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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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NOTICE SECTION

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to fees	) NOTICE OF PROPOSED AMENDMENT OF 8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 13, 1998, the Board of Cosmetologists proposes to amend the above-stated rule.

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

"8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND FEES (1) through (13)(o) will remain the same.

~~(14) Examination fees~~

~~(a) Cosmetology~~	~~89~~
~~(b) Manicure~~	~~89~~
~~(c) Esthetic~~	~~89~~
~~(d) Electrology~~	~~89~~
~~(e) Instructor~~	~~89~~
~~(f) Retake examination fee~~	~~70~~

(15) through (19) will remain the same, but will be renumbered (14) through (18)."

Auth: Sec. 37-1-134, 37-31-203, 37-31-323, 37-32-201, MCA; IMP, Sec. 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-309, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: The Board previously conducted the examination for licensure, but currently contracts with MJ Sorum, Inc. to administer the examination. Examinees also now pay their fees, set by the contractor, directly to the contractor. Therefore, the examination fees must be removed from the board's fee schedule.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., June 11, 1998.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Cosmetologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., June 11, 1998.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be approximately 40 based on the number of individuals taking the examination yearly.

6. Persons who wish to be informed of all Board of Cosmetologists administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing to 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4288.

BOARD OF COSMETOLOGISTS
VERNA DUPUIS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 4, 1998.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, licensure of out-of-state applicants, examination, fee schedule, sanitary standards, transfer or sale of mortuary license, crematory facility regulation, processing of cremated remains; repeal of rules pertaining to board meetings, disclosure of funeral arrangements, methods of quoting prices, itemization, disclosure statement; and adoption of new rules pertaining to cemetery regulation, federal trade commission regulations and disclosure statement on embalming	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE FUNERAL SERVICE INDUSTRY

TO: All Interested Persons:

1. On June 18, 1998, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the funeral service industry.

2. The proposed amendment of ARM 8.30.402, 8.30.404, 8.30.406, 8.30.407, 8.30.601, 8.30.607, 8.30.801 and 8.30.805 will read as follows: (new matter underlined, deleted matter interlined)

"8.30.402 APPLICATIONS (1) and (2) will remain the same.

(a) Certified copy of the transcript of ~~his~~ completion of 60 semester credit hours or 90 quarter credit hours ~~with a "C" average~~ from an accredited college or university.

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

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-19-202, 37-19-303, MCA

REASON: The proposed amendment to (2)(a) is a grammatical change to make the language gender-neutral. The proposed amendment will also delete the requirement that applicants show proof of a "C" average from an accredited college or university, as this grade point average requirement is not found in the statute, and should not therefore be imposed by board rule.

"8.30.404 LICENSURE OF OUT-OF-STATE APPLICANTS (1) will remain the same.

(2) Verification of applicant's current license in good standing shall be requested by the applicant to be sent directly from the other state. ~~Applicant shall also submit to the board information concerning the nature of the prior examination, with their completed application forms.~~

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

Auth: Sec. 37-19-202, MCA; IMP, Sec. ~~37-19-304,~~ 37-1-304, MCA

REASON: The proposed amendment to (2) will delete the requirement that applicants submit information on the nature of any prior licensing examination which they completed. The Board notes that (1) already requires the applicant to provide information from the other states so the Board may determine substantial equivalency. It is not therefore necessary to request this information twice. Additionally, all applicants must take and pass the national board examination for licensure in Montana, so the Board does not need additional information from the applicant on this standard examination.

"8.30.406 EXAMINATION (1) The licensing examination shall be any of the national board examination of the conference of funeral service examining boards ~~taken within the past five years~~ and in addition, the statutes and rules under Title 37, chapter 19, MCA, and the rules of the Montana state department of public health and human services covering registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing.

(2) will remain the same."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-19-302, 37-19-303, MCA

REASON: The proposed amendment will delete the requirement that the national board examination has been taken within the past five years, as this is an unnecessary restriction on an applicant's ability to move from state to state. The national examination does not vary so significantly from year to year that a recent examination is more useful than an older examination.

"8.30.407 FEE SCHEDULE

(1) through (7) will remain the same.

(8) Re-inspection fee	~~75~~	200

(9) through (13) will remain the same.

(14) Cemetery permit application	125
(15) Cemetery initial inspection fee	200
(16) Cemetery permit renewal fee (five year) (includes inspection fee)	625
(17) Administrative fee (change of name/address)	25"

Auth: Sec. 37-1-134, 37-19-202, 37-19-703, 37-19-807, MCA; IMP, Sec. 37-1-134, 37-19-301, 37-19-304, 37-19-306, 37-

19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-807, 37-19-808, 37-19-814, MCA

REASON: The proposed amendment to (8) will raise the fee for re-inspection of a mortuary facility to $200 to more accurately reflect the actual costs involved in the re-inspection process due to travel, etc. The fee is commensurate with the cost of re-inspection. The proposed addition of (14), (15) and (16) will create new fees for the cemetery permit program, which is just beginning with these new rules. The cemetery permit fees are commensurate with the costs of administering the cemetery permit program. Finally, the proposed addition of (17), an administrative fee for change of name or address, is necessary due to the increasing demand for these services. The Board is spending more than it is collecting to accommodate all of the requests. The new fee is commensurate with the costs of administering the requests.

"8.30.601 SANITARY STANDARDS - PREPARATION ROOM

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

(7) The preparation room shall be strictly private and clearly so labeled on each door by a sign reading "private," or "authorized personnel only" or "no admittance." No one shall be allowed in the room while a dead human body is being prepared except ~~duly authorized personnel~~ persons authorized by a licensed mortician.

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

Auth: Sec. 37-19-202, 75-10-1006, MCA; IMP, Sec. 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, MCA

REASON: The proposed amendment to (7) will require a label on each door of the preparation room indicating the room is private. The Board has noted, through inspections, that it is not always obvious which are the private areas of the mortuary facility, and who may authorize admission to this area.

"8.30.607 TRANSFER OR SALE OF MORTUARY LICENSE

(1) will remain the same.

(2) Whenever ownership of any mortuary is proposed to be transferred, the mortuary shall notify the board. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50% of the equitable ownership of a mortuary is transferred in a single transaction, or in a related series of transactions to one or more persons, associations or corporations. The notice shall specify the address of the principal offices of the mortuary, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders.

(3) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the mortuary is located. The notice shall specify the address of the principal offices of the mortuary, whether changed or unchanged, and shall specify the name and address of

each new owner and each stockholder owning more than five percent of the stock of each new owner."

Auth: Sec. 37-19-202, 37-19-403, MCA; IMP, Sec. 37-19-403, MCA

REASON: The proposed amendments will require notification of the transfer of ownership to the Board in writing, and the public via newspaper advertising. The Board has noted that sales and transfers of ownership are routine for mortuaries, but Board records and the public's perception of who is in charge are not always up-to-date. By requiring Board and public notification, the new owner/licensee will be more responsible to respond to Board licensing procedures and/or complaints.

"8.30.801 CREMATORY FACILITY REGULATION (1) and (2) will remain the same.

~~(3) The crematory facility shall provide plans to the board on the interior design and placement of the crematory retort which shall be in a completely fire proof building and exterior design which includes size and placement of smoke stack and emissions of sediment or smoke from it.~~

~~(4) All crematory facilities shall carry full fire protection insurance necessary for operation.~~

(5) through (10) will remain the same, but will be renumbered (3) through (8)."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-703, 37-19-705, MCA

REASON: The proposed amendment will delete the requirement that a crematory facility submit floor plans and smoke stack information. The rule already states in (2) that the crematory facility shall comply with all local, state and federal building codes and regulations. It is not, therefore, necessary for the Board to review the plans as well. The proposed amendment will also delete the requirement that each crematory facility carry full fire protection insurance, as this is a business decision, and not an area in which the Board should impose regulations for the protection of the public.

"8.30.805 PROCESSING OF CREMATED REMAINS (1) Upon completion of the cremation process, ~~all residual~~ the recoverable residual of the cremation process shall be removed from the retort and the cremation chamber swept clean. The residual remains shall be placed within a container or tray in such a way that will ensure against commingling with other cremated remains. The identifying metal disc shall be removed from the control panel area and attached to the container or tray to await final processing.

(2) ~~All residual~~ The recoverable residual of the cremation process shall undergo final processing.

(3) and (4) will remain the same."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-704, 37-19-705, 37-19-706, MCA

REASON: The proposed amendment will change the rule language from "all residual" to "the recoverable residual" to more accurately reflect the correct terminology and actual practice at a crematory.

3. The Board is proposing to repeal ARM 8.30.401 (authority 37-19-202, MCA; implementing 37-19-302, 37-19-303, MCA), located at page 8-927, Administrative Rules of Montana; ARM 8.30.602, 8.30.603, 8.30.604 (authority 37-19-202, MCA; implementing 37-19-403, MCA), located at pages 8-935 through and 8-937, Administrative Rules of Montana; and ARM 8.30.605 (authority 37-19-202, 37-19-315, MCA; implementing 37-19-315, 37-19-403, MCA), located at page 8-937, Administrative Rules of Montana. The reason for the proposed repeal is that the rules are unnecessary (8.30.401) and duplicative of the FTC rules (8.30.602, 8.30.603, 8.30.604 and 8.30.605). It is not necessary to repeat them in Board rule, as all mortuary standards contained therein must, by Federal statute, be following by licensed morticians. Instead, the Board will create a new rule requiring all Montana licensees to comply with FTC laws and regulations, by reference, so they need not be repeated in Montana rules.

4. The proposed new rules will read as follows:

"I APPLICATIONS FOR CEMETERY CERTIFICATES OF AUTHORITY

(1) Applications for a certificate of authority to operate a cemetery shall be filed on a form furnished by the board at the principal office of the board. In addition to the payment of the fees, each application shall be accompanied by the following:

(a) a certified copy of:

(i) articles of incorporation;

(ii) application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both, if applicable;

(iii) land use or zoning permit, if applicable; and

(iv) perpetual care and maintenance trust agreement executed by the board of directors of the cemetery authority;

(b) a statement signed by a majority and verified by one of the directors of the applicant, which shall set forth:

(i) names and addresses of the incorporators, directors, officers and trustees of the perpetual care and maintenance fund, including the person who will be in charge of sales;

(ii) a statement setting forth the size, location and topography of, and water available for, the property to be used for cemetery purposes; and

(iii) a statement of the amount deposited to the perpetual care and maintenance fund, type of investment made or to be made and the proposed rate of contribution for the future;

(c) an independent confirmation from the depository or other such proof of deposit of the initial contribution to the perpetual care and maintenance fund;

(d) an accurate and readable map of the proposed cemetery site (scale not less than 1 inch to 500 feet) and surrounding area showing number of acres, highways, access roads, etc., and area to be initially developed delineated thereon; and

(e) such other matters as the board may require by written notice to the applicant."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-814, MCA

"II MANAGERS (1) Each cemetery for which a new certificate of authority is required shall be operated under the supervision of a managing officer. The applicant for a new certificate of authority will designate the managing officer. The cemetery authority will notify the board within 30 days of a change in the managing officer.

(2) Each cemetery manager shall post in a conspicuous place in the office or offices where sales are conducted a legible sign which shall indicate the name of the cemetery manager, as well as the salespeople's names. This sign shall be at least 5½ inches high and 8½ inches wide."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-814, 37-19-822, MCA

"III CEMETERY CONTRACTS; PRICE DISCLOSURE (1) A contract for the sale of prearranged cemetery services or commodities, the price of which may be modified at the time of delivery of those services or commodities, shall contain the following disclosure statement immediately adjacent to the signature block, with a requirement for initials, in 10-point bold type: "YOU, THE PURCHASER, WILL HAVE TO PAY, AT THE TIME OF NEED, ANY ADDITIONAL CHARGES RESULTING FROM PRICE INCREASES FOR THE FOLLOWING PREARRANGED SERVICES AND COMMODITIES:..."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-822, MCA

"IV PERPETUAL CARE AND MAINTENANCE FUND REPORTS (1) A cemetery shall be required to submit an annual report. The report may consist of the certificate of the accountant or auditor preparing such statement and shall be deemed to have been complied with when prepared by a licensed independent certified public accountant or public accountant, provided that such statements fully and accurately disclose the position of the perpetual care and maintenance fund, and that such certificate does not contain disclaimers or qualifications such as to preclude the rendering of an independent opinion. Failure to provide the annual report shall void the operating license of the cemetery.

(2) Each cemetery authority shall file with the board annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted

by the board, a written report in a format prescribed by the board setting forth:

(a) the number of pre-need and at-need grave spaces and the number of crypts and niches sold or disposed of under perpetual care and maintenance by specific periods as set forth on the form prescribed;

(b) the amount collected and deposited in both the general and special care funds segregated as to the amounts for crypts, niches and grave spaces by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority;

(c) a statement showing separately the total amount of the general and special perpetual care and maintenance funds invested in each of the investments authorized by law, and the amount of cash on hand not invested, which statement shall actually show financial condition of the funds; and

(d) a statement showing separately the location, description and character of the investments in which the perpetual care and maintenance funds are invested. The statement shall show the valuations of any securities held in the perpetual care and maintenance fund;

(e) the report shall be verified by the president or vice president and one other officer of the cemetery corporation, and shall be certified by the accountant or auditor preparing the report.

(3) Any cemetery authority that does not file its report within the time prescribed may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act, and 37-1-304, MCA, including a fine of up to $1000.

(a) A cemetery authority may request waiver or reduction of a fine by making a written request therefor. The request shall be postmarked within 30 days of notice of the fine, and shall be accompanied by a statement showing good cause for the request.

(b) The board may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

(c) The board shall examine the reports filed with it as to the cemetery authority's compliance with all relevant statutes, as to the amount of perpetual care and maintenance funds collected and as to the manner of investment of such funds."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-822, 37-19-823, MCA

"V CONTRACT FOR GOODS AND SERVICES (1) The current address, telephone number and name of the board of funeral service shall appear on the first page of any contract for goods and services offered by a private cemetery, crematory or mortuary. At a minimum, the information shall be in 10-point boldface type and make the following statement: "FOR MORE INFORMATION ON STATE CEMETERY, CREMATION, AND MORTUARY

REGULATIONS CONTACT: BOARD OF FUNERAL SERVICE, (ADDRESS); TELEPHONE NUMBER (NUMBER)."

(2) Every contract of a cemetery authority, including contracts executed in behalf thereof by a cemetery broker or salesman, which provides for the sale by the cemetery authority of an interment plot or any service or merchandise, shall be in writing and shall contain all of the agreements of the parties. Such a contract shall include and disclose the following:

(a) the total contract price;

(b) terms of payment, including any promissory notes or other evidences of indebtedness; and

(c) an itemized statement of charges including, as applicable, the following:

(i) charges for an interment plot;

(ii) charges for performing burial, entombment or inurnment;

(iii) charges for a monument or marker;

(iv) charges for any services to be rendered in connection with any religious or other observance at the site of interment or in any facility maintained by the cemetery;

(v) amounts to be deposited in the perpetual care and maintenance or special care fund; and

(vi) any other charges, which shall be particularized.

(3) In addition to any right of rescission which the purchaser may have under law, a purchaser entering into a contract with a cemetery manager, salesman or authority for the provision of an interment plot or any service or merchandise, may cancel such contract without payment of a revocation fee or other penalty, within five calendar days after the purchaser signs it, by giving written notice of cancellation to the seller at the address specified in the contract. The notice need not be in any particular form, but shall indicate the purchaser's intent not to be bound by the contract. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(4) Every such contract shall contain in immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least 10-point bold type, the following statement: "YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH CALENDAR DAY AFTER THE DATE OF THIS TRANSACTION, PROVIDED NO INTERMENT OR SUBSTANTIAL SERVICE OR MERCHANDISE HAS BEEN PROVIDED HEREUNDER. TO CANCEL, DELIVER OR MAIL WRITTEN NOTICE OF YOUR INTENT TO (NAME AND ADDRESS OF CEMETERY AUTHORITY OR CEMETERY MANAGER)."

(5) Upon receipt of a valid notice of cancellation pursuant this rule, the cemetery authority or manager having custody of any money or property paid or transmitted by the purchaser on account of the preneed contract, shall return such money or property to the purchaser. The cemetery authority or manager shall promptly notify the trustee if any such money or property has been transmitted thereto prior to receipt of the notice of cancellation. It shall be unlawful for any person to retain money or property received from a purchaser under such

contract more than five business days after receiving or being apprized of a valid notice of cancellation.

(6) Notwithstanding other provisions of this rule, the right of cancellation granted hereby shall not be applicable if an interment has been made, or substantial services or merchandise provided, under the terms of the contract."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-822, 37-19-823, MCA

"VI RECORDS (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated and of the interment of remains on the premises under the person's charge, in each case stating the name of each deceased person, place of death, date of interment, name and address of the mortician, and location of grave, niche or crypt.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. Transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete and effective when recorded on the books of the cemetery authority."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-823, MCA

"VII REQUIREMENTS FOR BURIALS (1) Except as provided in (2) and (3), there shall be no less than 18 inches of dirt or turf on top of all vaults or caskets, and no less than six inches of dirt or turf on top of other containers of cremated remains.

(2) Cremated remains placed in an urn or urn vault and covered with at least three-quarters of an inch of concrete, brass, granite, marble or metal plate, affixed to the urn or vault shall be exempt from the requirement of (1).

(3) In the case of consensual double burials, the casket or vault that is on top shall be covered with at least 12 inches of dirt or turf as measured at the time of burial."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, MCA

"VIII CEMETERY AUTHORITY RULES (1) A cemetery authority may make, adopt, amend, add to, revise or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery, and for the other purposes specified in this subchapter."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, MCA

"IX RESTRICTIONS ON OFFICERS (1) No director or officer of any cemetery authority shall directly or indirectly, for the director or officer, or as the partner or agent of others, borrow any funds of the cemetery corporation or association, including perpetual care and maintenance funds. No director shall become an indorser or surety for loans to others, nor in any manner be an obligor for money borrowed of or loaned by the corporation or association. No corporation, of which a

director or an officer is a stockholder, or in which either of them is in any manner interested, shall borrow any of the funds of the corporation or association."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, MCA

"X TRANSFER OF CEMETERY OWNERSHIP (1) Whenever ownership of any cemetery authority is proposed to be transferred, the cemetery authority shall notify the board of funeral service in the department of commerce. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50% of the equitable ownership of a cemetery authority is transferred in a single transaction, or in a related series of transactions to one or more persons, associations or corporations. The notice shall specify the address of the principal offices of the cemetery authority, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders thereof.

(2) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall specify the address of the principal offices of the cemetery authority, whether changed or unchanged, and shall specify the name and address of each new owner and each stockholder owning more than 5% of the stock of each new owner.

(3) When there is a change of ownership pursuant to this rule, the existing certificate of authority shall lapse and a new certificate of authority shall be obtained from the board of funeral service. No person shall purchase a cemetery, including purchase at a sale for delinquent taxes, or purchase more than 50% of the equitable ownership of a cemetery authority without having obtained a certificate of authority from the board of funeral service prior to the purchase of the cemetery, or such an ownership interest in the cemetery authority.

(4) Every cemetery authority shall post and continuously maintain at the main public entrance to the cemetery, a sign specifying the current name and address of the cemetery authority, a statement that the name and address of each director and officer of the cemetery authority may be obtained by contacting the board of funeral service of the department of commerce and the address of the board of funeral service. Such signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright and vertical.

(5) The board of funeral service shall suspend the certificate of authority of any cemetery authority which is in violation of the sign or public notice requirements of this rule. Such certificate may be reinstated only upon compliance with such requirements."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-815, MCA

"XI PERPETUAL CARE AND MAINTENANCE FUNDS (1) Every cemetery authority which now or hereafter maintains a cemetery, may place its cemetery under perpetual care and maintenance and

establish, maintain and operate a perpetual care and maintenance fund. Perpetual care and maintenance funds and special care funds may be commingled for investment, and the income therefrom shall be divided between the perpetual care and maintenance fund and the special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the cemetery authority or its directors, or in the name of the trustees appointed by the cemetery authority.

(2) The principal of all funds for perpetual care and maintenance funds shall be invested, and the income only may be used for the care, maintenance and additions to the cemetery property, in accordance with the provisions of law and the resolutions, bylaws, rules and regulations, or other actions or instruments of the cemetery authority and for no other purpose. Perpetual care and maintenance and special care funds shall be maintained separate and distinct from all other funds, and the trustees shall keep separate records thereof.

(3) The cemetery authority may from time to time adopt plans for the general care and maintenance of its cemetery, and charge and collect from all subsequent purchasers of plots such reasonable sum as, in the judgement of the cemetery authority, will aggregate a fund, the reasonable income from which will provide care and maintenance.

(4) The perpetual care and maintenance fund under these provisions shall be kept separate and apart from all other cemetery funds. Separate records and books shall be kept of the perpetual care and maintenance fund. The amount to be deposited in the perpetual care and maintenance fund shall be separately shown on the original purchase agreement and shall be not less than 15% of the gross proceeds of each sale. A copy of the agreement shall be delivered to the purchaser. In the sale of cemetery property, no commission shall be paid a manager or salesman on the amount deposited by the purchaser in the fund.

(5) Each cemetery shall at all times maintain and keep within the state of Montana all books, accounts, records, cash and evidences of investments of its general and special care funds. They shall be readily available for inspection and examination by the board of funeral service in accordance with the provisions of the law."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-822, MCA

REASON: The proposed new rules on cemetery regulation will implement SB 56 passed by the 1997 Montana Legislature to authorize the Board of Funeral Service to regulate privately owned cemeteries in Montana. The Legislature determined the public was not protected by allowing unregulated operation of privately-owned, for-profit, perpetually maintained cemeteries, which included perpetual care and maintenance trust funds. With no regulation, the potential for abuse of the trust funds, and failure to properly operate and maintain the private cemeteries was high. By allowing the Board of Funeral Service

to issue permits, inspect, and audit these cemeteries, as well as providing a forum for complaints, the Legislature has assured the public that standards for operation of the cemetery will be met, and recourse exists for failure to uphold these standards. The consumer recourse will also be stated on the contract.

"XII FEDERAL TRADE COMMISSION REGULATIONS (1) A licensed mortician in Montana shall comply with all federal trade commission (FTC) regulations governing the pricing of funeral services and merchandise and the method of paying for funeral services, as defined in a manner and a form in compliance with Federal Trade Commission Funeral Industry Practice Rules, 16 CFR 453 (1997) which are hereby incorporated by reference. A copy of the written statement of compliance shall be kept by the mortuary for a period of three years. The FTC rules are available at the board office, 111 No. Jackson, Helena, MT 59620-0513."

Auth: Sec. 37-19-202, MCA; IMP: Sec. 37-19-403, MCA

REASON: This proposed new rule will replace those earlier repealed rules which were repetitive of FTC requirements for pricing of funeral services and methods of paying for funeral services. The new rule will simply incorporate the FTC regulations by reference, and require all Montana licensed morticians to comply with the rules, instead of repeating the language found in the CFR. A copy of the FTC regulations will be available at the Board office for review.

"XIII DISCLOSURE STATEMENT ON EMBALMING (1) A licensed mortician shall include a statement on all written contract materials intended for the public as to the conditions under which embalming is required, which statement shall be in accordance with department of public health and human services rules on embalming.

(2) The statement shall be in the following form: 'Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.'"

Auth: Sec. 37-19-202, MCA; IMP: Sec. 37-19-315, MCA

REASON: The proposed new rule will require a disclosure statement regarding the appropriate circumstances when embalming is required. The requirement is contained in Department of Public Health and Human Services rules, and not in Department of Commerce, Board of Funeral Service rules, but the Board licensees must nevertheless adhere to this DPHHS rule, and advise clients of the requirements. The Board has been informed in the past of cases where the clients were not advised of their choice as to embalming. The Board hopes to prevent this confusion in the future by implementation of this rule.

5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., June 8, 1998, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Funeral Service, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cheryl Smith.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Funeral Service, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than the close of hearing on June 18, 1998.

7. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

8. Persons who wish to be informed of all Board of Funeral Service administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Funeral Service, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-5433.

BOARD OF FUNERAL SERVICE
DAVID FULKERSON, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, May 4, 1998.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, continuing education, permit application types and unprofessional conduct	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.56.402 APPLICATIONS, 8.56.414 CONTINUING EDUCATION, 8.56.602 PERMIT APPLICATION - TYPES AND 8.56.801 UNPROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On June 11, 1998, at 11:00 a.m., a hearing will be held in the conference room of the Division of Professional and Occupational Licensing, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.56.402 APPLICATIONS (1) ~~All a~~Applications shall be made on printed forms provided by the board office and signed by the applicant, with the signature acknowledged before a notary public.

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

(5) An application for licensure shall be submitted to the board office with copies of the following documents:

(a) board-approved 24-month x-ray course certificate;

(b) current ARRT wallet card;

(c) three statements from persons attesting to the applicant's good moral character;

(d) application fee; and

(e) original certificate fee.

(6) Applications and related data will be kept in permanent files and maintained by the board office."

Auth: Sec. 37-14-202, MCA; IMP, Sec. 37-14-302, 37-14-303, 37-14-304, 37-14-305, 37-14-306, MCA

REASON: These amendments are necessary to notify applicants of the qualifications for licensure. The board inadvertently removed this language in a prior rulemaking procedure. The deletion has caused confusion for applicants, and the board therefore determined to again insert the qualifications for licensure.

"8.56.414 CONTINUING EDUCATION (1) ~~All~~ An applicants for renewal of a limited permits shall affirm on the renewal form that ~~they have~~ the applicant has completed six contact hours (one hour equals not less than 55-60 minutes) of continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education

requirement will not apply until after the licensee's first full year of licensure.

(2) The permit holder is required to make records and documentation available to the board as proof of meeting the continuing education requirement, if so requested during a random audit.

(3) A random audit of the permit holder's continuing education will be conducted on an annual basis.

(2) will remain the same, but will be renumbered (4).

~~(3) All permit holders shall attach copies of their documentation of completion for continuing education activities to the renewal form.~~

(4) through (12) will remain the same, but will be renumbered (5) through (13)."

Auth: Sec. 37-14-202, MCA; IMP, Sec. 37-1-306, MCA

REASON: These amendments are being proposed because the Division of Professional and Occupational Licensing has determined that performing audits on 100% of licensees, which is the current procedure, is too time consuming for administrative staff.

"8.56.602 PERMIT APPLICATION - TYPES (1) A temporary practice permit as provided in 37-14-306(3), MCA, may be obtained by radiologic technologist course graduates who have completed all requirements for licensure other than passage of the American registry of radiologic technologists (ARRT) examination. In reference to 37-14-306, when the examination has been taken, the temporary permit is valid until notification by the examination service that the person either fails the first license examination for which the person is eligible following issuance of the temporary permit, or passes the examination and is granted a license.

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

Auth: Sec. 37-1-131, 37-14-202, 37-14-306, MCA; IMP, Sec. 37-14-306, MCA

REASON: This amendment is being proposed because the examination results are not issued until seven weeks after the examination has been taken. It defeats the purpose of a temporary license if an individual cannot work until they receive the results of the examination.

"8.56.801 UNPROFESSIONAL CONDUCT For the purposes of implementing 37-1-307, MCA, and in addition to the provisions of 37-1-316, MCA, "unprofessional conduct" is defined by this board to include, but not be limited to, the following:

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

(6) failing to cooperate with an investigation or other disciplinary proceeding instituted by the department;

(6) will remain the same, but will be renumbered (7)."

Auth: Sec. 37-1-319, 37-14-202, MCA; IMP, Sec. 37-1-307, MCA

REASON: This proposed amendment further clarifies the intent of the meaning of hindering or being a hindrance to an investigation.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., June 1, 1998, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic Technologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Helena Lee.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Radiologic Technologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., June 11, 1998.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Radiologic Technologists administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Radiologic Technologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3091.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 4, 1998.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed repeal, amendment and adoption of rules relating to school funding, budgeting and transportation	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL, AMENDMENT AND ADOPTION OF RULES RELATING TO SCHOOL FUNDING, BUDGETING AND PUPIL TRANSPORTATION

To: All interested persons.

1. On June 5, 1998, at 9:00 a.m., in Room 104, State Capitol Building, Helena, Montana, a public hearing will be held to consider the proposed repeal, amendment and adoption of rules pertaining to school funding, budgeting and pupil transportation.

2. The Office of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this document. If you need accommodation, please contact Pat Reichert, (406) 444-4402, to advise OPI of the nature of the accommodation you need.

3. The proposed rule for repeal follows. Full text of the rule is found at Administrative Rules of Montana page 10-259.12.

10.16.2215 TRANSITION PERIOD
AUTH: 20-7-431, MCA; IMP: 20-7-431, MCA.

REASONABLE NECESSITY: This rule applied until July 1, 1996, to provide a transition period for changes in § 20-7-431.

4. 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 10-71, 10-74, 10-80, 10-82, 10-84, 10-109, 10-111, 10-112.2, 10-112.3, 10-112.4, 10-118, 10-120, 10-185, 10-245.5, 10-259.12, 10-259.13, 10.301, 10-325, 10-336, 10-337, 10-417, 10-421, 10-424, ARM.

10.7.101 INTRODUCTION (1) remains the same.

(2) The following list briefly states in chronological order the administrative steps for school transportation. This list is not a substitute for the more detailed requirements stated in these rules:

(a) By the fourth Monday in June a district must~~:~~

~~(i)~~ complete and sign transportation contracts (four copies) for the ensuing year~~; and~~

~~(ii) adopt a preliminary transportation budget~~.

(b) By July 1 a district must send to the county superintendent ~~the preliminary transportation budget,~~ copies of all completed school bus contracts and copies of all completed individual transportation contracts.

(c) through (f) remain the same.

~~(g) By September 1 the district trustees must send the new bus contracts to the superintendent of public instruction.~~

(h) through (ac) remain the same, but will be relettered (g) through (ab).

AUTH: 20-10-112, MCA; IMP: 20-10-101 through 20-10-147, MCA.

REASONABLE NECESSITY: Ch. 211, Session Laws, 1997, eliminated the requirement that school district trustees prepare and adopt a preliminary budget.

10.7.106 CONTENTS AND LIMITATIONS OF PUPIL TRANSPORTATION CONTRACTS (1) remains the same.

(2) A school district may enter into a contract for the provision of individual transportation only if the student being transported is an eligible transportee of the district.

(a) through (c) remain the same.

(d) If the student attends under the mandatory provisions of 10-5-321(1)(d) or (e), MCA, or is placed in another district under an Individual Education Plan (IEP), the distance from the home to the nearest appropriate school or bus stop will be used to calculate the amount of reimbursement under an individual contract for transportation.

(e) remains the same.

(3) through (11) remain the same.

(12) ~~After adoption of the preliminary budget by the board of trustees, the district clerk transmits each transportation contract to the county superintendent, with the preliminary budget. The transportation contracts (and preliminary budget) must reach the county superintendent no later than July 1.~~ The district clerk transmits each transportation contract to the county superintendent no later than July 1.

~~(13) Between July 1 and July 10, the county superintendent reviews the transportation budgets, together with any budgets of non-operating districts requiring transportation expenditures, and obtains therefrom the data needed to establish the county's responsibility for transportation reimbursement in the ensuing year. In making these determinations, the county superintendent refers to the transportation contract forms to verify the amount to be budgeted for the county's obligation for transportation reimbursement.~~

(14) and (15) remain the same, but will be renumbered (13) and (14).

AUTH: 20-10-112, MCA; IMP: 20-10-142, MCA.

REASONABLE NECESSITY: Ch. 211, Session Laws, 1997, eliminated the requirement that school district trustees prepare and adopt a preliminary budget.

10.7.108 BUS CONTRACTS (1) Contracts between districts and bus contractors must be signed prior to the adoption of

the budget by the trustees. Such contracts may run for a period of more than one year but not exceeding five years. Whenever a new contract is completed, one copy is retained by the bus contractor, one copy is retained by the district clerk and ~~the other two copies are~~ one copy is transmitted to the county superintendent~~, who keeps one and transmits one to the superintendent of public instruction~~.

AUTH: 20-10-112, MCA; IMP: 20-10-124, 20-10-143, MCA.

REASONABLE NECESSITY: Ch. 22, Session Laws, 1997, eliminated the requirement that a school district send OPI a copy of bus contracts.

10.7.111 QUALIFICATION OF BUS DRIVERS (1) School bus drivers must be fully qualified in order for a district to receive state reimbursement for the bus. Qualifications for bus drivers are prescribed by 20-10-103, MCA, and by the board of public education. These require that the driver:

(a) through (e) remain the same.

(f) hold a valid basic first-aid certificate or certificate from an equivalent or more advanced first-aid course; and

(g) remains the same.

(2) through (6) remain the same.

AUTH: 20-10-112, MCA; IMP: 20-10-103, 20-10-112, MCA.

REASONABLE NECESSITY: This rule change is necessary to clarify to school districts that an advanced first aid course satisfies the requirement for a basic first-aid course.

10.7.112 SUMMARY OF REQUIREMENTS FOR BUS TRANSPORTATION FOR ELIGIBILITY FOR STATE REIMBURSEMENT (1) remains the same.

(2) The route must be approved by the county transportation committee. (20-20-132, MCA.)

(a) The county transportation committee must withdraw approval of a route that crosses two school districts' boundary if one school district objects to the route and the districts do not have a written agreement authorizing the route.

(b) The county transportation committee may not approve only a portion of a route. The route must be approved or denied in its entirety.

(3) through (9) remain the same.

AUTH: 20-10-112, MCA; IMP: 20-10-126, 20-10-132, 20-10-141, MCA.

REASONABLE NECESSITY: Ch. 427, Session Laws, 1997, authorizes county transportation committees to withdraw approval of the entire bus route when one district is operating an unapproved bus route in the area of another district.

10.10.301C OUT-OF-STATE ATTENDANCE AGREEMENTS (1) through (5) remain the same.

~~(6) The county of residence is financially responsible~~

~~for tuition for a student without disabilities placed by a state agency in an out-of-state residential psychiatric treatment facility.~~

AUTH: 20-5-323, MCA; IMP: 20-5-323, MCA.

REASONABLE NECESSITY: Ch. 529, Session Laws, 1997, transferred to the state agency making the placement the responsibility for payment of education costs for students placed in out-of-state facilities.

10.10.303 COST ALLOCATIONS BETWEEN DISTRICTS/FUNDS (1) In the event certain shared costs, such as administrative costs, curriculum coordinator salaries, school psychologist salaries, etc., cannot reasonably be identified directly to either the elementary district or the high school district or between funds within a district, the school district administration shall prepare a cost allocation plan for approval by the board of trustees prior to adoption of the final budget. The cost allocation plan should reasonably distribute such costs between districts and funds within a district, consistently from year to year. Shared costs shall be budgeted and accounted for in accordance with the cost allocation plan approved by the board of trustees.

(2) through (4) remain the same.

AUTH: 20-9-102, MCA; IMP: 20-9-103, MCA.

REASONABLE NECESSITY: Section 20-9-103 requires OPI to provide for school budgeting procedures in compliance with generally accepted accounting principles (GAAP.) GAAP has the same requirements for allocation of costs among funds within a district as allocation of costs between districts.

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

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

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

REASONABLE NECESSITY: Ch. 22, Session Laws, 1997, standardized the terms used in Title 20 for the elementary and high school county equalization funds. This rule change makes the

language in rules consisted with the statute.

10.10.311 BUS DEPRECIATION RESERVE FUND (1) through (4) remain the same.

(5) The bus depreciation reserve fund shall not be used to depreciate or replace vans designed to carry fewer than 10 passengers that do not meet bus standards.

(6) The bus depreciation reserve fund may be used to depreciate and replace "over-the-road" coaches used for student activities and athletics.

(7) Cameras for security purposes may be considered remodeling for purposes of the bus depreciation reserve fund.

(8) A district may not increase the total number of operational buses owned by the district by purchasing a bus from the depreciation fund.

(9) The bus depreciation fund may only be used to replace buses owned by the district. Additional buses that result in expansion of the district's fleet must be purchased from the general, transportation, student activity, or other fund as allowed by law.

AUTH: 20-9-102, MCA; IMP: 20-10-147, MCA.

REASONABLE NECESSITY: Ch. 238, Session Laws, 1997, clarifies that a district may only transfer a bus depreciation reserve fund balance when it sells all of its buses. The other change to this rule clarifies what type of vehicles are buses for purposes of § 20-9-147 using the definition in § 61-1-115.

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

(2) Short-term interfund loans from a district's other funds may be used to fund expenditures in advance of tax collections in the building reserve fund. Such interfund loans must be repaid by year-end. Short-term interfund loans between school districts shall not be made.

(3) Proceeds of a loan to be repaid from the building reserve fund established under 20-9-503, MCA, must be deposited in the building reserve fund.

AUTH: 20-9-102, MCA; IMP: 20-9-503, MCA.

REASONABLE NECESSITY: Ch. 23, Session Laws, 1997, authorizes school districts to capitalize the school building reserve fund and limits the use of loan proceeds to statutorily authorized projects. This rule change makes the rule consistent with existing statute and removes redundant language.

10.10.503 REPORTS - NOTIFICATION TO BOARD OF PUBLIC EDUCATION (1) and (2) remain the same.

~~(3) The superintendent of public instruction may extend a district or county report or budget. "Reasonable cause" exists for an extension if the district or county exercised ordinary business care and prudence and was nevertheless unable to prepare and submit the report or budget properly and within the prescribed time. What constitutes the exercise of ordinary business care and prudence must be determined by the facts of a particular case. The existence of "reasonable cause" will be determined on a case by case basis at the discretion of the superintendent of public instruction.~~

~~(4) Examples of "reasonable cause" for failure to properly prepare and submit a required report or budget on the date required include:~~

~~(a) where the delay was caused by death or extended illness of a person integral to the preparation of the report or budget;~~

~~(b) where the delinquency was caused by the destruction by fire or other casualty of the district or county's business records.~~

~~(5) The examples stated in (4) are for illustration only. Other reasonable causes may exist for failure to prepare properly and submit timely a required report or budget.~~

~~(6) The following are examples which do not constitute reasonable cause for failure to prepare properly and submit timely a required report or budget:~~

~~(a) forgetfulness or inadvertence on the part of a district's or county's employee or professional preparer;~~

~~(b) the advent of new laws, regulations, or administrative rules;~~

~~(c) inability of a district or county to secure competent help in sufficient time to cope with the workload;~~

~~(d) failure to secure the proper forms;~~

~~(e) failure to attend training in the preparation of required reports and budgets;~~

~~(f) ignorance of the law; and~~

~~(g) failure to obtain the data necessary to complete the report or budget form where such data can be reasonably estimate- ed.~~

~~(7) The examples in (6) are for illustration only. Other circumstances may exist which do not constitute reasonable cause for submitting improperly prepared or untimely reports or budgets.~~

(8) remains the same, but will be renumbered (3).

~~(9) The district and the county, if notified, 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.~~

(10) through (12) remain the same, but will be

renumbered (4) through (6).
AUTH: 20-9-201, MCA; IMP: 20-9-344, MCA.

REASONABLE NECESSITY: This rule change is made pursuant to § 2-4-314. The existing language on reasonable cause for failure to file budget reports is not provided for in statute.

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

(2) through (4) remain the same.

(5) Revisions to the annual trustees' financial summary report made by the district or cooperative after December 20 of the ensuing fiscal year will not be considered in calculating amounts used for special education reversion or for federal maintenance of effort requirements.

(6) Material revisions to the annual trustees' financial summary submitted by December 20 shall be accepted, limited to the following types of adjustments:

(a) Coding revisions between revenue or expenditure line items providing no change occurs in the fund balance of budgeted funds; and

(b) Revisions in balance sheet accounts provided no change occurs in the fund balance of budgeted funds.

(7) Changes that affect fund balance in a budgeted fund or immaterial line item coding changes must be reported as prior period adjustments in the trustees' financial summary for the current year. The district may need to adopt a budget amendment in the current year to record the prior period adjustment within the budget of a fund.

(8) Revisions to the annual trustees' financial summary submitted by December 20 will be filed for information purposes by office of public instruction.

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

REASONABLE NECESSITY: Federal funding requires a maintenance of effort. This rule change is necessary for a school district or a special education cooperative to accurately account for its maintenance of effort when making revisions or adjustments to the annual financial summaries of the prior year.

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

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

~~attendance~~ not present during organized public school instruction for which he is enrolled.

(2) through (24) remain the same.

(25) "Enrolled student" means a high school student ~~is~~ assigned to receive organized instruction in ~~public school~~ an education program described in ARM 10.55.904 that is offered by a public school and can be applied towards the graduation requirements of ARM 10.55.905, or an elementary student assigned to receive organized instruction in an education program described in ARM 10.55.901 through 10.55.903, or an elementary or high school student in a course of instruction agreed to in an individualized education program (IEP). ~~and is in attendance, or is absent because of illness, bereavement, or other reasons prescribed by the policies of the trustees. In no event shall a school district calculate ANB for a student who has not been in attendance during a semester.~~

(26) through (35) remain the same.

~~(36) "Minimum amount of pupil instruction (PI) time for an elementary student" means the student must be present for 2 hours of either a morning or afternoon session or the entire morning or afternoon session, whichever is less, in order to be counted as being in attendance for one-half day. Attendance for the entire morning and afternoon sessions, or at least 2 hours of the morning session and at least 2 hours of the afternoon session, will be counted as attendance for a whole day.~~

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

(38) through (41) remain the same, but will be renumbered (36) through (39).

~~(42)~~(40) "Present" means ~~those days~~ the student is in attendance, ~~as defined in (3), for pupil instruction days~~ for the assigned organized public school program of instruction in which the student is enrolled.

(43) and (44) remain the same, but will be renumbered (41) and (42).

(43) "Pupil instruction time" includes time spent in organized instruction, structured recess periods for which there has been an identifiable effort to provide guidance and structure and which are directly or indirectly under the supervision of a certified teacher, and passing time between classes.

~~(45)~~(44) "Regularly enrolled full-time pupil" means a pupil who meets the definition of "enrolled student", ~~and is on a full-time basis.~~ is participating in organized instruction offered by the district, and is included in average student count adjusted for part-time and full-time students, represented in the ANB of a school district.

(46) through (59) remain the same, but will be renumbered (45) through (58).

AUTH: 20-9-102, MCA; IMP: Title 20, ch. 9, MCA.

REASONABLE NECESSITY: These rule changes are necessary to implement the changes in the calculation of ANB in Rule 10.20.102. See Rule 10.20.102 below.

10.16.1314 SPECIAL EDUCATION TUITION RATES (1) and (2) remain the same.

(3) A responsible school official of the receiving school district shall use one of the options defined below to determine the maximum amount which may be charged to the resident district for students with disabilities in addition to the regular education tuition rate:

(a) remains the same.

(b) Option B: The actual unique costs of services provided to the student ages 3 to 21 as per the individualized education program (IEP), minus the state's share of the maximum per ANB entitlement and per ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

~~(i) the district charges regular education tuition;~~

(ii) and (iii) remain the same, but will be relettered (i) and (ii).

(4) through (6) remain the same.

(7) When a student's IEP requires special education or related services beyond the 180 day school year, the school district providing services may initiate an attendance agreement or amend an existing agreement to provide tuition that covers the additional extended year period by prorating the actual cost on a daily or hourly basis.

AUTH: 20-5-323, MCA; IMP: 20-5-320, 20-5-321, MCA.

REASONABLE NECESSITY: These rule changes clarify the existing rule language that has been interpreted by some school districts as allowing a charge for special education tuition to another district for fixed costs of the district of attendance. The changes also provide a method for calculating tuition for the extended school year.

10.16.2216 SPECIAL EDUCATION TRANSFERS AND PAYMENTS TO OTHER DISTRICTS AND COOPERATIVES (1) To meet its obligation to provide services for students with disabilities, a district may establish its own special education program, participate in a special education cooperative or enter into an interlocal agreement, as defined in Title 7, chapter 11, part 1, MCA, with another district.

(2) If ~~the~~ a district chooses to ~~participate in~~ enter into an interlocal agreement ~~to cooperative or have~~ with another district ~~provide~~ to receive special education services, it may pay its state special education allowable cost payment, required block grant match and additional costs

of providing services to the ~~cooperative or~~ providing district on a reimbursement basis.

(a) The payment must be deposited to the miscellaneous programs fund or the interlocal agreement fund of the district providing services ~~or to the interlocal agreement fund of the cooperative providing services~~.

(b) remains the same.

(3) When a special education cooperative contracts with a district to provide special education instructional and related services:

(a) payment received by a district from a cooperative must be deposited in the district's miscellaneous programs fund ~~or interlocal agreement fund~~; and

(b) remains the same.

(4) and (5) remain the same.

AUTH: 20-7-431 MCA; IMP: 20-7-431, MCA.

REASONABLE NECESSITY: These rule changes correct erroneous references to cooperatives and interlocal agreement funds in this rule.

10.16.2218 SPECIAL EDUCATION FUNDING REVERSION (1) through (3) remain the same.

(4) Revisions to the annual trustees' financial summary report must be made in accordance with ARM 10.10.504. Revisions to the annual trustees' financial summary report made by the district after ~~the district's audit report for that fiscal year is issued, or after~~ December ~~31~~ 20 of the ensuing fiscal year, will not be considered in calculating the reversion amount. The superintendent of public instruction may accept the adjustments after those dates for unusual circumstances.

(5) remains the same.

AUTH: 20-9-321 MCA; IMP: 20-9-321, MCA.

REASONABLE NECESSITY: Federal funding requires a maintenance of effort. This rule change is necessary for a school district or a special education cooperative to accurately account for its maintenance of effort when making revisions or adjustments to the annual financial summaries of the prior year.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB) (1) A school must receive accreditation from the board of public education before the ~~regularly enrolled, full-time~~ pupils attending the school are eligible for ANB calculation purposes and for determining the BASE funding program for the district.

(2) and (3) remain the same.

(4) ~~A student will be dropped from the rolls prior to the 10th consecutive absence and will cease to be counted for ANB purposes when the student is enrolled in another school, the student's records are transferred to another school, or the student is unable to continue in attendance (i.e., death).~~ The official count of enrolled students, as defined in ARM

10.15.101, is taken on the first Monday in October and the 1st of February, or the first school day that follows the 1st of February if that date is not a school day. A school district may not count as enrolled a student who:

(a) has been absent for 11 consecutive pupil instruction days immediately prior to and including the official count date;

(b) has enrolled in another public school district;

(c) will not resume attendance according to notification received by the district;

(d) has had records transferred to another school; or

(e) is otherwise unable to continue in attendance.

(5) remains the same.

(6) For calculation of average daily attendance (ADA), a school district will report the number of enrolled students counted under (4) who are present and the number of enrolled students who are absent on the official count days.

~~(6)~~(7) ~~A student enrolled on a part-time basis must be counted as part-time enrolled for purposes of determining ANB if the student is enrolled for less than the minimum amount of pupil-instruction (PI) time considered a half-day for an elementary or high school student as defined in ARM 10.15.101.~~ For purposes of the enrollment count described in (4):

(a) A kindergarten student enrolled in a program designed to provide less than 180 hours of pupil instruction time per school year is not reported as enrolled. A kindergarten student enrolled in a program designed to provide 180 hours or more of pupil instruction time per school year is reported as enrolled.

(b) A student in grades 1 through 12 enrolled in a program designed to provide:

(i) less than 180 hours of pupil instruction time per school year is not reported as enrolled;

(ii) 180 to 359 hours of pupil instruction time per school year is reported as part-time enrolled;

(iii) 360 or more hours of pupil instruction time per school year is reported as full-time enrolled.

~~(7)~~(8) 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 10.15.101 ~~in the regular education program,~~ and is currently receiving organized and supervised pupil instruction as defined in 20-1-101~~(11)~~, MCA;

(b) and (c) remain the same.

(8) remains the same, but will be renumbered (9).

~~(9)~~(10) 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 accordance with 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.~~

~~(10)~~(11) The PIR days used for calculating ANB will be the number of PIR days, not to exceed 7, ~~which were approved by the office of public instruction and~~ conducted by the school district in the school fiscal year immediately preceding the school year for which the BASE funding program payment will be received.

~~(11)~~(12) If the school district fails to conduct the 3 PIR days for professional development required by 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 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)~~(12)(b).

~~(12)~~(13) A school district must conduct 90 days and a minimum of 360 hours of pupil instruction for a kindergarten program, 180 days and a minimum of 720 hours of pupil instruction for grades 1-3, and 180 days and a minimum of 1,080 hours of pupil instruction for grades 4-12. If the school district fails to conduct ~~180 days of pupil instruction~~ the required number of days and the minimum number of hours, the superintendent of public instruction will reduce the direct state aid and guaranteed tax base subsidy payments by 1/90th for each school day less than 180 school days ~~(20-1-301, MCA)~~. However, if a school district fails to conduct the minimum number of days by reason of one or more unforeseen emergencies as defined in 20-9-802, MCA, the superintendent of public instruction shall reduce the direct state aid and guaranteed tax base subsidy payments by 1/180th for each school day less than the minimum required.

~~(13)~~(14) 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~~ October and February enrollment report forms to the office of public instruction, pursuant to 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 budget unit;

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

(b) remains the same.

AUTH: 20-9-102, MCA; IMP: 20-1-301, 20-1-302, 20-1-304, 20-9-311, 20-9-313, 20-7-117, 20-9-805, MCA.

REASONABLE NECESSITY: Ch. 430, Session Laws, 1997, amended many statutes concerning the number of hours and days in a school fiscal year, the length of the school day, the conduct of pupil instruction related days and the effect of school closures by declaration of emergency. In addition, there has been confusion about the application of the language "enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day" in § 20-9-311. This rule change is necessary to state the effect on the calculation of ANB of the changes in Chapter 430 and to clarify the calculation of ANB for students enrolled less than a full-day.

10.22.102 SPENDING LIMITS (1) The trustees of an equalized district must adopt a general fund budget for the ensuing year that is at least equal to the ensuing year's BASE budget, but not greater than the ensuing year's maximum general fund budget.

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

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

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

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

~~(c) In no case is the minimum budget greater than the~~

~~BASE budget for the ensuing year.~~

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

~~(3)~~(2) For a school district that was not equalized in the current year and whose current year general fund budget is at or between the BASE budget and maximum general fund budget established for the ensuing fiscal year, the trustees of the district must adopt a general fund budget that is at least equal to the ensuing year BASE budget and not more than the ensuing year's maximum budget. With voter approval, the trustees may adopt a general fund budget up to the greater of 104% of the current year's budget or 104% of the current year's budget per-ANB times the ensuing year's ANB, but not more than the ensuing years maximum general fund budget.

~~(4)~~(3) 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 ensuing year's BASE budget but not more than the ensuing year's 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) through (7) remain the same, but will be renumbered (4) through (6).

AUTH: 20-9-102, MCA; IMP: 20-9-308, 20-9-315, MCA.

REASONABLE NECESSITY: This rule change removes language that is no longer needed because all school districts have reached BASE budget. It also makes a grammatical change to clarify to which fiscal year the existing rule is referring.

10.23.103 VOTED AMOUNT (1) The highest general fund budget that the trustees of an equalized district may adopt without a vote of the electorate is as follows:

(a) remains the same.

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

(i) remains the same.

(ii) the current year's budget divided by current year ANB, times the ensuing year's ANB but no less than the ensuing year's BASE budget.

(c) remains the same.

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

(a) If the district's current year budget is less than the ensuing year's BASE budget, the highest budget that can be

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

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

(i) remains the same.

(ii) the current year's budget divided by current year ANB, times the ensuing year's ANB but no less than ensuing year's BASE.

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

(3) remains the same.

AUTH: 20-9-102, MCA; IMP: 20-9-353, MCA.

REASONABLE NECESSITY: This rule change removes language that is no longer needed because all school districts have reached BASE budget. It also makes a grammatical change clarifying to which fiscal year the existing rule refers.

10.23.104 RETIREMENT LEVIES (1) Net county retirement levy requirement for elementary and high school retirement funds is defined in ARM ~~10.23.101(9)~~ 10.15.101.

(2) To determine the retirement mills needed, the net county retirement levy requirement for each fund is divided by:

(a) the sum of the county's taxable valuation as defined in ARM ~~10.23.101(8)~~ 10.15.101 divided by 1000 plus

(b) remains the same.

(3) and (4) remain the same.

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

REASONABLE NECESSITY: This rule change corrects an erroneous cross reference.

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

(4) ~~After July 1, 1995, i~~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 unless exempt under 20-6-701, MCA.

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

REASONABLE NECESSITY: Ch. 95, Session Laws, 1997, provides an exception to the requirement that elementary and high school districts with the same boundaries become a K-12 district by operation of law. This rule change reflects that change in law.

10.30.404 DISTRICT EQUALIZATION FUNDING (1) State equalization funding for the K-12 district will be determined in the following manner:

(a) through (c) remain the same.

(d) the school facility reimbursement will be distributed to K-12 districts per ARM 10.21.~~201~~ 101I with each bond identified with date of issue and level of indebtedness.

(2) and (3) remain the same.

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

REASONABLE NECESSITY: This rule change corrects an erroneous cross reference.

10.30.415 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-K-12 districts or if the trustees of the district have passed a resolution to dissolve the K-12 district under the exception provided in 20-6-704(2), MCA the following shall apply:

(a) and (b) remain the same.

AUTH: 20-3-106, MCA; IMP: 20-6-704, MCA.

REASONABLE NECESSITY: Ch. 95, Session Laws, 1997, provides an exception to the requirement that elementary and high school districts with the same boundaries become a K-12 district by operation of law. This rule change reflects that change in law.

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

RULE I REPORTING RETIREMENT COSTS (1) School districts will report retirement fund expenditures on the Trustees' Financial Summary either by:

(a) Reporting expenditures distributed to all expenditure functions used in payroll; or

(b) Reporting a single, undistributed expenditure total for the retirement fund.

(2) Districts may not partially distribute retirement fund expenditures to some functions and not to all functions. Expenditures must be reported using either the method in (1)(a) or (1)(b) but not both.

AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-103, 20-9-502, MCA.

REASONABLE NECESSITY: Section 20-9-103 requires OPI to provide for school budgeting procedures in compliance with generally accepted accounting principles (GAAP).

RULE II ANB AND BASIC ENTITLEMENT CALCULATIONS IN ANNEXATIONS AND CONSOLIDATIONS (1) In accordance with 20-9-311(8), MCA, for purposes of calculating the per-ANB and basic entitlement for the first 3 years that a school district continues after a consolidation or annexation the following

will apply:

(a) Enrollment used to calculate ANB of the school district that remains after the consolidation or annexation will be the enrollments of the separate school districts operating in the prior year, calculated as separate budget units.

(i) The enrollment of a school in nonoperating status in the prior year will not be used in calculating ANB, since no students were enrolled.

(ii) The enrollment of a district operating a school in the previous year that is subsequently closed when the districts are consolidated or annexed will be counted for ANB the first year the consolidation or annexation is effective. After the first year, the actual enrollment of the combined district will be used to calculate ANB.

(b) The combined district will receive a separate basic entitlement for the district or districts which combined for each of the three years after the consolidation or annexation becomes effective regardless of the distance between the schools or whether schools remain in operation. That is, the number of basic entitlements for the district after consolidation or annexation will be the same as the number before consolidation or annexation during this three year period.

(i) The basic entitlement of a school in nonoperating status in the prior year will be zero.

(ii) The basic entitlement of a district operating a school in the previous year that is subsequently closed when the districts are consolidated or annexed will be calculated the first year using the enrollment for the prior year. After the first year, the basic entitlement will be the minimum basic entitlement in 20-9-306 (6)(a) or (6)(b), MCA.

(iii) The basic entitlement for a district which continues to operate a school after the districts are consolidated or annexed will be calculated using the enrollment used for ANB.

(c) All schools of the combined district are subject to the school isolation requirements of 20-9-302 and 20-9-303, MCA. The district will provide the mandatory non-isolated levies in support of the general fund as necessary to support the increased entitlement provided by 20-9-311(8)(a)(iv), MCA.

(d) Trustees of a district which is entitled to receive additional entitlement under 20-9-311(8)(a)(iv), MCA, may forego the additional entitlement by sending a resolution to OPI by June 30.

AUTH: 20-9-102, MCA; IMP: 20-9-311, 20-9-308, MCA.

Reasonable Necessity: This rule is necessary to provide guidance for the calculation of ANB and the basic entitlement for the three years following two school districts' consolidation or annexation.

6. Any person/party may be placed on OPI's list of interested persons/parties for rulemaking by contacting Pat Reichert, Office of Public Instruction, P.O. Box 202501,

Helena, Montana 59620-2501, telephone number (406) 444-4402.

7. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may also be submitted to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, no later than 5:00 p.m. on June 11, 1998.

8. Geralyn Driscoll of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

9. The notice requirements of 2-4-302, MCA, have been satisfied.

Geralyn Driscoll
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State May 4, 1998.

BEFORE THE MONTANA STATE LIBRARY

IN THE MATTER OF THE PROPOSED AMENDMENT of ARM 10.102.4001 relating to Reimbursement to Libraries for Interlibrary Loans	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On June 5, 1998, at 9:00 a.m., a public hearing will be held in the conference room of the Montana State Library, at 1515 East 6th Avenue, Helena, Montana, to consider the amendment of ARM 10.102.4001, relating to reimbursement to libraries for interlibrary loans.

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

10.102.4001 REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS (1) Definitions used in this ~~section~~ rule include:

(a) Remains the same

(b) "Libraries eligible for interlibrary loan reimbursement" ~~means public libraries, libraries operated by public schools or school districts, libraries operated by public colleges or universities, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit private educational or research institutions~~ are defined in 22-1-328 (2), MCA.

(2) Reimbursements will be made on ~~a quarterly~~ an annual basis based on the following:

(a) and (b) Remain the same

(c) Each ~~quarterly~~ annual payment shall be made only for interlibrary loans within the specified ~~quarter~~ year for which reimbursement funding is available. No count of interlibrary loan transactions shall be carried over from one ~~quarter~~ year to another.

(d) Remains the same

(e) No library may levy service charges, handling charges, or user fees for interlibrary loans for which it is reimbursed under the provisions of 22-1-325 - through 22-1-331, MCA and these rules.

(i) Actual charges for postage are discouraged but not expressly prohibited under these rules.

(ii) Costs for special postal handling of interlibrary loan requests, when requested by the borrowing library, are chargeable costs.

(iii) Interlibrary loans, when completed via ~~telefacsimile~~ fax transmission, also count as reimbursable interlibrary loans.

Costs associated with ~~such telefacsimile~~ fax transmission are chargeable if ~~such~~ the transmission was specified by the requesting library. ~~Such~~ Fax transmissions qualify as special handling.

(iv) Per page photocopying charges may not be separately charged to the borrowing library but are assumed to be covered by the reimbursement under these rules.

(f) through (h) Remain the same

(3) For any library to receive reimbursement through the program, each must annually certify to the state library that the appropriate member of its staff has demonstrated competence regarding the application of the standardized interlibrary loan protocols.

AUTH: 22-1-330, MCA IMP: 22-1-328, MCA

3. The amendment is proposed to promote cost efficiency because the library incurs substantially more overhead expense when processing reimbursement checks quarterly than it would to process the checks annually. Libraries eligible for reimbursement would not be negatively impacted by this change.

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:

Karen Strege
Montana State Library
1515 East 6th Avenue
Helena, Montana 59620-1800

no later than June 15, 1998.

5. Karen Strege, State Librarian, has been designated to preside over and conduct the hearing.

6. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section four above.

Karen Strege
by Darlene M Staffeldt
KAREN STREGE
Rule Reviewer

Karen Strege
by Darlene M Staffeldt
KAREN STREGE
State Librarian

Certified to Secretary of State May 4, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through VI promulgating listing, delisting, and ranking rules for CECRA facilities	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF RULES (CECRA)

To: All Interested Persons

1. On June 5, 1998, at 9:00 a.m., the Department will hold a public hearing in the Lewis Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana, to consider the adoption of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5:00 p.m. on June 1, 1998, to advise of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, MT 59620-0901; phone 406/444-0472; facsimile 406/444-1901.

3. The rules, as proposed to be adopted, appear as follows:

RULE I PURPOSE (1) The purpose of this subchapter is to establish procedures for listing and delisting facilities for remediation under the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and to establish procedures and criteria for ranking such facilities on a priority list.

AUTH: 75-10-702 and 75-10-704, MCA; IMP: 75-10-702 and 75-10-704, MCA

RULE II DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

(1) "Beneficial use" means a use of groundwater designated under the appropriate classification in ARM 17.30.1003.

(2) "Free product" means a hazardous or deleterious substance or a substance containing a hazardous or deleterious substance that is present as a non-aqueous phase liquid.

(3) "Friable asbestos-containing material" means any material containing more than 1% asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(4) "Primary contact activities" means activities that involve direct contact with water including but not limited to swimming, wading, or fishing.

(5) "Risk-based concentrations" means chemical concentrations corresponding to a level of risk deemed

appropriate by the department for a particular facility.

(6) "Sensitive environment" means a terrestrial or aquatic resource, including wetlands, with unique or highly valued environmental or cultural features; an area with unique or highly valued environmental or cultural features; or a fragile natural setting.

AUTH: 75-10-702, MCA; IMP: 75-10-702, MCA

RULE III CECRA PRIORITY LIST (1) The department shall maintain and update, on a semi-annual basis, the CECRA priority list. The CECRA priority list must include all facilities that are listed pursuant to Rule IV and those facilities listed [as of the effective date of these rules]. The CECRA priority list will identify each facility by name, town or city, and county, and will indicate the current rank of each facility.

(2) Inclusion on the CECRA priority list is not a precondition to department action under CECRA or any other applicable law.

AUTH: 75-10-702 and 75-10-704, MCA; IMP: 75-10-702 and 75-10-704, MCA

RULE IV FACILITY LISTING (1) The department may list a facility on the CECRA priority list if the department determines there is a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment.

(2) Prior to listing a facility on the CECRA priority list, the department shall provide the opportunity for public comment, as follows:

(a) The department shall publish a notice of the proposed listing and a description of the nature and severity of the threat in a daily newspaper of general circulation in the county where the community most likely to be threatened by the facility that is proposed for listing is located.

(b) The notice must provide 30 days for submission of written comments to the department regarding the proposed listing.

(c) The department shall notify the county commissioners and governing bodies of cities, towns, and consolidated local governments in the community most likely to be threatened by the facility that is proposed for listing.

(d) The department may conduct a public meeting in the community most likely to be threatened by the facility that is proposed for listing without a specific request for such meeting.

(e) The department shall conduct a public meeting in the community most likely to be threatened by the facility that is proposed for listing upon written request within the comment period by 10 or more persons, by a group composed of 10 or more members, or by a governing body of a city, town, or county.

(f) The department shall consider and respond in writing to relevant written comments properly submitted during the comment period or at the public meeting.

(3) If the department lists a facility on the CECRA priority list and remedial actions to address the release or threatened release of hazardous or deleterious substances at the facility are required by another state program, the department shall provide a written rationale for listing the facility on the CECRA priority list. The department shall place this document in a facility file maintained by the department.
AUTH: 75-10-702, MCA; IMP: 75-10-702, MCA

RULE V FACILITY RANKING (1) The department shall rank each listed facility that is determined by the department to require remedial action and the ranking decision will be made in writing.

(2) A maximum priority designation must be given to a facility that exhibits one or more of the following characteristics:

(a) documented release to surface water in a drinking water intake that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a public drinking water supply; or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(b) documented release to groundwater in a drinking water well that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a public drinking water supply; or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(c) documented release into a water line that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a public drinking water supply; or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(d) documented release to surface water that is a private drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a domestic or commercial drinking water supply; or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(e) documented release to groundwater that is a private drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a domestic or commercial drinking water supply; or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(f) documented release into a drinking water line that is a private drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a domestic or commercial drinking water supply; or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(g) presence of explosive vapor levels or concentrations of vapors that could cause health effects in a structure or utility corridor;

(h) indications of an imminent danger of fire or explosion or a release of dangerous levels of vapors outdoors; or

(i) presence of free product in significant quantities in the groundwater, in or on surface water bodies, in utilities other than water supply lines, or in surface water runoff.

(3) A high priority designation must be given to a facility whose release does not exhibit any of the characteristics provided in (2) but exhibits one or more of the following characteristics:

(a) documented release to surface water in a drinking water intake that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); and

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, no concentration at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(b) documented release to groundwater in a drinking water well that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as drinking water maximum contaminant level listed at 40 CFR 141 (1997); and

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, no concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(c) documented release into a water line which is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 1995 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); and

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141, no concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(d) documented release to ambient air that poses a threat to public health;

(e) documented release of friable asbestos-containing material on the ground surface that may pose a threat to public health;

(f) migration of contamination above risk-based concentrations to third party property currently in use or a utility corridor currently in use;

(g) threat of explosive vapor levels or concentrations of vapors that could cause health effects by accumulating in a structure or utility corridor;

(h) documented and extensive contamination of exposed shallow soil or exposed sediment above risk-based concentrations with uncontrolled facility access;

(i) documented existence of a hazardous or deleterious substance in a container or impoundment that is leaking or that presents an imminent threat of leakage in an area with uncontrolled facility access;

(j) free product release impacting third party property; or

(k) documented impact to a sensitive environment.

(4) A medium priority designation must be given to a facility that does not exhibit any of the characteristics provided for in (2) or (3) but exhibits one or more of the following characteristics:

(a) documented or probable release to surface water that

is not a drinking water source but is used for another purpose;

(b) documented or probable release to groundwater that is not a drinking water source but is used for another purpose;

(c) documented or probable release into a water line that is not used as a drinking water source but is used for another purpose;

(d) imminent threat from migration of contamination from soil to:

(i) surface water that is a drinking water source;

(ii) groundwater that is a drinking water source; or

(iii) a water line that is a drinking water source;

(e) potential release to air that may pose a threat to public health;

(f) potential for migration of contamination to third party property currently in use or a utility corridor currently in use;

(g) documented contamination to third party property not in use or utility corridor not in use;

(h) documented or probable localized contamination of soil above risk-based concentrations;

(i) presence of containers or impoundments containing hazardous or deleterious substances that are leaking or that present an imminent threat of leakage in an area with controlled facility access;

(j) documented or probable extensive contamination of soil with controlled facility access; or

(k) potential impact to a sensitive environment.

(5) A low priority designation must be given to a facility that does not exhibit any of the characteristics provided for in (2), (3), or (4) but which does require remedial action. A low priority facility exhibits one or more of the following characteristics:

(a) minimal potential for release to surface water that is not used for any purpose other than primary contact activities;

(b) minimal potential for release to groundwater that is not used for any purpose other than primary contact activities;

(c) minimal potential for release into a water line that is not used for any purpose other than primary contact activities;

(d) minimal potential for release to air that may pose a threat to public health;

(e) minimal potential for release to third party property or utility corridor; or

(f) minimal documented release or potential for release to soil with minimal potential for direct contact hazard.

(6) An operation and maintenance designation must be given to a facility at which remedial actions are complete but which is undergoing operation and maintenance, including but not limited to revegetation monitoring, surface water monitoring, groundwater monitoring, or waste repository maintenance.

(7) The department may reevaluate the rank of a facility if the department obtains or receives additional information that may cause a change in rank. Compliance with Rule IV is not required to change the rank of the facility.

(8) Any person may submit a request to the department to evaluate a facility on the priority list for purposes of changing the rank of the facility. The request must be in writing and contain the rationale for the reclassification. The department may determine such a change in rank is appropriate. Compliance with Rule IV is not required to change the rank of the facility.

AUTH: 75-10-702 and 75-10-704, MCA; IMP: 75-10-702 and 75-10-704, MCA

RULE VI DELISTING A FACILITY ON THE CECRA PRIORITY LIST

(1) The department may delist a facility from the CECRA priority list if:

(a) the department determines that all requirements of CECRA have been fully met, including the requirement that conditions at the facility assure present and long term protection of public health, safety and welfare, and the environment;

(b) the department determines that the facility should not have been listed; or

(c) another state program assumes jurisdiction of the facility.

(2) In determining whether to delist a facility from the CECRA priority list, the department shall consider whether:

(a) investigations or facility-specific risk analysis demonstrate that taking additional remedial actions is not appropriate to address the release or threatened release of hazardous or deleterious substances;

(b) liable persons or other persons have completed all appropriate remedial actions, including a final long term remedy, required by the department; and

(c) other relevant information or conditions exist that pertain to the issue of delisting the facility from the CECRA priority list.

(3) The department may not delete a facility from the CECRA priority list if continuing engineering controls or institutional controls related to a remedial action, including but not limited to alternate water supply, caps, or security measures, are needed to assure present and long term protection of public health, safety and welfare, or the environment.

(4) The department may require that all the state's outstanding remedial action costs, including remedial action costs associated with delisting the facility from the CECRA priority list, and penalties be paid to the department by liable persons prior to delisting the facility from the CECRA priority list.

(5) The department may list on the CECRA priority list a facility that has previously been delisted from the CECRA priority list if a new release occurs or if the department receives new or different information regarding the need for further remedial action. In relisting, the department shall comply with the requirements of Rule IV.

(6) A facility at which remedial actions are being conducted under the Voluntary Cleanup and Redevelopment Act is

eligible for delisting from the CECRA priority list after a petition for closure has been granted by the department pursuant to 75-10-738, MCA, and the other requirements of this rule are met.

(7) Prior to delisting a facility on the priority list, the department shall provide the opportunity for public comment, as follows:

(a) The department shall publish a notice of the proposed delisting in a daily newspaper of general circulation in the county where the community most likely to be threatened by the facility that is proposed for delisting is located.

(b) The notice must provide 30 days for submission of written comments to the department regarding the proposed delisting.

(c) The department shall notify the county commissioners and governing bodies of cities, towns, or consolidated local governments in the community most likely to be threatened by the facility that is proposed for delisting.

(d) The department may conduct a public meeting in the community most likely to be threatened by the facility that is proposed for delisting without a specific request for such meeting.

(e) The department shall conduct a public meeting in the community most likely to be threatened by the facility that is proposed for delisting upon written request within the comment period by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county.

(f) The department shall consider and respond in writing to relevant written comments properly submitted during the comment period or at the public meeting.

AUTH: 75-10-702, MCA; IMP: 75-10-702, MCA

4. The Department is proposing Rules I through VI pursuant to Chapter 415, Laws of 1997, which authorized the department to adopt rules for listing and delisting facilities on a priority list. The standards are intended to ensure that the department consistently follows certain criteria when listing or delisting a facility and to allow public participation in the process. It also establishes a system for prioritizing sites for remedial action based on potential effects on human health and the environment.

Rule I is proposed to address the purpose of these rules. No rules have ever been promulgated under the Comprehensive Environmental Cleanup and Responsibility Act; therefore, outlining the purpose of the rules is appropriate.

Rule II is proposed to define terms that are used in the succeeding Rules III through VI so that the requirements of the rules are definite and understandable.

Rule III is proposed to establish the priority list required by 75-10-704, MCA, and to ensure that the priority list is updated on a regular basis.

Rule IV is proposed to provide a system for listing facilities on the priority list. It also provides for public

participation in the listing process and addresses the other requirements of the rulemaking authority granted to the department in 75-10-702, MCA. This is needed to ensure consistency in the listing process.

Rule V provides a system for ranking facilities once they are on the priority list. It provides for maximum, high, medium, low, and operation and maintenance categories and provides with specificity what site characteristics a facility must exhibit to be placed into one of those categories. This will assist the department in prioritizing sites for remedial action.

Rule VI provides a system for delisting facilities on the priority list so that once all required remedial actions are complete at a facility it may be removed from the list. It also provides for public participation in the delisting process. This is needed to ensure consistency in the delisting process.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the hearing officer at the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, no later than June 15, 1998.

6. Cynthia D. Brooks has been appointed hearing officer to preside over and conduct the hearing.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MARK SIMONICH, Director

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State May 4, 1998.

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

IN THE MATTER OF THE ADOPTION of NEW RULES I (ARM 2.55.501) and II (ARM 2.55.502) pertaining to Individual Loss Sensitive Dividend Distribution Plan	))))	NOTICE OF ADOPTION

TO: All Interested Persons:

1. On March 26, 1998, the State Compensation Insurance Fund Board published notice of the proposed adoption of New Rules I (ARM 2.55.501) and II (ARM 2.55.502) pertaining to Individual Loss Sensitive Dividend Distribution Plan at page 695 of the 1998 Montana Administrative Register, issue number 6.

2. The Board has adopted New Rule I (ARM 2.55.501) and New Rule II (ARM 2.55.502) as proposed, but with the following changes. Matter to be added is underlined; matter to be deleted is interlined.

NEW RULE I (ARM 2.55.501) DEFINITIONS The following definitions apply to ARM 2.55.502:

(1) remains as proposed but is renumbered (2).
(2) remains as proposed but is renumbered (7).
(3) remains as proposed but is renumbered (1).
(4) remains as proposed but is renumbered (3).
(5) remains as proposed but is renumbered (6).
(6) remains as proposed but is renumbered (5).

(4) "Individual loss sensitive dividend" means dividends authorized pursuant to 39-71-2323, MCA, declared by the board as an amount not to exceed the approved dividend amount, and distributed based upon a table of dividend factors.

(8) "Table of dividend factors" means a dividend distribution table created for each dividend year pursuant to ARM 2.55.502.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA;
IMP: Sec. 39-71-2323 MCA.

NEW RULE II (2.55.502) INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN (1) Upon declaration of a dividend by the state fund board of directors (board) as of the end of any fiscal year, but in no event ~~not~~ prior to July 1, 1998, the following factors and procedures shall be utilized to determine the entitlement of a state fund policyholder to an individual loss sensitive dividend. The dividend shall be declared as an amount not to exceed the approved dividend amount, to aid distribution of the declared dividend among policyholders through the table of dividend factors.

(2) through (8) remain as proposed.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA;
IMP: Sec. 39-71-2323 MCA.

3. The Board thoroughly considered the following comments:

COMMENT 1: One comment recommended that if a dividend were issued the policyholder would prefer to have the dividend reduce its premium. This would eliminate paperwork. If no dividend checks were issued the State Fund should be able to deduct the very most minimal amount from policyholders' premium. State Fund would not have the additional expenses of managing another checking account.

RESPONSE: The comment is acknowledged and appreciated. New Rules I and II implement legislative authority for the board to declare dividends under 39-71-2316 and 39-71-2323, MCA. New Rule II, subsection (7) contemplates dividend distribution by warrant unless any of several enumerated conditions exist. The State Fund believes the advantages of dividend distribution by warrant outweigh the potential savings of non-warrant credits.

The Authority in New Rule II to set a minimum dividend amount is in the discretion of the board at such time the board considers declaration of a dividend.

COMMENT 2: The Administrative Code Committee staff suggested the first sentence of New Rule II be clarified to explain the meaning of July 1, 1998 date.

RESPONSE: The comment is well taken. New Rule II, (1), contains a clerical error. The subsection should read, "but in no event prior to July 1, 1998". The clause is intended to modify when the board may declare a dividend, which is on or after July 1, 1998, in accordance with 39-71-2316, MCA, effective July 1, 1998. This correction does not change the substance of the rule.

COMMENT 3: The Administrative Code Committee staff stated New Rule II appears to address the whole "plan" for arriving at such a dividend. However, the rule does not clarify the meaning "loss sensitive dividend".

RESPONSE: The comment is well taken. To add clarity to New Rule II, a definition of loss sensitive dividend is provided in New Rule I, (4).

COMMENT 4: The Administrative Code Committee staff stated New Rule II refers to a table of dividend factors to be created by the State Fund. New Rule II should contain either a table set forth in the rule or, adoption by reference of a specific table.

RESPONSE: New Rule II contemplates creation of a table of dividend factors, based upon specific criteria set forth in the rule and certified by the State Fund's independent actuary consistent with accepted actuarial principals. The process and procedure for creating the table is contained in the rule, and the table is created contemporaneously with the board's consideration of declaration of dividends. However, to add clarity to the rules, New Rule I is amended to provide a definition of table of dividend factors as a table which is created by the State Fund for any given dividend year, and not a table in existence until such dividend year.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Jim Brouelette
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State May 4, 1998.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 4.13.1001A pertaining to changes in grain fee schedule	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On March 26, 1998, the Department of Agriculture published a notice of proposed amendment of rule 4.13.1001A pertaining to changes in grain fee schedules at page 698 of the 1998 Montana Administrative Register, Issue No. 6.

2. The department has amended the rule 4.13.1001A, exactly as proposed.

3. Two comments were received from WIFE, Women Involved in Farm Economics, in support of the grain fee scheduling changes.

DEPARTMENT OF AGRICULTURE

W. Ralph Peck

Ralph Peck
DIRECTOR

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State April 30, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through VI, and the repeal of 17.38.105 pertaining to cross-connections in drinking water supplies	)))))	CORRECTED NOTICE OF ADOPTION

To: All Interested Persons

1. On April 16, 1998, the board published a notice at page 958 of the 1998 Montana Administrative Register, Issue No. 7, of the adoption and repeal of the above-captioned rules pertaining to cross-connections in drinking water supplies.

2. The notice of adoption incorrectly showed Rule III(2)(b) (17.38.310) remaining as proposed and (2)(c) having changes when it should have shown (2)(b) as having changes and (2)(c) remaining as proposed. The corrected rule adoption reads as follows:

RULE III (17.38.310) VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS: APPLICATION REQUIREMENTS (1) through (2)(a) same as adopted.

(b) a requirement for a survey to be conducted by the owner or operator of a public water supply system for the purpose of identifying locations where cross-connections are likely to occur and evaluating the degree of hazard at each location;

(2)(c) same as proposed.

(2)(d) through (h) same as adopted.

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on June 30, 1998.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State May 4, 1998.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment to rule 23.17.108 regarding the establishment of a tuition fee at the Montana Law Enforcement Academy	) NOTICE OF AMENDMENT) OF RULE ESTABLISHING A) TUITION FEE FOR ATTENDING) THE MONTANA LAW ENFORCEMENT) ACADEMY

TO: All Interested Persons

1. On March 26, 1998, the Department of Justice published notice of the proposed amendment to rule 23.17.108 regarding the establishment of a tuition fee at the Montana Law Enforcement Academy at pages 709 to 710 of the 1998 Montana Administrative Register, issue number 6. No public hearing was scheduled or requested.

2. The department has amended rule 23.17.108 as proposed, but with the following changes (matter stricken is interlined; matter added is underlined):

23.17.108 PROCEDURES FOR REGISTRATION, ATTENDANCE, AND FEES FOR PRE-SERVICE APPLICANTS Subsections (1) through (5) remain as proposed.

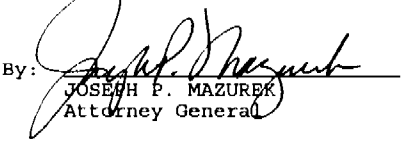
(6) A $2,000 tuition fee ~~set by the POST Council~~ , together with payment for meals and necessary uniforms and supplies, will be required from each pre-service applicant to be paid in full by the first day of the basic course session to be attended. Proof of tuition subsidies, grants or scholarships will be accepted in lieu of cash payment.

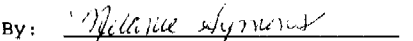
Subsections (7) through (9) remain as proposed.

AUTH: 44-10-202, MCA IMP: 44-10-202, 44-10-301, MCA

3. The only comment received was from Valencia Lane, staff attorney for the Montana Administrative Code Committee. Ms. Lane objected to the proposed change to rule 23.17.108 for two reasons: (1) POST's alleged lack of authority to set tuition fees at the Montana Law Enforcement Academy; and (2) the lack of a specific dollar amount in the rule. In response, the Department has determined to once again establish a specific tuition amount by rule. The Department has also amended the rule to include other costs charged a pre-service applicant for attendance at the Montana Law Enforcement Academy. However, it is impossible to establish a specific dollar amount as meal and uniform costs fluctuate based on the time of year and the costs of food.

DEPARTMENT OF JUSTICE

By: 
JOSEPH P. MAZUREK
Attorney General

By: 
Melanie Symons
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State May 4, 1998.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 24.5.313 and amendment of Rules 24.5.101, 24.5.301 24.5.303, 24.5.323, 24.5.326, 24.5.330, 24.5.348, 24.5.350.	NOTICE OF ADOPTION AND AMENDMENT OF RULES OF THE WORKERS' COMPENSATION COURT

TO: All Interested Persons

1. On March 26, 1998, the Workers' Compensation Court published a Notice of Proposed Amendment of Rules 24.5.101, 24.5.301, 24.5.303, 24.5.323, 24.5.326, 24.5.330, 24.5.348, 24.5.350; and adoption of New Rule I (24.5.313) at page 711, 1998 Montana Administrative Register, Issue No. 6.

2. No public hearing was held but interested parties were asked to submit their data, views or arguments to the court in writing by April 23, 1998. The court has considered all written commentary received subsequent to the original notice date and responds accordingly:

COMMENT: NEW RULE I (24.5.313) RECUSAL ". . . I would not limit recusal to district court judges in that very few of the district court judges possess any knowledge regarding workers' compensation. Consequently, I believe the Court would be better served by keeping the Dave Patterson, Tim Reardon, etc., option open."

RESPONSE: Since 1997 no funds have been appropriated by the legislature to pay for hearing examiners in workers' compensation matters. Moreover, only a judge may make the ultimate decision in a workers' compensation case, even if only to approve the findings of a non-judge hearing examiner. Therefore, recusal requires that a district judge be called in. The district judge has discretion to hire a hearing examiner if he or she wishes. The Workers' Compensation Court, however, cannot direct a district judge to employ a hearing examiner.

3. The Office of the Workers' Compensation Judge has adopted and amended the rules as proposed.

4. These rules become effective May 15, 1998.

MIKE McCARTER, JUDGE

Clarice V. Beck, Hearing Examiner

April 24, 1998
CERTIFIED TO THE SECRETARY OF STATE

BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE 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 REPEAL**

To: All Interested Persons

1. On March 26, 1998, the Board of Land Commissioners and the Department of Natural Resources and Conservation published a notice of proposed repeal of rules 26.2.703 through 26.2.707 pertaining to citizen participation in agency decisions at page 726 of the 1998 Montana Administrative Register, Issue No. 6.

2. **The board has repealed the rules as proposed.**
AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

3. **No comments were received.**

BOARD OF LAND COMMISSIONERS

BY: _____
MARC RACICOT, CHAIR

_____
ARTHUR R. CLINCH, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

_____
DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State May 4, 1998.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of of a rule establishing a fee schedule for the centralized voter file	))))	NOTICE OF ADOPTION OF RULE

TO: All Interested Persons

1. On March 26, 1998, the Secretary of State published notice of the proposed adoption of new Rule I pertaining to establishing a fee schedule for the centralized voter file at page 735 of the 1998 Montana Administrative Register, issue number 6.

2. The Secretary of State has adopted the rule as proposed, but with the following changes:

RULE I (44.3.1101) SCHEDULE OF FEES FOR THE CENTRALIZED VOTER FILE (1) Upon written request, the secretary of state shall furnish, for noncommercial use, a list of registered electors as compiled and maintained in its centralized voter file. The fee schedule is as follows:

~~Fees~~ Price per thousand voters:

~~Quantity of Product~~ Number of Records Ordered	CD-ROM	Diskette	Paper
Over 400,000	$8	$12	$60
300,000 - 399,999	$10	$16	$60
200,000 - 299,999	$12	$20	$60
100,000 - 199,999	$14	$24	$60
0 - 99,999	$16	$28	$60
Minimum Charge	$60	$60	$60

AUTH: 2-15-404, MCA; IMP: 13-2-115(2), MCA

3. The Secretary of State received no public comments. Comments were received from the counsel for the Administrative Code Committee which were thoroughly considered by the Secretary of State as follows:

COMMENT: The word "Fees" on the table is duplicative and, therefore, unnecessary.

RESPONSE: The Secretary of State agrees and has deleted this word.

COMMENT: The label "Quantity of Product" does not clearly explain that this means the number of records ordered by the customer with each voter's registration information being one record.

RESPONSE: The Secretary of State agrees and has changed the reference accordingly.

By

Mike Cooney
Secretary of State

By

Daniel J. Whyte
Rule Reviewer

Certified to the Secretary of State May 4, 1998.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of amendment of Rules 44.9.101, 44.9.313 44.9.401, 44.9.402 pertaining to mail ballot elections	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On March 26, 1998 the Secretary of State published notice of the proposed amendment of the above stated rules at page 737 of the 1998 Montana Administrative Register, issue number 6.

2. The agency has amended the rules exactly as proposed.

3. No comments or testimony were received.

By: Mike Cooney
Secretary of State

Daniel J. Whyte
Rule Reviewer

Certified to the Secretary of State May 4, 1998.

VOLUME NO. 47 OPINION NO. 14

CLERKS - Authority to collect $120 fee for filing petition for modification of child support;
COUNTY OFFICERS AND EMPLOYEES - Authority of clerk of district court to collect $120 fee for filing petition for modification of child support;
FEES - Authority of clerk of district court to collect $120 fee for filing petition for modification of child support;
MONTANA CODE ANNOTATED - Title 40, chapter 4; sections 25-1-201, 40-4-204, -208, -219, -233, -234.

HELD: Montana Code Annotated § 25-1-201(1)(a) (1997) does not authorize the clerk of the district court to collect a $120 fee, as the statutory fee for filing a "petition for a contested amendment of a final parenting plan," upon the filing of a petition to modify child support in an existing cause pursuant to §§ 40-4-204 and -208.

May 4, 1998

Mr. Brant Light
Cascade County Attorney
Cascade County Courthouse
121 Fourth Street North
Great Falls, MT 59401

Dear Mr. Light:

You have requested my opinion on the following question:

> Does Mont. Code Ann. § 25-1-201(1)(a) (1997) authorize the clerk of the district court to collect a $120 fee, as the statutory fee for filing a "contested amendment of a final parenting plan," upon the filing of a petition to modify child support in an existing cause pursuant to §§ 40-4-204 and -208?

The fees to be collected by the clerk of the district court are set forth in Mont. Code Ann. § 25-1-201(1) (1997). Subsection (1)(a) of that statute authorizes a fee of $120 for filing a petition for a contested amendment of a final parenting plan. There is no authorization for collecting a fee upon the filing of a petition to modify child support in an existing cause.

Your question is whether the clerk may collect $120 for filing a petition to modify child support in an existing cause under the authority of subsection (1)(a). The answer to this question depends on whether a petition to modify child support is, in fact, a "petition for a contested amendment of a final parenting plan." For the reasons discussed below, I conclude that it is not.

In 1997, the Montana Legislature mandated the use of a parenting plan in all proceedings initiated under Mont. Code Ann. title 40, chapter 4, involving a child. The plan is intended to address the respective parenting responsibilities of the parties, including provision for the child's daily needs, education, and contact with siblings and other persons, as well as other criteria as set forth in Mont. Code Ann. § 40-4-234(1) and (2). The function of the plan is to provide for the child's best interests and anticipate his or her long-term needs in a way that minimizes the need for future amendment. Mont. Code Ann. § 40-4-233(4). Pursuant to Mont. Code Ann. § 40-4-234(1) (1997), a final parenting plan must be incorporated into any final decree.

The parenting plan may or may not address the issue of child support. In accordance with Mont. Code Ann. § 40-4-234(2)(d), the parties may include in the plan provisions for "finances to provide for the child's needs," however there is no requirement that the parties specify their respective child support obligations therein. Those obligations are imposed by the district court based on a number of factors. The parenting plan is just one of the factors the district court considers when deciding the respective child support obligations of the parties. Mont. Code Ann. § 40-4-204(2)(g).

There are separate procedures for modifying a child support obligation and amending a final parenting plan. Modification of the decree pertaining to child support is governed by Mont. Code Ann. § 40-4-208. Amendment of a final plan, on the other hand, is governed by Mont. Code Ann. § 40-4-219. The clerk of the district court in Cascade County has proceeded under the assumption that modification of child support is accomplished under Mont. Code Ann. § 40-4-219 or -234; however, that is not the case.

It is clear from these statutes that child support is an issue apart from the parenting plan, and that modification of child support is a separate procedure which does not necessarily entail amendment of the plan. While the plan may contemplate child support or provide information relevant to a determination of child support, the obligation to pay child support arises from the decree, which is subject to modification under Mont. Code Ann. § 40-4-208. In this respect, a petition to modify child support is not a petition for contested amendment of the parenting plan. It is therefore inappropriate for the clerk of court to charge a $120 filing fee on the basis that a petition for modification is a "petition for a contested amendment of a final parenting plan."

It is notable that Mont. Code Ann. § 40-4-219 expressly provides for the amendment of a parenting plan and does not mention the modification of child support. The two petitions are statutorily distinct, and the standards and guidelines for modification are different. If the legislature had wanted the

clerks to collect an extra fee for child support modification proceedings, it could have expressly provided for such a fee. The fact that it did not is evidence of the legislature's intent not to impose the fee on the filing of a petition to modify child support.

This result is consistent with legislative policy reflected in Mont. Code Ann. § 40-4-233(4), which contemplates that a parenting plan will anticipate the child's changing needs to minimize the need for future amendment of the final plan. The legislature reinforced this policy when it imposed a $120 filing fee on such action, thereby deterring court involvement in every dispute over parenting responsibilities. See Mont. Code Ann. § 40-4-233(6). Child support, however, is another matter. The fee was not intended to deter legitimate requests for modification when the circumstances set forth in Mont. Code Ann. § 40-4-208 are present.

THEREFORE, IT IS MY OPINION:

> Montana Code Annotated § 25-1-201(1)(a)(1997) does not authorize the clerk of the district court to collect a $120 fee, as the statutory fee for filing a "petition for a contested amendment of a final parenting plan," upon the filing of a petition to modify child support in an existing cause pursuant to §§ 40-4-204 and -208.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/ja/mlr

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, 1997. This table includes those rules adopted during the period January 1, 1998 through March 31, 1998 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, 1997, 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 1996, 1997 and 1998 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.

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