 1,122	~~35.60~~	~~668~~ 727	~~22.27~~

(b) Maximum payment amounts to be used when no adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard as defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	~~With Shelter Obligation Per Day~~	Without Shelter Obligation Per Month	~~Without Shelter Obligation Per Day~~
1	$ ~~86~~ 91	$ ~~2.87~~	$ ~~32~~ 34	$ ~~1.07~~
2	~~168~~ 177	~~5.60~~	~~86~~ 91	~~2.87~~
3	~~252~~ 266	~~8.40~~	~~138~~ 146	~~4.60~~
4	~~335~~ 354	~~11.17~~	~~189~~ 200	~~6.30~~
5	~~418~~ 441	~~13.93~~	~~239~~ 252	~~7.97~~
6	~~502~~ 530	~~16.73~~	~~288~~ 304	~~9.60~~
7	~~586~~ 619	~~19.53~~	~~336~~ 355	~~11.20~~
8	~~669~~ 706	~~22.30~~	~~382~~ 403	~~12.73~~
9	~~709~~ 749	~~23.63~~	~~422~~ 446	~~14.07~~

10	~~747~~	789	~~24.90~~	~~459~~ 485	~~15.30~~
11	~~783~~	827	~~26.10~~	~~497~~ 525	~~16.57~~
12	~~819~~	865	~~27.30~~	~~531~~ 561	~~17.70~~
13	~~855~~	903	~~28.50~~	~~568~~ 600	~~18.93~~
14	~~888~~	938	~~29.60~~	~~601~~ 635	~~20.03~~
15	~~921~~	973	~~30.70~~	~~633~~ 668	~~21.10~~
16	~~951~~	1,004	~~31.70~~	~~664~~ 701	~~22.13~~

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

3. Payments to recipients of Aid to Families with Dependent Children (AFDC) are currently set at 40.5% of the federal poverty level, as mandated by House Bill 2 of the November 1993 Special Session of the 53rd Montana Legislature. New poverty levels for 1994 were published in February, 1994, resulting in increases in AFDC payment amounts. The AFDC gross monthly income standards and net monthly income standards are based on the payment amounts and therefore must also be increased at this time.

The amendment of ARM 46.10.403 is necessary to implement these increases. It should be noted that these changes are unrelated to other changes to the AFDC standards and payment amounts proposed in the rule notice published on February 10, 1994, having to do with different standards and payment amounts for recipients with shared living arrangements. In both rule notices we are changing AFDC standards, but not the same standards.

In this rule notice we are proposing to increase all standards and maximum payment amounts used for recipients with a shelter obligation and for those without a shelter obligation. Also, in the tables of maximum payment amounts we are eliminating figures showing the payment amounts per day for recipients with and without a shelter obligation because the daily amounts can be computed from the monthly figures and it is therefore unnecessary to include the daily figures in the rule.

On the other hand, in the rule notice concerning shared living arrangements, we did not propose to change the standards and payment amounts for persons with a shelter obligation or without a shelter obligation. Instead, we proposed the inclusion of additional standards and maximum payment amounts for recipients with a shared shelter obligation, i.e. recipients without a shelter obligation who share their living quarters with persons outside the AFDC assistance unit.

4. These amendments will take effect on July 1, 1994.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 26, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1994.

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

In the matter of the amendment of rules 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1249 and 46.12.1251 pertaining to medicaid coverage and reimbursement of nursing facility services	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1249 AND 46.12.1251 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF NURSING FACILITY SERVICES

TO: All Interested Persons

1. On May 25, 1994, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1249 and 46.12.1251 pertaining to medicaid coverage and reimbursement of nursing facility services.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 16, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.1222 DEFINITIONS Subsections (1) through (13) remain the same.

(14) "Nursing facility services" means nursing facility services provided in accordance with 42 CFR, Part 483, Subpart B, or intermediate care facility services for the mentally retarded provided in accordance with 42 CFR, Part 483, Subpart ~~D~~I. The department hereby adopts and incorporates herein by reference 42 CFR, Part 483, Subparts B and ~~D~~I, which define the participation requirements for nursing facility and intermediate care facility for the mentally retarded (ICF/MR) providers, copies of which may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210. The term

"nursing facility services" includes the term "long term care facility services". Nursing facility services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Payment for the services listed in this subsection is included in the per diem rate determined by the department under ARM 46.12.1226 or 46.12.1249 and no additional reimbursement is provided for such services. Nursing facility services include but are not limited to the following or any similar items:

Subsections (14)(a) through (14)(h) remain the same.

(15) "Patient contribution" means the total of all of a resident's income from any source available to pay the cost of care, less the resident's personal needs allowance. The patient contribution includes a resident's incurment determined in accordance with ~~ARM 46.12.3804~~ applicable eligibility rules.

Subsections (16) and (17) remain the same.

(18) "Rate year" means a 12-month period beginning July 1. For example, rate year 199~~2~~5 means a period corresponding to the state fiscal year ~~1992~~ July 1, 1994 through June 30, 1995.

Subsections (19) and (20) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1223 PROVIDER PARTICIPATION AND TERMINATION REQUIREMENTS Subsections (1) through (2) remain the same.

(3) A provider must provide the department with 30 days advance written notice of termination of participation in the medicaid program. Notice will not be effective prior to 30 calendar days following actual receipt of the notice by the department. Notice must be mailed or delivered to the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(a) For purposes of subsection (3), termination includes a cessation of provision of services to medicaid residents, termination of the provider's business, a change in the entity administering or managing the facility or a change in provider as defined in ARM 46.12.1241.

(b) In the event that discharge or transfer planning is necessary, the provider remains responsible to provide for such planning in an orderly fashion and to care for its residents until appropriate transfers or discharges are effected, even though transfer or discharge may not have been completed prior to the facility's planned date of termination from the medicaid program.

(c) Providers terminating participation in the medicaid program must prepare and file, in accordance with applicable

cost reporting rules, a close out cost report covering the period from the end of the provider's previous fiscal year through the date of termination from the program. New providers assuming operation of a facility from a terminating provider must enroll in the medicaid program in accordance with applicable rules.

AUTH: Sec. 53-6-108, 53-6-111 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111 and 53-6-113 MCA

46.12.1229 OPERATING COST COMPONENT Subsections (1) through (2)(a) remain the same.

~~(i) Except as otherwise specified in ARM 46.12.1243, for rate year 1992, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1989 and December 31, 1989 inclusive, if available or, if not available, the provider's cost report period of at least six months on file with the department before July 1, 1991.~~

~~(ii) Except as otherwise specified in ARM 46.12.1243, for rate years beginning on or after July 1, 1992, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, if available or, if such a cost report has not been timely filed or is otherwise not available, the provider's cost report period of at least six months on file with the department before April 1 immediately preceding the rate year.~~

Subsection (2)(a)(iii) remains the same in text but is renumbered (2)(a)(i). Subsections (2)(b) through (2)(d) remain the same.

~~(i) For purposes of setting state fiscal year 1992 rates, if a provider has not filed a cost report for a period of at least six months with a fiscal year ending between January 1, 1989 and December 31, 1989 inclusive, such provider shall not be included in the array for purposes of calculating the median.~~

Subsections (2)(d)(ii) and (2)(d)(iii) remain the same in text but are renumbered (2)(d)(i) and (2)(d)(ii). Subsections (2)(e) through (5)(a) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT Subsections (1) through (2)(a) remain the same.

~~(i) Except as otherwise specified in ARM 46.12.1243, for rate year 1992, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1989 and December 31, 1989 inclusive, if available or, if not available, the provider's cost report period of at~~

~~least six months on file with the department before July 1, 1991.~~

~~(ii) Except as otherwise specified in ARM 46.12.1243, for rate years beginning on or after July 1, 1992, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, if available or, if such a cost report has not been timely filed or is otherwise not available, the provider's cost report period of at least six months on file with the department before April 1 immediately preceding the rate year.~~

Subsection (2)(a)(iii) remains the same in text but is renumbered (2)(a)(i). Subsection (2)(b) remains the same.

(i) For purposes of calculating the composite nursing wage rate, the provider's base period average patient assessment score, determined in accordance with ARM 46.12.1232, is the average patient assessment score that was previously determined by the department in accordance with ARM 46.12.1232 for purposes of setting the provider's rate for an earlier rate period and which most closely corresponds to the base period.

Subsections (2)(c) through (2)(f) remain the same.

~~(i) For purposes of setting rate year 1992 rates, if a provider has not filed a cost report for a period of at least six months with a fiscal year ending between January 1, 1989 and December 31, 1989 inclusive, such provider shall not be included in the array for purposes of calculating the median.~~

Subsection (2)(f)(ii) remains the same in text but is renumbered (2)(f)(i). Subsections (3) and (4) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1232 PATIENT ASSESSMENT SCORING AND STAFFING REQUIREMENTS Subsections (1) through (4)(a) remain the same.

(5) Once a year, for purposes of determining the direct nursing personnel cost component as provided in ARM 46.12.1231, the department will determine the provider's average patient assessment score, using the methodology described in subsection (4)(a), considering such hours as are allowable under the patient assessment manual and based upon all patient assessment information for the provider from a survey period consisting of ~~not less than three nor more than six of the months in~~ the previous 6-month period of October through March inclusive.

Subsections (5)(a) through (8)(b)(ii) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-108 MCA

46.12.1235 OBRA COST REIMBURSEMENT Subsections (1) through (3)(b)(iv) remain the same.

(A) For ~~the period April 1, 1992 through June 30, 1993,~~ rate years beginning on or after July 1, 1994, the facility's medicaid utilization percentage will be determined based upon the form MA-15 staffing reports on file with the department for the previous 3-month period of ~~November 1991 through January 1992~~ January through March inclusive, by dividing the total medicaid patient days reflected in the staffing reports for such period by the total patient days reflected in the staffing reports for such period. ~~(B) For rate years beginning on or after July 1, 1993, the facility's medicaid utilization percentage will be determined based upon the form MA-15 staffing reports on file with the department for the period of January 1993 through March 1993, by dividing the total medicaid patient days reflected in the staffing reports for such period by the total patient days reflected in the staffing reports for such period.~~

Subsection (3)(b)(v) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1237 CALCULATED PROPERTY COST COMPONENT Subsections (1) through (2)(d) remain the same.

(i) For rate years beginning on or after July 1, 199~~3~~4, the property rate cap is $9.~~64~~81.

(e) "199~~3~~4 property component" means the provider's calculated property component determined for rate year 199~~3~~4 in accordance with ARM 46.12.1237.

(i) For any provider providing nursing facility services in a facility constructed prior to June 30, 1982 and for whom a calculated property component has not been determined by the department in accordance with ARM 46.12.1237 for rate year 199~~3~~4, the 199~~3~~4 property component shall equal the June 30, 1985 property rate computed for the facility according to the rules in effect as of June 30, 1985 and indexed forward to the 1992 rate year according to the rules in effect for rate year 1992.

(3) For rate years beginning on or after July 1, 199~~3~~4, the provider's calculated property cost component is as follows:

(a) If the provider's 199~~3~~4 property component is greater than the provider's base year per diem property costs, then the provider's calculated property cost component is the lesser of the provider's 199~~3~~4 property component or the property rate cap of $9.~~64~~81.

(b) If the provider's base year per diem property costs exceed the provider's 199~~3~~4 property component by more than $0.17, then the provider's calculated property cost component is the sum of the provider's 199~~3~~4 property component plus $0.17.

(c) If the provider's base year per diem property costs exceed the provider's 199~~3~~4 property component by $0.17 or less,

then the provider's calculated property cost component is the provider's base year per diem property costs.

Subsection (4) remains the same.

(a) the adjusted component shall be the lesser of $9.~~64~~81 or a blended rate determined by dividing the sum of the product of pre-construction square footage and the provider's July 1 calculated property cost component and the product of the additional constructed square footage and $9.~~64~~81, by the total square footage after construction.

Subsection (5) remains the same.

(a) the adjusted component shall be the lesser of $9.~~64~~81 or the existing component plus a per diem amount determined by amortizing 80% of the amount derived by dividing the total allowable remodeling cost by the number of licensed beds after remodeling. Such amount shall be amortized over 360 months at 12% per annum. A per diem amount shall be determined by multiplying the monthly amortization amount by 12 months and dividing the result by 365.

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

46.12.1241 CHANGE IN PROVIDER DEFINED Subsections (1) through (2) remain the same.

(3) As required in ARM 46.12.1223, a provider must provide the department with 30 days advance written notice of a change in provider and must file a close out cost report, and new providers must enroll in the medicaid program in accordance with applicable requirements.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1245 SEPARATELY BILLABLE ITEMS Subsections (1) through (1)(de)(iii) remain the same.

(2) The department may, in its discretion, pay as a separately billable item, a per diem nursing services increment for services provided to a ventilator dependent resident if the department determines that extraordinary staffing by the facility is medically necessary based upon the resident's needs.

(a) Payment of a per diem nursing services increment under subsection (2) for services provided to a ventilator dependent resident shall be available only if, prior to the provision of services, the increment has been authorized in writing by the department's medicaid services division. Approvals will be effective for one month intervals and reapproval must be obtained monthly.

(b) The department may require the provider to submit any appropriate medical and other documentation to support a request for authorization of the increment. Each calendar month, the provider must submit to the department, together with reporting

forms and according to instructions supplied by the department, time records of nursing services provided to the resident during a period of five consecutive days. The submitted time records must identify the amount of time care is provided by each type of nursing staff, i.e., licensed and non-licensed.

(c) The increment amount shall be determined by the department as follows. The department shall subtract the facility's current patient assessment score (determined under ARM 46.12.1232) from the average itemized hours of licensed and non-licensed nursing hours per day for the ventilator dependent resident, determined based upon the facility's time records of nursing services for the 5-day period submitted in accordance with subsection (b), to determine the extraordinary nursing hours for the resident. The increment shall be determined by the department by multiplying the number of extraordinary nursing hours per day by an hourly nursing rate determined by the department for the resident. The department shall determine the hourly nursing rate for the resident based upon the facility's inflated base period composite nursing wage rate determined for the rate year according to ARM 46.12.1231(2)(b) and the mix of licensed and non-licensed nursing staff used to provide the extraordinary nursing hours for the resident. The department will determine the increment for each resident monthly.

Subsections (2) through (9) remain the same in text but are renumbered (3) through (10).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1249 REIMBURSEMENT FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (1) For intermediate care facility services for the mentally retarded provided in facilities located in the state of Montana, the Montana medicaid program will pay a provider a per diem rate equal to the actual allowable cost incurred by the provider during the fiscal year, determined retrospectively in accordance with ARM 46.12.1258 and 46.12.1260, divided by the total patient days of service during the ~~provider's fiscal~~ rate year, minus the amount of the medicaid recipient's patient contribution, subject to the limits specified in subsection (2).

(2) Payments under subsection (1) may not exceed the following limits:

~~(a) For fiscal years ending on or before June 30, 1987, the payment rate will not exceed the final rate in effect on June 30, 1982, as indexed to the mid-point of the rate year by 9% per 12 month year.~~

~~(b) For fiscal years ending after June 30, 1987 and on or before June 30, 1988, the payment rate will not exceed the final rate in effect on June 30, 1987 indexed by 5.1% to June 30 of the rate year.~~

~~(c) For fiscal years ending after June 30, 1988 and on or before June 30, 1989, the payment rate will not exceed total allowable costs per day for the 12-month period ended June 30, 1989, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.~~

~~(d) For fiscal years ending after June 30, 1990 and on or before June 30, 1991, the payment rate will not exceed total allowable costs per day for the 12-month period ending June 30, 1991, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.~~

~~(e) For fiscal years ending after June 30, 1991 and on or before June 30, 1992, the payment rate will not exceed total allowable costs per day for the 12-month period ended June 30, 1992, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.~~

~~(f) For fiscal years ending after June 30, 1992 and on or before June 30, 1993, the payment rate will not exceed total allowable costs per day for the 12-month period ended June 30, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.~~

(~~g~~a) For fiscal years ending ~~after June 30, 1993 and~~ on or ~~before~~ after June 30, 1994, the payment rate will not exceed total allowable costs per day for ~~the 12-month~~ the previous cost reporting period ~~ended June 30, with increases in subsequent years~~ indexed to June 30 of the rate year by ~~an index not to exceed~~ the final medicare market basket index applicable to the rate year.

~~(3) Providers having a 1989 or 1991 cost reporting period ending on a date other than June 30 must submit detailed cost information supplemental to the cost report within 90 days after June 30. This cost information must be for the period July 1 through June 30 of the respective reporting year and must include, at a minimum, worksheet A and the medicaid long term care facility trial balance (form MA-2), which are standard cost report forms.~~

(3) All ICF/MR providers must use a July 1 through June 30 fiscal year for accounting and cost reporting purposes.

(4) Prior to the billing of July services each rate year, the department will ~~compute~~ determine an interim payment rate ~~which is~~ for each provider. The provider's interim payment rate shall be determined based upon the department's estimate of actual allowable cost under ARM 46.12.1258, divided by estimated patient days for the rate year. The department may ~~determine estimated costs based upon provider cost estimates, subject to the provisions of ARM 46.12.1258~~ consider, but shall not be bound by, the provider's cost estimates in estimating actual allowable costs. The provider's interim payment rate is an

estimate only and shall not bind the department in any way in the final rate determination under subsections (1) and (5).

(5) The provider's final rate as provided in subsection (1) shall be determined based upon the provider's cost report for the rate year filed in accordance with ARM 46.12.1260, after desk review or audit by the department's audit staff. The difference between actual includable cost allocable to services to medicaid residents, as limited in subsection (2), and the total amount paid through the interim payment rate will be settled through the overpayment and underpayment procedures specified in ARM 46.12.1261.

Subsection (6) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1251 REIMBURSEMENT TO OUT OF STATE FACILITIES

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

(5) Reimbursement to nursing facilities located outside the state of Montana for medicare coinsurance days for dually eligible medicaid and medicare individuals shall be limited to the per diem rate established by the facility's state medicaid agency, less the medicaid recipient's patient contribution.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

3. The proposed changes to the medicaid nursing facility rules are necessary to notify medicaid nursing facility providers of the rate methodology for the 1995 rate year, to implement various annual updates to the rules, to address issues that have arisen in various program areas and to make miscellaneous revisions to more clearly specify program requirements and processes.

The proposed rule changes are necessary to implement legislative funding increases for nursing facility reimbursement for state fiscal year 1995. The 1993 Montana legislature appropriated funds under House Bill 2 for increases in aggregate medicaid reimbursement to nursing facilities. House Bill 333 provides additional funding from a provider bed fee of $2.80 per patient day on all payers for fiscal year 1995.

The funding appropriated by the 1993 legislature results in fiscal year 1995 nursing facility reimbursement in the average amount of $80.31 per patient day or a total of $ 114,830,376 of combined state funds, federal funds, and patient contributions. This represents an average increase of $5.14 per patient day over the fiscal year 1994 reimbursement level.

Under the proposed rules, the department will continue use of the current reimbursement methodology. The rules with the proposed changes will update the operating and direct nursing components by applying the DRI McGraw-Hill Nursing Home market basket index to 1992 base period costs to project costs for rate year 1995 and adjusting the median rate arrays to set the cost limits for the 1995 rate year. The department at this time proposes to continue use of the 110% of median operating cost limit and the 125% of median direct nursing personnel cost limit. The department proposes to continue the methodology using cost report information rather than survey information to compute the licensed to non-licensed ratio for the patient assessment system. The proposed rules also continue to provide for an operating incentive at the lesser of 40% of the difference between the provider's indexed cost and the operating cost limit, or 10% of the indexed median operating cost.

The proposed amendments are necessary to update the property cost component based upon prior reimbursement levels and costs, and revise the property cost component upper limit to account for new construction cost information. The department proposes to modify reimbursement for the property cost component using property reimbursement levels set for 1994 and per diem costs per day as computed from the 1992 medicaid base period cost reports. This methodology would increase the new construction rate from $9.64 to $9.81. The proposed property reimbursement methodology will provide for rate increases of up to 17 cents per patient day. Providers will either remain at their 1994 property reimbursement level or receive an increase in property reimbursement up to the lower of their cost per day or 17 cents based upon their 1992 cost reports.

The proposed amendments will continue to apply a limit on medicaid reimbursement if a facility's private pay rate is lower than the computed medicaid rate. The department will survey nursing facilities to determine the private pay rate effective July 1, 1994. If the private pay rate is less than the computed July 1 rate under the reimbursement formula, then the facility's medicaid reimbursement is limited to the facility private pay rate for the entire rate year. This will continue to implement legislative cost containment amendments included in House Bill 2.

Again for rate year 1995, providers' rates will not be subject to minimum or maximum amount of increase over the 1994 rate.

The department will, prior to the rule hearing on the proposed changes, continue to analyze the cost data as inflated by the DRI index, and the resulting arrays and total per diem rates. The components, percentages and caps must be set in combination

to assure that the reimbursement system and levels of reimbursement furthers the department's goals.

The department would like to establish a working committee or advisory group to work on several areas of the reimbursement system for proposed changes to the 1996 reimbursement rule. The department would like assistance from this group on the following areas or any others that could improve the reimbursement system:

1. Combination of the patient assessment system with the minimum data set to avoid duplication and to develop a better case mix reimbursement component. These changes would impact the direct nursing component and its computation.

2. Property system changes using the study prepared by Myers and Stauffer and the property funding included in current appropriations.

3. Sub-acute reimbursement for ventilator dependent and head-injured residents.

4. An exceptions process to allow consideration of rate relief for exceptional circumstances outside the control of a provider that occur after rates have been set on July 1.

The proposed changes to ARM 46.12.1223 and 46.12.1241 are necessary to add provisions specifying requirements applicable to providers terminating participation in the medicaid nursing facility program through changes in provider or other circumstances. In several recent cases, it has come to the department's attention that changes in provider has occurred without notice to the department. As a result, close out costs reports were not filed. Also, recent facility closures or discussions of closures have indicated that providers are not aware of the notification requirements and termination procedures. The proposed changes specify notice requirements, specify what is considered termination from the program, specify provider responsibilities to residents, and specify cost reporting requirements for terminating providers and enrollment requirements for new providers assuming the operations of terminating providers.

The proposed changes to ARM 46.12.1245 are necessary to establish a methodology to provide additional reimbursement for providers that incur extraordinary nursing cost to provide care to ventilator dependent residents. These provisions are necessary to assure that facilities will accept ventilator dependent medicaid residents, who have been difficult to place. The proposed provisions specify the requirements to obtain the

additional reimbursement and the methodology used by the department to determine the amount of reimbursement. The additional reimbursement will be available only for providers that the department determines are not adequately reimbursed through the facility's established per diem rate, as demonstrated by documented nursing service levels. The proposed rules require that the additional reimbursement be prior authorized by the department's medicaid services division on a monthly basis.

The proposed changes to ARM 46.12.1249 are necessary to specify the rate of increase ceiling for the 1995 rate year intermediate care facilities for the mentally retarded (ICFs/MR) and to delete provisions relating to rate of increase ceilings applicable to prior rate years. The proposed changes also generally revise the rule to more clearly and accurately specify the final and interim rate methodologies and the cost settlement processes. The proposed changes also are necessary to require that all ICF/MR providers use a July 1 through June 30 fiscal year for accounting and cost reporting purposes and to delete the obsolete provision relating to providers that use other fiscal years.

The proposed changes to ARM 46.12.1251 are necessary to specify that reimbursement to out-of-state facilities for medicare coinsurance days is limited to the per diem rate established by the medicaid agency in that state.

The proposed changes to ARM 46.12.1222(14) are necessary to update the reference to and incorporation of 42 CFR, part 483, subpart D which contains ICF/MR participation requirements. The correct current citation is 42 CFR, part 483, subpart I.

The proposed changes to ARM 46.12.1222(15) are necessary to recognize all applicable eligibility rules, not only the cited rule, in determining the appropriate level of patient contribution to the cost of nursing facility care.

The proposed changes to ARM 46.12.1222(18) are necessary to clearly specify that "rate year" means the period from July 1 through June 30 of each year.

The proposed changes to ARM 46.12.1229, 46.12.1231 and 46.12.1232 are necessary to delete provisions regarding base periods and calculations used in prior rate years.

The proposed changes to ARM 46.12.1231(2)(b)(i) is necessary to remove an apparent ambiguity in the designation of the average patient assessment score to be used in the calculation of the composite nursing wage rate.

The proposed changes to ARM 46.12.1232(5) are necessary to specify that the average patient assessment score will be determined based upon the six-month period October through March prior to the rate year. This is a change from the current language which permits the department to select any period of at least three months from the period October through March.

The proposed changes to ARM 46.12.1235 are necessary to specify the time period from which staffing reports will be used to compute the medicaid utilization percentage for purposes of reimbursing for nurse aide testing and competency evaluation programs.

The estimated financial impact of the proposed changes is approximately $6.9 million in fiscal year 1995. The medicaid advisory committee will be informed of the proposed changes on April 28, 1994. Copies of this rule notice may be obtained from local county human service offices.

4. The proposed changes will become effective July 1, 1994.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 26, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1994.

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

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

TO: All Interested Persons

1. On May 18, 1994, at 9:15 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.12.3803 pertaining to medically needy income standards.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 9, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS
Subsections (1) through (3)(b) remain the same.

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

Family Size	One Month Net Income Level	
1	$ ~~425~~	446
2	~~425~~	450
3	~~455~~	475
4	~~484~~	499
5	~~567~~	583
6	~~650~~	667
7	~~732~~	750
8	~~816~~	834
9	~~855~~	875
10	~~893~~	916
11	~~926~~	949

12	~~959~~	986
13	~~988~~	1,017
14	~~1,017~~	1,047
15	~~1,044~~	1,075
16	~~1,068~~	1,122

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

3. The medically needy levels (also known as the medically needy income standards) are based on the standards of the most closely related cash assistance program, which is the Aid to Families with Dependent Children (AFDC) program. Thus any change in the AFDC standards necessitates changes in the medically needy standards.

The AFDC payment standards are currently set at 40.5% of the federal poverty level, as mandated by House Bill 2 of the November 1993 Special Session of the 53rd Montana Legislature. New poverty levels for 1994 were published in February, 1994, resulting in increases in the AFDC standards. The amendment of ARM 46.10.403 is therefore necessary to increase the medically needy income standards due to the increases in AFDC standards.

4. These amendments will take effect on July 1, 1994.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 26, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1994.

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

In the matter of the amendment of rules 46.12.590, 46.12.591, 46.12.592, 46.12.509A and 46.2.202 pertaining to medicaid coverage and reimbursement of residential treatment services	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.590, 46.12.591, 46.12.592, 46.12.509A AND 46.2.202 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF RESIDENTIAL TREATMENT SERVICES

TO: All Interested Persons

1. On May 25, 1994, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.590, 46.12.591, 46.12.592, 46.12.509A and 46.2.202 pertaining to medicaid coverage and reimbursement of residential treatment services.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 16, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.590 RESIDENTIAL TREATMENT SERVICES, PURPOSE AND DEFINITIONS Subsections (1) through (2)(o) remain the same.

(p) "Patient day" means a whole 24-hour period that a person is present and receiving residential treatment services. Even though a person may not be present for a whole 24-hour period, the day of admission and, subject to the limitations and requirements of ARM 46.12.592, therapeutic home leave days are patient days. The day of discharge is not a patient day for purposes of reimbursement.

Subsection (3) remains the same.

(4) Medicaid reimbursement is not available for services until and unless a complete and accurate certification of need for services, as defined in 42 CFR 441.152(a) and 153, has been completed:

(a) prior to admission, for an individual who is a recipient of medicaid when admitted to the facility; or

~~(b) within 14 days after an emergency admission; or~~

Subsection (4)(c) remains the same in text but is renumbered (4)(b).

(5) The provider must notify the department's designated review organization of each admission of a medicaid-eligible individual within three working days of ~~an emergency~~ the admission ~~so that a certification can be completed within 14 days of admission~~. If the provider fails to ~~timely~~ notify the review organization within 3 working days of the admission, the department shall deny reimbursement for the period from admission to the actual date of notification.

Auth: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-139 and 53-6-141 MCA

46.12.591 RESIDENTIAL TREATMENT SERVICES, PARTICIPATION REQUIREMENTS Subsections (1) through (2)(b) remain the same.

(c) enroll in the Montana medicaid program and maintain a current provider agreement with the department to provide residential treatment services, ~~including a provider enrollment form,~~ or, if the provider's facility is not located within the state of Montana, enter into and maintain a current provider enrollment form with the department's fiscal agent;

Subsections (2)(d) through (2)(j) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-139 and 53-6-141 MCA

46.12.592 RESIDENTIAL TREATMENT SERVICES, REIMBURSEMENT (1) The reimbursement period will be the provider's fiscal year. ~~Reimbursement f~~For residential treatment services, ~~will be at~~ the Montana medicaid program will pay a provider for each patient day the allowable cost ~~per day~~ incurred, determined on a retrospective basis, subject to an upper limit which will be the lesser of:

(a) the per patient day amount charged to the medicaid program;

(b) medicaid allowable costs per patient day as determined in accordance with this section, subject to the ceiling established in this section.

Subsections (2) through (2)(b) remain the same.

(c) Educational and vocational training costs are ~~not~~ an allowable cost if such costs qualify for federal financial participation under the provisions of 42 CFR 441.13(b), as amended effective December 21, 1992.

Subsections (3) through (4)(b) remain the same.

(5) The provider's base period for costs other than educational and vocational training costs will be the first full

12-month cost reporting period ending after June 30, 1985. No exceptions to this rule will be granted and the exception provisions contained in the HCFA-Pub. 15 and medicare regulations do not apply for purposes of determining the base period under these rules.

(a) For providers previously participating as hospital providers which convert their facilities to residential treatment facilities, the base period for costs other than educational and vocational training costs shall be the providers first full 12-month cost reporting period of participation in the Montana medicaid program as a residential treatment facility.

Subsections (5)(b) and (5)(c) remain the same.

(d) Base period allowable educational and vocational training costs shall be determined separately from other provider costs. The base period for educational and vocational training costs is the provider's first full 12-month cost reporting period ending on or after December 21, 1993. A base period educational and vocational training cost per day shall be determined by dividing the allowable medicaid educational and vocational training costs for the base period by the total number of medicaid patient days in the base period. In cost reporting years after the base period, reimbursement for educational and vocational training costs shall be subject to a ceiling on the rate of increase in costs per patient day. The ceiling shall be established as provided in subsection (6).

(6) Reimbursement to providers for all periods subsequent to the base period will be subject to a ceiling on the rate of increase of operating costs per patient day and educational and vocational training costs per patient day for services that will be recognized as reasonable for purposes of determining medicaid reimbursement.

(a) Ceilings established under this section will be applied to all full 12-month cost reporting periods that follow a base period as described in subsection (5) through (5)(d). For purposes of determining base period reimbursement, allowable cost shall be determined in accordance with subsection (2), without application of the ceiling established in this section.

Subsection (6)(b) remains the same.

(c) The cost per day ceilings established under this section ~~applies~~ apply to operating costs and educational and vocational training costs incurred by a provider in furnishing inpatient services. For purposes of calculating and applying the rate of increase ceiling on operating costs under these rules, operating costs exclude the costs of malpractice insurance and capital-related costs described in subsection (5)(c). Such costs shall be allowable operating costs to the extent otherwise permitted by these rules.

(d) Base period ~~operating costs~~ and subsequent ~~operating~~ costs subject to the ceilings as described in this subsection will be determined on a cost per day basis. Allowable medicaid

costs as defined in subsection (2) will be divided by the total number of medicaid inpatient days to determine the cost per day.

Subsection (6)(e) remains the same.

(7) For each provider, ~~a~~ ceilings will be established on the reimbursable operating costs per patient day and the reimbursable educational and vocational training costs per patient day of that provider. The ceiling for each 12-month cost reporting period, which is the maximum medicaid allowable cost per day, will be set as follows:

(a) For the first 12-month cost reporting period to which this ceiling applies, the ceiling will equal the provider's allowable operating or educational/vocational cost per patient day for the provider's base period increased by the maximum increase percentage for the subject period.

Subsection (7)(b) remains the same.

(8) The maximum increase percentage ~~increase~~ applicable to each 12-month cost reporting period will be used to determine the ceiling on the allowable rate of cost increase under this section.

Subsection (8)(a) remains the same.

(9) At the end of each 12-month cost reporting period subject to this section, the provider's allowable medicaid cost per patient day is compared with that provider's ceiling for that period.

(a) The provider will receive the actual allowable medicaid cost per patient day or the provider's ceiling amount for that period, whichever is less.

(b) Exceptions to the ceiling on operating or educational/vocational cost increases may be allowed as described in 42 CFR 413.40(g) (October 1, 1992) which is a federal regulation which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210. Requests for exceptions must be submitted to the department in writing along with supporting documentation. The department will determine whether the provider is entitled to an exception and will notify the provider in writing of its determination.

Subsections (9)(c) through (11) remain the same.

(a) the recipient's plan of care ~~provides~~ documents the medical need for therapeutic home visits;

Subsection (11)(b) remains the same.

(c) the recipient is absent from the provider's facility for no more than 72 consecutive hours per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence.

(12) No more than ~~24~~ 10 days per recipient in each rate year will be allowed for therapeutic home visits.

(13) The provider must submit to the department's medicaid services division or its designee a request for a therapeutic home visit bed hold, on the appropriate form provided by the department, within 90 days of the first day a recipient leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with department's medicaid services division.

(14) Providers must bill for residential treatment services using the revenue codes listed in the department's residential treatment services provider manual.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, and 53-6-141 MCA

46.2.202 OPPORTUNITY FOR HEARING Subsections (1) through (3) remain the same.

(4) Medical assistance providers of ~~inpatient psychiatric~~ residential treatment services for individuals under age 21, inpatient hospital services, outpatient hospital services, swing-bed hospital services, federally qualified health center services and case management services for high risk pregnant women contesting adverse department actions, other than medical assistance providers appealing eligibility determinations as a real party in interest, shall be granted the right to a hearing as provided in ARM 46.12.509A.

Subsections (5) and (6) remain the same.

AUTH: Sec. 2-4-201, 41-3-1142, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305 MCA
IMP: Sec. 2-4-201, 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305 MCA

46.12.509A ADMINISTRATIVE REVIEW AND FAIR HEARING PROCESS (1) The following administrative review and fair hearing process applies to providers of inpatient and outpatient hospital services, swing-bed hospital services, ~~inpatient psychiatric~~ residential treatment services for individuals under age 21, targeted case management and federally qualified health center services.

Subsections (2) through (6) remain the same.

AUTH: Sec. 2-4-201 and 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-111, and 53-6-141 MCA

3. The proposed changes are necessary to address current issues in several aspects of the medicaid residential treatment services program.

The current rules do not clearly specify what is considered a patient day that medicaid will reimburse. The proposed addition of new ARM 46.12.590(2)(p) and the proposed changes to ARM 46.12.592(1) are necessary to specify what is considered a patient day for purposes of medicaid reimbursement.

The proposed definition in ARM 46.12.590(2)(p) specifies that the day of discharge is not a patient day that will be reimbursed by medicaid. This is necessary to address the recurring situation in which a patient is discharged from one facility and admitted to another on the same day, and both facilities bill for the same day for the same patient. The proposed rule specifies that reimbursement is not available for the day of discharge. The proposed definition in ARM 46.12.590(2)(p) is also necessary to specify that therapeutic home visit days are reimbursable patient days, but subject to the requirements and limitations specified in ARM 46.12.592(11), (12) and (13).

The proposed changes also include clarifications and changes in department policy regarding medicaid reimbursement of therapeutic home visit days. The proposed changes to ARM 46.12.592(11)(a) are necessary to more clearly specify that the patient's plan of care must document the medical need for therapeutic home visit days. Proposed changes in ARM 46.12.592(11)(c) and (13) recognize the current department use of designated mental health professionals under contract with the department to review requests for approval of certain therapeutic home visits.

The proposed change to ARM 46.12.592(12) is necessary to reduce the number of reimbursable therapeutic home visit days per rate year that medicaid will reimburse a provider. The current rules allow reimbursement of up to 24 therapeutic home visit days per rate year. These days are reimbursed at the same rate paid when the patient is actually at the facility. The department believes that reimbursement of 24 therapeutic home visit days per year is excessive. The proposed change is necessary to reduce the number of reimbursable days to 10 per rate year.

The proposed changes to ARM 46.12.590(4) are necessary to specify that medicaid reimbursement will not be available until and unless the required certification of need for the services has been done and is complete and accurate. This change is necessary to address recurring problems with incomplete and inaccurate certifications of need that fail to meet the requirements of the rules. The proposed change is intended to put providers on notice that the department will strictly

enforce the certification of need requirements. No payment will be made until the document is complete and accurate.

The proposed changes to ARM 46.12.590(4)(a) and (b) are necessary to delete an emergency admission provision no longer needed in the rules in light of the elimination of freestanding psychiatric hospital coverage under the program for children under age 21.

The proposed changes to ARM 46.12.590(5) are necessary to more clearly specify the requirement that the provider notify the designated review organization within 3 working days of each admission of a medicaid eligible patient. The proposed change is also intended to clearly put providers on notice that the department will deny payment for the period from admission to actual notification in cases where the provider fails to notify the review organization within the required time.

The proposed changes to ARM 46.12.591(2)(c) are necessary to more clearly specify that no medicaid reimbursement is available to a provider until the provider enrolls in the Medicaid program. It should be noted that the fact that a provider has not enrolled in the program does not delay the running or expiration of the timely claim filing period specified in ARM 46.12.303. The 12-month timely claim filing period begins to run on the dates specified in ARM 46.12.303, regardless of whether the provider has enrolled in the program. It is the provider's responsibility to initiate and follow through with claim submission early enough to meet the claim filing deadline.

The proposed change to ARM 46.12.592(2)(c) is necessary to correct an error that occurred in the preparation of the rule replacement pages to incorporate the changes to the residential treatment rules that were adopted in the June 24, 1993 Montana Administrative Register notice of adoption at page 1369, issue no. 12. In that notice, the rules were amended to provide that educational and vocational training costs are allowable if they qualify for federal financial participation under the amended federal regulation. The replacement rule page failed to correctly set forth the language of the rule as adopted, indicating that such costs are not allowable if they qualify under the federal regulation. This proposed change corrects this error.

The proposed changes to ARM 46.12.592(5), (5)(a), (6), (6)(a), (6)(c), (6)(d), (7), (7)(a) and (9)(b) are necessary to specify the methodology that the department will use to determine base period educational and vocational training costs and to determine the maximum increases in such costs allowable from year to year. The December 21, 1992 federal register notice expanded the educational/vocational cost allowable under the

Medicaid program. Use of the base year operating costs to set ceilings applicable to educational costs in subsequent years could unfairly prevent recognition of cost increases resulting solely from the expanded federal coverage. Use of a separate base period and ceiling for educational/vocational costs will allow recognition of the expanded cost coverage without the need to adopt a new base period for all operating costs not affected by this federal regulatory change.

The proposed change to ARM 46.12.592(8) is necessary to delete an extra word that is unnecessarily repeated.

The proposed addition of new ARM 46.12.592(14) is necessary to require providers to bill using standardized billing codes provided by the department. Currently, providers bill using a wide variety of their own codes. This makes it impossible for the department to do comparative analysis of facilities. The proposed change will allow the department to require use of uniform billing codes and to use the information to more effectively manage the program.

The proposed changes to ARM 46.12.509A(1) and 46.2.202(4) are necessary to conform these rule sections with changes adopted in the June 24, 1993 notice of amendment regarding residential treatment services in the Montana Administrative Register, issue no. 12, page 1369. Medicaid no longer covers inpatient psychiatric services for individuals under age 21 in free standing hospital settings, but only in residential treatment facilities. The name of the service category accordingly has been changed to "residential treatment services." The proposed changes delete use of the prior terminology and insert the current terminology.

The Medicaid Advisory Committee will be notified of the proposed changes on April 28, 1994. The proposed changes are not estimated to have any significant fiscal impact. A copy of the notice of the proposed changes is available from the department or local county offices of human services.

4. The proposed changes will become effective July 1, 1994.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 26, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1994.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to dental hygienists, use of auxiliary personnel and dental hygienists and exemptions and exceptions and the adoption of a new rule pertaining to definitions	))))))))	NOTICE OF AMENDMENT OF 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS, 8.16.707 USE OF AUXILIARY PERSONNEL AND DENTAL HYGIENISTS AND 8.16.1005 EXEMPTIONS AND EXCEPTIONS, AND THE ADOPTION OF 8.16.609, A NEW RULE PERTAINING TO DEFINITIONS

TO: All Interested Persons:

1. On October 28, 1993, the Board of Dentistry published a notice of public hearing on the proposed amendment of rules pertaining to the above-stated rules, at page 2473, 1993 Montana Administrative Register, issue number 20. The hearing was held on November 20, 1993, at 9:00 a.m. in the conference room of the Professional and Occupational Licensing Bureau, 111 N. Jackson, Helena, Montana.

2. The Board has amended ARM 8.16.707 and 8.16.1005 exactly as proposed. The Board has adopted a new rule (8.16.609) pertaining to definitions (see explanation below.) The Board has amended ARM 8.16.602 as proposed but with the following changes:

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS (1) and (2) will remain the same as proposed.

~~(3) Prophylaxis is defined as a preventive dental health process by which gingival irritants including any existing combination of calculus deposits, plaque, materia alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of exposed teeth by a method or methods determined to be most suitable for the patient by an appropriately licensed practitioner.~~

~~(4) Coronal polishing is defined as a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal. Coronal polishing by itself, without an appropriately licensed practitioner inspecting for and removing any calculus or other gingival irritants deemed necessary for removal by an appropriately licensed practitioner, shall not be construed as an oral prophylaxis.~~"

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, MCA; IMP, Sec. 37-4-401, MCA

3. The Board is proposing the following new rule to address concerns raised by several persons in their individual capacity as well as staff of the Administrative Code Committee that the definitions of "coronal polishing" and "prophylaxis"

which had earlier been proposed for amendment in ARM 8.16.602 were not properly part of that rule. The concerns centered around whether the definitions as proposed related to the substance of ARM 8.16.602. The Board therefore, voted to adopt the amendments to ARM 8.16.602 but removed the definitions from that rule and voted to place the definitions in a new rule.

"I DEFINITIONS (2) "Prophylaxis" is defined as a preventive and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, materia alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling and root planing, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist, as ordered by the supervising dentist.

(1) "Coronal polishing" is defined as a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal. Coronal polishing by itself, without an appropriately licensed dentist or licensed dental hygienist inspecting for and removing any calculus or other gingival irritants deemed necessary for removal by an appropriately licensed dentist or licensed dental hygienist, shall not be construed as an oral prophylaxis."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, MCA; IMP, Sec. 37-4-401, MCA

4. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, follow:

ARM 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS

COMMENT: Lorence R. Flynn, D.D.S., James Olson, D.D.S., Robert Bowman, D.D.S., Douglas S. Hadnot, D.D.S. spoke in support of the proposed rule changes in their entirety. They agreed with the revisions in definitions of "coronal polishing" and "prophylaxis" since assistants are allowed to polish fillings, which at times may involve the entire coronal surface of the tooth, and have been allowed to remove cement, sutures and place orthodontic separators, which all involve tissue manipulation. Supported deletion of the laundry list. Expressed their opinion that the ultimate responsibility for patient care rests with the dentist.

RESPONSE: The Board noted the comments in support of the proposed rule.

COMMENT: Speaking in support of the proposed amendments to this regulation were Bill Zepp, Executive Director of the Montana Dental Association, and Dr. John Jost, representing the Montana Academy of Pediatric Dentists. It was suggested that prophylaxis be defined as a treatment process, as well as a preventive dental health process. Julie Ward, R.D.H., of

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
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RESPONSE: The Board noted the comments in support of the proposed rule.

COMMENT: Speaking in support of the proposed amendments to this regulation were Bill Zepp, Executive Director of the Montana Dental Association, and Dr. John Jost, representing the Montana Academy of Pediatric Dentists. It was suggested that prophylaxis be defined as a treatment process, as well as a preventive dental health process. Julie Ward, R.D.H., of

the Helena-area dental hygiene component, and Lori Storud, R.D.H., recommended that the definition of prophylaxis should include that it is a therapeutic process.

RESPONSE: The Board concurs with the suggestion and will expand the definition of prophylaxis to include treatment and therapeutic process.

COMMENT: Chris Herbert, R.D.H., Montana Dental Hygienists Association and John MacMaster, Staff Attorney for the Legislative Council and its Administrative Code Committee, stated that the definitions of coronal polishing and prophylaxis were misplaced because they were placed in a substantive section that otherwise does not refer to the procedures. It was suggested that these definitions be placed into a regulation titled "Definitions".

RESPONSE: The Board concurs with the comment and recommendation. The definitions are not properly included at the end of 8.16.602. The definitions are being separated from 8.16.602 and will be adopted and numbered ARM 8.16.609.

COMMENT: Lori Storud, R.D.H. suggested that the definition of prophylaxis should include curettage and root planing. Virginia Cleveland, R.D.H., and Patti Conroy, R.D.H., questioned whether the deletion of root planing, curettage, periodontal probing and soft tissue evaluation means dental assistants would be allowed to perform these functions under this proposed rule.

RESPONSE: The Board acknowledges and understands the concerns. Root planing and curettage should be included in the definition of "prophylaxis." The inclusion then clarifies that a dentist may not delegate these functions to a dental assistant. The Board believes that the changes proposed in these definitions will help to make more manpower available to the public. They will provide better overall periodontal care by freeing the hygienist up to be able to deliver it. The changes are not designed to benefit the dentists at the expense of the standard of care provided each patient.

Although not commented on specifically, the Board voted to delete the word "exposed" in the prophylaxis definition. By deleting the word "exposed" a licensed dental hygienist may treat a blind spot, subgingivally which is customary and common in the practice of dental hygiene.

COMMENT: Teresa Dougherty, R.D.H.; Laurie Hendrickson, R.D.H.; Sharon Swanson, R.D.H.; Lori Storud, R.D.H.; and Chris Herbert, R.D.H., representing the Montana Dental Hygienists Association stated that the wording "appropriately licensed practitioner" is open to many different interpretations and suggested the language be amended to "licensed dentist or licensed dental hygienist".

RESPONSE: The Board concurred with the suggestion and the language "licensed dentist or licensed dental hygienist" has been incorporated into the rule adoption.

COMMENT: Julie Blacker, R.D.H. commented that 37-4-408, MCA, prohibits an assistant from performing prophylaxis and

added that standard definitions and definitions used by insurance companies consider a coronal polishing to be part of a prophylaxis. Therefore, coronal polishing should only be done by one with at least a hygienist's training. She further stated that the Board had no authority to revise commonly understood terms by adopting these proposed definitions. Regina Gabrian, R.D.H., stated that coronal polishing is part and parcel of a prophylaxis and should not be defined as a separate procedure.

RESPONSE: The Board stated that part of the problem is that the insurance companies do not provide a billing code for "coronal polishing", but do provide such a code for "prophylaxis". The Board noted that the insurance industry has not provided a mechanism to obtain compensation for "coronal polishing". The Board feels that the definition of "prophylaxis" used by the insurance companies in their billing codes is not an appropriate clinical definition of "prophylaxis". It feels that the definitions proposed reflect the actual practice within a dental setting. The Board maintains that there is a distinction between a "prophylaxis" and "coronal polishing"; a "prophylaxis" may or may not include the element of polishing coronal surfaces.

COMMENT: Saundra Waters, R.D.H. stated coronal polishing and prophylaxis represent the same service. She asserted that the proposed rules would make an incomplete procedure, coronal polishing, legitimate and said attempts at distinguishing between the two procedures may only harm the patient's ability to obtain first-class service. She and Virginia Cleveland, R.D.H., both suggested deleting the definition of coronal polishing and stated that coronal polishing is an integral part of a prophylaxis. John MacMaster commented that the definitions appear to overlap and that if indeed there is an overlap in the definitions, the broader term of prophylaxis could include the specific item of coronal polishing, in which case, the Board would be allowing dentists to delegate a prophylactic function, which section 37-4-408, MCA prohibits. Eddy Crowley, D.D.S., stated that the proposed definition of prophylaxis defies logical explanation -- delegating such a function to a dental assistant almost certainly will be done for prophylactic reasons. Carol McGuire, R.D.H. stated the original intent in allowing dental assistants to do polishing was to allow orthodontic assistants to prepare teeth for brackets and polishing not to be a complete final procedure. Chris Herbert, R.D.H. and Judy Harbrecht, R.D.H., stated that the proposed regulations violate 37-4-408, MCA.

RESPONSE: The Board voted to further amend and adopt the definitions of prophylaxis and coronal polishing as contained in this adoption notice. The Board concluded that coronal polishing is not, by itself, the performance of a prophylaxis. The Board further concluded that there is no problem with both definitions addressing the removal of plaque or stains. The Board notes that brushing your teeth, flossing, rinsing and chewing gum remove plaque and stain. While, the broader term "prophylaxis" may include selective coronal polishing it is far more involved than just removing plaque and stains since

it also involves scaling of teeth, removal of calculus deposits, root planing, etc. In the opinion of the Board, a prophylaxis constitutes treatment and coronal polishing is a courtesy extended as part of a regular tooth cleaning. Further, the Board believes there is no violation of 37-4-408, MCA, since the use of dental assistants will still be regulated by new language added to ARM 8.16.707. It noted that the education received by dentists and hygienists is more extensive than merely dealing with polishing.

COMMENT: Kathy Mellen, R.D.H., stated it is inappropriate for the Board to allow an unlicensed dental assistant to provide the sort of service, coronal polishing, that dental hygienists perform by way of their licenses. Joe Merrick stated that dental assistants are neither licensed nor certified so why should they be allowed to perform a function such as coronal polishing that dental hygienists, who are licensed, attended school to learn. Carol McGuire, R.D.H., commented that untrained assistants should not be allowed to provide treatment that may be potentially irreversible. Teresa Dougherty, R.D.H., stated that the standards of care would be lowered and patients placed at risk if these rules are adopted.

RESPONSE: The Board notes that the use of dental assistants will still be regulated by new language added to ARM 8.16.707. Since coronal polishing is not a complete prophylaxis, the Board believes that the burden remains upon the dentist to see that the assistant is familiar with the procedure that there is no need for formal education. The dentist is ultimately responsible for the actions of the dental assistant and that the assistant may practice only under the direct supervision of the dentist. This means that any potential problem should be detected by the dentist before harm may come to the patient.

COMMENT: Lori Storud, R.D.H., stated it was inappropriate for dental assistants to perform coronal polishing since previous board rules in this regard had been ignored and abused by some practitioners. Mark Storud wrote that it was not until his teeth were cleaned by a dental hygienist that certain periodontal problems were found and corrected. In addition, Tammy Donahue, R.D.H., expressed concern that coronal polishing may be abused and that potential harm may result to the patient.

RESPONSE: One of the purposes in proposing these rule amendments was to provide a consistent and uniform regulation that all dental practitioners could adhere to. The Board feels that the implementation of uniform standards such as these will reduce the occurrence of abuse. As regards the potential for harm to the patient, the supervising dentist must be present with the assistant and so should be able to identify and correct any problems before the patient is harmed.

COMMENT: Chris Herbert, R.D.H. questioned whether instruments, burrs, ultrasonic cleaners or other devices would

be considered abrasive agents as that term is used in the definition for coronal polishing.

RESPONSE: The Board does not consider scalers, curretts, prophy jets etc. to be abrasive agents. The reason the terminology "utilization of abrasive agents" is contained in the rule is to provide a certain amount of flexibility with the various abrasive-type agents that are available. When the Board talks about abrasive agents it is talking about water and pumice, a polishing agent which might contain fluoride.

COMMENT: Suzanne Kato, R.D.H. and Darra Petersen, R.D.H. commented that the proposal does not provide for education of assistants to perform coronal polishing and x-rays. Julie Ward, R.D.H. commented that she supports coronal polishing by assistants with specific limitations and after meeting education requirements. Susan Kovan, R.D.H. questioned why the education requirements were removed. Kathy Mellen, R.D.H. commented that her dentist does not have time to train his dental assistant for such expanded duties and questioned the competency of assistants trained by dentists in their offices. Eddy Crowley, D.D.S. supported coronal polishing by assistants in preparation for brackets if properly educated, but questioned whether the Board should expect the dentist to train these people extensively in the expanded duty function area. Patti Conroy, R.D.H. commented that many intraoral tasks require education and training for safe performance and that lack of education requirement before the assistant is allowed to coronal polish means that untrained dental assistants will be performing most of the dental prophylaxis.

RESPONSE: It is the Board's position that Montana statutes allow a licensed dentist to choose to train his/her assistants or to choose not to train his/her assistants. If the dentist doesn't feel that he or she has the time, patience or desire to train the assistant then the assistant should attend an appropriate training program. However, if a dentist has the time, patience and desire to train the assistant he/she should be allowed to train the assistant to perform coronal polishing, just like he/she can train the assistant to place rubber dams, polish amalgams, floss teeth, set up trays, etc. The employing dentist is responsible for making sure that the assistant is adequately trained to perform any allowable function delegated by the dentist. Montana statute does not authorize the licensing of dental assistants, however, Montana statute does authorize the licensed dentist to employ a dental assistant and makes it clear that the dentist is ultimately responsible for the performance of the dental assistant.

COMMENT: Teresa Dougherty, R.D.H., Eddy Crowley, D.D.S., Sharon Swanson, R.D.H., Darra Petersen, R.D.H., Kelly Kemmer, R.D.H., Patti Conroy, R.D.H., Lorrie Merrick, R.D.H., Chris Herbert, R.D.H., Judy Harbrecht, R.D.H., and Julie Ward, R.D.H., protested the deletion of the laundry list of functions that could be delegated to the dental assistant. They stated that such a list permits the dentist to know what functions may be delegated and protects the public from abuse.

They also claimed that deleting the laundry list may make the regulation more difficult to enforce. They also expressed concerns that failure to delineate intraoral tasks that may be delegated to assistants means that dentists may not delegate functions to dental assistants, pursuant to section 37-4-408.

RESPONSE: The Board acknowledged all comments requesting that the laundry list currently contained in the rules be retained or at least some sort of laundry list delineating allowable functions be placed in the administrative rules. After much discussion, the Board voted to adopt the rule as proposed and delete the laundry list. The Board noted that the current list leaves much leeway because it says "including but not limited to" therefore the existing rule itself isn't comprehensive. With the elimination of the laundry list, the dentist must comply with ARM 8.16.707(1) which states "dentists shall refrain from delegating to dental auxiliaries and dental hygienists any duties or responsibilities regarding patient care that cannot be delegated to dental hygienists under section 37-4-401, MCA, and to auxiliaries under section 37-4-408, MCA, and these rules." The Board disagreed with the comment that these amendments are designed merely to benefit dentists at the expense of the standard of care for the patients. The Board believes that these changes will benefit the cost effectiveness of dental practice, that those cost savings will be seen by the patients. They will help to make more manpower available to the public.

COMMENT: Eddy Crowley, D.D.S., the Helena area dental hygiene component, John MacMaster, Attorney and Mark O'Keefe, State Auditor and Commissioner of Insurance, expressed concern that the proposed rules would blur the distinction between an assistant and a hygienist and could complicate insurance reimbursement practices and policies.

RESPONSE: The Board believes the proposed rules clarify and distinguish between an assistant and a hygienist. The definitions and amendments are intended to clarify and remove the confusions that have existed. The dentist submits for reimbursement and is directly accountable because of his or her signature on the insurance claim. If improper claims of any kind are made, the dentist is held responsible for the impropriety by the insurance company. The amendments are specific that coronal polishing is not in and of itself construed as a prophylaxis. The dentist is accountable for truthful reimbursement claims, from patients as well as insurance companies.

COMMENT: Among the comments received was one that included with it a legal opinion drafted by John Shontz, legal counsel for the Montana Dental Hygiene Association. In the opinion, Mr. Shontz questioned whether permitting dental assistants to do coronal polishing rose to the level of a traditional duty.

RESPONSE: Coronal polishing by assistants in dental offices has been commonplace since at least the early- to mid-1970s. In addition, the Board noted that studies indicate that at least 23 states and jurisdictions permit the

delegation of coronal polishing functions to dental assistants.

COMMENT: At least one individual questioned the rationale for the rule amendment stated in the Notice of Proposed Rule Amendment. The commenter inquired as to what advances in science and technology had occurred that would allow the dental assistant to do coronal polishing.

RESPONSE: The Board stated that individuals misunderstood the import of that statement of reasonable necessity. There are no advances in science and technology making assistants more adept at the process of coronal polishing; rather the advances in science and technology are such that more flexibility is required in scheduling the time of the dentist and hygienist. This leaves a function such as coronal polishing left to be picked up by the assistant.

ARM 8.16.707 USE OF AUXILIARY PERSONNEL AND DENTAL HYGIENISTS

COMMENT: Speaking in support of the proposed amendments were Bill Zepp representing the Montana Dental Association and John Jost, a Helena dentist, representing the Academy of Pediatric Dentistry. They offered general statements of support with Mr. Zepp adding that the dentist is always responsible for whatever actions occur in his office regardless of whether there is a laundry list of delegable functions. Letters also supporting the proposed changes were received from James W. Olson, D.D.S. wherein he stated that he supported the deletion of radiology regulations as "long overdue". Robert Bowman, D.D.S. submitted written testimony stating that the actions and duties of all employees in a dental office are the direct responsibility of the employing dentist.

RESPONSE: The Board noted the comments in support of the proposed rule.

COMMENT: Julie Blacker, R.D.H. speaking on behalf of the Dental Hygienists Association, stated that individuals exposing radiographs must demonstrate their competence, and such evidence of competence be posted, but asserted that MDHA should not be responsible for education and said that the dental office is not the appropriate forum for education.

RESPONSE: The Board believes that each Montana licensed dentist should be allowed to train his/her own assistants if he/she feels qualified and comfortable training them. Dental assistants are not licensed in Montana and the Board does not believe that it has the statutory authority to set forth formal educational requirements for the unlicensed dental assistant. If the dentist does not want to train his/her assistant then he/she may require some sort of attendance at an educational program.

COMMENT: Chris Herbert, R.D.H., Regina Gabrian, R.D.H., and Laurie Hendrickson, R.D.H., objected to the proposed rule because it states that x-rays may only be made by individuals competent to expose them yet then allows the assistant to use

x-rays for up to six months before having to prove competence. Carol McGuire, R.D.H., said it was inappropriate for any person to expose radiographs for any length of time without having formal training and certification.

RESPONSE: The Board disagreed with the comment. The proposed rule sets forth education requirements and allows the dentist to train his or her assistant in the office to take and expose x-rays under his or her direct supervision. The proposed rule actually sets forth stricter requirements by setting a 6 month limitation on the training period. Under existing rules there is no limitation on the training period. It also noted that dental and dental hygiene schools allow their students to take and expose x-rays under the direction of their dental instructors. Therefore, in the opinion of the Board it is not unrealistic to allow a dental assistant to train in the office of a licensed dentists for up to six months.

COMMENT: Sharon L. Swanson, R.D.H., suggested that the Board should be the monitoring agency for radiology certification rather than individual dentists to lessen the possibility of abuse.

RESPONSE: The Board disagreed with the comment and again notes that the Board of Dentistry has no authority to license dental assistants and the individual dentists hiring the assistant is responsible for checking the credentials therefore it is only logical to require the dentist to maintain evidence of the assistant's credentials.

COMMENT: Lorrie Merrick, R.D.H., inquired as to why standards for education in exposure of radiographs should be any less for assistants than they are for dental hygienists, who have received formal education in the subject. Patti J. Conroy, R.D.H., stated it is inappropriate for the Board to transfer responsibility to insure competency in exposure of x-rays to individual dentist and urged the retention of Board control over education requirements and testing of dental assistants wishing to expose radiographs.

RESPONSE: The Board again notes that there is not formal licensing requirements for the dental assistants. The provision allowing assistants to take x-rays is contingent upon the dentist, who is allowed to do x-rays, to train and supervise the assistant in the taking of x-rays.

COMMENT: State Auditor Mark O'Keefe in a written letter stated that the proposed amendment would lessen the distinction between a hygienist and an auxiliary exacerbating possibility for confusion in billing and reimbursement. He also stated that the increased responsibility this amendment would place on the dentist would require the dentist to take more time to administer supervision and record keeping requirements rather than engaging in the practice of dentistry.

RESPONSE: As previously stated, the Board sees no blurring between an assistant and a hygienist. The amendments are specific that coronal polishing is not in and of itself

construed as a prophylaxis. The dentist is accountable for truthful reimbursement claims, from patients as well as insurance companies.

COMMENT: Attorney John MacMaster, of the Legislative Council's Administrative Code Committee, said that the amendment's admonition that the dentist may allow only competent individuals to expose radiographs and its intimation that assistants may be allowed to perform radiography is confusing and misleading and must be more clearly stated in regulation. He also notes that ARM 8.16.602(2)(a) allows hygienists to do radiography, pursuant to section 37-4-401 and 37-4-402, MCA. Radiography, therefore, constitutes practice of dental hygiene and thus cannot be delegated to an assistant.

RESPONSE: According to 37-4-408, MCA, assistants are prohibited from performing those functions specifically prohibited to dental hygienists under 37-4-401 and 402, MCA, as well as being prohibited from doing prophylactic work. Because the statutes do not prohibit a dental hygienist from taking and exposing radiographs, and because there has been no contention that taking and exposing radiographs is prophylactic in nature, it is a function that can be delegated to an assistant because it is not specifically prohibited by statute.

8.16.1005 EXEMPTIONS AND EXCEPTIONS

COMMENT: Julie Blacker, R.D.H. representing the Montana Dental Hygienists Association, stated that association's support for this proposed amendment. The amendment would not require continuing education submission by individuals whose licenses were on inactive status.

RESPONSE: The Board concurred and voted to adopt the proposed rule as noticed.

BOARD OF DENTISTRY
SCOTT ERLER, D.D.S., PRESIDENT

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to prohibition, permits required for administration, minimum qualifying standards, minimum monitoring standards, facility standards, on-site inspection of facilities	)))))))	NOTICE OF AMENDMENT OF RULES PERTAINING TO THE ADMINISTRATION OF ANESTHESIA AND SEDATION BY DENTISTS

TO: All Interested Persons:

1. On October 28, 1993, the Board of Dentistry published a notice of public hearing on the proposed amendment of rules pertaining to the administration of anesthesia and sedation by dentists, at page 2478, 1993 Montana Administrative Register, issue number 20. The hearing was held on November 20, 1993, at 11:00 a.m. in the conference room of the Professional and Occupational Licensing Bureau, 111 N. Jackson, Helena, Montana.

2. The Board has amended ARM 8.16.901, 8.16.902 and 8.16.903 exactly as proposed. The Board has amended ARM 8.16.904, 8.16.905 and 8.16.906 as proposed but with the following changes:

"8.16.904 MINIMUM MONITORING STANDARDS (1) through (b)(i) will remain the same as proposed.

(ii) PRECORDIAL STETHOSCOPE USED TO MONITOR RESPIRATORY RATE AND PULSE RATE ~~Pulse oximetry;~~, and

(iii) PULSE OXIMETRY, AND

(iii) and (iv) will remain the same as proposed but will be renumbered (iv) and (v).

~~(v)~~ (vi) Continuous monitoring of skin and mucosal color, AND

~~(vi) Defibrillator; and~~

(vii) will remain the same as proposed.

(c) through (2)(ii) will remain the same as proposed.

(iii) A PRECORDIAL STETHESCOPE USED TO CONTINUALLY MONITOR RESPIRATION AND PULSE RATE, AND

(iv) PULSE OXIMETRY, AND

~~(iv)~~ (v) Continuous monitoring skin and mucosal color~~;~~. ~~(v) Electrocardiac monitoring, and~~

~~(vi) Defibrillator.~~

(c) through (3) will remain the same as proposed.

(4) DURING DENTAL PROCEDURES THE FACILITY MUST BE STAFFED BY SUPERVISED MONITORING PERSONNEL ALL OF WHOM ARE CAPABLE OF HANDLING PROCEDURES, PROBLEMS, AND EMERGENCY INCIDENTS AND HAVE SUCCESSFULLY COMPLETED BASIC LIFE SUPPORT.

(a) WITH RESPECT TO A FULL GENERAL ANESTHESIA FACILITY, IN ADDITION TO THE DENTIST AND DENTAL ASSISTANT, THERE MUST BE AT LEAST ONE PERSON PRESENT TO MONITOR VITAL SIGNS. THAT PERSON MUST BE EITHER:

(i) AN ANESTHESIOLOGIST LICENSED TO PRACTICE MEDICINE IN THE STATE OF MONTANA; OR

(ii) A CERTIFIED REGISTERED NURSE ANESTHETIST RECOGNIZED IN THAT SPECIALTY BY THE MONTANA BOARD OF NURSING; OR

(iii) A TRAINED HEALTH PROFESSIONAL WHO HAS RECEIVED AT LEAST ONE YEAR OF POSTGRADUATE TRAINING IN THE ADMINISTRATION OF GENERAL ANESTHESIA.

(b) WITH RESPECT TO LIGHT GENERAL ANESTHESIA, IN ADDITION TO THE DENTIST AND DENTAL ASSISTANT, THERE MUST BE ONE PERSON PRESENT WHOSE DUTIES ARE TO MONITOR VITAL SIGNS. THIS PERSON MUST BE TRAINED IN BASIC LIFE SUPPORT AND THEIR TASK DEDICATED TO MONITORING.

(c) WHEN CONSCIOUS SEDATION IS USED, THE DENTIST SHALL BE QUALIFIED AND PERMITTED TO ADMINISTER THE DRUGS AND APPROPIATELY MONITOR THE PATIENT, AND HAVE SUCCESSFULLY COMPLETED A COURSE IN ADVANCED CARDIAC LIFE SUPPORT. IN ADDITION TO THE DENTIST, AT LEAST ONE OTHER PERSON ON STAFF AND PRESENT IN THE OFFICE MUST HAVE SUCCESSFULLY COMPLETED BASIC LIFE SUPPORT."

Auth: Sec. 37-1-131, 37-4-205, 37-4-511, MCA; IMP, Sec. 37-4-511, MCA

"8.16.905 FACILITY STANDARDS (1) through (1)(f) will remain the same as proposed.

(g) a PRECORDIAL STETHOSCOPE; ~~and~~

(h) PULSE OXIMETER; AND

(h) will remain the same as proposed but will be renumbered (i).

(2) and (2)(a) will remain the same as proposed.

(b) PRECORDIAL STETHOSCOPE;

(c) PULSE OXIMETER;

(c) through (f) will remain the same as proposed but will be renumbered (d) through (g).

~~(3) During dental procedures the facility must be staffed by supervised monitoring personnel all of which are capable of handling procedures, problems, and emergency incidents and have successfully completed basic life support;~~

~~(a) with respect to a full general anesthesia facility, in addition to the dentist and dental assistant, there must be at least one person present to monitor vital signs. That person must be either:~~

~~(i) an anesthesiologist licensed to practice medicine in the state of montana; or~~

~~(ii) a certified registered nurse anesthetist recognized in that specialty by the montana board of nursing; or~~

~~(iii) a trained health professional who has received at least one year of postgraduate training in the administration of general anesthesia.~~

~~(b) With respect to light general anesthesia, in addition to the dentist and dental assistant, there must be one person present whose duties are to monitor vital signs. This person must be trained in basic life support and their task dedicated to monitoring.~~

~~(c) When conscious sedation is used, the dentist shall be qualified and permitted to administer the drugs and appropriate monitor the patient, and have successfully~~

~~completed a course in advanced cardiac life support. In addition to the dentist, at least one other person on staff and present in the office must have successfully completed basic life support.~~

(4) will remain the same as proposed but will be renumbered (3)."

Auth: Sec. 37-1-131, 37-4-205, 37-4-511, MCA; IMP, Sec. 37-4-511, MCA

"8.16.906 ON-SITE INSPECTION OF FACILITIES (1) will remain the same as proposed.

(5) AN INDIVIDUAL WHO PROVIDES ANESTHESIA AT MULTIPLE FACILITIES MUST BE INSPECTED AT ONE FACILITY ONLY.

(5) will remain the same as proposed but will be renumbered (6)."

Auth: Sec. 37-1-131, 37-4-205, 37-4-511, MCA; IMP, Sec. 37-4-511, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto, follow:

ARM 8.16.901 and 8.16.902

COMMENT: Dr. James Ronald, Kalispell, and Dr. James Olson, Hamilton, inquired as to whether there ought to be a standard list of things necessary in a facility for either general anesthesia, conscious sedation or nitrous oxide. Dr. Ronald suggested that the temporary permit authorizing a dentist to administer general anesthesia or conscious sedation pending an inspection be valid for six months instead of 120 days. A six month period would allow the dentist ample time to prepare his office and office staff.

RESPONSE: The Board wishes to inform Dr. Olson and Dr. Ronald that Dr. Robert D. Smith is currently in the process of drafting various check lists for equipment, drugs etc. The Board does not believe that the various check lists need to be set forth as requirements in the administrative rules. The Board did not concur with Dr. Ronald's suggestion to issue temporary permits for a period of six months. The Board believes that inspections should be conducted within 120 days. If the inspection is not completed within the 120 days, for the protection of the public, the temporary permit should expire and the dentist should be limited to the use of local anesthetics. ARM 8.16.901 and 8.16.902 will be adopted exactly as proposed.

ARM 8.16.903

COMMENT: Dr. Doug Smith supported the minimum qualifying standards in the proposed amendment but suggested that the definitions be revised to the generally accepted definitions of conscious sedation and general anesthesia. He noted that the statutes speak of light general and general anesthesia. In addition, Dr. John Jost, Helena, speaking on behalf of the Montana Academy of Pediatric Dentists, supported the proposed

amendment. Dr. R. D. Smith, Kalispell, voiced his support for the requirement to show successful completion of an advanced course in cardiac life support. He stated that because a certificate attesting to ACLS is not available, all that can be realistically required is completion of the course.

RESPONSE: The Board concurred with Dr. Doug Smith's statement that the definitions as contained in the statutes should be revised, however, this is a legislative matter and not an administrative rule matter. The Board suggested that Dr. Smith work with the Montana Oral and Maxillofacial Surgeons Society and that they propose appropriate legislation during the 1995 Legislative Session. The Board acknowledged the other comments and voted to adopt 8.16.903 exactly as proposed.

ARM 8.16.904

COMMENT: Dr. Doug Smith supported the proposed amendment especially the requirement of the use of pulse oximetry in relation to electrocardiac monitoring and mandating the presence of a defibrillator for both conscious sedation and general anesthesia. Dr. R. D. Smith characterized the inclusion of these elements as meeting the standard of care and stated that if the Board is serious about mandating completion of ACLS it only makes sense to require the presence of a defibrillator since the initial treatment for somebody in cardiac arrest is defibrillation. Dr. James Ronald concurred that the inclusion of these elements would meet the minimum standard of care. Dr. Carson, Bozeman, stated that he did not believe that defibrillation monitoring is the standard of care for pediatric dentistry and that it is not as reasonable or necessary as the use of pulse oximetry especially if required for the use of conscious sedation. He concurred that defibrillation may indeed be appropriate for IV sedation or deep general anesthesia but not conscious sedation. He further stated that the Board does distinguish in its permits for conscious sedation versus general anesthesia noting that the national organization for pediatric dentistry does not require a defibrillator because the need for a defibrillator is greater in treating adult patients. Dr. R. D. Smith noted that permits are not awarded by virtue of the route of administration. Rather, an individual is permitted only to do the various procedures. To be uniform, therefore, it is easiest to require that certain equipment be present, and in some cases, used. Providing written comments in this regard were Mark H. Nedrud, D.D.S., who stated that pulse oximetry is generally regarded as the standard of care and provides an accurate method of monitoring changes in oxygen saturation in the blood. He supported the use of defibrillator. Stephen L. Black, D.D.S., admonished the Board for attempting to relieve the doctor of the responsibility to have a precordial stethoscope. He asserted that requiring the presence of a defibrillator is inappropriate because it is not a monitoring device. In regard to conscious sedation, it would be inappropriate to require EKG continuous monitoring. He stated that the Board's proposed regulations as a whole tend to

dilute regulations dealing with dentists who use nitrous oxide/oxygen as well as those dentists using oral sedatives, which avenues of sedation, he stated, have a higher degree of risk than some forms that have been addressed by the Board.

RESPONSE: After considering all of the comments, the Board voted to continue to require the precordial stethoscope and delete the electrocardiac monitoring and defibrillator. The Board agrees that the defibrillator is not a monitoring device. The Board concurred that electrocardiac monitoring for conscious sedation is not the current standard of care and removed the requirement. The Board does not believe that the rules proposed dilute nitrous oxide/oxygen regulations.

ARM 8.16.905

COMMENT: Dr. Doug Smith spoke in general support of the proposed amendment but suggested that the language be revised to require that the support staff complete the American Heart Association's Health Care Provider Course. He also stated that allowance should be made in the rule so that individuals monitoring electrocardiographs must have completed ACLS. Dr. James Olson suggested that (3)(c) be revised to read "successfully completed a course in advanced cardiac life support" rather than "successfully completed an advanced course in cardiac life support".

RESPONSE: The Board disagreed with Dr. Smith's recommendation for completion of ACLS by support staff. The Board believes that BLS (basic life support) is a sufficient level for the support staff. As previously noted, the Board voted to leave the precordial stethoscope requirement in the various rules. On its own suggestion, the Board voted to move the facility staff requirements contained in this rule to 8.16.904. Staff requirements are not the same as facility standards. The Board concurred with Dr. Olson's suggestion on revising the language on ACLS.

ARM 8.16.906

COMMENT: Dr. Doug Smith inquired as to whether it would be better if the rules would address the question of whether facilities he visits as an anesthesiologist must be equipped for anesthesia and sedation or whether he is responsible for providing the anesthesia and equipment. He sees no need to require the host dentist to be certified to perform anesthesia/sedation if the "itinerant anesthesiologist" is actually going to be performing the procedure.

RESPONSE: The Board concurred that Dr. Smith's situation needs to be addressed by administrative rule and amended the

rule to state that "an individual who provides anesthesia at multiple facilities must be inspected at one facility only".

BOARD OF DENTISTRY
SCOTT ERLER, D.D.S., PRESIDENT

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to adoption of the ANSI standard	NOTICE OF AMENDMENT OF 8.63.501 ADOPTION OF THE ANSI STANDARD

TO: All Interested Persons:

1. On February 24, 1994, the Board of Passenger Tramway Safety published a notice of proposed amendment of the above-stated rule at page 351, 1994 Montana Administrative Register, issue number 4.

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

3. No comments or testimony were received.

BOARD OF PASSENGER TRAMWAY SAFETY
KEVIN TAYLOR, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal and adoption of new rules pertaining to retention of bank records and investment securities	))))	NOTICE OF REPEAL AND SUBSEQUENT ADOPTION OF NEW RULES PERTAINING TO RETENTION OF BANK RECORDS AND INVESTMENT SECURITIES

TO: All Interested Persons:

1. On February 24, 1994, the Banking and Financial Institutions Division published a notice of public hearing on the proposed repeal and adoption of the above-stated rules at page 355, 1994 Montana Administrative Register, issue number 4. The public hearing was held on March 16, 1994.

2. The Division has repealed ARM 8.80.103 and 8.80.105; and has adopted new rule I (8.80.111) exactly as proposed. The Division has adopted new rule II (8.80.112) as proposed but with the following changes:

"8.80.112 INVESTMENT SECURITIES (1) through (3) will remain the same as proposed.

(a) obligations of the United States of America, including those of its agencies and instrumentalities, that are fully guaranteed as to principal and interest by the United States of America~~.~~, GUARANTEES OF THE UNITED STATES OF AMERICA SHALL INCLUDE THOSE THAT ARE EXPRESSED OR IMPLIED.

(b) and (c) will remain the same as proposed.

(d) and with the approval of the commissioner of banking and financial institutions, newly created investment products issued by the U.S. treasury, federal agencies, and the state of Montana, as well as certain other investment securities, AND OTHER INVESTMENTS, MAY BE ADDED TO THOSE APPROVED SECURITIES AND INVESTMENTS listed in Approved Securities Publication, Appendix "A". Approved Securities Publication, Appendix "A" lists all the investment securities AND OTHER INVESTMENTS that are approved for investment by banks chartered by the state of Montana. Approved Securities Publication, Appendix "A" includes specific requirements or limitations, if any, related to that scheduled and approved list of investment securities AND OTHER INVESTMENTS. Approved Securities Publication, Appendix "A" is maintained by the commissioner of banking and financial institutions, and is updated yearly by the commissioner. Approved Securities Publication, Appendix "A" is henceforth incorporated as part of this rule. A copy of the most recent edition of Approved Securities Publication, Appendix "A" can be obtained from the Banking and Financial Institutions Division, 1520 East 6th Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-0512.

(4) will remain the same as proposed."

3. The Division has thoroughly considered all comments and testimony received. No comments or testimony were received pertaining to the repeal of ARM 8.80.103 and

8.80.105. The Division did receive comments regarding the adoption of the new rules. Those comments and the Division's responses thereto follow:

NEW RULE I (8.80.111)

COMMENT: One commenter, speaking generally but including the rule about retention of bank records, described recent state regulatory proposals as being too complicated, too burdensome, and too disadvantageous to Montana chartered banks.

RESPONSE: New or amended administrative rules, including this rule, have been promulgated as a requirement of recent banking legislation that represents the most significant updating of Montana's banking laws since 1927. In recent years, Montana banking has grown, and has become more complex as a business, and in its responsibilities to the people of Montana. Banking has incorporated many operations, products, and business relationships that formerly did not exist, or were previously insignificant. As one consequence, a bank's records administration must be utilized to avoid certain liabilities. The division agrees that regulation does have certain associated costs. However, the regulatory costs incurred by state chartered Montana banks are generally less than half those costs associated with the regulation of a national bank of similar asset size.

COMMENT: A supporting comment was made when a speaker recalled that an issue had arisen within the 1992-era Bank Code Advisory Council concerning what was perceived then to be an overly rigid set of record retention requirements. The commenter added that the proposed rule, with its associated Records Retention Publication Appendix "A", would implement work that went into what was introduced as HB201.

RESPONSE: The division agrees. This rule and its appendix will provide a tool for Montana bankers that is more applicable to modern records that have been developed within the banking industry.

NEW RULE II (8.80.112)

COMMENT: Three comments addressed questions that pertain to subsection (3)(a), as to what aggregate restrictions, if any, would be applicable when a bank purchases federal agency securities; and, with reference to the division's definition of "... fully guaranteed as to principal and interest by the United States of America ...," was this inclusive of "implied" guarantees as well as "expressed" guarantees? The comments primarily focused upon securities issued by federal agencies generally known as "government sponsored enterprises".

RESPONSE: Other than those limitations established by a bank's board of directors for its bank's investment policy, there are no aggregate restrictions for the purchase of those federal agency securities, including those issued by "government sponsored enterprises", that are fully guaranteed as to principal and interest by the United States of America,

whether such guarantee is expressed or implied, and that are listed in Approved Securities Publication Appendix "A". New rule 8.80.105, as adopted, now includes a statement under subsection (3)(a) that specifies the inclusion of expressed or implied guarantees of the United States of America.

COMMENT: A comment expressed concern that the banking and financial institutions division's recent rulemaking tended toward "Micro-management" of the Montana banking business, particularly as the rules pertain to limitations. Commenter cited what he considered to be the more traditional role of a bank's board of directors in the setting of policy limitations.

RESPONSE: Regulatory "micro-management", does not exist for Montana's state chartered banks. The division continues to rely upon the prudent policy positions established by boards of directors. Bank policies are typically reviewed by its board of directors and the division on a timely basis, in order to assure the bank's continued safety and soundness. Recent administrative rulemaking is statutorily mandated. Amendments to existing rules, and the adoption of new rules, implement those statutory changes.

COMMENT: A commenter suggested that a bank's board of directors review its bank's investment policy at least once each year.

RESPONSE: The division agrees, but would expect that a board of directors would not necessarily wait for an annual investment policy review. A board would typically review its policies as needed or appropriate, or at times within a year when benefit to the bank and its Montana community may result.

APPROVED SECURITIES PUBLICATION, APPENDIX "A"

Several general and technical comments and questions were received that addressed elements of the commissioner's Approved Securities Publication, Appendix "A". We note that presently the purpose of the Approved Securities Publication, Appendix "A" does not include instruction for call report preparation, or an organizational conception of securities and investments to be used for compliance with FASB 115, as effective. The comments and responses are as follows:

COMMENT: Three commenters inquired whether investment in high quality corporate bonds, bankers' acceptances, and certificates of deposits remain legal investments for state chartered banks.

RESPONSE: Yes. For technical reasons, these investments were originally withheld from new rule II (8.80.112) and from inclusion within Approved Securities Publication, Appendix "A". However, for clarity, adopted subsection (3)(d) of new rule II, included the term "other investments", and a separate section within Approved Securities Publication, Appendix "A" has been established to list these investments. Subject to approval by a bank's board of directors for inclusion in its bank's investment policy, corporate bonds rated in the top

four quality categories (a/k/a "investment grade") by a national rating service, bankers' acceptances, and certificates of deposit or notes from insured financial institutions that aggregate $100,000 or less with any one name, are all approved investment vehicles for state chartered banks.

COMMENT: Two comments pertained to the percentage limitation on the aggregation of collateralized mortgage obligations ("CMOs"), in a bank's investment portfolio.

RESPONSE: The 40% of investment portfolio limitation is deemed prudent for the approved CMOs, and in light of the continuing monitoring and risk management necessary for owners of CMOs.

COMMENT: One commenter postulated that seasonal liquidity demands ("draw-downs") on other securities in his bank might result in an aggregate of CMOs that exceeded the 40% limitation. He asked how that would be construed by division supervisors. Another commenter inquired as to the potential sales of CMOs in such a circumstance.

RESPONSE: In such a situation, division examiners would make note of non-reoccurring, unexpected, or planned seasonal characteristics, and compare them to the board of director's investment policy, and frequency of reviews. If board of director's policy is deficient, the examiner would make a comment in his report to division supervisors. However, if board investment policy reflected a decision to operate within appropriate limitations, but that seasonal characteristics of the bank's general business were foreseen by the board of directors, and occurred substantially as anticipated; and unless an adverse exposure was otherwise created by holding the CMOs, an examiner could opt to discuss the matter with the bank's management, but not consider such seasonal percentage aggregations to be an adverse circumstance for report purposes. In this instance, a bank would not be required to sell CMOs, thereby avoiding a potentially unfavorable market.

COMMENT: For purposes of the 40% aggregate limitation, one commenter asked if private issue CMOs, REMICs, FHLMC Gold PCs, and "similar instruments" would be included in the definition of a CMO.

RESPONSE: Yes. However, the phrase "similar instruments" would be applicable to listed CMO products found in the Approved Securities Publication, Appendix "A".

COMMENT: One comment contained the question: "Are single loan CMOs included within the scope of Approved Securities Publication, Appendix "A"?

RESPONSE: While not precluded from a category within the Approved Securities Publication, Appendix "A", the weaknesses of single loan and very small number loan pools are well known to bankers. A bank's board of directors or its investment committee would decide whether or not to acquire such a CMO. The division would view such a CMO from a safety and soundness perspective.

COMMENT: A commenter asked about the logic of permitting general obligation loans to political subdivisions on an unlimited basis, but limiting the purchase of their bonds to 40% of a bank's capital and surplus.

RESPONSE: Political subdivisions arrange loans and issue bonds usually for different reasons, and on differing terms. Loans may be arranged for working capital, the purchase of chattels, for the acquisition or refurbishment of real property, etc. The loans are usually direct, can be supported by a secondary guarantee, bear interest at a negotiated market rate, have customary periodic repayment terms, and are usually secured by appropriate collateral. Bond funding, however, is primarily used to sell debt to others on a law cost, often tax shielded basis. Bonds are often issued to finance longer term projects of the political subdivision, can contain distant or decelerated repayment terms, and encumber single purpose collateral with values difficult to maintain. Because the terms and conditions of such an issue may be unique, an alternative income stream is often required to create a sinking fund or add repayment support for the bonds. These and other important differences underlie the logic relating to how much of a certain type of political subdivision debt instrument a bank should own.

COMMENT: Two comments were received concerned with the holding of municipal bonds. They described adverse situations whereby the holding of revenue issues might exceed 50% of the bank's municipal bond portfolio.

RESPONSE: The division concurs. There is at this time municipal issues being arranged by Montana communities, and those that do come to market are promptly sold. Essentially, the comments received pertain to the purchase of out-of-state municipal fundings. However, the division has deleted the 50% restriction on revenue issues in the bank's municipal bond portfolio from the Approved Securities Publication, Appendix "A".

COMMENT: A comment requested further clarity as to whether the 40% limitation on municipal investments found at subsection (a) refers to the purchase of individual municipal issues, or the aggregate amount that an institution may invest in municipal issues.

RESPONSE: With the removal of the 50% revenue issue component from the municipal bond portfolio (see above comment), the 40% overall limit pertains only to the bank's capital and surplus, and is silent as to the portion of any one issue a bank may purchase. However, this becomes an important issue to the bank's board of directors as it reviews and operates through its bank's investment policy.

COMMENT: A commenter noted that investment in mutual funds are limited to only funds whose shares represent the fund's sole investment in U.S. government bonds, notes, and bills. He stated that consideration should be given to investment in those funds that may also have a portion of investments in U.S. government sponsored agencies. He stated

that this would not increase risk to a bank, as agency issues are already an allowable investment (included in Approved Securities Publication, Appendix "A").

RESPONSE: The division disagrees. There are differences between buying government agencies direct, and buying shares of mutual funds that own government agency securities. The major issues that often arise in a discussion of this topic usually include the variation of the value of mutual fund shares versus the values of underlying securities, the issue of control and selection of underlying securities, comparative management acumen, and the required acceptance of a blurring of the standards set forth by the Glass-Steagall Act.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DONALD HUTCHINSON, COMMISSIONER

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to semi-annual assessments upon banks, investment companies, and trust companies and the adoption of new rules establishing fees for the approval of automated teller machines, and point-of-sale terminals	)))))))	NOTICE OF AMENDMENT OF 8.80.104 SEMI-ANNUAL ASSESSMENTS AND THE ADOPTION OF NEW RULES PERTAINING TO FEES FOR THE APPROVAL OF AUTOMATED TELLER MACHINES AND FOR THE APPROVAL OF POINTS-OF-SALE TERMINALS

TO: All Interested Persons:

1. On February 24, 1994, the Banking and Financial Institutions Division published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 353, 1994 Montana Administrative Register, issue number 4. The public hearing was held on March 16, 1994.

2. The Division has amended ARM 8.80.104 exactly as proposed and has adopted new rules I (8.80.504) and II (8.80.110) as proposed but with the following changes: (The authority and implementing sections will remain the same as proposed in the original notice.)

"8.80.504 FEES FOR THE APPROVAL OF AUTOMATED TELLER MACHINES (1) The owner of the automated teller machine shall file a certificate with the commissioner of banking and financial institutions that contains the information required in 32-6-304, MCA. ~~A fee of $100 shall be paid to the division at the time the certification is submitted.~~ THOSE OWNERS WHO ARE NOT BANKS, CREDIT UNIONS, OR OTHER FINANCIAL INSTITUTIONS SUPERVISED BY THE STATE OF MONTANA SHALL PAY A FEE OF $100 AT THE TIME EACH OF THEIR APPLICATIONS IS SUBMITTED."

"8.80.110 FEES FOR THE APPROVAL OF POINT-OF-SALE TERMINALS (1) ALONG WITH AN APPLICATION TO THE COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS DEMONSTRATING THAT THE STANDARDS REQUIRED BY 32-6-305, MCA, ARE MET, ~~A~~ a fee of $100 shall be paid to the division ~~at the time a merchant submits an application to the commissioner of banking and financial institutions demonstrating that the standards required by 32-6-305, MCA, are met.~~ BY APPLICANTS WHO ARE NOT BANKS, CREDIT UNIONS, OR OTHER FINANCIAL INSTITUTIONS SUPERVISED BY THE BANKING AND FINANCIAL INSTITUTIONS DIVISION. THE FEE SHALL BE PAID FOR EACH APPLICATION SUBMITTED."

3. The Division has thoroughly considered all comments and testimony received. Those comments and the Division's responses thereto follow:

COMMENT: A commenter stated that based upon the present structure of state banks subsequent to mergers, conversions, and branching, it must be easier for the Banking and Financial Institutions Division to meet its responsibilities. Decreased

workloads should result in decreased staff levels, greater efficiencies, and the need for less revenue.

RESPONSE: When commonly owned banks merge and operate as a branched system, the new, large bank pays significantly less than the smaller banks did in aggregate. At December 31, 1989, there were 115 state banks and trust companies with total assets of $3.3 billion. Revenue from assessments for that fiscal year totalled $740,194. On December 31, 1993, there were 87 state banks and trust companies with total assets of $4.8 billion. However, assessment revenue for this fiscal year will amount to only $753,575. Because of mergers, revenue has increased less than two percent over a four-year period while total supervised assets have increased by about 44 percent.

COMMENT: Another commenter stated a belief that larger banks require more manpower to examine. Based upon this assumption, he stated that the smaller banks, with assets of less than $100 million, require less manpower, and therefore the proposed across-the-board increase seemed unfair to smaller banks.

RESPONSE: Since the Banking and Financial Institutions Division became self-supporting in 1985, all costs of the Division are covered by fees collected from the financial institutions regulated by the division. Assessment rates are tiered, with larger banks paying less per dollar of assets than smaller banks. No assessment rates have increased on any banks since inception. In reference to asset size, more time is proportionately and necessarily spent with smaller, not larger banks. For example, smaller banks typically have less in-house support, which require more technical assistance. Conversely, larger banks generally have ready access to a variety of lending, compliance, legal, and accounting specialists. Also, bank examinations initially involve specific tasks and tests that essentially take the same amount of time to complete, regardless of bank size. However, it takes a certain minimum number of examiners and hours to complete these tasks. While the semi-annual assessment scale remains a sliding scale, the 1.37 increment is a constant multiplier for that scale.

COMMENT: A comment was received that the Banking and Financial Institutions Division should present state chartered banks with the data and budget information that support the need for an increase in the assessment, so state banks can make an informed and reasonable judgment as to the need for an increased assessment.

RESPONSE: Section 32-1-213, MCA, provides the Department with the authority to establish fees to recover all costs of administering the program for the supervision of banks, trust companies and investment companies. The budget information is available to any individual who requests to review it.

COMMENT: A commenter opined that the 37% increase in the bank assessment may give state banks an additional incentive to convert to a national charter.

RESPONSE: From a financial perspective, this would not be cost effective to state banks. Based upon December 31, 1993 asset figures, and using current OCC assessment rates and the division's proposed rates, most state chartered banks will pay less than 50% of what they would pay the OCC as a national bank. No bank would pay more than 57% of what it would pay the OCC.

COMMENT: Another commenter conditioned its support for the rise in assessments upon the reclassification of senior bank examiners to a higher market-based pay scale. The commenter also requested that the director of the department pursue the proper authorities in the Montana Department of Administration to affect such a reclassification. The commenter apparently intended to register concern regarding senior examiner turnover at a time when Montana banking has become larger and more complex.

RESPONSE: The Division management recognizes the concern relating to compensation of its examiners.

NEW RULE I (8.80.504)

COMMENT: A comment was received that the proposed $100 fee for the division's processing of minimum paperwork for such an application was exorbitant.

RESPONSE: The work done in this area is more than processing minimum paperwork. However, work-flow analysis revealed most of this work is attributed to the processing of applications from owners that are not banks, credit unions, or other financial institutions supervised by the Banking and Financial Institutions Division. Based upon this, the adopted rule was recast to focus upon such non-supervised applicants.

NEW RULE II (8.80.110)

COMMENT: A commenter stated that the effect of charging a $100 fee for each point-of-sale terminal would be to deny the benefits of point-of-sale technology to Montana merchants and consumers. Commenter also maintained that a $100 fee for processing related paperwork would be excessive.

RESPONSE: The adopted rule has been modified to apply only to applicants not supervised by the Banking and Financial Institutions Division.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DONALD HUTCHINSON, COMMISSIONER

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to investigation responsibility, application procedures and requirements for a certificate of authorization for a state chartered bank, for assuming deposit liability of any closed bank, the merger of affiliated banks, and the establishment of new branch banks and the adoption of new rules concerning discovery and hearing procedures, and an application requirement	NOTICE OF AMENDMENT OF 8.87.202, 8.87.203, 8.87.301, 8.87.302, 8.87.303, 8.87.304, 8.87.501, 8.87.601, 8.87.701; AND THE ADOPTION OF NEW RULES I (8.87.204) AND II (8.87.305) PERTAINING TO DISCOVERY AND HEARING PROCEDURES AND A REQUIRED PRO FORMA STATEMENT IN NEW BANK APPLICATIONS

TO: All Interested Persons:

1. On February 24, 1994, the Banking and Financial Institutions Division published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 361, 1994 Montana Administrative Register, issue number 4. The public hearing was held on March 16, 1994.

2. The Division has amended ARM 8.87.202, 8.87.301, 8.87.302, 8.87.303, 8.87.304 and 8.87.501 and has adopted new rule II (8.87.305) exactly as proposed. The Division has amended ARM 8.87.203, 8.87.601, and 8.87.701 and has adopted new rule I (8.87.204) as proposed, but with the following changes: (The authority and implementing sections will remain the same as proposed in the original notice.)

"8.87.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE CHARTERED BANK (1) through (3) will remain the same as proposed.

(4) In the event that an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the division of banking and financial institutions and allowed up to sixty (60) days in which to perfect the application or provide additional information. An extension of this sixty (60) day period may be obtained from the ~~department~~ DIVISION OF BANKING AND FINANCIAL INSTITUTIONS by showing good cause why it should be so extended.

(5) will remain the same as proposed."

"8.87.601 APPLICATION PROCEDURE FOR APPROVAL TO MERGE AFFILIATED BANKS (1) through (4) will remain the same as proposed.

(5) If an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the ~~department~~ DIVISION OF BANKING AND FINANCIAL INSTITUTIONS and allowed up to thirty (30) days in which to perfect the application or provide additional information. An extension of this thirty (30) day period may

be obtained from the division of banking and financial institutions by showing good cause why it should be so extended. The state banking board may delay processing, including extending the comment period, for good cause. Processing will be completed no earlier than the 15th day, nor generally not later than the 45th day, following the date of the last required publication.

(6) through (8) will remain the same as proposed."

"8.87.701 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION TO ESTABLISH A NEW BRANCH (1) through (4) will remain the same as proposed.

(5) In the event that an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the ~~department~~ DIVISION OF BANKING AND FINANCIAL INSTITUTIONS and allowed up to thirty (30) days in which to perfect the application or provide additional information. An extension of this thirty (30) day period may be obtained from the division of banking and financial institutions by showing good cause why it should be so extended. The state banking board may delay processing, including extending the comment period, for good cause. Processing will be completed no earlier than the 15th day, or generally not later than the 45th day, following the date of the last required publication.

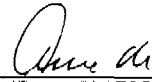
(6) through (8) will remain the same as proposed."

"I (8.87.204) PROCEDURAL RULES FOR DISCOVERY AND HEARING (1) will remain the same as proposed.

(2) The state banking board adopts 'Roberts Rules of Order'."

3. No comments or testimony were received. Minor editorial changes from the division of banking and financial institutions are incorporated above. The division noted that ARM 8.87.203 Application Procedure for a Certificate of Authorization for a state chartered bank, was inadvertently numbered as 8.87.204 in the original notice.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DONALD HUTCHISON, COMMISSIONER

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 18, 1994.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules concerning motor carrier services (formerly "gross vehicle weight").	)	NOTICE OF AMENDMENT OF RULES 18.8.101, 18.8.301, 18.8.408, 18.8.414, 18.8.415, 18.8.418, 18.8.422, 18.8.426, 18.8.428, 18.8.429, 18.8.504, 18.8.509, 18.8.510A, 18.8.510B, 18.8.512, 18.8.513, 18.8.514, 18.8.519, 18.8.601, 18.8.901, AND 18.8.1401; AND REPEAL OF RULES 18.8.303, 18.8.404, AND 18.8.405; AND ADOPTION OF NEW RULE I

TO: All Interested Persons.

1. On December 9, 1993, the Department of Transportation published a notice of public hearing on the proposed amendment, repeal and adoption of rules regarding the licensing requirements and permit requirements for overdimensional vehicles and loads, and reflecting the creation of the Department of Transportation by the 1991 Legislature. The notice was published at page 2875 of the 1993 Montana Administrative Register, issue no. 23.

2. The Department conducted a public hearing on January 14, 1994, which was presided over by W. D. Hutchison of the Agency Legal Services Bureau, Department of Justice. The Department received both written and oral comments. Those comments and testimony have been considered.

3. The Department has adopted new rule I (18.8.430), the repeal, and the amendments exactly as proposed, except as follows. The Department has adopted the amendments to ARM 18.8.101, 18.8.510A, 18.8.514, and 18.8.519 as proposed, but with the following changes:

4. As a result of written and oral comments, the Department has determined that additional amendments are required for the following rules:

18.8.101 DEFINITIONS (1)(a) through (e) will remain the same.

(f) ~~Overhang means the part of a load that extends beyond the front or rear of a vehicle. Rear overhang is measured from the center of the rear most axle to the most distant end of the load being hauled. Front overhang is measured from the front~~

~~bumper of a vehicle to the most distant end of the load being hauled.~~

~~(g)~~ A quarter or calendar quarter shall be any consecutive three months.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-104, 61-10-121, 61-10-124, 61-10-209 MCA.

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) A flag vehicle may be any passenger car or ~~pickup truck that is properly equipped and used to warn other traffic of an oversize or overweight movement~~ two axle truck a minimum of 60 inches wide. ~~A maximum gross vehicle weight of 14,000 pounds is recommended but in no case may the gross vehicle weight exceed 26,000.~~ THE MAXIMUM MANUFACTURER'S RATING FOR THE FLAG VEHICLE SHALL NOT EXCEED TWO (2) TONS. A flag vehicle may not exceed legal limits of size and weight. A flag vehicle ~~shall not~~ MAY pull a trailer or carry any item(s) or equipment or load in or on the flag vehicle which:

(a) ~~impairs its immediate recognition as a flag vehicle by the motoring public, or~~DOES NOT EXCEED LEGAL LIMITS OF SIZE AND WEIGHT; AND

(b) ~~which~~DOES NOT obstructs the view of the flashing lights or signs used by the flag vehicle; ~~or~~.

~~(c) causes safety risks or otherwise impairs the performance by the operator.~~

(2) through (5) remain as proposed.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-101 through 61-10-148, MCA.

18.8.514 LENGTH (1) through (4) remain as proposed.

(5) Any combination of vehicles with load, which extends beyond the FRONT OR REAR OF THE COMBINATION OF VEHICLES ~~rear of the vehicle in excess of 15 feet~~, and has a total combined length including the vehicles and load, in excess of 75 feet, but not exceeding 120 feet, is restricted to the following:

(5)(a), (6) and (7) remain as proposed.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121 through 61-10-148, MCA.

18.8.519 WRECKER AND/OR TOW VEHICLE REQUIREMENTS

(1)(a) remains the same.

(b) The wrecker or tow vehicle may tow the vehicles or vehicle combination from the emergency scene to ITS PLACE OF BUSINESS OR OPERATOR'S YARD IF IT IS WITHIN 100 MILES OF THE EMERGENCY SCENE AND THE LICENSED GROSS WEIGHT OF THE POWER UNIT DOES NOT EXCEED 26,000 POUNDS. IF THE LICENSED GROSS WEIGHT OF THE POWER UNIT EXCEEDS 26,000 POUNDS, THE DISABLED VEHICLE COMBINATION MAY BE REMOVED FROM THE EMERGENCY SCENE TO THE FIRST PLACE WHERE THE DISABLED VEHICLE COMBINATION CAN BE SAFELY REDUCED TO A SINGLE UNIT. ~~its place of business or operator's yard if it is within 100 miles of the emergency scene and proper permits have been obtained. The wrecker or tow vehicle operator will be issued an overdimensional permit, in excess of the statutory permit dimensions, to the tow vehicle's place of~~

~~business or operator's yard if it is within 100 miles of the emergency scene. the first place where the disabled vehicle or vehicle combination can be safely removed from the highway and unhitched or broken apart. The disabled vehicle or vehicle combination must be reduced to a single unit before a second move can be made.~~

(c) through (g) remain as proposed.

AUTH: 61-10-155, MCA; IMP: 61-10-121 and 61-10-141, MCA.

Proponents comments: The proposed amended rules and new rule received written support from General Electric Company, and Hi-Ball Trucking, Inc. Oral testimony was also received from several sources in support of the proposed changes to ARM 18.8.510B, 18.8.512, 18.8.601, and 18.8.901.

Opponents comments: In addition to the written and oral comments listed, opposition was received concerning ARM 18.8.509(10), limiting the speed for vehicles towing house trailers. Montana Mobile Home Transport commented that the term "house trailer" used in the amendment is not the same as "mobile home" or "manufactured home."

Response: The agency noted that the speed restriction for house trailers in ARM 18.8.509(10) is statutory, § 61-8-312(4), MCA, and was added for clarification. The term "house trailer" as used in the rule has the same meaning as the term has in statute. The agency does not have the authority to amend or repeal statutory language.

Opponents comments: One comment on ARM 18.8.901 requested that the language requiring confiscation of permits be changed to allow officer discretion.

Response: The Department proposed the amendment to ARM 18.8.901 merely to eliminate duplication of language. The Department determined that it will continue with its current practice, and not to allow discretion in these instances.

Comment: Comments were received from Timberweld Manufacturing which indicated that a definition of overhang in ARM 18.8.101 would be difficult to apply uniformly to a substantial number of trailers in current use.

Response: The agency agreed that the proposed rule would be difficult to apply to motor carriers in general and will not adopt a definition of overhang. Otherwise the rule will be adopted as proposed.

Comment: Written and oral comments were received from the Montana Manufactured Housing and Recreational Vehicle Association, Ferris Brothers, Inc., Great Falls Ford New Holland, Rainbow Irrigation, Inc., Pearce Custom Grain, and Tilleman Motor Company in opposition to the provision in ARM

18.8.510A which limits the ability of flag vehicles to pull trailers. The Custom Combine industry particularly felt that it was necessary to pull trailers when harvesting in Montana.

Response: The rule as adopted represents a compromise to the concerns voiced at the hearing, yet still provide safety for the traveling public.

Comment: Written comment was received from Timberweld Manufacturing which opposed the adoption of a definition of overhang and opposed changing ARM 18.8.514(5).

Response: The agency agreed that without a definition of overhang, ARM 18.8.514 (5) should not be amended and will remain as it currently exists.

Comment: Oral comment was received from members of the Montana Tow Truck Association that the proposed rule change in ARM 18.8.519 would impose economic hardship on lighter weight and single trailer vehicle combinations which was unwarranted.

Response: The revised amendment addresses the concerns received during the comment period and also accomplishes the agency's original intent to clarify compliance requirements and assure safety for the traveling public.

MONTANA DEPARTMENT OF TRANSPORTATION

By: _____
MARVIN DYE, Director

_____
LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State April 15, 1994.

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

In the matter of the adoption of new rules and repeal of existing rules, concerning claims for unpaid and underpaid wages, and calculation of penalties	)))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH XIX AND REPEAL OF 24.16.7501 AND 24.16.7502

TO ALL INTERESTED PERSONS:

1. On February 24, 1994, the Department published notice at pages 367 to 374 of the Montana Administrative Register, Issue No. 4, to consider the adoption of new rules I through XIX, and the repeal of two existing rules.

2. On March 18, 1994, a public hearing was held in Helena concerning the proposed adoption of new rules and proposed repeal of existing rules, at which oral and written comments were received. Additional written comments were received prior to the closing date of March 25, 1994.

3. After consideration of the comments received on the proposed rules, the Department has adopted the following rules as proposed with the following changes: (new matter underlined, deleted matter interlined)

NEW RULE I [24.16.7503] PURPOSE Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE II [24.16.7506] DEFINITIONS Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE III [24.16.7511] ACCRUAL OF CLAIMS UPON SEPARATION FROM EMPLOYMENT (1) and (2) Same as proposed.

(3) For the purpose of construing 39-3-205, MCA, payment of wages is considered to be "immediate" if the wages are paid to the employee by the earlier of the close of business or four hours from the time the employee is notified that the employee has been ~~fired~~ discharged. Payment of wages is also considered to be "immediate" if the employer mails to the employee a check or money order for the wages, and the envelope containing the payment is postmarked the same day as the discharge. If payment is made by mail, however, and there is a dispute over when the payment was made, the employer bears the burden of proof to show that payment was timely mailed. Such proof may include, but is not limited to, a receipt issued by the United States postal service showing that the envelope addressed to the employee was mailed on that date.

AUTH: Sec. 39-3-202, MCA IMP: Sec. 39-3-205, MCA

NEW RULE IV [24.16.7514] COMPUTATION OF TIME PERIODS Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE V [24.16.7517] FACSIMILE FILINGS Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE VI [24.16.7521] FILING A CLAIM Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-211, MCA

NEW RULE VII [24.16.7524] EMPLOYEE'S FAILURE TO PROVIDE INFORMATION Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-210, MCA

NEW RULE VIII [24.16.7527] EMPLOYER RESPONSE TO CLAIM (1) A claim is commenced when a letter is mailed to the employer by an authorized representative of the commissioner notifying the employer of the claim.

(2) Same as proposed.

(3) To be timely, the employers' written response must be ~~mailed~~ postmarked or delivered to the department by the date specified by the department. Upon timely request, and for good cause shown, the department may allow additional time for response.

(4) Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-210, MCA

NEW RULE IX [24.16.7531] DETERMINATION Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-209, MCA

NEW RULE X [24.16.7534] REQUEST FOR REDETERMINATION Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-209, MCA

NEW RULE XI [24.16.7537] REQUEST FOR FORMAL HEARING Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-216, MCA

NEW RULE XII [24.16.7541] DEFAULT ORDERS AND DISMISSALS Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-216, MCA

NEW RULE XIII [24.16.7544] REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-216, MCA

NEW RULE XIV [24.16.7547] APPEAL OF FORMAL HEARING Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-217, MCA

NEW RULE XV [24.16.7551] PENALTY WHEN PAYMENTS ARE MADE PRIOR TO DETERMINATIONS AND SUBSEQUENT TO DETERMINATIONS Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XVI [24.16.7556] SPECIAL CIRCUMSTANCES JUSTIFYING MAXIMUM PENALTY Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XVII [24.16.7561] PENALTY FOR MINIMUM WAGE AND OVERTIME CLAIMS Same as proposed.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XIII [24.16.7566] PENALTY FOR CLAIMS INVOLVING OTHER KINDS OF COMPENSATION Same as proposed.
AUTH: Sec. 39-3-202, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XIX [24.16.7569] PENALTY FOR MIXED CLAIMS Same as proposed.
AUTH: Sec. 39-3-202, MCA IMP: Sec. 39-3-206, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: The Montana Chamber of Commerce (Chamber) offered comments generally in support of the proposed new rules, but commented that the requirement in Rule III (3) mandating payment by the close of business or within four hours was unworkable for certain employers or in some situations. The Chamber suggested that an employer be allowed to mail the wages to the terminated employee, and that a payment postmarked the same day be deemed to be "immediate".
Response 1: The Department agrees with the suggestion and has amended the rule accordingly. The Department notes that the amended language does not require that the final pay be mailed, nor does it require that the final pay, if mailed, be sent via certified or registered mail. However, in the event of a dispute over the mailing date, employers should be aware that they will have to offer competent evidence showing that they timely mailed the final pay.

Comment 2: The Montana School Board Association (MSBA) commented the mandatory "shall" in Rule VIII (4), requiring a determination favorable to the claimant be made if the employer does not respond, should be changed to the permissive "may".
Response 2: The Department believes that subsection (3) of the rule allows the Department to grant additional time to an employer to file a response. However, if the employer ignores the request for a response, the Department will make a determination based upon the available evidence (i.e. the employee's statement). An employer may request a redetermination if it so chooses.

Comment 3: The MSBA commented on Rule XI, stating that the 15 days to request a hearing following a determination or redetermination is too short a time to obtain legal counsel or call a meeting of a school board. The MSBA suggested that the time be extended to 30 days.
Response 3: The Department notes that 15 days is the same amount of time as provided by section 39-3-216, MCA, to appeal a hearing to the Board of Personnel Appeals. The Department believes that counsel can either be consulted prior to the determination being issued, or that an employer can request a hearing without having a lawyer make that request. If counsel advises that the employer's case is without merit, the hearing request can be dismissed.

Comment 4: The MSBA commented that rule XVI (3), making the maximum penalty mandatory, was unnecessarily inflexible.
Response 4: The Department and the Board of Personnel Appeals believe that having firm rules on the amount of penalties is appropriate. Numerous employers have criticized the Department's exercise of discretion and lack of rules to guide that discretion. The Department also believes that (3) allows the penalty to be reduced if all of the parties agree.

Comment 5: Department of Labor staff commented that in Rule VIII, the rule should be clarified to state that the letter to the employer could come from department employees, not just the commissioner of labor. Likewise, the use of the word "postmarked" was suggested in place of the term "mailed" as being clearer and more in line with the other rules.
Response 5: The Department agrees with the comment and has amended the rule accordingly.

5. The Department of Labor and Industry repeals 24.16.7501, Procedure for Filing, and 24.16.7502, Processing the Claim, in their entirety. The staff of the Administrative Code Committee noted that the Department did not cite the appropriate statute for the authority for the repeal of the rules. The correct citation for authority to repeal the existing rules is section 39-3-202, MCA. No comments were received on the proposed repeal, other than the comment from the Administrative Code Committee.

6. The new rules are effective May 1, 1994. The repeal of 24.16.7501 and 24.16.7502 is effective May 1, 1994.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 18, 1994.

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

In the matter of the adoption of rules related to implementation of education-based safety programs for workers' compensation purposes)	) NOTICE OF ADOPTION OF) RULES I THROUGH IV) (SAFETY CULTURE ACT))

1. On February 10, 1994, the Department published notice at pages 257 to 261 of the Montana Administrative Register, Issue No. 3, to consider the adoption of new rules I through IV.

2. On March 7, 1994, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of March 14, 1994.

3. After consideration of the comments received on the proposed rules, the Department has adopted the rules as proposed with the following changes: (added text underlined, deleted text interlined)

RULE I [24.30.2501] PURPOSE Same as proposed.
AUTH: Sec. 39-71-1505, MCA IMP: Sec. 39-71-1505, MCA

RULE II [24.30.2503] DEFINITIONS Same as proposed.
AUTH: Sec. 39-71-1505, MCA IMP: Sec. 39-71-1505, MCA

RULE III [24.30.2521] EACH EMPLOYER TO HAVE EDUCATION-BASED SAFETY PROGRAM (1) Same as proposed.

(a) Same as proposed.

(b) provide job or task-specific safety training appropriate for employees before they perform that job or task without direct supervision. The department recommends this training:

(i) Same as proposed.

(ii) clearly identify the employer's and employee's responsibilities regarding safety in the workplace;

(iii) and (iv) Same as proposed.

(c) through (f) Same as proposed.

(2) The department suggests that employers contact their insurer for advice and assistance in implementing safety programs that are consistent with these rules.
AUTH: Sec. 39-71-1505, MCA IMP: Sec. 39-71-1505, MCA

RULE IV [24.30.2541] EMPLOYERS WITH MORE THAN FIVE EMPLOYEES TO HAVE COMPREHENSIVE AND EFFECTIVE SAFETY PROGRAM (1) All employers having more than five employees must have a comprehensive and effective safety program. In making the determination of employment levels, the employer shall count all regular, temporary, leased and seasonal workers under the employer's direction and control~~, and shall base the number on peak employment~~. This rule applies whenever there are more than

five employees, and continues in effect until the number of employees is less than six for three consecutive months.

(2) This comprehensive and effective safety program must include all of the mandatory elements contained in ARM 24.30.2521 (although it need not necessarily include all of the recommended items contained in that rule) and must also include, but need not be limited to:

(a) policies and procedures that assign specific safety responsibilities and safety performance accountability. The department recommends these policies and procedures:

(i) include a statement of top management commitment to the safety program;

(ii) encourage and motivate employee involvement in the safety program;

(iii) define safety responsibilities for managers, safety personnel, supervisors and employees;

(iv) be reflected in job descriptions and performance evaluations, if they exist; and

(v) be communicated and accessible to all employees; and

(b) ~~safety committee(s) composed of employee and employer representatives that holds regularly scheduled meetings, at least quarterly. The committee(s) should be of sufficient size and number to provide for effective representation of the workforce. Employers with multiple workplaces may elect to have more than one committee. The department recommends the safety committee(s):~~

~~(i) include in its membership representatives of employees and management, with management members not exceeding employee members;~~

~~(ii) include in its membership appointed, elected and/or volunteer members;~~

~~(iii) document committee activities, i.e., attendees, subjects discussed; and~~

~~(iv) assist the employer and make recommendations for:~~

~~(A) assessing and controlling hazards;~~

~~(B) communicating with employees regarding safety committee activities;~~

~~(C) developing safety rules, policies and procedures;~~

~~(D) educating employees on safety related topics;~~

~~(E) evaluating the safety program on a regular basis;~~

~~(F) inspecting the workplace;~~

~~(G) keeping job specific training current;~~

~~(H) motivating employees to create a safety culture in the workplace;~~

~~(I) recommending safety training and awareness topics; and~~

~~(J) reviewing incidents of workplace accidents, injuries and illnesses; and~~

~~(c)~~ procedures for reporting, investigating and taking corrective action on all work-related incidents, accidents, injuries, illnesses and known unsafe work conditions or practices. The department recommends these procedures be non-punitive and that they include, but need not be limited to:

(i) provisions for timely and effective reporting, investigating and for taking corrective action;

(ii) recommendations and follow-up for corrective action;
(iii) documentation;
(iv) signature requirements for reports, investigations and corrective action; and
(v) periodic evaluation of the procedure's effectiveness.
AUTH: Sec. 39-71-1505, MCA IMP: Sec. 39-71-1505, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

General Comments:

Comment 1: Many commenters complimented the work of the Safety Employment Education and Training Advisory Committee in drafting rules that are flexible in implementing the Safety Culture Act. Other commenters, however, expressed the opinion that the proposed rules were contrary to the legislative intent of Safety Culture Act.

Response 1: The Department believes the rules appropriately balance the needs of employers, employees, and insurers in establishing and maintaining an appropriate safety awareness that will reduce injuries in the work place. The public was encouraged to and did participate in each stage of writing these rules.

Comment 2: A commenter stated that the Department should have sent a copy of the Notice of Public Hearing to every employer enrolled in a workers' compensation plan, so that every employer would have an opportunity to comment on the rules.

Response 2: The Department mailed a copy of the Notice of Public Hearing to approximately 375 persons and organizations. Many of those organizations gave that information to their members and customers. The Department also published the Notice of Public Hearing in the Montana Administrative Register, as required by law. Based on an estimated 35,000 Montana employers, the cost of sending every Montana employer a copy of the Notice would have exceeded $17,000.00. The Department believes that it has provided an adequate opportunity for the public to comment on the rules.

Comment 3: A commenter, while agreeing that safety is very important, commented that the Safety Culture Act essentially takes the wrong approach by mandating safety programs rather than providing incentives. The commenter also stated that a good safety attitude is not something that can be imposed by government regulation, but arises when employers and employees see safety as being beneficial.

Response 3: The Department agrees that a safety culture will not instantly spring into existence because of these rules.

However, the Legislature has directed the Department to adopt rules that require every employer to have a safety program.

Comment 4: The same commenter objected to the general tone of the rules and suggested that rather than mandating every item, the rules should give employers a "menu" from which to choose.

Response 4: The Department believes that the rules do in fact give employers a "menu" of recommendations from which to choose. While there are certain mandatory requirements (mostly imposed by statute) contained in the rules, the Department has listed many recommendations from which the employer, in consultation with the employer's workers' compensation insurer, may select the most appropriate. An employer is also free to develop creative ways of implementing the mandatory portions of the rules. Also see comment no. 11, below.

Comment 5: Several commenters suggested that the Department undertake a large scale effort at educating the public about the Safety Culture Act and the effect of these rules.

Response 5: The Department has already participated in numerous forums discussing the Safety Culture Act and the draft rules. The Department will continue with its educational efforts. The Department, with the advice and assistance of the Safety Employment Education and Training Advisory Committee, is currently drafting pamphlets and brochures to explain the Safety Culture Act and these rules, and to provide information about the law and the rules in a question and answer format.

Comment 6: Some commenters asked whether the Department would provide assistance in developing specific safety programs for their industry, or if a list of resources about safety information and programs would be available from the Department.

Response 6: The Department suggests that employers contact their workers' compensation insurer for assistance in developing appropriate safety programs. (See also comment no. 12, below.) The Department, through the Safety Bureau of the Employment Relations Division, will provide information about the resources it has available and where to find additional safety information and material.

Comment 7: A commenter inquired whether certain types of occupational licensing (such as for hunting guides) would be evidence of education in basic safety matters.

Response 7: While occupational licensing or training may well provide evidence of a person's knowledge or understanding of safety issues, the Safety Culture Act requires that the employer have a safety program. The statutes do not exempt employers of holders of occupational or professional licenses from complying with these rules.

Comment 8: A commenter suggested that while the Department should adopt the rules on or about May 1, it should make the rules effective October 1, 1994, so that employers have time to become educated about the rules and to come into compliance with the rules.

Response 8: The Department believes that implementation of the rules should occur without delay, to begin as soon as possible the process of establishing a safety culture in Montana employers and employees. The Department is currently engaged in educational efforts (see comment no. 5, above). The Department is advised that the State Compensation Insurance Fund (State Fund) will also be undertaking educational efforts for its insureds. To the extent that the commenter is concerned that employers might be penalized for not being in immediate compliance, the Department is also advised that the State Fund does not intend to levy a premium surcharge on non-complying employers during the next six or so months.

Comment 9: A commenter suggested that employers should compensate employees for time spent during training and on safety committees, if there is to be any hope that employees will buy in to a safety culture.

Response 9: The Department agrees with the comment, and notes that under existing Montana wage and hour laws and administrative rules, time spent undergoing required training must be paid time. ARM 24.16.1009 provides additional details. Employers should note that if safety training occurs outside of, or in addition to regular work hours, overtime pay may be due.

Rule I [24.30.2501] Comments:

Comment 10: Two commenters stated that the rule should expressly state that the recommendations contained in the rules may be adopted at the employer's discretion, and that the recommendations do not establish a standard of care in civil actions that might be brought against employers.

Response 10: The Department agrees with the comment. The Department has balanced the interests of employers, employees, and insurers in a manner that allows but does not require a single safety structure for all businesses. The recommendations contained in these rules do not establish a standard of care in any civil action that might be brought against an employer.

Rule III [24.30.2521] Comments:

Comment 11: A commenter suggested that the rules should make reference to the fact that insurers are to provide safety consultive services to their insured employers.

Response 11: The Department agrees with the comment and has amended the rule accordingly.

Comment 12: A commenter (in the mining industry) questioned whether the reporting requirements of these rules could be met by using the same forms that the employer uses to report safety matters to the federal mining authorities.

Response 12: The rules do not require periodic reporting, only record keeping. The rules do not require that any particular form be used; rather employers are encouraged to review how records that are already kept could serve to fulfill the recordkeeping requirements. For example, if an employer already keeps a "sign-up sheet" for safety meetings that shows the date, topics discussed, and the names of the participants, that document would fulfill the requirements of this rule.

Comment 13: Several commenters stated that the general safety orientation required by Rule III (1)(a) before employees begin their regular job duties should not mean that an employee cannot begin work until after the safety orientation has been completed, and suggested that the general safety orientation be given within the first 30 days of employment.

Response 13: The Department believes that every new employee, on the first day of employment (the first day "on the job") should be given general safety information. The Department believes that if a true safety culture is to exist, it must begin on the first day on the job. The Department anticipates that the basic orientation could be accomplished in as little as 10 or so minutes (depending on employer). The orientation information, such as the location of fire exits, emergency equipment, and first aid kits needs to be given to every worker during the first day. The Department believes that allowing an employer 30 days to perform the general safety orientation might encourage employers to "put it off until tomorrow". The Department is also concerned that in some seasonal employments or for some jobs in the building trades, employers could avoid ever providing the required safety orientation, because the job would be of less than 30 day's duration.

Comment 14: A commenter suggested that the task-specific training required by Rule III (1)(b) should be allowed to be given in "a reasonable amount of time", unless the job or worksite poses "some significant risk to employee safety".

Response 14: The Department believes that there are at least two major objections to the suggestion. First, there is no objective criteria by which to determine whether a job or worksite poses a "significant risk to employee safety". The Department is concerned that an employer's assessment of the significance of risk might be colored by the short term costs of providing immediate training if the risk is "significant". Second, if the risk is deemed not to be "significant", an employer could argue that there is no reason to hurry having training, because the job or worksite did not pose a "significant" risk to employee safety. The Department believes

that it has proposed a reasonable compromise in that it allows work to occur without task-specific safety training so long as the employee is being directly supervised.

Comment 15: A commenter questioned how much of the task-specific training required by Rule III (1)(b) has to be in writing, and how much could be by way of demonstration or lecture.

Response 15: The Department has not established any sort of guidelines or recommendations for how much of the training must be in written form. The Department believes that each employer is in the best position to determine (with advice from the insurer) how much written material is appropriate for the particular situation.

Comment 16: One commenter stated that the responsibility for safety covers both the employer and the employee and not just the employee, as presently proposed in Rule III (1)(b)(ii).

Response 16: The Department agrees with the comment and has amended the rule accordingly.

Comment 17: A commenter suggested that the Rule III (1)(b)(iv)(C) recommendation of safety training "whenever new substances, processes or equipment is introduced in the work place" should be made only occur if a significant risk is present in the new situation.

Response 17: The Department believes that the recommendation is appropriate as written. Employers should analyze every new situation in the workplace to identify what risks, if any, are present. While in many instances no additional employee training other than identifying the new substance, process or equipment will be necessary, the employer (and the employees) should undergo the thought process of thinking about the safety implications of the change. The Department notes that this provision is merely a recommendation, rather than a requirement.

Rule IV [24.30.2541] Comments:

Comment 18: Several commenters interpreted the reference to requiring compliance with the mandatory elements of Rule III as meaning that all of the "recommendations" contained in Rule III were in fact mandatory.

Response 18: The Department has amended the rule to clarify that the mandatory portions of Rule III, but not necessarily the recommendations, must be complied with by employers subject to Rule IV.

Comment 19: Some commenters objected to the requirement that all employers with more than five employees be subject to Rule IV.

Response 19: Because section 39-71-1105 (2), MCA, is applicable to all employers with more than five employees, the Department believes that it does not have the authority to except employers with more than five employees from the rule that implements that portion of the law.

Comment 20: Several commenters objected to the way that the rule determines how many employees an employer has, and wanted to know when (and if) an employer whose goes from having more than five employees to having less than six employees could be excused from complying with Rule IV.

Response 20: The Department has amended the rule to excuse employers from complying with Rule IV when the number of employees remains below six for a period of three consecutive months.

Comment 21: Numerous commenters objected to various provisions of the rule concerning safety committees. Several commenters referred the Department to recent decisions of the National Labor Relations Board which held that joint employer-employee committees (including safety committees) violate section 8 (a)(2) of the National Labor Relations Act.

Response 21: At the time it proposed Rule IV, the Department was not aware of the apparent conflict between the proposed rule and the National Labor Relations Act. In light of the decisions in Electromation, Inc., 309 NLRB No. 163 (decided Dec. 16, 1992) and E.I. Du Pont de Nemours & Co., 311 NLRB No. 88 (decided May 28, 1993), the Department has decided not to adopt the portions of Rule IV relating to safety committees. The Department will continue to study the issues involved, and staff will attempt to develop a rule that will implement section 39-71-1505, MCA, without at the same time creating an unavoidable violation of federal law by employers. When such language is drafted, the Department will commence formal rulemaking proceedings, and give notice to the interested parties and hold a public hearing on the proposed rule. At this time, the Department is unable to estimate when such language will be drafted.

Comment 22: Several commenters objected to the requirement that safety committees meet at least quarterly.

Response 22: The Department will keep the comment in mind as it re-drafts language regarding safety committees.

Comment 23: A commenter suggested that small employers be allowed to join together in forming safety committees.

Response 23: The Department will keep the comment in mind as it re-drafts language regarding safety committees.

5. These rules are effective May 1, 1994.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 18, 1994.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1993. This table includes those rules adopted during the period January 1, 1994 through March 31, 1994 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1993, this table and the table of contents of this issue of the MAR.

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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in March, 1994, are published. Vacancies scheduled to appear from May 1, 1994, through July 31, 1994, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 5, 1994.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Multistate Tax Commission Advisory Council (Revenue)			
Ms. Lynn Chenoweth	Director	not listed	3/1/1994
Helena			3/1/1996
Qualifications (if required): none specified			
Ms. Judy Paynter	Director	not listed	3/1/1994
Helena			3/1/1996
Qualifications (if required): none specified			
Mr. Neil Peterson	Director	not listed	3/1/1994
Helena			3/1/1996
Qualifications (if required): none specified			
Mr. David W. Woodgerd	Director	not listed	3/15/1994
Helena			3/1/1996
Qualifications (if required): none specified			
Public Employees' Retirement Board (Administration)			
Ms. Eleanor Pratt	Governor	reappointed	3/15/1994
Glasgow			4/1/1999
Qualifications (if required): represents public retirement system			
Science and Technology Development Board (Commerce)			
Mr. Mark F. Sullivan	Governor	Tilman	3/3/1994
Great Falls			1/1/1997
Qualifications (if required): represents private sector			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
American Indian Monument Tribal Circle of Flags (Administration)			
Mr. Earl Old Person Browning Qualifications (if required): represents Blackfeet Tribe	Governor	Gervais	3/7/1994 0/0/0
Board of Architects (Commerce)			
Mr. John W. Peterson Kalispell Qualifications (if required): registered architect	Governor	Hefty	3/15/1994 3/27/1997
Board of Professional Engineers and Land Surveyors (Commerce)			
Mr. Paul Dana Billings Qualifications (if required): public member	Governor	reappointed	3/15/1994 3/31/1998
District Court Judge, Ninth District (Justice)			
Judge Marc George Buyske Shelby Qualifications (if required): none specified	Governor	McPhillips	3/9/1994 12/31/1994
Flathead Basin Commission (Governor)			
Ms. Elna Darrow Big Fork Qualifications (if required): public member	Governor	reappointed	3/15/1994 10/1/1997
Mr. Larry Wilson Columbia Falls Qualifications (if required): public member	Governor	reappointed	3/15/1994 10/1/1997

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor)		
Mr. Roland F. Kennerly, Browning	Governor	7/18/1994
Qualifications (if required): member from Region VII		
Mr. Dwight MacKay, Billings	Governor	7/18/1994
Qualifications (if required): member from Region II		
Agricultural Development Council (Agriculture)		
Mr. Everett Snortland, Conrad	Governor	7/1/1994
Qualifications (if required): Director of Department of Agricultural		
Alfalfa Leaf-Cutting Bee Advisory Council (Agriculture)		
Mr. Gill M. Sorg, Wolf Point	Governor	7/1/1994
Qualifications (if required): alfalfa seed grower		
Board of Banking (Commerce)		
Mr. Tom Ryan, Hamilton	Governor	7/1/1994
Qualifications (if required): public member from Congressional District 1		
Mr. Jerry L. Wiedebush, Plentywood	Governor	7/1/1994
Qualifications (if required): officer of state bank & from Congressional District 2		
Board of Barbers (Commerce)		
Ms. Amy S. Adler, Drummond	Governor	7/1/1994
Qualifications (if required): licensed barber		
Board of Dentistry (Commerce)		
Ms. Michele G. Kiesling, Helena	Governor	7/1/1994
Qualifications (if required): licensed dental hygienist		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Board of Hearing Aid Dispensers (Commerce)		
Dr. Wilson Higgs, Kalispell	Governor	7/1/1994
Qualifications (if required): otolaryngologist		
Mr. James Lopez, Kalispell	Governor	7/1/1994
Qualifications (if required): hearing aid dispenser		
Mr. Byron Randall, Kalispell	Governor	7/1/1994
Qualifications (if required): hearing aid dispenser		
Board of Landscape Architects (Commerce)		
Ms. Jean Stephenson, Helena	Governor	7/1/1994
Qualifications (if required): public member		
Mr. Patrick A. Thomas, Kalispell	Governor	7/1/1994
Qualifications (if required): licensed landscape architect		
Board of Morticians (Commerce)		
Mr. Guy W. Miser, Fort Benton	Governor	7/1/1994
Qualifications (if required): not specified		
Board of Nursing (Commerce)		
Ms. Helen Carey, Boulder	Governor	7/1/1994
Qualifications (if required): public member		
Ms. Laura A. Lenau, Miles City	Governor	7/1/1994
Qualifications (if required): registered nurse		
Ms. Blanche Proul, Anaconda	Governor	7/1/1994
Qualifications (if required): public member		
Ms. Suzzie Thomas, Stevensville	Governor	7/1/1994
Qualifications (if required): licensed practical nurse		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Board of Nursing Home Administrators (Commerce)		
Ms. Molly L. Munro, Great Falls	Governor	5/28/1994
Qualifications (if required): public member 55 years old		
Board of Pharmacy (Commerce)		
Mr. Robert J. Kelley, Helena	Governor	7/1/1994
Qualifications (if required): pharmacist		
Mr. H. Dean Mikes, Jr., Missoula	Governor	7/1/1994
Qualifications (if required): hospital pharmacist		
Board of Physical Therapy Examiners (Commerce)		
Ms. Charlotte Fannon, Billings	Governor	7/1/1994
Qualifications (if required): physical therapist		
Board of Plumbers (Commerce)		
Mr. Richard Grover, Missoula	Governor	5/4/1994
Qualifications (if required): master plumber		
Mr. Michael Waldenberg, Great Falls	Governor	5/4/1994
Qualifications (if required): journeyman plumber		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Richard A. "Dick" Ainsworth, Missoula	Governor	7/1/1994
Qualifications (if required): professional and practicing land surveyor		
Mr. Daniel F. Prill, Great Falls	Governor	7/1/1994
Qualifications (if required): professional engineer		
Board of Public Accountants (Commerce)		
Ms. Shirley Warehime, Helena	Governor	7/1/1994
Qualifications (if required): certified public accountant		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Board of Radiologic Technologists (Commerce)		
Ms. Sandra Curtiss, Havre	Governor	7/1/1994
Qualifications (if required): radiological technologist		
Board of Real Estate Appraisers (Commerce)		
Ms. Linda Cunningham, Fairfield	Governor	5/1/1994
Qualifications (if required): public member		
Board of Regents of Higher Education (Education)		
Mr. Shane Coleman, Bozeman	Governor	6/1/1994
Qualifications (if required): full-time student at unit of higher education		
Board of Sanitarians (Commerce)		
Ms. Joanne C. Chance, Helena	Governor	7/1/1994
Qualifications (if required): none specified		
Board of Veterans Affairs (Military Affairs)		
Mr. Neil Shepherd, Chester	Governor	5/18/1994
Qualifications (if required): none specified		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Wes Lindsay, Clancy	Governor	7/1/1994
Qualifications (if required): licensed water well contractor		
Child Care Advisory Council (Social and Rehabilitation Services)		
Ms. Jean Broadhead, Gardiner	Governor	6/30/1994
Qualifications (if required): child care provider		
Ms. Clarice Cryder, Billings	Governor	6/30/1994
Qualifications (if required): parent representative		
Mr. Mike Dellwo, Clancy	Governor	6/30/1994
Qualifications (if required): parent representative		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Child Care Advisory Council (Social and Rehabilitation Services) cont.		
Mr. David Lockie, Bozeman	Governor	6/30/1994
Qualifications (if required): parent member		
Ms. Mary Jane Standaert, Helena	Governor	6/30/1994
Qualifications (if required): parent representative		
Ms. Mildred Wehrman, Billings	Governor	6/30/1994
Qualifications (if required): child care provider		
Committee on Telecommunication Services for the Handicapped (Social and Rehabilitation Services)		
Ms. Sheri Devlin, Billings	Governor	7/1/1994
Qualifications (if required): represents Department of Social and Rehabilitation Services		
Mr. Eric Eck, Helena	Governor	7/1/1994
Qualifications (if required): representative of Public Service Commission		
Mr. Norm Eck, Helena	Governor	7/1/1994
Qualifications (if required): not handicapped and is a senior citizen		
Ms. Barbara Ranf, Helena	Governor	7/1/1994
Qualifications (if required): representative of local exchange company		
Historical Society Board of Trustees (Education)		
Mr. William R. Mackay, Roscoe	Governor	7/1/1994
Qualifications (if required): none specified		
Ms. Susan R. McDaniel, Miles City	Governor	7/1/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Library Services Advisory Council (Education)		
Ms. Brenda Grasmick, Helena	Director	6/1/1994
Qualifications (if required): represents state agency libraries		
Ms. Andrine Haas, Glendive	Director	6/1/1994
Qualifications (if required): represents academic libraries		
Mr. Joseph Hathaway, Glendive	Director	6/1/1994
Qualifications (if required): represents public library service users in Golden Plains Federation		
Ms. Jane Howell, Billings	Education	6/1/1994
Qualifications (if required): represents Montana Library Association		
Ms. Margaret Kernan, Helena	Director	6/1/1994
Qualifications (if required): represents school libraries		
Rep. Ray Peck, Havre	Director	6/1/1994
Qualifications (if required): represents the legislature		
Ms. Carolyn Salansky, Dupuyer	Governor	6/1/1994
Qualifications (if required): represents public library service users in Pathfinder Federation		
Ms. Deborah Schlesinger, Helena	Director	6/1/1994
Qualifications (if required): represents federation coordinators		
Ms. Phyllis Sundberg, Bridger	Director	6/1/1994
Qualifications (if required): represents public library service users in S. Central Federation		
Ms. Margaret Webster, Billings	Director	6/1/1994
Qualifications (if required): represents special libraries		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Montana Historical Society Board of Trustees (Education)		
Ms. Marjorie W. King, Winnett	Governor	7/1/1994
Qualifications (if required): public member		
Montana Mint Committee (Agriculture)		
Mr. Philip Clarke, Columbia Falls	Governor	7/1/1994
Qualifications (if required): active mint grower		
Mr. Mark Ficken, Kalispell	Governor	7/1/1994
Qualifications (if required): active mint grower		
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Mr. Ron Guttenberg, Glasgow	Governor	6/30/1994
Qualifications (if required): public member		
Mr. Gary Tschache, Bozeman	Governor	6/30/1994
Qualifications (if required): representative of service station dealers		
State Library Commission (Education)		
Ms. Vada Taylor, Glendive	Governor	5/22/1994
Qualifications (if required): member		
Teachers' Retirement Board (Administration)		
Mr. W. Craig Brewington, Fort Benton	Governor	7/1/1994
Qualifications (if required): member of teaching profession		
Tourism Advisory Council (Commerce)		
Mr. Terry Abelin, Bozeman	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and skiing		
Mr. Henry Gehl, Lewistown	Governor	7/1/1994
Qualifications (if required): Montana Chamber representative		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1994 through July 31, 1994

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce) cont.		
Mr. Herbert Leuprecht, Butte	Governor	7/1/1994
Qualifications (if required): representative of Gold West Country		
Ms. Barbara Moe, Great Falls	Governor	7/1/1994
Qualifications (if required): representative of Russell Country		
Mr. Art Peterson, Billings	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and camping		
Ms. Velda Shelby, Ronan	Governor	7/1/1994
Qualifications (if required): Native American		
Mr. Roman I. Zylawy, Jr.,	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and skiing		
Western Interstate Commission on Higher Education (Education)		
Ms. Emily Swanson, Bozeman	Governor	6/19/1994
Qualifications (if required): public member		