

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption)	NOTICE OF PROPOSED
of new rules to implement a)	ADOPTION
commodity research and market)	
development program.)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On February 27, 2000, the Montana Department of Agriculture proposes to adopt new rules to implement the Agricultural Commodity Research and Market Development Enabling Act (S.B. 18, 1999 Montana Legislature; Title 80, Chapter 11, Part 5, MCA).

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rule making process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 20, 2000, to advise us of the nature of the accommodation that you need. Please contact Lee Boyer at P.O. Box 200201, Helena MT 59620-0201; Phone: (406) 444-2402; TDD Phone: (406) 444-4687; FAX: (406) 444-9442; E-mail: agr@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I PETITION TO CREATE A COMMODITY RESEARCH AND MARKET DEVELOPMENT PROGRAM (1) The petition requirements are:

- (a) name of applicant;
- (b) address of applicant;
- (c) if applicant is an organization, a list of officers with complete addresses and phone numbers;
- (d) the proposed rate of assessment per unit of commodity;
- (e) a proposed statement of purpose;
- (f) a list of 25 or more producer signatures (including legibly printed names, addresses, and phone numbers) of this commodity who are petitioning the Montana department of agriculture to develop a commodity research and market development program;
- (i) The petition must include only names of persons who qualify as a "grower or producer" as defined in 80-11-503, MCA; "A person or landowner who is personally engaged in growing or producing commodities, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements."

(ii) The grower or producer must have grown or produced this agricultural commodity within the last two growing seasons.

(g) attach a list of all known producers (with addresses and phone numbers) of this commodity, as defined above, who are 18 years of age or older, and a Montana resident;

(h) the department of agriculture shall verify eligibility of petitioners as commodity producers using the definition in (1)(f)(i);

(i) a petition shall be filed with the department either in person or by certified mail; and

(j) application shall include the name, address, and phone numbers of the designated liaison for the petitioners.

AUTH: 80-11-504, MCA

IMP: 80-11-512, MCA

NEW RULE II PETITION TO ELIMINATE A COMMODITY RESEARCH AND MARKET DEVELOPMENT PROGRAM (1) After two years from the date of adoption, the department may, upon its own accord or upon receipt of a verified petition, call a hearing to determine if a program should be eliminated.

(2) The petition requirements are:

(a) name of applicant requesting elimination;

(b) complete address of applicant;

(c) if applicant is an organization, a list of officers with complete addresses and phone numbers;

(d) statement that the program has been in existence for a minimum of two years;

(e) a list of 15% or more of producer or grower names and signatures, (include legibly printed name, addresses, and phone numbers) of this commodity who are petitioning the Montana department of agriculture to eliminate the program;

(i) The petition must include only names of persons who qualify as a "grower or producer" as defined in 80-11-503, MCA; "A person or land owner who is personally engaged in growing or producing commodities, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices and arrangements."

(f) the department shall verify eligibility of petitioners as commodity producers using the definition in (2)(e)(i) and the list of eligible voters at the time the program was adopted; and

(g) a petition shall be filed with the department either in person or by certified mail.

AUTH: 80-11-504, MCA

IMP: 80-11-513, MCA

REASON: S.B. 18 of the 1999 Montana Legislature enacted the Agricultural Commodity Research and Market Development Enabling Act, codified in Title 80, Chapter 11, Part 5, MCA. That Act, authorized the Department of Agriculture, upon the

petition and approval of producers of certain agricultural commodities, to establish an agricultural production check off system to promote the market, development, and research of those agricultural commodities. The act further authorizes the department to enter into rule making (80-11-504, MCA) to carry out the statutory provisions. The check off program commences with a petition prepared and filed by affected growers asking the department to propose a check off program, hold a hearing, and to put it to a referendum of the affected growers. These proposed two rules provide the details required for the petition. They also provide the rules for a petition to terminate the program, which is also authorized by the Act.

4. Concerned persons may submit their data, views or arguments concerning this adoption in writing to Lee Boyer, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; FAX: (406) 444-9442, or E-mail: agr@state.mt.us, no later than February 25, 2000.

5. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201. The comments must be received no later than February 25, 2000.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25 persons, whichever is less, of the persons who are directly affected by the adoption; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2300 based on 23,000 farms and ranches in Montana (MT Agricultural Statistics Bulletin 1998).

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, feed, apiculture, fertilizer, commodity dealers and warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and monitoring, rural development, and/or hail. Such written request may be mailed or delivered to the Department

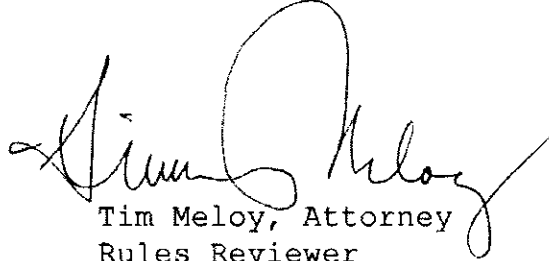
of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201.

8. The bill sponsor notification requirements of 2-4-302, MCA apply, and have been fulfilled.

DEPARTMENT OF AGRICULTURE



Ralph Peck
Director



Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State January 14, 2000.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF SECURITIES
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED AMENDMENT
proposed amendment of rule)
6.10.131 pertaining to) NO PUBLIC HEARING
foreign security exemption) CONTEMPLATED

TO: All Concerned Persons

1. On March 6, 2000, the state auditor and commissioner of securities proposes to amend Rule 6.10.131 pertaining to foreign security exemption.

2. The proposed rule amendment provides as follows (new text is underlined; text to be deleted is interlined):

6.10.131 FOREIGN SECURITY EXEMPTION (1) through (1)(a)(ii) will remain the same.

(A) The most recent edition of ~~Moody's~~ Mergent's Manual or Standard & Poor's Corporation Records, or the periodic supplements to such publications, as well as all commonly recognized formats of the manuals including CD-ROM and electronic dissemination over the internet, contains a description of the issuer's business or operations, the names of the issuer's officers and directors (or their corporate equivalents in the issuer's country of domicile), an externally audited balance sheet of the issuer as of a date within 18 months of the date of the transaction and audited profit and loss statements for each of the issuer's two fiscal years immediately preceding the date of such balance sheet (such statements to be prepared in accordance with U.S. or foreign GAAP); or

(B) through (b) will remain the same.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-104, and 30-10-107, MCA

3. Rule 6.10.131 is being amended because a new company became the publisher of Moody's Manuals, and the license to use the Moody's trademark will expire soon. The publisher has changed the name to Mergent's Manuals. Aside from the new name, there will be no changes in the substantive requirements issuers must satisfy in order to be included in Mergent's Manuals.

The financial services industry is increasingly relying on the Internet and other electronic means of communication. The addition of reference to "all commonly recognized formats..." simply permits the use of those methods of communication, which are identical to the information published in the manual itself.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Pam

Weitz, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than February 28, 2000.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Pam Weitz, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than February 24, 2000.

6. If the agency receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 persons based on the 200 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

MARK O'KEEFE, State Auditor
and Commissioner of Securities



By:

Peter Funk
Deputy Insurance Commissioner



By:

Janice S. VanRiper
Rules Reviewer

Certified to the Secretary of State January 14, 2000.

BEFORE THE MONTANA CONSUMER AFFAIRS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed)
adoption of new rules pertain-)
ing to the Telemarketing)
Registration and Fraud)
Prevention Act)

NOTICE OF PUBLIC HEARING ON
THE PROPOSED ADOPTION OF
NEW RULES PERTAINING TO THE
TELEMARKETING REGISTRATION
AND FRAUD PREVENTION ACT

TO: All Concerned Persons

1. On February 23, 2000, at 9:00 a.m., a public hearing will be held in the downstairs conference room, at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the adoption of new rules pertaining to the Telemarketing Registration and Fraud Prevention Act.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish 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., February 7, 1999, to advise us of the nature of the accommodation that you need. Please contact Donna Stevens, Department of Commerce, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 444-9405; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 449-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Donna Stevens.

3. The proposed new rules will read as follows:

"I DEFINITIONS In addition to the terms defined in 30-14-1403, MCA, the following terms shall, unless the context otherwise indicates, have the following meanings for the purposes of this sub-chapter:

- (1) "Act" means the Montana Telemarketing Registration and Fraud Prevention Act as set forth in Title 30, chapter 14, part 14, MCA.
- (2) "Applicant" means a person applying for registration or renewal with the department to be a registered seller or telemarketer.
- (3) "Financial responsibility" means surety bond, certificate of deposit, cash, or a government bond in the amount of \$50,000.
- (4) "Manager" means a person who supervises the work of a telemarketer or seller.
- (5) "Principal" means:
 - (a) an owner;
 - (b) an officer of a corporation or limited liability company;
 - (c) a general partner of a partnership;
 - (d) a sole proprietor of a sole proprietorship;

- (e) a partner of a limited liability partnership;
- (f) a trustee of a trust or any other individual who controls, manages; or
- (g) supervises a telephone sales operation.
- (6) "Registrant" means the person registered with the department of commerce as a seller or telemarketer to conduct telemarketing operations in Montana."

Auth: Sec. 30-14-1402, MCA; IMP, Sec. 30-14-1402, 30-14-1403, MCA

REASON: The department sets forth the additional definitions needed to fully inform applicants, sellers, telemarketers, and the public of the statutory and registration requirements. The definitions faithfully follow the statutory definitions and statutory intent. The above definitions were needed to clarify information required in the registration and bonding process.

"II FORMS AND PROCEDURES FOR INITIAL REGISTRATION AND BONDING

(1) Prior to conducting telemarketing business in the state of Montana, the applicant must have a Montana department of commerce certificate of registration.

(2) Application for an initial certificate of registration shall be made to the department on the forms prescribed by the department and accompanied by:

- (a) a surety bond in the penal sum of \$50,000; or
- (b) certificate of deposit, cash, or a government bond in the amount of \$50,000.

(3) A surety bond application shall be submitted on a form prescribed by the department.

(4) The certificate of deposit and government bond shall name the Montana department of commerce as owner.

(5) The applicant shall designate a registered agent with the Montana secretary of state for all sellers or telemarketers. An agent must be designated to accept service for all legal pleadings.

(6) The department shall either approve or disapprove the application based on the completeness and accuracy of items reported. If the department denies the application, the applicant will receive a written letter from the department stating the reason(s) for the denial.

(7) At any time during the process, the department reserves the right to deny registration based on false information provided by the applicant.

(8) The applicant shall notify the department in writing of any changes to the information provided by the applicant made since the initial or renewal application within 10 working days of the change.

(9) The application form and instructions for registration as a telemarketer and/or seller may be obtained from the Department of Commerce, Consumer Affairs Division, Telemarketing Section, 1424 Ninth Avenue, PO Box 200501, Helena, Montana 59620-0501."

Auth: Sec. 30-14-1402, MCA; IMP, Sec. 30-14-1404, MCA

REASON: Section 30-14-1402, MCA authorizes the department to adopt rules implementing 30-14-1404, MCA outlining the registration and bonding requirements prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium. This rule is to inform applicants and the public of the registration and bonding process.

"III FORMS AND PROCEDURES FOR REGISTRATION RENEWAL

(1) The renewal application will be similar to the initial application and process with the following changes:

(a) Registrant shall note on the application that the surety bond, certificate of deposit, cash, or government bond was submitted to the department with the initial application. Applicant will provide proof of payment with the renewal application.

(b) In the event the certificate of deposit needs to be renewed prior to the one year, it will be released by the department to be renewed with the applicant's financial institution's verification. The department must be named as the owner of the certificate of deposit at all times that the telemarketer operates in Montana.

(c) Failure to fully complete the renewal application on or before December 31st will result in the renewal application being null and void and the lapse of registration. All items must be completed on the renewal application. No photocopied applications from the prior year will be accepted.

(d) All signatures on the renewal application must be current and dated.

(2) All applications for the renewal of application must occur on or before December 31st of each year. The department will mail the renewal notices and accompanying renewal forms to registrants approximately two months in advance of expiration allowing time for registrant to complete the form.

(3) If the registrant does not renew, he or she must use a form attached to the application stating that he or she will cease to operate in this state as a telemarketer/seller under the Act.

(4) The registrant may cease to operate his or her telemarketing business at any time by providing the department with written notice that he or she no longer engages in telemarketing activities in the state of Montana.

(5) One year after the date the registrant ceases to operate its telemarketing business in this state, the registrant shall request in writing to the department to release its financial responsibility utilizing the form provided by the department.

(6) The registrant must complete a notarized "release of financial responsibility" form provided by the department containing an affirmative statement by the registrant that no claims exist against the telemarketing business by any person.

(7) After any and all consumer claims are resolved to the satisfaction of the department, and one year has passed

since the registrant has ceased telemarketing business in the state, the remainder of the financial responsibility will be returned to the registrant.

(8) The forms prescribed by the department may be obtained from the Montana Department of Commerce, Consumer Affairs Division, Telemarketing Section, 1424 Ninth Avenue, PO Box 200501, Helena, Montana 59620-0501."

Auth: Sec. 30-14-1402, MCA; IMP, Sec. 30-14-1404, MCA

REASON: Section 30-14-1402, MCA authorizes the department to adopt rules implementing 30-14-1404, MCA outlining the registration and bonding requirements prior to a seller or telemarketer offering for sale consumer goods or services through any medium. This rule is needed to inform applicants and the public of the registration and bonding renewal process. The rule further sets forth the requirements for renewal of registrants and the process to cease operations of their business.

"IV TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM

(1) The department will educate Montana senior citizens as well as other consumers by developing the telemarketing fraud consumer awareness program.

(a) The program will educate the Montana consumer through telemarketing fraud and prevention brochures and other informational material distributed by the department at public presentations and also to consumers who phone or write to the department.

(b) The program will provide statewide workshops and training seminars sponsored by the department in cooperation with local, state and national law enforcement and aging agencies to promote awareness of telemarketing fraud and prevention.

(c) Education through news releases (including newspaper, television and radio) may also be disseminated to the public to inform Montana consumers about fraudulent telemarketers operating in Montana and the manner consumers can best protect themselves from being defrauded."

Auth: Sec. 30-14-1402, MCA; IMP, Sec. 30-14-1406, MCA

REASON: Section 30-14-1402, MCA authorizes the department to adopt rules implementing 30-14-1406, MCA which requires the department to establish and administer a telemarketing fraud consumer awareness program. The rule describes the department's education awareness program that will reach consumers through written educational information, on-going one to one counseling sessions by the staff, the news and media, public presentations and conferences.

"V CIVIL ACTION ENFORCEMENT PROCEDURE (1) Enforcement options available to the department are set forth in 30-14-1407, 30-14-1410, 30-14-1411, 30-14-1413 and 30-14-1414, MCA.

(2) Consumer complaint forms may be obtained from the department. The department will provide these forms to

consumers who have suffered a loss due to the alleged violation of the act by a business through unfair or deceptive conduct, prohibited acts or practices, or abusive acts or practices. The complaint form may be obtained from the Montana Department of Commerce, Consumer Affairs Division, Telemarketing Section, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501. The department is unable to proceed with a consumer complaint unless the complaint form is completed and signed by the consumer.

(3) Upon receipt of the completed and signed complaint, the department will request the business to provide a written response to the allegations set forth by the consumer within 20 days. The response must be submitted to the department.

(4) The department may proceed with alternative dispute resolution procedures, contested case proceedings under the Montana Administrative Procedure Act, set forth under 2-4-601, MCA or an action in district court to enjoin prohibited acts and seek remedy on behalf of state residents who have suffered a loss as a result of violation of the act."

Auth: Sec. 30-14-1402, MCA; IMP, Sec. 30-14-1407, 30-14-1410, 30-14-1411, 30-14-1412, 30-14-1413, MCA

REASON: The rule informs the consumer and business of the procedure for handling consumer complaints under the Act. The rule also sets forth the manner by which a consumer may obtain assistance from the department in the event the consumer has suffered a loss due to an unlawful action in violation of the act by a business. The rule informs the consumer and business of the legal remedies and actions available to the consumer and department for violations of the Act.

4. Concerned 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 Department of Commerce, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana, 59620-0501, or by facsimile number (406) 444-2903, to be received no later than 5:00 p.m., March 2, 2000.

5. Annie M. Bartos, Chief Legal Counsel of the Department of Commerce has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Telemarketing Registration and Fraud Division administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Department of Commerce at the hearing or in writing to the Department of Commerce at 1424 Ninth Avenue, P.O. Box 200501, Helena, MT 59620-0501 or by phone at (406) 444-9405.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply, and have been fulfilled.

CONSUMER AFFAIRS DIVISION

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 2000.

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

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
adoption of a rule for the)	ON THE PROPOSED ADOPTION
administration of the 2000)	OF A RULE PERTAINING TO
Federal Community Development)	THE ADMINISTRATION OF THE
Block Grant Program)	2000 FEDERAL COMMUNITY
)	DEVELOPMENT BLOCK GRANT
)	PROGRAM

TO: All Concerned Persons

1. On February 16, 2000, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce Building, 1424 Ninth Ave., Helena, MT to consider the adoption of a rule pertaining to the administration of the 2000 Federal Community Development Black Grant program.

2. The Division will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, please contact the Division no later than 5:00 p.m., February 7, 2000 to advise us of the nature of the accommodation you require. Please contact Gus Byrom, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena Montana 59620; telephone (406)444-4477; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4482. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Richard M. Weddle at the above stated address.

3. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 2000 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference:

(a) the Montana Community Development Block Grant Program 1999 Application Guidelines for Housing & Public Facilities Projects;

(b) the Montana Community Development Block Grant Program 2000 Application Guidelines for Economic Development Projects;

(c) and the Montana Community Development Block Grant Program 2000 Grant Administration Manual published by it as rules for the administration of the 2000 CBDG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program;

(b) requirements for applicants;

(c) procedures for evaluating applications;

(d) procedures for local project start up;

(e) environmental review of project activities;

- (f) procurement of goods and services;
- (g) financial management;
- (h) protection of civil rights;
- (i) fair labor standards;
- (j) acquisition of property and relocation of persons displaced thereby;
- (k) administrative considerations specific to public facilities, housing rehabilitation and community revitalization, and economic development projects;
- (l) project audits;
- (m) public relations;
- (n) project monitoring; and
- (o) technical assistance.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, MT 59620."

Auth: 90-1-103, MCA IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the 1999 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the Department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements that local governments must comply with in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and statutory requirements, with which local CDBG recipients must comply in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing and public facility projects.

4. Concerned 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 Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than February 24, 2000.

5. Gus Bryom will preside over and conduct the hearing.

6. Persons who wish to be informed of all Local Government Assistance Division administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Division at the rulemaking hearing or in writing to the Local Government Assistance Division, Department of Commerce, Capital Station, Helena, Montana 59620.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 2000.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the)
adoption, transfer,)
transfer and amendment,)
and repeal of rules)
relating to special)
education)

NOTICE OF PUBLIC HEARING ON
THE PROPOSED ADOPTION,
TRANSFER, TRANSFER AND
AMENDMENT, AND REPEAL OF
RULES RELATING TO SPECIAL
EDUCATION

TO: All Concerned Persons

1. Public hearings will be held to consider the adoption, transfer, transfer and amendment, and repeal of rules relating to special education as follows:

Billings - February 28, 2000, 9:00 a.m. - Parmly Billings Library, 510 N. Broadway, 3rd floor meeting room.

Kalispell - March 1, 2000, 9:00 a.m. - Kalispell Courthouse East, 723 5th Ave. East, Conference Room #1.

Helena - March 2, 2000, 9:00 a.m. - Lewis and Clark Library, 120 South Last Chance Gulch, Large Conference Room.

2. The Office of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on February 14, 2000 to advise us of the nature of the accommodation that you need. Please contact Pat Reichert, P.O. Box 202501, Helena, MT 59620-2501, telephone: 406-444-3172, TDD number: 406-444-1812, FAX: 406-444-2893.

3. Statement of Reasonable Necessity. The proposed adoption, transfer, transfer and amendment, and repeal of the following Administrative Rules of Montana are necessary to comply with the federal Individuals with Disabilities Education Act (IDEA) Amendments of 1997, 20 U.S.C. chapter 33, sections 1411 through 1487. The 1997 Amendments made a number of significant changes to the prior law. Its implementing regulations at 34 CFR, part 300 require states to adopt policies and procedures to ensure compliance with the federal law. Specifically, 34 CFR 300.110 requires that Montana demonstrate to the satisfaction of the Secretary of Education that it has in effect policies and procedures as required in 34 CFR 300.121 through 300.156 to be eligible for federal financial assistance. The Superintendent of Public Instruction has the statutory duty to ensure that the requirements of IDEA are met (20-7-403(12), MCA).

The Superintendent of Public Instruction proposes to adopt administrative rules which (1) are required by the federal regulations, (2) will clarify the federal regulations, or (3) are unique to Montana. Requirements set forth in federal regulations will not be repeated in state administrative rule. Compliance with IDEA 1997 will require knowledge and understanding of the federal regulations and the Administrative Rules of Montana.

The Superintendent of Public Instruction proposes to retain certain special education practices that have been effective and are in compliance with the final regulations for IDEA 1997. An example would be the use of a Child Study Team to determine eligibility of students qualified to receive services under IDEA. The implementing federal regulations include the substance of a number of administrative rules adopted by the Superintendent of Public Instruction prior to the IDEA Amendments of 1997. Prior administrative rules included in the new federal regulations will be repealed.

Extensive amendment and repeal of special education administrative rules since 1971 require individuals to search through many pages of text to locate current rules. To help schools, agency personnel, and parents to find the Administrative Rules of Montana that apply to IDEA 1997, it is proposed, in consultation with the Secretary of State, that all administrative rules required to implement IDEA 1997 be transferred to Title 10, chapter 16, sub-chapters 30 through 38. The Administrative rules will be renumbered to correspond more closely to the numerical configuration found in the federal regulations.

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

RULE I ELIGIBLE STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (1) To be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), a student must meet the criteria for one or more of the disabling conditions listed in 34 CFR 300.7(a)(1) and as a result of that condition the student is in need of special education as defined in 34 CFR 300.26.

(2) "In need of special education" means the student must need specially designed instruction delivered or directed by a qualified special educator, either alone or in collaboration with other qualified personnel.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE II ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE (1) "Adversely affect the student's educational performance" means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral assessments, analysis of classroom assignments, or criterion-referenced tests, etc.) indicate a pattern of educational

attainment that can wholly or in part be attributed to the disabling condition.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE III INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS

(1) Local educational agencies shall develop, implement, review, and revise individualized education programs (IEP) in accordance with 34 CFR 300.340 through 300.350.

(2) IEP teams shall make placement decisions in accordance with least restrictive environment provisions at 34 CFR 300.550 through 300.554.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE IV TRANSFER STUDENTS: INTRASTATE AND INTERSTATE

(1) When an IDEA eligible student moves to a new school district within the state, the new school district shall ensure that there is no interruption of special education and related services. If the parents and the new school district are unable to agree on a placement, the new school district must implement the former IEP to the extent possible until a new IEP is developed and implemented. To the extent that implementation of the former IEP is impossible, the new district must provide services that approximate, as closely as possible, the former IEP.

(2) When an IDEA eligible student moves to Montana from another state, the first step is to determine whether to adopt the most recent evaluation and IEP.

(a) If the former IEP is adopted by the new district and the parents agree to its use, it can be implemented.

(b) If the former IEP is refused by the new district or the parents, an IEP meeting must proceed in accordance with 34 CFR 300.343. If the former evaluation is rejected by the new district, an evaluation must be conducted without undue delay. During the evaluation, the student shall be placed pursuant to an agreed-upon interim IEP, or in general education in absence of such an agreement.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE V TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

(1) When a student with disabilities reaches the age of 18, parental rights under IDEA will transfer to the student in accordance with 34 CFR 300.517.

(a) Beginning at least one year before a student's 18th birthday, the student's IEP must document that the student has been informed of his or her rights under part B of IDEA that will transfer to the student.

(b) The parent will be provided written notice of the transfer of rights to the student at least one year before the student reaches the age of 18.

(c) Both the parent and the student will receive all notices required by 34 CFR 300.504.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE VI VOLUNTARY MEDIATION (1) Upon receipt by mail of

a written request for mediation signed by all parties to a special education controversy as defined in 34 CFR 300.506, prior to, during, or after a request for a due process hearing under ARM 10.16.3507, the superintendent of public instruction shall appoint an impartial mediator.

(2) The parties may mutually agree to any qualified mediator whose name is included on the list maintained by the office of public instruction. If the parties agree to a mediator, the name of the mediator will be included in the request for mediation.

(3) If the request for mediation does not include the name of a qualified mediator, the process for selection is as follows:

(a) The office of public instruction shall mail to each party the names of three mediators from its list of qualified mediators knowledgeable in special education laws and regulations.

(b) Upon receipt of the list of names, the parties shall have three business days to review the list, prioritize their selection, and return the list to the office of public instruction.

(c) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree, the superintendent of public instruction shall appoint a mediator from the names sent to the parties.

(4) The mediator shall schedule a mediation session in a timely manner, but no later than 30 days from the date of receipt of the request for mediation at the office of public instruction.

(5) Mediation shall comply with 34 CFR 300.506.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE VII INITIATING EXPEDITED DUE PROCESS HEARING (1) An expedited due process hearing under 34 CFR 300.528 may be initiated by submitting a written request for a hearing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.

(2) The written request for expedited hearing shall include:

(a) date of the manifestation determination and evidence of a behavioral assessment plan;

(b) general statement of the problem;

(c) name of the school district or public agency, including the name and telephone number of the contact person;

(d) name of the parent and contact phone number;

(e) student's name; and

(f) tentative date(s) that the parties have agreed to hold the expedited hearing.

(3) A facsimile of the request may be submitted, but the original signed request must be received within three business days. The facsimile number may be requested by calling the office of public instruction.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE VIII SELECTION OF EXPEDITED DUE PROCESS HEARING OFFICER (1) The superintendent of public instruction shall maintain a list of due process hearing officers who have successfully completed at least one regular due process hearing under IDEA and have indicated a willingness to accept appointment to conduct an expedited due process hearing.

(2) A qualified due process hearing officer shall be appointed by the superintendent of public instruction from the list.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE IX EXPEDITED HEARING (1) Upon appointment, the hearing officer shall:

(a) contact the parties to schedule a prehearing telephone conference;

(b) set the date, time and place of the expedited hearing; and

(c) advise the parties of their right to be represented by counsel.

(2) The hearing officer may compel or limit discovery.

(3) The hearing officer shall prepare an order identifying the issues and matters to be decided.

(4) Evidence to be introduced at the hearing shall be disclosed to the opposing party at least two business days before the hearing or the evidence will not be admitted, unless the hearing officer decides otherwise.

(5) The hearing shall be conducted in accordance with ARM 10.16.3519 through 10.16.3522.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE X FINAL DECISION IN EXPEDITED DUE PROCESS HEARING

(1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the expedited hearing as soon as possible and not later than 10 days after the receipt of the request for the expedited hearing by the superintendent of public instruction. An extension may be requested, however, the extension cannot be for more than a total of 35 days.

(2) If the parent requests an audio record of the hearing and/or the findings of facts and decision at the prehearing conference, the due process hearing officer shall provide such a copy to the superintendent of public instruction and the parties.

(3) The hearing officer shall mail or deliver the record as defined in ARM 10.16.3522 to the superintendent of public instruction.

(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may begin a civil action under 34 CFR 300.512.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XI EARLY ASSISTANCE PROGRAM (1) The office of public instruction shall provide an ongoing and systematic informal dispute resolution process referred to as the "early assistance program."

(2) A parent, guardian, adult student, school district, or their representative may request early assistance in any issue related to a student's free appropriate public education. The early assistance program does not require formal, written application, however, request for early assistance may be made in writing to the Office of Public Instruction, Legal Services, P.O. Box 202501, Helena, MT 59620-2501. There is no pre-established procedure that must be followed.

(3) The early assistance program focuses on substance -- the quick resolution of problems of mutual concern to all parties. It is not based on the model of an impartial third party resolving a legal dispute between parties with conflicting goals or interests. It is, however, based on the goal of ensuring the delivery of a free appropriate public education. The early assistance program draws on the traditional model of parents and schools working cooperatively to achieve their shared goal of meeting the educational needs of the student with disabilities.

(4) As stated in ARM 10.16.3662, prior to filing a formal administrative complaint as that term is defined in 34 CFR 300.662 (as distinguished from a request for due process), a parent or guardian must allow the office of public instruction 15 business days from the day it receives written notification of the intent to file a complaint to contact the school district and the parent or guardian to attempt to resolve the problem through the early assistance program.

(5) After the expiration of 15 business days, the parent or guardian may file a formal complaint at any time using a form provided by the office of public instruction. If a complaint has already been filed, there is no need for a new complaint on an office of public instruction form. All procedural rights apply. If the parent or guardian chooses not to file a formal complaint, the office of public instruction, the school district and the parent or guardian will continue to attempt to resolve the problem through the early assistance program.

(6) The services offered under this program shall be at the discretion of the office of public instruction.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

5. The rules as proposed to be transferred will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
10.16.113	<u>10.16.3751</u>	Office of Public Instruction Responsibility for Child Count
10.16.1123	<u>10.16.3020</u>	Criteria for Identification of Student as having Speech-Language Impairment
10.16.1315	<u>10.16.3819</u>	Contested Cases
10.16.1713	<u>10.16.3136</u>	Special Education Professional Staff Qualifications

10.16.2107	<u>10.16.3820</u>	Transportation for Special Education Students with Disabilities
10.16.2204	<u>10.16.3804</u>	General Principles of Special Education Funding
10.16.2209	<u>10.16.3809</u>	Cooperative Boundaries
10.16.2210	<u>10.16.3810</u>	Eligibility to Receive Payment
10.16.2212	<u>10.16.3812</u>	Calculation of Special Education Allowable Cost Payments
10.16.2214	<u>10.16.3814</u>	Advance on Special Education Allowable Cost Payments
10.16.2216	<u>10.16.3815</u>	Special Education Transfers and Payments to Other Districts and Cooperatives
10.16.2217	<u>10.16.3816</u>	Distribution of Special Education Allowable Cost Payments
10.16.2401	<u>10.16.3507</u>	Scope of Rules
10.16.2409	<u>10.16.3515</u>	Scope of Discovery
10.16.2410	<u>10.16.3516</u>	Limitations on Discovery by the Impartial Hearing Officer
10.16.2411	<u>10.16.3517</u>	Sequence and Timing of Discovery
10.16.2413	<u>10.16.3519</u>	Ex-Parte Consultations
10.16.2414	<u>10.16.3520</u>	Powers of the Impartial Hearing Officer
10.16.2415	<u>10.16.3521</u>	Hearing
10.16.2601	<u>10.16.3901</u>	Duration of Cooperative
10.16.2602	<u>10.16.3902</u>	Management Board
10.16.2604	<u>10.16.3903</u>	Non-Participating Districts
10.16.2605	<u>10.16.3904</u>	Procedures for Approval
10.16.2723	<u>10.16.3341</u>	Residential Placement by Public Agency Other Than Local Educational Agency

6. The rules proposed to be amended and transferred provide as follows, stricken matter interlined, new matter underlined:

~~10.16.104~~ 10.16.3121 OFFICE OF PUBLIC INSTRUCTION
 RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

(1) The office of public instruction shall ensure that all students with disabilities, ages 3- through 18 inclusive, including students with disabilities who have been suspended or expelled from school who are entitled to a free appropriate public education, are provided a free appropriate public education (FAPE) in accordance with the Individuals with Disabilities Education Act (IDEA) or federal and state statutes and regulations (20 U.S.C., sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16).

(2) The office of public instruction shall ensure that when local educational agencies provide education to individuals students ages 19-21 19, 20 or 21 inclusive, individuals students

of the same age with disabilities are provided FAPE a free appropriate public education in accordance with IDEA.

(3) The office of public instruction shall ensure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA or federal and state statutes and regulations.

(4) If a local educational agency fails to provide FAPE a free appropriate public education for a student with disabilities in accordance with IDEA or federal and state statutes and regulations, the office of public instruction shall take immediate steps to ensure a free appropriate public education (FAPE) is made available to the student with disabilities.

(a) The office of public instruction may initiate one or more of the following options to ensure that FAPE a free appropriate public education is made available for the individual student with disabilities:

- (i) through (vi) remain the same.
- (b) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.105~~ 10.16.3141 OFFICE OF PUBLIC INSTRUCTION
RESPONSIBILITY FOR MONITORING (1) The office of public instruction shall provide an ongoing and systematic monitoring process to ensure compliance with all applicable statutes and regulation IDEA and its implementing regulations at 34 CFR, part 300, and Montana statutes pertaining to special education at Title 20, chapter 7, part 4, MCA, and implementing administrative rules at ARM Title 10, chapter 16. The procedures shall apply to all educational programs for students with disabilities including those administered by other state agencies and educational programs for students with disabilities referred to or placed in private schools by a public agency.

(a) The procedures shall include:

(i) on-site visitations of special education services in the local educational agencies; and review of local educational agency policies, procedures, programs, and program data;

(ii) state level review of local educational agency applications, individualized education programs and inquiries by parents, complaints and due process requests; and, whenever a local educational agency submits documentation in support of request for funds, the individual's eligibility for services under IDEA; and determination of the need for further information, on-site visitation, training, or technical assistance;

(iii) development of strategies to enable the local educational agency to improve programs for students with disabilities;

(iv) office of public instruction review of the effectiveness of the improvement plan and implementation strategies; and

(v) procedures for identification of noncompliance and its correction including:

(A) the local educational agency's response to the findings; and

(B) and (C) remain the same.

(2) If a local educational agency fails to voluntarily take steps to correct an identified deficiency or fails to take any of the actions specified in a local educational agency corrective action plan, the office of public instruction shall notify the local educational agency in writing of the actions the office of public instruction intends to take in order to enforce compliance with ~~state and federal law~~ IDEA and its implementing regulations, and Montana statutes pertaining to special education and implementing administrative rules.

(a) remains the same.

(b) The office of public instruction may initiate one or more of the options under ARM ~~10-16-104~~ 10.16.3121 to ensure compliance.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.106~~ 10.16.3142 INTERAGENCY AGREEMENTS (1) The office of public instruction shall develop and implement interagency agreements with the board of public education, departments of ~~social and rehabilitation~~ public health and human services, health and environmental sciences, and corrections and human services, family services for the purpose of describing the role that each of these agencies plays in providing for special education or related services.

(2) and (3) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.107~~ 10.16.3132 INTERAGENCY COORDINATION FOR PART H C, IDEA (1) The office of public instruction shall develop and implement interagency agreements with the department of ~~social and rehabilitation~~ public health and human services for the purpose of coordinating on transition matters between Part H C and Part B of IDEA.

(2) The agreement shall include policies and procedures relating to a smooth and effective transition for those ~~individuals~~ children participating in the early intervention program under Part H C of IDEA who will participate in preschool programs assisted under Part B of IDEA, including:

(a) through (c) remain the same.

(d) coordinating communication between agencies; ~~and~~

(e) participating in transition planning conferences; and

(f) ~~a method of ensuring that when a student with disabilities turns age 3,~~ an individualized education program has been developed and implemented by the student's third birthday.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.108~~ 10.16.3180 NOTICE OF AVAILABILITY OF FEDERAL FUNDS (1) remains the same.

(2) The notice shall include:

(a) through (c) remain the same.

(d) description of state and federal requirements to which the local educational agency must comply ~~in making application for to receive funds;~~

(e) remains the same.

(f) requirements for project narrative reports and fiscal reports;

(g) and (h) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.110~~ 10.16.3194 OFFICE OF PUBLIC INSTRUCTION
APPROVAL/DISAPPROVAL OF APPLICATIONS FOR FEDERAL FUNDS

(1) Local educational agency federal funds applications shall be consistent with state and federal regulations and be completed according to application instructions and timelines as stated in notice of availability of federal funds and ~~shall include written assurance that special education and related services are provided in accordance with the state plan and the local educational agency's program narrative.~~

(2) The office of public instruction approval procedures shall include:

(a) consideration of a local educational agency's response to onsite program monitoring and the early assistance program as defined in [RULE XI], complaint investigation or due process hearing decisions which are adverse to the local educational agency;

(b) through (d) remain the same.

(3) through (5) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.111~~ 10.16.3196 OFFICE OF PUBLIC INSTRUCTION
DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING

(1) If a local educational agency alleges that the office of public instruction violates a state or federal statute or regulation with regard to the disapproval of, or failure to approve the application or project in whole or in part, or failure to provide federal funds in amounts in accordance with requirements of statutes and regulations, the local educational agency shall request a hearing within 30 days of the receipt of notice of proposed disapproval of funds by the office of public instruction.

(a) The request shall be made in writing by the board of trustees of the local educational agency to the state superintendent of public instruction.

(b) remains the same.

(2) Within 30 days after receipt of the request, the office of public instruction shall hold a hearing on the record and shall review its action.

(a) remains the same.

~~(b) The proceedings for the hearing shall follow IDEA, and its implementing regulations.~~

(3) through (5) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.115~~ 10.16.3145 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN (1) ~~The state superintendent of public instruction shall send written notice of IDEA funds made available~~ If through the monitoring procedures defined in ARM 10.16.3141, or through other means, the office of public instruction determines that IDEA funds have been made available to a local educational agency as the result of misclassified children, the office of public instruction shall send written notice to a the local educational agency as the result of misclassified children.

(a) and (b) remain the same.

(2) and (3) remain the same.

(4) If a local educational agency disagrees with the findings of the office of public instruction in regard to IDEA funds made available to the local educational agency as a result of misclassified children, the local educational agency may request a hearing under ARM ~~10.16.111~~ 10.16.3196.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.116~~ 10.16.3146 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN (1) If the local educational agency fails to reimburse the office of public instruction according to schedule for payments stated in the written notice for funds made available to local educational agency as a result of misclassified children, the office of public instruction shall implement state procedures under ARM ~~10.16.105~~ 10.16.3141.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

~~10.16.117~~ 10.16.3150 STATE ADVISORY PANEL (1) ~~The state superintendent of public instruction shall appoint members to establish and maintain the state advisory panel in accordance with 34 CFR 300.650 through 300.653 for special education comprised of at least one representative of each of the following groups: individuals with disabilities, teachers of students with disabilities, parents of a student with disabilities, state and local educational officials, special education administrators. The state superintendent may expand the advisory panel to include additional persons to provide an appropriate balance between professional groups and consumers advocates.~~

~~(2) The state advisory panel for special education shall:~~

~~(a) advise the office of public instruction of unmet needs within Montana in the education of students with disabilities;~~

~~(b) comment publicly on the Montana state plan for special education and rules or regulations proposed for issuance by the state and the procedures for distribution of funds under IDEA;~~

~~(c) assist the office of public instruction in developing and reporting such information and evaluations as may assist the secretary of the U.S. department of education in the performance of any of the requirements of the IDEA; and~~

~~(d) annually review the findings and decisions of due process hearings conducted within Montana.~~

~~(3) The state advisory panel for special education shall:~~

~~(a) submit an annual report of panel activities and suggestions to the office of public instruction by July 1 of each year and shall make the report available to the public in a manner consistent with other public reporting requirements under IDEA;~~

~~(b) maintain official minutes which shall be made available to the public upon request;~~

~~(c) publicly announce all advisory panel meetings and agenda items prior to the meeting and conduct meetings open to the public; and~~

~~(d) provide interpreters and other necessary services at panel meetings for panel members or participants.~~

~~(4) The advisory panel shall serve without compensation but the office of public instruction must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties.~~

~~(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)~~

10.16.1004 10.16.3560 SPECIAL EDUCATION RECORDS

~~(1) Special education records means all personally identifiable information which is directly related to a student and is collected and maintained by the local educational agency or by a person acting for such agency or program for the purpose of implementing IDEA. School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR 500.560 through 500.577.~~

~~(a) For the purposes of this section, education records includes records, files, documents and other materials such as handwritten notes, computer printouts, audio and video tape, film or microfiche which is personally identifiable.~~

~~(b) For the purposes of this section, education records do not include:~~

~~(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the records and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;~~

~~(ii) records of law enforcement unit of an educational agency which are maintained apart from education records;~~

~~(iii) records related to an individual who is employed by the local educational agency or state operated program;~~

~~(iv) records identified by the local educational agency as directory information.~~

~~(2) remains the same.~~

~~(3) Only authorized school officials determined by the LEA to have legitimate educational interests in accord with the Family Educational Rights and Privacy Act (FERPA) shall have access to special education records.~~

~~(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)~~

10.16.1005 10.16.3571 PARENTAL CONSENT FOR RECORDS

(1) ~~Parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized school officials of the local educational agency collecting or using the information under these rules or used for any purpose other than meeting a requirement under IDEA. The local educational agency may not release information from special education records to local educational agencies without parental consent unless authorized to do so under FERPA or these rules. Parental consent for disclosure of records shall comply with 34 CFR 300.571.~~

(2) ~~A local educational agency may disclose personally identifiable information from the special education records of a student without written parent consent if the disclosure is to authorized school officials or to officials of another local educational agency or state operated program in which the student seeks or intends to enroll subject to the following:~~

~~(a) the local educational agency makes a reasonable attempt to notify the parent of the transfer of records except when the transfer is initiated by the parent; or~~

~~(b) the local educational agency has a policy that special education records are forwarded within 5 days upon written request to a local educational agency in which the student seeks or intends to enroll.~~

(3) ~~A local educational agency may disclose personally identifiable information from the special education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent except as provided for in FERPA.~~

(4) ~~In the event that parents refuse to consent to disclosure of records, the local educational agency may request an impartial due process hearing in accordance with ARM 10.16.2401 10.16.3507 through 10.16.2417 10.16.3523 to resolve the controversy.~~

~~(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)~~

10.16.1104 10.16.3504 SURROGATE PARENTS (1) ~~The local educational agency or public agency shall ensure that the rights of a child are protected when the parents of the child cannot be identified, or the whereabouts of the parents cannot be discovered or the child is a ward of the state. Procedures for the appointment of a surrogate parent shall comply with 20-7-461, MCA.~~

(2) ~~The local educational agency shall develop procedures for:~~

~~(a) determining whether a student with disabilities needs a surrogate parent; and~~

~~(b) assigning a surrogate parent; and~~

~~(c) terminating a surrogate parent appointment.~~

(3) ~~Local educational agencies shall ensure that a person selected as a surrogate parent:~~

~~(a) has no interest that conflicts with the interests of the child he or she represents; and~~

~~(b) has knowledge and skills that ensure adequate representation of the child.~~

~~(c) A person assigned as a surrogate is not an employee of the local educational agency or public agency which is involved in the education or care of the child.~~

~~(4) A person who otherwise qualifies to be a surrogate parent under this rule, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.~~

~~(5) The surrogate may represent the child in all matters relating to:~~

~~(a) the identification, evaluation, and educational placement of the child; and~~

~~(b) the provision of a free appropriate public education to the child.~~

~~(6) The local educational agency shall petition a court of competent jurisdiction for termination of the surrogate parent appointment when the child's student's parents are identified, the whereabouts of the parents are discovered, the child student is no longer a ward of the state or the surrogate parent wishes to discontinue her or his appointment.~~

~~(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)~~

10.16.1105 10.16.3346 AVERSIVE TREATMENT PROCEDURES

~~(1) Individual programs involving the use of aversive stimuli (e.g., restraints, shock, seclusion) shall be conducted only with the written consent of the affected student's parents and at the recommendation of the child study team and shall be described by specific behavioral objectives. Chemical restraint may never be used for punishment, for staff convenience, or as a substitute for a program. Each use of physical restraint, aversive techniques, or environmental seclusion shall be recorded in the student's file.~~

~~(2) The record shall include:~~

~~(a) description of behavior to be modified;~~

~~(b) evidence that less aversive measures have been tried;~~

~~(c) expected behavioral outcome;~~

~~(d) actual behavioral outcome;~~

~~(e) if relevant, list possible secondary effects;~~

~~(f) date for review or termination; and~~

~~(g) written parental permission.~~

(1) Aversive treatment procedures may be appropriate for an individual student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions. Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program addressing the behavioral needs of students.

(2) Aversive treatment procedures are defined as:

(a) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;

(b) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device;

(c) physical restraint, other than as provided in 20-4-302, MCA, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and

(d) isolation time-out which results in the removal of a student to an isolation room under the following conditions:

(i) the student is alone in the isolation room during the period of isolation;

(ii) the student is prevented from exiting the isolation room during the period of isolation;

(iii) the door to the isolation room remains closed during the period of isolation; and

(iv) the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.

(3) Any student in isolation timeout must be under the direct constant visual observation of a designated staff person throughout the entire period of isolation.

(4) The following procedures are prohibited:

(a) any procedure solely intended to cause physical pain;

(b) isolation in a locked room, except in residential treatment facilities and psychiatric hospitals as defined in 20-7-436, MCA, when prescribed by a physician as part of a treatment plan and when implemented in compliance with relevant federal and state law; and

(c) the withholding of a meal for a period of greater than one hour from its scheduled starting time.

(5) Exclusion timeout is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (2)(d).

(6) IEPs shall include the use of aversive treatment procedures only when:

(a) subsequent to a functional behavioral assessment, a series of no less than two written positive behavioral intervention strategies, which were designed to target the behavior to be changed, were previously implemented;

(b) the IEP team includes a person trained and knowledgeable about best practices in the application of positive behavioral interventions, aversive treatment procedures and nonaversive alternatives for de-escalation of behaviors; and

(c) a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as a part of the IEP.

(7) A behavioral intervention plan using aversive treatment procedures shall:

(a) include a statement describing no less than two positive behavioral intervention strategies previously attempted and the results of these interventions, as described in (6)(a);

(b) describe the target behavior(s) that will be consequented with the use of the aversive treatment procedure(s);

(c) include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s);

(d) provide a written description of the aversive treatment procedure(s);

(e) specify a time limit for the use of the aversive treatment procedure for any one instance;

(f) include data collection procedures for recording each application of the aversive treatment(s);

(g) state when the IEP team will meet to review the ongoing use, modification or termination of the aversive procedure;

(h) designate an individual responsible for ongoing review and analysis of the data on the target behavior;

(i) state how the student's parents will be regularly informed of the progress toward the short-term objectives in the IEP at a frequency no less than is required in 34 CFR 300.347; and

(j) state whether any standard school disciplinary measures are waived.

(8) When an aversive treatment plan is incorporated in the IEP, the parents must be informed that their consent to the IEP includes consent for the aversive treatment plan. Failure to obtain consent is subject to due process proceedings under ARM 10.16.3507 through 10.16.3523.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1108~~ 10.16.3661 OPPORTUNITY TO PRESENT COMPLAINTS

(1) The superintendent of public instruction has established the following state complaint procedures to provide for the filing of complaints by comply with 34 CFR 300.660 through 300.662. Individuals or organizations alleging that a Montana local educational agency or public agency has failed to provide a student with disabilities a free appropriate public education may use ARM 10.16.3662 to file a complaint.

(2) Whenever a complaint has been received with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a qualified student, the complainant may request an impartial due process hearing in accordance with ARM 10.16.2401 through 10.16.2417.

(3) If the complainant alleges the notice provided by the local educational or public agency was not adequate under 34 C.F.R. 300.505, the state compliance officer shall investigate the allegations and if the findings support a conclusion that the notice was inadequate, shall order the issuance of a notice in compliance with that section.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1110~~ 10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint that the local educational or public agency is violating the Individuals with Disabilities Education Act (20 U.S.C., sections 1401- through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (MCA Title 20, chapter 7, part 4, MCA) or the administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16).

(2) The complaint must include:

(a) allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.662 unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under 34 CFR 300.660;

~~(a)(b)~~ A contain a specific statement of what requirement of a federal or state statute, regulation, or rule that applies to a student with disabilities or special education that the local educational or public agency has allegedly violated; a requirement of a federal or state statute, regulation or rule that applies to a student with disabilities or special education- and

(b)(c) include a statement of The facts on which the statement allegation is based.

(3) The complaint must be filed with the Compliance Officer, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501. The compliance officer may return the complaint for a more complete statement of the issue. The compliance officer may contact the complainant orally or in writing to discuss the details of the complaint.

(4) Upon Within 10 calendar days of receipt of the final written complaint, the compliance officer shall send written notification to the complainant and the local educational agency and/or the public agency named in the complaint that a complaint has been filed, conduct an appropriate investigation of the allegations and prepare a final report stating the findings and conclusions of the compliance officer. The complaint, investigative records and the final report shall be filed in a confidential file retained by the compliance officer.

(a) The compliance officer shall include a copy of the complaint with the notice to the local educational or public agency.

~~(a)(b)~~ If the complaint addresses matters listed in ARM 10.16.1108 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the complainant shall be informed compliance officer shall inform the complainant of the right to secure request a due process hearing under the provisions of special education due process procedural rules under 34 CFR

~~300.507 and ARM 10.16.2401—10.16.3507 through 10.16.2417 10.16.3523. The complainant will be notified that unless s/he requests that their names not be released to the local educational agency, the local educational agency will be notified of the name of the person(s) filing the complaint.~~

~~(b) The compliance officer shall send written notice to the named local educational or public agency which includes information about the nature of the allegations in the complaint within 10 days of receipt of the complaint.~~

~~(c) The written notice shall inform the local educational or public agency and the complainant that the office of public instruction will contact both parties to implement its early assistance program pursuant to [RULE XI]. The early assistance program requires that prior to conducting an investigation of the allegations and preparation of a final report, the office of public instruction shall actively facilitate resolution of the written complaint for a maximum of 15 business days.~~

~~(i)(5) The compliance officer shall request the local educational or public agency to file. If the local educational or public agency and the complainant are successful in resolving the dispute within 15 business days, the complaint will be dismissed. If resolution within 15 business days is not possible, the compliance officer shall immediately request the local educational or public agency to prepare and submit its written response to the allegations complaint within 15 10 calendar days of receipt of receiving the written notice of filing of complaint by the compliance officer that the early assistance program has been unsuccessful. An extension may be granted to the local educational or public agency by the compliance officer based on merits. An extension shall not be granted that will result in findings issued past the 60 day timeline. The local educational or public agency shall send its response to the compliance officer and a copy to the complainant.~~

~~(ii)(6) The local educational or public agency may request a 10 day extension of the 15 day period. The compliance officer may grant an extension of 10 days if the local educational or public agency has shown good cause exists. Upon receipt of the local educational or public agency's response, the compliance officer shall begin an appropriate investigation.~~

~~(iii)(7) The complainant will be given the opportunity have 10 calendar days to submit to the compliance officer additional information, either orally or in writing, about the allegations in the complaint and the local educational or public agency's written response to the complaint. The 10 days will be counted from the day after the complainant receives a copy of the local educational or public agency's response.~~

~~(c) The compliance officer shall write a preliminary report in regard to the investigation of the complaint and forward a copy to the local educational or public agency and the complainant within 30 days of the receipt of the complaint. If an onsite investigation has not been conducted within that 30 day period, the report will indicate whether an onsite investigation is required and inform the local educational or~~

~~public agency of the date of such investigation. The preliminary report will inform the complainant of the opportunity to submit additional information, either orally or in writing about the allegations in the complaint.~~

~~(d)(8) During the investigation neither the complainant nor the local educational or public agency or others representing either party shall contact the compliance officer without notifying the other party.~~ Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the local educational or public agency is violating a requirement of federal or state statute, regulation or rule concerning the provision of a free appropriate public education to a student with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint unless an extension of the 60 day period is required by exceptional circumstances which exist with respect to the particular complaint.

(9) The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. The written decision will contain the reasons for the office of public instruction's decision. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action. The office of public instruction will provide technical assistance at the request of the local educational or public agency. The complaint, investigative records, and the final report shall be filed in a confidential file retained by the compliance officer.

~~(e)(10) At any time during this process, if the compliance officer determines that the complaint has been resolved and compliance is achieved, the compliance officer shall inform the complainant and the local educational or public agency of that fact in writing. The complainant shall be given an opportunity to respond before the complaint is considered closed.~~

~~(f) If the complainant disagrees with the decision of the compliance officer, the complainant may request that the Secretary, U.S. Department of Education, Federal Office Building, 400 Maryland Ave. SW, Washington, DC 20202, review the decision.~~

(g)(11) If within 60 days of issuance of the final report, the local educational or public agency has not implemented the corrective action required by the final report, the office of public instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

~~(i)(a)~~ recommending to the board of public education withholding state education funds;

~~(ii)(b)~~ denial in whole or part IDEA-B, part B federal funds; or

~~(iii)(c)~~ recommending to the board of public education a change in accreditation status.

~~(h)(12) If the local educational or public agency alleges that the state education agency office of public instruction has~~

violated a state or federal special education statute, regulation or rule in ordering the corrective action required by the final report, the ~~state education agency~~ office of public instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401(e)(2) through (7), and the Montana Administrative Procedure Act, sections 2-4-601 through 2-4-711, MCA, prior to implementing sanctions. (AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1112~~ 10.16.3320 REFERRAL (1) A local educational agency shall establish a referral process which includes a method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral must include a statement of the reasons for referral, a ~~description of any options the local educational agency considered~~ including documentation of regular general education interventions and ~~the reasons why those options were rejected~~, and the signature of the person making the referral.

(b) and (c) remain the same.

(2) If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the local educational agency shall notify the parent in writing of its decision, including a description of any options the local educational agency considered and the reasons why those options were rejected and a full explanation of all of the procedural safeguards available under ~~subpart E of IDEA~~ 34 CFR 300.500 through 300.529.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1113~~ 10.16.3321 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS (1) Before initial provision of special education and related services, a comprehensive and individualized evaluation of the student's educational needs shall be conducted in accordance with the requirements of ~~20 U.S.C. Sec. 1414, and its implementing regulations~~ 34 CFR 300.531 through 300.543.

(2) For initial evaluations, the child study team report shall address:

(a) remains the same.

(b) The data necessary to address criteria established in ARM ~~10.16.1115~~ 10.16.3010 through ~~10.16.1128~~ 10.16.3022.

(3) through (9) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1114~~ 10.16.3322 COMPOSITION OF A CHILD STUDY TEAM

(1) The initial evaluation for determining eligibility for special education and related services is made by the child study team that includes the following members:

(a) remains the same.

(b) At least one regular general education teacher of the student if the student is or may be participating in the ~~regular general~~ general education environment;

(c) At least one special education teacher or, if appropriate, related services provider;

(d) through (g) remain the same.

(2) remains the same.

(AUTH: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA)

~~10.16.1115~~ 10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD WITH DISABILITIES AGES 3 THROUGH 5 (1) A ~~student child~~ may be identified as being a child with disabilities, ~~without the specific category being identified,~~ if the child is 3, 4, or 5 years old and meets the criteria for one or more disabilities in ARM 10.16.3011 through 10.16.3022.

(2) At the discretion of the local educational agency, a child may be identified as being a child with disabilities if the child experiences a severe delay in development. A severe delay in development means:

(a) and (b) remain the same.

~~(2) The student may not be identified as a child with disabilities if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, MCA)

~~10.16.1116~~ 10.16.3012 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING COGNITIVE DELAY (1) The student may be identified as having cognitive delay if the student has a significantly subaverage general intellectual functioning and ~~significant~~ corresponding deficits in adaptive behavior and educational performance, especially in the area of application of basic academic skills in daily life activities.

(2) and (3) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, MCA)

~~10.16.1117~~ 10.16.3013 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS (1) The student may be identified as having deaf-blindness if documentation supports that the student:

(a) Meets the criteria in ARM ~~10.16.1124~~ 10.16.3022 for visual impairment;

(b) Meets the criteria in ARM ~~10.16.1123~~ 10.16.3020 for speech-language impairment;

(c) Meets the criteria in ARM ~~10.16.1119~~ 10.16.3016 for hearing impairment or in ARM ~~10.16.1118~~ 10.16.3014 for deafness; and

(d) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1118~~ 10.16.3014 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS (1) remains the same.

(2) The student's educational performance is adversely affected as documented by specific examples. The results and analysis of a current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually is required to show an impairment in processing linguistic information prior to identification.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, MCA)

~~10.16.1119~~ 10.16.3016 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING HEARING IMPAIRMENT (1) The student may be identified as having a hearing impairment if an audiological report documents that the student has a permanent hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided, or has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to adversely affect educational performance. ~~"Adversely affect the student's educational performance"~~ means that the student's ability to learn in the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided, to the degree that the student needs special education and related services.

~~(2) Each local educational agency shall ensure that auditory trainers or hearing aids worn in school by students with hearing impairments are functioning properly.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1120~~ 10.16.3017 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT (1) The student may be identified as having orthopedic impairment if:

~~(a) The student is diagnosed by a qualified medical practitioner that the impairment substantially limits normal function of muscles and joints due to congenital anomaly, disease or permanent injury and as having an orthopedic impairment;~~

~~(b) The impairment is severe; and~~

~~(c) The impairment adversely affects the student's educational performance, ability to learn or participate in the general education curriculum. "Substantially limits" requires specific examples of the adverse impact of the orthopedic impairment on the student's educational performance and documentation of:~~

~~(a) The effect of the orthopedic impairment on the student's ability to participate in educational programs including vocational and physical education programs;~~

~~(b) The effect of medications, treatments or other medical interventions on the student's educational performance; and~~

~~(c) The results of a physical therapy and/or occupational therapy evaluation which describes the need for therapy as related to educational performance.~~

~~(2) The term orthopedic impairment includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1122~~ 10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student

may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels:

(a) The student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (1)(b); and

(b) The student has a severe discrepancy between the student's intellectual ability and ~~academic~~ achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning; and

~~(c) The severe discrepancy between ability and achievement is not correctable without special education and related services.~~

(i) A severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in (1)(b) when adjusted for regression to the mean. Error in test measurement requires judgment for students who score near two standard deviations below the population mean. When exercising this judgment, consideration of additional information, such as classroom performance relative to the student's performance on norm referenced tests, shall be used as the basis for determining the severe discrepancy.

~~(ii) When standardized test instruments do not provide valid assessment results for determining the two standard deviation discrepancy, any alternative assessment procedure utilized shall determine Alternatives to norm referenced tests shall be utilized to determine severe discrepancy whenever cultural factors, test conditions, size of test item sampling for the student's age, or other factors render standardized assessment results invalid. When utilizing alternative assessment procedures, a determination must still be made that a discrepancy between ability and achievement exists at a level of severity similar to a two standard deviation discrepancy in size to the discrepancy that would have otherwise been found in (1)(b)(i). In making this judgment, the child study team shall document the basis for concluding that standardized test instruments when applied to this student are not valid and verify with specific examples that the student's ability to learn in the regular education setting in one or more of the areas listed in (1)(b) remains severely affected even when classroom interventions are applied.~~

(2) The student may be identified as having a specific learning disability only when ~~written documentation supports that:~~

(a) The student has had opportunities to learn commensurate with the student's age and abilities;

~~(b) At least two intervention techniques have been tried in the regular classroom and the student's ability remains severely affected; and~~

~~(c)(b) Educationally relevant medical findings, if any, have been considered.~~

(3) Documentation of the learning disability determination shall:

(a) Meet the requirements for a written report found in 34 CFR 300.543; and

(b) If appropriate, state the basis for concluding that the use of standardized test instruments would not be valid whenever provisions of (1)(b)(ii) are utilized to determine a severe discrepancy.

~~(3)(4) The student may not be identified as having a specific learning disability if the severe discrepancy between ability and achievement is primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay or emotional disturbance the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; or cultural difference.~~
(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1124~~ 10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (1) The student may be identified as having a visual impairment if the student has a:

~~(a) visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than 20 degrees in the better eye with correction; and~~

~~(b) needs special education and related services.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, MCA)

~~10.16.1125~~ 10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (1) remains the same.

~~(2) Assessments shall document the presence of at least six items from (a), (b) and (c), to include one from (a)(ii) and one from (a)(iii): significant delays in verbal and nonverbal communication and social interaction.~~

~~(a) Qualitative impairment in social interaction, as manifested by at least two of the following:~~

~~(i) marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze facial expression, body postures and gestures to regulate social interaction;~~

~~(ii) failure to develop peer relationships appropriate to developmental level;~~

~~(iii) a lack of spontaneous seeking to share enjoyment, interests or achievements with other people (e.g., a lack of showing, bringing or pointing out objects of interest);~~

~~(iv) lack of social or emotional reciprocity;~~

~~(b)(a) Qualitative impairments in communication as Significant delays in verbal communication are manifested by at least one of the following:~~

(i) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);

(ii) in ~~individuals~~ students with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;

(iii) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level~~+~~.

(b) Significant delays in nonverbal communication are manifested by a marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, or gestures to regulate social interaction.

(c) Significant delays in social interaction are manifested by at least one of the following:

(i) failure to develop peer relationships appropriate to developmental levels;

(ii) lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., lack of showing, bringing or pointing out objects of interest);

(iii) lack of social or emotional reciprocity.

(e)(3) Other characteristics often associated with autism which may assist but are not required for identification, include Rrestricted, repetitive and stereotyped patterns of behavior, interests and activities, as manifested by at least one or more of the following:

(i)(a) eEncompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(ii)(b) aApparently inflexible adherence to specific nonfunctional routines or rituals;

(iii)(c) sStereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);

(iv)(d) pPersistent preoccupation with parts of objects;

(d) Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years:

(i) social interaction;

(ii) language as used in social communication;

(iii) symbolic or imaginative play.

(4) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (2) and (3) are met.

(3)(5) The student may not be identified as having autism if the student's has a hearing impairment, emotional disturbance or global cognitive defects in which the student exhibits "autistic-like" behavior, such as Rett's disorder, Asperger's disorder, or childhood disintegrative disorder educational performance is adversely affected primarily because the student has an emotional disturbance.

(AUTH: Sec. 20-7-402, MCA; IMP: Sec. 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1126~~ 10.16.3015 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE (1) and (2) remain the same.

(3) The student may be identified as having emotional disturbance when:

(a) The student has been observed by ~~two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide in more than one setting within the educational environment which provides a foundation for probable concern for emotional disturbance; and~~

(b) The local educational agency has attempted at least ~~two different~~ planned and implemented one positive behavioral intervention techniques which may include, but are not limited to, changes in the student's regular class schedule, curriculum, and/or teacher, school counseling or use of community resources specific to the individual student. Interventions shall not unnecessarily delay appropriate identification when it can be shown through a student's social or developmental history, compiled directly from the student's parents or from records when the parents are not available, the existence of emotional disturbance.

~~(c) Documentation of the observations and interventions shall include:~~

~~(i) descriptions of procedures, durations of each, and results accruing to each;~~

~~(ii) dated and signed documented anecdotal records of behavioral observations made in multiple settings (i.e., in addition to the classroom setting, consider playground, cafeteria, school bus, hallway, etc.) and showing that the student's disability is evident in other than the school classroom environment; and~~

~~(iii) a social or developmental history compiled directly from the student's parents, or from records when the parents are not available.~~

(4) The student may not be identified as having emotional disturbance if:

~~(a) Delays in educational performance are primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay, health factors, cultural factors or limited educational opportunity; or~~

~~(b) (5) Common disciplinary problems behaviors (e.g., truancy, smoking, breaking school conduct rules) are the sole criteria for determining existence of emotional disturbance. Common disciplinary problem behaviors may exist in conjunction with emotional disturbance, but cannot be used as the sole criteria for recommending special education and related services determining the existence of an emotional disturbance.~~

~~(5) (6) The term emotional disturbance does not apply to children students who are socially maladjusted, unless it is determined that they have meet the criteria herein for emotional disturbance.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1127~~ 10.16.3018 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (1) The student may be identified as having other health impairment if:

(a) ~~The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes; and~~

(b) ~~that The condition adversely affects the student's educational performance.~~

~~(2) The child study team shall determine whether the disability adversely affects the student's educational performance in the regular curriculum, with or without accommodations or modifications, and because of that disability needs special education.~~

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

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1128~~ 10.16.3021 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING TRAUMATIC BRAIN INJURY (1) The student may be identified as having traumatic brain injury if the student has an acquired injury to the brain caused by external physical force which ~~substantially limits~~ adversely affects the student's functional or psychosocial ability or both and the student's ability to learn or participate in the general local educational agency's education curriculum program.

~~(2) "Substantially limits" means that the student's ability to learn and participate in the general education setting remains severely affected even when classroom interventions are applied or accommodations provided. Documentation shall include specific examples of the severe effect of the injury on the student's educational performance, including school attendance, loss or retention of previously acquired skills and knowledge, and student's social/interpersonal skills.~~

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

~~(4)~~ (3) The student may not be identified as having a traumatic brain injury if ~~the disability is primarily due to visual or hearing impairment, cognitive delay, emotional disturbance, or if the injury to the brain is congenital, degenerative, or caused by birth trauma.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

~~10.16.1201~~ 10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES (1) Each local educational agency shall establish procedures to ensure that all students with disabilities living within the jurisdiction boundaries of the local educational agency regardless of the severity of their disability are identified, located, and evaluated including a practical method to determine which children students are currently receiving needed special education and related

services and which children are not currently receiving needed special education and related services. If the student is parentally enrolled in a private school outside the boundaries of the local educational agency in which the student is living, the local educational agency where the private school is located is responsible for child find activities through referral.

(a) remains the same.

(b) The written procedures shall describe the methods for collecting, maintaining, and reporting current and accurate data on all student identification activities. At a minimum, the procedures must:

(i) name the title of the person responsible for the coordination, implementation, and documentation of the procedures; and

(ii) describe student identification activities including audiological, health, speech/language and visual screening, and review of data or records for children students who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, or waiver of learner outcomes (accreditation standards); and

(iii) remains the same.

(iv) ensure the collection and use of data are subject to in accordance with the confidentiality requirements of these rules 34 CFR 300.560 through 30.577.

(2) Before any major identification, location, or evaluation activity, the local educational agency must provide parents with written notice of the policies and procedures it implements to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained under part B of IDEA. The notice must comply with the requirements of 34 CFR 300.561 and be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the local educational agency jurisdiction boundaries of the activity.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1213~~ 10.16.3129 PARENTAL INVOLVEMENT (1) Each local educational agency or public agency shall afford parents the opportunity to participate in the child study team process and individualized education program meetings.

~~(2) Each local educational agency or public agency shall take whatever action is necessary to ensure parent participation, including arranging for an interpreter for parents who are deaf or whose native language is other than English.~~

~~(3)~~ (2) No parent of a child student receiving special education and related services will be required to perform duties not required of any other parent whose child is of a student enrolled in the local educational agency.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.1314~~ 10.16.3818 SPECIAL EDUCATION TUITION RATES

(1) remains the same.

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

(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~~ general education tuition rate:

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

(b) remains the same.

(4) through (7) remain the same.

(AUTH: 20-5-323, MCA; IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA)

~~10.16.1902~~ 10.16.3220 PROGRAM NARRATIVE (1) Each local educational agency or education cooperative must have on file with the office of public instruction a written program narrative that describes policies and procedures used for the provision of special education and related services within the local educational agency or education cooperative. The policies, procedures, and programs in the program narrative shall include the following components: be consistent with state policies and address the requirements of 34 CFR 300.121 through 300.156.

~~(a) Written procedures to ensure:~~

~~(i) that all students residing within the jurisdiction of the local educational agency who are disabled and in need of special education and related services are identified, located and evaluated including students in all public and private agencies and institutions within its jurisdiction;~~

~~(ii) that confidentiality of personally identifiable information meets the standards of 34 CFR 300.221;~~

~~(iii) implementation and use of the office of public instruction comprehensive system of personnel development;~~

~~(iv) that in meeting the goal under 34 CFR 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of students with disabilities;~~

~~(v) that to the maximum extent practicable, and consistent with 34 CFR 300.500 through 300.553 of subpart E, the local~~

~~educational agency provides special services to enable students with disabilities to participate in regular educational programs including the types of alternative placements that are available for students with disabilities, and the number of students within each disability category who are served in each type of placement;~~

~~(vi) that the local educational agency complies with 34 CFR 300.530 through 300.534;~~

~~(vii) that the local educational agency complies with 34 CFR 300.340 through 300.349; and~~

~~(viii) procedural safeguards.~~

~~(b) Written statement for a goal of providing full educational opportunity to all students with disabilities, aged birth through 21 and a date when the goal will be accomplished; and~~

~~(e)(2) The program narrative shall include a copy of the local educational agency or education cooperative special education policies and forms.~~

~~(2)(3) If a local educational agency participates in an education cooperative under sections 20-7-451 and 20-7-457, MCA, the local educational agency must submit a single program narrative through the cooperative.~~

~~(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)~~

~~10.16.2203~~ 10.16.3803 DEFINITIONS The following definitions apply to rules affecting the funding of special education programs:

(1) through (3) remain the same.

(4) "Child count" means the number of students with disabilities receiving special education and related services per a current individualized education program on December 1 of each fiscal year. This number is reported in accordance with ARM ~~10.16.2704~~ 10.16.3752.

(5) through (14) remain the same.

(AUTH: 20-7-402, 20-7-431, 20-7-457, MCA; IMP: 20-7-414, 20-7-431, 20-7-457, 20-9-321, MCA)

~~10.16.2205~~ 10.16.3805 SPECIAL EDUCATION ALLOWABLE COST LIMITATIONS (1) Allowable costs for public school districts for purposes of determining payments are limited to instructional and related service costs and do not include the entire cost of operating a special education program. Allowable costs specifically do not include:

(a) through (e) remain the same.

(f) the cost of administrative support personnel, such as clerks and clerical personnel, with the exception of ARM ~~10.16.2207~~ 10.16.3807(1)(c) and ~~10.16.2208~~ 10.16.3808(1)(a); and

(g) remains the same.

(2) Allowable costs for expenditures for salaries and benefits of personnel who serve both regular and special education must be directly proportionate to the time dedicated to special education allowable costs outlined in ARM ~~10.16.2206~~ 10.16.3806 and ~~10.16.2207~~ 10.16.3807. To support the proportion of time charged to special education, districts and cooperatives

must maintain documentation such as time and effort reports, class schedules, job descriptions or other support information that will verify the time each person devotes to activities associated with special education allowable costs.

(AUTH: 20-7-431, MCA; IMP: 20-7-431, MCA)

~~10.16.2206~~ 10.16.3806 SPECIAL EDUCATION ALLOWABLE COSTS--INSTRUCTIONAL BLOCK GRANT (1) Allowable costs associated with instruction of students with disabilities include:

(a) Salaries and benefits, not excluded in ARM ~~10.16.2205~~ 10.16.3805, for qualified special education teachers and special education teacher aides for the proportion of time spent providing services to students with disabilities. This includes time spent:

(i) and (ii) remain the same.

(b) through (f) remain the same.

(AUTH: 20-7-431, MCA; IMP: 20-7-431, MCA)

~~10.16.2207~~ 10.16.3807 SPECIAL EDUCATION ALLOWABLE COSTS--RELATED SERVICES BLOCK GRANT (1) Allowable costs associated with the provision of related services to students with disabilities include:

(a) Salaries and benefits, not excluded in ARM ~~10.16.2205~~ 10.16.3805, for licensed or certified professional support personnel who meet the qualifications in ARM ~~10.16.1713~~ 10.16.3136, for supervisors of special education, speech language pathologists, audiologists, counselors, social workers, school psychologists, physicians, nurses, physical and occupational therapists and other professional persons meeting the requirements for the profession or discipline responsible for delivery of a special education related service for the proportion of time spent:

(i) through (iv) remain the same.

(b) Salaries and benefits, not excluded in ARM ~~10.16.2205~~ 10.16.3805, for support personnel aides for the proportion of time spent:

(i) through (iii) remain the same.

(c) Salaries and benefits, not excluded in ARM ~~10.16.2205~~ 10.16.3805, for clerical personnel who assist professional support personnel, corresponding to the proportion of time spent providing assistance to professional support personnel;

(d) through (h) remain the same.

(AUTH: 20-7-431, MCA; IMP: 20-7-431, MCA)

~~10.16.2208~~ 10.16.3808 SPECIAL EDUCATION ALLOWABLE COSTS--COOPERATIVES (1) Special education allowable costs for cooperatives include all allowable costs in ARM ~~10.16.2206~~ 10.16.3806 and ~~10.16.2207~~ 10.16.3807 and the additional cost of the operation of the cooperative. These additional costs allowed exclusively for a cooperative are:

(a) and (b) remain the same.

(AUTH: 20-7-431, MCA; IMP: 20-7-431, 20-7-451, MCA)

~~10.16.2211~~ 10.16.3811 GENERAL PRINCIPLES OF THE SPECIAL

EDUCATION ALLOWABLE COST PAYMENT CALCULATION (1) through (3) remain the same.

(4) The special education allowable cost payment calculation consists of four steps:

(a) remains the same.

(b) Calculate a pro-rata percentage as stated in ARM ~~10.16.2212~~ 10.16.3812(5) to ensure that the statewide special education allowable cost payments do not exceed the available special education appropriation;

(c) and (d) remain the same.

(AUTH: 20-9-321, MCA; IMP: 20-9-321, MCA)

~~10.16.2213~~ 10.16.3813 LOCAL MATCHING FUNDS (1) remains the same.

(2) The superintendent of public instruction will determine from district prior fiscal year trustees' financial summary reports if local match has been met.

(a) Demonstration that local match contributions have been made is determined by totaling the prior fiscal year special education allowable cost expenditures, defined in ARM ~~10.16.2206~~ 10.16.3806 and ~~10.16.2207~~ 10.16.3807, as reported on the annual trustees' financial summary for the general fund, the impact aid fund, the metal mines tax reserve fund and state mining impact fund. Those prior fiscal year expenditures must equal or exceed the district's minimum special education expenditures to avoid reversion for the prior fiscal year.

(3) remains the same.

(AUTH: 20-9-321, MCA; IMP: 20-9-321, MCA)

~~10.16.2218~~ 10.16.3817 SPECIAL EDUCATION FUNDING REVERSION

(1) and (2) remain the same.

(3) The reversion will be calculated as follows:

(a) Calculate the district's total prior fiscal year expenditures of allowable costs in accordance with 20-7-431, MCA, and ARM ~~10.16.2206~~ 10.16.3806 and ~~10.16.2207~~ 10.16.3807.

(b) Subtract the district's total prior fiscal year expenditures calculated in (3)(a) from the district's prior fiscal year minimum special education expenditure to avoid reversion as defined in ARM ~~10.16.2203~~ 10.16.3803.

(c) and (d) remain the same.

(4) remains the same.

(5) A district participating in a cooperative must provide to the cooperative the required related service matching funds as certified by the superintendent of public instruction. Failure to provide the match by June 30 of the fiscal year for which the related services block grant was established will cause the participating district to lose eligibility for future membership in the cooperative at the end of the three year participation cycle as defined in ARM ~~10.16.2601~~ 10.16.3901 and may affect the terms of the cooperative's interlocal agreement.

(AUTH: 20-9-321, MCA; IMP: 20-9-321, MCA)

~~10.16.2402~~ 10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS (1) ~~Impartial due process matters involving educating~~

~~students with disabilities may be initiated by a parent, legal guardian or surrogate parent of a student with disabilities if the parent disagrees with a decision of a school district for which notice to parents is required.~~

~~(2) Impartial due process hearings involving educating students with disabilities may be initiated by a school district board of trustees or governing authority of the state operated facility when, after reasonable efforts at mediation, a parent, legal guardian or surrogate parent either fails to provide a written parental consent for a proposed educational action, or provides a formal disapproval of education actions. A hearing may also be initiated by a school district board of trustees to show that its educational evaluation is appropriate whenever an independent evaluation is requested by the parent, legal guardian or surrogate parent.~~

~~(3) A request for an impartial due process hearing involving the education or possible identification of a student with disabilities shall be made in writing to the State Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501, and include a short, plain statement of matters asserted.~~

(2) The superintendent of public instruction shall develop a model form to assist parents in filing a request for due process. The request shall include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student attends;

(d) A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) Upon receipt, the office of public instruction shall mail a copy to the other party.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2403 10.16.3509 SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES~~ (1) Upon receipt by the state

~~superintendent of public instruction mail of a written request for a due process hearing involving a special education controversy, the state superintendent of public instruction shall:~~

~~(a) Promptly advise the board of trustees district administration and parent, legal guardian or surrogate parent of the request for due process hearing; and~~

~~(b) Provide the board of trustees up to and including ten calendar days in which to address the special education controversy in the school district, and reach a final decision. (This ten days is counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM 10.16.2417). Pending the final decision of the board of trustees or upon mutual agreement of the parties, the state superintendent of public instruction shall provide mediation so long as both parties voluntarily and freely agree to the~~

mediation. ~~The mediation conference is an attempt to resolve the differences and, if possible, avoid a due process hearing. The mediation shall:~~

~~(i) be an intervening, informal process conducted in a non adversarial atmosphere;~~

~~(ii) not be used to deny or delay an aggrieved party their rights to a hearing.~~

~~(e) Appoint an impartial hearing officer to conduct a due process hearing.~~

(i) The state superintendent of public instruction shall maintain a list of ~~persons~~ individuals who are qualified to serve as impartial hearing officers.

(ii) Selection of impartial hearing officer:

(A) Upon receiving a ~~copy of the~~ request for hearing, the state superintendent of public instruction shall mail to each party a list of the names of five proposed impartial hearing officers together with a summary of their qualifications

(B) A Each party shall have ~~seven~~ five business days following receipt of the list of names to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the state superintendent of public instruction. Requests for more information about proposed impartial hearing officers must be directed to the superintendent of public instruction. Unless good cause is shown, this request for more information does not extend the ~~seven~~ five business day response time. (This ~~seven~~ five business days is counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM ~~10.16.2417~~ 10.16.3523.)

(C) If the parties arrive at a mutually agreeable choice, the superintendent of public instruction shall make the appointment from the ranking.

(D) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon an impartial hearing officer, the state superintendent of public instruction shall make the appointment from the names ranked by the parties.

~~(D) Notwithstanding the foregoing provisions, the parties may mutually select the impartial hearing officer from the list provided by the state superintendent of public instruction.~~

~~(iii) Disqualification:~~

~~(A) A hearing may not be conducted by a person who is an employee of a school district or other public agency which is involved in the education or care of the child, or who has a personal or professional interest which would conflict with his or her objectivity in the conduct or review of the hearing.~~

~~(B) A person who otherwise is qualified to conduct a hearing under paragraph (A) of this subsection is not an employee solely because he or she is paid by contract by the public agency to serve as impartial hearing officer.~~

(2) An impartial hearing officer may at any point withdraw from consideration or from service in any hearing in which the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing

officer's objectivity. Such written request to withdraw shall be directed to the state superintendent of public instruction. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2404~~ 10.16.3510 NOTICE OF HEARING (1) The impartial hearing officer shall within ten days of receipt of notice of appointment by the state superintendent of public instruction schedule a prehearing conference pursuant to ARM ~~10.16.2406~~ 10.16.3512. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:

- (a) through (e) remain the same.
- (2) and (3) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2405~~ 10.16.3511 CONFERENCE AND INFORMAL DISPOSITION

(1) remains the same.

(2) This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may informally confer to resolve the special education controversy by stipulation, agreed settlement, consent order, or default. To be effective, any agreement made at such conference must be reduced to writing and signed by all parties. An agreed resolution shall end the proceedings upon formal action of the hearing officer unless a party to the hearing appeals the decision under ARM ~~10.16.2417~~ 10.16.3523.

~~(3) If it is appropriate, the impartial hearing officer may draft findings of fact, conclusions of law and order and shall promptly send to each party in the special education controversy.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2406~~ 10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES (1) The impartial hearing officer shall schedule a prehearing conference to ~~consider~~:

- (a) ~~the simplification of~~ identify and clarify the issues;
- (b) determine the necessity or desirability of amendments to the request for impartial due process hearing;
- (c) ~~the possibility of obtaining, if possible,~~ admissions of fact and documents which will avoid unnecessary proof;
- (d) ~~a limitation of the number of expert witnesses set~~ discovery and prehearing schedule, including schedule for identification of expert witnesses;
- (e) determine if the parent wants an audio record of the hearing and/or the findings of facts and decision; and
- ~~(e)(f)~~ consider such other matters as may aid in the disposition of the action.

(2) through (4) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2407~~ 10.16.3513 DISCOVERY (1) The impartial hearing officer may compel, limit or conduct discovery prior to the hearing and/or prehearing conference pursuant to ARM ~~10.16.2408~~ 10.16.3514 through ~~10.16.2410~~ 10.16.3516.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2408~~ 10.16.3514 DISCOVERY METHODS (1) remains the same.

(2) Any evidence to be introduced at the hearing or on file shall be disclosed to the opposing party at least 5 five business days before the hearing or the evidence will not be admitted.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2412~~ 10.16.3518 AVAILABILITY OF CROSS-EXAMINATION OR PARTICIPATION IN THE HEARING (1) The right to examine, cross-examine or to participate as a party in this action shall be limited to the attorneys, the lay advocates with special knowledge or training with respect to the ~~problems of handicapped children~~ students with disabilities who accompany and advise a particular party named in the matter, the particular parties named in the matter, and the impartial hearing officer.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2416~~ 10.16.3522 RECORD (1) remains the same.

(2) Any party to a hearing has the right to obtain ~~written or electronic verbatim~~ an audio record of the hearings. A ~~transcript verbatim record~~ transcribed and made available upon request of either party to the hearing, transcribed. The ~~state~~ superintendent of public instruction will pay costs associated with the transcription of the record taken by the court reporter.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2417~~ 10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within 45 days of the ~~state~~ superintendent of public instruction's receipt of the request for hearing unless an extension of time has been granted by the impartial hearing officer. The impartial hearing officer may grant a request by either party for a specific extension of the 45-day period allowed for rendering a final order. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the ~~state~~ superintendent of public instruction. The hearing officer shall also mail or deliver the record as defined in ARM ~~10.16.2416~~ 10.16.3522 to the state superintendent of public instruction.

(2) In the event the impartial hearing officer has granted a written request from a party to extend the 45-day period in

which to render a final decision, the impartial hearing officer shall notify the ~~state~~ superintendent of public instruction when the decision is due. In the event the decision is not rendered within 90 days from the date the request for impartial due process hearing was filed with the ~~state~~ superintendent of public instruction, the ~~state~~ superintendent of public instruction may remove the impartial hearing officer and appoint another impartial hearing officer.

(3) and (4) remain the same.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under ~~20 U.S.C. 1415(e)(2) of the Individuals with Disabilities Education Act~~ 34 CFR 300.512.

(6) The ~~state~~ superintendent of public instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that occur.

(7) remains the same.

(8) In the event that parents of a ~~handicapped child student with disabilities~~ prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found under ~~20 U.S.C. 1415(e)(4) of the Individuals with Disabilities Education Act~~ 34 CFR 300.513.

(9) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

~~10.16.2701~~ 10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) The local educational agency (~~LEA~~) in which ~~the~~ a student with disabilities resides is responsible for ensuring ~~that~~ the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16). If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency.

(2) ~~To the extent consistent with their number and location, the local educational agency shall make provision for the participation of private school students with disabilities~~

in special education and related services provided by the local educational agency. When the local educational agency provides education to students ages 19, 20 or 21, students of the same age with disabilities will be provided a free appropriate public education in accordance with IDEA.

(a) Each LEA shall provide special education and related services designed to meet the needs of private school students with disabilities residing in the jurisdiction of the agency.

(3) Students with disabilities unilaterally placed in private schools by their parents when a free appropriate public education is not an issue will be provided services as required by 34 CFR 300.450 through 300.462.

(a) The local educational agency in which the private school is located shall be responsible for child find activities, through referral, for students attending the private school.

(b) The local educational agency in which the private school is located shall refer each student identified under (3)(a) to the local educational agency in which the student resides.

(c) The local educational agency in which the student resides shall follow the procedures established in ARM 10.16.3320(1)(c) or (2) for each referred private school student.

(d) If the student is qualified for special education services, the local educational agency in which the student resides shall consult with the private school officials and develop a service agreement in accordance with 34 CFR 300.454 through 300.456.

(e) Each private school student with disabilities who has been designated to receive services under 34 CFR 300.452 must have a services plan that describes the specific special education and related services that the local educational agency in which the student resides will provide to the student in light of the services that the local educational agency has determined, through the process described in 34 CFR 300.453 through 300.454, it will make available to private school students with disabilities.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2703 10.16.3345 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES

(1) remains the same.

(2) Whenever a student with disabilities is receiving special education and related services in a setting not defined by the school's learner outcomes (accreditation standards) non-graded program and the student is age 14 on or before September 10th of the school year, the responsibility for ensuring a free appropriate public education changes from the elementary local educational agency to the high school local educational agency.

(3) Chronological age and physical development should be strong factors in the decision to move a student from the junior high or middle school to the high school. Consideration also

must be given to the least restrictive environment principle in planning for promotion.

(4) A student with disabilities shall be promoted or retained according to local educational agency criteria unless ~~specific learner outcomes~~ are waived in the student's IEP.

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

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.2704~~ 10.16.3752 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT (1) Each local educational agency shall count the number of students with disabilities receiving special education and related services on December 1 of each year and submit the count to the office of public instruction by December 10 of that year.

(a) The count shall include only those students with disabilities who:

(i) are identified in accordance with ARM ~~10.16.1116~~ 10.16.3010 through ~~10.16.1124~~ 10.16.3022 and have an individualized education program or services plan in effect on the date the count is taken;

(ii) and (iii) remain the same.

(b) remains the same.

(2) The child count shall be submitted on forms provided by the office of public instruction and shall include written assurance that students with disabilities counted on December 1 had an individualized education program or services plan implemented on the day the count was taken.

(3) and (4) remain the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.2705~~ 10.16.3181 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS (1) In order to receive federal entitlement funds under IDEA, a local educational agency shall annually submit an application to the office of public instruction in accordance with application instructions and within announced timelines.

(a) A local educational agency may submit a single district application if it has:

(i) an entitlement of \$7500 or more; and

(ii) established, satisfactory to the office of public instruction, special education and related services which provide a free appropriate public education to students with disabilities.

(b) A local educational agency that participates in an education cooperative under 20-7-451 and 20-7-457, MCA, shall submit one consolidated application through the cooperative.

(c) A local educational agency that generates an entitlement of less than \$7500 or that is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall participate in one consolidated application with other local educational agencies.

~~(2) The application shall meet the requirements of section 436 of the General Education Provisions Act, and include: A~~

consolidated application must meet the same requirements as a single district application.

~~(a) Written assurances to the office of public instruction that the local educational agency: If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds.~~

~~(i) provides special education and related services in accord with the local educational agency's program narrative under IDEA; and~~

~~(ii) uses accounting system that permits identification of use of designated funds.~~

~~(b) Written descriptions of how the applicant will, in the ensuing project period year, use:~~

~~(i) IDEA funds;~~

~~(ii) the office of public instruction comprehensive system of personnel development; and~~

~~(iii) facilities, services and personnel for delivery of special education and related services.~~

~~(c) Signed debarment and certifications as required.~~

~~(d) Data, reports and information to enable the office of public instruction to perform its duties.~~

~~(e) Written description of how the applicant will meet the federal requirements for participation of students enrolled in private schools including:~~

~~(i) the number of students identified as eligible to receive benefits under IDEA who are enrolled in private schools with the jurisdiction of the applicant; and~~

~~(ii) the number who will receive benefits under IDEA; and~~

~~(iii) the basis upon which students are selected; and~~

~~(iv) the manner and extent to which consultation was conducted with representatives of private school students; and~~

~~(v) the places and times that the students will receive benefits under IDEA and the differences, if any, between the program benefits the applicant will provide to private school students and students enrolled in the local educational agency, and the reasons for the differences.~~

~~(3) remains the same.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.2708 10.16.3505 PARENTAL CONSENT (1) Written parental consent to conduct an initial evaluation must be obtained by the local educational agency or public agency a reasonable time prior to the evaluation process.~~

~~(a) Written parental approval applies only to those procedures used selectively with an individual student (i.e., individual intelligence measures, audiometric evaluation, speech, voice, language evaluation and diagnostic skill testing) and not to basic tests administered to all children in school (i.e., yearly achievement measures, vision screening, hearing screening and speech screening).~~

~~(b)~~ The local educational agency shall maintain written documentation of the date the notice of intent to conduct an evaluation was sent to the parent and the date of parental consent for the evaluation.

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational agency or public agency prior to the placement except as provided in subsection (3).

(a) and (b) remain the same.

~~(3) Except for initial evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or the student.~~

~~(a)~~ When parental consent for initial evaluation or initial placement is refused, the local educational agency or public agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM ~~10.16.2401~~ 10.16.3507 through ~~10.16.2417~~ 10.16.3523, to determine if the student may be initially evaluated or initially provided special education and related services without parental consent.

~~(i)~~(a) If the hearing officer upholds the local educational agency or public agency, the local educational agency or public agency may initially evaluate or initially provide special education and related services to the student without parental consent subject to the parent's right to bring a civil action.

(b) When parental consent for annual placement has not been obtained ~~after following procedures in ARM 10.16.1213 and 10.16.2709~~ and has not been specifically refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the parent.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency or public agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational agency or public agency shall provide the student special education and related services according to the student's IEP without parental consent subject to the parent's right to an impartial due process hearing under ARM ~~10.16.2401~~ 10.16.3507 through ~~10.16.2417~~ 10.16.3523.

(c) When parental consent for annual placement is refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the parent before ~~requesting an impartial due process hearing under ARM 10.16.2401 through 10.16.2417.~~ If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall:

(i) provide the parent written notice as required by 34 CFR 300.503; and

(ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it may file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523.

(d) A parent may revoke consent at any time. If the parent revokes consent, the parent and the local educational agency have the right to due process procedures under ARM ~~10.16.2401~~ 10.16.3507 through ~~10.16.2417~~ 10.16.3523.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

~~10.16.2719~~ 10.16.3135 COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (1) The office of public instruction shall establish procedures for the development and conduct of a comprehensive system of personnel development which ~~includes in service, preservice, and technical assistance training for regular education teachers, special education teachers, school administrators and related service providers.~~ The procedures shall include:

(a) Analysis of state and local needs for professional development for personnel to serve students with disabilities that includes at a minimum:

(i) the number of personnel providing special education and related services;

(ii) relevant information on current and anticipated personnel vacancies and shortages including the number of individuals described in (1)(a)(i) with provisional certification; and

(iii) the extent of certification or retraining necessary to eliminate these shortages that is based, to the maximum extent possible, on existing assessments of personnel needs.

~~(a)(b)~~ An annual statewide needs assessment to be conducted before June 1 of each year to determine if:

(i) through (iii) remain the same.

~~(b)(c)~~ Annual program plan which provides a detailed structure for personnel planning and that focuses on preservice and in-service education needs and which that describes procedures for:

(i) acquiring, reviewing and disseminating to ~~regular general~~ and special education teachers, paraprofessional personnel (e.g., teacher aides and instructional assistants), administrators and related service providers significant information about promising educational practices proven effective through research or demonstration;

(ii) and (iii) remain the same.

(2) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

7. The rules proposed for repeal follow.

10.16.109 OFFICE OF PUBLIC INSTRUCTION APPROVAL OF PROGRAM NARRATIVE FOR SPECIAL EDUCATION AND RELATED SERVICES found at page 10-217.3, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.112 CONFIDENTIALITY IN CHILD FIND found at page 10-217.5, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.114 MISCLASSIFIED CHILDREN found at page 10-217.6, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.214 SPECIAL EDUCATION DEFINITIONS found at page 10-217.14, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.1001 SPECIAL EDUCATION REQUIREMENTS found at page 10-219, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1102 INDEPENDENT EDUCATIONAL EVALUATION found at page 10-223, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1207 CONTENT OF INDIVIDUALIZED EDUCATION PROGRAM found at page 10-244, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1212 PROMOTION OF STUDENTS FROM ELEMENTARY TO SECONDARY PROGRAMS found at page 10-244.2, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1301 LEAST RESTRICTIVE ENVIRONMENT found at page 10-245, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-411, MCA)

10.16.1305 CONTINUUM OF SERVICES found at page 10-245.1, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1308 SPECIAL EDUCATION IN HOME, HOSPITAL OR INDIVIDUALIZED SETTINGS found at page 10-245.2, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1310 PLACEMENT BY THE LOCAL EDUCATIONAL AGENCY found at page 10-245.3, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1801 AUXILIARY PERSONNEL found at page 10-251, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.1904 EVALUATION found at page 10-254, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2106 APPLICATIONS FOR FEDERAL FUNDS BY A COOPERATIVE
found at page 10-257, ARM
(AUTH: 20-7-457, MCA; IMP: 20-7-403, 20-7-457, MCA)

10.16.2303 INDIVIDUALS WITH DISABILITIES EDUCATION ACT,
PART B found at page 10-261, ARM
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

10.16.2501 SPECIALIZED TRANSPORTATION AS A RELATED SERVICE
found at page 10-281, ARM
(AUTH: 20-7-442, MCA; IMP: 20-3-106, MCA)

10.16.2503 BUS CAPACITY found at page 10-281, ARM
(AUTH: 20-7-442, 20-10-112, MCA; IMP: 20-3-106, 20-10-141, MCA)

10.16.2702 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR
PRESCHOOL SPECIAL EDUCATION AND RELATED SERVICES found at page
10-285, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2706 TYPES OF APPLICATIONS FOR FEDERAL FUNDS --
SINGLE/CONSOLIDATED found at page 10-287, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2707 WRITTEN NOTICE found at page 10-288, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2709 PARENTAL INVOLVEMENT IN INDIVIDUALIZED
EDUCATIONAL PROGRAM (IEP) MEETING found at page 10-290, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2710 STUDENT'S STATUS DURING PROCEEDINGS found at
page 10-290.1, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2711 STUDENT'S STATUS DURING EXCLUSION FROM SCHOOL
found at page 10-290.2, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2712 INDIVIDUALIZED EDUCATION PROGRAM IMPLEMENTATION
found at page 10-290.2, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2713 COMPOSITION OF INDIVIDUALIZED EDUCATION PROGRAM
TEAM found at page 10-290.3, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2714 RELATED SERVICES found at page 10-290.4, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2715 IEP ACCOUNTABILITY found at page 10-290.4, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2716 DETERMINING LEAST RESTRICTIVE ENVIRONMENT found at page 10-290.5, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2717 COMPARABILITY found at page 10-290.5, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2718 LENGTH OF SCHOOL DAY, SCHOOL YEAR found at page 10-290.5, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.2720 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES FOR PRIVATE SCHOOL STUDENTS found at page 10-290.7, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.2721 ENROLLMENT IN NONPUBLIC SCHOOLS BY PARENTS found at page 10-290.7, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

10.16.2722 SPECIAL EDUCATION AND RELATED SERVICES WHEN STUDENT IS RESIDENT OF ANOTHER LOCAL EDUCATIONAL AGENCY found at page 10-290.7, ARM
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

8. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearings. Written data, views or arguments may also be submitted by mail to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@state.mt.us and must be received no later than 5:00 p.m. on March 8, 2000.

9. Janice Frankino Doggett, of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

10. The Office of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Services, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501, or may be made by completing a request form at any rules hearing held by the Office of Public Instruction.

11. The bill sponsor requirements of 2-4-302, MCA, do not apply.

12. The effective date of these administrative rules, as adopted, will be July 1, 2000.

/s/ Nancy Keenan
Nancy Keenan
Superintendent
Office of Public Instruction

/s/ Janice Frankino Doggett
Janice Frankino Doggett
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State January 14, 2000.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of rule 12.6.901) ON PROPOSED AMENDMENT
regulating personal water-)
craft on Tongue River)
Reservoir)

TO: All Concerned Persons

1. The Montana Fish, Wildlife and Parks Commission (commission) will hold public hearings to consider two alternative proposals to amend ARM 12.6.901, restricting the use of personal watercraft, and potentially other watercraft, on Tongue River Reservoir. The hearing dates and places are as follows:

February 22, 2000, 7:00 p.m.
Miles City Community College
2715 Dickinson Street
Miles City, Montana

February 23, 2000, 7:00 p.m.
Sheridan Center Best Western
610 North Main
Sheridan, Wyoming

February 24, 2000, 7:00 p.m.
Department of Fish, Wildlife and Parks
Region 5 Headquarters meeting room
2300 Lake Elmo Drive
Billings, Montana

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, please contact the department no later than 5:00 p.m. on February 11, 2000, to advise us of the nature of the accommodation that you need. Please contact Connie Gilbertson, Department of Fish, Wildlife and Parks, P.O. Box 1630, Miles City, MT 59301; (406) 232-0910; FAX (406) 232-4368.

3. The commission proposes two alternatives for the proposed rule amendment. The proposed amendment provides as follows, new matter underlined, deleted matter interlined:

ALTERNATIVE A

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, public welfare, public safety, ~~or~~ and protection of property and public resources, the following regulations concerning the public use of certain waters of the state of

Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

(a) through (g) remain the same.

(h) The use of personal watercraft is restricted on the following waters. The definition of personal watercraft in 23-2-502, MCA applies to this rule:

Bighorn County: (A) Tongue River Reservoir is closed to the operation of personal watercraft.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

ALTERNATIVE B

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, public welfare, public safety, ~~or~~ and protection of property and public resources, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

(a) and (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County: (A) Tongue River Reservoir as buoyed in the marina area at Campers Point;

(B) The entire Tongue River Reservoir from the shoreline to 200 feet off shore. Exceptions: (1) Personal watercraft which must maintain a certain minimum operating speed to remain upright and maneuver in the water may travel at that minimum operating speed following the most direct route between the no wake and shore. (2) Motorized watercraft towing a skier from a dock or the shore.

(d) through (g) remain the same.

(h) The use of personal watercraft is restricted on the following waters. The definition of a personal watercraft in 23-2-502, MCA applies to this rule:

Bighorn County: (A) Tongue River Reservoir is closed to the operation of personal watercraft. Exceptions: (1) Personal watercraft are allowed

from July 15 to the Thursday
before Labor Day each year
between the hours of 12:01 p.m.
until 6:00 p.m. daily.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

4. The proposed rule amendments are necessary to protect public safety, preserve fishing opportunities, and respond to numerous complaints about the operation of personal watercraft, or jet skis, on the Tongue River Reservoir. Since 1994 boat registration in Montana has increased 10% while jet ski registration has increased 133%. While 10% of all registered watercraft in Montana are jet skis, in 1998 these craft accounted for 42% of all reported boating accidents.

The commission believes many jet ski operators are responsible and safe, but the percentage who do not operate their craft in a safe, legal manner is causing serious safety concerns on the reservoir. The department has received many complaints from reservoir users about jet skis being operated purposely in very close proximity to anchored boats, attempting to splash water into fishing boats, noise, wake jumping, and activities in which jet ski users tightly circle their machines to make waves to jump and by so doing cause boats near the shore to be washed ashore and pounded on the edge. A majority of the activities the department has received complaints about takes place close to the shore. Many of these activities are illegal, but the amount of enforcement available on the reservoir makes it impossible for the department to adequately monitor the irresponsible operators.

Operation of jet skis on the reservoir is also diminishing fishing opportunities. The Tongue River Reservoir offers the best black and white crappie fishing in Montana. The best crappie fishing occurs during the spawning period during May and June. Crappies congregate in the shallow, warm water along the shoreline and, at the peak of the fish run, crappies are often caught on each cast. Memorial Day weekend is usually the peak of the crappie run and fisherman from Montana and Northern Wyoming gather to participate in this event.

A conflict arises when jet ski operators, also seeking warmer water, continuously operate their machines along the shore thereby causing the fish to move to the deeper, quieter waters. Additionally, the wave action from the jet ski wakes churns the water, making it turbid. This coupled with the already, "off color" water from the spring run off seems to have a negative impact on fishing success in the camp areas from Pee Wee Point upstream to Camper's Point and Rattlesnake Point.

Since Tongue River Reservoir also provides good smallmouth bass and walleye fishing throughout the summer, numerous complaints

from campers and persons fishing are received throughout the summer.

The proposed rule amendments are a reasonable way to protect public safety and fishing on the Tongue River Reservoir. Two options are proposed for public comment and discussion.

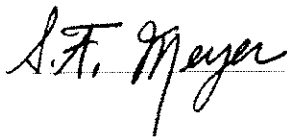
5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Don Hyyppa, Department of Fish, Wildlife and Parks, Route 1-4210, Glasgow, MT 59230, and must be submitted no later than March 3, 2000.

6. Douglas J. Monger has been designated to preside over and conduct the hearing.

7. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive the notices and description of the subject or subjects or interest. Such written request may be mailed or delivered to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701, faxed to the office at (406) 444-7456.

8. The bill sponsor notification requirements of 2-4-302, MCA do not apply.

By:



S.F. Meyer
Commission Chairman



Robert N. Lane
Rule Reviewer

Certified to the Secretary of State January 14, 2000

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of one new rule) THE PROPOSED ADOPTION OF ONE
related to the payment of) NEW RULE
silicosis benefits)

TO: All Concerned Persons

1. On February 18, 2000, at 10:00 a.m., a public hearing will be held in the Council Chambers (3rd floor), Butte-Silver Bow County Courthouse, 155 West Granite, Butte, Montana, to consider the adoption of one new rule related to the payment of silicosis benefits.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 4:00 p.m., February 10, 2000, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTD (406) 444-5549; fax (406) 444-3465. Persons with disabilities who need an alternative accessible format of this notice in order to participate in this rule-making process should contact Ms. Wilson.

3. The Department of Labor and Industry proposes to adopt a new rule as follows:

NEW RULE I PAYMENT OF SILICOSIS BENEFITS (1) The department of labor and industry will pay silicosis benefits to persons entitled to receive those benefits pursuant to Title 39, chapter 73, MCA. Such persons include the victim of silicosis, the surviving spouse of such a victim, or an appropriate representative of the victim or surviving spouse of the victim.

(2) The monthly amount paid as silicosis benefits is established by the legislature, and is subject to a funding level appropriated by the legislature for payment of monthly silicosis benefits.

(a) For the state fiscal biennium 2000-2001, the monthly amount paid as silicosis benefits is \$225.00, except for persons who are the surviving spouse of a victim who died prior to March 14, 1974, or the representative of such a surviving spouse. The monthly amount payable to the surviving spouse of a victim who died prior to March 14, 1974, or the representative of such a surviving spouse, is \$125.00.

AUTH: 39-73-102, MCA

IMP: 39-73-104, 39-73-107, 39-73-108, 39-73-109, 39-73-111, MCA, and Chap. 142, L. of 1999

REASON: There is reasonable necessity to adopt NEW RULE I. In addition to the provisions of § 39-73-102(1), MCA, which appears to require the Department to adopt such rules as are necessary for the payment of silicosis benefits to eligible persons, there is reasonable necessity to adopt NEW RULE I in order to harmonize the provisions of § 39-71-107, MCA, with the clear legislative directive of Chapter 142, Laws of 1999 (House Bill 495). The need for a rule harmonizing the provisions of § 39-73-107, MCA, and Chapter 142, L. of 1999 recently came to the attention of the Department. The Department believes that the 1999 Legislature, in enacting House Bill 495, intended the Department increase the \$200.00 monthly silicosis benefit payment to \$225.00 per month and the \$100.00 monthly silicosis benefit payment for certain surviving spouses to \$125.00, and directed the Department to do so by appropriating additional money to pay those monthly benefits at the higher rate.

4. Concerned 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:

Keith Messmer, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by not later than 5:00 p.m., February 25, 2000.

5. An electronic copy of this Notice of Public Hearing is generally available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. Because the Department is continually updating the design and features of its website, the Department reserves the right to change the location of the electronic copy of this Notice to elsewhere within the Department's website. In the event of such a change of location, the Department will endeavor to provide appropriate links from the Calendar of Events section of the website to the new location of this Notice of Public Hearing and other current rule-making documents. At the present time, the Department does not yet have the capability of accepting comments on the proposed rules via the Internet or e-mail.

6. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. The Department proposes to make the new rule effective as soon as feasible. The Department reserves the right to adopt only a portion of the rule, or to adopt some or all of the rule at a later date.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 14, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 4.10.1806)
relating to fees)
)

TO: All Concerned Persons

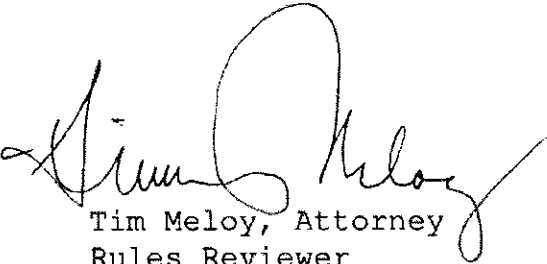
1. On December 2, 1999, the Montana Department of Agriculture published a notice of proposed amendment of ARM 4.10.1806 at page 2672 of the 1999 Montana Administrative Register, Issue No. 23.

2. The department has amended the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

By: 
Ralph Peck
Director

By: 
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State January 14, 2000.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of)	CORRECTED NOTICE
amendment of ARM 6.6.4102)	OF AMENDMENT
pertaining to continuing)	
education fees)	

TO: All Concerned Persons:

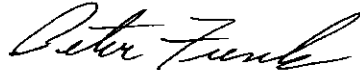
1. On October 7, 1999, the department published notice of the amendment of ARM 6.6.4102 pertaining to continuing education fees at page 2247 of the 1999 Montana Administrative Register, Issue Number 19.

2. The reason for the correction is: On June 22, 1999, the State Auditor's office published notice of the proposed amendment of ARM 6.6.4102 at page 1600 of the 1999 Montana Administrative Register, Issue Number 14. That notice of proposed amendment showed an effective date of January 1, 2000. The notice of amendment failed to show the effective date of January 1, 2000. This notice is to correct that error.

3. The effective date of the amendment is January 1, 2000.

4. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on December 31, 1999.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance



By:
Peter Funk
Deputy Insurance Commissioner



By:
Janice S. VanRiper
Rules Reviewer

Certified to the Secretary of State January 14, 2000.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to) 8.58.415A CONTINUING REAL
continuing real estate) ESTATE EDUCATION
education)

TO: All Concerned Persons

1. On October 21, 1999, the Board of Realty Regulation published a notice of a public hearing on the proposed amendment of the above-stated rule at page 2337, 1999 Montana Administrative Register, issue number 20. The hearing was held November 22, 1999.

2. The Board has adopted 8.58.415A exactly as proposed.

3. The Board received two written comments. The comments received and the Board's response is as follows:

COMMENT #1: The Montana Association of Realtors stated that they would like to have the audit requests mailed by registered mail.

RESPONSE: Because of the number of audits performed and the expense involved in mailing all original audit requests out registered mail, the Board determined they would not pursue that option. A policy was adopted that requires the staff to send out the original audit letter with a certificate of service. At the conclusion of the 30 day requirement, the Board would send a registered notice to the licensee that they failed to comply with the audit and give them an additional 20 days to comply, at which time their license would be suspended pursuant to Section 37-51-310, MCA.

COMMENT #2: The second comment concluded that the only reason the mandatory hours were being changed was so that the Board would say they were doing something.

RESPONSE: The Board's response is that they had a task force that studied the entire continuing education issue at great length and it was the recommendation of the task force to change the mandatory hours. The Board concluded that this was sufficient reasoning to adopt the change in mandatory hours.

BOARD OF REALTY REGULATION
JOHN BEAGLE, CHAIRMAN

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

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

In the matter of the) NOTICE OF ADOPTION OF
adoption of a new rule for the) NEW RULE I (8.94.3806)
administration of the 2000/2001) PERTAINING TO THE
Treasure State Endowment) ADMINISTRATION OF THE
Program (TSEP)) 2000/2001 TREASURE STATE
) ENDOWMENT PROGRAM

TO: All Concerned Persons

1. On October 12, 1999, the Department of Commerce published notice of a public hearing on the proposed adoption of the above-stated rule at page 2342, 1999 Montana Administrative Register, issue number 20. The Department convened the hearing on November 17, 1999, at 1:30 p.m. in the downstairs conference room at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana.

2. The Department has adopted new rule I (8.94.3806) as proposed with the following changes: (authority and implementing sections will remain the same as proposed)

"8.94.3806 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS UNDER THE 2000/2001 TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program 2000/2001 Application Guidelines published by it as rules ~~for the administration of governing the submission and review of applications under the TSEP program.~~

(2) will remain the same as proposed.

(3) will remain the same as proposed."

3. The reason for the changes noted above is to distinguish that the new rule deals with the submission and evaluation of applications for TSEP funding from the administration of TSEP projects after they been approved by the Legislature. That administration will be addressed by the TSEP Administrative Manual which will be adopted by reference in an administrative rule at a later date.

4. In response to comments received, the Department has made several minor changes in the application guidelines themselves. These changes are discussed in item 5, below. In addition, the Department has modified the guidelines to provide that TSEP funds will not be released to a recipient until the Department has determined that the recipient is in compliance with the auditing and reporting requirements established by the Department under section 2-7-503, MCA, and has established a financial accounting system which conforms to generally accepted accounting practices or "GAAP."

5. Two members of the public attended and testified at the hearing. In addition, the Department received eight written comments during the comment period provided for by the

Administrative Procedure Act. A summary of the oral testimony and the written comments and the Department's responses to them follow:

COMMENT #1: Two individuals representing the Hinsdale Water and Sewer Association commented that a rural special improvement district (RSID) should be allowed to receive TSEP funds through the county without requiring that it be formed as a county water and sewer district. One these individuals that commented stated that the Department has some valid concerns about the problems with the management and operation of these systems through an RSID, but that the Department could find some other means, such as auditing, to ensure their proper management and operation. Another individual commented that he also agreed with this concept.

Three individuals commented that the rule requiring the formation of a RSID as a county water and sewer district prior to applying or the county applying on their behalf should be maintained. Two of the individuals provide technical assistance throughout the state to communities and districts that operate water and sewer systems and the third represented a former RSID that re-formed as a county water and sewer district. These three individuals described numerous problems communities have encountered when RSID's have been used as the vehicle to manage, operate and administer the activities of a water or sewer system. They also stressed the importance to the effective operation and long-term management of a utility system of involving the local residents in the process through the structure provided by a county water and sewer district.

RESPONSE: Based on its experience and the confirmation of this experience by comments it has received, the Department has decided to maintain the requirement that existing water users' associations or RSID's must be reconstituted as county water or sewer districts before they may apply, or a county may apply on their behalf, for TSEP funds. The Department believes that the water and sewer district mechanism provides a greater opportunity for the proper management and operation of water and sewer systems. The Department has observed numerous situations where water and sewer systems have been mismanaged and poorly operated through the RSID mechanism. The Hinsdale Water and Sewer Association itself has had numerous problems over the years as documented by the Department of Environmental Quality.

It is important to have local residents who are served by a community water or sewer system to have direct involvement in the management and operation of that system. The involvement of the persons who utilize the system in its operation provides greater assurance that it will be properly managed and operated. The members of a county water and sewer district board have only one concern - the management and operation of the system. County commissioners have numerous

competing responsibilities in administering their county, and may not be able to devote the attention to the operation of the water or sewer system that it requires, especially if they are not, themselves, users of the system.

The Department strongly encourages, and certain federal funding programs require, that grantees based their utility rate structure on consumption. Unlike water and sewer districts, however, RSID's have no authority to incorporate water meters into their systems. The fact that other funding agencies limit their assistance to unincorporated areas to county water and sewer districts was also a consideration in the Department's decision.

COMMENT #2: One individual commented that financial need would become a higher priority under the new guidelines.

RESPONSE: The restructuring of the priorities used to rank applications, and the movement of financial need from priority #5 to #2, was a change made to the TSEP statute by the 1999 Legislature.

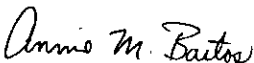
COMMENT #3: The Montana Department of Transportation (DOT) suggested some minor changes regarding the definition of a "bridge" versus a "culvert," and the structuring of one paragraph in the preliminary engineering report outline.

RESPONSE: The Department has incorporated the changes suggested by the DOT.

6. No other comments or testimony were received.


LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 2000.

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

In the matter of the transfer) NOTICE OF TRANSFER
of Title 17, Chapter 70)
pertaining to radiation)
control)

TO: All Interested Persons

1. Pursuant to Chapter 73, Laws of Montana 1997, effective July 1, 1997, the radiation control program is transferred from the Department of Environmental Quality, Title 17 to the Department of Public Health and Human Services, Title 37. The repealed rules will appear in the "Repealed Rules" table in back of Title 37 Administrative Rules of Montana. The rules will be renumbered as follows:

<u>OLD</u>	<u>NEW</u>	
17.70.101	37.14.101	Policy
17.70.102	37.14.102	Definitions
17.70.103	37.14.106	Exemptions
17.70.104	37.14.107	Records
17.70.105	37.14.108	Inspections
17.70.106	37.14.115	Tests
17.70.107	37.14.116	Prohibited Uses
17.70.108	37.14.120	Communications
17.70.201	37.14.301	Purpose
17.70.202	37.14.302	Definitions
17.70.203	37.14.306	Exemptions
17.70.204	37.14.307	Registration
17.70.205	37.14.315	Out-of-State Radiation Machines
17.70.301	37.14.501	Purpose
17.70.302	37.14.505	Exemptions: Source Material
17.70.303	37.14.506	Exemptions: Radioactive Material other than Source Material
17.70.308	37.14.510	Licenses: Types of Licenses
17.70.309	37.14.511	General Licenses—: Source Material
17.70.310	37.14.512	General Licenses—: Radioactive Material other than Source Material
17.70.311	37.14.513	General Licenses—: Intrastate Transportation of Radioactive Material
17.70.312	37.14.520	Specific Licenses—: Filing Application for Specific Licenses
17.70.313	37.14.521	Specific Licenses—: General Requirements for the Issuance of Specific Licenses

17.70.314	37.14.540	Specific Licenses—: Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material
17.70.315	37.14.541	Specific Licenses—: Special Requirements for Specific Licenses of Broad Scope
17.70.316	37.14.542	Specific Licenses—: Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices which Contain Radioactive Material
17.70.317	37.14.522	Specific Licenses—: Issuance of
17.70.318	37.14.526	Specific Licenses—: Specific Terms and Conditions of License
17.70.319	37.14.527	Specific Licenses—: Expiration of Licenses
17.70.320	37.14.528	Specific Licenses—: Renewal of License
17.70.321	37.14.529	Specific Licenses—: Amendment of Licenses at Request of Licensee
17.70.322	37.14.535	Specific Licenses—: Department Action on Applications to Renew and Amend
17.70.323	37.14.543	Specific Licenses—: Persons Possessing a License for Source, Byproduct, or Special Nuclear Material in Quantities not Sufficient to Form a Critical Mass
17.70.324	37.14.546	Existing Specific Licenses—: NARM
17.70.325	37.14.547	Specific Licenses—: Transfer of Material
17.70.326	37.14.550	Specific Licenses—: Modification, Revocation, and Termination
17.70.330	37.14.551	Reciprocity
17.70.331	37.14.552	Transportation—: Preparation of Material
17.70.401	37.14.701	Purpose and Scope
17.70.402	37.14.705	Permissible Doses, Levels and Concentrations—: Radiation Dose to Individuals in Restricted Areas
17.70.403	37.14.706	Permissible Doses, Levels, and Concentrations—: Determination of Accumulated Dose
17.70.404	37.14.707	Permissible Doses, Levels, and Concentrations—: Exposure of Individuals to Concentrations of

17.70.405	37.14.708	Radioactive Material in Air in Restricted Areas
17.70.406	37.14.709	Permissible Doses, Levels, and Concentrations—: Exposure of Minors
17.70.407	37.14.710	Permissible Doses, Levels, and Concentrations—: External Sources in Unrestricted Areas
17.70.408	37.14.711	Permissible Doses, Levels, and Concentrations—: Radioactivity in Effluents to Unrestricted Areas
17.70.412	37.14.720	Permissible Doses, Levels, and Concentrations—: Orders Requiring Furnishing of Bioassay Services
17.70.413	37.14.721	Precautionary Procedures—: Surveys
17.70.414	37.14.725	Precautionary Procedures—: Personnel Monitoring
17.70.415	37.14.726	Precautionary Procedures—: Caution Signs, Labels, and Signals
17.70.416	37.14.729	Precautionary Procedures—: Exceptions from Posting and Labeling Requirements
17.70.417	37.14.730	Precautionary Procedures—: Instruction of Personnel
17.70.418	37.14.731	Precautionary Procedures—: Storage and Control of Sources of Radiation
17.70.422	37.14.740	Precautionary Procedures—: Procedures for Picking Up, Receiving, and Opening Packages
17.70.423	37.14.741	Waste Disposal—: General Requirement
17.70.424	37.14.742	Waste Disposal—: Method of Obtaining Approval of Proposed Disposal Procedures
17.70.425	37.14.743	Waste Disposal—: Disposal by Release into Sanitary Sewerage Systems
17.70.426	37.14.744	Waste Disposal—: Disposal by Burial in Soil
17.70.430	37.14.750	Waste Disposal—: Disposal by Incineration
		Records, Reports and Notification—: Surveys, Radiation Monitoring, Disposal

17.70.431	37.14.751	Records, Reports, and Notification—: Reports of Theft or Loss of Sources of Radiation
17.70.432	37.14.755	Records, Reports, and Notification—: Notification of Incidents
17.70.433	37.14.756	Records, Reports, and Notification—: Reports of Overexposures and Excessive Levels and Concentrations
17.70.434	37.14.757	Records, Reports, and Notification—: Vacating Premises
17.70.435	37.14.758	Records, Reports, and Notification—: Notifications and Reports to Individuals
17.70.501	37.14.801	Purpose
17.70.502	37.14.802	Scope
17.70.503	37.14.803	Definitions
17.70.507	37.14.810	Equipment Control—: Limits on Levels of Radiation
17.70.508	37.14.811	Equipment Control—: Locking of Sources of Radiation
17.70.509	37.14.812	Equipment Control—: Storage Precautions
17.70.510	37.14.820	Equipment Control—: Radiation Survey Instruments
17.70.511	37.14.813	Equipment Control—: Leak Testing, Repair, Tagging, Opening, Modification, and Replacement of Sealed Sources
17.70.512	37.14.816	Equipment Control—: Quarterly Inventory
17.70.513	37.14.817	Equipment Control—: Utilization Logs
17.70.514	37.14.821	Equipment Control—: Inspection and Maintenance: Radiographic Exposure Devices and Storage Containers
17.70.515	37.14.823	Equipment Control—: Inspection and Maintenance: High Radiation Area Control Devices or Alarm Systems
17.70.520	37.14.830	Personal Radiation Safety Requirements for Radiographers and Radiographers' Assistants—: Limitations
17.70.521	37.14.831	Personal Radiation Safety Requirements for Radiographers and Radiographers' Assistants—: Operating and Emergency Procedures

17.70.522	37.14.832	Personal Radiation Safety Requirements for Radiographers and Radiographers' Assistants—;
17.70.525	37.14.833	Personnel Monitoring Control
17.70.526	37.14.840	Precautionary Procedures in Radiographic Operations—;
17.70.527	37.14.841	Security
17.70.528	37.14.845	Precautionary Procedures in Radiographic Operations—;
17.70.529	37.14.846	Records Required at Temporary Job Sites
17.70.601	37.14.1001	Precautionary Procedures in Radiographic Operations—;
17.70.602	37.14.1002	Special Requirements and Exemptions for Enclosed Radiography
17.70.603	37.14.1003	Scope
17.70.604	37.14.1005	Definitions
17.70.605	37.14.1006	General Safety Provisions
17.70.609	37.14.1010	Prohibited Use
17.70.610	37.14.1011	Fluoroscopic Installations
17.70.611	37.14.1012	Dental Radiographic Installations
17.70.615	37.14.1020	Veterinary Medicine Radiographic Installations
17.70.616	37.14.1021	Radiographic Installations other than Dental and Veterinary Medicine
17.70.617	37.14.1022	Special Requirements for Mobile Diagnostic Radiographic Equipment
17.70.701	37.14.1101	Special Requirements for Chest Photofluorographic Installations
17.70.702	37.14.1105	Therapeutic X-ray Installations
17.70.703	37.14.1106	Scope
17.70.801	37.14.1301	Interstitial, Intracavitary and Superficial Applications
17.70.802	37.14.1302	Teletherapy
17.70.803	37.14.1305	Scope
17.70.804	37.14.1306	Definitions
17.70.805	37.14.1307	Equipment Requirements
17.70.806	37.14.1308	Area Requirements
17.70.901	37.14.1401	Operating Requirements
17.70.902	37.14.1405	Personnel Requirements
		Purpose
		Registration Procedures and Requirements

17.70.903	37.14.1406	General Registration Procedure and Requirements—; Human Use of Particle Accelerators
17.70.904	37.14.1407	Registrations Procedure—; Human Use of Particle Accelerators
17.70.908	37.14.1415	Compliance
17.70.909	37.14.1416	Limitations
17.70.910	37.14.1417	Shielding and Safety Design Requirements
17.70.911	37.14.1418	Particle Accelerator Controls and Interlock Systems
17.70.912	37.14.1425	Warning Devices
17.70.913	37.14.1426	Operating Procedures
17.70.916	37.14.1430	Radiation Monitoring Requirements
17.70.917	37.14.1431	Ventilation Systems
17.70.1001	37.14.1701	Purpose and Scope
17.70.1002	37.14.1705	Posting of Notices to Workers
17.70.1003	37.14.1706	Instructions to Workers
17.70.1004	37.14.1707	Notifications and Reports to Individuals
17.70.1005	37.14.1720	Inspection Procedures
17.70.1006	37.14.1721	Consultation with Workers during Inspections
17.70.1101	37.14.1801	Scope
17.70.1102	37.14.1805	Permissible Concentrations and Levels of Radiation
17.70.1103	37.14.1806	Stabilization of Tailings Piles and Ponds from Mills

Dawn Slava
Rule Reviewer

Laurie Elvinger
Director, Public Health and Human Services

Certified to the Secretary of State January 14, 2000.

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

In the matter of the transfer)	NOTICE OF TRANSFER
of ARM 46.12.502B, 46.12.578)	
through 46.12.579A, 46.12.586)	
through 46.12.586E,)	
46.12.596A through)	
46.12.596F, 46.12.599A)	
through 46.12.599G,)	
46.12.1471 through)	
46.12.1473A pertaining to)	
medicaid mental health)	
services)	

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, medicaid mental health services is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the above-stated rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 88.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
46.12.502B	<u>37.88.101</u>	Medicaid Mental Health Services, Authorization Requirements
46.12.586	<u>37.88.201</u>	Licensed Clinical Social Work Services, Definitions
46.12.586A	<u>37.88.205</u>	Licensed Clinical Social Work Services, Requirements
46.12.586B	<u>37.88.206</u>	Licensed Clinical Social Work Services, Reimbursement
46.12.586C	<u>37.88.301</u>	Licensed Professional Counselor Services, Definitions
46.12.586D	<u>38.88.305</u>	Licensed Professional Counselor Services, Requirements
46.12.586E	<u>38.88.306</u>	Licensed Professional Counselor Services, Reimbursement
46.12.578	<u>37.88.601</u>	Licensed Psychologist Services, Definitions
46.12.579	<u>37.88.605</u>	Licensed Psychologist Services, Requirements
46.12.579A	<u>37.88.606</u>	Licensed Psychologist Services, Reimbursement

<u>OLD</u>	<u>NEW</u>	
46.12.1471	<u>37.88.901</u>	Mental Health Center Services, Definitions
46.12.1472	<u>37.88.905</u>	Mental Health Center Services, Requirements
46.12.1473	<u>37.88.906</u>	Mental Health Center Services, Covered Services
46.12.1473A	<u>37.88.907</u>	Mental Health Center Services, Reimbursement
46.12.596A	<u>37.88.1101</u>	Inpatient Psychiatric Services, Purpose and Definitions
46.12.596B	<u>37.88.1105</u>	Inpatient Psychiatric Services, Participation Requirements
46.12.596C	<u>37.88.1106</u>	Inpatient Psychiatric Services, Reimbursement
46.12.596D	<u>37.88.1107</u>	Inpatient Psychiatric Services, Cost Settlement and Underpayment
46.12.596E	<u>37.88.1115</u>	Inpatient Psychiatric Services, Administrative Review and Fair Hearing Procedures
46.12.596F	<u>37.88.1116</u>	Inpatient Psychiatric Services, Certification of Need for Services, Utilization Review and Inspections of Care
46.12.599A	<u>37.88.1401</u>	Institutions for Mental Diseases, Purpose
46.12.599B	<u>37.88.1402</u>	Institutions for Mental Diseases, Definitions
46.12.599C	<u>37.88.1405</u>	Institutions for Mental Diseases, Provider Participation Requirements
46.12.599D	<u>37.88.1406</u>	Institutions for Mental Diseases, Individual Treatment Plans
46.12.599E	<u>37.88.1410</u>	Institutions for Mental Diseases, Reimbursement
46.12.599F	<u>37.88.1411</u>	Institutions for Mental Diseases, Billing and Payment
46.12.599G	<u>37.88.1420</u>	Institutions for Mental Diseases, Administrative Review and Fair Hearing Procedures

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Dawn Silva
Rule Reviewer

Laurie Thunger
Director, Public Health and Human Services

Certified to the Secretary of State January 14, 2000.

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

In the matter of the transfer)	NOTICE OF TRANSFER
of ARM 46.12.4101,)	
46.12.4102, 46.12.4201)	
through 46.12.4203,)	
46.12.4206, 46.17.101,)	
46.17.102, 46.17.105,)	
46.17.107 through 46.17.109,)	
46.17.115 through 46.17.117,)	
46.17.119, 46.17.121,)	
46.17.123 and 46.17.124)	
pertaining to medicaid for)	
certain medicare)	
beneficiaries and others)	

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, medicaid for certain medicare beneficiaries and others is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the above-stated rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 83.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
46.12.4101	<u>37.83.201</u>	Qualified Medicare Beneficiaries, Application and Eligibility for Medicaid
46.12.4102	<u>37.83.202</u>	Qualified Medicare Beneficiaries, Effective Date of Eligibility
46.12.4201	<u>37.83.401</u>	Qualified Disabled Working Individuals, Application and Eligibility for Medicaid
46.12.4202	<u>37.83.402</u>	Qualified Disabled Working Individuals, Effective Date of Eligibility
46.12.4203	<u>37.83.406</u>	Qualified Disabled Working Individuals, Medicaid Benefits
46.12.4206	<u>37.83.501</u>	Specified Low Income Medicare Beneficiaries, Application and Eligibility for Medicaid
46.17.101	<u>37.83.801</u>	Medicaid Coverage for Qualified Medicare Beneficiaries
46.17.102	<u>37.83.802</u>	Qualified Medicare Beneficiaries, Definitions

<u>OLD</u>	<u>NEW</u>	
46.17.105	<u>37.83.805</u>	Qualified Medicare Beneficiaries, General Requirements
46.17.107	<u>37.83.810</u>	Qualified Medicare Beneficiaries, Payment of Medicare Premiums
46.17.108	<u>37.83.811</u>	Qualified Medicare Beneficiaries, Coverage and Reimbursement of Deductibles and Coinsurance for Medicare Services Also Covered by Full Medicaid
46.17.109	<u>37.83.812</u>	Qualified Medicare Beneficiaries, Payment for Chiropractic Services as Medicare Services Not Covered by Full Medicaid
46.17.115	<u>37.83.820</u>	Qualified Medicare Beneficiaries, Free Choice of Providers
46.17.116	<u>37.83.821</u>	Qualified Medicare Beneficiaries, Provider Requirements
46.17.117	<u>37.83.822</u>	Qualified Medicare Beneficiaries, Provider Choice of Participation and Other Rights
46.17.119	<u>37.83.825</u>	Qualified Medicare Beneficiaries, Payments to Providers
46.17.121	<u>37.83.826</u>	Qualified Medicare Beneficiaries, Copayments
46.17.123	<u>37.83.830</u>	Qualified Medicare Beneficiaries, Billing
46.17.124	<u>37.83.831</u>	Qualified Medicare Beneficiaries, Determination of Medical Necessity

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Dawn Silva
Rule Reviewer

Laurie Elvinger
Director, Public Health and
Human Services

Certified to the Secretary of State January 14, 2000.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 46.18.149)
and 46.18.150 pertaining to)
emergency assistance for)
recipients of temporary)
assistance to needy families)
(TANF))

TO: All Interested Persons

1. On December 2, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2755 of the 1999 Montana Administrative Register, issue number 23.

2. The Department has adopted the rule 46.18.150 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.18.149 EMERGENCY ASSISTANCE (1) and (2) remain as proposed.

(3) Emergency assistance will be provided only if:

(3)(a) and (b) remain as proposed.

(i) good cause for failure to accept or maintain employment or training for employment shall be determined in accordance with the provisions of ~~ARM 46.18.146~~ ARM 46.18.136.

(3)(c) through (10) remain as proposed.

AUTH: Sec. 53-2-201 and 53-4-212, MCA

IMP: Sec. 53-2-201 and 53-4-211, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Although no changes were proposed to subsection (3)(b)(i) of the rule, that subsection contains an error which should be corrected. Subsection (3)(b)(i) lists ARM 46.18.146 as the rule defining good cause, while ARM 46.18.136 is actually the correct cite.

RESPONSE: The Department appreciates the comment and is changing the cite to correctly reflect ARM 46.18.136 as the rule defining good cause for FAIM financial purposes.

Jawn Slava
Rule Reviewer

Launi Elvinger
Director, Public Health and
Human Services

Certified to the Secretary of State January 14, 2000.

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE
Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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 September 30, 1999. This table includes those rules adopted during the period October 1, 1999 through December 31, 1999 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 September 30, 1999, 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 1998 and 1999 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in December 1999, appear. Vacancies scheduled to appear from February 1, 2000, through April 30, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 7, 2000.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1999

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Real Estate Appraisers (Commerce)			
Mr. Tim Moore Helena	Governor	Northcutt	12/21/1999 5/1/2001
Qualifications (if required): real estate appraiser			
Building Codes Council (Commerce)			
Mr. Derek J. Brown Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the home building industry			
Mr. Fred Flanders Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the public			
Mr. Dick Grover Missoula	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the State Plumbing Board			
Mr. Joe Hansen Bozeman	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the building contractor industry			
Mr. Jeffrey Jenkins Great Falls	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): municipal building inspector			
Mr. Robert J. Karhu Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): practicing architect			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1999

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Building Codes Council (Commerce) cont.			
Mr. Terry Phillips Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): state fire marshal			
Mr. Daniel Prill Great Falls	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): practicing professional engineer			
Mr. Howard Reid Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the Department of Public Health and Human Services			
Mr. Mike Skinner Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the manufactured housing industry			
Mr. Joe F. Wolfe Helena	Governor	not listed	12/17/1999 10/1/2002
Qualifications (if required): representative of the State Electrical Board			
Burial Preservation Board (Indian Affairs)			
Mr. Melbert Eaglefeathers Butte	Governor	Stovall	12/23/1999 8/22/2001
Qualifications (if required): public member			
Mr. Carl Fourstar Poplar	Governor	reappointed	12/23/1999 8/22/2001
Qualifications (if required): representative of the Assiniboine Tribe			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1999

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Burial Preservation Board (Indian Affairs) cont.			
Mr. Tony Incashola Pablo	Governor	Auld	12/23/1999 8/22/2001
Qualifications (if required): representative of the Salish and Kootenai Tribes			
Ms. Jennie Parker Ashland	Governor	reappointed	12/23/1999 8/22/2001
Qualifications (if required): representative of the Northern Cheyenne Tribe			
Mr. Stephen S. K. Platt Helena	Governor	Schwab	12/23/1999 8/22/2001
Qualifications (if required): representative of the State Historic Preservation Office			
Dr. Randall Skelton Missoula	Governor	reappointed	12/23/1999 8/22/2001
Qualifications (if required): physical anthropologist			
Mr. Ken Talksabout Browning	Governor	Wagner	12/23/1999 8/22/2001
Qualifications (if required): representative of the Blackfeet Tribe			
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Mr. James Driggers Helena	Governor	Lund	12/20/1999 1/1/2003
Qualifications (if required): Public Health and Human Services representative for Title 19			
Rep. Bob Lawson Whitefish	Governor	not listed	12/20/1999 1/1/2001
Qualifications (if required): State Representative			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1999

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont. Sen. Bea McCarthy Anaconda Qualifications (if required): State Senator	Governor	not listed	12/20/1999 1/1/2001
Lewis and Clark Bicentennial Commission (Historical Society) Mr. Darrell Kipp Browning Qualifications (if required): member of a Montana Indian tribe	Governor	reappointed	12/17/1999 10/1/2002
Ms. Marilyn J. Ryan Missoula Qualifications (if required): public member	Governor	Johnson	12/17/1999 10/1/2001
Mr. Homer Staves Billings Qualifications (if required): public member	Governor	Korpela	12/17/1999 10/1/2002
Ms. Betty Stone Glasgow Qualifications (if required): public member	Governor	reappointed	12/17/1999 10/1/2002
Montana Alfalfa Seed Committee (Agriculture) Mr. John Mehling Hardin Qualifications (if required): alfalfa seed grower	Governor	Helm	12/21/1999 12/21/2002
Mr. David Sagmiller Ronan Qualifications (if required): alfalfa seed seller	Governor	K. Sagmiller	12/21/1999 12/21/2002

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1999

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Alfalfa Seed Committee (Agriculture) cont.			
Mr. James Whitmer Bloomfield	Governor	reappointed	12/21/1999 12/21/2002
Qualifications (if required): alfalfa seed grower and rearing alfalfa leaf-cutting bees			
Montana Workforce Investment Board (Labor and Industry)			
Mr. Jeffrey Shapiro Great Falls	Governor	not listed	12/6/1999 0/0/0
Qualifications (if required): business representative			
Ms. Lynn Winslow Helena	Governor	not listed	12/6/1999 0/0/0
Qualifications (if required): representative of Mental Health Client Assistance Program			
Small Business Compliance Assistance Advisory Council (Environmental Quality)			
Ms. Sandy Newton Jefferson City	Governor	reappointed	12/6/1999 10/1/2002
Qualifications (if required): public member			
Ms. Karen Williams Helena	Governor	reappointed	12/6/1999 10/1/2002
Qualifications (if required): public member			
Water Pollution Control Advisory Council (Environmental Quality)			
Ms. Barbara Butler Billings	Governor	Steiner	12/6/1999 0/0/0
Qualifications (if required): representative of a municipal government			
Water and Waste Water Operators' Advisory Council (Environmental Quality)			
Mr Roger Thomas Billings	Governor	Holzworth	12/22/1999 10/16/2002
Qualifications (if required): wastewater treatment plant operator			

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2000 through APRIL 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Mr. John W. Peterson, Kalispell Qualifications (if required): registered architect	Governor	3/27/2000
Board of Dentistry (Commerce) Dr. Thad Langford, Bozeman Qualifications (if required): dentist	Governor	3/29/2000
Board of Public Education (Education) Ms. Barbara Keim, Billings Qualifications (if required): resides in District IV	Governor	2/1/2000
Board of Regents of Higher Education (Education) Mr. Patrick P. Davison, Billings Qualifications (if required): Republican residing in Eastern District	Governor	2/1/2000
Capital Finance Advisory Council (Administration) Dr. Peter Blouke, Helena Qualifications (if required): Director of the Department of Commerce	Governor	2/25/2000
Mr. Bob Thomas, Stevensville Qualifications (if required): member of the Board of Housing	Governor	2/25/2000
Mr. Mark A. Simonich, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	2/25/2000
Mr. Marvin Dye, Helena Qualifications (if required): Director of the Department of Transportation	Governor	2/25/2000
Rep. Royal C. Johnson, Billings Qualifications (if required): legislator	Governor	2/25/2000

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Montana Administrative Register

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2000 through APRIL 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont.		
Mr. Jim Kaze, Havre Qualifications (if required): member of the Board of Regents	Governor	2/25/2000
Mr. Dave Lewis, Helena Qualifications (if required): Director of the Office of Budget and Program Planning	Governor	2/25/2000
Dr. Amos R. Little Jr., Helena Qualifications (if required): member of the Health Facility Authority	Governor	2/25/2000
Mr. Bud Clinch, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	2/25/2000
Mr. W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	2/25/2000
Ms. Lois A. Menzies, Helena Qualifications (if required): Director of the Department of Administration	Governor	2/25/2000
Rep. Ray Peck, Havre Qualifications (if required): State Representative in the Montana Legislature	Governor	2/25/2000
Mr. Warren Vaughan, Billings Qualifications (if required): member of the Board of Investments	Governor	2/25/2000
Executive Board of University of Montana (Education)		
Mr. Leonard Landa, Missoula Qualifications (if required): public member	Governor	4/15/2000
Governor's Council on Organ Donor Awareness (Public Health and Human Services)		
Mr. Lowell Bartels, Helena Qualifications (if required): representative of business	Governor	2/12/2000

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2000 through APRIL 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont.		
Ms. Nancy Ellery, Helena	Governor	2/12/2000
Qualifications (if required): representative of the Department of Public Health and Human Services		
Lt. Governor Judy Martz, Helena	Governor	2/12/2000
Qualifications (if required): representative of state government and donor families		
Montana Abstinence Education Advisory Council (Public Health and Human Services)		
Sen. Bea McCarthy, Anaconda	Governor	2/13/2000
Qualifications (if required): public member		
Rep. Loren Soft, Billings	Governor	2/13/2000
Qualifications (if required): state legislator		
Montana Arts Council (Education)		
Mr. Bill Frazier, Livingston	Governor	2/1/2000
Qualifications (if required): public member		
Mr. Jack Hines, Big Timber	Governor	2/1/2000
Qualifications (if required): public member		
Mr. Monte Dolack, Missoula	Governor	2/1/2000
Qualifications (if required): public member		
Ms. Marilyn Olson, Sidney	Governor	2/1/2000
Qualifications (if required): public member		
Ms. Kathy Doeden, Miles City	Governor	2/1/2000
Qualifications (if required): public member		

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Montana Administrative Register

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2000 through APRIL 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana-Alberta Boundary Advisory Council (Commerce) Rep. Ernest Bergsagel, Malta Qualifications (if required): representing the legislative branch	Governor	3/9/2000
Mr. Brian Cockhill, Helena Qualifications (if required): representing the Montana Historical Society	Governor	3/9/2000
Rep. George Heavy Runner, Browning Qualifications (if required): representing the legislative branch	Governor	3/9/2000
Rep. Linda J. Nelson, Medicine Lake Qualifications (if required): representing the legislative branch	Governor	3/9/2000
Ms. Lisa Perry, Shepherd Qualifications (if required): representative of the Tourism Advisory Council	Governor	3/9/2000
Peace Officers Standards and Training Advisory Council (Justice) Chief Robert Jones, Great Falls Qualifications (if required): representing Montana Chief's Association	Governor	2/13/2000
Sheriff Lee Edmisten, Virginia City Qualifications (if required): representing Montana Sheriff's Association	Governor	2/13/2000
Sen. Debbie Shea, Butte Qualifications (if required): representing Montana Board of Crime Control	Governor	2/13/2000
Mr. Jack Lynch, Butte Qualifications (if required): representing Montana League of Cities and Towns	Governor	2/13/2000
Colonel Craig Reap, Helena Qualifications (if required): representing Montana Highway Patrol	Governor	2/13/2000

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2000 through APRIL 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Mr. Greg Noose, Helena Qualifications (if required): representing Montana Law Enforcement Academy	Governor	2/13/2000
Mr. Donald R. Houghton, Bozeman Qualifications (if required): representing Montana Deputy Sheriff's Association	Governor	2/13/2000
Mr. Dennis McCave, Billings Qualifications (if required): representing Montana detention officers	Governor	2/13/2000
Mr. Chris Miller, Deer Lodge Qualifications (if required): representing Montana Attorney's Association	Governor	2/13/2000
Ms. Surry Latham, Helena Qualifications (if required): representing Montana communications officers	Governor	2/13/2000
Prison Ranch Advisory Council (Corrections)		
Rep. Francis Bardanouve, Harlem Qualifications (if required): rancher	Director	2/1/2000
Sen. Thomas Beck, Deer Lodge Qualifications (if required): rancher	Director	2/1/2000
Mr. Don Davis, Deer Lodge Qualifications (if required): rancher	Director	2/1/2000
Rep. Bill Tash, Dillon Qualifications (if required): rancher	Director	2/1/2000
Rep. Edward (Ed) J. Grady, Canyon Creek Qualifications (if required): rancher	Director	2/1/2000

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Montana Administrative Register

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2000 through APRIL 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Prison Ranch Advisory Council (Corrections) cont. Sen. Francis Koehnke, Townsend Qualifications (if required): rancher	Director	2/1/2000
Mr. Ray Lybeck, Kalispell Qualifications (if required): dairyman	Director	2/1/2000
Rep. Robert Thoft, Stevensville Qualifications (if required): rancher	Director	2/1/2000
Public Employees' Retirement Board (Administration) Mr. Terry Teichrow, Helena Qualifications (if required): public employee	Governor	4/1/2000
State Employees' Combined Campaign Steering Committee (Administration) Ms. Barbara Proulx, Helena Qualifications (if required): none specified	Director	3/30/2000
Ms. Joy McGrath, Helena Qualifications (if required): none specified	Director	3/30/2000
Upper Clark Fork River Basin Remediation and Restoration (Environmental Quality) Ms. Sally Johnson, Missoula Qualifications (if required): member of the public who does not represent one of the above described interests	Governor	4/23/2000
Commissioner Gail Jones, Deer Lodge Qualifications (if required): local government representative	Governor	4/23/2000
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Ms. Betty Van Tighem, Great Falls Qualifications (if required): none specified	Director	2/10/2000