RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 6.2.103, 6.2.104 and 6.2.107 and the proposed repeal of Rules 6.2.102, 6.2.105, 6.2.106 and 6.2.108 pertaining to the procedural rules of the State Auditor's Office.	) NOTICE OF PROPOSED AMENDMENT AND REPEAL)) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 10, 1996, the State Auditor's Office proposes to amend rules 6.2.103, 6.2.104 and 6.2.107 and to repeal rules 6.2.102, 6.2.105, 6.2.106, and 6.2.108 pertaining to the procedural rules of the State Auditor's Office.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.2.103 ~~(In Lieu of 1.3.207)~~ RULEMAKING, NOTICE, ~~CONTENTS~~

(1) The notices prescribed by this rule anticipate two different situations, one where the agency contemplates a public hearing, and the other where the agency does not contemplate having a public hearing. The agency will not generally contemplate having a public hearing ~~where~~when:

(a) the rule change is procedural~~, or~~;

(b) a specific rule will be under consideration, no useful purpose would be served by a hearing and where it is anticipated that less than 10% or 25 persons directly affected will request a public hearing~~, and~~; or

(c) where, in the case of certain rules adopted by the commissioner of insurance, it is anticipated that no hearing will be demanded by any aggrieved person pursuant to ~~section~~ 33-1-701, MCA. ~~In any event, interested persons must have reasonable opportunity to submit data, views or arguments. If 10% or 25 persons, whichever is less, request a public hearing, the agency must grant a public hearing. Section 2-4-302, MCA. If any person, aggrieved by the rule within the meaning of section 33-1-701, MCA, demands a hearing, subsequent proceedings will be governed by that section.~~

~~(2) The notice of hearing shall contain:~~

~~(a) A description of the agency's intended action (adoption, amendment or repeal of rule). The description shall set forth the subjects and issues involved. When practicable and appropriate, a copy of any rule proposed to be adopted, amended or repealed shall be included. If the rule is too voluminous, the notice must include a summary of changes and inform interested persons where a copy of the proposed rule may be obtained.~~

~~(b) The time and place of public hearing and the manner in which interested persons may present their views at the hearing.~~

~~(c) A designation of the office or governing body of the~~

~~agency or other person who will preside at and conduct the hearing.~~

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

6.2.104 ~~(In lieu of 1.3.213)~~ CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD (1) through (2)(c) remain the same.
~~(3) Section 2-4-106, MCA, requires service in accordance with the Montana Rules of Civil Procedure.~~

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

6.2.107 ~~(In lieu of 1.3.225)~~ CONTESTED CASES, FINAL ORDERS (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. ~~In contested case proceedings before the commissioner of insurance, the commissioner shall make his order on hearing within 30 days after any hearing, rehearing, or reargument. A party to a hearing may, within 30 days after the mailing or delivery of the commissioner's order, request a rehearing. The commissioner may, in his discretion, grant or deny the request.~~ A final decision shall include the following:
(1)(a) through (e) remain the same.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

3. The rules proposed for repeal are as follows:

Rule 6.2.102 is on pages 6-9 and 6-10 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA IMP: 2-4-201, MCA

Rule 6.2.105 is on page 6-11 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA IMP: 2-4-201, MCA

Rule 6.2.106 is on pages 6-11 and 6-12 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA IMP: 2-4-201, MCA

Rule 6.2.107 is on page 6-12 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA IMP: 2-4-201, MCA

Rule 6.2.108 is on page 6-12 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA IMP: 2-4-201, MCA

REASON: All of these rules are being amended or repealed because they contain text that is duplicative of statutory language. Furthermore, the rules are being amended to remove language which indicates that the State Auditor's procedural rules for the Insurance Department replace, rather than supplement, the Attorney General's model rules.

Rule 6.2.106(1) is being repealed because it is in conflict with 33-1-704, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeals in writing to Elizabeth A. O'Halloran, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604-4009, and must be received no later than June 6, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Elizabeth A. O'Halloran, Montana Insurance Department, P.O. Box 4009, Mitchell Building, 126 North Sanders, Helena, Montana 59604-4009, and must be received no later than June 6, 1996.

6. If the State Auditor's Office of the state of Montana, receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 18 based on 188 persons affected by the proposed amendments.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: Rusty Harper
Rusty Harper
Deputy State Auditor

By: Elizabeth A. O'Halloran
Elizabeth A. O'Halloran
for Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 26th day of April, 1996.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed repeal, amendment, transfer, and adoption of rules relating to school finance, budgeting and funding.	)))))	NOTICE OF PUBLIC HEARING

TO: All interested persons.

1. On May 30, 1996, 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, transfer and adoption of rules pertaining to school finance, budgeting and funding.

2. The rules proposed for repeal follow. Full text of the rules are found at pages 10-309, 10-310, 10-321, 10-331.1, 10-331.3 and 10-339, ARM.

10.20.201 APPLICATION FOR INCREASED STATE AID

(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-314, MCA)

10.20.202 PROCEDURE FOR COMPUTING ADDITIONAL STATE AID

(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-314, MCA)

10.21.105 RECORDS OF GTBA CALCULATIONS AND PAYMENTS

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

10.22.202 PETITION TO SUPERINTENDENT OF PUBLIC INSTRUCTION
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-163, MCA)

10.22.206 STATE FINANCIAL AID FOR BUDGET AMENDMENTS

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

10.23.106 STATE EQUALIZATION LEVY
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-360, 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 10-107 through 10-111, 10-112.3, 10-118 through 10-120, 10-185 through 10-190, 10-301 through 10-306, 10-313 through 10-321, 10-325 through 10-329, 10-331 through 10-331.3, 10-335, 10-336, 10-417 through 10-420, 10-422, 10-423, ARM.

10.10.301 CALCULATING TUITION RATES (1) The maximum regular education 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. For a kindergarten student and a pre-school child with disabilities the rate is one-half the rate for an elementary student.

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

(3) - (4) remain the same.

(5) The calculations in this rule are the maximum tuition rates that a district may charge.

(a) Pursuant to ~~sections~~ 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.

(i) Regular education tuition charged for students under a group attendance arrangement in accordance with 20-5-320(8), MCA, must be the same rate charged for students attending under other attendance agreements but may not exceed the maximum regular education rate in (1).

(ii) Regular education tuition charged for mandatory conditions must be the same rate charged for discretionary conditions.

(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.

~~(6) Tuition amount should be adjusted for the portion of the year the student is enrolled.~~

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-5-320, 20-5-321, 20-5-323, MCA)

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) - (2) remain the same.

(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~~ it has not agreed to the out-of-district attendance. However, ~~they~~ it 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~~.~~; or

(c) the student is a student without disabilities who is a legal resident of a school district outside the state of Montana.

(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) remains the same.

(7) When the county is obligated to pay tuition or transportation costs for mandatory out-of-county, out-of-district attendance agreements, those payments will be made from the county equalization funds in the school year following the year of attendance.

(8) - (9) remain the same.

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-5-320, 20-5-321, 20-5-323, MCA)

10.10.301C OUT-OF-STATE ATTENDANCE AGREEMENTS (1) - (4) remain the same.

(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's portion of the per ANB entitlement for that student.

(a) Based on the county superintendents' reports submitted in accordance with ARM 10.10.301D, 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 (5)(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) remains the same.

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-5-314, 20-5-316, MCA)

10.10.301D ~~NEW~~ TUITION REPORTS (1) - (2) remain the same.

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-5-320, 20-5-321, 20-5-323, MCA)

10.10.302 PAYMENT AND CLOSING OF PRIOR YEAR ACCRUED EXPENDITURES AND ENCUMBRANCES (1) ~~In order to comply with sections 20-9-121, 20-9-206, 20-9-212 and 20-9-222, MCA, for budgetary control purposes, the county treasurer shall add the total of accrued expenditures and encumbrances reported by the district for the prior year to the current year's budget for each fund.~~

~~(2)~~ A list showing the detail and total amount of accrued expenditures and encumbrances reported by fund shall be ~~provided by the district to the county treasurer. A copy of the list and supporting documentation shall be~~ retained by the district for audit purposes. ~~If the list cannot be provided to the county treasurer by July 10, the county treasurer will report "Information Not Available" on the county treasurer's statement of cash balances and bond information required by section 20-9-121, MCA.~~

~~(3) If requested by the county treasurer, the district will include an accounting of the payment of accrued expenditures, encumbrances and current year expenditures at the time the district transmits duplicate warrants or a list of warrants issued to the county treasurer.~~

(4) Remains the same, renumbered (2).

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-5-320, 20-5-321, 20-5-323, MCA)

10.10.312 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) remains the same.

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

10.10.503 REPORTS - NOTIFICATION TO BOARD OF PUBLIC EDUCATION (1) - (7) remain the same.

(8) Upon discovery that a report or budget has not been submitted or has not been prepared properly, the office of public instruction will notify the district clerk, ~~the board of trustees,~~ the district superintendent and the county superintendent of the specific violation(s). If the report is a county report, the county treasurer and county commissioners will also be notified. A list of districts and counties notified will be sent to the board of public education.

(9) The district~~,~~ and the county, if notified, ~~will have~~ must submit the report or budget within 35 calendar days from the report's or budget's original due date. The district or county must also include an explanation why the required report or budget was not submitted in time and/or was prepared improperly. ~~five (5) working days to submit respond to the office of public instruction's notice. Failure of the district or county to respond within five working days of~~

~~receiving the office of public instruction's notice will result in the office of public instruction immediately notifying the board of public education.~~

~~(10) The district or county's response must include the reason why the required report or budget was not submitted in time and/or was prepared improperly. The response must request an extension of the report's due date and state the date when the properly completed report or budget will be submitted to the office of public instruction. In no case, will a date more than 35 calendar days from the report's or budget's original due date be approved.~~

~~(11) The office of public instruction will determine whether "reasonable cause" exists for the extension and will notify the district within five (5) working days of receiving their request whether or not the extension is approved.~~

(10) After thirty-five (35) calendar days, the office of public instruction will provide to the board of public education an updated list of districts that have not submitted or properly prepared a report or budget.

(12) remains the same, renumbered (11).

(13) remains the same, renumbered (12).

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

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

(1) - (2) remain the same.

(3) "Attendance" means a student is present for at least a the minimum amount of pupil-instruction (PI) time defined in (36) or (37).

(4) - (10) remain the same.

(11) "Budget unit" means the unit for which the ANB of a district is aggregated for all enrolled students according to 20-9-311, MCA.

(12) - (27) remain the same.

(28) "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~~.

(29) - (37) remain the same.

(38) "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, motorcycle fees, recreational vehicle fees, out-of-state equipment fees, ~~local government severance taxes and net proceeds taxes paid on oil and gas production,~~ oil and natural gas production taxes, 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.

(39) - (59) remain the same.

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

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) - (2) remain the same.

~~(3) If the school district budget report indicates calculation of BASE funding for a separate budget unit but the school does not meet the criteria for a separate budget unit as set out in ARM 10.15.101, the superintendent of public instruction shall aggregate the regularly enrolled, full time pupils with the appropriate budget unit.~~

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

~~(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, renumbered (4).

~~(7)~~(5) After a student is dropped from the rolls in accordance with ~~subsections (5) or (6)~~(4), student absences will not be included for absence and attendance calculations, and student enrollment may not be considered in ANB calculations unless attendance is resumed on or before the date of the official count.

~~(8) A maximum of one-half 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) If the 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 any kindergarten attendance that exceeds a total of 90 pupil instruction days.~~

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

~~(10)~~(7) Homebound students, as defined in ARM 10.15.101, and students who are confined to a treatment, medical, or custodial facility may be counted as enrolled for ANB purposes after the 10th consecutive day of absence if the student:

(a) is an enrolled student as defined in ARM 10.~~20~~15.101~~(4)~~ in the regular education program, and is currently receiving organized and supervised pupil instruction as defined in ~~section~~ 20-1-101(11), MCA;

(b) is in a home or facility which does not offer a regular educational program; and

(c) has instructional costs during the absences which are financed by the school district general fund.

~~(11)~~(8) Extenuating circumstances for students who do not meet the criteria in ~~subsections~~ ~~(10)~~(7)(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 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)~~(9) Trustees may apply for increased ANB for early graduates who are enrolled as of the first Monday of October as a senior in high school, the seventh semester of secondary school, and complete the graduation requirements prior to the February 1 enrollment count ~~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) remains the same, renumbered (10).

~~(14) The time designated as PIR days must not overlap with the time designated as PI days.~~

~~(15) 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.~~

~~(16)~~(11) 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) 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 (11)(b).

(17) remains the same, renumbered (12).

~~(18)~~(13) For purposes of determining the BASE funding program of a district, ANB will be calculated using the following method:

(a) the 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 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 divided by 180 to determine an enrollment ANB;

By budget unit: [(enrollment by grade for first Monday in October + enrollment by grade for February 1) - (one-half the kindergarten enrollment) - (prekindergarten 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~~ budget unit;

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

(b) additional approved enrollment, as determined in ARM 10.20.103, will be added to the enrollment used to calculate the final ANB for BASE funding.

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-9-311, 20-9-313, 20-9-314, MCA)

10.20.103 CIRCUMSTANCES UNDER WHICH THE REGULAR ~~AVERAGE NUMBER BELONGING~~ ANB MAY BE INCREASED ~~FOR THE ENSUING SCHOOL FISCAL YEAR~~ ~~(1) The ANB of a school, calculated in accordance with ARM, 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 the school year preceding the year the ANB is used for funding.~~

~~(2)~~(1) The board of trustees or the county superintendent will provide information requested by the superintendent of public instruction to establish the basis for an increase in ANB and the estimates or data required to determine the number of additional ANB to be approved for the ~~following~~ situations as listed in ~~(section~~ 20-9-313, MCA)~~:~~, or special unanticipated circumstances resulting from the implementation of 20-9-311, MCA.

~~(a) the opening or reopening of an elementary school in accordance with section 20-6-502, MCA;~~

~~(b) the opening or reopening of a high school or branch of the county high school in accordance with sections 20-6-503, 20-6-504, or 20-6-505, MCA;~~

~~(c) an anticipated increase in the ANB due to the closing of any private or public school in the district or a neighboring district;~~

~~(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.~~

(2) A district that experiences an unanticipated enrollment increase after the beginning of the school fiscal year may apply to the superintendent of public instruction for an increase in the district direct state aid amount provided the unanticipated enrollment increase meets the requirements of (NEW RULE I)and the district has adopted a budget amendment for the unanticipated enrollment increase in accordance with the provisions of 20-9-161 through 20-9-165, MCA and ARM 10.22.201 through 10.22.206.

(a) Receipt of the adopted budget amendment resolution signed by the presiding officer of the trustees and the district clerk will be considered the request for additional state assistance.

(b) In order to be eligible to receive additional state assistance, the district must submit the adopted budget

amendment resolution to the superintendent of public instruction no later than May 31 of the school fiscal year to which the enrollment increase applies.

(3) Application for increased ANB will be made to the superintendent of public instruction by May 10 for ~~situations (2)(a) through (e)~~ reasons provided in 20-9-313, MCA. The superintendent will approve, disapprove, or adjust the application by the ~~first~~ fourth Monday in June.
(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-9-311, 20-9-313, 20-9-314, MCA)

10.20.104 **ANTICIPATED** UNUSUAL ENROLLMENT INCREASE - ~~DIRECT STATE AID PAYMENT~~ **ANB CALCULATION** ~~(1) School district trustees may apply to the superintendent of public instruction for increased payment from the state public school equalization aid account for unusual elementary or high school enrollment increases that exceed 6% of the enrollment in the fiscal year prior to the year for which the increase is requested.~~

~~(a) Eligibility to receive additional direct state 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) 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.~~

~~(I) 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.~~

~~(II) Enrollment must be adjusted by subtracting the prekindergarten 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)(II) above.~~

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

~~(D) Determine the enrollment increase exceeding six percent (6%) 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.~~

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

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

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

~~(III) 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) 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.~~

~~(I) 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.~~

~~(II) Estimated enrollment must be adjusted by subtracting the prekindergarten 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 six percent (6%) 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:~~

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

~~(II) 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~~

~~(III) Rounding the ANB up to the nearest whole number.~~

~~(IV) 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.~~ (1) School district trustees may apply to the superintendent of public instruction for increased ANB for unusual elementary or high school enrollment increases that exceed six percent (6%) of the enrollment in the fiscal year prior to the year for which the increase is requested. Elementary district and high school district calculations are always separate. In the case of a K-12 district, make separate enrollment calculations for the elementary and high school levels of the K-12 district.

(2) The eligibility for ANB for the ensuing school fiscal year due to anticipated unusual elementary or high school enrollment increases will be computed as follows pursuant to 20-9-314, MCA.

(a) Estimate the district's anticipated enrollment for the next October count using information known to be accurate at the time the estimate is made. Prekindergarten enrollment is not included in the estimate. One-half of the anticipated kindergarten enrollment and one-half of the anticipated part-time enrollment is subtracted. This is anticipated enrollment (AE).

(b) Determine the enrollment counts for October and February of the current school year adjusted to remove one-half of the kindergarten enrollment and one-half of the part-time enrollment. This is current year enrollment (CYE).

(c) Determine the anticipated enrollment increase (AEI) by subtracting the current year enrollment from the anticipated enrollment. AEI = AE - CYE.

(d) Determine the anticipated increase in enrollment as a percentage of the current year's enrollment by dividing the AEI calculated in (2)(c) by the current year enrollment. AEI/CYE = % increase.

(e) If the anticipated increase in enrollment as a percentage of the current year's enrollment calculated in (2)(d) exceeds six percent (6%), the superintendent of public instruction shall approve increased ANB used to establish the ensuing year's BASE funding program and entitlement calculations in accordance with 20-9-314(5), MCA.

(3) The increased ANB for the ensuing fiscal year will be calculated as follows:

(a) Determine AEI in excess of 6% of CYE. AEI - (.06xCYE). Round to nearest hundredth (.xx).

(b) Determine AEI for each budget unit by subtracting CYE by budget unit from AE by budget unit. AEI by budget unit = AE by budget unit - CYE by budget unit. If the district has one budget unit, go to (3)(d).

(c) Prorate anticipated enrollment increase exceeding 6% of CYE among the district's budget units by:

(i) calculating the ratio of AEI for each budget unit as calculated in (3)(b) to the total AEI for the district calculated in (2)(c); and

(ii) multiplying AEI in excess of 6% of CYE (AEI - (.06xCYE)) by the ratio calculated in (3)(c)(i) for each budget unit within the district. Round to the nearest hundredth (.xx).

(d) Add the CYE by budget unit and the AEI in excess of 6% by budget unit as calculated in (3)(c).

(e) Multiply the sum calculated in (3)(d) by the total of PI days and PIR days approved for the current year and divide by 180 for each budget unit. Round the ANB up to the nearest whole number.

(4) In accordance with 20-9-314(6), MCA, after the next October enrollment count the office of public instruction reviews the ANB of a district that used anticipated enrollment figures. ANB is recalculated in accordance with ARM 10.20.104(2), using actual enrollment as of the 1st Monday in October in place of the anticipated enrollment. If the recalculated ANB based on the actual enrollment is less than the ANB used for funding, ARM 10.20.104(2) will be used to recalculate ANB using actual enrollment as of the next February count in place of the anticipated enrollment.

(a) If the recalculated ANB based on the actual enrollment as of the 1st Monday in October or official February count is less than the ANB used for funding:

(i) 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

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

(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-311, MCA)

10.21.101B 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 *x 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~~calendar year 199X-1 statewide taxable value x 1.21)/1,000] / 199X statewide elementary or high school ANB. (AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.21.101C CALCULATION OF MILL VALUES PER ANB AND GTB RATIOS (1) remains the same.

(2) By March 1 OPI will send:

(a) Each school district its preliminary figures for:

(i) the district's ~~mill value per ANB~~ weighted GTB subsidy per mill(s) in the BASE budget levy,

(ii) the district's ~~GTB ratio~~ debt service mill value per ANB,

(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) - (4) remain the same.

(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, and 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~~ PO Box 202701, ~~Helena Avenue,~~ Helena, MT 59601~~20~~-2701. 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 debt service GTB ~~ratio and~~ mill value per ANB and weighted GTB subsidy per mill(s) in the BASE budget levy.

(7) By May 1 OPI will calculate and notify all districts and counties of the final state, county, and district mill values per ANB, final district general fund weighted GTB subsidy per mill(s) in the BASE budget levy, and final state ~~and district~~ GTB ratios.
(AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.21.101D CALCULATION OF DISTRICT RATIO (1) A district's GTB ratio for purposes of calculating FY 199X+1 eligibility is: ~~(1)~~calendar year 199X-1 district taxable value / [~~(2)~~district's FY 199X direct state aid + [40% of ~~(3)~~district's FY 199X special education allowable cost payment and related-services block grant payment to cooperatives)].
(AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.21.101G 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 25 of the year prior to the change. Upon notification of the change OPI will recalculate the district mill value per ANB and subsidy per mill 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, direct state aid, and special education entitlements of the territories within the district.
(AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.21.101I 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. Eligible districts are provided advances for school facilities in the first school fiscal year in which a debt service payment is due.

~~(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) remains the same.

(3) Pursuant to 20-9-422, MCA, regarding additional requirements for trustees' resolution calling a bond election, the office of public instruction shall

calculate an estimate of the amount of advance for which the district will be eligible. "Current year" information used to estimate this payment will be the current year information originally submitted on the final budget from the district and the prior year percentage used to prorate the state share of reimbursement for school facilities until the payment is made in May. After the May payment, "current year" information used to estimate the advance payment will be the ensuing year's information for ANB and district and statewide mill values and the most current percentage used to prorate the state share of reimbursement for school facilities.

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

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

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

~~(6)~~(7) If the legislative appropriation for the state reimbursement for school facilities is less than the amount for which districts qualify in ~~subsection (5)~~(6), 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)~~(6).

~~(7)~~(8) On or before May ~~1~~ 31, the office of public instruction shall distribute the state advance for school facilities and the state reimbursement for school facilities to qualifying districts for deposit in the district's debt service fund.

(9) After the payment is made in May pursuant to 20-9-371, MCA, actual state advance amounts for the ensuing fiscal year will be calculated using ANB and district and statewide mill values for the year in which the advance applies and the most current percentage of state share which will be considered "prior year's" percentage in the year in which the payment is made. The office of public instruction will notify the districts of the amount to estimate as revenue in their debt service funds by the final budget meeting.

(10) Enrollment adjustments due to audit and enrollment increases approved under 20-9-166, MCA, after October 1, do not constitute a change in ANB for the purpose of calculating the district's eligibility for facilities reimbursement or advance. However, in cases of significant adjustments in ANB, the superintendent of public instruction may require adjustment of facility reimbursements and advance funding.

(11) If a district has more than one bonding jurisdiction and the district has eligibility for facilities reimbursement in one or more jurisdiction(s), those jurisdictions having eligibility will receive credit for the reimbursement. (AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.21.102B CALCULATION OF COUNTY MILL VALUES PER ANB (1) remains the same.

(2) The county elementary or high school GTB mill value per ANB for purposes of calculating FY 199X+1 retirement fund GTBA is: (~~C~~calendar year 199X-1 county taxable value/1,000) / 199X county elementary or high school ANB.

(AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.21.104 DISTRIBUTION ~~AND REVERSION~~ OF GTBA

(1) - (3) remain the same.

~~(4) In accordance with section 20-9-368, MCA, 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) Formula to calculate amount of GTBA reversion:~~

~~County Retirement GTBA Reversion~~

~~1) total retirement budget~~

~~2) total retirement expenditures~~

~~3) percent expended (B / A)~~

~~4) percent of GTBA reverted (1 - C)~~

~~5) total retirement GTBA subsidy~~

~~6) total retirement GTBA reversion (D x E)~~

~~(b) OPI will adjust expenditures for disbursements illegally made from the retirement fund.~~

~~(5) To ensure that GTBA 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 GTBA payments made to the county during the next fiscal year. In the instance where a county must revert GTBA but will not receive GTBA in the next fiscal year, the county will pay the reversion amount due to the OPI by county warrant.~~

(AUTH: Sec. 20-9-369, MCA; IMP: Secs. 20-9-366 through 20-9-371, MCA)

10.22.102 SPENDING LIMITS (1) - (3) remain the same.

(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 maximum budget, without voter approval. With voter approval, the trustees may adopt a general fund budget up to the current year general fund budget.

(5) For a non-operating district that is reopening, budget limitations for the general fund shall be based on the last operating year's budget for the general fund. This budget will be considered the prior year's budget and used in calculations to determine budget limitations for the year of reopening. These budget limitation calculations may not allow

a general fund budget below BASE or above maximum as calculated for the year of reopening.

~~(5)~~(6) For purposes of determining the spending limit:

~~(a)~~For a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget ~~shall~~ may include a portion of the payments received by the full service cooperative in support of special education programs. OPI will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.

~~(6)~~(7) OPI shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in ~~section~~ 20-9-308, MCA. The superintendent of public instruction ~~shall~~ may request a revised budget from ~~the chairman of the board of trustees of~~ any district whose general fund budget is ~~in excess of~~ not within the limits using the guidelines established in ARM 10.10.503. ~~When making this request, the superintendent shall also notify the county superintendent of the county in which the district is located.~~

~~(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 section 20-9-308, MCA, to both the county superintendent and the superintendent of public instruction.~~

~~(8) If the superintendent does not receive the revised budget within 35 days after initial notice to the district, 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: Sec. 20-9-102, MCA; IMP: Sec. 20-9-308, 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.

~~(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.

~~(3)~~(2) The amount earmarked as reserves can exceed the limitations of ~~subsection (2)~~(1) by a combination of one or more of the ~~following:~~ unused balances described in 20-9-104(5), MCA.

~~(a) the unused balance of any amount received in settlement of tax payments protested in a prior school fiscal year;~~

~~(b) the unused balance of any amount received from a tax audit;~~

~~(c) the unused balance of any amount received in delinquent taxes from a prior school fiscal year; or~~

~~(d) any amount received as a general bonus payment.~~

(3) Amounts that have been identified in (2) cannot be identified as reserves in excess of the operating reserve unless the limitation of operating reserves in 20-9-104, MCA, which is the greater of either 10% of ensuing year's budget or $10,000, has been met.

(4) Reserves are reidentified each year when budgeting for the ensuing year. After the fund balance for the general fund budget is determined and the operating reserve is fully met, the trustees may determine any revenues that have been received by the district in the current year according to section 20-9-104(5), MCA. This amount must only include revenues received that were protested and/or delinquent from a prior tax year. The amount must not include revenues received which were protested and delinquent taxes from the current tax year. Current year receipts of penalties and interest on protested and delinquent taxes from the current or prior years may be included in the reserve. The amount identified may be added to the current year's identified excess reserves, minus amounts used in the current year for budget amendments for deferred projects, minus amounts used to fund the ensuing year's budget. Total operating and excess reserves must not exceed the fund balance available for those reserves.

~~(4)~~(5) OPI shall monitor the general fund budget of each school district to ensure compliance with the reserve limits established in ~~section~~ 20-9-104, MCA. The superintendent of public instruction ~~shall~~ may request a revised budget from ~~the chairman of the board of trustees of~~ any district whose reserves ~~are in excess of~~ do not comply with the limit using the guidelines established in ARM 10.10.503. ~~When making this request, the superintendent shall also notify the county superintendent of the county in which the district is located.~~

~~(5) 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 20-9-104, MCA, to both the county superintendent and the superintendent of public instruction.~~

~~(6) If the superintendent does not receive the revised budget within 35 days after initial notice to the district, written notice of the violation shall be given to the board of public education and the county attorney of the county in which the district is located.~~

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

10.22.104 UNRESERVED FUND BALANCE REAPPROPRIATED (1) - (4) remain the same.

~~(5) If a district has unreserved fund balance reappropriated remaining after fully funding the general fund budget amount in excess of 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 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 operating~~

~~reserve account, exceed the reserve limit established in ARM 10.22.103.~~
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-104, MCA)

10.22.105 OVEREXPENDED BUDGETS (1) remains the same.

~~(2) Section 20-9-222, MCA, mandates the county treasurer not honor warrants issued that will cause the overexpenditure of a fund's budget authority.~~

~~(3)~~(2) Expenditures made, liabilities incurred or warrants issued in excess of any final budget shall not be the liability of the district and no district money shall be used to pay the same as per ~~section~~ 20-9-133, MCA.

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

~~(5)~~(4) When the superintendent of public instruction becomes aware that a district has overexpended a fund's budget, the superintendent ~~shall~~ may notify the district's board of trustees and request an explanation for the overexpenditure.

(a) The trustees shall respond in writing within 30 calendar days of receiving the superintendent's notification and shall include in their response a description of the changes and/or controls that have, or will be, put in place at the district to prevent a reoccurrence of the situation that created the budget overdraft.

(6) remains the same, renumbered (5).
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-133, MCA)

10.22.107 PETITION TO APPROPRIATE REVENUE TO FUND A PRIOR YEAR BUDGET AMENDMENT (1) In accordance with 20-9-168, MCA, a ~~A~~ district may petition the superintendent of public instruction for approval to appropriate revenue in the ensuing school year to fund a current year general fund budget amendment adopted under ~~section~~ 20-9-161(2), 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~~ 20-9-308, MCA. The amount appropriated under this ~~subsection~~ may not exceed the ~~amount expended~~ unfunded amount of expenditures made for the current year budget amendment. ~~If the budget amendment is to be funded from a property tax levy, the trustees of a district must comply with the requirements for voter approval in sections 20-9-308 and 20-9-353, MCA.~~
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-168, 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.

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

(4) remains the same.

~~(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(2) through (6), MCA.~~

~~(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), MCA.~~

~~(7)~~(5) Budget amendment petitions for unanticipated enrollment increases must be received by the superintendent of public instruction by May 31 of the school fiscal year to which the budget amendment applies. The superintendent of public instruction will consider budget amendment petitions after May 31 only under exceptional circumstances that could not be foreseen by the district trustees as of May 31.

(6) A budget amendment may be adopted under the provisions of 20-9-161(5)(e), MCA, to expend all or a portion of taxes received in the current year and identified under the provisions of 20-9-161(5)(a) through (d), MCA.

(7) A budget amendment may be adopted under the provisions of 20-9-161(5)(d), MCA, to expend all or a portion of the taxes received in a prior year that have been identified as excess reserves under the provisions of 20-9-104(5), MCA, and ARM 10.22.103(3) and (4).

(AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-9-161 through 20-9-165, 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~~ each funds affected must be determined ~~in the following manner~~ as follows:

(a) 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 amount determined in ~~subsection~~ (1)(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 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.~~ in accordance with ARM 10.20.104(3)(a) through (c). 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~~ (1)(b) by the enrollment increase determined in ~~subsection~~ (1)(c). The result is the maximum limitation on a budget amendment for amendments resulting from enrollment increases.

(e) 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~~. The maximum general fund budget will be adjusted as follows:

(i) Determine the total enrollment increase in accordance with [RULE I UNANTICIPATED ENROLLMENT INCREASE] (1)(a) through (c) and the enrollment increase for each budget unit within the elementary level or the high school level in accordance with [RULE I UNANTICIPATED ENROLLMENT INCREASE] (2)(b).

(ii) Prorate the total enrollment increase determined in [RULE I UNANTICIPATED ENROLLMENT INCREASE] (1)(a) through (c) to each budget unit by multiplying the total enrollment increase by the ratio of the enrollment increase by budget unit determined in [RULE I UNANTICIPATED ENROLLMENT INCREASE] (2)(b) to the total enrollment increase. Round the result of the calculation to the nearest hundredth (.xx).

(iii) Determine the current year's adjusted ANB used to adjust the maximum general fund budget for each budget unit by:

(A) summing the current year enrollment as defined in [NEW RULE I] (1)(a) by budget unit and the enrollment increase by budget unit as calculated in (1)(e)(ii);

(B) multiplying the sum in (1)(e)(iii)(A) by the total of PI days and PIR days approved for the current year, and dividing the total by 180; and

(C) rounding the ANB up to the nearest whole number.

(iv) Calculate the basic entitlement and total per-ANB entitlement using the adjusted ANB as calculated in (1)(e)(iii)(C).

(v) Subtract the basic entitlement and total per-ANB entitlement calculated using the ANB based on the prior year average enrollment from the basic entitlement and total per-ANB entitlement calculated in (1)(e)(iv).

(vi) Determine the adjusted maximum general fund budget by adding the amount calculated in (1)(e)(v). current year maximum general fund budget reported on the budget form for the current fiscal year.

(2) remains the same.
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-165, MCA)

10.22.205 BUDGET AMENDMENT PREPARATION AND ADOPTION ~~(1) A majority of the trustees present at the meeting to consider a budget amendment may adopt a budget amendment, setting forth fully the facts constituting the need for the budget amendment.~~

~~(2) The trustees may amend the budget for any fund that was included on the final budget of the district for the current school year. The expenditures related to the budget amendment must be accounted for separately using a project reporter number assigned by the office of public instruction.~~

~~(3) Whenever the trustees adopt a budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment.~~

~~(4)~~ (1) The adopted budget amendment must be signed by the ~~chairman~~ presiding officer 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)~~ (2) Upon receipt of the budget amendment resolution, the office of public instruction will assign a project reporter number to the budget amendment to be used for accounting purposes. The expenditures related to the budget amendment must be accounted for separately using a project reporter number assigned by the office of public instruction.

(3) 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 provided in 20-9-306, MCA, and ARM 10.20.201, an increase in state transportation aid, or both.

(4) The superintendent of public instruction shall approve or disapprove each application for increased direct state aid made in accordance with 20-9-314, MCA, and ARM 10.20.104.
(AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-165, MCA)

10.23.102 FUNDING THE BASE BUDGET LEVY (1) remains the same.

(2) To determine the BASE budget levy requirement needed to help fund the BASE budget area, the county superintendent shall first subtract the other revenues available to fund the district's BASE budget. The remaining amount is the 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~~ this 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.

(3) remains the same.

(4) When reporting the 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 GTB ratio and the statewide GTB ratio for the current fiscal year, as provided by OPI in accordance with ARM ~~10.21.103~~ 10.21.101B through 10.21.101D; and

(b) the calculation used to determine the mills needed to fund the levy requirement for the BASE budget.

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

10.30.402 CREATION OF K-12 DISTRICTS (1) - (3) remain the same.

(4) ~~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) - (3) remain the same.

(4) The elementary and high school district officials shall prepare a single budget per fund for the K-12 district for the effective year of formation of the K-12 district, and

for each year thereafter, using the forms and procedures established by the office of public instruction.

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

(i) The budget limitations shall be applied to the combined total of the elementary and high school budgets for the fiscal year prior to the effective fiscal year of the attachment. For each year thereafter, the budget limitations shall be applied to the prior year K-12 district budget.

(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 BASE budget levy amount for a K-12 district will be prorated between elementary and high school programs using the ratio of the elementary GTBA budget area to the high school GTBA budget area.

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

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:			
(I) [Allowable costs, including disproportionate cost reimbursement times (Elementary ANB			

divided by total K-12 ANB)]	_____		
(II) [Allowable costs, including disproportionate cost reimbursement times (High School ANB divided by total K-12 ANB)]		_____	
(III) Total K-12 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~~ 10.21.101F, 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 BASE budget amount.

(c) After the resolution to attach and establish a K-12 district, 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) remain the same.

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

10.30.406 EXCEPTIONS TO HIGH SCHOOL PROVISIONS (1) The K-12 school district is subject to the provisions of law for high school districts except for those situations set out in Title 20, chapter 6, MCA, and this title.

(a) The retirement fund of a K-12 district will be a high school retirement fund, and the eligibility for guaranteed tax base aid will be determined based on the high school mill value per ANB. The guaranteed tax base aid payment for the high school retirement fund will be awarded to a county with a K-12 district using the number of high school ANB in the county plus the elementary ANB of any K-12 district in the county times the statewide subsidy per mill per ANB as calculated by the office of public instruction. The guaranteed tax base aid payment for the elementary retirement

fund will be awarded to a county with a K-12 district using the number of elementary ANB from elementary districts in the county, but not including the elementary ANB from any K-12 districts in the county. However, the calculations for the statewide and the county mill value per ANB will utilize the elementary ANB of the K-12 district for the statewide and county elementary calculation and the high school ANB of the K-12 district for the statewide and county high school calculation.

(b) Tuition calculations will be determined separately for high school and elementary pupils using the rates established in ARM 10.10.302~~1~~. ~~The expenditures for the general fund, the retirement fund, and debt service fund will be determined based on the following:~~

~~(i) the ratio of the elementary general fund and the high school general fund expenditures to the total of the two expenditure amounts in the fiscal year prior to formation of the K-12 district, will be applied to the K-12 general fund expenditure amount each year to determine the portion attributed to elementary and to high school programs to be used for tuition calculations.~~

	~~Elementary~~	~~H School~~	~~K-12 Total~~
~~(A) general fund expenditures for year prior to K-12 formation~~			
~~(B) Ratio to total Elem and H School (A) divided by K-12 total~~	~~%~~	~~%~~	~~100%~~

~~(ii) the elementary and high school percent calculated in (i)(B) will be applied to the total K-12 figure determined for tuition in ARM 10.10.302 in the second year after formation of a K-12 district.~~

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

(c) Unusual enrollment increase eligibility, pursuant to ~~section~~ 20-9-314, MCA, will be determined separately for elementary enrollment and for high school enrollment, and not based on total K-12 district enrollment.

(d) The end-of-year fund balance of a K-12 school district lease or rental agreement fund which exceeds $20,000 shall be transferred to the general fund of the district. (AUTH: Sec. 20-3-106, MCA; IMP: Sec. 20-6-702, MCA)

4. The rule, as proposed to be amended, and transferred to Chapter 10, sub-chapter 20, new material underlined, deleted material interlined, provides as follows.

10.23.101A 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;~~

(1) The 20 mile minimum described in 20-9-311(8), MCA, will be measured as the shortest passable route on a road between one school of the district and another school of the district or between a school of the district and the official boundary of an incorporated city or town located in the district.

~~(c)~~(2) ~~t~~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: Sec. 20-9-102, MCA; IMP: Sec. 20-9-311, MCA)

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

RULE I UNANTICIPATED ENROLLMENT INCREASE (1) If a budget amendment resulting from an unanticipated increased enrollment has been adopted pursuant to 20-9-161 through 20-9-166, MCA, the eligibility for and number of increased ANB for the current school fiscal year due to an unanticipated elementary or high school enrollment increase will be computed pursuant to 20-9-314, MCA. Elementary district and high school district calculations are always separate. In the case of a K-12 district, make

separate enrollment calculations for the elementary and high school levels of the K-12 district.

(a) The enrollment determined from the enrollment reported on the fall enrollment report (Form FR-4) or the spring enrollment report form for official reporting is defined as the "current year enrollment" (CYE) for purposes of this calculation. CYE must be adjusted by subtracting the prekindergarten 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. For purposes of this calculation, "prior year enrollment" (PYE) 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 (1)(a).

(c) Determine the enrollment increase by subtracting the prior year enrollment from the current year enrollment. EI = CYE - PYE.

(d) Determine the enrollment increase as a percentage of the prior year enrollment by dividing the enrollment increase calculated in (1)(c) by the prior year enrollment. EI/PYE = %.

(e) If the enrollment increase as a percentage of the prior year enrollment calculated in (1)(d) exceeds six percent (6%), the superintendent of public instruction will approve an increase in ANB used to establish the current year's basic entitlement and total per-ANB entitlement in accordance with 20-9-314(5), MCA.

(2) The increased ANB for the current fiscal year is calculated as follows:

(a) Determine EI in excess of 6% of PYE. EI - (.06xPYE). Round the calculation to the nearest hundredth (.xx).

(b) Determine EI for each budget unit by subtracting PYE by budget unit from CYE by budget unit. EI by budget unit = CYE by budget unit - PYE by budget unit.

(c) Prorate enrollment increase exceeding 6% of PYE calculated in (2)(a) among the budget units by:

(i) calculating the ratio of EI for each budget unit as calculated in (2)(b(to the total EI for the district calculated in (1)(c); and

(ii) multiplying the EI in excess of 6% of PYE calculated in (2)(a) by the ratio calculated in (2)(c)(i) for each budget unit within the district. Round the calculation to the nearest hundredth (.xx).

(d) Add the CYE by budget unit and the EI in excess of 6% by budget unit as calculated in (2)(c)(ii).

(e) Multiply the sum calculated in (2)(d) by the total of PI days and PIR days approved for the current year, and divide the total by 180.

(f) Round the ANB up to the nearest whole number. (AUTH: Sec. 20-9-102, MCA; IMP: Secs. 20-9-313, 20-9-314, MCA)

RULE II LITIGATION RESERVE FUND (1) The board of trustees may establish a litigation reserve fund when litigation is pending. Pending litigation is defined as any type of contested hearing that could result in a judgment with adverse fiscal consequences against the school district. Such proceedings may include but are not limited to actions heard by a county superintendent, the state superintendent of public instruction, the Montana human rights commission, a district court, the Montana supreme court, the equal opportunity commission, fair labor standard boards, etc.

(2) The litigation reserve fund may be used to pay awards or judgments, including costs if so ordered in the judgment. This fund may also be used to pay settlements agreed upon before a judgment is rendered, back wages including benefits, and civil penalties.

(3) The litigation reserve fund shall not be used to pay costs of attorney fees, witness fees, travel, copies, telephone, transcripts, etc.

(4) When the litigation ends, any remaining fund balance in the litigation reserve fund shall be immediately transferred back to the general fund.

(5) In accordance with generally accepted accounting principles, transfers due to or from the litigation reserve fund must be accrued prior to year's end in the district's accounting records as operating transfers. The actual cash transfer to or from the litigation reserve fund shall be made before September 30th of the next fiscal year. (AUTH: Sec. 20-9-102, MCA; IMP: Sec. 20-9-515, MCA)

RULE III DISSOLUTION OF K-12 DISTRICTS (1) If a K-12 district has voted to dissolve in order to consolidate with one or more K-12 or non-K12 districts the following shall apply:

(a) To determine prior year adopted budget amounts for the elementary and high school portions of the dissolved K-12 district, divide the adopted budget of the K-12 district for the last school year by the maximum budget limit of the K-12. Multiply the result times the maximum limit portion as determined by the elementary program and times the maximum limit portion as determined by the high school program.

(b) To determine prior year ANB for the elementary and high school portions of the dissolved K-12 district to be used to calculate spending limitations for the consolidated district(s), use ANB per elementary portion and ANB per high school portion of the K-12 from the prior year. (AUTH: 20-3-106, MCA; IMP: 20-6-704, MCA)

6. Revision of school funding rules is necessary to implement changes in statute from the 1995 Legislative session, to clarify existing rules, and to comply with HJR 5.

7. 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, Kathleen F. Holden, P.O. Box 202501, Helena, MT 59620-2501, no later than 5:00 p.m. on June 14, 1996.

8. 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 23, 1996.

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Amendment of Rule 23.14.401 relating to Peace Officers Standards and Training and the Repeal of Rule 23.14.307 relating to the DARE Trust Fund	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 23.14.401 AND REPEAL OF RULE 23.14.307

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 8, 1996, the Board of Crime Control proposes to amend rule 23.14.401 and repeal rule 23.14.307.

2. The proposed amendment will read as follows:

23.14.401 ADMINISTRATION OF PEACE OFFICERS STANDARDS AND TRAINING (1) through (3)(k) remain the same.

(l) One member to be a detention center administrator or detention officer; ~~and~~

(m) One member to be an incumbent county attorney recommended by the county attorneys association~~.~~; and

(n) One member to be a 9-1-1 coordinator or public safety communications officer.

(4) through (21) remain the same.

AUTH: 44-4-301, MCA
IMP: 44-4-301, 7-32-303, MCA

3. The following rule is proposed for repeal:

23.14.307 DRUG ABUSE RESISTANCE EDUCATION (DARE) TRUST FUND Text can be found at page 23-409.

AUTH: 44-2-701, MCA; Sec. 12, CH. 808, L. 1991
IMP: 44-2-702, 44-2-704, MCA

4. The rule proposed for amendment will give public safety communications officers representation on the POST council as their profession now must conform to POST rules.

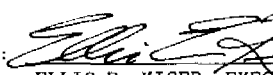
5. The rule proposed for repeal has been sunsetted as it did not fulfill the legislative financial expectations for the biennium per Sec. 12, CH. 808, L. 1991.

6. Interested parties may submit their data, views, or arguments concerning the proposed amendment or repeal in writing to Ellis E. Kiser, Executive Director, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than June 6, 1996.

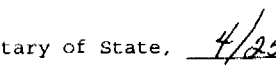
7. If a person who is directly affected by the proposed amendment or repeal wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Ellis E. Kiser, Executive Director, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than June 6, 1996.

8. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 15 based on the number of public safety communications officers in the state.

BOARD OF CRIME CONTROL
ELLIS E. KISER, EXECUTIVE DIRECTOR

By: 
ELLIS E. KISER, EXECUTIVE DIRECTOR
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 4/25/96


Rule Reviewer

BEFORE THE BOARD OF LAND COMMISSIONERS AND DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of Rules 26.2.703 through 26.2.707 pertaining to citizen participation in agency decisions	))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 9, 1996, the Board of Land Commissioners and the Department of Natural Resources and Conservation propose to repeal Rules 26.2.703 through 26.2.707 pertaining to citizen participation in agency decisions. A Notice of Repeal was incorrectly published in the 1995 Montana Administrative Register Issue No. 18 on p. 1957, which will not be effective.

2. The proposed repeal of Rules 26.2.703 through 26.2.707 is necessary because the Department of State Lands was eliminated by Section 500, Chapter 418, Laws of Montana 1995. As a result of the reorganization of natural resource management functions the existing Department of Natural Resources and Conservation rules are deemed appropriate for coverage of the functions being transferred from the Department of State Lands. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation.

3. Rules 26.2.703 through 26.2.707, the rules proposed for repeal, are on pages 26-82 and 26-83 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than June 6, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. Requests must be received no later than June 6, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on the number of persons who participate in agency decisions.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE, REVIEWER

Certified to the Secretary of State April 29, **1996.**

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I pertaining to the release of confidential records for state mental health facilities	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE

TO: All Interested Persons

1. On May 31, 1996, at 10:30 a.m., a public hearing will be held in the Auditorium of the Social and Rehabilitation Services Building, 111 North Sanders, Helena, Montana to consider the proposed adoption of Rule I pertaining to the release of confidential records for state mental health facilities.

The Department of Public Health and Human 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 20, 1996, 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 adopted provides as follows:

[RULE I] RELEASE OF CONFIDENTIAL RECORDS (1) All information obtained and records prepared in the course of a state mental health facility providing service are confidential and privileged. Information and records may be disclosed to qualified personnel for the purpose of conducting scientific or genealogical research, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, or otherwise disclose patient identities in any manner.

(2) Consent of the patient is required in order to release information or records concerning an individual who is currently an inpatient or who has been discharged within the twelve previous months. In the case of a patient who has been adjudicated incapacitated, any consent which is required under these rules may be given by the guardian or other person authorized under state law to act in the patient's behalf. If a written consent is needed to disclose information identifying a deceased patient, that consent may be given by an executor, administrator, or other personal representative appointed under

applicable state law. If there is no such appointment, the consent may be given by the patient's spouse, or, if none, by any responsible member of the patient's family.

(3) Patient identifying information may be disclosed for the purpose of conducting research if the department director or, for records in state archives, the state archivist, makes a determination that the recipient of the patient identifying information:

(a) is qualified to conduct the research, as determined from the recipient's application for authorization of confidentiality;

(b) signs an oath of confidentiality; and

(c) agrees in writing to:

(i) maintain copies of the patient identifying information in accordance with security requirements;

(ii) Destroy or deposit with the State Archives all copies of the patient identifying information upon completion of the research. All information deposited with the State Archives will be subject to retention rules of that agency.

(4) An application for authorization of confidentiality for a research project must be approved by the department and shall include the following:

(a) The name and address of the individual primarily responsible for the conduct of the research and the sponsor or institution with which he or she is affiliated, if any. Any application from a person affiliated with an institution will be considered only if it contains or is accompanied by documentation of institutional approval. This documentation may consist of a written statement signed by a responsible official of the institution, such as a graduate student's advisor or department chair;

(b) The location of the research project and a description of the facilities available for conducting the research, including the name and address of any hospital, institution, etc. to be utilized in connection with the research;

(c) Summaries of the applicant's and any other personnel having major responsibilities in the research project appropriate training and experience;

(d) An outline of the research project, including a clear and concise statement of the purpose and rationale of the research project and the general research methods to be used;

(e) The date on which research will begin and the estimated date for completion of the project;

(f) An assurance that if an authorization of confidentiality is given it will not be represented as an endorsement of the research project or used to coerce individuals to participate in the research project.

(5) Security requirements shall include:

(a) Written records that are subject to these regulations must be maintained in a secure room, locked file cabinet, safe, or other similar container when not in use;

(b) Applicant must have a research protocol which has been

reviewed by a group of at least two individuals knowledgeable in the field who are independent of the research project. Applicant must have a written statement that the protocol has been reviewed and it has been determined that the rights of the patients will be adequately protected and the risks in disclosing patient identifying information are outweighed by the potential benefits of the research;

(c) The information will be used only for the purposes for which it is being provided.

AUTH: Sec. 53-21-166, MCA
IMP: Sec. 53-21-166, MCA

3. This rule is necessary to effectuate the provisions of 53-21-166(4), MCA which requires promulgated rules for the conduct of research into confidential information and records of a mental health facility. The rule is particularly needed to govern access to records of state mental health facilities which are archived with Montana State Archives.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than June 6, 1996.

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

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 29, 1996.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of Rule I; the amendment of rules 16.32.101 through 16.32.103, 16.32.106, 16.32.107, 16.32.109 through 16.32.112, 16.32.118, 16.32.128, 16.32.136 through 16.32.141; and the repeal of rules 16.32.114, 16.32.130, and 16.32.142, concerning procedures, criteria, and reporting for the certificate of need program	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION, AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons

1. On May 31, 1996, at 1:30 p.m., a public hearing will be held in the Auditorium of the Social and Rehabilitation Services Building, 111 N. Sanders, Helena, Montana, to consider the proposed adoption of Rule I; the amendment of rules 16.32.101 through 16.32.103, 16.32.106, 16.32.107, 16.32.109 through 16.32.112, 16.32.118, 16.32.128, 16.32.136 through 16.32.141; and the repeal of rules 16.32.114, 16.32.130, and 16.32.142, concerning procedures, criteria, and reporting for the certificate of need program.

The Department of Public Health and Human 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 20, 1996, 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 adopted provides as follows:

RULE I DEFINITIONS OF STATUTORY TERMS (1) The department interprets the phrase "enforceable capital expenditure commitment", as used in 50-5-305, MCA, to mean an obligation incurred by or on behalf of a health care facility when:

(a) an enforceable contract is entered into by such facility or its agent for the construction, acquisition, lease or financing of a capital asset;

(b) a formal internal commitment of funds by such a facility which constitutes a capital expenditure; or

(c) in the case of donated property, the date on which the gift vested.

(2) The department interprets the phrase "office of a private physician, dentists or other physical or mental health care professionals, including chemical dependency counselors", used in 50-5-301, MCA, as an exception from the definition of "health care facility", to mean the private offices of those professionals, whether practicing individually or as a group, and associated facilities that are:

(a) located on the premises of the professional's offices;

(b) operated as an integral part of the professional's private practice; and

(c) primarily available only to the professionals whose offices are located on the premises. Such facilities may include outpatient services and observation beds, but may not include inpatient services.

AUTH: Sec. 50-5-302, MCA
IMP: Sec. 50-5-305, MCA

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

16.32.101 DEFINITIONS For the purposes of ~~these rules~~ this sub-chapter:

~~(1) "Capital expenditure" means any purchase or transfer of money or any property of value, or any enforceable promise or agreement to purchase or to transfer money or any property of value, incurred by or on behalf of a person for any of the activities stated in 50-5-301, MCA, and includes the values of facilities and equipment obtained under donation, lease or comparable arrangements as though such items had been acquired by purchase.~~

~~(2) "Develop" means to undertake activities which upon completion will result in the offering of a new institutional health service, or the incurring of a financial obligation in relation to the offering of such a service.~~

~~(3) "Offices of private physicians or dentists" means the private offices of a physician or dentist or group of physicians or dentists, and associated facilities which are:~~

~~(a) located on the premises of the physician's or dentist's offices;~~

~~(b) operated as an integral part of the physician's or dentist's private practice; and~~

~~(c) primarily available only to the physicians or dentists whose offices are located on the premises. Such facilities may include outpatient services and observation beds, but may not include inpatient services.~~ (1) "Current state health plan" means the compilation of components containing guidelines for determining need for health care facilities and services subject to certificate of need review that is most recently adopted by the governor and the statewide health coordinating council

appointed by the governor; a separate component adopted by the statewide health coordinating council and the governor for a single type of service or facility is part of the current state health plan.

(4) remains the same in text but is renumbered (2).

~~(5) "Enforceable capital expenditure commitment" means an obligation incurred by or on behalf of a health care facility when:~~

~~(a) an enforceable contract is entered into by such facility or its agent for the construction, acquisition, lease or financing of a capital asset;~~

~~(b) a formal internal commitment of funds by such a facility for a force account expenditure which constitutes a capital expenditure; or~~

~~(c) in the case of donated property, the date on which the gift vested.~~

(3) "Major medical equipment" is defined as provided in 50-5-101, MCA and the department interprets the phrase "substantial sum of money" in that definition to mean "more than $750,000".

(4) "Swing bed" means a licensed hospital or medical assistance facility bed that is also certified for the provision of long term care pursuant to 42 CFR 482.66.

AUTH: Sec. 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310 and 50-5-316, MCA

16.32.102 LONG TERM ~~AND PERSONAL~~ CARE -- WHERE ALLOWED

~~(1) "Long-term care" means skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101(27)(b) through (d), MCA, which is provided to patients with chronic infirmities or disabilities necessitating the provision solely of such care. The term does not include such regular inpatient hospital treatment of specific psychiatric, rehabilitative, or acute medical problems under the direct and regular supervision of a physician as is ordinarily furnished by a hospital.~~

~~(2)~~(1) A health care facility may provide long term care ~~or personal care~~ only if:

(a) it is licensed to provide the level of care in question; ~~or~~

(b) ~~in the case of long-term care,~~ it has received certificate of need approval pursuant to ARM 16.32.128 for the establishment of swing beds, is certified to provide long term care in such swing beds, and the provision of long term care is limited to such swing beds; or

(c) whenever the number of beds in which long term care is provided is five or fewer, the facility is certified to provide long term care in those beds as swing beds, and the provision of long term care is limited to such swing beds.

AUTH: Sec. 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-201 and 50-5-301, MCA

16.32.103 SUBMISSION OF LETTER OF INTENT (1) Any person proposing an activity other than those to which (3) and (4) below apply and that is subject to review under ~~section~~ 50-5-301, MCA, and not exempt under 50-5-309, MCA, shall submit to the department a letter of intent that contains the following:

(1)(a) and (1)(b) remain the same.

(c) a detailed statement outlining whether the proposal involves:

(i) a substantial change in existing services or the addition of a new service;

~~(ii) acquisition of equipment (major medical equipment and/or other);~~

~~(iii) replacement of existing equipment;~~

~~(iv) renovation of existing structure;~~

~~(v) addition to existing structure;~~

~~(vi) new construction;~~

(ii) the construction, development, or other establishment of a health care facility that did not previously exist or is being replaced;

(iii) the construction, remodeling, renovation, or replacement of a health care facility requiring a capital expenditure of more than $1,500,000;

(iv) a change in bed capacity through an increase in the number of beds or a relocation of beds from one facility or site to another;

(v) addition of health services that are to be offered in or through a health care facility, were not offered on a regular basis in or through the facility within the previous 12-month period, and will result in additional annual operating and amortization expenses of $150,000 or more;

(vi) the expansion of a geographic service area of a home health agency;

(vii) if the person desires comparative review of their proposal with that of another applicant, the name of the other applicant; or

~~(vii)~~(viii) other (explain);

(d) a narrative summary of the proposal~~, including statements on whether the proposal will affect bed capacity of the facility, or changes in services~~;

(1)(e) through (1)(i) remain the same.

(j) an itemized estimate of increases in annual operating and/or amortization expenses resulting from new health services ~~if any are proposed~~;

(k) the location of the proposed project, including its street address;

(l) the name of the person to contact for further information, including city, state, zip code, and telephone number; and

(1)(m) remains the same.

(2) through (3) remain the same.

(4) Any person proposing to increase or relocate from one facility or site to another no more than 10 beds or 10% of the licensed beds must~~, in order to be exempt from certificate of need review for the change,~~ submit to the department a letter of intent containing the following as one of the conditions that 50-5-301(1)(b), MCA, requires to be met in order to be exempt from certificate of need review for the change:

(4)(a) through (4)(b) remain the same.

~~(5) Within 15 calendar days after receipt of a letter of intent, the department shall notify the applicant in writing whether or not the activity proposed in its letter of intent is subject to review under section 50-5-301, MCA.~~

~~(6) An applicant submitting a letter of intent pursuant to sections (3) or (4) of this rule and whose proposal is found to require certificate of need review must submit a full letter of intent as described in section (1) of this rule. In the case of a proposal for new beds, the batch in which the letter of intent for the proposal will be placed is determined by the date the full letter of intent is received by the department, in accordance with ARM 16.32.106.~~

~~(7)~~(5) As required by 50-5-302(2), MCA, Ppersons who acquire health care facilities but who do not file the notice of intent required by ~~section~~ (3) of this rule ~~will be presumed to be~~ are subject to certificate of need review for the purposes of this sub-chapter.

~~(8) Any affected person may request an informal hearing before the department to challenge the department's determination regarding applicability of certificate of need review. Such a request must be received by the department within 10 days following the determination. At least 7 days prior notice of the hearing will be sent to the applicant, the person requesting the hearing, and any other affected person who requests it. At the hearing, the affected parties or their counsel will be given the opportunity to present written or oral evidence or arguments challenging or supporting the department's determination. Within 7 days following the hearing, the department will issue its decision, in writing, and the reasons therefore, which shall be sent to the persons who received notice of the hearing. If the department determines that the applicant is subject to review, the letter of intent will be assigned to the next appropriate batching period.~~

AUTH: Sec. 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-301 and 50-5-302, MCA

16.32.106 ~~BATCHING PERIODS~~, SUBMISSION OF APPLICATIONS

~~(1) The following batching periods are established for applications for new beds or major medical equipment from any region of the state:~~

~~(a) January 1 through January 20;~~

~~(b) March 1 through March 20;~~

~~(c) May 1 through May 20;~~
~~(d) July 1 through July 20;~~
~~(e) September 1 through September 20; and~~
~~(f) November 1 through November 20.~~

~~Except as provided in section (4) below and in ARM 16.32.103(6), letters of intent for new beds or major medical equipment will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.~~

~~(2) The following challenge periods are established:~~

For the batching period ending:	The challenge period is:
January 20	February 1 through February 20
March 20	April 1 through April 30
May 20	June 1 through June 30
July 20	August 1 through August 31
September 20	October 1 through October 31
November 20	December 1 through December 31

~~(3) Except as provided in section (14) below, upon determination by the department that an activity described in a letter of intent is subject to certificate of need review and involves either new beds or major medical equipment, the letter of intent will be placed in the appropriate batch, according to its category and region of the state. At the conclusion of the batch period, the department will notify each applicant in the batch that its application may be submitted, and that a deadline for submission will be determined at the conclusion of the challenge period immediately following the batch just concluded. If, at the end of the challenge period, no challenging letter of intent has been submitted, the applicant's deadline for submission of an application will be set no earlier than 30 calendar days after the date notice of the deadline is sent and no later than 90 calendar days after the conclusion of the challenge period. If a challenging letter of intent has been submitted, the deadline for both original and challenging applications will be 30 calendar days after the date notice of the deadline is sent, unless a longer time is agreed upon by all affected applicants. On the first day of the month following the conclusion of each batching period, the department will publish notices in a newspaper of general circulation in the affected areas listing the letters of intent which have been received in the batch just concluded.~~

~~(4) Persons who have not filed a letter of intent in the batch just concluded, but who wish to apply for comparative review with one or more of the applicants in that batch, must file a letter of intent during the appropriate challenge period. To qualify for comparative review, such a letter of intent must be received by the department during the challenge period and must identify the applicant(s) in the batch just concluded with which a comparative review is requested, and briefly explain why comparative review is appropriate. Letters of intent which so qualify will be included in the batch just concluded.~~

~~(5) At the conclusion of each challenge period, the department will determine which proposed projects within the batch will require comparative review, and will notify all applicants in the batch in writing of comparative review assignments. The notice of assignments will include a brief statement of reasons why comparative review was deemed necessary.~~

~~(6)~~(1) An application will be accepted only after submission of a letter of intent~~, and, in the case of an application for new beds or major medical equipment, will be accepted no earlier than the conclusion of the batch period in which the letter of intent was accepted~~.

(2) The deadline set by the department for submission of an application will not exceed 90 days unless the department and all affected applicants agree to a longer period.

(3) No application for a proposal will be accepted earlier than the deadline set by 50-5-302(5), MCA, for receipt of a letter of intent requesting comparative review with that proposal.

~~(7)~~(4) The application must contain, at a minimum, the information as specified by the department pursuant to ARM 16.32.136 and 16.32.137.

~~(8)~~(5) The original and ~~nine~~ six copies of the application must be submitted to the department.

~~(9)~~(6) If the application is received without the full fee ($500 or 0.3% of the application's projected capital expenditure, whichever is larger), it will not be considered submitted to the department until the date the full fee due is received by the department. The fee must be paid by ~~cashier's~~ check made out to the department of public health and ~~environmental sciences~~ human services.

~~(10) Within 20 working days from the date that the department receives the application, the department shall determine whether or not the application is complete.~~

~~(11)~~(7) If the application is determined to be incomplete, the department shall notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 calendar days, within which the department must receive the additional information requested. Within 15 working days after receipt of the additional information, the department shall determine whether the application is complete~~, and, if the information submitted is still not sufficient, send a written request for additional information~~.

~~(12)~~(8) ~~If an applicant whose application is to be comparatively reviewed with another application~~ If an applicant does not submit adequate information within the time specified, ~~the~~ their application will be ~~dropped from the current batch and assigned to the next batching period~~ considered withdrawn.

~~(13)~~(9) ~~An application may be changed any time prior to the department's declaration that the application is complete.~~

~~Change in~~ If the intent of the application or ~~impact on~~ the financial feasibility of the proposed project is altered after the ~~department's declaration may require~~ department declares the application complete, the department may require the applicant to begin the process ~~to begin~~ again ~~with the~~ by filing ~~of another~~ a new letter of intent for the proposed project.

~~(14)~~(10) ~~Only those applications for new beds or major medical equipment which are received and declared complete within the time periods specified in this rule are entitled to participate in comparative review procedures with other applications within the current batch. However, the~~ The department may, in its discretion, conduct a comparative review of competing applications ~~from different batches~~ if such applications are being reviewed concurrently ~~and~~, if such comparative review can be conducted consistently with all other time constraints imposed by Title 50, Chapter 5, Part 3, MCA and this sub-chapter, and if, as required by 50-5-302(12), MCA they pertain to similar types of facilities or equipment affecting the same health service area, subject to the limitation that a proposal for which a letter of intent is submitted requesting comparative review, pursuant to 50-5-302(5), MCA will not be reviewed comparatively with a proposal for which a letter of intent is filed after the 30-day deadline referred to in 50-5-302(5), MCA.

AUTH: Sec. 2-4-201, 50-5-103, and 50-5-302, MCA
IMP: Sec. 50-5-302 and 50-5-310, MCA

16.32.107 NOTICE OF ACCEPTANCE OR EFFECTIVE WITHDRAWAL OF APPLICATION (1) When an application is determined to be complete, the department shall issue a ~~notice~~ letter of acceptance, ~~which includes the following:~~

~~(a) the review period time schedule;~~

~~(b) the date by which a written request for an informational hearing must be received by the department;~~

~~(c) the manner in which notification will be provided of the time and place of any informational hearing which is held; and~~

~~(d) the manner in which the informational hearing will be conducted.~~

(2) ~~A notice of acceptance of a complete application must be mailed to the applicant and all licensed health care facilities affected by the application located in the service area. The notice of acceptance must also be published in a newspaper of general circulation in the service area affected.~~ When an application is determined to be incomplete after the applicant has been given an opportunity to submit additional information, the department will issue the applicant a letter declaring the application is effectively withdrawn.

AUTH: Sec. 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

16.32.109 INFORMATIONAL HEARING PROCEDURES (1) remains the same.

(2) A hearing request must be received by the department within ~~15~~ 30 calendar days after the date the monthly notice of ~~acceptance of the completed application~~ letters of intent appears in the newspaper.

(3) Notice of the informational hearing will be given at least 14 calendar days before the hearing date by the following means:

(a) Written notice must be sent by ~~certified~~ mail to the person requesting the hearing, the applicant, and all other applicants assigned for comparative review with the applicant, if any. Other persons who have requested notice will be notified by ~~ordinary~~ mail.

(3)(b) through (8) remain the same.

AUTH: Sec. 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

16.32.110 CRITERIA AND FINDINGS (1) ~~A certificate of need will not be issued unless the department determines there is a need for the proposed project, and that the proposal is consistent with the state health plan unless compelling evidence is presented that need for the project exists in spite of projections to the contrary in the plan. In addition, consistency with the state health plan may be waived in emergency circumstances that pose an imminent threat to public health. Criteria~~ The criteria listed in 50-5-304, MCA and the following will be considered by the department in making its decision:

~~(a) in the case of an application proposing a construction project, the probable impact that the costs of the proposed construction, including the costs and methods of energy conservation, will have on the costs of providing health services;~~

~~(b)~~(a) the equal access the medically underserved population, as well as all other people within the geographical area documented as served by the applicant, will have to the subject matter of the proposal.;

~~(2) In the case of any proposed new inpatient health care facility or inpatient health care service, the department will make each of the following determinations in writing:~~

~~(a) the efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed, instead of using the proposed facilities or services;~~

~~(b) whether a superior alternative to such inpatient service in terms of cost efficiency and appropriateness exists, or whether the development of such alternatives is practicable;~~

~~(c) whether, in the case of new construction, alternatives to new construction such as modernization or sharing arrangements have been considered or implemented to the maximum~~

~~extent practicable, and whether such alternatives would be preferable to new construction;~~

~~(d)~~(b) whether patients will experience problems including, but not limited to, cost, availability, or accessibility in obtaining ~~inpatient~~ care of the type proposed in the absence of the proposed new service~~;~~.

~~(e) the efficiency and appropriateness of the proposal and the potential impact the capital and operating costs of the proposal may have on patient charges; and~~

~~(f) the findings required by (1) of this rule.~~

~~(3) The department hereby adopts and incorporates by reference the 1993 Montana State Health Plan, adopted by the statewide health coordinating council and the governor. The Montana State Health Plan sets forth the state's policies, standards and criteria for review of certificate of need applications. A copy of the 1993 Montana State Health Plan may be obtained from the Health Planning Program, Cogswell Building, Capitol Station, Helena, Montana, 59620.~~

AUTH: Sec. 50-5-103 and 50-5-304, MCA
IMP: Sec. 50-5-304, MCA

16.32.111 DEPARTMENT DECISION (1) If the department fails to reach ~~a decision within the required deadlines or the longer period of time agreed upon by the applicant, or to~~ and issue a decision within ~~5 working days thereafter~~ the deadlines established by 50-5-302, MCA, a certificate of need will not automatically issue unless the delay is due to an abuse of discretion by the department and the applicant obtains a writ of mandamus ordering the department to issue the certificate.

(2) remains the same.

(3)~~(a)~~ The basis for the decision of the department must be expressed in written findings of fact and conclusions of law, which must be ~~mailed~~ sent via certified mail to the applicant and all other applicants assigned for comparative review with the applicant, along with a notice of the right to a reconsideration hearing pursuant to 50-5-306, MCA, and the deadline for requesting such a hearing. The findings, conclusions, and notice will be made available, upon request, to others for cost.

~~(b)~~(4) Notice, in summary form, of the department's decision, the right to request a reconsideration hearing, and the deadline for such a request will also be sent to each health care facility of the type affected by the application or applications in question within the geographic area affected by the application(s)~~, and will be published in a newspaper of general circulation in the service area affected~~.

AUTH: Sec. 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-302 and 50-5-304, MCA

16.32.112 APPEAL PROCEDURES (1) Any affected person who requests a hearing to reconsider the department's decision must submit a check for $500 to the department along with the request. No hearing will be scheduled or held unless the department has received the fee.

~~(1)~~(2) Notice of the date and time of a reconsideration hearing ~~shall~~ will be sent to the affected person requesting the hearing and, if the applicant did not request the hearing, the applicant~~, and any other affected person who requests it~~ as well.

~~(2) Any affected person who wishes to participate in the hearing must submit a pre-hearing memorandum and $500, if that person is other than the department or an applicant whose proposal is approved and who does not request the hearing, to the department, no later than 15 days prior to the hearing, in which is set out with as much specificity as possible a statement of the issues that person will address at the hearing, the facts he plans to contest, the relevant points of law, the witnesses that person anticipates calling, the nature of the testimony of each witness, and copies of anticipated exhibits. No affected person may participate in the hearing unless the department has received such pre-hearing memorandum from that person by the prescribed deadline and the required fee is paid.~~

(3) If a hearing to reconsider a decision is requested, any affected person, other than the requestor of the hearing, who wishes to participate in the hearing must, at least 2 weeks prior to the hearing date, submit a written notice of intent to participate to the department along with a check for $500, unless the affected person is an applicant whose proposal was approved and is the subject of the hearing, in which case only the notice of intent must be received by the department.

~~(3)~~(4) The fees required by ~~(2)~~ (1) and (3) above must be paid by ~~cashier's~~ check made out to the department of public health and ~~environmental sciences~~ human services.

(4) remains the same in text but is renumbered (5).

~~(5)~~(6) A copy of any prehearing motion filed by an affected person ~~after the date the pre-hearing memorandum is due~~ must be served by mail upon ~~each person who files such a memorandum. If a motion is filed on or prior to the date the pre-hearing memorandum is due, a copy must be served upon each person who has requested such notice from the department's hearing officer~~ the department and any other affected person participating in the hearing.

~~(6)~~(7) The department's hearing officer may require the direct testimony of ~~each party's~~ the witnesses of each affected person participating in the hearing to be in writing and filed prior to hearing with the department, with copies served upon ~~each party who submitted a pre-hearing memorandum~~ the department and every other participating affected person.

~~(7) Informal public testimony may be permitted at the discretion of the hearing officer.~~

(8) remains the same.

(9) The department shall ~~make~~ send the written findings of fact and conclusions of law ~~which~~ that state the basis for its decision ~~within 30 calendar days after the conclusion of the reconsideration hearing. These findings of fact and conclusions of law shall be sent~~ to all parties participating in the hearing. Any other person upon request may receive a copy ~~of these findings~~ for cost.

(10) remains the same.

AUTH: Sec. 50-5-103 and 50-5-306, MCA
IMP: Sec. 50-5-306 and 50-5-310, MCA

16.32.118 DURATION OF CERTIFICATE; TERMINATION; EXTENSION

(1) through (2)(d) remain the same.

(3) A certificate of need, once granted to an applicant, may not be transferred to another ~~holder~~ person. In addition to a transfer from one person to another, such a transfer will be considered to have taken place if the applicant to which the certificate was granted is an organization and there is a change of ownership of 50% or more of ~~the entity holding the certificate~~ that organization.

AUTH: Sec. 50-5-103, 50-5-302 and 50-5-305, MCA
IMP: Sec. 50-5-302 and 50-5-305, MCA

16.32.128 SWING BEDS -- REVIEW CRITERIA ~~(1) A "swing bed" is a hospital bed which is certified for the provision of long-term care for the purpose of medicare reimbursement pursuant to 42 U.S.C. 1395tt and 42 C.F.R. 405.1041.~~

~~(2)~~(1) A certificate of need may be issued to a hospital or medical assistance facility to establish swing beds only if, in addition to compliance with all other applicable provisions of 50-5-304, MCA and ARM 16.32.110:

(a) existing licensed long term care facilities in the service area, which provide the level of care proposed to be provided by the hospital or medical assistance facility, have an aggregate average occupancy level of at least 95 ~~percent~~ % during the ~~three~~ 3 years prior to the date of the application for certificate of need; and

(b) no more than ~~fifty percent~~ 50% of the ~~hospital's~~ excess bed capacity of the hospital or medical assistance facility will be certified as swing beds. Excess bed capacity is the difference between the number of licensed hospital beds in the facility and the average acute care occupancy level of the facility over the three years prior to the date of the application for certificate of need.

~~(3)~~(2) A long term care patient occupying a swing bed must be transferred to a long term care facility in the service area which provides the appropriate level of care as soon as such long term care bed becomes available and the facility in question notifies the hospital or medical assistance facility of that fact.

(3) The utilization of swing beds by a medical assistance facility is subject to certificate of need review only if, as required by 50-5-301(1)(c), MCA, the facility did not offer long term care during the 12 months prior to the month the service is scheduled to commence and the service will add annual operating and amortization expenses of $150,000 or more.

AUTH: Sec. 50-5-304, MCA
IMP: Sec. 50-5-304, MCA

16.32.136 CERTIFICATE OF NEED APPLICATION; INTRODUCTION AND COVER LETTER (1) It is suggested that the applicant contact the ~~bureau of~~ health planning program before completing and submitting the necessary information. ~~It is possible that some information listed in ARM 16.32.137 may not be required for a simple review, or that additional information will be required for a complex review.~~ If an early contact is made ~~between an applicant and the appropriate review agency~~, the applicant will be made aware of what will be required in specific cases before a formal application is completed and submitted.

(2) The applicant must send a cover letter, containing ~~the information set out in (3) below which is applicable to the project~~ the information included in the original letter of intent with any pertinent revisions, to the Department of Public Health and ~~Environmental Sciences~~ Human Services, ~~Bureau of~~ Health Planning Program, ~~Cogswell Building, Capitol Station,~~ 1400 Broadway, P.O. Box 202951, Helena, Montana, 59620. The cover letter must accompany the original and each of the ~~nine~~ six copies of the information required by ARM 16.32.137.

~~(3) The following information must appear in the cover letter:~~

~~(a) name of applicant;~~

~~(b) proposal title;~~

~~(c) name of person to contact for additional information and his city, state, zip code, and telephone number;~~

~~(d) whether the project involves any of the following:~~

~~(i) the construction, development, or other establishment of a health care facility which did not previously exist or is being replaced;~~

~~(ii) the acquisition of equipment and the construction, including remodeling, of any building necessary to house the equipment requiring a capital expenditure of more than $750,000;~~

~~(iii) the construction, remodeling, renovation, or replacement of a health care facility requiring a capital expenditure of more than $1,500,000;~~

~~(iv) a change in bed capacity through an increase in the number of beds or a relocation of beds from one facility or site to another;~~

~~(v) addition of health services to be offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the~~

~~previous 12-month period and which will result in additional annual operating and amortization expenses of $150,000 or more;~~

~~(vi) acquisition by any person of major medical equipment unless it is to replace equipment performing substantially the same service and in the same manner;~~

~~(vii) the expansion of a geographic service area of a home health agency;~~

~~(e) a narrative description of the proposal;~~

~~(f) for existing facilities, a brief summary describing the existing institution;~~

~~(g) estimated start and completion dates;~~

~~(h) total proposed capital expenditure (principal and interest);~~

~~(i) total proposed major medical equipment expenditure;~~

~~(j) total new health service annual operating expenses;~~

~~(k) any changes proposed in bed capacity or category.~~

AUTH: Sec. 2-4-201 and 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

16.32.137 CERTIFICATE OF NEED APPLICATION -- REQUIRED INFORMATION The following ~~information~~ must be included in a certificate of need application~~, on forms provided by the department~~:

(1) through (1)(j) remain the same.

(2) A description of the project's accessibility to the public. In particular, the following information must be included:

(a) the location of the proposed facility ~~with respect to:~~

~~(i) transportation routes;~~

~~(ii) center of population in the service area;~~

(2)(b) through (2)(d) remain the same.

(3) A discussion of planning and environmental considerations, including the following information:

(a) an explanation of how the proposed service or facility is compatible with the current ~~s~~State ~~H~~health ~~p~~lan~~,~~ (a copy of which may be obtained from the Department of Public Health and Human Services, Health Systems Bureau, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620). If it is not compatible, an explanation of why it should be approved must be included;

(3)(b) through (3)(e) remain the same.

(4) A discussion of the organizational aspects of the project, including the following information:

(4)(a) through (4)(b) remain the same.

(c)~~(i)~~ any changes in the ownership~~, board of directors or articles of incorporation~~ of the applicant during the past year;

~~(ii) the names of the current chairman and members of the board of directors of the applicant;~~

~~(iii) the names of the corporate officers of the applicant;~~

~~(iv)~~(d) the name and title of the chief administrator of the applicant's facility, and whether employed by the applicant or another organization as identified in ~~(d)~~(e) below;

~~(d)~~(e) if the controlling organization has placed responsibility for the administration of the facility with another organization, the name and type of organization that manages the facility~~. A copy of the latest management agreement must be provided~~;

(4)(e) remains the same in text but is renumbered (4)(f).

~~(f)~~(g) whether the applicant's facility has received or intends to apply for state licensure or federal certification~~, any of the following accreditations or approvals, and the expiration dates and applicable conditions of accreditation of any such accreditations or approvals currently held (if none were held, provide explanation)~~:

~~(i) state licensure;~~

~~(ii) national association membership (specify);~~

~~(iii) JCAH accreditation;~~

~~(iv) medicare certification;~~

~~(v) other (specify).~~

(5) A discussion of the program staffing and operational capabilities of the project, including the following information:

(a) ~~the number~~ an itemized list of full time equivalent staff positions (current and after completion of project), and estimated number of personnel available, ~~in each of the following categories~~ including:

(i) administration;

(ii) physician services;

~~(iii) dental services;~~

~~(iv)~~(iii) nursing services;

~~(v) pharmacy;~~

~~(vi) clinical lab services;~~

~~(vii) dietary services;~~

~~(viii) radiological services;~~

~~(ix) rehabilitation services;~~

(x)(iv) social services;

~~(xi) medical records;~~

~~(xii)~~ (v) other professional/technical;

~~(xiii) housekeeping;~~

~~(xiv)~~ (vi) all other (specify);

~~(b) expected sources from which the applicant will draw for filling the staff positions created by the proposed institution or service and the potential of those sources to fill the applicant's needs. The applicant shall include manpower development needs, training resources, etc.;~~

~~(c) a discussion of the success of recruiting efforts in the area in the past;~~

~~(d)~~(b) if the applicant operates an existing facility, whether it meets current staffing standards;.

(6) A discussion of the physical structure and services to be provided, including the following information:

(6)(a) remains the same.

(b) a discussion of legal considerations, including:

(i) whether the project will correct non-conforming conditions;

(ii) whether the project is in conformance with current local zoning laws (city or county);

(iii) whether the structures meet current safety and building codes;

(c) a listing of current licensed beds, certified medicare or medicaid beds, ~~average daily census,~~ and beds to be added in each of the basic service categories~~, including medical, surgical, coronary care unit, intensive care unit, maternity, pediatric, neuro-psychiatric, chemical dependency, orthopedics, rehabilitation, skilled nursing care, intermediate long-term care, and other (specify)~~;

~~(d) a description of major medical equipment to be acquired, including current and proposed capacity;~~

~~(e)~~(d) for home health agencies, the current and proposed number of patient visits and consultations, and the reporting period;

~~(f)~~(e) in order to show utilization levels, indication of ~~for~~ each of the following~~, the utilization levels which existed 3 years ago, 1 year ago,~~ for the applicant's facility, if already in existence, and for every other facility of the same kind within the same service area, for each of the past full three years and ~~currently~~ the current year, ~~and~~ as well as utilization projections for each of the foregoing facilities for 1, 2, and 3 years ~~into the future, assuming both current capacities and capacities after construction or implementation of the proposal~~:

(i) average daily census;

(ii) percent occupancy;

(iii) average length of stay;

(iv) total discharges;

~~(v) emergency room visits;~~

~~(vi)~~(v) outpatient visits;

~~(vii)~~(vi) home care visits;

~~(viii) lab exams;~~

~~(ix) radiology;~~

~~(x)~~(vii) surgical procedures, inpatient and outpatient~~;~~

~~(xi) respiratory therapy;~~

~~(xii) other (specify);~~

~~(g) a listing of the major items of fixed and movable equipment anticipated to be purchased as part of the proposal.~~

(f) If the applicant's facility is not yet in existence, the applicant must submit all of the above for any other parallel facility in the same service area, along with projections for (i) through (vii) above for the first, second, and third years of operation of the proposed facility.

(7) A discussion of capital expenditure requirements, including the following information:

(a) the approximate date that obligation of funds will be incurred for the proposal;

(b)(i) the source of funds (specify cash on hand, commercial or government loans, grants, net earnings and reserve, bequests and endorsements, charitable fund raising, revenue bonds, other);

(ii) amount available;

(iii) amount to be borrowed;

(c) ~~(i) a complete debt service cash flow schedule for each year of repayment;~~

~~(ii)~~ term and interest rate of loan;

~~(iii) interest rate of loan;~~

(d) copies of the ~~following~~ complete financial operating statements for the last 3 years and, if available, audited statements~~:~~;

~~(i) audited balance sheets;~~

~~(ii) audited revenue and expense statements;~~

~~(iii) changes in net working capital;~~

~~(iv) any other financial operating statements;~~

(e) copies of the following:

(i) projected revenue and expense statements with supportive population and utilization assumptions both during construction and the first two years of operation;

~~(ii) projected cash flow schedule for proposed project during construction and the first two years of operation;~~

~~(iii) projected balance statements with statistical assumptions during construction and first two years of operation;~~

~~(iv)~~(ii) utilization projections demonstrating need for the project.

(8) through (9) remain the same.

(10) A discussion of cost containment factors, including the following information:

~~(a) how the architectural plan promotes economy in the delivery of service;~~

~~(b)~~(a) how the proposal demonstrates superior community cost-benefit or community cost effectiveness;

~~(c)~~(b) description of shared services which are available as an alternative to duplication (explain in detail);

~~(d)~~(c) alternatives which have been considered to provide the service proposed by the project~~;~~.

(11) A discussion specifically addressing the review criteria listed in 50-5-304, MCA and ARM 16.32.110.

~~(11)~~(12) The ~~application must be dated and signed by~~ signature of a responsible representative of the applicant, ~~indicating~~ the title of the signatory, and the date of signing.

AUTH: Sec. 2-4-201 and 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

16.32.138 ANNUAL OPERATIONAL REPORTS BY HOSPITALS (1) Every hospital shall submit an annual report to the department

~~no later than January 31 of each year~~ on ~~forms~~ a form provided by the department and no later than the deadline specified on the form. The annual reports must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(1) and (2) remain the same in text but are renumbered (1)(a) and (1)(b).

~~(3)~~(c) a discussion of the organizational aspects of the ~~project~~ facility, including the following information:

(3)(a) remains the same in text but is renumbered (1)(c)(i).

~~(b)~~(iii) whether the controlling organization leases the physical plant from another organization~~. If~~, and if so, the name and type of organization that owns the plant;

(3)(c)(i) and (3)(c)(ii) remain the same in text but are renumbered (1)(c)(iii) and (1)(c)(iv). (3)(d) and (3)(e) remain the same in text but are renumbered (1)(c)(v) and (1)(c)(vi).

(4) through (16) remain the same in text but are renumbered (1)(d) through (1)(p).

AUTH: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-106 and 50-5-302, MCA

16.32.139 ANNUAL FINANCIAL REPORTS BY HOSPITALS (1) Every hospital shall submit an annual financial report to the department ~~no later than January 31 of each year~~ on ~~forms~~ a form provided by the department and no later than the deadline specified on the form. The annual financial report must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(1) through (7) remain the same in text but are renumbered (1)(a) through (1)(g). (8)(a) through (8)(c) remain the same in text but are renumbered (1)(h)(i) through (1)(h)(iii).

AUTH: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-106 and 50-5-302, MCA

16.32.140 ANNUAL REPORTS BY LONG TERM CARE AND PERSONAL CARE FACILITIES (1) Every long term care and personal care facility shall submit an annual report to the department ~~no later than January 31 of each year~~ on ~~forms~~ a form provided by the department and no later than the deadline specified on the form. The annual report must be signed by the facility administrator and must include whichever of the following information is requested on the form:

(1) through (2)(b) remain the same in text but are renumbered (1)(a) through (1)(b)(ii). (2)(c)(i) and (2)(c)(ii) remain the same in text but are renumbered (1)(b)(iii) and (1)(b)(iv). (2)(d) and (2)(e) remain the same in text but are renumbered (1)(b)(v) and (1)(b)(vi). (3) through (4)(c) remain the same in text but are renumbered (1)(c) through (1)(d)(iii).

~~(5)~~(e) staff information, including the number and classification of full and part-time ~~registered and licensed professional nurses~~ medical personnel;

(6) and (7) remain the same in text but are renumbered (1)(f) and (1)(g).

AUTH: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-106 and 50-5-302, MCA

16.32.141 ANNUAL REPORTS BY HOME HEALTH AGENCIES

(1) Every home health agency shall submit an annual report to the department ~~no later than January 31 of each year~~ on ~~forms~~ a form provided by the department and no later than the deadline specified on the form. The report must be signed by the administrator of the agency and must include whichever of the following information is requested on the form:

(1) through (3)(b) remain the same in text but are renumbered (1)(a) through (1)(c)(ii). (3)(c)(i) and (3)(c)(ii) remain the same in text but are renumbered (1)(c)(iii) and (1)(c)(iv). (3)(d) and (3)(e) remain the same in text but are renumbered (1)(c)(v) and (1)(c)(vi). (4) through (9) remain the same in text but are renumbered (1)(d) through (1)(i).

AUTH: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA
IMP: Sec. 50-5-106 and 50-5-302, MCA

4. The rules to be repealed are:

16.32.114 ABBREVIATED REVIEW, found on page 16-1417 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

16.32.130 REPORTS, found on page 16-1447 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

16.32.142 ANNUAL REPORTS BY ALCOHOL AND DRUG TREATMENT FACILITIES, on page 16-1461 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-302, MCA
IMP: Sec. 50-5-302, MCA

5. Amendment of the above rules is necessary because the certificate of need statutes (Title 50, Chapter 5, Part 3, MCA) were substantially amended during the 1995 legislative session by Senate Bill 416 (Ch. 398) and a good share of the above

amendments are necessary to respond to those changes. Other changes found to be needed are as follows:

(a) Proposed new rule I contains two definitions of phrases found in, but not defined in, the certificate of need statutes. Confusion about their meaning has led the department to propose Rule I as a rule interpreting the meaning of those phrases. The phrases "enforceable capital expenditure commitment" and "offices of private physicians or dentists" were formerly contained in, and are now deleted from, ARM 16.32.101. The deletion from ARM 16.32.101 is necessary since that rule contains definitions applying solely to the rules and the phrases are not used anywhere in the rules. Therefore, both definitions are more properly expressed in a separate rule interpreting the law than in a body of definitions that apply to the certificate of need rules. In addition, the definition concerning doctor's offices was updated to include statutory amendments expanding the language to cover physical and mental health care professionals as well as physicians and dentists.

(b) In ARM 16.32.101:

(i) the definition of "capital expenditure" was deleted as unnecessary, since the statutory definition of the same phrase is sufficient;

(ii) a definition of the "current state health plan" was needed to eliminate confusion about when updated components of the state health plan became part of the "current" plan;

(iii) the definition of "develop" was deleted because it contains outdated language and is not used in the rules;

(iv) a definition of "major medical equipment" was needed to clarify what level of cost will qualify medical equipment as "major", since the statutory definition merely requires it to cost "a substantial sum of money";

(v) the definition of "swing bed" was transferred from ARM 16.32.128 to more appropriate placement in ARM 16.32.101 where the balance of the definitions are located, and was amended to correct the citation to the federal swing bed certification standards and to acknowledge the fact that medical assistance facilities can also have swing beds.

(c) In ARM 16.32.102, the definition of "long term care" was deleted as unnecessary because its components--skilled nursing, intermediate nursing, and intermediate development disability care--are already sufficiently defined in the law.

(d) In ARM 16.32.103, the list of items required in a letter of intent was amended to require a more specific description of the proposed project, in order to provide the department with all the information necessary to draft an announcement of letters of intent received (now required by law to be published in a newspaper) that describes the project clearly enough so that interested parties can determine whether they should, in turn, submit a letter of intent requesting comparative review. In addition, subsection (4) is proposed to be amended to clarify that submission of a letter of intent is not the only thing required to qualify a proposal to add or

relocate up to 10 beds or 10% of existing licensed beds for an exemption from certificate of need review; the existing language can be misconstrued as meaning only a letter of intent is necessary for such an exemption. Finally, subsection (8), providing a hearing to someone disputing the department's determination concerning whether certificate of need review is required, was deleted as unnecessary and without statutory authority.

(e) In ARM 16.32.106:

(i) in subsection (2), the department felt it necessary to reassure applicants that the deadline it sets for submission of applications will not go beyond 90 days unless the applicant(s) agree;

(ii) new subsection (3) was felt necessary to prevent the department having to begin review of an application even before it knows whether there will be another application against which the first will be comparatively reviewed;

(iii) the number of application copies to be submitted was reduced from nine to six as less of a burden on applicants yet still meeting the department's needs;

(iv) the restriction added in subsection (10) was necessary to clarify the statutory intent that comparative review be limited to review of an application for which a letter of intent is submitted during one month and one for which, the following month, a letter of intent is submitted requesting comparative review with it pursuant to 50-5-302(5), MCA.

(f) In ARM 16.32.107, the required contents of a letter giving notice that an application is complete were deleted as unnecessary to meet statutory requirements and as responsive to HJR 5 (1995 Legislature) directing a reduction in unnecessary agency rules. Also, the proposed rule amendments add a letter giving notice that an application is incomplete and effectively withdrawn, an addition that was necessary to let applicants know they had exhausted the more limited opportunities granted by the 1995 Legislature to submit needed additional information.

(g) The deadline in ARM 16.32.109 for a request for an informational hearing was altered to be triggered by the newspaper publication of letters of intent instead of the notice of completed application in order to reflect the shorter review time frame allowed by SB 416.

(h) Most of the criteria for review listed in ARM 16.32.110 were deleted as unnecessarily duplicative of statutory criteria.

(i) In ARM 16.32.111, notices of department decisions must be by certified mail so that the department knows whether appeal requests are timely, since the law now requires the deadline to run from the date an affected person receives the notice rather than the date it was "announced". The statutory change is also the reason why, in subsection (3)(b), the decision will no longer be published in the newspaper.

(j) In ARM 16.32.112, new subsection (1) is added to clarify when the $500 fee for a hearing request must be

submitted. Subsection (3) is needed to indicate when other parties to a requested hearing must submit the $500 fee. The other changes, as noted above, are necessitated by SB 416.

(k) The amendments in ARM 16.32.128 are needed to clarify the nature of the entities between whom a certificate of need cannot be transferred.

(l) In ARM 16.32.128:

(i) as noted previously, the "swing bed" definition was transferred to a more appropriate location in ARM 16.32.101, containing the balance of the definitions;

(ii) references to medical assistance facilities were added in recognition of the fact that such facilities occasionally have swing beds; subsection (3) was added to inform the public of the only circumstances under which medical assistance facilities would be subject to CON review prior to adding such beds.

(m) Unnecessary language has been deleted from ARM 16.32.136; the list of information to be in an application's cover letter is deleted in favor of a simplified requirement to include the information already provided in the letter of intent.

(n) The information required by ARM 16.32.137 to be in a certificate of need application has been stripped down and simplified to eliminate those items that have not proved very helpful in the past and to add a few that would be. Subsection (6)(e) was amended to clarify what utilization information is needed from existing facilities, as opposed to those not yet in existence.

(o) ARM 16.32.138, 16.32.139, 16.32.140, and 16.32.141, concerning annual reports, were amended to allow needed flexibility in the deadlines for report submission and in the specific information that must be submitted.

ARM 16.32.114, concerning abbreviated review, is proposed to be repealed as unnecessary because abbreviated review is scarcely ever utilized and normal review allows for the same sort of condensed timeline in appropriate cases without the application of a special rule for the purpose.

ARM 16.32.130, imposing general reporting requirements, is proposed to be repealed for the following three reasons. Subsection (1), requiring health care facilities to submit health planning and resource development information to the department, upon request, is an unnecessary duplication of the statutory requirements of 50-5-106, MCA. The specific requirements, contained in subsection (2), for a status report on an approved project are proposed for deletion because, while the law requires such a status report (Sec. 50-5-305(4), MCA), more general reports rather than the specificity required by the rule are sufficient for the department's purposes. Subsection (3) imposes a duty on the department to issue an annual report that it no longer has the resources to produce and which is unnecessary since the department already produces monthly reports.

ARM 16.32.142, requiring and prescribing the contents of annual reports from alcohol and drug treatment facilities, is proposed for repeal because the department's Division of Addictive and Mental Disorders already gets that information, where it is readily available to the Health Planning Program. Therefore, requiring essentially the same report to be made to the Health Planning Program mandates an unnecessary duplication of effort on the part of the facilities.

6. 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 Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than June 6, 1996.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Michael S. Billings for
Director, Public Health and Human Services

Certified to the Secretary of State April 29, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule 46.10.403 pertaining to AFDC assistance standards	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF A RULE

TO: All Interested Persons

1. On May 31, 1996, 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 assistance standards.

The Department of Public Health and Human 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 20, 1996, 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; METHODS OF COMPUTING PAYMENTS

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

(c) 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	In Shared Shelter Per Month	Without Shelter Obligation Per Month
1	$ ~~594~~ 616	$ ~~544~~ 566	$ ~~216~~ 224
2	~~797~~ 823	~~747~~ 773	~~350~~ 361
3	~~1,001~~ 1,032	~~951~~ 982	~~481~~ 496
4	~~1,204~~ 1,241	~~1,154~~ 1,191	~~611~~ 629
5	1,408 1,449	~~1,358~~ 1,399	~~731~~ 751
6	~~1,611~~ 1,658	~~1,561~~ 1,608	~~844~~ 868

7	~~1,817~~	1,867	~~1,767~~	1,817	~~958~~	984
8	~~2,020~~	2,074	~~1,970~~	2,024	~~1,064~~	1,093
9	~~2,120~~	2,176	~~2,070~~	2,126	~~1,164~~	1,195
10	~~2,218~~	2,276	~~2,168~~	2,226	~~1,262~~	1,295
11	~~2,303~~	2,364	~~2,253~~	2,314	~~1,347~~	1,382
12	~~2,388~~	2,451	~~2,338~~	2,401	~~1,432~~	1,469
13	~~2,464~~	2,529	~~2,414~~	2,479	~~1,508~~	1,547
14	~~2,536~~	2,601	~~2,486~~	2,551	~~1,580~~	1,621
15	~~2,607~~	2,673	~~2,557~~	2,623	~~1,650~~	1,693
16	~~2,668~~	2,736	~~2,610~~	2,686	~~1,711~~	1,756

(d) 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
1	$ ~~216~~ 224
2	~~426~~ 440
3	~~640~~ 660
4	~~855~~ 881
5	~~1,067~~ 1,099
6	~~1,282~~ 1,317
7	~~1,499~~ 1,539
8	~~1,709~~ 1,756
9	~~1,813~~ 1,861
10	~~1,909~~ 1,959
11	~~2,005~~ 2,059
12	~~2,096~~ 2,152
13	~~2,189~~ 2,246
14	~~2,274~~ 2,333
15	~~2,359~~ 2,420
16	~~2,436~~ 2,499

(e) 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	In Shared Shelter Per Month	Without Shelter Obligation Per Month
1	$ ~~321~~ 333	$ ~~271~~ 283	$ ~~117~~ 121
2	~~431~~ 445	~~381~~ 395	~~189~~ 195
3	~~541~~ 558	~~491~~ 508	~~260~~ 268
4	~~651~~ 671	~~601~~ 621	~~330~~ 340
5	~~761~~ 783	~~711~~ 733	~~395~~ 406
6	~~871~~ 896	~~821~~ 846	~~456~~ 469
7	~~982~~ 1,009	~~932~~ 959	~~518~~ 532
8	~~1,092~~ 1,121	~~1,042~~ 1,071	~~575~~ 591
9	~~1,146~~ 1,176	~~1,096~~ 1,126	~~629~~ 646
10	~~1,199~~ 1,230	~~1,149~~ 1,180	~~682~~ 700
11	~~1,245~~ 1,278	~~1,195~~ 1,228	~~728~~ 747
12	~~1,291~~ 1,325	~~1,241~~ 1,275	~~774~~ 794
13	~~1,332~~ 1,367	~~1,282~~ 1,317	~~815~~ 836
14	~~1,371~~ 1,406	~~1,321~~ 1,356	~~854~~ 876
15	~~1,409~~ 1,445	~~1,359~~ 1,395	~~892~~ 915
16	~~1,442~~ 1,479	~~1,392~~ 1,429	~~925~~ 949

(f) 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
1	$ ~~117~~ 121
2	~~230~~ 238
3	~~346~~ 357
4	~~462~~ 476
5	~~577~~ 594
6	~~693~~ 712
7	~~810~~ 832
8	~~924~~ 949
9	~~980~~ 1,006
10	~~1,032~~ 1,059
11	~~1,084~~ 1,113
12	~~1,113~~ 1,163
13	~~1,183~~ 1,214
14	~~1,229~~ 1,261
15	~~1,275~~ 1,308
16	~~1,317~~ 1,351

(5) through (6) 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 (BENEFIT 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	In Shared Shelter Per Month
1	$ ~~252~~ 261	$ ~~92~~ 95	$ ~~202~~ 211
2	~~338~~ 349	~~148~~ 153	~~288~~ 299
3	~~425~~ 438	~~204~~ 210	~~375~~ 388
4	~~511~~ 527	~~259~~ 267	~~461~~ 477
5	~~597~~ 615	~~310~~ 319	~~547~~ 565
6	~~684~~ 703	~~358~~ 368	~~634~~ 653
7	~~771~~ 792	~~407~~ 418	~~721~~ 742
8	~~857~~ 880	~~451~~ 464	~~807~~ 830
9	~~900~~ 923	~~494~~ 507	~~850~~ 873
10	~~941~~ 966	~~535~~ 550	~~891~~ 916
11	~~977~~ 1,003	~~571~~ 586	~~927~~ 953
12	~~1,013~~ 1,040	~~608~~ 623	~~963~~ 990
13	~~1,046~~ 1,073	~~640~~ 656	~~996~~ 1,023
14	~~1,076~~ 1,104	~~670~~ 688	~~1,026~~ 1,054
15	~~1,106~~ 1,134	~~700~~ 718	~~1,056~~ 1,084
16	~~1,132~~ 1,161	~~726~~ 745	~~1,082~~ 1,111

(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 (BENEFIT STANDARDS) TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month
1	$ ~~92~~ 95
2	~~181~~ 187
3	~~272~~ 280
4	~~363~~ 374
5	~~453~~ 466
6	~~544~~ 559
7	~~636~~ 653
8	~~725~~ 745
9	~~769~~ 790

10	~~810~~	831
11	~~851~~	874
12	~~889~~	913
13	~~929~~	953
14	~~965~~	990
15	~~1,001~~	1,027
16	~~1,034~~	1,061

AUTH: 53-4-212, 53-4-241, MCA IMP: 53-4-211, 53-4-241, MCA

3. House Bill 2 of the 54th Montana Legislature sets payments to recipients of Aid to Families with dependent Children (AFDC) at 40.5% of the federal poverty index. Due to recently published increases in the federal poverty index, the amendment of ARM 46.10.403 is necessary to increase the AFDC payment amounts. Additionally, the AFDC gross monthly income standards and net monthly income standards are based on the payment amounts and therefore must also be increased when the payment standards increase.

4. This rule will be applied effective July 1, 1996. The increase in the assistance standards and maximum payment amounts coincide with the beginning of the state's fiscal year. The federal poverty index on which the assistance standards and payment amounts are based was published later than usual, and for this reason it wasn't possible to compute the new standards and publish notice at an earlier date. In order to allow time for a hearing and comments publication of a final notice may not take place prior to July 1, 1996. The Department, however, intends to apply the rule retroactively to July 1st if needed.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than June 6, 1996.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 29, 1996.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of a rule pertaining to orders of the board	))))	NOTICE OF AMENDMENT OF 2.51.307 ORDERS OF THE BOARD

TO: All Interested Persons:

1. On March 21, 1996, the State Tax Appeal Board published notice of the proposed amendment of the above-captioned rule, pertaining to orders of the board. The notice was published at page 703 of the Montana Administrative Register, Issue No. 6.

2. The agency has amended the rule as proposed.

3. No comments were received.

STATE TAX APPEAL BOARD

BY: _____
PATRICK MCKELVEY, Chairman

_____
Rule Reviewer

Certified to the Secretary of State on April 29, 1996.

BEFORE THE BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and repeal of rules pertaining to the practice of clinical laboratory science	)))	NOTICE OF AMENDMENT AND REPEAL OF RULES PERTAINING TO THE PRACTICE OF CLINICAL LABORATORY SCIENCE

TO: All Interested Persons:

1. On February 8, 1996, the Board of Clinical Laboratory Science Practitioners published a notice of proposed amendment and repeal of rules pertaining to the practice of clinical laboratory science at page 350, 1996 Montana Administrative Register, issue number 3.

2. The Board has amended ARM 8.13.304, 8.13.306, and 8.13.401 and repealed ARM 8.13.302 exactly as proposed.

3. No comments or testimony were received.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
JOANN SCHNEIDER, CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 29, 1996.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to out-of-state mail service pharmacies	)))	NOTICE OF AMENDMENT OF RULES PERTAINING TO OUT-OF-STATE MAIL SERVICE PHARMACIES

TO: All Interested Persons:

1. On November 9, 1995, the Board of Pharmacy published a notice of proposed amendment of rules pertaining to out-of-state mail service pharmacies, at page 2339, 1995 Montana Administrative Register, issue number 21. The Board subsequently received a qualifying request for hearing, and published its notice of public hearing on January 25, 1996, at page 220, 1996 Montana Administrative Register, issue number 2. The public hearing was held on February 28, 1996, in Helena, Montana.

2. The Board has amended ARM 8.40.1601 through 8.40.1607 exactly as proposed.

3. Oral testimony on the rules was received at the hearing. Written comments were accepted through the close of hearing on February 28, 1996. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Two comments were received stating ARM 8.40.1603(1)(a) requiring each mail service pharmacy to be registered in this state as a foreign corporation should be deleted because the Montana "long arm" statutes, the Business Corporations Act and the use of an "agent of record" for service of process will all suffice to ensure the mail service pharmacies would have to appear in Montana in response to any legal action instituted in this state.

RESPONSE: The Board noted that this section of the rule was not proposed for change in this rule notice, and language specifically stated (1)(a) would remain the same as already adopted. Comments on a section of the rule not proposed for change do not require a response from the Board as part of the adoption notice.

COMMENT NO. 2: Three comments were received stating ARM 8.40.1604 should be stricken or modified in that the statute requires "full faith and credit" to be given to the laws of other licensing states, and this rule should not therefore impose an alleged set of Montana licensing standards and requirements on an out of state registrant.

RESPONSE: The Board noted that this rule was not proposed for change in this rule notice, except to modify the authority citation to reflect the proper statute put in place by the 1995 legislature. Comments on a rule not proposed for change do not require a response from the Board as part of the adoption notice.

COMMENT NO. 3: Four comments were received stating ARM 8.40.1605 should be stricken, as no statutory authority exists for the Montana Board to take action against the registrant, and only the domicile state of the mail service pharmacy may enforce compliance.

RESPONSE: The Board noted that the only change proposed for this rule concerned the deletion of a time frame for the Board to take action, and no other substantive change to the already adopted rule. Comments on sections of a rule not proposed for change do not require a response from the Board as part of the adoption notice.

COMMENT NO. 4: One comment was received stating in ARM 8.40.1606 the phrase "Montana laws and regulations," should be stricken to clarify that the only applicable laws and rules are those of the state where the pharmacy is located.

RESPONSE: The Board noted that the only change proposed for this rule concerned an amendment to the title, and authority and implementing sections cited at the end, with no other substantive changes to the already adopted rule. Comments on sections of a rule not proposed for change do not require a response from the Board as part of the adoption notice.

COMMENT NO. 5: Three comments were received stating ARM 8.40.1607 should include the phrase "or otherwise define the role of the pharmacist in compounding or dispensing drugs at the pharmacy" to the rule to make the rule more in conformance with the statute that is being implemented.

RESPONSE: The Board's proposed changes were in response to the statutory language on regulation of the use of pharmacy technicians. The addition of the suggested phrase does not clarify the pharmacy technician's role or regulation of their role. Also, §37-7-703, MCA, already contains language on "the role of the pharmacist," and it is not therefore necessary to repeat statutory language in the rules.

BOARD OF PHARMACY
ED HARRINGTON, PRESIDENT

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 29, 1996.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and adoption of rules pertaining to passenger tramways	))))))	NOTICE OF AMENDMENT OF 8.63.504 REGISTRATION OF NEW, RELOCATED OR MAJOR MODIFICATIONS OF TRAMWAYS AND THE ADOPTION OF NEW RULE I (8.63.303) NOTICE OF CONFERENCE CALL MEETINGS

TO: All Interested Persons:

1. On March 7, 1996, the Board of Passenger Tramway Safety published a notice of proposed amendment and adoption of rules pertaining to registration of new, relocated or major modifications of tramways and conference call meetings, at page 633, 1996 Montana Administrative Register, issue number 5.

2. The Board has amended ARM 8.63.504 and adopted new rule I (8.63.303) exactly as proposed.

3. No comments or testimony were received.

BOARD OF PASSENGER TRAMWAY SAFETY
KEVIN TAYLOR, CHAIRMAN

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 29, 1996.

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

In the matter of the adoption of a new rule for the administration of the 1996 Federal Community Development Block Grant Program; the adoption of a new rule pertaining to the 1996 Treasure State Endowment (TSEP) Program; and repeal of rules pertaining to the 1987 and 1988 Federal Community Development Block Grant Programs	NOTICE OF ADOPTION OF NEW NEW RULE I (8.94.3712) PERTAINING TO THE ADMINISTRATION OF THE 1996 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; ADOPTION OF NEW RULE II (8.94.3803) PERTAINING TO THE 1996 TREASURE STATE ENDOWMENT (TSEP) PROGRAM; AND REPEAL OF THE 1987 AND 1988 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

TO: All Interested Persons:

1. On November 22, 1996, the Local Government Assistance Division published a notice of public hearing on the proposed adoption and repeal of rules pertaining to the Federal Community Development Program and the Treasure State Endowment Program, at page 2454, 1996 Montana Administrative Register, issue number 22. The hearing was held on December 20, 1995, in Helena, Montana.

2. The Board has adopted new rule I (8.94.3712) with the following change: INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 19956 CDBG PROGRAM (1) through (3) remain as proposed. The Board has adopted new rule II (8.94.3803) and repealed ARM 8.94.3703 and 8.94.3704 exactly as proposed.

3. No members of the public attended the hearing. The Division did receive three written comments during the public comment period provided by the Administrative Procedure Act. Those comments, and the Division's responses thereto, are as follows:

HOUSING & PUBLIC FACILITIES COMMENTS:

COMMENT 1: A written comment was received that the formula for determining the allocation for funding between housing and public facilities should be re-examined. It was stated that the formula for allocation between housing and public facilities is now obsolete, due to the abrupt increase in the demand for new affordable housing construction that has occurred in Montana since 1991. The commenter stated that public facility projects now have numerous sources of both loan and grant assistance, especially the 4% low interest loan revolving fund for wastewater projects funded by the State Revolving Loan Fund administered by the Department of Environmental Quality.

RESPONSE: Due to major new legislation proposed by Congress that would dramatically restructure the CDBG program, the Department does not believe it would be appropriate to re-examine the distribution formula between housing and public facilities at this time. Congress is currently considering new housing legislation that would completely revise the federal

Housing and Community Development Act, which if passed would require a complete redesign of Montana's CDBG program.

In addition, there is still a critical need for CDBG Public Facility grants, especially for water and sewer projects, because of the importance of providing grant funds to meet funding gaps. Although it is true that the 4% loan funds from the State Revolving Loan Fund are available for wastewater projects, experience has demonstrated that CDBG grant funds are still critical to make projects affordable, even for those using low interest loan programs. The only other major source of federal grant funds, USDA Rural Development, experienced a one-third cut in its funding for Montana this year.

COMMENT 2: An oral comment was received at the December 5, 1995 Consolidated Plan Public Hearing held in Polson that the CDBG housing application forms are too complex and that the HOME program application forms should be used as a model.

RESPONSE: The CDBG program has re-organized all public facility and housing application forms in a more simplified format for 1996, which is available on computer disk. In 1997, the CDBG program will consider the development of joint forms with the HOME program, depending on the outcome of proposed Congressional legislation which would affect both programs.

COMMENT 3: A written comment was received supporting the proposed change to the Public Facility ranking criteria to reallocate points from Criteria #6, Benefit to Low and Moderate Income, to Criteria #1, Project Planning and Selection, and Criteria #7, Project Implementation and Management.

COMMENT 4: A written comment questioned setting the base criteria for affordability for water and sewer projects (combined rates) at 2.2% of the Median Housing Income level to indicate the optimum level of debt. The commenter stated that setting target rates for a community is difficult at best with many considerations beyond median household income, including past debt and terms of that debt, the bond market, other infrastructure deficiencies that a community may have, other scheduled future projects, and availability of other sources of funding.

RESPONSE: The "target rate" concept which relates a community's ability to pay for water and sewer facilities to its overall Median Household Income (MHI) is a fair system based upon considerable experience and research. In addition to comparing user charges to overall MHI and target rates, the Department also considers the percentage of low and moderate income, percentage of poverty, and other community debt indicators determining financial need and ability to pay for public facilities.

COMMENT 5: Two comments were received relative to the grant ceilings for housing and public facilities projects, as follows:

The first comment stated that the $400,000 ceiling is obsolete for housing rehabilitation projects because sources of matching and leveraged funds are more limited.

RESPONSE: The Department feels it would be more appropriate to consider this issue when the status of the new proposed legislation for the Community Development Block Grant Program is resolved. In addition, given the current budget impasse in Congress, funding levels for the CDBG program are very uncertain. With more than half the 1996 federal fiscal year completed, a final funding level for this year's program has still not been established. However, because of increasing project costs for both housing and public facility projects, the Department will solicit public comment on increasing the grant ceilings for both categories next year during the development of the 1997 guidelines.

The same person also commented that the grant ceiling of $400,000 may be less than what a community needs if the CDBG program is truly to be a gap financing vehicle. The amount of money requested should reflect what the community needs to truly fill a gap, rather than an arbitrary limit.

RESPONSE: The Department believes that the scarce CDBG funds must be available to serve the community development of all of Montana's 56 counties and over 127 incorporated municipalities (with the exception of Billings and Great Falls). The setting of grant ceilings for the CDBG program has been strongly supported by local officials as a means of rationing the limited funds among the many communities that need CDBG assistance.

ECONOMIC DEVELOPMENT COMMENTS:

COMMENT: Written comments were received regarding the CDBG economic development guidelines, that a two-year contract completion deadline may not be feasible depending on the use of the economic development funds, such as construction, working capital, etc. It was suggested that there be a mechanism to amend a project time frame.

RESPONSE: Job creation/retention goals should be accomplished within the 24-month contract period; however, if this cannot be accomplished, the hiring goals will be reviewed and the contract deadline revised accordingly. For public improvement projects in support of businesses, new language was added on page 8 of the Economic Development CDBG guidelines to allow for a three-year contract completion deadline.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, April 29, 1996.

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

In the matter of the adoption of 5 new rules and the repeal of ARM 24.29.706, related to the exemption of independent contractors from workers' compensation coverage	) NOTICE OF ADOPTION OF FIVE NEW RULES AND REPEAL OF ONE EXISTING RULE

TO ALL INTERESTED PERSONS:

1. On March 21, 1996, the Department published notice at pages 725 through 730 of the Montana Administrative Register, Issue No. 6, to consider the adoption of new rules I through V, and the repeal of ARM 24.29.706.

2. On April 12, 1996, 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 April 19, 1996.

3. After consideration of the comments received on the proposed new rules, the Department has adopted RULE I as proposed, but with the following changes: (new material underscored, deleted material interlined)

RULE I (24.29.706A) APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION (1) As provided by 39-71-401(3), MCA, a sole proprietor, working member of a partnership, or working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound by the provisions of a workers' compensation plan but may apply for an exemption from the Workers' Compensation Act. In order to obtain an independent contractor exemption, an applicant must:

(a) submit a department application affidavit form bearing the applicant's notarized signature in which the applicant swears or affirms under oath that the statements contained in the form are true and accurate to the best of their ability; and

(b) pay a fee, if required by ARM 24.29.706C.

(2) The department application affidavit form requires the applicant to provide their correct name and social security number and to make the following representations for each trade, occupation, profession or business for which the applicant is seeking an independent contractor exemption:

(a) that the applicant is engaged in an independently established trade(s), occupation(s), profession(s) or business(es) which are specifically identified;

(b) that the applicant currently files or, if a new business is formed, will be filing the appropriate federal and state tax returns for the year in which the exemption is in effect and pays self-employment taxes on the income earned as an

independent contractor;

(c) that the applicant has or will have a contract or accepted bid proposal;

(d) that the applicant has documents such as printed invoices, business cards, current business licenses, permits, advertisements, etc., which support a finding of an independently established trade, occupation, profession or business;

(e) that the applicant supplies substantially all of the tools and equipment necessary for the performance of the contract;

(f) that the applicant controls the details of how to perform the contracted for services and that the employer retains only the control necessary to ensure the bargained for end result; and

(g) that the applicant understands and agrees that if the independent contractor exemption is granted, the applicant is not eligible for workers' compensation benefits or unemployment insurance benefits for work performed as an independent contractor for which the exemption is granted.

(3) An application that is approved and for which the exemption certificate is issued, shall be in effect for one year unless the department revokes the exemption certificate or is notified in writing prior to the expiration date that the exemption holder wishes to have the exemption revoked.

AUTH: Sec. 39-71-203 and 39-71-401 MCA
IMP: Sec. 39-71-120, 39-71-401 and 39-71-409 MCA

4. After consideration of the comments received on the proposed new rules, the Department has adopted RULE II, III, IV and V exactly as proposed:

RULE II (24.29.706B) RENEWAL OF INDEPENDENT CONTRACTOR EXEMPTION

RULE III (24.29.706C) APPLICATION FEE FOR INDEPENDENT CONTRACTOR EXEMPTION

RULE IV (24.29.706D) SUSPENSION OR REVOCATION OF INDEPENDENT CONTRACTOR EXEMPTION

RULE V (24.29.706E) GUIDELINES FOR DETERMINING WHETHER AN INDEPENDENT CONTRACTOR EXEMPTION IS NEEDED

5. The Department of Labor and Industry did not receive any comments opposing the proposed repeal of ARM 24.29.706, and accordingly has repealed the rule in its entirety.

6. The Department has thoroughly considered the comments and testimony received on the proposed new rules. Two members of the public spoke in favor of the rules; one person submitted written comments generally objecting to the rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Two commenters favored the proposed new rules, stating that the new rules were more "user-friendly" than the previous rule.
Response 1: The Department agrees with the commenters.

Comment 2: A commenter generally objected to the proposed rules, stating that the underlying laws related to independent contractors were unconstitutional, and stating that the Department could not adopt rules to implement unconstitutional laws. The same commenter also objected to various portions of the proposed rules as being "vague" and therefore unconstitutional.
Response 2: Under Montana law, the acts of the Legislature are presumed to be constitutional. The Department has reviewed the wording of the proposed rules in the context of the decisions of the Montana Supreme Court regarding independent contractors, and has concluded that the rules are not unduly vague.

Comment 3: A commenter objected to the requirement of furnishing a social security number in connection with the independent contractor exemption application and renewal, citing the federal "Privacy Act of 1975" [sic].
Response 3: The Department is unaware of a federal law known as the "Privacy Act of 1975." The Department presumes that the commenter is referring to the Privacy Act of 1974, Public Law 93-579, sec. 7 [88 Stat. 1909]. The Department has concluded that use of social security numbers by the Department for independent contractor exemption applications is authorized by 42 U.S.C. § 405(c)(2)(C)(I). The information will be used by the Montana Department of Labor and Industry in the administration of state unemployment insurance tax laws (*see*: § 39-51-204(4), MCA) and workers' compensation laws (*see*: § 39-71-401(3), MCA).

Comment 4: The same commenter objected to the requirements in RULE I(2)(b), (c) and (d), generally on the grounds that the Department lacks the authority to regulate or compel the existence of those items.
Response 4: The Department's identification of those items as being evidence of the status of a person who purports to be an independent contractor is consistent with the evidence the Montana Supreme Court has found to be significant in making independent contractor status determinations.

Comment 5: The commenter also objected to RULE I(2)(b)(e) as being unrealistic and inconsistent with ARM 24.11.825(1)(b).
Response 5: The Department agrees that the rule should read "substantially all", and has amended RULE I accordingly.

Comment 6: The commenter suggested that RULE I(2)(g) should also include a caveat about the consequences of the failure of the applicant to meet the "A-B" portion of the independent contractor test.
Response 6: The Department believes that the information is

already being communicated to applicants and potential employing contractors via both the application forms and the independent contractor certificates. The Department does not think that it is appropriate to include the explanatory information suggested by the commenter in the text of the rule.

Comment 7: The commenter also objected to the provisions of RULE IV(1)(a), on the grounds that the actions of another could jeopardize the independent contractor's status.
Response 7: The Department believes that the rule correctly reflects the current state of the law regarding independent contractors, as explained by the Montana Supreme Court.

Comment 8: The commenter objected to the provisions of RULE IV(1)(b), indicating that the "current form" does not list the rules which the independent contractor is agreeing to follow.
Response 8: The statements contained in the independent contractor exemption application form are the same as contained in RULE I(2). The Department does not believe that there is any ambiguity in the statements contained in the application form.

Comment 9: The commenter also objected to the provisions of RULE IV(1)(d) on the grounds that the language is arbitrary and capricious, and gives too much discretion to the Department. The commenter stated that nothing in Senate Bill 354, section 30, requires the rule.
Response 9: The Department has general rule-making authority regarding the administrative provisions of the Workers' Compensation Act. The Legislature, in originally enacting the provisions of 39-71-401(3), MCA, granted the Department the discretion to make rules regarding independent contractor exemptions and approve or deny applications. The Department has concluded that the broad language in RULE IV(1)(d) appropriately gives the Department flexibility to address unanticipated techniques that individuals may try in order to misrepresent their status as an independent contractor.

Comment 10: The commenter objected to the use of the term "generally" used in RULE V(4) and (5), and stated that deciding who is exempt from workers' compensation laws is a job for the Legislature, not the Department.
Response 10: The Department has included the provisions of RULE V(4) and (5) based on requests from the public concerning guidelines for when an independent contractor exemption is or is not needed. Because the determination of a person's status as an independent contractor is a fact-driven determination, the Department cannot make a rule that provides absolute assurances applicable to every conceivable fact situation. However, the Department has concluded that the examples given in the rule accurately reflect the current state of the law in Montana concerning independent contractor status. Finally, the Department's rules do not grant exemptions from the workers' compensation laws that are not already contained in statute. This rule explains the law and provides guidance to individuals

who desire information concerning the application of 39-71-401(3), MCA, to specific types of work.

Comment 11: The commenter stated that he had requested that the "Rules Committee" be convened concerning this rule-making. The commenter also made numerous requests for an "economic impact statement."
Response 11: The Department presumes that the commenter (a member of the 1995 Legislature) will direct his requests for an economic impact statement to the Administrative Code Committee. The Administrative Code Committee is the body which is authorized by law to request that the Department prepare a statement of estimated economic impact.

Comment 12: Another commenter asked whether there could be a simplification to the renewal process that could serve to lower the $25.00 renewal fee.
Response 12: The fee for renewal of the independent contractor exemption has been set by statute at $25.00. The Department does not have the authority under current law to reduce that fee. The Department believes that the use of an affidavit is a very simple way to accomplish the annual renewal of the exemption, but it will continue to look for ways to further streamline the process.

7. The new rules and repeal are effective May 10, 1996. The Department had originally proposed to make the rules and repeal effective June 7, 1996, but has decided that in light of the relatively few comments opposing the rules to make the rules and the comments stating that the new rules were more "user-friendly" to move the effective date to May 10.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 29, 1996.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of rules 36.22.1401, 36.22.1410, 36.22.1416, 36.22.1417, and 36.22.1418, and the adoption of new rules I and II, pertaining to underground injection	))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Interested Persons

1. On March 7, 1996, the Board of Oil and Gas Conservation published notice of a public hearing on the proposed amendment of rules 36.22.1401, 36.22.1410, 36.22.1416, 36.22.1417, and 36.22.1418, and the proposed adoption of new rules I and II, pertaining to underground injection at page 649 of the 1996 Montana Administrative Register, issue number 5.

2. No comments were received at the public hearing. Written comments were received from the Department of Natural Resources and Conservation, Trust Land Management Division (TLMD), on March 21, 1996. Comments were also received from the Department of Environmental Quality (DEQ), on April 5, 1996. Although the DEQ comments were received after the April 4, 1996, deadline for public comment, the Board has elected to consider them.

3. The Board has amended rules 36.22.1410, 36.22.1417, and 36.22.1418, and adopted rules I (36.22.1424) and II (36.22.1425) as proposed.

4. The Board amended rule 36.22.1401 as proposed with the following change:

36.22.1401 DEFINITIONS For the purpose of this subchapter the following are defined:

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

(a) injects fluids brought to the surface in conjunction with conventional oil and gas production and may be commingled with waste waters ~~(regardless of their source)~~ from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

Subsections (4)(b) through (20) remain the same.

COMMENT: 36.22.1401 DEFINITIONS DEQ (Waste Management Division) requests the Board to alter the amendment of rule 36.22.1401(4)(a) by dropping the words "regardless of source" and inserting "on-site" before the words "gas plants". DEQ cites 75-10-214, MCA, as providing certain exclusions for disposal of waste generated on-site.

RESPONSE: Board staff contacted DEQ Waste Management personnel about this comment. Section 75-10-214, MCA, also provides exclusions for certain other wastes regulated under

other statutory authority (e.g.: this Board's regulation of commercial class II injection wells). The DEQ request to insert "on-site" before the words "gas plants" would limit the ability of commercial disposal wells to take gas plant waste otherwise lawfully available for class II injection to situations where the disposal well and the gas plant are on the same "site", an unlikely circumstance. Since the exclusion in 75-10-214, MCA, extends to commercial class II wells under the Board's regulation, this comment is not adopted. The Board however, agrees that the words "regardless of source" broaden the scope of the rule and may result in misinterpretation of the intent (which is to allow disposal of only valid class II injectate).

5. The Board amended rule 36.22.1410 as proposed. However, the Board directs its staff to ensure a complete copy of each UIC application is available at its Helena office for inspection or copying as soon as possible after receipt. Also, staff will contact TLMD and DEQ to ensure that the proper parties are on its mailing list.

COMMENT: 36.22.1410 NOTICE OF APPLICATION TLMD asks the Board to retain the written notice to mineral lessees and mineral owners within the area of review originally required by rule 36.22.1410. DEQ requests the Board to restore written notice to both DEQ and the clerk and recorder of the county in which the project is located.

RESPONSE: While the Board is concerned that adequate notice of proposed injection projects be given, the Board also believes its decision to issue UIC permits using its existing public notice and hearing process provides adequate notice in a manner equivalent to the procedure currently used by EPA in the Montana program. The Board publishes notice of future public hearings in the Helena Independent Record and in a newspaper of general circulation in the county where the proposed project is located. Notice is also mailed from the Board's Helena office to some 400+ interested parties. Both TLMD and DEQ officials appear on the Board's mailing list. County clerk and recorder offices do not appear to have any uniform public notice procedures established and while in some cases UIC notices may be referred to appropriate local officials, there does not seem to be any assurance such a notice will reach the intended parties. Publication in the county newspaper is a more effective means of public notice to both county officials and the general public.

6. The Board has amended rule 36.22.1416 as proposed with the following change:

36.22.1416 MECHANICAL INTEGRITY

Subsections (1) through (2)(a) remain the same.

(b) monitoring of the casing-tubing annulus following a valid initial pressure test, or

Subsections (2)(c) through (8) remain the same.

COMMENT: 36.22.1416 MECHANICAL INTEGRITY TLMD requests the Board to retain the requirement to conduct a valid pressure

test before accepting subsequent annulus monitoring as a mechanical integrity test in rule 36.22.1416.

RESPONSE: The Board agrees with TLMD that an initial pressure test is needed to establish the initial mechanical integrity of a well.

COMMENT: Rule II (36.22.1425) AREA OF WAIVER TLMD requests the Board retain a fixed ¼ mile minimum area of review or the radius calculated in rule II (36.22.1425), whichever is greater.

RESPONSE: EPA allows the area of review to be reduced if the alternative calculation results in a radius smaller than ¼ mile in their current Montana UIC program. TLMD indicates EPA's review is solely to protect USDWs and the Board's responsibilities also include impacts upon adjacent oil and gas operations, even if a USDW is not threatened. The Board agrees its responsibilities are more comprehensive than the UIC program activities; however the UIC rules and procedures proposed here are indeed intended to "only" protect USDWs. The public hearing process and the ability to protest issuance of an injection permit by those believing harm may result from a project for any reason will not be adversely affected by the proposed area of review procedures.

BOARD OF OIL AND GAS
CONSERVATION

THOMAS P. RICHMOND
ADMINISTRATOR

DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State April 29th, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule 11.14.105 pertaining to licensure of day care facilities	)))))	NOTICE OF THE AMENDMENT OF RULE

TO: All Interested Persons

1. On March 7, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rule 11.14.105 pertaining to licensure of day care facilities at page 656 of the 1996 Montana Administrative Register, issue number 5.

2. The Department has amended rule 11.14.105 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 29, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules I through V and the amendment of rules 20.3.501, 20.3.502, 20.3.503 and 20.3.504 pertaining to chemical dependency educational courses	))))))	NOTICE OF THE AMENDMENT AND ADOPTION OF RULES

TO: All Interested Persons

1. On February 8, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of rules I through V and the amendment of rules 20.3.501, 20.3.502, 20.3.503 and 20.3.504 pertaining to chemical dependency educational courses at page 391 of the 1996 Montana Administrative Register, issue number 3.

2. The Department has amended rule 20.3.504 and adopted [Rule I] 20.3.508 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: REQUIRED SERVICES, [Rule II] 20.3.509 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: COURSE CURRICULUM, [Rule III] 20.3.510 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: MONITORING REQUIREMENTS, and [Rule IV] 20.3.513 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: ACT PROGRAM PROVIDER REQUIREMENTS as proposed.

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

20.3.501 CHEMICAL DEPENDENCY EDUCATIONAL COURSES; COST OF TREATMENT (1) through (3)(b) remain as proposed.

(c) Offenders referred to treatment AND/OR MONITORING via the ~~referral~~ assessment process are responsible for the costs of treatment AND MONITORING.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 61-8-714 and 61-8-722, MCA

20.3.502 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: DEFINITIONS In addition to terms defined in 53-24-103, MCA and ARM 20.3.202, the following are defined:

(1) remains as proposed.

~~(a)~~(2) "ACT (Assessment, Course, Treatment) program" means an assessment, educational course and/or referral to treatment ~~program which~~. This is a three ~~level~~ part process designed to assess, educate and~~/or treat persons convicted of driving~~ to recommend treatment placement as appropriate for persons convicted of driving under the influence of intoxicating substances, MDD AND THIRD OR SUBSEQUENT MIP.

(3) and (4) remain as proposed.

(5) "ASSESSMENT" MEANS, FOR THE PURPOSE OF THIS SUB-CHAPTER, THE PROCESS OF IDENTIFYING AND LABELING SPECIFIC CONDITIONS SUCH AS CHEMICAL ABUSE OR DEPENDENCE; AND THE DETERMINATION OF THE APPROPRIATE LEVEL OF TREATMENT FOR THE OFFENDER. THIS PROCESS IS DESCRIBED IN ARM 20.3.508(1)(a) through(d).

(5) through (7) remain as proposed but are renumbered (6) through (8).

~~(8)~~(9) "Cross-referencing" is a method used to determine if similar questions are answered in the same manner on different assessment instruments. The purpose is to discover consistencies and inconsistencies in an offender's answers to questions AND ASSESS THE VALIDITY OF THE OFFENDER'S SELF-REPORT.

(9) through (21) remain as proposed but are renumbered (10) through (22).

~~(h)(22)~~(23) "Offender" means a person convicted of DUI, /per se, ~~or~~ MIP, or a dangerous drug misdemeanor and sentenced to complete a chemical dependency educational course provided by a state approved program and/or treatment provided by a ~~state approved treatment program~~ certified chemical dependency counselor.

(23) through (25) remain as proposed but are renumbered (24) through (26).

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204 and 53-24-208, MCA

20.3.503 ~~EDUCATIONAL COURSE REQUIREMENTS FOR DUI OFFENDERS (ACT PROGRAM)~~ CHEMICAL DEPENDENCY EDUCATION COURSES: GENERAL EDUCATIONAL COURSE REQUIREMENTS (1) This program is for persons convicted of a DUI, /per se ~~or~~ misdemeanor dangerous drug offense and sentenced under 61-8-714, ~~MCA~~ ~~or~~ 61-8-722, ~~MCA~~ or Title 45, Chapter 9 or 10, MCA to complete an alcohol ~~educational~~ or other dangerous drugs information course ~~and/or treatment provided by a state approvedtreatment program.~~ provided by a state approved program and which may include alcohol or drug treatment or both in accordance with state approved placement criteria and provided by a certified chemical dependency counselor.

(2) and (2)(a) remain as proposed.

(b) ~~Level II~~ Course, which is an educational component based on the curriculum contained and explained in ~~ARM 20.3.503(4)(b)~~ Rule II ~~of this rule~~ and further defined in the ACT course curriculum manual. The manual may be obtained from the Department of Transportation, Traffic Safety Bureau, 2701 Prospect Avenue, P.O. Box 201001, Helena, MT 59620-1001. Misdemeanor dangerous drug offenders must complete a specific drug education course equivalent in hours to the ACT curriculum. The course will be based on the ACT curriculum but must contain specific information on misdemeanor drug laws. ~~The MDD course must be offered separately from the DUI course at the program's~~

~~central office. The MDD and DUI educational courses may be combined at the program's satellite offices.~~ THE MDD COURSE MAY BE COMBINED WITH OR HELD SEPARATELY FROM THE DUI COURSE. IF MORE THAN EIGHT MDD CLIENTS ARE ENROLLED AT ONE TIME ON A CONSISTENT BASIS, IT IS RECOMMENDED THAT THE COURSES BE OFFERED SEPARATELY.

(2)(c) remains as proposed.

(3) ~~The ACT program will notify the sentencing court if the offender does not enroll with the program within ten days or start the course process within thirty days of the program's receipt of the court referral notice. Level I and II of the ACT program will take~~ To complete the ACT program, the offender:

(a) must enroll by the date specified by the sentencing court. IF NO DATE IS SPECIFIED, THEN within 10 days of the ACT program's receipt of the court referral notice;

(3)(b) remains as proposed.

(c) must complete the program in a minimum of 30 days FROM THE DATE OF ENROLLMENT, but no longer than 90 days FROM THE DATE OF ENROLLMENT. ~~not less than thirty days and not longer than ninety days to complete.~~ An exception to the 30-day minimum may be granted by the department based only on justified geographical considerations. The ACT program will notify the sentencing courts in all cases of failure to comply and the sentencing court ~~will~~ may notify ~~drivers improvement~~ the drivers control bureau. ~~Length of stay for level III (treatment) will be based on the recommendation of the certified chemical dependency counselor as approved or modified by the order of the sentencing court. The approved chemical dependency program accepting the treatment referral must notify the sentencing court upon completion of Level III for second and subsequent offenders.~~

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

20.3.504 EDUCATION COURSE REQUIREMENTS FOR MIP OFFENDERS (MIP PROGRAM) (1) This program is for minors convicted of unlawful possession of an intoxicating substance and sentenced under 45-5-624, MCA. The requirements for the MIP education course are contained in the MIP curriculum manual. The manual may be obtained from the Department of Public Health and Human Services, ADDICTIVE AND MENTAL DISORDERS DIVISION, 1400 Broadway, P.O. BOX 202951, Helena, MT 59620-2951.

(2) A person 18 to 20 years of age, who is convicted of a third OR SUBSEQUENT offense possession of an intoxicating substance under 45-5-624 MCA, and ordered to complete an alcohol information course at a state approved program shall attend and complete the ACT program, with all of its requirements.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-208 and 45-5-624, MCA

4. The department has adopted the following rule as proposed with the following changes:

[RULE V] 20.3.514 CHEMICAL DEPENDENCY EDUCATIONAL COURSES; RECORD KEEPING AND REPORTING REQUIREMENTS (1) remains as proposed.

(a) ALCOHOL AND DRUG INFORMATION SYSTEM (ADIS) Admission/Discharge ACT program report;

(1)(b) through (j) remain as proposed.

(k) biopsychosocial and patient placement documentation; ; AND

(l) ADVISAL OF RIGHTS FORM.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

5. The Department has thoroughly considered all commentary received:

COMMENT #1: The words "and/or monitoring" should be added to ARM 20.3.501(3)(c) to clarify that the cost for monitoring, and treatment, is the responsibility of the offender. This subsection should be clarified.

RESPONSE: The department has revised the rule to clarify this issue.

COMMENT #2: A definition for "Assessment" should be added since it is used throughout the rules.

RESPONSE: The department has added a definition for "Assessment" to the rules.

COMMENT #3: The department should change the wording of ARM 20.3.502(5) regarding part of the definition of "Assessment/evaluation instruments" and what they are to decide about the offender's chemical use.

RESPONSE: The department believes that the term "severity" is adequate in this situation. It more clearly describes what the instruments are to determine, rather than the term "nature" as proposed. The rule will be left as is.

COMMENT #4: There were four of eighteen comments addressing the use of the term Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) and the descriptions of the categories relating to the severity of an offender's chemical use. One comment also asks questions about the International Classification of Diseases, Tenth Revision (ICD-10) as opposed to the DSM-IV. They recommend that the rule be revised to use the terms "dependence, abuse and misuse" rather than "chemically dependent, abuser and misuser." The former is "recognized as

diagnostic terminology" and the latter "sound" to the commentator like "name-calling, or labeling in an adverse manner." The question is asked if the ICD-10 is used by programs (chemical dependency programs) or if they wish to use that criteria.

RESPONSE: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) in their *Alcohol Alert* pamphlet (No. 30, PH 359, October 1995) describe the use of the DSM-IV. They define diagnosis as "the process of identifying and labeling specific conditions such as alcohol abuse or dependence." The term "abuser," as used in the rule, is as a noun in that it denotes that person who may "abuse" chemicals. This also applies to the term "misuser" as one who may "misuse" chemicals. These terms are in not meant in an adverse manner. They do label the person, but in the same sense as described in the definition by the NIAAA above.

To the best of the department's knowledge, the ICD-10 is not used by other programs, nor has there been any desire to do so. The DSM-IV criteria are the primary criteria used in the United States. It is also used by the Mental Health Centers in Montana. The ICD-10 criterion for substance dependence is used by the World Health Organization and is only a small part of many other diseases covered. The DSM-IV was formulated to describe behavioral disorders and better suits the purpose of consistency between the field of mental health and chemical dependency. It is used in the rule because the chemical dependency programs are most familiar with it and it is more widely accepted. The rule will not be revised in these areas.

COMMENT #5: The department should more accurately describe the use of cross-referencing by adding "and assess the validity of the offender's self-report."

RESPONSE: The department agrees, and has added this statement.

COMMENT #6: The department should add language to include the "community-based substance abuse information course for minors" to the definition of "offender." There was a total of seven comments, including the one above, addressing the issue of MIP requirements within the ACT program. The commentator also questions placing the third offense MIP offender into the ACT program and perhaps should be allowed to have a separate program for this population. The comments also address the issue of the requirements for the MDD program as well as the MIP program.

RESPONSE: The MIP offender, within the definition of "offender" found in the rules, refers only to the offender who is 18 to 20 years of age. The law indicates that only that type of offender is to be referred to an alcohol information course approved by DPHHS. Since the ACT program is the only state

approved information course, the third offense MIP offender must attend ACT. Those MIP offenders under the age of 18 are not required to attend a state approved education course. The "community-based substance abuse information course for minors" is only for those less than eighteen years of age and does not need to be provided within a state approved program. Therefore, there will not be requirements within ACT for the less than eighteen year old MIP offender. The requirements for the community-based information course will be found in the MIP manual. The ACT program meets the needs of the MIP offender convicted of a third or subsequent MIP offense and should be sufficient to serve this population. It would be cost prohibitive to require programs to have a separate program for this age group (18-20). Eighteen year old DUI offenders are currently required to attend the ACT program. Programs would just include the third MIP offender with that group. If the program should choose to offer a separate ACT program for this age group, they could do so, however, it would be called ACT with all of its requirements.

The ACT program is designed to offer services for the DUI offender and the MDD offender. The requirements are the same for each except as specifically stated within the rule for the MDD offender, i.e., education regarding MDD laws, etc.

COMMENT #7: The commentator indicates that the definition for "unidentified" is not always true. The commentator indicates that if the client will not, or is unable to provide information needed to complete the evaluation they may refer them for a more comprehensive evaluation.

RESPONSE: The definition will remain as written. It is open enough to include the offender who does not complete the assessment for any reason, including denial if present.

COMMENT #8: Three of four comments request a change in the rule requiring the DUI and MDD courses be offered separately in the urban programs and combined in the rural areas. They feel that the requirement as written is not cost effective. There have been very few or no MDD referrals to the programs at this time and to offer two separate courses is not feasible. They request more flexibility to implement what is best for their program needs. One comment indicates that many times the two types of clients are the same people and the program wants to incorporate appropriate education for both into the same course. One comment supports the rule as it is written.

RESPONSE: The department agrees with the comments. The rule has been revised to allow more flexibility for the programs. Included is a suggestion that if more than eight MDD clients are enrolled at one time on a consistent basis, the program should

offer the courses separately. It is left up to the program to decide to offer the courses together or separately.

COMMENT #9: It is noted that the new rules do not take into account the new ruling regarding assessments by eligible counselors.

RESPONSE: The protocol in place allowing eligible counselors to perform assessments is there to allow programs to provide training for eligible counselors. The protocol still requires that the assessment and placement results be determined by a certified counselor, and the exit interview where recommendations are made is conducted by a certified counselor. The rule will remain as written.

COMMENT #10: The department should add the "advisal of rights" form to the reporting requirements list within the reporting requirement's rule.

RESPONSE: The department agrees and this item has been added.

COMMENT #11: The definition of ACT found in 20.3.502(2) should be revised to include the Misdemeanor Dangerous Drug (MDD) offender and the third or subsequent Minors in Possession (MIP) offender as part of the process of assessment, education and referral to treatment. The ACT program also does these functions for these added offenders.

RESPONSE: The department had intended to add these two types of offenders to the definition. The rule has been revised accordingly.

COMMENT #12: The term "DUI, per se" should be made consistent throughout the rules, using "DUI/per se" instead.

RESPONSE: The department has made this revision in the rules.

COMMENT #13: The department should clarify ARM 20.3.503(3)(a) & (b) regarding the time lines for enrollment in the ACT program.

RESPONSE: The department has added language to clarify this issue.

COMMENT #14: The department needs to update the name and address of the Alcohol and Drug Abuse Program found in ARM 20.3.504(1) in order to reflect their new name, Addictive and Mental Disorders Division, and address.

RESPONSE: This change has been made. The department did not know the new name and address of the division at the time of the first hearing date.

COMMENT #15: The term "or subsequent" should be added to the MIP offenders in ARM 20.3.504(2).

RESPONSE: This item was recommended to be added but was inadvertently overlooked before the first hearing. It has been added.

COMMENT #16: The department should describe what the acronym "ADIS" in Rule V(a) 20.3.514 means.

RESPONSE: "Alcohol and Drug Information System" has been added to the rule.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 29, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.6.405, 46.6.407, 46.6.408, 46.6.409, 46.6.410, and 46.6.412 and the repeal of rules 46.6.306 and 46.6.411 pertaining to vocational rehabilitation financial need standards	))))))))	NOTICE OF THE AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons

1. On December 21, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.6.405, 46.6.407, 46.6.408, 46.6.409, 46.6.410, and 46.6.412 and the repeal of rules 46.6.306 and 46.6.411 pertaining to vocational rehabilitation financial need standards at page 2779 of the 1995 Montana Administrative Register, issue number 24.

2. The Department has amended rules 46.6.405, 46.6.407, 46.6.409, and 46.6.412 and repealed rules 46.6.306 and 46.6.411 as proposed.

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

46.6.408 VOCATIONAL REHABILITATION PROGRAM: INFORMATION FOR DETERMINATION OF FINANCIAL NEED (1) The individual ~~will be~~ is the primary source of the financial information necessary for the determination by the department of ~~his~~ financial need. The department, within its discretion, may obtain information about an individual's financial resources and requirements from any ~~reliable other~~ RELIABLE source. ~~All sources of financial information must be documented.~~

(2) through (5) remain as proposed.

(6) The counselor may obtain information about an individual's financial resources and requirements from the individual or any other RELIABLE source.

AUTH: Sec. 53-7-102 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

46.6.410 VOCATIONAL REHABILITATION PROGRAM: INCOME AND RESOURCES (1) through (3)(c) remain as proposed.

(4) WITH THE EXCEPTION OF REHABILITATION TECHNOLOGY SERVICES, comparable services or benefits under any other programs that are currently available to an individual must be

used to meet in whole or in part the cost of vocational rehabilitation services.

(4)(a) through (7) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310, MCA

4. The Department has thoroughly considered all commentary received:

COMMENT #1: The use of the word "may" in ARM 46.6.405 and 46.6.409 is inappropriately permissive. The word "shall" should be used instead. All services that may be provided should be itemized and listed.

RESPONSE: In both rules the word "may" is used to implement the federal Rehabilitation Act (Title 110) requirement that services be purchased only in response to individual need. The discretion is required by the federal authority. The request to itemize the services the department provides would be unfeasible as the list of possible services this program could provide would be unmanageably long.

COMMENT #2: The department should not strike the term "within a reasonable length of time" in ARM 46.6.407(1).

RESPONSE: The timeline of the process is overwhelmingly dependent on the consumer's timely participation. Consequently, the existing requirement is ineffective since it can not effect a change in the timeliness of clients. The department's timeliness is already required by federal statute and regulation so the instruction is redundant.

COMMENT #3: The terms "reliable" and "all sources of financial information must be documented" in ARM 46.6.408(1) AND (6) should not be stricken. The department appears to be intending to consider utilizing unreliable information. The term "reliable" should be defined.

RESPONSE: The department concurs the word "reliable" serves as reasonable and useful guidance and is retaining its use in the rule. The department believes that the word "reliable" can be effectively applied without definition and that an attempt to define would result in an overly prescriptive and restrictive application. Considering the nature of this program and its financial standard, the department believes that requiring the department and the consumer to document all sources of financial information to be an unnecessary paperwork burden to the consumer.

COMMENT #4: The Federal Rehabilitation Act does not require the search for comparable benefits in the purchase of rehabilitation technology. The exception should be noted in ARM 46.6.410.

RESPONSE: The department concurs and has included language in ARM 46.6.410 noting the exception for rehabilitation technology.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 29, 1996.

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, 1995. This table includes those rules adopted during the period January 1, 1996 through March 31, 1996 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, 1995, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1995 and 1996 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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