

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the)	NOTICE OF PUBLIC HEARING
proposed adoption of new rule)	ON PROPOSED ADOPTION,
I definitions, new rule II)	AMENDMENT, AMENDMENT AND
establishment of investment)	TRANSFER, TRANSFER,
accounts, new rule III)	AND REPEAL
spending accounts, new rule)	
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through 10.16.3812,)	
10.20.103, 10.20.105,)	
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10.30.102, the amendment and)	
transfer of ARM 10.10.306 and)	
10.10.317, the transfer of)	
10.10.308 and the repeal of)	
ARM 10.23.107 regarding)	
basic equalization levy)	
shortfall)	

TO: All Concerned Persons

1. On April 30, 2002 at 10:00 a.m. a public hearing will be held by interactive teleconference through the Montana Educational Telecommunications Network (METNET) to consider the adoption, amendment, amendment and transfer, transfer, and repeal of rules relating to school funding. The teleconference will be held at the following sites:

Helena
Dept. of Public Health and Human Services
111 Sanders Street
Lower Level Auditorium

Billings
Montana State University-Billings
1500 North 30th St.
Special Ed. Bldg., Room 159

Bozeman
Montana State University-Bozeman
EPS Building, So. 7th and Grant
Burns Center, Room 126

Butte
Montana Tech of the University of Montana
1300 West Park Street
ELCB, Room 231

Great Falls
Montana State University College of Technology-Great
Falls
2100 16th Ave. So., Room B-103

Kalispell
Flathead Valley Community College
777 Grandview Drive
Learning Resource Center, Room 120

Miles City
Miles Community College
2715 Dickenson Street
Room 106

Missoula
University of Montana-Missoula
Corner of Arthur and Eddy
Gallagher Building, Room 104

Glasgow
Francis Mahon Deaconess Hospital
621 3rd Street South

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 April 15, 2002 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, P.O. Box 202501, Helena, MT 59620-2501, telephone: 406-444-3172, TDD number: 406-444-1812, FAX: 406-444-289; e-mail bemarlow@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Non-spending investment account" is a school district investment account from which monies are transferred back to the county treasurer to cover district warrants drawn on the district's fund.

(2) "School district investment account" is defined as an investment account established by a Montana school district pursuant to 20-9-235, MCA. "School district investment account" does not include an investment pool program hosted by the county as a countywide investment pool or a school district investment pool formed by schools or by a combination of schools and other local governments under 20-9-213, MCA.

(3) "Spending investment account" is a school district investment account from which the district makes payments for district expenditures using electronic payments, either to vendors or to a subsidiary checking account used to issue checks from the district's school investment accounts. District warrants are not written on a district fund for which a spending investment account has been established.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt new rules I through VI and to amend ARM 10.10.306 and 10.10.317 because Senate Bill 260 (2001 Mont. Laws, Ch. 205) expanded investment opportunities for school districts to include the ability to establish investment accounts for district funds. Trustees may establish investment accounts and transfer cash into the accounts from any of the district's budgeted or non-budgeted funds held by the county treasurer. Permissible investments are listed in 20-9-213, MCA (2001). A separate account is required for each fund from which transfers are made. The principal and interest must be allocated to the fund from which the deposit was originally made. The district may establish: 1) non-spending accounts, returning sufficient funds to the county treasurer in time to pay all claims presented against the applicable fund, or 2) a subsidiary checking account, making expenditures from the investment account, providing that all transactions are accounted for and reported as required by state school accounting policies.

A district that chooses to establish an investment account enters into a written agreement with the county treasurer, establishing procedures and reporting dates. The agreement must be binding on both parties for a period not less than five years. A district may request that OPI send its BASE aid payment directly to the district's investment account. The county treasurer continues to collect other monies of the district and will invest the money in the investment account as directed by the district.

NEW RULE II ESTABLISHMENT OF INVESTMENT ACCOUNTS

(1) A school district may set up school district investment accounts for any fund or funds of the district.

(2) The district must establish a separate school district investment account for each district fund. Elementary and high school accounts must be maintained separately.

(3) All elected officials, school district employees, and investment firm employees with duties related to the investment must be bonded.

(a) The bond may cover an individual or a blanket bond of the investment may cover all elected officials and employees or any combination.

(b) The district shall determine the amount for which the elected official or employee shall be bonded based on the amount of money or property handled and the opportunity for defalcation.

(4) Before establishing investment accounts, a school district must obtain written documentation that the investment firm or entity being contracted to administer the school district investment account(s):

(a) complies with 20-9-204, MCA, Article VIII, section 13 of the Montana Constitution and is qualified and competent to provide investment services to school districts;

(b) is either registered with or has filed notice with the state auditor under the provisions of Title 30, chapter 10, MCA;

(c) acquires pledged securities in the same manner and amount as required in 7-6-202 and 7-6-213, MCA, for investments which are not guaranteed or uninsured investments;

(d) agrees to purchase only the types of investments allowed for schools by law pursuant to 7-6-202, 7-6-213, and 20-9-213(4), MCA; and

(e) provides the district with a monthly report detailing:

(i) investment and redemption dates;

(ii) investment and redemption amounts, by school district fund;

(iii) fees charged for administering the investment accounts;

(iv) the amount of interest accrued, reinvested and distributed by fund;

(v) the balance of the district's investments, by fund;

(vi) for a spending investment account, a list of checks, if applicable, and a detailed report of electronic payments made from the investment account; and

(vii) at fiscal year-end, the amount of interest accrued as of June 30 and the fair value of the district's share of pooled investments as of June 30 as prescribed by governmental accounting standards board (GASB) No. 31.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons

as set forth following NEW RULE I above.

NEW RULE III SPENDING INVESTMENT ACCOUNTS (1) A district that establishes a spending investment account for a fund will issue payments from the fund using electronic payments or checks. District warrants may not be issued from a spending investment account.

(a) A district using spending investment accounts may establish a subsidiary checking account from which checks are issued. Districts may transfer money from the spending investment accounts to the district's subsidiary checking account to pay checks written against district funds held in spending investment accounts.

(b) A district issuing checks from a subsidiary checking account may apply facsimile signatures and seals as provided in 2-16-114 and 20-9-221, MCA.

(c) Checks must be countersigned using the process for signing warrants as provided in 20-9-221, MCA.

(d) Checks must be made payable to specified payees and never made payable to cash.

(2) Section 20-9-440, MCA, requires the county treasurer to make all payments due on school district bonds and special improvement districts (SIDs). Therefore, trustees may establish a non-spending account, but not a spending investment account, for the debt service fund.

AUTH: Sec. 20-9-102, 20-9-235, MCA
IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following NEW RULE I above.

NEW RULE IV AGREEMENT WITH THE COUNTY TREASURER

(1) Before establishing a school district investment account or accounts, the trustees shall enter into a written agreement with the county treasurer.

(2) Trustees of a joint district shall enter into an agreement with the county treasurer of the located county only. County treasurers of non-located counties shall continue to remit the revenue collections from their counties to the appropriate district funds held by the located county's treasurer, who will deposit the money according to the signed agreement and the trustees' directives.

(3) To be effective for the ensuing school year, an agreement must be entered into no later than June 30.

(4) A separate agreement must be used for each elementary, high school, or K-12 district.

(5) The written agreement must, at a minimum meet the statutory requirements of 20-9-235, MCA. The district and the county treasurer may include additional agreed-upon provisions.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following NEW RULE I above.

NEW RULE V PAYMENTS INTO AN INVESTMENT ACCOUNT

(1) The school district may apply in writing to the office of public instruction to distribute the district's BASE aid payments, including the direct state aid, state special education funding, and general fund GTB payments, by direct electronic transfer of funds into an investment account as provided by 20-9-346(3), MCA.

(2) To qualify for the electronic transfer, the trustees shall submit a written request to OPI, including a copy of the trustees' written agreement under [NEW RULE IV] for the district's general fund and a copy of the direct deposit signup form (OMB standard form 1199A), signed by the district and the investment firm, indicating the routing numbers for the electronic deposit into the school investment account for the general fund.

(3) The office of public instruction shall approve the request if:

(a) the district is currently in compliance with financial accounting and reporting requirements of the office of public instruction;

(b) other funds of the district held by the county treasurer do not have deficit cash balances; and

(c) the district's most recent audit report discloses no serious financial noncompliance issues, repeated or unresolved financial problems, or significant internal control problems.

(4) The office of public instruction shall process an eligible district's request for direct depositing beginning with the next scheduled BASE aid payment if the district's completed request is received by the 10th of a month, barring unforeseen delays.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following NEW RULE I above.

NEW RULE VI INTERNAL CONTROLS AND ACCOUNTING RECORDS

(1) Trustees shall provide and enforce a system of internal controls to safeguard the district's money by providing the following procedural checks and balances:

(a) Each month, a school district that has established a school district investment account(s) shall reconcile:

(i) the district's records of investment balances;

(ii) county treasurer's transfers from the district funds to the account(s);

(iii) transfers from the account(s) to the district

fund(s) held by the county treasurer;

(iv) checks cleared; and

(v) interest income to the investment account statement.

(b) A person other than the district employee responsible for producing payments by check or electronic transfer, including another district employee, a county employee, a trustee, or a contracted accounting professional, shall review the monthly reconciliation to verify validity of:

(i) changes to account routing numbers;

(ii) appropriate payees;

(iii) proper sequence of check numbers; and

(iv) authorization of expenditures by the appropriate school district official.

(c) No single person may control an accounting transaction from beginning to end, meaning the same person shall not be responsible for initiating a payment or transfer, authorizing the payment or transfer, recording of accounting transactions for payments and transfers, and reconcilements.

(2) When directed by the school district, a county treasurer shall deposit the district's money directly into the appropriate investment account by issuing a treasurer's check or wire transfer of funds to the investment account. A treasurer may not direct payments to a subsidiary checking account.

(a) When directing investments, the school district shall provide written notification to the county treasurer stating the amount to deposit and the fund making the investment.

(b) A school district shall not purchase investments using district warrants.

(3) For a non-spending investment account, a school district shall direct the investment firm to deposit redeemed investments and interest income to the credit of the specific and appropriate school district fund held by the county treasurer.

(a) The school district shall require that the investment firm, transferring money to the district's fund held by the county treasurer, inform the county treasurer in writing stating the fund(s) to which the proceeds should be deposited and the amount of the interest earnings and principal contained in the proceeds. Any losses incurred must also be reported by fund.

(b) The school district shall not make payments from a non-spending investment account.

(4) Before transferring money from one fund to another fund of the district, as allowed by specific references in school laws, trustees shall return the money from the school investment account to the related fund held by the county treasurer. Trustees may then direct the county treasurer to transfer the money to the receiving fund pursuant to 20-9-201, 20-9-208, or 20-9-443, MCA.

(5) A school district participating in a non-spending investment account shall monitor its cash balances maintained with the county treasurer and will promptly redeem investments

to pay district warrants and bond principal and interest in a timely manner.

AUTH: Sec. 20-9-102, 20-9-235, MCA
IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following NEW RULE I above.

NEW RULE VII CLOSURE OF A SCHOOL DISTRICT FUND (1) An "inactive" fund for purposes of this sub-chapter and 20-9-201(3), MCA, is a fund that has had no revenue or expenditure activity for at least three fiscal years, other than collection of prior year revenues.

(2) Trustees may not close a fund into a fund of another school district. An elementary fund must be closed into another elementary fund, and a high school fund must be closed into another high school fund.

(3) Pursuant to 20-9-201, MCA when trustees determine that a tuition fund is inactive and will no longer be used, they must close the fund into the miscellaneous programs fund.

(4) Pursuant to 20-9-443, MCA when all bond principal, interest, and fees and all SIDs outstanding have been fully paid, the trustees shall close the debt service fund into the building reserve fund, general fund, or technology fund. The district shall identify money transferred from the debt service fund using a project reporter code number and track the subsequent uses of the money that are limited by 20-9-443, MCA.

(5) Pursuant to 20-10-147, MCA, when all the buses of a district have been sold or otherwise disposed of, trustees may close a bus depreciation reserve fund to any other fund of the district contingent on voter approval.

(6) Pursuant to 20-9-505, MCA, a district entering non-operating status shall close all funds, except the debt service fund and the miscellaneous programs fund, into a single non-operating fund of the district.

(7) Pursuant to 20-9-201, MCA except as provided in (1) through (6) of this rule, trustees may close an inactive fund into any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit. If an inactive fund has a cash or fund balance deficit, the district must resolve the deficit before closing the fund.

(8) Pursuant to 20-9-201, MCA, the trustees shall notify the county treasurer in writing of the fund closure, stating the district fund into which the inactive fund is to be closed. The county treasurer shall deposit subsequent receipts on behalf of the closed fund, including subsequent tax receipts, in the fund to which the inactive fund was closed.

AUTH: Sec. 20-9-102, MCA
IMP: Sec. 20-9-201, 20-9-443, 20-9-505, 20-10-147, MCA

Statement of Reasonable Necessity: The Office of Public Instruction is proposing to adopt this rule because Senate Bill 436 (2001 Mont. Laws, Ch. 480) and Senate Bill 218, (2001 Mont. Laws, Ch. 356) allow certain transfers between funds of a school district. Various school finance laws, some allowing transfers between funds and some prohibiting such transfers, are located throughout Title 20, MCA, making decision-making very difficult for school officials. This rule clarifies the interrelationships between these laws.

NEW RULE VIII CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS

(1) Trustees may transfer cash between funds only if the transfer is specifically allowed by law or administrative rule.

(2) Trustees shall hold a properly noticed hearing to accept public comment on a transfer before the transfer can occur, except the following cash transfers:

(a) transfers from the general fund to the compensated absences fund under 20-9-512, MCA, or transfer of an excess balance in the compensated absences fund to the general fund;

(b) transfers of unused employer contributions for self-insurance group coverage allowed by 2-18-703, MCA;

(c) transfers from the general fund to the litigation reserve fund and, upon settlement of the litigation, a transfer returning the balance to the general fund under 20-9-515, MCA;

(d) transfers between the federal impact aid fund and the debt service fund under 20-9-437 and 20-9-443, MCA;

(e) transfers from any fund, except the miscellaneous programs fund, to support an interlocal agreement fund under 20-9-703, MCA;

(f) closure of district funds to establish a non-operating fund under 20-9-505, MCA; and

(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in (4).

(3) The trustees shall not transfer cash from the district retirement fund, which is funded by a countywide levy, to any other fund.

(4) Pursuant to 20-10-407, MCA, when all the buses of a school district have been sold or otherwise disposed of, trustees may transfer any portion of the bus depreciation reserve fund balance to any other fund of the district contingent on voter approval.

(5) Trustees shall not transfer any portion of the balance in the debt service fund to another fund, except to close the fund after fully paying all obligations as provided in 20-9-443, MCA.

(6) Except for the general fund, retirement fund, debt service fund, and bus depreciation fund, trustees may transfer any portion of the cash balance in a budgeted fund to another budgeted fund for any purpose allowed by law, provided the money being transferred is comprised of revenue from sources other than tax receipts. Trustees may transfer tax revenues from one budgeted fund to another budgeted fund, provided the

money is subsequently expended for purposes the same as, or directly related to, the purposes for which the taxes were levied. When tax receipts are transferred, the trustees' resolution shall state the purpose for which the taxes were levied and the purposes for which the funds will be used.

(7) Trustees shall not transfer cash received through state and federal grants and contracts.

(8) Trustees may transfer any portion of the cash balance in a nonbudgeted fund of the district. The trustees' resolution shall state specifically how the transfer will be used to improve efficiency of spending within the district.

(9) Except when specifically provided by law, trustees may not transfer money between a budgeted fund and a nonbudgeted fund.

(10) When the trustees transfer cash from one budgeted fund to another budgeted fund, the trustees may also transfer budget authority up to the amount of the cash transfer, from the paying fund to the receiving fund.

(11) Within 30 days of approving the transfer, the trustees shall notify the state superintendent, county superintendent, and county treasurer in writing of the amount of budget authority and the amount of cash transferred, the purposes for which the amount transferred will be used, and the funds affected.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-208, 20-9-439, 20-9-443, 20-9-512, 20-9-515, 20-9-703, 20-10-147, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following NEW RULE VII above.

NEW RULE IX SCHOOL FLEXIBILITY PAYMENT (1) For purposes of calculating a district's school flexibility payment for fiscal year 20XX, the following definitions apply:

(a) "Average student amount" means the amount calculated by:

(i) multiplying either the cash balance or the fiscal year 20XX appropriation in the school flexibility account, whichever is less, by 40 percent; and

(ii) dividing by average statewide ANB for the previous five-year period. Average statewide ANB is calculated using the final ANB for fiscal years 20XX-5 through 20XX-1.

(b) "Current student amount" means the amount calculated by:

(i) multiplying either the cash balance or the fiscal year 20XX appropriation in the school flexibility account, whichever is less, by 20 percent; and

(ii) dividing by the total statewide ANB for the previous fiscal year. Total statewide ANB is calculated using the final ANB for fiscal year 20XX-1.

(c) "District K-12 public school funding amount" means the K-12 public schools amount multiplied by the number of K-

12 public schools in the district, as defined in 20-6-501, MCA, that are open as of October 1 in the year of the payment.

(d) "District K-12 large public school funding amount" means the large K-12 public schools amount multiplied by the number of K-12 public schools in the district, as defined in 20-6-501, MCA, that report at least 250 students enrolled on the October count date in the year of the payment.

(e) "District student funding amount" means the current student amount multiplied by the district's ANB for fiscal year 20XX-1 plus the average student amount multiplied by the district's average ANB for fiscal years 20XX-5 through 20XX-1.

(f) "K-12 public schools amount" means the amount calculated by:

(i) multiplying either the cash balance or the fiscal year 20XX appropriation in the school flexibility account, whichever is less, by 15 percent; and

(ii) dividing by the total number of K-12 public schools statewide, as defined in 20-6-501, MCA, that are open as of October 1 in the year of the payment.

(g) "Large K-12 public schools amount" means the amount calculated by:

(i) multiplying either the cash balance or the fiscal year 20XX appropriation in the school flexibility account, whichever is less, by 25 percent; and

(ii) dividing by the total number of K-12 public schools, as defined in 20-6-501, MCA, that report at least 250 students enrolled on the October count date in the year of the payment.

(h) "District flex fund allocation" means the sum of the district K-12 public school funding amount, the district large K-12 public school funding amount and the district student funding amount.

(2) No later than January 31, the office of public instruction shall distribute a school flexibility payment to qualified districts for deposit in the district's school flexibility fund. Non-operating districts are not qualified for a district flex fund allocation.

(3) If approved by the electorate, in addition to the amount distributed to a district's flex fund under this rule, the trustees may levy an amount not to exceed 25% of the office of public instruction's most recent estimate of the district flex fund allocation.

AUTH: Sec. 20-9-102, 20-3-106, MCA

IMP: Sec. 20-9-541, 20-9-542, 20-9-543, 20-9-544, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule in response to Senate Bill 390 (2001 Mont. Laws, Ch. 237) to clarify the process used to calculate and distribute state payments to schools under 20-9-541 through 543, MCA.

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

10.7.112 SUMMARY OF REQUIREMENTS FOR BUS TRANSPORTATION FOR ELIGIBILITY FOR STATE REIMBURSEMENT (1) through (9) remain the same.

(10) A school district shall not claim state and county transportation aid for the district's or cooperative's conveyance of students to and from alternative sites, buildings or other locations where services or programs are offered during the school day, such as special education services provided by a cooperative or classes at different buildings of the school district or community.

AUTH: Sec. 20-3-106, 20-9-102, 20-10-112, MCA
IMP: Sec. 20-10-103, 20-10-112, 20-10-121, 20-10-126, 20-10-132, 20-10-141, 20-10-145, 20-10-146, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to ensure consistent state reimbursement to school districts. Recently, OPI became aware of misinterpretations concerning a district's eligibility to state and county transportation reimbursement. The state's appropriation covers transportation as defined by 20-10-101, MCA. Reimbursement rates are addressed in 20-10-141, MCA.

10.7.114 SCHEDULE FOR TRANSPORTATION PAYMENTS

~~(1) Schedule for Individual and Isolated ("Increased") Transportation Payments:~~

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

~~(c)~~(3) In cases where the family must move and maintain two households or where the family must board the student near the school, the family may be eligible for the room and board rate of ~~\$8.00~~ \$9.25 per day for the first child and ~~\$5.00~~ \$6.00 per day for each additional child (20-10-142, MCA). All contracts for room and board reimbursement must be approved by the county transportation committee prior to approval by the superintendent of public instruction.

~~(i)~~(a) If there is more than one eligible transportee of the same household, and the eligible transportees attend schools operated by more than one school district, the rate of ~~\$8.00~~ \$9.25 per day shall be paid to the district enrolling the student with the highest grade level. Additional reimbursement will be at the rate of ~~\$5.00~~ \$6.00 per day per student.

AUTH: Sec. 20-3-106, 20-10-112, MCA
IMP: Sec. 20-10-142, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule because Senate Bill 344 (2001 Mont. Law, Ch. 409) changed the reimbursement rates.

10.10.307 REPLACEMENT WARRANTS AND CHECKS (1) remains the same.

(2) The following rules apply when a school district issues a check replacing a lost or cancelled check written on a school district investment account or an account established pursuant to 20-9-235, MCA:

(a) the original check shall be removed from the unpaid outstanding check list;

(b) the word "duplicate" and phrase "replacement check for check no." shall be printed plainly across the face of the check;

(c) the school district shall send the investment firm or entity a letter, including the original indemnity bond if required, stating which check number has been lost or cancelled and which check number has been issued to replace the lost or cancelled check; and

(d) the amount of the replacement check shall be shown on the list of checks issued for the month but shall not be included in the total of the checks issued.

AUTH: Sec. 20-9-102, 20-9-201, MCA

IMP: Sec. 20-9-102, 20-9-201, 20-9-235, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the same reasons as set forth following New Rule I above.

10.10.309 DISTRIBUTION AND REAPPROPRIATION OF COUNTYWIDE FUNDS (1) and (2) remain the same.

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

~~(a) Once the foundation program for a given year has been funded 100%, any additional collections of county equalization revenues for that year may be used to fund the next subsequent year's foundation program.~~

~~(b) Once the foundation programs for all subsequent years have been funded 100%, additional collections must be remitted to the state treasurer.~~

~~(4) The cash balance in the elementary and high school countywide retirement and transportation funds at fiscal year end must be reappropriated in the following fiscal year once distributions to school districts for the current and prior years are 100% of the total net district requirements and the reserve permitted by 20-10-146, MCA, has been provided.~~

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-213, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to delete an obsolete requirement. No further payments are possible due to

expiration of the ability to collect taxes for years prior to July 1, 1991 under 15-16-704, MCA.

10.10.407 FIXED ASSET INVENTORY (1) All school districts shall maintain fixed asset inventory and depreciation records to allow reporting of fixed assets in conformity with generally accepted accounting principles.

AUTH: Sec. 20-9-102, 20-9-201, MCA

IMP: Sec. 20-9-103, 20-9-213, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule because a recent change in Generally Accepted Accounting Principles (GASB 34) requires schools to report depreciation expenses on the annual financial statements for audit.

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

(1) and (2) remain the same.

(3) "Average daily attendance" or "ADA" is the average number of students present on the dates used to report fall and spring enrollment. The total number of students present in grades 1-12, as reported on the October and February enrollment counts and used to determine average number belonging, will be added together and divided by two to determine the average daily attendance for that school year. The number of pre-kindergarten and kindergarten students present, as reported on the October and February enrollment counts, will be added together and divided by four to determine average daily attendance for that school year.

(4) through (6) remain the same.

(7) "BASE budget" means the minimum general fund budget a district is allowed to adopt. It is the sum of: 80% of the district's basic and per-ANB entitlements; ~~up to~~ 140% of the district's special education allowable cost payment; and, ~~up to~~ 40% of the district's related services block grant payment to cooperatives.

(8) through (14) remain the same.

(15) "Current fiscal year" or "current FY" means the period between July 1 and June 30 during which calculations for the ensuing fiscal year are made. For purposes of these rules the current fiscal year is referred to as FY ~~199X~~ 20XX, the ensuing fiscal year is referred to as FY ~~199X+1~~ 20XX+1 and the prior fiscal year or prior calendar year is referred to as FY ~~199X-1~~ 20XX-1 or CY ~~199X-1~~ 20XX-1.

(16) through (18) remain the same.

(19) "District guaranteed tax base (GTB) ratio" means the measure for determining if a district is eligible for general fund GTBA from the state to help fund the district's BASE budget. The ratio compares the district's tax base to the portion of its general fund BASE budget that must be funded with local revenue. As defined in 20-9-366, MCA, for the FY ~~199X+1~~ 20XX+1 general fund budget the GTB ratio is the

district's CY ~~199X-1~~ 20XX-1 taxable valuation divided by the GTBA budget area.

(20) remains the same.

(21) "District mill value per district ANB" for FY ~~199X+1~~ 20XX+1 means the district's CY ~~199X-1~~ 20XX-1 mill value divided by the district's ~~199X~~ 20XX ANB.

(22) through (24) remain the same.

(25) "Ensuing fiscal year" or "ensuing FY" means the fiscal year for which a calculation is being made. Calculations for the ensuing fiscal year are made during the current fiscal year. For purposes of these rules the ensuing fiscal year is referred to as FY ~~199X+1~~ 20XX+1.

(26) through (32) remain the same.

~~(33) "Motor vehicle reimbursement payment" means the distribution made by OPI to each school district, in accordance with 61-3-509, MCA, for the amount of the difference between light vehicle tax received by the district's general fund in FY 1999 and the amount of light vehicle tax received by the district's general fund in the prior fiscal year.~~

(34) ~~(33)~~ "Maximum general fund budget" or "maximum GFB" means the maximum general fund budget a district is allowed to adopt. It is the sum of: 100% of the district's basic and per-ANB entitlements; up to ~~153%~~ 200% of the district's special education allowable cost payment; and up to ~~53%~~ 100% of the district's related services block grant payment to cooperatives.

~~(35) (34)~~ "Non-levy revenue" means the tax and fee revenue available to a district from sources other than property taxes based on levied mills. Non-levy revenue includes ~~motor vehicle fees, motorcycle fees, recreational vehicle fees, out-of-state equipment fees,~~ oil and natural gas production taxes, coal gross proceeds taxes, personal property tax reimbursements, ~~corporation license taxes paid by financial institutions,~~ tuition, investment earnings and any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(36) through (46) remain the same but are renumbered (35) through (45).

(46) "School block grant" means the block grants paid by the state to a school district's budgeted funds as provided in section 244, chapter 574, laws of 2001.

(47) through (50) remain the same.

(51) "Statewide elementary GTB ratio" or "statewide high school GTB ratio" for GTBA funding of eligible districts' FY ~~199X+1~~ 20XX+1 BASE budgets means the ratio of 175% of the CY ~~199X-1~~ 20XX-1 statewide taxable valuation to the statewide elementary or high school total of FY ~~199X~~ 20XX CTBA budget area.

(52) "Statewide mill value" for calculating the FY ~~199X+1~~ 20XX+1 GTBA entitlement means the CY ~~199X-1~~ 20XX-1 state taxable valuation divided by 1,000.

(53) "Statewide mill value per elementary ANB" or

"statewide mill value per high school ANB" means the CY ~~199X-1~~ 20XX-1 statewide mill value multiplied by 1.21, then divided by the statewide FY ~~199X~~ 20XX high school or elementary ANB.

(54) through (57) remain the same.

AUTH: Sec. 20-9-102, MCA
IMP: Title 20, Ch. 9, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to: (1) change the percentages of the state special education funding that are included in the BASE and maximum general fund budgets per Senate Bill 94 (2001 Mont. Laws, Ch. 231); (2) delete an obsolete definition of motor vehicle reimbursement in ARM 10.15.101(33) which was repealed in 2000; (3) delete an obsolete reference to non-levy revenue types that were replaced by House Bill 124 (2001 Mont. Laws, Ch. 574), (4) add a definition of school block grants established in House Bill 124 and (5) change the references from 199X to 20XX.

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

(1) remains the same.

(2) "Appropriation" means an annual amount set by the office of public instruction for distribution to schools and cooperatives such that:

(a) the amount does not exceed legislative appropriation;

(b) the sum of amounts that are set for each of the fiscal years of a biennial appropriation total the biennial appropriation; and

(c) the amount distributed to schools may be less than the appropriated amount to compensate for additional ANB count.

(2) through (7) remain the same but are renumbered (3) through (8).

(9) "Eligible district" means a district that has a special education program as defined in ARM 10.16.3810.

(8) through (14) remain the same but are renumbered (10) through (16).

AUTH: Sec. 20-7-402, 20-7-431, 20-7-457, MCA
IMP: Sec. 20-7-414, 20-7-431, 20-7-457, 20-9-321, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to include definitions for "appropriation" and "eligible district".

10.16.3804 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING (1) and (1)(a) remain the same.

(b) The distribution of the funds is based primarily on ANB and ~~prior fiscal year expenditure reports.~~

(c) through (2) remain the same.

(3) The superintendent of public instruction ~~will~~ shall

use the trustees' financial summary to determine the special education allowable cost payments to districts and cooperatives.

AUTH: Sec. 20-7-431, 20-9-321, MCA
IMP: Sec. 20-7-431, 20-9-321, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule and ARM 10.16.3806, 10.16.3807, 10.16.3809, 10.16.3810, 10.16.3811 and 10.16.3812 to comply with legislative changes enacted in House Bill 160 (2001 Mont. Laws, Ch. 145) effective July 1, 2001. The proposed changes reflect amendments to the formula for the distribution of state special education funds to school districts and special education cooperatives. The changes simplify the formula for distribution and bring greater stability and better predictability in special education funding for cooperatives and school districts. In addition, several proposed changes are made to conform rule language to language used in statute and to delete outdated language. Several changes are proposed to clean up existing language.

10.16.3806 SPECIAL EDUCATION ALLOWABLE COSTS--INSTRUCTIONAL BLOCK-GRANT SERVICES (1) through (1)(f)(iii) remain the same.

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

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to eliminate "Block Grant" from the catchphrase of this rule because these words do not pertain to the text of the rule.

10.16.3807 SPECIAL EDUCATION ALLOWABLE COSTS--RELATED SERVICES BLOCK-GRANT (1) and (1)(a) remain the same.

- (i) ~~in~~ providing services for students with disabilities;
- (ii) remains the same.
- (iii) in activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and
- (iv) and (b) remain the same.
- (i) ~~in~~ providing services for students with disabilities;
- (ii) in activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and
- (iii) through (h) remain the same.

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

Statement of Reasonable Necessity: The Office of Public

Instruction proposes to amend this rule to correct grammar.

10.16.3809 COOPERATIVE BOUNDARIES (1) through (1)(b) remain the same.

(c) The special education cooperative boundaries ~~must~~ shall be ~~drawn~~ established so that the districts included within the boundaries are contiguous.

(d) remains the same.

(2) The superintendent of public instruction ~~will~~ shall maintain the an official Montana school district boundary line map indicating the boundaries for cooperatives data file with districts identified within the cooperative boundary consistent with the requirements of 20-7-457, MCA.

(3) remains the same.

(4) ~~After June 1, 1995,~~ The request for change must be provided to the superintendent of public instruction no later than October 1 to be in effect for the ensuing fiscal year.

(5) remains the same.

(6) ~~After June 1, 1995,~~ tThe superintendent must approve any boundary changes prior to January 1 in order to be in effect for the ensuing fiscal year.

(7) remains the same.

(8) ~~Unless boundary line changes result in the creation of a new cooperative, the merging of existing cooperatives, or are approved by a majority of the trustees in each school district directly affected and the majority of the management board of each affected cooperative,~~ bBoundary changes for districts already participating in a cooperative must occur on timelines consistent with the district's commitment for participation in the cooperative as specified in the interlocal agreement, unless the changes:

(a) result in the creation of a new cooperative;

(b) result in the merging of existing cooperatives; or

(c) are approved by a majority of the trustees in each school district directly affected and approved by the majority of the management board of each affected cooperative.

AUTH: Sec. 20-7-457, MCA

IMP: Sec. 20-7-457, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the reasons following ARM 10.16.3804.

10.16.3810 ELIGIBILITY TO RECEIVE PAYMENT (1) remains the same.

(2) Any residential treatment facility or children's psychiatric hospital that provides education services under contract with the office of public instruction is not eligible to receive special education allowable cost payments.

(3) Non-operating districts are eligible for reimbursement of disproportionate costs.

~~(2)~~ (4) A cooperative meeting the requirements of 20-7-457, MCA, is eligible to receive the related services block

grants for member districts and an additional amount for cooperative administrative and travel costs.

AUTH: Sec. 20-9-321, MCA

IMP: Sec. 20-7-414, 20-9-321, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the reasons following ARM 10.16.3804.

10.16.3811 GENERAL PRINCIPLES OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT CALCULATION (1) For purposes of calculating statewide allowable cost amounts, ~~The~~ superintendent of public instruction will shall use ensuing fiscal year ANB and other school district special education cooperative the most current information available on February 1 of the current fiscal year as the basis for calculating the special education allowable cost payments for the ensuing fiscal year. If material differences in statewide factors used in the calculation are documented or legislative changes occur regarding the calculation, the office of public instruction may recalculate and notify all districts and counties. ANB will be used in the payment calculation for the purpose of reflecting relative district and program size. Use of ANB does not limit the age range for fund expenditures.

(2) The special education allowable cost payments consist of instructional block grants, related services block grants, reimbursements for disproportionate costs and cooperative administrative and travel amounts.

(3) The statewide special education allowable cost payments to districts and cooperatives may not exceed the legislative appropriation available for special education allowable costs. ~~Thus, the payments allocated to each district and cooperative is a pro-rata share of the available appropriation if necessary.~~

(4) The special education allowable cost payment calculation consists of four steps distributes appropriations according to the following formula:

(a) ~~Calculate preliminary figures. These figures are the basis for the final block grant, reimbursement and cooperative administrative amount calculations~~ 52.5 percent through instructional block grants;

(b) ~~Calculate a pro-rata percentage as stated in ARM 10.16.3812(5) to ensure that the statewide special education allowable cost payments do not exceed the available special education appropriation~~ 17.5 percent through related services block grants;

(c) ~~Calculate final block grant, reimbursement and cooperative administrative amounts by multiplying the pro-rata percentage by the preliminary amounts~~ 25 percent through reimbursement of local districts; and

(d) ~~Calculate a special education allowable cost payment for each district and cooperative that is eligible to receive the funding~~ 5 percent to special education cooperatives for

administration and travel.

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

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the reasons following ARM 10.16.3804.

10.16.3812 CALCULATION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (1) ~~The preliminary state instructional services block grant rate for the ensuing fiscal year is calculated as follows by multiplying the state special education appropriation by .525 and dividing by the ensuing year statewide ANB of eligible districts, truncated to two decimal places.~~

~~(a) Sum the prior fiscal year statewide allowable cost expenditures for instruction, as reported on the trustees' financial summary by cooperatives, elementary, high school and K-12 districts;~~

~~(b) Divide the sum of the statewide instructional expenditures from (1)(a) by the prior fiscal year's ANB to arrive at the statewide special education allowable cost expenditures per ANB for instruction;~~

~~(c) Multiply the statewide expenditure per ANB for instruction from (1)(b) by a factor to ensure that the districts will pay a minimum of one dollar for every three dollars of state special education funds.~~

(2) ~~Calculate~~ The preliminary state related services block grant rate for the ensuing fiscal year as follows: is calculated by multiplying the state special education appropriation by .175 and dividing by the ensuing year statewide ANB of eligible districts, truncated to two decimal places.

~~(a) Sum the prior fiscal year statewide allowable cost expenditures for related services, as reported on the trustees' financial summary by cooperatives, elementary, high school and K-12 districts;~~

~~(b) Divide the sum of the statewide related services expenditures from (2)(a) by the prior fiscal year's ANB to arrive at the total statewide special education allowable cost expenditure per ANB for related services;~~

~~(c) Multiply the statewide expenditure per ANB for related services from (2)(b) by a factor to ensure that the districts will pay a minimum of one dollar for every three dollars of state special education funds.~~

(3) ~~The preliminary calculation to determine a~~ A district's eligibility to receive reimbursement for disproportionate costs for the ensuing fiscal year is calculated per district as follows for each district that is eligible per ARM 10.16.3803:

(a) Sum the district's prior fiscal year special education state allowable cost expenditures for instructional and related services;

(b) From (3)(a) subtract the district's prior fiscal year minimum special education expenditure to avoid reversions multiplied by 1.10 from the expenditure total in (3)(a);

(c) If the figure from result of (3)(b) is less than or equal to zero, a district did not reach the threshold amount and is not eligible for reimbursement;

(d) If the figure from result of (3)(b) is greater than zero, a district reached the threshold amount and its preliminary may receive reimbursement for disproportionate costs is the amount which exceeds 0 multiplied by .65. provided that the district's rate of expenditures calculated by dividing (3)(a) by the district's prior fiscal year minimum special education expenditure to avoid reversion reaches the threshold for eligibility based on the following formula:

(i) multiply the state special education appropriation by .25;

(ii) for all districts where the result of (3)(b) is greater than zero, sum the results of (3)(b) and multiply by .40;

(A) If (3)(d)(i) equals (3)(d)(ii), the threshold for eligibility is 1.00, and the district shall be reimbursed \$0.40 for each dollar calculated in (3)(b);

(B) If (3)(d)(i) exceeds (3)(d)(ii), the threshold for eligibility is 1.00. The .40 multiplier in (3)(d)(ii) shall be increased to a multiplier which causes the result of (3)(d)(ii) to equal (3)(d)(i), and the district shall be reimbursed at that multiplier for each dollar calculated in (3)(b);

(C) If (3)(d)(ii) exceeds (3)(d)(i), the threshold rate in (3)(d)(ii) shall be increased to a percent which causes the result of (3)(d)(ii) to equal (3)(d)(i). The district shall be reimbursed \$.40 for each dollar calculated in (3)(a) that exceeds the amount calculated by multiplying the threshold rate times the district's prior year special education spending to avoid reversion.

(4) Preliminary The statewide amount for cooperative administration and travel payments must be is calculated to provide cooperatives an additional amount for administrative costs by multiplying the state appropriation by .05. This figure is distributed to cooperatives under the following two components:

(a) to calculate administration:

(i) multiply the figure in (4) by .60;

(ii) divide (4)(a)(i) by the ensuing year's ANB for all participating districts in all approved cooperatives to determine per ANB rate;

(iii) multiply (4)(a)(ii) by the cooperative's ensuing year's ANB from member districts.

(b) to calculate travel:

(i) multiply the figure in (4) by .40;

(ii) use the following factors to distribute, on a weighted basis, the figure from (4)(b)(i) among approved cooperatives (weight assigned to each cooperative is determined by dividing the number of rural miles within the

boundaries of a cooperative by the total ANB of member districts within the cooperative and add to that figure the number of member districts and full-time equivalent of itinerant personnel in the cooperative):

(A) the number of member districts;

(B) the number of full-time equivalent reported for itinerant personnel on the most current annual data collection report;

(C) the most current ANB reported by member school districts; and

(D) the number of road miles within the boundaries of the cooperative.

~~(a) The maximum statewide amount for cooperative administrative costs is the sum of all cooperatives' special education allowable cost expenditures reported on the prior fiscal year trustees' financial summary minus instructional and related service expenditures reported by the same cooperatives.~~

~~(b) Determination of the cooperatives' administration and travel amounts is based on consideration of the current number of member districts, ANB, staff, road mileage and any other factors considered appropriate. The superintendent of public instruction will annually review use of these factors and their weighted application.~~

~~(i) (5) Cooperatives must shall report staff information to the superintendent of public instruction on the cooperative fall report staff and membership information and annual data collection report. Annual membership information and any additional information needed to administer the provisions of 20-9-321, MCA, shall be reported on forms provided by the superintendent of public instruction. Cooperatives must shall notify the superintendent of public instruction of any revisions to the fall report annual data collection report or membership information by February 1.~~

~~(5) The pro-rata percentage is calculated as follows:~~

~~(a) Determine the statewide total preliminary special education allowable cost payment level for the ensuing fiscal year by summing:~~

~~(i) preliminary statewide instructional block grant rate times current statewide ANB;~~

~~(ii) preliminary statewide related services block grant rate times current statewide ANB;~~

~~(iii) total statewide preliminary reimbursements for disproportionate costs; and~~

~~(iv) total cooperative preliminary administration and travel amounts.~~

~~(b) The pro-rata percentage equals the available special education appropriation divided by the statewide total preliminary special education allowable cost payment level.~~

~~(6) The pro-rata percentage is multiplied by the preliminary block grant rates, preliminary cooperative administration and travel amounts and the sum of districts' preliminary reimbursement figures for disproportionate costs to determine the final allowable cost payment factors.~~

~~(7)~~ (6) The superintendent of public instruction calculates an eligible district's special education allowable cost payment for the ensuing fiscal year by multiplying the ~~final~~ instructional block grant rate by the district's ensuing fiscal year ANB, adding the ~~final~~ related services block grant rate multiplied by the district's ensuing fiscal year ANB, adding a the district's ~~final~~ reimbursement for disproportionate costs, if applicable, ~~and rounding to the nearest whole dollar~~. If the district is a participating member of a cooperative, the special education allowable cost payment will not include the related services block grant.

~~(8)~~ (7) A cooperative's special education allowable cost payment for the ensuing fiscal year consists of the ~~final~~ cooperative travel and administration amounts plus the related services block grants of districts who are participating members of the cooperative, ~~rounded to the nearest whole dollar~~.

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

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the reasons following ARM 10.16.3804.

10.20.103 CIRCUMSTANCES UNDER WHICH THE REGULAR ANB MAY BE INCREASED FOR THE ENSUING SCHOOL FISCAL YEAR (1) through (2)(b) remain the same.

(3) Application for increased ANB ~~will~~ shall be made to the superintendent of public instruction by ~~May 10~~ June 1 for reasons provided in 20-9-313, MCA. The superintendent ~~will~~ shall approve, disapprove, or adjust the application by the fourth Monday in June.

AUTH: Sec. 20-3-106, 20-9-102, MCA
IMP: Sec. 20-9-311, 20-9-313, 20-9-314, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to adjust for a change of the legal deadline pursuant to changes made by the legislature in Senate Bill 390 (2001 Mont. laws, Chapter 237).

10.20.105 UNANTICIPATED ENROLLMENT INCREASE (1) through (2)(c) remain the same.

(i) calculating the ratio of EI for each budget unit as calculated in (2)(b) to the total EI for the district calculated in (1)(c). If the EI calculated for a budget unit in (2)(b) is negative (enrollment loss), omit the budget unit from the proration and add the absolute value of the negative EI by budget unit to the EI determined in (1)(c); and

(ii) through (f) remain the same.

AUTH: Sec. 20-9-102, MCA
IMP: Sec. 20-9-313, 20-9-314, MCA

Statement of Reasonable Necessity: The Office of Public Instruction is proposing to amend this rule to provide state funding to school districts consistently in cases of unusual enrollment increases.

10.21.101B CALCULATION OF STATEWIDE RATIOS (1) The statewide elementary or high school GTB ratio for purposes of calculating FY ~~199X+1~~ 20XX+1 general fund GTBA is: $1.75 \times \text{calendar year } \del{199X-1} \text{ } \u20XX-1 \text{ statewide taxable valuation} / \text{total FY } \del{199X} \text{ } \u20XX \text{ elementary or high school GTBA budget area.}$

(2) The statewide elementary or high school mill value per ANB for purposes of calculating FY ~~199X+1~~ 20XX+1 retirement fund GTBA is: $[(\text{calendar year } \del{199X-1} \text{ } \u20XX-1 \text{ statewide taxable value} \times 1.21) / 1,000] / \del{199X} \text{ } \u20XX \text{ statewide elementary or high school ANB certified for the adopted budget.}$ OPI may instead use final data in cases where significant changes in ANB and taxable valuation made after the adoption of a district's budget would significantly affect the statewide ratios.

AUTH: Sec. 20-9-102, 20-9-369, MCA
IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to allow OPI to use adjusted budget data, rather than data from the budgets as adopted, in calculating a district's guaranteed tax base ratio when using the adopted budget data would seriously misrepresent the district's eligibility for state funding or the statewide ratios. OPI is also changing the reference to 199X to 20XX.

10.21.101D CALCULATION OF DISTRICT RATIO (1) A district's GTB ratio for purposes of calculating FY ~~199X+1~~ 20XX+1 eligibility is: $\text{calendar year } \del{199X-1} \text{ } \u20XX-1 \text{ district taxable value} / \text{district's FY } \del{199X} \text{ } \u20XX \text{ GTBA budget area.}$ Data used in this calculation shall be taken from the district's adopted budget, except that OPI may instead use final data in cases where significant changes in ANB and taxable valuation made after the adoption of a district's budget would significantly affect the district's eligibility to receive state funding.

AUTH: Sec. 20-9-102, 20-9-369, MCA
IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the same reason as set forth following ARM 10.21.101B above.

10.21.101E WHICH DISTRICTS QUALIFY FOR GTBA ON GENERAL FUND MILLS (1) and (2) remain the same.

(3) For the initial year of operation for a non-operating district that re-opens under 20-9-502 and 20-9-503, MCA, the district GTB ratio shall be calculated using the district ANB and BASE budget for the district's last year of operation.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, 20-9-502, 20-9-503, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the same reason as set forth following ARM 10.21.101B above.

10.22.102 GENERAL FUND SPENDING LIMITS (1)(a) If a district's current year budget does not exceed the maximum budget allowed by statute for the ensuing year, the trustees must adopt a budget for the ensuing year that is at least equal to the ensuing year's BASE budget, but not greater than the ensuing year's maximum budget.

~~(b)(a)~~ With voter approval for any increase in the over-BASE levy amount, the trustees may adopt a budget up to ~~the greater of 104% of the current year's budget or 104% of the current year's budget per ANB times the ensuing year's ANB,~~ but not more than the ensuing year's maximum budget and not less than the ensuing year's BASE budget.

(2)(a) The trustees of a district that has always adopted a budget above maximum since FY 2000, and whose current year budget exceeds the maximum budget for the ensuing fiscal year, must:

(a) adopt a budget that is at least equal to the ensuing year BASE budget and not more than the lesser of either:

(i) remains the same.

(ii) the ensuing year's maximum budget plus the difference between the current year budget and the current year maximum budget amount;

~~(b) The trustees must~~ obtain voter approval for the over-maximum budget amount.

(3)(a) The trustees of a school district that was equalized in the current year and whose current year budget exceeds the ensuing year's maximum budget due to an enrollment decrease of less than 30%, must:

~~(a)~~ adopt a general fund budget that is:

~~(i)~~ at least equal to the ensuing year's BASE budget and

~~(ii) not more than the greater of either:~~

~~(A) the current year budget; times 94%; or~~

~~(B) the ensuing year maximum budget.~~

~~(b) The trustees must~~ obtain voter approval for the over-maximum amount of budget;

(c) ~~W~~within 5 five years of first adopting a budget which exceeds maximum due to an enrollment decrease of less than 30%, ~~the trustees must~~ adopt a budget which does not exceed the district's maximum budget amount; and

(d) before adopting a general fund budget that exceeds the maximum budget, adopt a written plan to reach the district's maximum general fund budget as provided in (3)(c).

(4)(a) The trustees of a school district that was equalized and whose current year general fund budget is greater than the maximum general fund budget established for the ensuing fiscal year due to an enrollment decrease of 30% or more must:

(a) adopt a general fund budget that is:

(i) through (E) remain the same.

(b) ~~The trustees must~~ obtain voter approval for the over-maximum budget amount;

(c) ~~W~~within 5 five years of first adopting a budget which exceeds maximum due to an enrollment decrease of 30% or more, ~~the trustees must~~ adopt a budget within the limits of (1).

(5) The percentage of enrollment decrease for purposes of ~~(4)(3)~~ and ~~(5)(4)~~ is calculated by subtracting the ensuing year's ANB from the current year's ANB, dividing the result by the current year's ANB, and rounding up to the nearest whole number.

(6) through (9) remain the same.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-308, ~~20-9-315~~, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the following reasons: the change in (1) implements House Bill 164 (2001 Mont. Laws, Ch. 146) which amended general fund budget limitations for school districts budgeting in the "equalized" range and the changes in (3) implement Senate Bill 390 (2001 Mont. Laws, Ch. 237) which allows districts with less than 30% enrollment decreases to adopt general fund budgets exceeding the maximums if they adopt a plan to reduce the budget to the maximum within five years.

10.22.205 BUDGET AMENDMENT PREPARATION AND ADOPTION

(1) through (3) remain the same.

(4) The state superintendent's receipt of an adopted budget amendment resolution signed by the presiding officer of the trustees and the district clerk shall be considered the district's application for additional state assistance under a budget amendment. The superintendent of public instruction shall approve or disapprove each application for increased direct state aid or additional transportation aid made in accordance with 20-9-166, MCA.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-165, 20-9-166, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to simplify the process for a district's application for additional state

funding authorized by law for certain budget amendments.

10.23.102 FUNDING THE BASE BUDGET LEVY (1) through (2)(a)(i) remain the same.

(ii) Anticipated tuition revenue for out of district pupils under the provisions of 20-5-321 through 20-5-323, MCA, except may be used to fund the BASE or over-BASE budgets under 20-9-308, MCA, and the tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities as calculated under 20-5-323(2), MCA, may be deposited to the miscellaneous programs fund pursuant to 20-5-324, MCA.

~~(iii) Anticipated revenues for light vehicle and local option tax, which for fiscal years beginning on or after July 1, 2000, may not be estimated at less than 75% of the previous year's revenue from these sources.~~

~~(iv) Anticipated oil and natural gas production taxes.~~

~~(v) Anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702, MCA.~~

~~(vi) remains the same but is renumbered (iv).~~

(v) School block grant funding as provided in section 244, chapter 574, laws of 2001.

(3) and (4) remain the same.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-5-321, 20-5-322, 20-5-323, 20-5-324, 20-9-141, 20-9-145, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule to address the 2001 legislative changes as follows: 1) Senate Bill 65 (2001 Mont. Laws, Ch. 464) allows tuition receipts to be used to fund the over-BASE budget, deleting the requirements to use the funds in the BASE budget and 2) House Bill 124 (2001 Mont. Laws, Ch. 574) replaced certain non-levy revenues with a school block grant in each fund.

10.23.102A FUNDING FOR OVER-BASE BUDGET (1) and (1)(a) remain the same.

(b) estimated tuition receipts not used to fund the BASE budget;

(b) and (c) remain the same but are renumbered (c) and (d).

(2) remains the same.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-308, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes the amendments to this rule to address the 2001 legislative changes in that Senate Bill 65 (2001 Mont. Laws, Ch. 464) allows tuition receipts to be used to fund the over-BASE budget, deleting the requirements to use

the funds in the BASE budget.

10.23.108 ANB AND BASIC ENTITLEMENT CALCULATIONS IN ANNEXATIONS AND CONSOLIDATIONS (1) through (1)(a)(ii) remain the same.

(b) The combined district will receive a separate basic entitlement for the district or districts which combined for each of the ~~three~~ six years after the consolidation or annexation becomes effective regardless of the distance between the schools or whether schools remain in operation. That is, the number of basic entitlements for the district after consolidation or annexation will be the same as the number before consolidation or annexation during this ~~three~~ six year period, with percentage reductions during the last three years as provided in 20-9-311, MCA.

(i) through (d) remain the same.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-308, 20-9-311, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule in response to House Bill 488 (2001 Mont. Laws, Ch. 252) which extends the current three year consolidation incentive to six years with a proportional funding reduction during the years four through six.

10.30.102 APPROVAL CRITERIA (1) remains the same.

(a) an application form has been completed by the trustees, received by the county superintendent ~~on or before May 1,~~ approved by the board of county commissioners (~~budget board~~) ~~on or before May 15,~~ and received by the superintendent of public instruction ~~before June 1~~ pursuant to the provisions of 20-6-502(4) and 20-9-302, MCA;

(b) through (e) remain the same.

AUTH: Sec. 20-3-106, MCA

IMP: Sec. 20-6-502, 20-9-302, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule because House Bill 358 (2001 Mont. Laws, Ch. 105) allows a district to re-open a school of the district mid-year if the school is approved as an isolated school under 20-9-302, MCA. The amendments to this rule adjust the current approval process to accommodate a mid-year application.

5. The rules proposed to be amended and transferred to Title 10, Chapter 10, Subchapter 6 provide as follows, stricken matter interlined, new matter underlined:

10.10.306 BANK ACCOUNTS OR OTHER DEPOSITORIES (1) As provided by 20-9-212 and 20-9-504, MCA, the county treasurer is the custodian and depository of all school district monies

except student extracurricular funds. Other bank accounts or depositories outside the control of the county treasurer shall be limited to:

(a) accounts with the state board of investments or investment firms maintaining a unified investment program in accordance with ARM 10.10.317~~7i~~;

(b) petty cash accounts~~7i~~;

(c) interim depository accounts for school lunch or driver's education fees~~7i~~;

(d) money held by the district in investment accounts established under 20-9-235, MCA; and

(e) gifts or endowments if such accounts are required by the donor.

(2) The county treasurer shall be the custodian for all other school district monies, including gifts, donations, endowments, interlocal agreements, direct federal or state revenues and district administered self-insurance programs.

AUTH: Sec. 20-9-102, 20-9-201, MCA

IMP: Sec. 20-9-212, 20-9-504, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the reasons set forth following New Rule I above.

10.10.317 INVESTMENT POOLS (1) For purposes of this rule, "investment pool" is defined as a unified investment program established under 20-9-213(4), MCA, by a Montana school district and one or more other school districts or other local governmental entities. "Investment pool" does not include an investment program hosted by the county as a countywide investment pool or a school district investment account established under 20-9-235, MCA.

(2) through (7) remain the same.

AUTH: Sec. 20-9-102, 20-9-201, MCA

IMP: Sec. 20-9-212, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the reasons set forth following New Rule I above.

6. The Office of Public Instruction proposes to transfer ARM 10.10.308 COUNTY INVESTMENT OF SCHOOL DISTRICT FUNDS to Title 10, Chapter 10, Subchapter 6 so that all rules relating to investment of school district funds are contained in one subchapter.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-212, 20-9-213, MCA

7. ARM 10.23.107 which can be found on page 10-339 of the Administrative Rules of Montana, is proposed to be repealed because the shortfalls reported as of 1993 are

absolute due to uncollectable taxes.

AUTH: Sec. 20-9-102, MCA
IMP: Sec. 20-9-331, 20-9-333, MCA

8. 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 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 April 30, 2002.

9. Jeffrey Weldon, Chief Legal Counsel for the 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 school funding or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, 1227 11th Avenue, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, e-mailed to bemarlow@state.mt.us, 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, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch
Linda McCulloch
Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State March 18, 2002.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the)
proposed adoption of new)
rule I relating to)
students placed in)
private education)
programs, and the amendment)
of ARM 10.7.106A, 10.10.301,)
10.10.301B, 10.10.301C,)
10.10.301D, 10.16.3818, and)
10.20.102 relating to tuition)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On April 30, 2002 at 10:30 a.m. a public hearing will be held by interactive teleconference through the Montana Educational Telecommunications Network (METNET) to consider the adoption and amendment of rules relating to tuition. The teleconference will be held at the following sites:

Helena
Dept. of Public Health and Human Services
111 Sanders Street
Lower Level Auditorium

Billings
Montana State University-Billings
1500 North 30th St.
Special Ed. Bldg., Room 159

Bozeman
Montana State University-Bozeman
EPS Building, So. 7th and Grant
Burns Center, Room 126

Butte
Montana Tech of the University of Montana
1300 West Park Street
ELCB, Room 231

Great Falls
Montana State University College of Technology-Great Falls
2100 16th Ave. So., Room B-103

Kalispell
Flathead Valley Community College
777 Grandview Drive
Learning Resource Center, Room 120

Miles City
Miles Community College

2715 Dickenson Street
Room 106

Missoula
University of Montana-Missoula
Corner of Arthur and Eddy
Gallagher Building, Room 104

Glasgow
Francis Mahon Deaconess Hospital
621 3rd Street South

2. The Office of Public Instruction shall 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 April 15, 2002 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, P.O. Box 202501, Helena, MT 59620-2501, telephone: 406-444-3172, TDD number: 406-444-1812, FAX: 406-444-2893; e-mail bemarlow@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I STUDENTS PLACED IN EDUCATION PROGRAMS (1)

The office of public instruction recognizes that a Montana state agency or court may place a Montana student in a facility located within a school district that is not the student's district of residence. The office of public instruction also recognizes that a district may contract with a private or public entity for the provision of a Montana student's education. If a district contracts and pays for the provision of a Montana student's education, the district may include that student in the district's enrollment count for purposes of calculating ANB, provided:

(a) the student, who otherwise qualifies for ANB, is enrolled at district expense in the district on the count date;

(b) the district retains written verification from the contractor documenting the student's participation in the education program on the count date;

(c) either:

(i) the contractor is accredited by the Montana board of public education; or

(ii) the student's education program is under the direction and supervision of the district and is provided by district staff; and

(d) the contractor is a facility, center, home or other program licensed by and located within the state of Montana, excluding licensed day care centers.

(2) Payments made to contractors described in (1) are not considered tuition for purposes of applying the provisions in Title 20, chapter 5, part 3, MCA. When a district

contracts for a Montana student's education, the cost for such services shall be paid from the district's general fund or from federal funds, provided the cost is an allowable use of the federal funds. Districts shall not use the tuition fund for payments to private education programs.

(3) If a student is not a resident of the district of attendance, the district may charge tuition in accordance with Montana law (see ARM 10.10.301).

(4) In accordance with 20-7-422, 20-7-402(4) and 20-5-323(5), MCA, when a child is placed by a Montana state agency in an out-of-state residential facility, the state agency making the placement shall be responsible for paying the education costs of the placement.

AUTH: Sec. 20-7-419, MCA

IMP: Sec. 20-5-321, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule to ensure consistent and proper use of the funding sources available to schools for payments to private education programs. The proposed rule clarifies that the district tuition fund may not be used for payments to a private education program and also clarifies that the district responsible for paying a private education program for a student's education program may include that student in the district's enrollment count for ANB purposes.

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

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) and (2) remain the same.

(3) Pursuant to 20-5-323, MCA, a school district transporting a student under an out-of-district attendance agreement may charge for over-schedule costs of transportation if stated in the attendance agreement. Over-schedule costs of transporting an out-of-district student, as limited by 20-5-323(5), MCA, may be charged to:

~~(a) the district of residence or county of residence~~ the entity that could be held responsible for paying tuition under ~~a mandatory~~ an attendance agreement required by 20-5-320 or 20-5-321, MCA; or.

~~(b) the parent/guardian or district of residence under a~~ For discretionary attendance agreements allowed by 20-5-320, MCA, ~~the~~ the district of residence may refuse to accept responsibility for the over-schedule costs of transportation at the time the attendance agreement is signed by indicating so on the agreement form.

(4) remains the same.

(a) the transportation fund expenditures reported by the district of residence on the Trustees' Financial Summary for ~~1999X-2~~ 20XX-2, divided by the total October 1 enrollment for the school year ~~1999X-2~~ 20XX-2; or

(b) the number of miles added to a bus route or routes

to accommodate students attending under attendance agreements, divided by the number of students riding the buses under the attendance agreement(s), times ~~\$0.2125~~ \$0.25, times the number of days the route or routes are conducted for the year of attendance.

(5) through (8) remain the same.

(9) In accordance with 20-5-324, MCA and ARM 10.10.301B, the school district trustees or county superintendent will ~~will~~ may pay costs of transportation listed on an attendance agreement ~~for school year 199X~~ along with tuition due on that contract in the year ~~following the school year of the student's attendance, which is school year 199X+1~~ or, if the obligation occurs after the district's budget is adopted, in the ensuing year. Parents or guardians may be charged in the year of attendance.

AUTH: Sec. 20-10-112, MCA

IMP: Sec. 20-5-320, 20-5-321, 20-5-323, 20-10-141, 20-10-142, MCA

Statement of Reasonable Necessity: Changes in law made by Senate Bill 65 (2001 Mont. Laws, Chapter 5) require parents to pay tuition when their elementary school-aged child attends, with mandatory approval, the elementary school where a high school sibling attends (See 20-5-321(1)(c), MCA). A change in the entity responsible for paying a child's tuition also changes the potential payment date for both the tuition and transportation payment. The transportation rate in (4) was changed by Senate Bill 344 (2001 Mont. Laws, Chapter 409).

10.10.301 CALCULATING TUITION RATES (1) The maximum regular education tuition rate a district may charge ~~for the ensuing school year is equal to 80% of the maximum per ANB entitlement less the state's share of the maximum per ANB entitlement per student is 20% of the per ANB rate established in 20-9-306(10), MCA, for the first ANB for the year of attendance as of March 15th.~~ For a kindergarten student and a pre-school child with disabilities the rate is one-half the rate for an elementary student.

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

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

(a) and (b) remain the same.

(3) Tuition calculated in (2) may not exceed the lesser of:

(a) \$2,500; or

(b) the actual individual costs of providing that student's program minus 80% of the maximum per-ANB rate

established in 20-9-306(10), MCA for the first ANB for the year of attendance.

(4) The maximum tuition rate for a student with disabilities may exceed the regular tuition rate calculated in (1) but may not exceed the rates established in ARM ~~10.16.1314~~ 10.16.3818.

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

(a) Pursuant to 20-5-320 and 20-5-321, MCA, the three entities that pay tuition are: parents or guardians, school districts, and the state. ~~‡~~The trustees may waive any or all of the calculated tuition amount, but any waiver must be applied equally to all students in the district's elementary or high school program, the tuition for which is required to be paid by the same type of entity. Trustees may set different tuition rates for elementary and high school programs, including programs offered by an elementary district and high school district operated under a combined board or a K-12 district.

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

(ii) remains the same but is renumbered (c).

(b) remains the same but is renumbered (d).

(e) If trustees charge tuition, the trustees shall charge all parents and guardians the same tuition rate, including the parent or guardian of a child with disabilities.

AUTH: Sec. ~~20-5-305~~, 20-5-312, 20-9-102, 20-9-201, MCA

IMP: Title 20, ch. 5, pt. 3, 20-6-702, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes the amendments to the rules relating to tuition because Senate Bill 65 (2001 Mont. Laws, Chapter 5) made significant changes to the laws that govern student attendance in a school outside the resident district. The bill:

1. Eliminated the state's payment of tuition for most students who must cross a county line to attend school outside their resident district.

2. Allows districts to use regular education tuition to fund the district's over-BASE portion of the general fund budget, rather than the BASE budget (effective FY 2003). Tuition received in FY 2002 for non-resident students that attended the district in FY 2001 must still be budgeted to fund the district's FY 2002 BASE budget, but tuition charged for non-resident students that attend the district in FY 2002 may be budgeted to fund the over-BASE portion of the budget in FY 2003.

3. Gives districts greater flexibility in granting

tuition waivers. Senate Bill 65 defines three "entities" that may be required to pay tuition, i.e. parents/guardians, other districts and the state. The trustees can elect to charge tuition for all non-resident students placed in their district by one entity, such as the state, and not charge for non-resident students placed in the district by another entity, such as parents/guardians. All members of an "entity" must be charged equally. For example, if one parent is required to pay tuition, all parents must be required to pay.

4. Changes some of the conditions under which acceptance of a non-resident student is mandatory versus discretionary.

5. Lowers the maximum tuition rate that can be charged for a non-resident student; and

6. Changes the entity responsible for paying a child's tuition, in some cases.

The rule changes proposed herein meet these statutory changes.

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS

(1) For purposes of this ~~section~~ rule:

(a) ~~a child's family is defined as being the family of parents or legal guardians~~ guardian means an adult who is responsible for the child and has the reciprocal rights, duties and responsibilities with the child and whose status is created and defined by law;

(b) placement by a court of competent jurisdiction includes federal and state district courts, tribal courts and youth courts established pursuant to Title 41, chapter 5, MCA; and

(c) for the purpose of this rule placement by a "state agency" includes placement by tribal agencies, the department of corrections or the department of public health and human services. Placement by a state agency does not include placement by a private or not-for-profit entity under contract with the department of corrections or the department of public health and human services.

~~(c) an emancipated minor is defined as set out in 20-25-501 and 41-3-102, MCA.~~

(2) through (3)(a) remain the same.

(b) If the resident district has not agreed to allow the out-of-district attendance, the receiving district may allow the student to attend, and the parent or guardian may be charged for tuition and transportation costs. ~~The resident district may not be held responsible for paying costs of tuition or transportation for discretionary attendance if the district has not agreed to allow the out-of-district attendance.~~

(4) Pursuant to 20-5-321, MCA, the resident district and the receiving district must accept the ~~parent or guardian's~~ request for the student to attend out-of-district if the mandatory conditions set out in 20-5-321, MCA, are present, unless:

(a) remains the same.

(b) ~~the district of attendance is in the same county as~~

~~the district of residence, and the district of residence provides transportation; or~~

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

~~(5) remains the same.~~

~~(6) For purposes 20-5-321(1)(a), MCA, "transportation" shall include, but not be limited to, the offering or provision of:~~

~~(a) bus service;~~

~~(b) an individual transportation contract; or~~

~~(c) room and board reasonably near the school.~~

~~(6) (7) Statutes in effect at the time the out-of-district attendance agreement was signed for the student's year of attendance govern the conditions of the attendance agreement.~~

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

~~(8) When the state is obligated to pay tuition or transportation costs for a student placed under provisions of 20-5-321(1)(d) and (e), MCA, the county superintendent shall send a completed copy of the student's attendance agreement to the superintendent of public instruction before paying tuition to the school district of attendance.~~

~~(8) (9) When the district is obligated to pay tuition or transportation costs for out-of-district attendance agreements, the tuition will be paid from the district's tuition fund, and the transportation costs will be paid from the district's transportation fund. A district may pay tuition and transportation charges in the student's year of attendance or, if the obligation occurs after the district's budget is adopted, in the ensuing year.~~

~~(9) (10) The county of residence state shall be is financially responsible for out-of-county tuition and may be charged transportation costs as established under 20-5-323, MCA, for a child with disabilities, as defined in 20-7-401, MCA, who has been placed outside the child's resident district by a court or by a state agency or for a child placed outside the child's resident district in a foster care or group home licensed by the state. When the state is obligated to pay a student's tuition or transportation costs, those payments may be made in the child's year of attendance.~~

~~(11) The state's tuition and related transportation obligation shall be paid to the receiving district by the county superintendent in the county of attendance, who will direct the county treasurer to pay the billing district from the basic county tax for equalization.~~

~~(12) Tuition payments made for a child placed outside the child's resident district by a court or state agency must be supported by a properly completed out-of-district attendance agreement signed by both the receiving district and by an~~

authorized representative of the placing court or state agency.

AUTH: Sec. 20-5-323, 20-9-102, MCA

IMP: Sec. 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following ARM 10.10.301.

10.10.301C OUT-OF-STATE ATTENDANCE AGREEMENTS

(1) remains the same.

(2) The amount of tuition paid by a Montana district for a regular education student without disabilities who attends attending school in a state or province not governed by a reciprocal tuition agreement cannot exceed the annual average cost per student in the student's district of residence.

~~(a) The average cost per student will be calculated by totaling the expenditures from the preceding school fiscal year for the following funds: 01-General, 10-Transportation, 13-Tuition, 14-Retirement, 19-Nonoperating, and 50-Debt Service, and dividing that total by the October 1 enrollment from the preceding school fiscal year.~~

~~(b) If the tuition rate charged by the receiving district is less than the Montana district's annual average cost per student, the tuition payment may not exceed the lesser of the two amounts.~~

(3) remains the same.

~~(4) If a Montana school district receives a tuition payment for a regular education out-of-state student from a state or province that does not have a reciprocal tuition agreement with Montana, and that payment exceeds the rate established in ARM 10.10.301, the Montana school district will reimburse the state of Montana for the amount received in excess of the maximum regular education tuition rate for the school year of out-of-state attendance.~~

~~(5) (4) Provided it is in an operating status, a school districts that are is responsible for paying tuition charges for a resident student who attends an out-of-state public school may receive reimbursement for the amount of tuition paid, up to the state's portion of the per ANB entitlement for that per student for the year of attendance.~~

~~(a) Calculations will be based on the county superintendents' reports submitted in accordance with ARM 10.10.301D, the superintendent of public instruction will calculate the per ANB entitlement amount the district would have received if that student had been enrolled in the resident district.~~

~~(b) The superintendent of public instruction shall provide payment of the amount calculated in (5)(4)(a), but not more than the amount of tuition paid by the district for resident students who attended school out-of-state, in the year the out-of-district attendance report is submitted,~~

provided it is submitted ~~in~~ by July 30 of the year following the year of attendance.

AUTH: Sec. 20-5-323, 20-9-102, MCA

IMP: Sec. 20-5-314, 20-5-316, 20-5-320, 20-5-321, 20-5-323, 20-5-324, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following ARM 10.10.301.

10.10.301D TUITION REPORTS (1) ~~For the purpose of determining state and county responsibility for tuition payment, by~~ By July 15 of each year, the trustees of a district shall provide an out-of-district attendance report to the county superintendent. That report shall be in a format prescribed by the office of public instruction and shall list, for the most recent school year, students who attended a school of the district under an approved a mandatory agreement pursuant to 20-5-321, MCA and, resident students who attended a public school out-of-state for which the district is responsible for payment of the tuition charges, and students for whom tuition rates were charged that exceed the maximum regular education tuition rate as established in ARM 10.10.301. The rates which exceed the maximum regular education tuition rate may be special education rates, out-of-state rates, or rates for students without disabilities who require unique programs.

(2) ~~By July 30, the county superintendent shall submit out-of-district attendance~~ the tuition reports received under (1) to the superintendent of public instruction for those districts that are responsible for payment of out-of-state tuition charges and districts that charge out-of-state tuition that exceeds the maximum regular education tuition rates established in ARM 10.10.301.

AUTH: Sec. 20-5-323, 20-9-102, MCA

IMP: Sec. 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-7-431, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following ARM 10.10.301.

10.16.3818 SPECIAL EDUCATION TUITION RATES (1) remains the same.

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

(3) and (3)(a) remain the same.

(b) Option B: The actual unique costs of services

provided to the student ages 3 to 21 as per the individualized education program (IEP), ~~minus the state's share of the maximum per ANB entitlement less 80% of the maximum per-ANB rate established in 20-9-306(10), MCA for the year of attendance and less the per ANB special education block grants received by the district,~~ may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) through (4) remain the same.

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

(6) and (7) remain the same.

AUTH: Sec. 20-5-323, MCA

IMP: Sec. 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to adopt this rule for the same reasons as set forth following ARM 10.10.301.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) through (7) remain the same.

(a) a kindergarten student enrolled in a program designed to provide less than 180 hours of pupil instruction time per school year is ~~not~~ reported as enrolled but is excluded from eligibility for purposes of ANB. A kindergarten student enrolled in a program designed to provide 180 hours or more of pupil instruction time per school year is reported as enrolled and is included in eligibility for purposes of ANB.

(b) remains the same.

(i) less than 180 hours of pupil instruction time per school year is ~~not~~ reported as enrolled but is excluded from eligibility for purposes of ANB;

(ii) through (8)(c) remain the same.

(9) Trustees may apply for increased ANB for a student placed by the trustees, a state agency, or court in an accredited private education program if the trustees enter into a contract as provided in [NEW RULE I(1)].

(9) through (12) remain the same but are renumbered (10) through (13).

(a) and (b) remain the same.

(c) adjust the guaranteed tax base aid payment to reflect the amount which the district would be eligible for based on the budget recalculated in ~~(12)~~ (13)(b).

~~(13)~~ (14) A school district must conduct 90 days and a minimum of 360 hours of pupil instruction for a kindergarten program, 180 days and a minimum of 720 hours of pupil instruction for grades 1-3, ~~and~~ 180 days and a minimum of 1,080 hours of pupil instruction for grades 4-~~12~~ 11, and 175 days and 1,050 hours for grade 12.

(a) If the school district fails to conduct the required

number of days and the minimum number of hours, the superintendent of public instruction will reduce the direct state aid and ~~guaranteed tax base subsidy payments for the year in which the requirement was not met~~ by 1/90th for each school day less than 180 school days.

(b) However, if a school district fails to conduct the minimum number of days by reason of one or more unforeseen emergencies as defined in 20-9-802, MCA, the superintendent of public instruction shall reduce the direct state aid and ~~guaranteed tax base subsidy payments~~ by 1/180th for each school day less than the minimum required.

(c) The reduction of state funding will be prorated based on enrollment for the portion of the district, such as one class, school, or grade level, for which the district fails to conduct the minimum pupil instruction days and hours.

(14) (15) For the purpose of determining the BASE funding program of a district, ANB will be calculated using the following method:

(a) the enrollment reported by the school district on the October and February enrollment report forms to the office of public instruction, pursuant to 20-9-311, MCA, will be averaged by budget unit. After subtracting the prekindergarten enrollment and one-half of the kindergarten enrollment and adjusting for part-time enrollment from each report, the average will be multiplied by the total of PIR days plus PI days and divided by 180 to determine ANB;

By budget unit: [(enrollment for first Monday in October + enrollment for February 1) - (kindergarten enrollment for students receiving less than 180 hours of pupil instruction time per school year) - (one-half the kindergarten enrollment for students receiving 180 hours or more of pupil instruction time per school year) - (prekindergarten enrollment) - (part-time enrollment for students in grades 1 through 12 receiving less than 180 hours of pupil instruction time per school year) - (one-half of part-time enrollment by ~~grade category~~ for students in grades 1 through 12 receiving 180 - 359 hours of pupil instruction time per school year) - (enrolled students reaching 19 years of age by September 10 of the school year)] divided by 2 to get the average of the two enrollment counts by budget unit;

Then: average of two enrollment counts by budget unit, multiplied by the sum of PIR days plus PI days, divided by 180, rounded up to the next whole number, equals ANB.

(b) remains the same.

AUTH: Sec. 20-9-102, 20-9-346, 20-9-369, MCA

IMP: Sec. 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

Statement of Reasonable Necessity: The Office of Public Instruction proposes to amend this rule for the following reasons: the change in (7) reflects changes in the reporting method caused by OPI's implementation of a new computer program for collection of enrollment data used to calculate

ANB; the addition under (9) allows a district that places a student in a private educational program or that claims tuition for state and court placements at private facilities within the district, to claim the ANB for the student so the district general fund has the ability to pay the contract with the facility. This change provides consistent state funding to schools within the tuition changes provided by Senate Bill 65; the changes in (14) allow consistent state application of penalties for failure to conduct minimum days and reduction of guaranteed tax base subsidy is removed from the penalty since the amount of the payment is not related to the number of days the school operates and should therefore not be included in the penalty.

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 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 April 30, 2002.

6. Jeffrey A. Weldon, attorney, has been designated to preside over and conduct the hearing.

7. 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 tuition or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, P.O. Box 202501, 1227 11th Avenue, Helena, Montana 59620-2501, faxed to the office at (406)444-2893, e-mailed to bemarlow@state.mt.us, or may be made by completing a request form at any rules hearing held by the Office of Public Instruction.

8. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch
State Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State March 18, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
proposed adoption of)	ADOPTION AND REPEAL
new rule I model rules and)	
new rule II teacher)	
certification and the repeal)	
of ARM 10.57.211 and)	
10.57.212 relating to testing)	
for certification and minimum)	NO PUBLIC HEARING
scores)	CONTEMPLATED

TO: All Concerned Persons

1. On April 29, 2002, the Board of Public Education proposes to adopt New Rule I Model Rules, New Rule II Educator Recruitment and to repeal ARM 10.57.211 and 10.57.212.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on April 15, 2002, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, Executive Secretary, Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail smeloy@bpe.montana.edu.

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

NEW RULE I MODEL RULES (1) Except as waived by the board of public education, the board adopts and incorporates by reference the Attorney General's Model Rules relating to contested cases. The model rules being adopted are ARM 1.3.211 through 1.3.225. A copy of the model rules may be obtained from the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601.

AUTH: Sec. 20-2-114, MCA
IMP: Sec. 20-2-121, 20-4-110, MCA

Statement of Reasonable Necessity: The Board of Public Education finds it reasonable and necessary to adopt the Attorney General's Model Rules in connection with its duty to investigate and hear matters in connection with the suspension or revocation of a teacher's certification.

NEW RULE II EDUCATOR RECRUITMENT (1) Individuals who meet the following qualifications to practice shall be certified class 1, 2, 3, or 6 as appropriate.

(a) individuals who have held, within the last five years, a professional--not alternative or provisional--

teacher, specialist, or administrator certificate from another state in an area certifiable in Montana. This section applies only to individuals who have completed an applicable accredited education degree in an area certifiable in Montana;

(b) individuals who have graduated within the last five years (January 1997 through [effective date of rule]) from a teacher, specialist, or administrator preparation program in an area certifiable in Montana that is either accredited by NCATE or a state board of public education;

(c) individuals who hold a current certificate from the national board for professional teaching standards in an area that is certifiable in Montana; or

(d) individuals who currently hold a provisional (Class 5) certificate who meet one or more of the above three qualifications.

(2) Such individuals must meet all other nonacademic requirements for certification.

(3) This rule shall be effective from [effective date of rule] until June 30, 2003.

Auth: Sec. 20-2-121, MCA

IMP: Sec. 20-4-102, MCA

Statement of Reasonable Necessity: The Board of Public Education finds it reasonable and necessary to adopt New Rule II because recruitment and retention of qualified professional educators in Montana elementary and secondary public schools has become increasingly difficult. Failure to recruit and retain qualified professional educators negatively impacts the quality of public education. Newspapers and electronic media regularly document local school community problems finding and keeping teachers and administrators who are certified or certifiable in Montana. Two recent reports competently outline the problem: Who Will Teach Montana's Children?, February 2001, commissioned by the Montana Certification Standards and Practices Advisory Council, prepared in conjunction with Dori Nielson, and Governor's Task Force on Teacher Shortage/Teacher Salaries, "Final Report," September 11, 2000.

Whereas there is no one instant remedy to our quality educator shortage, in accordance with Section 2-4-302, MCA, the Board of Public Education believes the adoption of New Rule II will in part help address this shortage, sustain the integrity of the teaching profession, and enhance the education of our public school children.

Our proposed action does not take place in a vacuum. At the request of this board, the Certification Standards and Practices Advisory Council is right now deep into the process of developing new rules that will make it easier for educators who meet the qualifications we have outlined in this rule to become professionally certified to practice in our public schools. Unfortunately, the advisory council will not

complete its entire work in time for this board to act on our immediate need to relax archaic and unnecessary existing rules that discourage qualified individuals from applying for Montana certification.

Fortunately, this proposed rule is consistent with preliminary recommendations of the task force the advisory council appointed to review the entire body of certification rules. The task force is chaired by a member of the advisory council and is composed of representatives from the Board of Public Education, Office of Public Instruction, Montana University System, Montana School Boards Association, Montana Rural Education Association, School Administrators of Montana, and MEA-MFT.

As indicated above, at the earliest possible date, following the recommendation of the advisory council, the Board of Public Education will consider other rules addressing this issue.

4. The rules proposed for repeal follow.

10.57.211 TEST FOR CERTIFICATION found at page 10-837, Administrative Rules of Montana.

AUTH: Sec. 20-2-121(1), 20-4-102(1) and (5), MCA

IMP: Sec. 20-4-102(1) and (5), MCA

10.57.212 MINIMUM SCORES ON TEST OF BASIC SKILLS found at page 10-838 Administrative Rules of Montana.

AUTH: Sec. 20-2-121(1), MCA

IMP: Sec. 20-4-102(1) and (5), MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that the test for teacher certification (ARM 10.57.211 and 10.57.212) Pre-Professional Skills Test no longer meets the needs of entry-level professional educators in Montana. Based upon the unanimous recommendations of the advisory councils to the Board of Public Education, the Montanan Advisory Council on Indian Education and the Certification Standards and Practices Advisory Council, the Board of Public Education has taken action to repeal the test for teacher certification in Montana.

5. Concerned persons may present their data, views or arguments concerning the proposed adoption and repeal in writing to Steve Meloy, Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu to be received no later than 5:00 p.m. on April 25, 2002.

6. If persons who are directly affected by the proposed

actions 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 Steve Meloy, Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu. The comments must be received no later than 5:00 p.m. on April 25, 2002.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 2,500 based on approximately 25,000 persons certified by the Board of Public Education in Montana.

8. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 Board of Public Education rulemaking. Such written request may be mailed or delivered to the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State March 18, 2002.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the)
proposed amendment of)
ARM 23.4.201, 23.4.212,)
23.4.213, 23.4.214, 23.4.215,)
23.4.216, 23.4.217, 23.4.218,)
23.4.219, 23.4.220, and)
23.4.225 pertaining to field)
certification of associated)
equipment)

TO: All Concerned Persons

1. On April 26, 2002, at 1:00 p.m. a public hearing will be held at the Forensic Science Lab, 2679 Palmer, in Missoula, Montana, to consider the proposed amendment of ARM 23.4.201, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, and 23.4.225 pertaining to field certification of associated equipment.

2. The Department of Justice 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 Department of Justice no later than 5 p.m. on April 3, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; e-mail asheppard@state.mt.us.

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

23.4.201 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

(1) "Accessory" means any device or item, which may or may not be expandable, but assists in the operation of the breath analysis instrument, ~~i.e., a surge suppressor.~~

(2) through (4) remain the same.

(5) "Annual" means yearly or once a year, but does not in itself signify what time in a year. See Black's Law Dictionary 2 (6th ed. 1990).

(5) and (6) remain the same, but are renumbered (6) and (7).

~~(7)~~ (8) "Associated equipment" means:

(a) remains the same.

(b) any approved device which is designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration. ~~Analyses of this type of device, e.g. a preliminary breath tester, are to be considered as probable cause evidence only.~~

~~(8)~~ (9) "Blood" refers to whole blood, ~~which contains the cellular components and the serum of plasma blood or serum, or plasma.~~

(9) remains the same, but is renumbered (10).

~~(10)~~ (11) "Breath analysis instrument" means any device which is capable of capturing and analyzing deep lung air to establish the concentration of alcohol contained in that sample. Such instruments must be approved by the ~~division of forensic science~~ forensic science division.

(11) through (15) remain the same, but are renumbered (12) through (16).

~~(16)~~ (17) "Breath analysis instrument modification" means any alteration, variation or redesign of any part, device or electronic circuit which directly ~~effects~~ affects, alters, varies or changes the analytical and/or the operational section of the breath analysis instrument. Such modification, may at the discretion of the ~~division of forensic science~~ forensic science division, require re-approval of the breath analysis instrument.

~~(17)~~ (18) "Breath analysis instrument update" means any advancement, augmentation, addition, or replacement of any part or device with a different specification which may or may not ~~effect~~ affect the analytical or operational sections of the breath analysis instrument. Such update may, at the discretion of the ~~division of forensic science~~ forensic science division, require re-approval of the breath analysis instrument.

(18) remains the same, but is renumbered (19).

~~(19)~~ (20) "Breath test specialist" means a person qualified under these rules to use a breath analysis instrument or ~~preliminary breath tester~~ a preliminary alcohol screening test. Depending on the person's degree of training as set forth in ARM 23.4.216, he/she may be certified as:

(a) through (c) remain the same.

~~(20)~~ (21) "Laboratory" means the ~~division of forensic science~~ forensic science division.

(21) through (24) remain the same, but are renumbered (22) through (25).

~~(25)~~ (26) "~~Preliminary breath tester~~" or "~~PBT~~" "Preliminary alcohol screening test" or "PAST" means any device meeting the definition of ~~ARM 23.4.201(7)-(8)(b)~~. Where the context clearly indicates, ~~PBT~~ also means preliminary breath test.

~~(26)~~ (27) "Preservative" means any chemical which inhibits the development of bacterial growth in a collected blood sample or which inhibits or prevents enzymatic hydrolysis of drugs by cholinesterase, i.e., potassium oxylate and sodium fluoride.

~~(27)~~ "~~Probable cause test~~" means ~~any analysis of the breath using preliminary breath testers or any approved field sobriety or approved psycho motor maneuver designed to indicate and or estimate the presence of or demonstrate the influence of alcohol or other intoxicating substances.~~

(28) "Sample" means blood, breath, urine or other bodily substances biological fluid to be analyzed for the presence of drugs and/or alcohol pursuant to this subchapter. All samples must be of sufficient volume so that complete analysis may be performed.

(29) and (30) remain the same.

(31) "Test", in reference to a breath analysis, means a full and complete analysis of a properly delivered breath sample(s). Such analysis is to be considered complete when the breath analysis instrument has executed its prescribed program, a final result is obtained and a printed record is produced by the breath test instrument. All breath analysis must be performed in accordance with the procedures set forth by the forensic science division. In reference to other biological sample analysis, a test shall be defined as a full and complete analysis of the received sample or samples. A test of the sample may consist of more than one analysis of the submitted sample or samples in accordance with the procedures set forth by the forensic science division.

(32) remains the same.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments are necessary to update terminology to be consistent with the terms used in the statute, as well as to refine and clarify some existing definitions. The definition of the term annual is necessary to clarify that the use of the term in the rules does not imply a set time in the year, only that the specified event will occur once every year and is not dependent on the time of year. The amendments to the definitions of the terms blood and preservative are necessary to be consistent with the scientific usage of such terms. The remaining amendments are necessary to update the terminology and to reflect the terminology used in Title 61, chapter 8, part 4, MCA.

23.4.212 BREATH ANALYSIS INSTRUMENTATION AND ASSOCIATED EQUIPMENT

(1) All manufacturers/vendors of breath analysis instruments, associated equipment, and supplies are required to submit such breath analysis instrumentation, associated equipment, or supplies to the division of ~~forensic science~~ for formal state approval prior to introduction into the state of Montana.

(2) A record of ~~A~~all breath analysis instruments which have met the approval criteria established by the division of ~~forensic science~~ shall be kept on file at the division of ~~forensic science~~.

(3) A record of ~~A~~all associated equipment, and supplies which have met approval criteria established by the division of ~~forensic science~~ shall be kept on file at the division of ~~forensic science~~.

(4) The division of ~~forensic science~~ reserves the right to withdraw approval status of any breath analysis instrument,

associated equipment, or supply, or the manufacturer/vendor's approval to market said product, if the manufacturer/vendor fails to comply with the provisions set forth in the approval criteria or regulations pertaining to the manufacturer's/vendor's responsibilities to the state of Montana.

(5) Manufacturers/vendors of breath analysis instrumentation, equipment, and/or supplies must comply with the following regulations:

(a) All manufacturers/vendors must have a completed and signed application on file with the division of ~~forensic science~~.

(b) and (c) remain the same.

(d) The manufacturer/vendor shall send at least one representative knowledgeable in the technology and electronic configurations of the breath analysis instrument and capable of providing training for the personnel in the DUI breath analysis section of the division of ~~forensic science~~. The manufacturer/vendor shall, if requested to do so, send at least one representative knowledgeable in the technology and electronic configurations of the associated equipment ~~device~~.

(e) The manufacturer/vendor must provide all information concerning any modification, change or upgrade to an approved breath analysis instrument or approved associated equipment within ~~two~~ six months of that modification, change or upgrade. The division of ~~forensic science~~ will evaluate such modifications, changes or updates and determine if such modification, change or update necessitates re-approval of the breath analysis instrument.

(f) remains the same.

(6) The division of ~~forensic science~~ shall have the duty to select the primary breath analysis instrument for use in the state of Montana. Selection shall be based on, but not limited to, performance of the breath analysis instrumentation in each segment of the state approval process, breath analysis instrumentation field history, legal history, manufacturer's/vendor's support capability, and references of other users.

(7) remains the same.

(8) All results of a breath analysis shall be reported as grams of alcohol by weight per two hundred ten liters of deep lung breath (G/210L). All test results will be reported on a form approved by the division of ~~forensic science~~. Copies of all tests results will be sent to the division of ~~forensic science~~ on a monthly schedule. Failure to file a copy of the report with the division does not invalidate the test results, if the report is on file at the testing location.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments are necessary to provide consistent use of the term "forensic science division" which is used in its abbreviated form, "division," throughout the rules. The

amendment to (5)(e) above is necessary because the division has found two months is not an adequate timeframe for manufacturers/vendors to provide information of modifications, changes, or upgrades to the division. The amendment to (8) above is necessary to clarify that failure to send a test result to the division will not invalidate the test so long as a test result is on file at the testing location. The amendments also make minor changes in language.

23.4.213 FIELD CERTIFICATION OF BREATH ANALYSIS INSTRUMENTS AND ASSOCIATED EQUIPMENT (1) Breath analysis instruments shall be field certified for accuracy at least once every seven ~~(7)~~ days by a breath test specialist/senior operator, or in the event of a senior operator's absence, his/her authorized designee, using ~~a solution of an ethyl alcohol water standard or an ethyl alcohol gas standard which has been approved by the division of forensic science~~ and using the field certification report form for the breath analysis instrument being certified.

(a) A field certification shall consist of a series of no less than two analyses obtained using an approved ~~ethyl alcohol solution standard~~.

(b) A field certification is valid when the results of the approved ~~ethyl alcohol solution test standard~~ is are at target value plus or minus one hundredth ~~(.01)~~ grams per ~~two hundred and ten~~ 210 liters. The results of the field certification shall be reported to the third decimal (.000) and recorded on the field certification report form~~7~~. If a test record card shall be affixed is used, it shall be affixed to the report which is to be kept at the testing location and a copy of the field certification report will be prepared for the division ~~of forensic science~~. All reports will be sent to the division ~~of forensic science~~ on a monthly basis.

(c) The approved ethyl alcohol water solution standard will not be used for ~~more than 20 analyses or longer than two three~~ months after its first date of use, ~~which ever comes first~~. This use and time limitation does not apply to the ethyl alcohol gas standard.

(d) Results of a field certification analysis outside the range specified in this rule shall be confirmed by the breath test specialist/senior operator, or his/her authorized designee using a fresh solution. If the test results are still out of the specified range, the breath analysis instrument will be removed from service and the division ~~of forensic science~~ shall be notified.

(e) A field certification shall be performed whenever a new breath analysis instrument is placed in service or when a breath analysis instrument is returned to service. The field certification results must be on file at the testing location before the breath analysis instrument can be used for subject testing.

(f) ~~The field certification solution a~~ After each use, the ethyl alcohol water standard shall be stored in a closed

container and placed in a cool dark area. This storage requirement does not apply to the ethyl alcohol gas standard.

(g) The field certification report form and results will be kept on file at the testing location. The division of ~~forensic science~~ will receive copies of all field certification report forms along with copies of all breath analysis report forms. All reports will be sent to the division of ~~forensic science~~ on a monthly basis.

(h) Failure to file a copy of the report with the division of ~~forensic science~~, does not invalidate the field certification, or any subject analysis performed at that location, if the report is on file at the testing location.

(i) A proper field certification prior to any subject test and a proper field certification following a subject test shall create the inference that the breath analysis instrument was in proper working order at the time of the subject test.

(j) A breath analysis instrument's field certification shall be considered valid for seven ~~(7)~~ days forward from the date of a proper field certification.

(2) All devices meeting the definition of "associated equipment" contained in ARM 23.4.201~~(7)~~(8)(b)~~7~~ shall be field certified for accuracy at least once every ~~thirty-one~~ ~~(31)~~ days by a breath test specialist who has received training approved by the division in the proper methods for conducting such analyses.

(a) A PBT's PAST's field certification shall consist of a series of no less than two ~~(2)~~ analyses using an ethyl alcohol/water or ethyl alcohol/gas standard approved by the division.

(b) A field certification is valid when the results of the approved ethyl alcohol standard test is at target value plus or minus one hundredth ~~(.01)~~ gram per ~~two hundred and ten~~ 210 liters. The results of the field certification must be recorded and maintained in the administering agency's files.

(c) Results of a field certification analysis outside the range specified in ARM ~~23.4.213~~(2)(b) shall be confirmed by using a fresh/new standard the breath test specialist/senior operator, or his/her authorized designee. If the test results are still out of the specified range, the PBT PAST will be removed from service.

(d) A field certification shall be performed whenever a new device PAST is placed in service or when a device PAST is returned to service. The field certification results must be on file with the agency before the PBT PAST can be used for subject testing.

(e) The individual law enforcement agencies using PBTs PAST's shall maintain a record of the field certifications of each individual device. Such record shall include but not be limited to:

(i) the date of the field certification~~7i~~

(ii) the serial number of the PBT PAST~~7i~~

(iii) the results obtained~~7i~~

(iv) the lot number of the ethyl alcohol water standard or ethyl alcohol gas standard; and

(v) the name of the individual conducting the analysis.

(f) A PBT's PAST's field certification shall be considered valid for ~~thirty-one~~(31) days forward from the date of a proper field certification.

AUTH: 61-8-405(6), MCA

IMP: 61-8-405(6), MCA

The title of the rule was amended to clarify that the rule governs certification for both breath analysis instruments and associated equipment. The amendments to subsection (1) are necessary to delineate the difference between the two acceptable standards, the ethyl alcohol standard and the ethyl alcohol gas standard, used for calibration checks and reference checks on instrumentation. Because the ethyl alcohol water standard is wet and the ethyl alcohol gas standard is dry, the two standards have different use and time limitations, which are reflected in the amendment. The amendments also make minor changes in language and style and reflect consistent use of the term division. Subsection (2)(e) was amended to require recording of the lot number of the standard used for field certification of PAST's because there have been challenges to the validity of tests by criminal defendants where this lot number has not been recorded.

23.4.214 LABORATORY CERTIFICATION (1) All breath analysis instruments shall be returned to the division of ~~forensic science~~ on an annual basis for a laboratory certification. Such certification shall at a minimum consist of, ~~but not be limited to:~~

(a) A field certification ~~shall be performed~~ to establish the current status of the breath analysis instrument-;

(b) A complete analysis of the breath analysis instrument's ~~electronic~~ diagnostic functions and settings-;

(c) A series of controlled ethyl alcohol water solutions standards shall be analyzed with an accuracy requirement of +/- 5% or (.005) whichever is greater on all target values-;

(d) All updates, modifications, or changes which have been approved by the division of ~~forensic science~~ may be installed-; and

(e) A review of the breath analysis instrument's sensitivity for the detection of any interfering substances.

(2) A record of the laboratory certification report shall be kept on file at the division of ~~forensic science~~.

(3) All new breath analysis instrumentation must receive a laboratory certification prior to placement in the field. Any breath analysis instrument sent to ~~another~~ a location other than the division of ~~forensic science~~, or an approved repair facility within the state of Montana for maintenance or repair is required to receive a laboratory certification from the division of ~~forensic science~~ prior to the unit instrument being placed back into service.

(4) All breath analysis instruments received from the division of ~~forensic science~~ either after the laboratory certification, preventive maintenance, or after repair must have a field certification performed by the breath test specialist/senior operator or his/her authorized designee ~~designed~~ as set forth in ARM 23.4.213 prior to analysis of any subjects.

(5) The results of the laboratory certification report shall be placed on file with the division of ~~forensic science~~ and a copy of the laboratory certification shall be filed with the testing location. Failure to file with the testing location does not invalidate the laboratory certification, or any subject analysis performed at that location, if such certification is on file with the division of ~~forensic science~~.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendment to (1)(c) is necessary to meet the requirements set forth by both manufacturer and DOT/NHTSA guidelines. The amendments also make minor changes in language and style and reflect consistent use of the term division.

23.4.215 QUALIFICATION OF BREATH ANALYSIS LOCATION (1) and (2) remain the same.

(3) All locations will provide an adequate operational environment for the breath analysis instrument. If a location fails to do so the division of ~~forensic science~~ shall have the right to place that location on suspension, and if the location does not meet approval within ~~ninety (90)~~ days of notification of suspension, that location shall have its certification revoked the division will revoke the location's certification. ~~and i~~ If the breath analysis instrumentation is state-owned ~~such the~~ breath analysis instrumentation will be removed ~~from that location.~~

(4) remains the same.

(5) ~~Locations wishing approval~~ In order to obtain approval as a certified test location ~~must submit~~ an application must be submitted to the division of ~~forensic science~~. The division will review the application and will respond with its decision ~~in writing to the submitting location.~~ Applications will be available through the division of ~~forensic science~~. All locations established prior to April 1, 1990, are exempt from the application requirement and are granted certification status.

(6) Temporary testing locations may be designated upon the request of a law enforcement agency if the division of ~~forensic science~~ feels that such location is warranted. Such location must conform to all certification specifications required for a permanent testing location.

(7) All locations ~~must~~ should have an equipment control form and a signed user agreement on file with the division of ~~forensic science~~ to maintain their certification status.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments make minor changes in language and style and reflect consistent use of the term division.

23.4.216 QUALIFICATIONS OF PERSONNEL (1) An individual meets the qualifications for a breath test specialist/operator permit by:

(a) Attending an approved training course conducted by personnel from the division of ~~forensic science~~;

(b) Satisfactorily demonstrating knowledge of the principles of breath test analysis through discussion and examination; and

(c) Satisfactorily demonstrating competent operation of the breath analysis instrumentation.

(2) remains the same.

(3) If a breath test specialist candidate fails the certification examination he/she may retake the examination within 30 days of notification of failure. After a second test failure, all candidates for certification must retake the appropriate breath test specialist course.

~~(3)~~ (4) An individual meets the qualifications for a breath test specialist/senior operator permit by:

(a) Holding a valid breath test specialist permit for at least one year. A special exemption for this requirement may be obtained through the division of ~~forensic science~~;

(b) Attending an approved breath test specialist/senior operator training course conducted by personnel from the division of ~~forensic science~~;

(c) Satisfactorily demonstrating knowledge of the principles of breath test analysis through discussion and examination;

(d) Satisfactorily demonstrating competent operation of the breath analysis instrumentation; and

(e) Satisfactorily demonstrating competent preparation and analysis of controlled solutions utilized in field certifications.

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

~~(5)~~ (6) A person meets the qualifications for breath test specialist/technician by:

(a) Holding a valid breath test specialist/senior operator permit for at least one year. A special exemption for this requirement may be obtained through the division of ~~forensic science~~;

(b) Attending an approved breath test specialist/technician training course conducted by personnel from the division of ~~forensic science~~, or an approved manufacturer's course in technical repair and maintenance;

(c) Satisfactorily demonstrating knowledge of the technology utilized by the specific breath analysis instrument for which the individual wishes to hold a permit; and

(d) Satisfactorily demonstrating competency in problem solving and repair of specific breath analysis instrument.

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

AUTH: 61-8-405(6), MCA

IMP: 61-8-405(6), MCA

The amendments are necessary to clarify the language of the rule and to reflect consistent use of the term "division."

23.4.217 RE-CERTIFICATION OF BREATH TEST PERSONNEL (1)

The division of ~~forensic science~~ must approve any course given needed necessary for the re-certification of the breath test specialist/operator. The division of ~~forensic science~~ shall place a copy of the re-certification exam in the custody of the breath test specialist/senior operator.

(2) The breath test specialist/senior operator shall have the responsibility of presenting the approved re-certification course and monitoring the examination of all personnel seeking re-certification. The division of ~~forensic science~~ may, if it determines that the circumstances warrant, give re-certification training to any individual(s) seeking re-certification directly from the division.

(3) All examinations shall be sent to the division of ~~forensic science~~ for grading.

(4) and (5) remain the same.

(6) In addition to the annual re-certification, all breath test specialist/senior operators ~~must~~ may be re-certified by a representative of the division of ~~forensic science~~ once every two years on a schedule to be determined by the division.

(7) Training may include, but is not limited to, the following subjects:

(a) toxicology and pharmacology of alcohol in the human system_{TJ}

(b) breath analysis instrument theory_{TJ}

(c) breath analysis instrument operation_{TJ}

(d) current legal decisions_{TJ}

(e) training techniques_J and

(f) any area deemed appropriate by the division of ~~forensic science~~.

(8) The breath test specialist/senior operator is still required to submit an annual examination based on the material he/she is presenting to the breath test specialist/operators in addition to the bi-annual re-certification conducted by the division of ~~forensic science~~.

(9) A permit will be issued to all individuals successfully completing the senior operator's re-certification training. Such notification shall have the specialist's certification date displayed. Certification expires the last

day of the month, in the following year of which the specialist was certified.

(10) The breath test specialist/technician is only required to fulfill the re-certification requirements of a breath test specialist/senior operator. The technician's proficiency will be assessed through monitoring of his/her performance.

(11) All breath test specialists must successfully pass a re-certification course within 90 days after his/her expiration date.

(12) If a breath test specialist fails to re-certify within the specified time frame, he/she must either attend an initial certification course or file a request, in writing, for an exemption. Exemption requests will be reviewed by the division and ~~a decision will be presented to the individual in writing.~~

(13) If a breath test specialist fails the re-certification examination he/she may retake the examination within 30 days of notification of failure. After a second test failure, all candidates for re-certification must retake the appropriate breath test specialist course.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments are necessary to clarify the language of the rule and to reflect consistent use of the term "division."

23.4.218 PERMITS (1) ~~The division of forensic science~~ shall issue permits to perform analysis of a person's breath for alcohol to individuals who qualify under these rules. No individual may perform a breath analysis for alcohol pursuant to 61-8-402, MCA, without a current permit. Individuals holding permits issued by the ~~division of forensic science~~ shall perform only those functions designated by that permit.

(2) Permits issued shall expire the last day of the month, in the following year, of which the specialist was certified, unless revoked prior to that date. Individuals seeking renewal or upgrading of a permit must demonstrate to the satisfaction of the ~~division of forensic science~~ such competency and ability to warrant renewal or upgrade of the permit. ~~The division of forensic science~~ has the right to deny or delay the issuance or renewal of any permit for good cause.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments are necessary to reflect consistent use of the term "division."

23.4.219 REVOCATION OF PERMITS (1) ~~The division of forensic science~~ may deny, deny renewal of, suspend, or revoke the permit of any permit holder who:

- (a) ~~Who~~ obtained such permit falsely or deceitfully;
 - (b) ~~Who~~ fails to comply with any section of the rules and regulations;
 - (c) ~~Who~~ as a breath test specialist/operator, fails to demonstrate that he or she can properly carry out the duties and responsibilities of the issued permit, ~~or~~;
 - (d) ~~Who~~ as a breath test specialist/senior operator and/or breath test specialist/technician, fails to carry out the responsibilities incumbent of that permit.
- (2) The division ~~of forensic science~~ has the right to revoke, suspend, or deny any permit for good cause.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments are necessary to reflect consistent use of the term "division."

23.4.220 COLLECTION OF BLOOD SAMPLES FOR DRUG AND/OR ALCOHOL ANALYSIS (1) through (4) remain the same.

(5) The division ~~of forensic science~~ will provide collection kits consisting of approved collection tubes and the appropriate request forms for collection of blood samples. The division ~~of forensic science~~ reserves the right to accept or reject any blood sample submitted in a commercially available collection kit.

(6) The approved collection tube will be one that contains a preservative, sodium fluoride or its equivalent and an anticoagulant, potassium oxalate or its equivalent. ~~If no additive or additives are used, a statement should accompany the sample.~~ The use of other types of collection tubes will be at the discretion of the division.

(7) remains the same.

AUTH: 61-8-405(6), MCA
IMP: 61-8-405(6), MCA

The amendments are necessary to reflect consistent use of the term "division" and to clarify that the type of collection tube used will be at the discretion of the division.

23.4.225 PROBABLE CAUSE TESTS PRELIMINARY ALCOHOL SCREENING TESTS (PAST'S) ~~(1) Preliminary breath testers (PBTs)~~

~~(a) (1)~~ All models and/or types of PBTs PAST'S used for development ~~of probable cause evidence testing~~ must be approved by the division. A list of approved PBTs PAST'S will be maintained at the division.

~~(b) (2)~~ Individuals conducting PBTs PAST'S as authorized by statute must be certified as breath test specialists.

~~(c) (3)~~ Individuals certified as breath test specialists pursuant to ARM 23.4.216 on or before July 1, 1995, are deemed to be PBT- PAST-certified after attending a PBT PAST operation course approved by the division ~~of forensic science~~.

Individuals certified as breath test specialists after July 1, 1995, are deemed to be PBT- ~~PAST~~-certified.

~~(d)~~ (4) Individuals responsible for field certification of the PBT ~~PAST~~ must receive training approved by the division outlining the procedures for conducting such certifications.

~~(e)~~ (5) All PBT ~~PAST~~ results will be recorded in a manner approved by the division of ~~forensic science~~.

AUTH: 61-8-405~~(6)~~, MCA
IMP: 61-8-404, 61-8-405~~(6)~~, MCA

The amendments are necessary to update the rule to reflect the changes that were made to 61-8-404, MCA, by the 1999 Legislature. The amendments to the statute removed the limitation that preliminary alcohol screening tests were only admissible as evidence of probable cause.

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 Ali Sheppard, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401, fax (406) 444-3549, by surface mail, or be submitted electronically to contactdoj@state.mt.us and must be received no later than April 25, 2002.

5. Ali Sheppard, Assistant Attorney General, P.O. Box 201401, Helena, MT 59620-1401 has been designated to preside over and conduct the hearing.

6. 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 that includes the name and mailing address of the person to receive notices and specifies the subject matter of administrative rules in which the requestor is interested. Such written request may be mailed or delivered to the Attorney General's Office, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, e-mailed to contactdoj@state.mt.us or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Mike McGrath
MIKE McGRATH, Attorney General

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State March 18, 2002.

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

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 8.36.801,) AMENDMENT
pertaining to therapeutic)
pharmaceutical agents)

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 13, 2002, the Board of Optometry proposes to amend the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry no later than 5:00 p.m., April 29, 2002, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail complopt@state.mt.us.

3. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS (1) through (1)(b) remain the same.

(c) All licensed and therapeutically certified optometrists who issue prescriptions for controlled substances must obtain ~~and use~~ a DEA number and place the number on all controlled substance prescriptions only.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA
IMP: ~~37-1-304,~~ 37-1-131, 37-10-103, MCA

REASON: The Board finds there is reasonable necessity to propose amendment to this rule. The American Optometric Association ("the AOA") recently suggested the board amend ARM 8.36.801(1)(c) because the AOA believes the rule may be contrary to what the federal Drug Enforcement Agency (DEA) requires for optometrists who prescribe controlled substances. After considering the suggestion, the board has verified the DEA's policy regarding use of the DEA number only on those prescriptions for what the DEA has classified as a "controlled substance". The Board finds there is reasonable necessity to amend this rule to be in compliance with DEA requirements, so that Montana optometrists may continue to serve their patients

by prescribing (when necessary and appropriate) those substances which are strictly regulated by federal law.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to complopt@state.mt.us. to be received no later than 5:00 p.m., April 29, 2002.

5. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to complopt@state.mt.us to be received no later than 5:00 p.m., April 29, 2002.

6. An electronic copy of this Notice of Proposed Amendment is available through the Department's and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/opt_board/rules.htm. 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.

7. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 27 based on the 267 licensed optometrists in Montana.

8. The Board of Optometry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. 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 all Board of Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to complopt@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Optometry will meet on May 13, 2002, via a conference call at its offices at 301 South Park Avenue, Helena, Montana, at 10:00 a.m., to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments. Members of the public are welcome to attend the conference call meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendment beyond the April 29, 2002, deadline.

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

BOARD OF OPTOMETRY
LARRY OBIE, PRESIDENT

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State, March 18, 2002.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.30.102,) ON PROPOSED AMENDMENT
related to occupational safety)
and health standards for)
public sector employment)

TO: All Concerned Persons

1. On April 19, 2002, at 10:00 a.m. a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor and Industry Building), 1327 Lockey Street, Helena, Montana, to consider the proposed amendment of ARM 24.30.102, to generally incorporate by reference the current version of federal health and safety regulations.

2. The Department of Labor and Industry 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 Department by not later than 5:00 p.m., April 12, 2002, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Ms. Sandra Mihalik, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; TDD (406) 444-0532; fax (406) 444-9396; or e-mail smihalik@state.mt.us.

3. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) Section 50-71-311, MCA, of the Montana Safety Act provides that the department of labor and industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees of ~~this state~~ or political subdivisions of this state. It is the intent of this rule that public sector employees of ~~this state~~ and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States secretary of labor under the Occupational Safety and Health Act of 1970. The department has determined, with the assent of the secretary of state, that publication of the rules would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost

from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) As used in the rules adopted by reference in ~~subsection~~ (3) below, unless the context clearly requires otherwise, the following definitions apply:

(a) "Act" means the Montana Safety Act (50-71-101 through 50-71-334, MCA).

(b) "Assistant secretary of labor" or "secretary" means the commissioner of the Montana department of labor and industry.

(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral or written.

(d) "Employer" or "public sector employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(3) The department of labor and industry hereby adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~July~~ January 1, 1996 2001:

(a) Title 29, Part 1910; and

~~(b) the provisions of 29 CFR 1910.146 appendix C, example 1, part A, as mandatory provisions that are applicable to all confined spaces; and~~

~~(c)~~ (b) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of ~~July~~ January 1, 1996 2001, are considered under this rule as the printed form of the safety code ~~adopted under this subsection~~, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code ~~adopted under this subsection~~. All the provisions, remedies, and penalties found in the Montana Safety Act (~~50-71-101 through 50-71-334, MCA~~) apply to the administration of the provisions of the safety code adopted by this rule.

(5) For convenience, the federal number of a particular section found in the Code of Federal Regulations should be used when referring to a section in the safety code adopted in ~~subsection~~ (3) above. The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal

Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102(5) 1910.27".

AUTH: 50-71-311, MCA

IMP: 50-71-311 and 50-71-312, MCA

REASON: The proposed amendments to this rule are reasonably necessary to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). The Department finds that it is reasonably necessary to regularly update this rule to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The current version of the state rule incorporates the 1996 version of the federal rules. In the past couple of years, there have been some significant changes in Title 29, CFR parts 1910 and 1926. The January 1, 2001, version is proposed for incorporation by reference because it is the most recent version generally available in printed form, and was published by the U.S. Government Printing Office in printed form on or about January 1, 2002.

The amendment to delete subsection (3)(b) is proposed because the reference to adopt the specific part of the CFR that applies to all confined spaces is already referenced as a part of 29 CFR part 1910, as stated in (3)(a). Therefore, the amendment is necessary to prevent unnecessary duplication of the reference.

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:

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 7128
Helena, Montana 59624-7128

and must be received by no later than 5:00 p.m., April 26, 2002. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is 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. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., April 26, 2002. 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. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

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, e-mailed to mcadwallader@state.mt.us, 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, do not apply.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY KEATING
Wendy Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 18, 2002.

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

In the matter of the repeal)	NOTICE OF PROPOSED
of ARM 37.114.799 pertaining)	REPEAL
to communicable disease)	
control)	NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons

1. On April 27, 2002, the Department of Public Health and Human Services proposes to repeal the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 15, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. ARM 37.114.799 is being transferred from ARM 16.28.703 in another notice in this issue of the Register. The current version of the rule as proposed to be repealed is on page 16-1287 of the Administrative Rules of Montana.

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-406, MCA

3. ARM 37.114.799 is proposed for repeal because it sets immunization requirements that apply only to those individuals who commenced attendance for the first time before August 1, 1980, in any grade from kindergarten through 12th grade. Anyone to whom it originally applied has long since been out of school, effectively eliminating the need for the rule.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on April 25, 2002. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in

writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on April 25, 2002.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 0 based on the fact that no individual is affected by the rule covering Documentation of Immunization Status of Persons Commencing Attendance for the First Time prior to August 1, 1980, at a School Offering Any Portion of Grades Kindergarten through 12.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 18, 2002.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed)
Amendment of ARM 38.5.1107)
Pertaining to Accrual of)
Interest on Customer Deposits)
With Utilities)

NOTICE OF PUBLIC
HEARING ON PROPOSED
AMENDMENT

TO: All Concerned Persons

1. On May 14, 2002, at 1:30 p.m. a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.1107.

2. The PSC 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 PSC no later than 5:00 p.m. on May 7, 2002, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, email rsimmons@state.mt.us.

3. The rule proposed to be amended, provides as follows (through alternatives A through F), stricken matter interlined, new matter underlined:

Alternative A: 38.5.1107 INTEREST ON DEPOSITS

(1) Interest on deposits held shall be accrued at the rate of ~~1 percent per month~~ three percent per year. Interest shall be computed from the time ~~to~~ of the deposit to the time of refund or of termination, to the nearest whole month, without compounding.

Alternative B: 38.5.1107 INTEREST ON DEPOSITS

(1) Interest on deposits held shall be accrued at the rate of ~~1 percent per month~~ [fixed rate of three to 19] percent per year. Interest shall be computed from the time ~~to~~ of the deposit to the time of refund or of termination, to the nearest whole month, without compounding.

Alternative C: 38.5.1107 INTEREST ON DEPOSITS

(1) Interest on deposits held shall be accrued at the ~~rate of 1 percent per month~~ [a recognized and readily available national standard rate (e.g., rate equal to the weekly average yield of one-year United States treasury securities adjusted for constant maturity for the week ending on or after December 1, made available by the federal reserve board)], rounded to the nearest tenth of one percent. Interest shall be computed from

the time ~~to~~ of the deposit to the time of refund or of termination, to the nearest whole month, without compounding.

Alternative D: 38.5.1107 INTEREST ON DEPOSITS

(1) Interest on deposits held shall be accrued at the ~~rate of 1 percent per month.~~ Interest following rates and shall be computed from the time ~~to~~ of the deposit to the time of refund or of termination-, to the nearest whole month, without compounding:

(a) for utilities serving 1 to 100 customers, [fixed rate (e.g., three percent)] per year;

(b) for utilities serving 101 to 1000 customers, [fixed rate (e.g., five percent)] per year;

(c) for utilities serving 1001 to 10,000 customers, [fixed rate (e.g., seven percent)] per year; and

(d) for utilities serving over 10,000 customers, [fixed rate (e.g., nine percent)] per year.

Alternative E: 38.5.1107 INTEREST ON DEPOSITS

(1) Interest on deposits held shall be accrued at ~~the rate of 1 percent per month~~ a rate equal to the utility's [cost of capital or rate of return] last approved by the commission. Interest shall be computed from the time ~~to~~ of the deposit to the time of refund or of termination, to the nearest whole month, without compounding.

Alternative F: 38.5.1107 INTEREST ON DEPOSITS

(1) Interest on deposits held shall be accrued at ~~the rate of 1 percent per month~~ [a fixed rate equal to a typical depositing customer's time value of money (e.g., average credit card rate)]. Interest shall be computed from the time ~~to~~ of the deposit to the time of refund or of termination, to the nearest whole month, without compounding.

AUTH: 69-3-103, MCA

IMP: 69-3-103, MCA

4. Hot Springs Telephone Company has petitioned for this rulemaking (Alternative A, above). The PSC grants the petition for purposes of receiving comment on the proposed amendment. Adoption of an amendment may be necessary because the existing interest rate in ARM 38.5.1107 (1 percent per month, 12 percent per year) on customer deposits may be out of date. Amendments to the rule are proposed in the alternative, as there are a number of acceptable ways to amend the rule to meet current needs of the utilities and customers. If the PSC determines an amendment is justified the PSC will adopt one of the alternatives or a combination of any or all of them. It is intended any amendment adopted will not be retroactive and the existing interest rate will apply to existing customer deposits up to the effective date of any amendment and the amended interest rate, if any, will apply to existing customer deposits after the effective date of the amendment and for all future customer deposits.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than May 14, 2002, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than May 14, 2002. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-02.1.1-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at (406) 444-7618, or emailed to rsimmons@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Gary Feland
Gary Feland, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MARCH 18, 2002.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 44.3.1101) ON PROPOSED AMENDMENT
regarding schedule of fees for)
centralized voter file)

TO: All Concerned Persons

1. On April 22, 2002, a public hearing will be held at 1:00 p.m. in the Secretary of State's Office Conference Room at room 260 of the State Capitol, Helena, Montana, to consider the proposed amendment of ARM 44.3.1101 regarding the schedule of fees for the centralized voter file, or database.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on April 19, 2002, to advise us of the nature of the accommodation that you need. Please contact Kitty Ryan, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5598; FAX (406) 444-5833; e-mail kryan@state.mt.us.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

44.3.1101 SCHEDULE OF FEES FOR THE CENTRALIZED VOTER FILE (1) Upon written request, the secretary of state shall furnish, for noncommercial use, a list of registered electors as compiled and maintained in its centralized voter file. The fee schedule us as follows: For each record the charge is .009 cents. For paper copies there is an additional charge of 50 cents per page per copy.

~~Price per thousand voters:~~

~~Number of Records Ordered~~

	CD-ROM	Diskette	Paper
Over 400,000	\$8	\$12	\$60
300,000-399,999	\$10	\$16	\$60
200,000-299,999	\$12	\$20	\$60
100,000-199,999	\$14	\$24	\$60
0-99,999	\$16	\$28	\$60
Minimum charge	\$60	\$60	\$60

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

4. The rule as proposed is intended to revise the charge for election records for voter files in the state of Montana. An additional charge of 50 cents per page for paper copies is necessary to cover office costs associated with making these copies.

5. Currently, the Secretary of State charges .012 cents for each electronic record. Therefore this rule will decrease the cost per record by .002 cents. Approximately 2 individuals or entities have requested the voter files since the beginning of fiscal year 2001. The revenue generated since that time has been \$5016.50. At least two entities or individuals will be affected by this change in the fee schedule. The anticipated change in cost or revenue is negligible.

6. 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 Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than May 1, 2002.

7. Janice Doggett, address given in paragraph 6 above, has been designated to preside over and conduct the hearing.

8. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 18th day of March, 2002

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 44.6.201 and) ON PROPOSED AMENDMENT AND
adoption of new rules) ADOPTION
regarding Uniform Commercial)
Code Filings (UCC))

TO: All Concerned Persons

1. On April 22, 2002, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 260 of the State Capitol, Helena, Montana, to consider the proposed amendment of ARM 44.6.201 defining search criteria and adoption of new rules regarding UCC searches, amendments and consumer liens.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on April 19, 2002, to advise us of the nature of the accommodation that you need. Please contact Kitty Ryan, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5598; FAX (406) 444-5833; e-mail kryan@state.mt.us.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

44.6.201 DEFINING SEARCH CRITERIA FOR UNIFORM COMMERCIAL CODE CERTIFIED SEARCHES (1) through (6)(d) remain the same.
(7) A search limited to a particular city may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such search.

AUTH: Sec. 2-15-404 and 30-9-407, MCA
IMP: Sec. 30-9-403 and 30-9-421, MCA

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

RULE I EFFECTIVE DATE AND TIME (1) Any filing delivered by the postal service has an effective time as of 8:00 a.m. on the delivery date. Filings received after 4:00 p.m. have the next business day's effective date.
(2) Any filing received by fax, walk-in, or express delivery service will have the same date and time as received.

AUTH: Sec. 30-9-539, MCA
IMP: Sec. 30-9-539, MCA

RULE II REQUIREMENTS FOR FILING UCC AMENDMENTS (1) In addition to the requirements of 30-9A-512, MCA, the following information needs to be included:

(a) the name of the debtor(s) currently on file with the secretary of state;

(b) the name of the secured party(ies) currently on file with the secretary of state;

(c) the original filing number on file with the secretary of state;

(d) only one filing number per form.

(2) Multiple amendments, other than terminations, may be submitted on one form.

AUTH: Sec. 30-9-546, MCA

IMP: Sec. 30-9-539, MCA

5. The rules as proposed are intended to clarify procedures for perfecting liens under Revised Article 9.

6. 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 Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than May 1, 2002.

7. Janice Doggett, address given in paragraph 6 above, has been designated to preside over and conduct the hearing.

8. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown

BOB BROWN

Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 18th day of March, 2002

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of) NOTICE OF REPEAL
ARM 2.59.107 Investments of)
Financial Institutions)

TO: All Concerned Persons

1. On January 31, 2002, the Department of Administration, Division of Banking and Financial Institutions published notice of the proposed repeal of ARM 2.59.107 concerning investments of financial institutions at page number 136 of the 2002 Montana Administrative Register, Issue Number 2.

2. The agency has repealed ARM 2.59.107 as proposed.

AUTH: 32-1-424, MCA
IMP: 32-1-424, MCA

3. No comments or testimony were received.

By: /s/ Scott Darkenwald
Scott Darkenwald, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State March 18, 2002.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 23.16.102,)
23.16.103, 23.16.502,)
23.16.503, 23.16.1716,)
23.16.1914, 23.16.1915,)
23.16.1916, 23.16.1918, and)
23.16.2001 concerning forms)
used by the department in)
regulating gambling, gambling)
applications, and video)
gambling machine testing fees)

TO: All Concerned Persons

1. On February 14, 2002, the Department of Justice published notice of the proposed amendment of ARM 23.16.102, 23.16.103, 23.16.502, 23.16.503, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1918 and 23.16.2001 at page 308 of the 2002 Montana Administrative Register, Issue Number 3.

2. The agency has amended ARM 23.16.102, 23.16.103, 23.16.502, 23.16.503, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1918 and 23.16.2001 as proposed.

3. These amendments will be effective April 1, 2002.

Comments: The Department of Justice received three written comments. Letters were received from Ms. Kati Kintli, Jackson, Murdo, Grant and McFarland, P.C., an attorney who represents many license applicants; Mr. Rich Miller, Executive Director of the Gaming Industry Association of Montana; and Mr. Mark Staples, Staples Law Firm, P.C., in his capacity as Legal Counsel for the Montana Tavern Association. Each of the letters addressed the license application fees. Each of the correspondents indicated they understood the department's reasons for increasing the application fees to be paid with license applications. The correspondents did not object to the increase in fees but asked if the department could provide more detail in its expense schedule reported to the applicant at the conclusion of the investigation.

Response: The law requires applicants for gambling licenses to pay the cost of their license investigations. The application fees, (deposit to be applied against that cost) that the department has been charging for several years was not, in most cases, covering the actual cost of investigations. The department was then required to incur additional costs for billing applicants for the balance. The expense schedule provides dates, and time spent under the functional categories Licensing, Audit, and Investigations.

At the present time the department does not require license investigation and processing personnel to enter enough detail in its license investigation tracking system to provide the requested level of detail in expense reports. That level of detail is primarily kept manually in case files and made available on request. However, the department understands the correspondents' concerns and will study the feasibility of adding sufficient detail to the database to expand the reports. If it is feasible the requested changes will be made.

No comments were received from machine manufacturers on raising the video gambling machine test fees.

By: /s/ Mike McGrath
MIKE MCGRATH, Attorney General
Department of Justice

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State March 18, 2002.

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.40.101 through)
8.40.1607 pertaining to the)
Board of Pharmacy)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Pharmacy is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 174.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.40.101	24.174.101	Board Organization
8.40.201	24.174.201	Procedural Rules
8.40.202	24.174.202	Public Participation Rules
8.40.401	24.174.301	Definitions
8.40.702	24.174.302	<u>Hospital/Health Care Facility</u> Definitions
8.40.902	24.174.303	Internship Program Definitions
8.40.404	24.174.401	Fee Schedule
8.40.1209	24.174.402	<u>Dangerous Drug Fees Schedule</u>
8.40.402	24.174.403	Change in Address and/or Employment
8.40.403	24.174.501	Examination for Licensure as a Registered Pharmacist
8.40.417	24.174.502	Transfer of License from Another State
8.40.405A	24.174.510	Prescription Requirements
8.40.406	24.174.511	Labeling for Prescriptions
8.40.406A	24.174.512	Records of Dispensing
8.40.407	24.174.513	Copy of Prescription
8.40.408A	24.174.514	Transfer of Prescriptions
8.40.409	24.174.520	Prescription Required for Schedule V
8.40.411	24.174.521	Returned Prescription
8.40.413	24.174.522	Alternate Delivery of Prescriptions
8.40.416	24.174.523	Transmission of Prescriptions by Electronic Means
8.40.901	24.174.601	Summary of Objectives
8.40.903	24.174.602	Internship Requirements
8.40.907	24.174.603	Out-of-State Internship <u>Requirements</u>
8.40.904	24.174.604	Preceptor Requirements
8.40.905	24.174.611	Approved Training Areas
8.40.906	24.174.612	Required Forms and Reports
8.40.909	24.174.613	Revocation or Suspension of

		Certificate
8.40.1302	24.174.702	Qualifications of Pharmacy Technician
8.40.1301	24.174.703	Use of Pharmacy Technician
8.40.1305	24.174.704	Pharmacy Technician Training
8.40.1304	24.174.705	Tasks and Functions of Pharmacy Technician
8.40.1308	24.174.711	Ratio of Pharmacy Technicians to Supervising Pharmacists
8.40.1303	24.174.712	Application for Approval of Utilization Plan
8.40.1306	24.174.713	Contents of Training Course
8.40.1307	24.174.714	Inspection of Utilization Plan and Training Record
8.40.601	24.174.801	General License Requirements
8.40.603	24.174.802	New Pharmacy
8.40.604	24.174.803	Change in Location
8.40.605	24.174.804	Change in Ownership
8.40.606	24.174.805	Change of Pharmacist-in-Charge
8.40.607	24.174.806	Licenses to be Posted
8.40.703	24.174.810	Class I Facility
8.40.704	24.174.811	Class II Facility
8.40.705	24.174.812	Class III Facility
8.40.706	24.174.813	Class IV Facility
8.40.502	24.124.817	Automated Record Keeping Systems
8.40.503	24.174.818	Security
8.40.602	24.174.819	Sanitation and Equipment Requirements
8.40.1601	24.174.1001	Registration of Out-of-State Mail Service Pharmacies
8.40.1603	24.174.1002	Conditions of Registration
8.40.1606	24.174.1003	Identification of Pharmacist-in-Charge of Dispensing to Montana
8.40.1602	24.174.1007	Agent of Record
8.40.1607	24.174.1008	Use of Pharmacy Technicians by Out-of-State Mail Service Pharmacies
8.40.1604	24.174.1009	Compliance
8.40.1605	24.174.1010	Disciplinary Action
8.40.608	24.174.2101	<u>Certified Pharmacies - Annual Renewal</u>
8.40.1004	24.174.2103	<u>Registered Pharmacist - Renewal Notice and Application</u>
8.40.1001	24.174.2104	<u>Registered Pharmacist Continuing Education - Requirements</u>
8.40.1002	24.174.2105	<u>Registered Pharmacist Continuing Education - Subjects</u>
8.40.1003	24.174.2106	<u>Registered Pharmacist Continuing Education - Approved Programs</u>
8.40.1005	24.174.2107	<u>Registered Pharmacist Continuing Education - Non-Compliance</u>
8.40.1501	24.174.901	Patient Records
8.40.1502	24.174.902	Prospective Drug Review
8.40.1503	24.174.903	Patient Counseling

8.40.1401	24.174.1201	Wholesale Drug Distributor Licensing
8.40.1402	24.174.1202	Minimum Information Required for Licensure
8.40.1403	24.174.1203	Personnel
8.40.1404	24.174.1211	Minimum Requirements for Storage and Handling of Drugs
8.40.1405	24.174.1212	Minimum Requirements for Establishment and Maintenance Of Drug Distribution Records
8.40.1406	24.174.1213	National Clearinghouse for Wholesale Drug Distributor Licensing
8.40.1203	24.174.1401	Requirements for Registration
8.40.1207	24.174.1402	Application for Registration or Renewal
8.40.1208	24.174.1403	Application Forms
8.40.1212	24.174.1404	Required Records
8.40.1213	24.174.1411	Security Requirements
8.40.1215	24.174.1412	Additions, Deletions and Rescheduling of Dangerous Drugs
8.40.415	24.174.2301	Unprofessional Conduct
8.40.418	24.174.2401	Screening Panel
8.40.419	24.174.2402	Complaint Procedure
8.40.414	24.174.2403	Legal Suspension or Revocation

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF PHARMACY
ALBERT A. FISHER, R.Ph.,
CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, March 18, 2002.

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

In the matter of the adoption) NOTICE OF ADOPTION OF
of a temporary emergency) TEMPORARY EMERGENCY AMENDMENT
amendment to ARM 24.29.2814,)
pertaining to the uninsured)
employers' fund administrative)
costs balance)

TO: All Concerned Persons

1. The Department of Labor and Industry ("the Department") has concluded that the Uninsured Employers' Fund ("the UEF") presently has an available cash balance, as defined by ARM 24.29.2803, that is at risk of becoming insufficient to pay current claims costs without a pro rata decrease in benefits. Collection of the amounts owed by uninsured employers to the UEF as of late has not kept pace with the expenditures from the UEF. In addition, the UEF has recently had an increase in the amount of claims costs to be paid, due in part to the serious nature of certain recent claims. These factors have resulted in a decreasing available cash balance from which the UEF can pay claims to injured employees who suffered on-the-job injuries or occupational illnesses while employed by an uninsured employer. The claims payments to injured workers act as a substitute wage-loss benefit for those injured workers and the families or survivors of those injured workers. The Department concludes that pursuant to the public policy expressed by 39-71-105, MCA, the public welfare is served by providing a workers' compensation system that provides wage-loss and other benefits to injured workers and their families. The Department further concludes that the public welfare is endangered and in imminent peril when the available source of benefits available to those employees of uninsured employers is decreased or eliminated.

The UEF presently maintains a 12-month revolving balance of its administrative costs, pursuant to ARM 24.29.2814. The administrative costs balance is designed to ensure that the UEF has a year's worth of operating costs set aside to fund the continued operation of the UEF's functions. Those functions include enforcement efforts against uninsured employers (preventing employers from operating without complying with Montana's workers' compensation laws, and imposing monetary penalties against those employers which violate the law) and the claims adjustment and benefit payments to injured employees of uninsured employers.

The Department, faced with the alternatives of either proportionately reducing claim benefits paid to UEF claimants or decreasing the amount of the UEF's 12 month revolving balance of administrative costs, concludes that it should try reducing the administrative costs balance by half, in order to avoid or delay

having to proportionately reduce the amount of benefits paid to UEF claimants. The Department recognizes that there is a risk to the continued, viable operation of the UEF if the administrative costs balance is decreased. The Department runs the risk that claims costs will continue to rise while collections from uninsured employers will remain flat or decrease. The Department recognizes that the UEF's sole source of funding comes from the successful collection of penalties and/or indemnification from uninsured employers, and that a significant portion of the UEF's administrative costs are spent finding uninsured employers, assessing penalties against those employers, and trying to collect from them. However, the Department presently believes that it should attempt to operate the UEF on a 6-month's administrative costs balance, in the hope that collections from uninsured employers will increase and that claims costs will decrease in the near future.

For the above reasons, the Department therefore finds that an emergency exists within the UEF, and the public welfare is endangered and in imminent peril by that emergency, so that it is appropriate to make an emergency amendment to ARM 24.29.2814 without the usual notice and comment period provided for by the Montana Administrative Procedure Act.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. Please contact Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728; (406) 444-0280 (voice); (406) 444-1394 (fax); (406) 444-0532 (TTY); e-mail mcadwallader@state.mt.us.

3. The effective date of this temporary emergency amendment is March 19, 2002. The Department believes, based on the information presently available to it, that delaying the effective date of the emergency amendment until this Notice is published in the Montana Administrative Register will cause the UEF to be unable to timely or fully pay benefits to claimants for the months of March and April 2002. The uncertainty of when, in March or April, the UEF will run out of money to pay benefits is dependent upon the timing of certain benefit payments. Because the Department recognizes the importance of promptly paying benefits (both wage-loss benefits and payments to medical providers who have already furnished professional services), the Department finds that an immediate effective date is appropriate to ensure payment as soon as the UEF determines that certain benefits are properly payable. By using an immediate effective date, the UEF will have the money on hand to pay those benefits, regardless of whether those benefits get paid in March 2002 or in April 2002.

4. ARM 24.29.2814 with the emergency amendment reads as follows, stricken matter interlined, new matter underlined:

24.29.2814 DETERMINING THE AMOUNT OF THE ADMINISTRATIVE COSTS BALANCE--UEF (1) The administrative costs balance is calculated on a revolving 12 6 month balance of projected budgeted costs for the UEF. The administrative costs balance will therefore always be a positive number, representing the projected budget needed to operate and administer the UEF for the next 12 6 months.

AUTH: 39-71-203, MCA
IMP: 39-71-503, MCA

5. The rationale and statement of reasonable necessity for the emergency amendment of ARM 24.29.2814 is given in paragraph 1, above.

6. A standard rule-making procedure will be undertaken prior to the expiration of this temporary emergency amendment.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rule-making process. If concerned persons wish to be personally notified of that rule-making process, they should submit their names and addresses to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728; (406) 444-0280 (voice); (406) 444-1394 (fax); (406) 444-0532 (TTY); e-mail mcadwallader@state.mt.us.

8. 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 Lockett 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, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

9. An electronic copy of this Notice of Adoption of Temporary Emergency Amendment is 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 Adoption of Temporary Emergency Amendment 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.

10. The Economic Affairs Interim Committee has been
Montana Administrative Register 6-3/28/02

notified of this adoption of a temporary emergency amendment to ARM 24.29.2814.

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 19, 2002.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.207.401,)
24.207.402, 24.207.509 and)
24.207.515 pertaining to fees,)
adoption of USPAP by reference,)
qualifying experience, and)
inactive license/certification)

TO: All Concerned Persons

1. On January 31, 2002, the Board of Real Estate Appraisers published notice of the proposed amendment of the above-stated rules at page 144 of the 2002 Montana Administrative Register, Issue Number 2.

2. A public hearing was held in Helena on February 26, 2002, but no members of the public attended. Three written comments were received by the Board prior to the closing of the comment period.

3. After consideration of the comments received, the Board has amended ARM 24.207.401, 24.207.402, 24.207.509 and 24.207.515 exactly as proposed.

4. The Board received written comments from three people. The comments received and the Board's responses are as follows:

COMMENT 1: A commenter relayed a comment from an inactive appraiser. The inactive appraiser suggested that continuing education should be reduced while licensees are on inactive status, with the requirement that continuing education be caught up before reactivation of the license.

RESPONSE 1: The Board considered the comment, and noted that this question was debated during previous discussions regarding continuing education. It is the Board's belief that requiring continuing education during a licensee's temporary inactive status is appropriate, and helps ensure that a re-activating licensee is adequately current on her or his professional knowledge. The Board also notes submitting continuing education credits while maintaining an inactive license helps hold down the costs of administering an inactive license by simplifying the record-keeping duties of staff.

COMMENT 2: The same commenter questioned why a licensee on inactive status has to pay \$20 - \$50 a year to cover the USPAP book and Board costs.

RESPONSE 2: The Board notes that this issue has also been raised in previous Board discussions. The Board notes that

there is already a decreased fee for those licensees on inactive status, and that licensees on inactive status still receive materials and services from the Board and the Board's staff. The Board is required by 37-1-134, MCA, to set fees that are commensurate with the Board's costs.

COMMENT 3: The Appraisal Subcommittee of the Federal Financial Institutions Examinations Council commented that it had reviewed the proposed amendments and had no specific comments on the proposals.

RESPONSE 3: The Board acknowledges the Subcommittee's review of the proposed amendments.

COMMENT 4: A commenter stated that the proposed amendment of ARM 24.207.402 to incorporate USPAP by reference did not adequately identify whether the definitions section of USPAP was being adopted as well, and whether the Statements on Standards were also being adopted.

RESPONSE 4: The Board believes that the proposed language is adequate to incorporate by reference the definitions, which clearly are a part of USPAP. The Board's express intent in adopting the amendments is to include those definitions in the adoption of USPAP. Likewise, the Board believes that the Statements on Standards are considered a part of USPAP, and the Board expressly intends to incorporate those Statements on Standards that are in existence on the date these amendments are effective. Pursuant to section 2-4-307(3), MCA, Statements on Standards that are first published after the effective date of these amendments cannot be adopted until the Board goes through a subsequent rule-making process to adopt subsequent Statements on Standards.

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun, Rule Reviewer

Certified to the Secretary of State, March 18, 2002.

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 Title 16, Chapter 28)
pertaining to communicable)
disease control)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, communicable disease control is transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services, Title 37. The rules will be renumbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.28.101	37.114.101	Definitions
16.28.102	37.114.102	Local Board Rules
16.28.201	37.114.201	Reporters
16.28.202	37.114.203	Reportable Diseases and Conditions
16.28.203	37.114.204	Reports and Report Deadlines
16.28.204	37.114.205	Report Contents
16.28.239	37.114.546	Lead Poisoning: Elevated Blood Lead Levels in Children
16.28.301	37.114.301	Sensitive Occupations
16.28.302	37.114.303	Funerals
16.28.303	37.114.306	Transportation of Communicable Disease Cases
16.28.304	37.114.312	Importation of Disease
16.28.305	37.114.313	Confirmation of Disease
16.28.306	37.114.314	Investigation of a Case
16.28.307	37.114.315	Potential Outbreaks
16.28.308	37.114.307	Quarantine of Contacts:--Notice and Observation
16.28.309	37.114.308	Isolation of Patient:--Notice
16.28.601	37.114.501	Minimal Control Measures
16.28.601A	37.114.503	Acquired Immune Deficiency Syndrome (AIDS) and HIV Infection
16.28.602	37.114.504	Amebiasis
16.28.603	37.114.506	Anthrax
16.28.604	37.114.507	Botulism:--Infant Botulism
16.28.605	37.114.509	Brucellosis
16.28.605A	37.114.510	Campylobacter Enteritis
16.28.605B	37.114.512	Chancroid
16.28.605D	37.114.515	Chlamydial Genital Infection
16.28.606	37.114.516	Cholera
16.28.606A	37.114.518	Colorado Tick Fever
16.28.606C	37.114.521	Diarrheal Disease Outbreak
16.28.606D	37.114.519	Cryptosporidiosis
16.28.607	37.114.522	Diphtheria
16.28.607A	37.114.525	Escherichia Coli 0157:H7 Enteritis

<u>OLD</u>	<u>NEW</u>	
16.28.608	37.114.524	Encephalitis
16.28.608A	37.114.527	Gastroenteritis Outbreak
16.28.609	37.114.528	Giardiasis
16.28.609A	37.114.530	Gonorrhoea
16.28.610A	37.114.531	Granuloma Inguinale
16.28.610B	37.114.533	Haemophilus Influenza B Invasive Disease
16.28.610C	37.114.534	Hansen's Disease (Leprosy)
16.28.610D	37.114.536	Hantavirus Pulmonary Syndrome
16.28.610E	37.114.537	Hemolytic Uremic Syndrome
16.28.611	37.114.539	Hepatitis Type A
16.28.612	37.114.540	Hepatitis Type B
16.28.612A	37.114.542	Hepatitis, Non-A Non-B
16.28.612C	37.114.544	Influenza
16.28.614	37.114.548	Legionellosis
16.28.616A	37.114.549	Listeriosis Outbreak
16.28.616B	37.114.551	Lyme Disease
16.28.616C	37.114.552	Lymphogranuloma Venereum
16.28.617	37.114.554	Malaria
16.28.618	37.114.555	Measles:--Rubeola
16.28.619	37.114.557	Meningitis:--Bacterial or Viral
16.28.621	37.114.558	Mumps
16.28.621A	37.114.560	Ophthalmia Neonatorum
16.28.622	37.114.561	Ornithosis (Psittacosis)
16.28.623	37.114.563	Pertussis (Whooping Cough)
16.28.624	37.114.565	Plague
16.28.625	37.114.566	Poliomyelitis
16.28.625A	37.114.568	Q-Fever (Query Fever)
16.28.626	37.114.570	Rabies:--Human
16.28.626A	37.114.571	Rabies Exposure
16.28.628	37.114.573	Rocky Mountain Spotted Fever
16.28.628A	37.114.574	Rubella
16.28.629	37.114.575	Rubella: Congenital
16.28.630	37.114.577	Salmonellosis (Other than Typhoid Fever)
16.28.631	37.114.579	Shigellosis
16.28.632C	37.114.583	Syphilis
16.28.632D	37.114.582	Streptococcus Pneumoniae Invasive Disease, Drug Resistant
16.28.634	37.114.585	Trichinosis
16.28.634A	37.114.586	Tuberculosis
16.28.635	37.114.588	Tularemia
16.28.636	37.114.589	Typhoid Fever
16.28.638	37.114.591	Yellow Fever
16.28.638A	37.114.592	Yersiniosis
16.28.638B	37.114.595	Illness in Traveler from Foreign Country
16.28.701	37.114.701	Definitions
16.28.701A	37.114.702	General Immunization Requirements for All Schools
16.28.701B	37.114.704	Requirements for Attendance at a Preschool

<u>OLD</u>	<u>NEW</u>	
16.28.701C	37.114.709	Requirements for Unconditional Attendance at a Post-Secondary School
16.28.702	37.114.705	Requirements for Unconditional Attendance at a School Offering any Portion of Grades Kindergarten through 12
16.28.703	37.114.799	Documentation of Immunization Status of Persons Commencing Attendance for the First Time Prior to August 1, 1980, at a School Offering Any Portion of Grades Kindergarten through 12
16.28.704	37.114.708	Documentation of Immunization Status of Persons Commencing Attendance for the First Time After July 31, 1980
16.28.706	37.114.710	Requirements for Conditional Enrollment
16.28.707	37.114.715	Medical Exemption
16.28.708	37.114.716	Religious Exemption
16.28.712	37.114.720	Report of Immunization Status
16.28.714	37.114.721	Report of Non-Compliance
16.28.1001	37.114.1005	Isolation of Case; -- Testing and Quarantine of Contacts
16.28.1002	37.114.1002	Tuberculosis; -- Communicable State
16.28.1003	37.114.1001	Diagnosis
16.28.1005	37.114.1010	Employee of School;--Day Care Facility Care Provider
16.28.1006	37.114.1006	Treatment Standards
16.28.1007	37.114.1015	Follow-up and Reporting
16.28.1008	37.114.1016	Submission of Specimens

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-406, MCA

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

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 18, 2002

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

In the matter of the adoption of new)	NOTICE OF ADOPTION,
Rules I through X; the transfer of)	TRANSFER AND
ARM 16.32.601, 16.32.621, 16.32.623,)	AMENDMENT AND REPEAL
16.32.624 and 16.32.627, the)	
transfer and amendment of ARM)	
16.32.602, 16.32.607, 16.32.608,)	
16.32.609, 16.32.610, 16.32.615,)	
16.32.616, 16.32.617, 16.32.622,)	
16.32.640, 16.32.644, 16.32.645,)	
16.32.646, 16.32.650 and 16.32.651)	
and the repeal of 16.32.630)	
pertaining to minimum standards for)	
mental health centers)	

TO: All Interested Persons

1. On October 11, 2001, the Department of Public Health and Human Services published notice of the proposed adoption, transfer and amendment and repeal of the above-stated rules at page 1962 of the 2001 Montana Administrative Register, issue number 19.

2. The Department has adopted the rules II [37.106.1955], V [37.106.1960], VII [37.106.1965], VIII [37.106.1966], IX [37.106.1967] and X [37.106.1968], as proposed.

3. The Department has transferred and amended rules 16.32.609 [37.106.1908], 16.32.610 [37.106.1909], 16.32.617 [37.106.1917], 16.32.622 [37.106.1919], 16.32.640 [37.106.1935], 16.32.645 [37.106.1937], 16.32.646 [37.106.1938] and 16.32.651 [37.106.1946] and repealed rule 16.32.630 as proposed. The Department has transferred rules 16.32.601 [37.106.1901], 16.32.621 [37.106.1918], 16.32.623 [37.106.1925], 16.32.624 [37.106.1926] and 16.32.627 [37.106.1927] as proposed.

4. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.106.1950] MENTAL HEALTH CENTER: MEDICATION MANAGEMENT SERVICES (1) and (2) remain as proposed.

(3) A mental health center shall have a medication management policies and procedures in its policy procedure manual which include, at minimum, the following: policy and procedure manual that must include, at a minimum, policies and procedures regarding:

(a) maintaining a current, chronological and dated record of medication orders by the client's copy of the licensed health

care professional's ~~order for medication~~ in the client's file clinical records;

(b) remains the same.

(c) ~~administering and monitoring~~ client prescription and over-the-counter medications by licensed health care professionals;

(d) through (g) remain as proposed.

(h) reporting and addressing in a timely manner, any medication errors and adverse drug reactions to the licensed health care professional who prescribed the client's medication, and to the program supervisor and medical director;

(i) through (l) remain as proposed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE III [37.106.1958] MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, POLICY AND PROCEDURES

(1) Each mental health center that has a foster care program endorsement shall have policy and procedures in place to make initial and periodic assessment of ~~an applicant's~~ the foster care provider's ability to meet the following criteria:

(a) and (b) remain as proposed.

(2) The mental health center shall provide an orientation session prior to the ~~foster care applicant's licensure~~ mental health center entering into a client placement agreement with the foster care provider, and at least annually on issues that at minimum address the following:

(a) through (g) remain as proposed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE IV [37.106.1959] MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, RECORDS

(1) For each foster care provider, the mental health center shall maintain the following information on file:

(a) remains as proposed.

(b) documentation of the orientation session prior to the ~~provider's licensure~~ entering into a client placement agreement, and annually thereafter.

(2) through (2)(b) remain as proposed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE VI [37.106.1961] MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, ADULT FOSTER CARE SPECIALIST

(1) and (2) remain as proposed.

(3) The adult foster care specialist shall:

(a) remains as proposed.

(b) carry a case load of not more than ~~12~~ 16 foster care clients;

(c) ~~meet with the foster care provider at least quarterly to assess, weekly in his or her home or whenever there is a significant change in the client's condition, to assess,~~ at a minimum, the following:

(i) and (ii) remain as proposed.

(d) document bi-weekly summaries or sooner if there is a significant change in the client's condition each contact with the foster care provider, regarding the client's treatment in the client's case file clinical record.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

5. The Department has transferred and amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

16.32.602 [37.106.1902] MENTAL HEALTH CENTER:
DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) and (2) remain as proposed.

(3) "Chemical dependency treatment services" means:

~~(a) referral of a mental health center client with chemical dependency to a certified chemical dependency counselor or state approved chemical dependency treatment program;~~

~~(b) assessment of a mental health center client for chemical dependency by a certified chemical dependency counselor; and~~

~~(c) integration and coordination of chemical dependency treatment and mental illness treatment for mental health center clients who have co-occurring chemical dependency and mental illness.~~

(a) screening of a client for substance abuse issues by the mental health center through its clinical intake assessment;

(b) as indicated by the substance abuse screening, the provision or arrangement by the mental health center for a client to be evaluated by a licensed addiction counselor;

(c) in accordance with the evaluation by a licensed addiction counselor, the provision or arrangement by the mental health center of chemical dependency treatment by a licensed addiction counselor or state-approved chemical dependency treatment program; and

(d) the integration and coordination by the mental health center of the client's mental health treatment with the chemical dependency treatment.

(4) "Child and adolescent" means a person 17 years of age or younger and includes students up to 21 years of age who still attend a secondary public school.

(5) through (8) remain as proposed.

(9) "Crisis stabilization program" means 24 hour supervised treatment for adults with a mental illness ~~experiencing a crisis. The length of stay is limited to~~ for the purpose of stabilizing the individual's symptoms.

(10) "Crisis telephone services" means 24 hour telephone response to mental health emergencies ~~that is available and publicized to a community~~ for the mental health center's clients.

(11) through (14) remain as proposed.

(15) "Intensive case management" means the activities of a single person or team that assists individuals with mental illness to make informed choices for community services which seek to maximize their personal abilities and enable growth in some or all aspects of the individual's vocational, educational, social, and health related environments.

(16) remains as proposed.

(17) "Licensed mental health professional" means:

(a) remains as proposed.

(b) an occupational therapist licensed to practice in Montana who has had at least 3 years experience dedicated substantially to serving persons with serious mental illnesses and is working in a child and adolescent day treatment program or adult day treatment program; or

(c) through (26) remain as proposed.

(27) "Serious emotional disturbance" means, with respect to a youth ~~between the ages of 6 and 17 years~~, that the youth meets the requirements defined in ARM 37.86.3702.

(28) and (29) remain as proposed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.607 [37.106.1906] MENTAL HEALTH CENTER: SERVICES AND LICENSURE (1) remains as proposed.

(2) Services provided by a mental health center must be rendered by a single administration in a discrete physical facility or multiple facilities or by written agreements or contract with licensed health care professionals, licensed mental health professionals or other facilities such as hospital, clinics, or educational institutions which may combine to provide services.

(3) For a mental health center to be licensed, it must ~~make available~~ provide to its clients all of the following services:

(a) through (d) remain as proposed.

(e) chemical dependency treatment services.

(4) through (5) remain as proposed.

(6) A mental health center may not condition a client's access to one of its services upon the client's receipt of another service provided by the mental health center unless continuity and quality of care require that services be provided by the same agency.

(7) through (8)(e) remain as proposed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.608 [37.106.1907] MENTAL HEALTH CENTER:

ORGANIZATIONAL STRUCTURE (1) through (1)(f) remain as proposed.

(2) Each mental health center shall employ or contract with a medical director who shall:

(a) coordinate with and advise the staff of the mental health center on clinical matters;

(b) provide direction, consultation, and training regarding the mental health center's programs and operations as needed;

~~(a) ensure that all clients receive evaluation, diagnosis, treatment, medical screening and medical/psychiatric evaluation whenever indicated;~~

~~(b) oversee the work of all physicians;~~

~~(c) ensure the implementation of clinical staff development and training activities;~~

~~(d) provide psychiatric and medication management services;~~

~~(e) advise the administrator on the development and review of the mental health center's programs and supervision of clinical staff;~~

(f) remains as proposed but is renumbered (c).

~~(g) (d) ensure the quality of treatment and related services provided by the mental health center's professional staff, through participation in the mental health center's ongoing quality assurance and audit process.~~

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.615 [37.106.1915] MENTAL HEALTH CENTER: CLIENT ASSESSMENTS (1) through (2) remain as proposed.

(3) Each mental health center shall ~~establish a~~ maintain a current list of providers used for outside assessments and a written process for referring clients who accept referrals for assessments and services, if any, not provided by the center.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.616 [37.106.1916] MENTAL HEALTH CENTER: INDIVIDUALIZED TREATMENT PLANS (1) Based upon the findings of

the assessment(s), each mental health center shall establish an individualized treatment plan for each client within 24 hours after admission for crisis intervention and stabilization program services and within 5 contacts, or 21 days from the first contact, whichever is later, for other services. The treatment plan must:

(a) and (b) remain as proposed.

(c) describe the service or intervention with sufficient specificity to demonstrate the relationship between the service or intervention and the stated objective specific services which will be provided in order to achieve each objective;

~~(d) specifically state how the service or intervention will assist the client in meeting the objective;~~

(e) and (g) remain as proposed but are renumbered (d) and

(e).

~~(g)~~ (f) include the signature and date of the mental health center's licensed mental health professional and of the person(s) with primary responsibility for implementation of the plan indicating development and ongoing review of the plan. If intensive care management is the only service being received from the mental health center, a program supervisor must sign the treatment plan indicating the supervisor's review and approval for appropriateness; and

(h) remains as proposed but is renumbered (g).

(2) and (3) remain as proposed.

(4) If a client is receiving case management and/or medication management services along with one or more other services from the mental health center, the treatment plan review must be conducted by at least one licensed mental health professional from the mental health center and include persons with primary responsibility for implementing the treatment plan. Other staff members must be involved in the review process as clinically indicated. Outside service providers must be contacted and encouraged to participate in the treatment plan review, as clinically indicated.

~~(a)~~ (5) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted face-to-face and include:

~~(i)~~ (a) the client as clinically appropriate;

~~(ii)~~ (b) the client's guardian if applicable;

~~(iii)~~ (c) the client's parents or guardian if the client is a youth and the involvement by the parent or guardian is clinically appropriate; and

~~(iv)~~ (d) case manager, if the client has one; and

(e) in the case of an adult client, an adult friend or family member may be invited to participate in the treatment planning or treatment plan review meeting, at the request of and upon written consent of the client, and as deemed clinically appropriate by the client's treatment team, prior to the scheduling of the meeting.

~~(b)~~ (6) The treatment plan review must be comprehensive with regard to the client's response to treatment and result in either an amended treatment plan or a statement of the continued appropriateness of the existing plan. The results of the treatment plan review must be entered into the client's clinical record. The documentation must include a description of the client's functioning and justification for each client goal.

~~(4)~~ (7) If the mental health center develops separate treatment plans for each service, the treatment plans must be integrated with one another and a copy of each treatment plan must be kept in the client's record.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.644 [37.106.1936] MENTAL HEALTH CENTER: CHILD AND ADOLESCENT DAY TREATMENT (1) remains as proposed.

(2) The child and adolescent day treatment program must be

site based and occur in a location separate from the child and adolescent's regular classroom. Appropriate, supplemental day treatment services may be delivered off site. The program shall:

(a) through (d) remain as proposed.

~~(e) provide appropriate educational services to clients including special education, if necessary, coordinate its services with educational services provided through full collaboration with a school district recognized by the office of public instruction;~~

(f) through (4) remain as proposed.

(5) Each program therapist or in-training practitioner therapist in the program shall carry an active caseload not to exceed 12 day treatment clients. The therapist who carries the caseload must also provide the therapy and must be on site during the entire day treatment hours of operation unless the therapist is attending a meeting offsite that pertains to one of the day treatment client's treatment. The program supervisor may carry a caseload of up to 6 day treatment clients.

(6) There must be at least one full-time equivalent (FTE) clinical or mental health support staff member for every 8 6 clients in the program. Support staff means an adult, under the supervision of the program supervisor or therapist, with experience in working with children and adolescents with severe emotional disturbances. For the purpose of this ratio, the number of participants in the program must be based on the average daily attendance. This ratio includes the site based therapist or program supervisor, if the therapist or supervisor spends at least half of the time ~~in the classroom with the clients with the class~~ and is readily available at other times when the need arises. The program therapist's office must be in close proximity to the day treatment classroom to provide timely interventions to clients. Mental health staff must not be shared with other programs. Either the mental health support staff member, the therapist or the supervisor must be in the classroom at all times during operation of the program.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.650 [37.106.1945] MENTAL HEALTH CENTER: CRISIS TELEPHONE SERVICES (1) In addition to the requirements established in this subchapter, each mental health center shall provide crisis telephone services and comply with the following requirements:

(a) through (d) remain as proposed.

~~(e) publish the crisis telephone number in the local telephone directory in the yellow pages under mental health services;~~

(f) through (f)(v) remain as proposed but are renumbered (e) through (e)(v).

(2) remains as proposed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

6. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: These rules tighten state control over all mental health service providers, which seems to be incongruent with the State's movement toward regionalized Service Area Authorities, where much of the responsibility and authority for the delivery of mental health services will be delegated to a regional entity.

How do the proposed rule changes support the development of Service Area Authorities if the people who are supposed to be developing them in each service area have not even sat down together to review the questions that need answers? These rules fall outside the requirements of Senate Bill 454 and the Montana Children's Initiative.

RESPONSE: The Department believes comments and questions about the mental health system budget, Service Area Authority development, Senate Bill 454, the Montana Children's Initiative provider association and Multiagency Children's Committee initiatives confuse funding, reimbursement and system development with licensing requirements, and are beyond the scope of these administrative rules. The Department is statutorily required to establish minimum standards for healthcare facilities, including mental health centers. The purpose of these administrative rules is to define what a mental health center is, and the minimum standards for licensure.

COMMENT #2: Four commentors recommended suspending the proposed changes altogether.

RESPONSE: The Department disagrees and believes the proposed changes in administrative rule are needed.

COMMENT #3: One commentor used the Comprehensive School and Community Treatment provider work group as an example where providers are working with the Department and creating solutions together as an alternative method of developing standards to improve services. The rule making process does not allow for the level of interactive dialogue necessary to develop shared solutions.

Another commentor thought the proposed changes projected the appearance that decisions had already been made without proper community input. Are the mental health centers' recommendations useful in changing the system?

RESPONSE: The Department values public input in the development of administrative rules. A public hearing and comment period has been provided for public input. The Department has given

careful consideration of the comments received in drafting the final version of these rules.

COMMENT #4: Several commentors were concerned that the consequence of these rule changes would be to divert attention away from developing a new mental health system, the Service Area Authorities, the work of Senate Bill 454, the Montana Children's Initiative provider association and provider work groups.

Several commentors believe these rules run counter to the intent of Senate Bill 454 to strengthen community-based services and that the Department should create more flexibility for mental health centers to tailor services to meet the needs of individual communities, including rural settings.

RESPONSE: The Department does not believe the proposed changes in mental health center licensure are inconsistent with legislative intent.

As indicated previously, the Department believes comments and questions about the mental health system budget, Service Area Authority development, Senate Bill 454, the Montana Children's Initiative provider association and Multiagency Children's Committee initiatives confuse funding, reimbursement and system development with licensing requirements, and are beyond the scope of these administrative rules. The Department is statutorily required to establish minimum standards for healthcare facilities, including mental health centers. The purpose of these administrative rules is to define a mental health center, and the minimum standards for licensure.

COMMENT #5: Several commentors did not think it was reasonable to require the smaller mental health centers to provide the same services that the regional mental health centers provide because it would put smaller centers out of business. It does not make sense to mandate the provision of more services in a time when government and agency budgets are so tight.

RESPONSE: These rules do not make a distinction between mental health centers based upon size. These rules address minimum standards for mental health center licensure and the Department is not requiring the smaller mental health centers to provide the same services as larger mental health centers. The proposed administrative rules do not prohibit mental health centers from contracting with other agencies to provide the core services. The Department changed rule wording in ARM 16.32.607(2) [37.106.1906] to make it clear that a mental health center may also contract with licensed health care professionals and licensed mental health professionals to provide required services. As indicated earlier, funding issues are outside the scope of these administrative rules. Making core services available to their clients does not mean the core services are appropriate or medically necessary for all clients.

COMMENT #6: The mental health system has been in such a state of flux in recent years. Escalating costs have created a crisis atmosphere. Will these proposed changes address the issue of upward spiraling costs? The proposed changes will increase the cost of services and create duplicate layers of services. A thorough analysis should be conducted of existing data to ascertain if and where changes are necessary. Solutions should be considered that reduce rising costs. Recent changes have not been given enough time to work. What data was utilized to propose these rule changes? The recommendations of the Technical Assistance Collaborative Incorporated Report were worthy of consideration. Have the recommendations been considered in these proposed rules?

RESPONSE: As stated earlier, the Department believes comments and questions about the mental health system budget and Service Area Authority development confuse funding, reimbursement and system development with licensing requirements, and are beyond the scope of these administrative rules.

The Department does not agree that the proposed rules create a duplicate layer of services. Requiring a mental health center to make core services available to their clients does not mean the core services are appropriate for all clients and does not mandate that all clients receive each core service. As stated earlier, the proposed changes set minimum standards for mental health centers.

COMMENT #7: With regard to these proposed rule changes, are the Quality Assurance Division and the Addictive and Mental Disorders Division working collaboratively? The proposed changes would appear to be opposed to the recent efforts of the Addictive and Mental Disorder Division.

RESPONSE: Yes, the Department's Quality Assurance Division and Addictive and Mental Disorders Division did work collaboratively on these proposed administrative rule changes. The Addictive and Mental Disorders Division believes the proposed changes will support efforts to work with providers and others interested in improving mental health services in Montana from a licensure standpoint.

COMMENT #8: Under managed care and under the demise of managed care, providers came forward to meet the needs of children and their families and departed from the mold of the "full service" community mental health center. The children's provider system in Montana evolved into a much richer and more diverse provider network consisting of three psychiatric residential treatment providers, ten therapeutic foster care providers, a higher number of therapeutic youth group home providers, 14 mental health centers in addition to the regular private practitioners of outpatient therapy services and medication management.

These proposed rules take us backwards by isolating children's

mental health in an adult model of services that does not work and is not in the best interests of children. The model for children's services must be grounded in the precepts that children's services are fundamentally different than adult services; that they are not primarily a mental health issue; and that they require a multi-agency response.

RESPONSE: These rules address mental health center licensure only. They do not address licensure of other health care facilities or practitioners.

The Department believes medication management, outpatient therapy, crisis telephone, community-based psychiatric rehabilitation and support and chemical dependency services are valuable components of working with children with an emotional disturbance or mental illness and their families. Rule changes on chemical dependency services were made based on comments received and are addressed later in this document.

These rules set minimum standards and do not prohibit a mental health center from providing other services important in working with children and their families. The Department agrees that children's mental health issues require multi-agency collaboration. Most of that collaboration does not fall within the scope of these rules.

COMMENT #9: Commentor believes requiring mental health centers to provide medication management services that is required by Rule I(1) [37.106.1950] may increase access to these services for persons with a mental illness.

RESPONSE: The Department agrees. Medication management is one of the most important services in treating youth with serious emotional disturbance and adults with severe disabling mental illness.

COMMENT #10: Commentor agrees that medication management is an integral part of the mental health system, as provided in Rule I(1) [37.106.1950]. The commentor, however, did not believe mandating mental health centers to provide this service will address the central problem of the shortage of psychiatrists and physicians. The rule should be flexible to allow communities to find creative solutions between mental health centers and licensed health care professionals. The Department is urged to develop strategic plans to recruit qualified psychiatrists. The wording recommendation is ". . . coordinate access to medication management services for clients . . ."

Commentor recommends changing the wording of Rule I(2) [37.106.1950] to read "(a) that medication management be provided by licensed health care professionals who are employed by the mental health center; (b) are contracted with the mental health center; or (c) have written agreements with the mental health center."

RESPONSE: The Department believes Rule I(2) [37.106.1950] already allows a mental health center the flexibility to employ or contract with a licensed health care professional for medication management services, as provided in ARM 16.32.607(2) [37.106.1906].

COMMENT #11: Several commentors questioned whether Rule I(3) [37.106.1950] required a separate medication management policy and procedure manual, or whether the medication management policies could be included in the mental health center's general clinical policy and procedure manual.

RESPONSE: Separate manuals are not necessary for medication management policies and procedures and may be kept in the center's clinical or main policy and procedure manual. Rule I [37.106.1950] will be changed to read: "A mental health center shall have medication management policies and procedures in its policy and procedure manual which include, at a minimum, the following:".

COMMENT #12: Regarding the medication management policy and procedure requirements Rule I(3) [37.106.1950], does the state Medicaid program demand such minute regulation of other doctors who provide general medical services to Medicaid clients?

RESPONSE: The Department cannot respond to this comment as these administrative rules pertain to licensing rules and not Medicaid rules.

COMMENT #13: Regarding Rule I(3)(a) [37.106.1950], outpatient physicians issue prescriptions instead of "medication orders". The prescriptions are generally phoned in, faxed or e-mailed to a pharmacy and documented in the client's file under "Doctors Order Sheet". Commentor is opposed to the proposed change in Rule I(3)(a) [37.106.1950] because it would require more paperwork and increased administration responsibilities.

RESPONSE: The Department agrees with the commentor and will change the wording of Rule I(3)(a) [37.106.1950] to read: "maintaining a current, chronological and dated record of medication orders prescribed by the client's licensed health care professional in the client's clinical records".

COMMENT #14: One commentor disagreed with the proposed change in Rule I(3)(1) [37.106.1950] because it would cause compliance problems for many seriously ill clients. The commentor has worked with pharmacies in the past who will not package medication in less than monthly amounts. In such cases, the mental health center nurses dispense medication daily or weekly by repackaging the medication for clients on a daily or on a weekly basis.

RESPONSE: The Department did not propose changes to Rule I(3)(1) [37.106.1950]. The language was simply moved from ARM

16.32.609(1)(j)(x) [37.106.1908] and placed in Rule I(3)(1) [37.106.1950]. Licensed health professional can do whatever duties they need to as long as the duties are within the scope of their licenses. The license scope is not defined in these rules.

COMMENT #15: The language found in Rule I(3)(c) [37.106.1950] regarding "administering and monitoring" medications "by a licensed health care professional" seems to mean that a mental health center must have only licensed staff monitoring clients for medication compliance or side-effects.

RESPONSE: Rule I(3)(c) [37.106.1950] was moved from ARM 16.32.609(1)(j)(ii) [37.106.1908] with slight modifications to the wording. The Department will take out the wording "and monitoring" in Rule I(3)(c) [37.106.1950] as monitoring the client's response to medication or dosage changes is addressed in Rule I(3)(e) [37.106.1950].

COMMENT #16: One commentor recommended that Rule I(3)(h) specify who would be notified regarding medication errors or adverse drug reactions and who should follow-up or investigate them.

RESPONSE: The Department agrees and will modify the wording of Rule I(3)(h) [37.106.1950] to read: "reporting and addressing in a timely manner, any medication errors and adverse drug reactions to the licensed health care professional prescribing the client's medication, and to the program supervisor and medical director".

COMMENT #17: Regarding Rule III(1)(a) [37.106.1958], how would a mental health center assess the proposed rule that a foster care provider have the "ability to provide necessary services and supports to the client"?

RESPONSE: The Department believes there are a number of ways to assess whether or not a foster care provider is able to provide the necessary services and supports to clients in the mental health center's development of policies and procedures. Examples that adhere to the proposed rules include: Maintaining a current copy of the adult foster care provider's license pursuant to Rule II [37.106.1955]; requiring the adult foster care providers participation in the initial orientation and follow-up training session, and show satisfactory comprehension of the issues presented pursuant to Rule III(2) [37.106.1958]; requiring the adult foster care provider's to be able to enter into an individual placement agreement with the mental health center pursuant to Rule IV(2)(a) [37.106.1959] and Rule IX [37.106.1967]; requiring the adult foster care provider to satisfactorily comprehend therapeutic deescalation techniques as provided for in Rule V(2) [37.106.1960]; and requiring the adult foster care provider be able to support the client's treatment plan goals pursuant to Rule VIII [37.106.1966].

Inconsistent terms may have contributed to the commentor's confusion. To address this problem the Department will change the wording in Rule III(1) [37.106.1958] from "applicant's" to "foster care provider's" to be consistent with Rule VI(1)(a) [37.106.1961].

Also, inconsistent wording found in Rule III(2) [37.106.1958] and Rule IV(1)(b) [37.106.1959] may have added to the commentor's confusion. The Department has changed the wording to be consistent with Rule II's [37.106.1955] requirement that a mental health center utilize only licensed foster care providers. Mental health centers may recruit licensed adult foster care providers and/or recruit individuals to become adult foster care providers licensed by the Department pursuant to ARM Title 37, chapter 100, subchapter 1. The wording in Rule III(2) [37.106.1958] "the mental health center shall provide an orientation session prior to the foster care applicant's licensure . . ." and similar wording found in Rule IV(1)(b) [37.106.1959] "documentation of the orientation session prior to the provider's licensure, . . ." adds confusion. The wording in Rule III(2) [37.106.1958] will be changed to read: "the mental health center shall provide an orientation session prior to entering into a client placement agreement with the foster care provider, . . ." The wording in Rule IV(1)(b) [37.106.1959] will be changed to read "documentation of the orientation session prior to entering into a client placement agreement, and annually thereafter".

COMMENT #18: A couple of commentors said the adult foster care specialist's caseload is too low to be financially feasible. One thought the caseload size should be the same as an intensive case manager's caseload size. The other thought that with the proposed caseload size of 12 would require the daily rate to be \$65 per day.

RESPONSE: The Department does not believe the adult foster care specialist caseload size should be the same as for an intensive case manager, however, the Department will increase the caseload size from 12 to 16. The wording of Rule VI(3)(b) [37.106.1961] will be changed to read: "carry a case load of not more than 16 foster care clients".

COMMENT #19: Regarding Rule VI(3)(c) [37.106.1961], the adult foster care specialist should meet more frequently with the provider than quarterly. The practice should consist of daily contact and weekly meetings.

RESPONSE: The Department will change Rule VI(3)(c) [37.106.1961] to read: "meet with the foster care provider at least weekly in his or her home, or whenever there is a significant change in the client's condition to assess, at a minimum, the following:".

COMMENT #20: One commentor said that its current adult foster

care specialist practices include daily contacts and weekly meetings. The commentor believed that documenting each contact as required by Rule VI(3)(d) [37.106.1961], would be excessive, and recommended bi-weekly summaries and summaries whenever a significant event occurs.

RESPONSE: The Department agrees and will change the wording in Rule VI(3)(d) [37.106.1961] to read: "document bi-weekly summaries or sooner if there is a significant change in the client's condition regarding the client's treatment in the client's clinical record".

COMMENT #21: One commentor recommended adding a definition for "medication management services" for consistency, because it is proposed as a core service.

RESPONSE: The Department believes medication management services are already defined in Rule I(1), (2) and (3) [37.106.1950].

COMMENT #22: Regarding the definition of chemical dependency treatment found in ARM 16.32.602(3), (3)(b) and (3)(d) [37.106.1902], several commentors said the definition was confusing and needed clarification. One thought the rule directed the mental health center to employ or contract with a certified chemical dependency counselor for the purpose of assessing their clients for chemical dependency. One recommended screening clients prior to referral and another recommended using the clinical intake assessment to screen for substance abuse issues; to make referrals for an evaluation by a certified chemical dependency counselor; and provide for chemical dependency treatment by a certified chemical dependency counselor or state approved program.

RESPONSE: The Department agrees that the definition was somewhat confusing and will change the term "chemical dependency treatment" to "chemical dependency services" because the mental health center has the option to provide a chemical dependency evaluation and treatment or make arrangements for a mental health center client's chemical dependency evaluation and treatment. A mental health center is required by ARM 16.32.615(1) [37.106.1915] to assess a client's substance use and abuse in the clinical intake assessment. ARM 16.32.602(3) [37.106.1902] will be modified to read:

"(3) "Chemical dependency services" means:

(a) screening of a client for substance abuse issues by the mental health center through its clinical intake assessment;

(b) as indicated by the substance abuse screening, the provision or arrangement by the mental health center for a client to be evaluated by a licensed addiction counselor;

(c) in accordance with the evaluation by a licensed addiction counselor, the provision or arrangement by the mental health center of chemical or department treatment by a licensed addiction counselor or state-approved chemical dependency

treatment program; and

(d) the integration and coordination by the mental health center of the client's mental health treatment with the chemical dependency treatment."

COMMENT #23: One commentor recommended the "child and adolescent" definition found in ARM 16.32.602(4) [37.106.1902] include youth 18 years of age or older who are still attending high school because they still qualify to receive mental health services.

RESPONSE: The Department agrees and will change the wording of ARM 16.32.602(4) [37.106.1902] to read: "child and adolescent means 17 years of age or younger and includes students up to 21 years of age who are still attending a secondary public school".

COMMENT #24: Using the phrase, "the length of stay is limited to stabilizing the individual's symptoms" in the definition of a "crisis stabilization program" found in ARM 16.32.602(9) [37.106.1902] is not appropriate or correct. Crisis stabilization programs often accept patients stepping down from Montana State Hospital to the community.

RESPONSE: The Department agrees and will change the wording of ARM 16.32.602(9) [37.106.1902] to read: "crisis stabilization program means 24 hour supervised treatment for adults with a mental illness for the purpose of stabilizing the individual's symptoms".

COMMENT #25: Several commentors thought the definition of "crisis telephone services" in ARM 16.32.602(10) [37.106.1902] needed to be clarified by allowing 24 hour emergency mental health telephone services to their own clients and not the community at large. Crisis telephone services to the community at large is a contracted service provided by the community mental health centers. All providers have an ethical responsibility to provide emergency services to their clients or to make alternative arrangements with other providers.

One commentor recommended the term "crisis intervention services" for 24 hour telephone response to mental health emergencies available to a mental health center's clients and the term "crisis telephone services" for 24 hour toll-free telephone response to emergencies that are contracted by the state and publicized to a community.

RESPONSE: The Department agrees the definition of crisis telephone services is confusing because they are also a required core service of all mental health centers as provided in ARM 16.32.607(3)(a) [37.106.1906]. The wording of ARM 16.32.602(10) [37.106.1902] will be changed to: "crisis telephone services means 24 hour telephone response to mental health emergencies for the mental health center's clients". ARM 16.32.650(2)(e) [37.106.1945] regarding the requirement that the crisis

telephone number be published in the local telephone directory was eliminated.

COMMENT #26: The definition in ARM 16.32.602(13) [37.106.1902] regarding the individualized treatment plan should include involvement of the consumer in the planning process. Consumers who are actively involved in their own treatment plans cooperate more.

RESPONSE: The Department agrees with the concept, however it believes consumer participation is expected and addressed adequately in ARM 16.32.616(1)(f) (renumbered (1)(e)) [37.106.1916], which provides that treatment plan "include the client's or parent/guardian's signature indicating participation in the development of the treatment plan. If the client's or parent/guardian's signature indicating participation is not possible or inappropriate, written documentation must indicate the reason;".

COMMENT #27: Add the word "educational" after vocational in the definition of intensive case management in ARM 16.32.616(15) [37.106.1916]. Intensive case managers also assist youth in their school setting.

RESPONSE: The Department agrees and will change the definition to include the language as proposed.

COMMENT #28: ARM 16.32.616(16) [37.106.1916] contains a new definition of a licensed health care professional. The concern is not so much with the definition, but rather with the definition of severe disabling mental illness in ARM 16.32.602(26) [37.106.1902] and that a health care professional has determined that medication is necessary to control the symptoms of mental illness. Individuals who do not meet the other criteria to meet the definition of severe disabling mental illness do not have the resources to pay for such an evaluation by a licensed health care professional as defined. It was recommended to change the definition of severe disabling mental illness, or allowing a licensed mental health professional's referral for a medication evaluation.

RESPONSE: The Department decided to make the definition of "severe disabling mental illness" consistent with the definition found in ARM 37.89.103(15), which pertains to the mental health service plan reimbursement rules. Therefore, the Department will not make any changes at this time.

COMMENT #29: For consistency and quality of care issues, one commentor recommended adding the 3 years of experience requirement found in ARM 16.32.602(17)(c) [37.106.1902] regarding registered nurses to ARM 16.32.602(17)(b) [37.106.1902] for occupational therapists.

RESPONSE: The Department agrees with the commentor and will

change the wording as proposed regarding years of experience for occupational therapists.

COMMENT #30: The definitions of "seclusion" and "time-out" in ARM 16.32.602(25) and (29) [37.106.1902] are confusing and unclear. The terms seem to be used interchangeably.

RESPONSE: The Department did not propose changes to these definitions. "Time-out" is a behavioral measure where the child or adolescent voluntarily consents to it. "Seclusion" is an involuntary intervention. The Department believes these definitions are clear on these points, therefore the Department did not make changes to those definitions.

COMMENT #31: Modify the definition of "serious emotional disturbance" in ARM 16.32.607(27) [37.106.1906] to include youth younger than 6 and over 18 who are still in high school to be consistent with ARM 16.32.602(4) [37.106.1902].

RESPONSE: The definition will be changed to read: "serious emotional disturbance" means, with respect to a youth, that the youth meets the requirements defined in ARM 37.86.702.

COMMENT #32: One commentor asked if it was necessary to require services currently provided by new mental health centers to be provided by an existing mental health center.

RESPONSE: The Department believes that the services included in these licensure rules require the clinical structure and expertise of a mental health center and should not be provided on a stand-alone basis. These rules apply to all mental health centers, regardless of size or date of licensure.

COMMENT #33: One commentor thought mental health centers should be required to provide 24 hour emergency services and medication management services, and not be required to provide outpatient therapy and chemical dependency services. Require mental health centers to assess their clients and make referrals to chemical dependency treatment providers.

RESPONSE: The Department believes that medication management services, outpatient therapy, community based psychiatric rehabilitation and support, chemical dependency and crisis telephone services are critical components in the treatment of some clients with an emotional disturbance or mental illness. The Department believes mental health centers should provide more than one service to be licensed and offer an array of services in an outpatient continuum of care. The Department does not believe that making core services available means that these services are appropriate or medically necessary for all clients. Based on the previous comments, the Department has agreed to make some changes in chemical dependency treatment found in ARM 16.32.602(3) [37.106.1902].

COMMENT #34: Under the new mental health system, various providers have been allowed to become mental health centers, which allows greater flexibility in providing services to consumers. Many of the new centers focus on children's services. The proposed rules do not differentiate between community mental health centers and specialized mental health centers. The rules are tailored for an adult medical model. Children's services need to be more creative and individualized. Children need more case management, tailored family interventions and supports, pediatric specialist in therapy, psychiatric medications and behavioral interventions. The commentor recommends differentiating regional centers from specialized centers to reflect the different populations served.

RESPONSE: These rules do not distinguish between mental health centers of various sizes and the ages of the clients they serve. All are licensed by these minimum standards. The Department does not believe the proposed rules prohibit centers from becoming specialized by providing tailored family interventions and supports; and pediatric specialists in therapy, medication or behavioral interventions. The Department encourages mental health centers to provide or develop additional services for children.

COMMENT #35: One commentor in general thought that one problem with the mental health system is that private providers do not have an incentive to provide services to difficult-to-serve clients in the community, and state institutions like Montana State Hospital are required to provide services. This situation results in difficult-to-serve clients being sent to the state hospital and unable to return to their communities. Private providers can choose who they want to serve and are limited in what services they provide and how much they are reimbursed.

Make it mandatory that mental health centers serve all eligible consumers from their region or county regardless of the consumer's history of refusing services, of being hard to serve, or of past acts of violence or criminal adjudication; and allow funding to develop flexible treatment options that may fall outside the current model. Another solution would be to require or allow mental health centers and community providers to bid on providing treatment services for hard-to-serve consumers in their chosen community along with providers of the consumers choice. This would require some or all of the money from the state hospital to follow hard-to-serve consumers to the community.

RESPONSE: These licensing rules do not mandate who providers serve but instead provide minimum licensure requirements. Altering funding structures is beyond the scope of these rules.

COMMENT #36: One commentor asked if each licensed mental health center would be required to provide all of these services to everyone in the community, and whether each center will be

offered the same funding and grants to provide these services.

RESPONSE: Yes, licensed mental health centers are required to make their services available to the general public and provide services to individuals based on need within the center's scope of practice. The licensing rules do not address reimbursement.

COMMENT #37: Add the option in ARM 16.32.607(2) [37.106.1906] to contract with, as well as having written agreements with, other facilities. Also include the option of having a contract or written agreement with practitioners as well as the other facilities listed. With the additional options, communities would have more flexibility to develop the required array of core services.

RESPONSE: The Department agrees and will make this more clear by changing the rule to read: "Services provided by a mental health center must be rendered by a single administration in a discrete physical facility or multiple facilities or by written agreements or contracts with other licensed health care professionals, licensed mental health professionals, or other facilities such as hospitals, clinics or educational institutions which may combine to provide services".

COMMENT #38: Several commentors disagreed with the proposed core services in ARM 16.32.607(3) [37.106.1906]. One commentor believes mental health centers should provide case management, day treatment, inpatient psychiatric services, outpatient therapy, medication management and emergency services. The comment was asked what "make available" meant. For example, was the provider to provide crisis telephone services, or refer clients to another provider for emergencies?

One commentor did not believe the Department should define what core services are, and that this task should be completed by the Mental Health Oversight Advisory Council and the Service Area Authority planning meetings. The commentor recommended the following core services: crisis intervention services; medication management services, when clinically and medically indicated; and chemical dependency screening and referral.

One commentor thought requiring core services similar to those of community mental health centers was onerous and would force centers to increase services and billing. The growth of many small mental health centers was due in part to the dissatisfaction of children's services provided by the community mental health centers that emphasize adult services over children services.

Another commentor suggested that adult and child day treatment centers should be mandatory but substituted with consumer run activity or drop in centers. Each center should provide a place where consumers can physically go for support, daytime activities and help.

RESPONSE: To clarify ARM 16.32.607(3) [37.106.1906], the wording "make available" will be changed to "provide" so the wording is consistent with ARM 16.32.607(4) [37.106.1906]. To provide mental health center clients core services means to provide services according to the client's individual need, either directly, through a written agreement, or under contract with licensed health care professionals or facility. Inpatient psychiatric services are provided by a hospital and do not fall within the scope of practice of a mental health center.

The Mental Health Oversight Advisory Council and Service Area Authorities each have their respective roles in advising the Department on the mental health system. The Licensure Bureau has statutory responsibility to establish minimum standards for mental health centers. These rules do not prohibit a mental health center from providing additional services.

COMMENT #39: In ARM 16.32.607(3)(a) [37.106.1906], it would be helpful to allow specialized mental health centers to combine to provide crisis telephone coverage for their clients.

RESPONSE: The Department agrees and has proposed this many times to providers. The proposed administrative rules do not prohibit this.

COMMENT #40: Several commentors questioned why outpatient therapy services were required in ARM 16.32.607(3)(c) [37.106.1906] as a core service. Two pointed out that there are many private practitioners providing this service.

Another commentor was concerned that these services are not necessarily the most important services for children, and that the new mental health centers are focusing more on rehabilitation and recovery rather than psychotherapy.

RESPONSE: The Department believes a mental health center should provide basic services for an outpatient continuum of care. These rules set minimum standards and do not prohibit a mental health center from providing additional services for children.

COMMENT #41: One commentor recommended adding "crisis telephone services" and "community based psychiatric rehabilitation and support" to the list of areas of endorsement in ARM 16.32.607(4) [37.106.1906], instead of naming them as core services. The commentor previously recommended a definition for "crisis intervention services" which differs from "crisis telephone services".

RESPONSE: Based on the previous comment, changes were made to the definition of crisis telephone services. As indicated before, the Department believes a mental health center should provide basic services, including crisis telephone services, and community-based psychiatric rehabilitation and support, for an outpatient continuum of care.

COMMENT #42: One commentor thought case management should remain mandatory, although the commentor found that ARM 16.32.607(4) [37.106.1906] allowed it to be optional. Many professionals identify case management as one of the most important services provided to clients. It is probably even more important in a recovery model than a medical model.

Another commentor said that the Addictive and Mental Disorders Division is limiting intensive case management services for youth in therapeutic living placements to 3 months and will be inappropriately establishing monopolies in intensive case management by July 1, 2002. The Developmental Disabilities Division was cited by Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration) for maintaining a system of provider monopolies and failing to provide consumer choice. The licensing and reimbursement changes taken together create the same mistakes and is in opposition to Medicaid, the U.S. Supreme Court's decision of Olmstead v. L.C., 527 U.S. 581 (1999), and the Centers for Medicare and Medicaid Services rules. There is no evidence monopolies cut costs.

RESPONSE: These rules continue treating intensive case management as an optional, not mandatory, mental health center service. The reason for this is because case management coordinates services for clients, and those services can extend to other providers who are not within the mental health center. The Department therefore decided to make case management an optional service. Question of Department funding of case management and the Olmstead Decision compliance are beyond the scope of these rules.

COMMENT #43: A couple of commentors thought requiring ARM 16.32.607(6) [37.106.1906] presented problems for mental health centers when potential clients are seeking to access only medication management or psychiatric services. Some agencies require case management or outpatient therapy services to be provided by their own agency in conjunction with medication management services. Many psychiatrists are hesitant to prescribe psychotropic medication to clients without other support services in place.

One commentor made a distinction between a psychiatrist who functions as the client's therapist who also prescribes medication, and the psychiatrist who only prescribes and monitors the client's medication. There needs to be a way to protect mental health centers from being required to operate medication only clinics. The commentor recommended the following wording, "a mental health center must make medication management services available to any clients who are in receipt of another service provided by that mental health center. However, the mental health center's cannot require the client to accept multiple services as a means of gaining access to medication clinic". The term "another service" would include therapeutic youth group homes, therapeutic foster care, etc.

Another commentor said outpatient therapy services in conjunction with medication management by the mental health center's psychiatrist is required because the therapist needs to assess the client's need for being seen by the psychiatrist, and needs to provide clinical input required of individualized treatment plans. This arrangement helps to ensure the quality of treatment provided by the mental health center. Using the same agency therapist ensures appropriate treatment planning and communication.

A third commentor would make the statement specific to medication management services and say that a mental health center may not condition a client's access to medication management services upon the client's receipt of another service provided by the center.

Another commentor asked what qualifies a person to be a mental health center client? Can a mental health center not accept a person as a client if the only service the client wants is medication management or community-based psychiatric rehabilitation and support services? An in-depth discussion is needed about the difference between community mental health centers and mental health centers. It is unnecessary to expect all mental health centers to provide an array of services to respond to any and all mental health needs within a community. This destroys the richness of the provider network and overburdens the mental health budget.

RESPONSE: The Department agrees that some clients may clinically need care coordination, case management or outpatient therapy services in conjunction with medication management services. However, the department does not agree that these services should be mandated for all clients receiving medication management services. The Department will change the wording of ARM 16.32.607(6) [37.106.1906] to read: "A mental health center may not condition a client's access to one of its services upon the client's receipt of another service provided by the mental health center unless continuity and quality of care requires that services be provided by the same agency." For example, if the client's health is put at risk because a case manager from another agency or private practitioner does not work collaboratively with the licensed health care professional providing medication management services, then these services should be provided by the same agency.

Reimbursement for mental health services is outside the scope of these licensing rules. A licensed mental health center is required to make its services available to the general public and provide services to individuals based on need within the center's scope of practice.

The Department believes a mental health center should provide basic services for an outpatient continuum of care. These rules are minimum standards and do not prohibit a mental health center

from providing additional services for children.

COMMENT #44: Two commentors support the proposed rule change in ARM 16.32.607(6) [37.106.1906]. One mental health center requires clients to receive outpatient therapy services and medication management services from the same agency. Outpatient therapy services provided by private practitioners should be allowed.

RESPONSE: This was addressed in the previous response.

COMMENT #45: Many commentors thought the medical director requirements were excessive and not necessary in ARM 16.32.608 [37.106.1907]. Some commentors provided general comments and others provided specific comments and recommendations.

Medical directors must be integrally involved with medication management, evaluation and diagnosis, duties often carried out by physician's assistants, licensed therapists and/or registered nurses. One commentor thought requiring a medical director with the highest reimbursement rate to duplicate these services dramatically increases state mental health costs with no apparent program improvement. The intent of the 2001 Montana Legislature was to contain mental health costs. This rule change promotes duplication of services in a time of scarce financial resources.

The commentor went on to say that Montana does not have adequate access to psychiatrists, especially in rural areas. Most physicians practicing in small rural communities do not have the necessary training or experience to meet the proposed requirements. The Department cannot require psychiatrists serve rural areas or Medicaid clients, so the rule change will force small rural centers without access to psychiatric care to close. The Montana legislature clearly mandated increased access to mental health services in rural locations.

Another commentor thought that the new definition of the medical director in ARM 16.32.608(2) [37.106.1907] seemed to follow the strict medical model with the physician having clinical and administrative responsibility for all services provided by a mental health center, like in a hospital. The commentor felt this would be expensive and does not make sense in a rehabilitation model.

A third commentor thought that ARM 16.32.608(2)(a) [37.106.1907] conflicted with ARM 16.32.607(6) [37.106.1906], in that a medical director cannot ensure treatment if it is not done within the mental health center. The best way to assure that these services are provided is to require mental health centers to provide a range of services from case management to inpatient psychiatric and emergency services.

A fifth commentor thought ARM 16.32.608(2)(a) [37.106.1907]

which requires the medical director to ensure that medical screening and evaluations occur as needed, places an undue amount of responsibility on them, particularly in rural areas where there may not be any physicians who accept Medicaid payment.

A sixth commentor was in favor of adopting ARM 16.32.608(2)(a) [37.106.1907] but wondered if it was an unfunded mandate for Mental Health State Plan recipients if another physician or professional is needed to complete a medical screening or medical/psychiatric evaluation.

A seventh commentor recommended changing the wording in ARM 16.32.608(2)(a) [37.106.1907] to "provide oversight and consultation regarding the mental health center's clinical services," rather than to "coordinate with and advise the staff" on clinical matters.

Two commentors were not clear as to what was meant by ARM 16.32.608(2)(b) [37.106.1907] regarding the medical director overseeing the work of all physicians. One commentor said most mental health centers do not employ physicians other than a medical director, and recommended adding, "employed by or contracted with the mental health center". It was not feasible for the medical director to oversee the work of private physicians who do not have a contractual agreement with the mental health center.

Two commentors disagreed with ARM 16.32.608(2)(c) [37.106.1907] regarding the proposal that the medical director ensure the implementation of clinical staff development and training activities. Both believed it was an administrative role, and one of the commentors did not believe it required the very expensive specialized expertise of a psychopharmacologist.

One commentor recommended combining ARM 16.32.608(2)(d) with (2)(f) [37.106.1907]. The combination would enable the medical director to advise the administrator on clinical staff development and training activities.

One commentor recommended deleting ARM 16.32.608(2)(d) [37.106.1907] requiring the medical director to provide medication management and psychiatric services. The current shortage of qualified medical professionals, along with the added expense of expanding contracts for the additional duties of the medical director duties, would create an undue burden on mental health centers.

One commentor thought the wording in ARM 16.32.608(2)(e) [37.106.1907] presumes the medical director has greater knowledge of programs than program or clinical managers. The commentor recommended changing the wording to "consult with".

Two commentors disagreed with ARM 16.32.608(2)(g) [37.106.1907]

that the medical director ensure the quality of treatment through participation in the mental health center's quality assurance and audit process. One did not believe this was practical or advisable because quality assurance realistically requires consultation between the medical director, administrator, and supervisors.

One commentor proposed using the old language that was proposed to be eliminated in ARM 16.32.608(2) [37.106.1907] because it was more specific.

RESPONSE: The Department will eliminate ARM 16.32.608(2)(a) [37.106.1907] that would require the medical director to ensure that all clients receive an evaluation, diagnosis, medical screening and medical and psychiatric evaluation as needed because these requirements are already addressed in ARM 16.32.615(1), (2) and (3) [37.106.1915]. These rule subsections require the clinical intake assessment and other assessments be completed by the mental health center or outside providers as indicated by the findings of the clinical intake assessment and the client's clinical needs.

The Department agrees with the commentors regarding ARM 16.32.608(2)(b) [37.106.1907] and will eliminate this subsection.

The Department agrees with the commentors regarding ARM 16.32.608(2)(c) [37.106.1907] and will eliminate this subsection. The Department will re-instate the old rule language that requires the medical director to provide direction, consultation and training as needed.

The Department agrees with the commentors regarding (2)(d) and will eliminate this subsection.

The Department agrees with the commentors with regard to changing the wording in ARM 16.32.608(2)(e) [37.106.1907] from "advise" to "consult". However the Department will use the old rule language instead which requires the medical director to provide consultation regarding the mental health center's programs and operations as needed.

The Department agrees with the commentors regarding ARM 16.32.608(2)(g) [37.106.1907] and will not require the medical director to participate in the mental health center's audit process. However, the department believes the medical director should participate in the quality assurance process.

The Department will change the responsibilities of the medical director in ARM 16.32.608(2) [37.106.1907] and will incorporate the old rule language and make changes in the proposed rules to read:

"Each mental health center shall employ or contract with a

medical director who shall:

(a) coordinate with and advise the staff of the mental health center on clinical matters;

(b) provide direction, consultation and training regarding the mental health center's programs and operations as needed;

(c) act as the liaison for the mental health center with community physicians, hospital staff, and other professionals and agencies with regard to psychiatric services; and

(d) ensure the quality of treatment and related services through participation in the center's quality assurance process."

COMMENT #46: While consumers are not prohibited from providing crisis counseling with professional backup, there is no effort in these rules to encourage consumer crisis counseling and consumer run services. Mental health centers serving adults and possibly children should have the duty to include consumers in providing services, in assisting with the grievance procedure, and in providing other support services.

RESPONSE: The Department agrees that consumer run services are important, however, the purpose of these rules is to establish minimum standards for mental health center services. The rules do not prohibit the option of consumer run services.

COMMENT #47: Several commentors supported the proposed changes in ARM 16.32.609(1)(d)(iii) [37.106.1908] for client complaints, grievances, appeal process and advocacy information, however one recommended a universal and uniform grievance process for all mental health centers to be developed.

RESPONSE: The Department agrees that a uniform grievance procedure would be beneficial for all mental health centers to follow, however, this goes beyond the scope of these rules in setting minimum standards.

COMMENT #48: Two commentors believe in-training practitioners under close supervision should be allowed to complete clinical intake assessments like licensed mental health professionals do, as stated in ARM 16.32.615(1) [37.106.1915].

RESPONSE: The Department disagrees and believes an established level of clinical competence is required to complete a client's clinical intake assessment.

COMMENT #49: Regarding ARM 16.32.615(1) [37.106.1915], 12 hours seems onerous when the Joint Commission on Accreditation of Health Care Organizations requires hospital admission history and physical examination to be completed in 24 hours.

RESPONSE: The time frame for completing a clinical intake assessment in ARM 16.32.615(1) [37.106.1915] was not revised. A mental health center does not provide hospital level of care. Hospital licensing and certification requirements are much

stricter. The Department does not believe requiring a clinical intake assessment to be completed in 12 hours in a crisis stabilization program is unreasonable given the crisis nature of the client's symptoms when entering the program.

COMMENT #50: ARM 16.32.615(1) [37.106.1915], which requires items of the clinical assessment to be in narrative form, does not make sense for parts of the clinical assessment where the mental status check-list and the risk factors check-list is used. The checklist is much easier to complete and read.

RESPONSE: The Department believes if a mental status or risk factor checklist is used, supplemental or circumstantial information needs to be included in narrative form in order to clarify the level and specific nature of the risk.

COMMENT #51: ARM 16.32.615(3) [37.106.1915] requires a list of outside providers that mental health centers used for assessments, and a written process for referring clients for assessment services. One commentor believes this rule requires additional and needless paperwork.

RESPONSE: The Department believes the requirements in ARM 16.32.615(3) [37.106.1915] are needed so that all staff members will be aware of outside providers available for assessments. The Department feels this is important for the maximum treatment benefit of clients.

COMMENT #52: A commentor recommended adding the wording "that accept referrals" in ARM 16.32.615(3) [37.106.1915] and changing the order of the sentence to respect client choice when making referrals to outside providers.

RESPONSE: The department agrees that the list of providers should be those who accept referrals. The wording of ARM 16.32.615(3) [37.105.1915] will be changed to read: "Each mental health center shall maintain a current list of providers who accept referrals for assessments and services not provided by the center."

COMMENT #53: One commentor supports the Department's attempt in ARM 16.32.616(1) [37.106.1916] to strengthen treatment plans as a meaningful and effective treatment tool.

RESPONSE: The Department agrees and thanks the commentor for its support.

COMMENT #54: One commentor believes that listing specific individuals in the treatment plan, as specified in ARM 16.32.616(1)(a) and (1)(e) [37.106.1916], adds to an already lengthy treatment plan process. If individuals need to be added, positions should be listed instead of names because of staff turnover. Listing the positions instead of names would assist in not needing to re-write treatment plans.

RESPONSE: The Department disagrees. The administrative rules do not require the treatment plan be rewritten if there is staff turnover or upon review of the treatment plan. Requiring a specific individual to be identified provides accountability. Identifying specific individuals on the client's treatment team prior to the development of the client's treatment plan is important in understanding what role each member will play.

COMMENT #55: A commentor recommended changing the wording of ARM 16.32.616(1)(d) [37.106.1916] to read: "Describe the service or intervention with sufficient specificity to demonstrate the relationship between the service or intervention and the stated objective."

RESPONSE: The Department agrees with the proposed wording and will combine ARM 16.32.616(1)(c) and (1)(d) [37.106.1916] to read as follows: "Describe the service or intervention with sufficient specificity to demonstrate the relationship between the service or intervention and the stated objective."

COMMENT #56: A commentor thought the requirement of treatment plans containing a statement on how services or intervention will meet client's objectives, as specified in ARM 16.32.616(1)(d) [37.106.1916] was a significant change and addition to an already lengthy treatment plan process. Standards like this are troublesome and leave room for judgment and interpretation regarding whether a statement specifically indicates how the client will be assisted in meeting the objective.

RESPONSE: The Department does not believe requiring a statement that addresses the relevancy of interventions provided is a significant change. Interventions should be tailored to the needs of the client as identified in the clinical intake assessment. The Department believes this requirement adds accountability.

COMMENT #57: In 16.32.616(1)(g) (renumbered as (1)(f)) [37.106.1916], one commentor recommended eliminating the requirement that the licensed mental health professional work for the mental health center. The rule should include in-training practitioners under the supervision of a licensed mental health practitioner employed by the mental health center. When a mental health center provides intensive case management and not outpatient therapy services, the oversight of a community mental health professional should suffice.

RESPONSE: The Department disagrees with the recommendation that an in-training practitioner under the supervision of a licensed mental health practitioner employed by the mental health center be included, or that a licensed private practitioner's signature should suffice to meet the requirements in ARM 16.32.616(1)(g) (renumbered (1)(f)) [37.106.1916]. The Department believes the professional signing off on the treatment plan must have the

level of clinical competency that a licensed professional has.

In the case management example given, the signature of the mental health center's licensed mental health professional is appropriate to indicate clinical supervision. The following wording will be added to ARM 16.32.616(1)(g) (renumbered to (1)(f)) [37.106.1916]: "If intensive case management is the only service being received from the mental health center, a program supervisor must sign the treatment plan indicating the supervisor's review and approval for appropriateness." In-training practitioners are not allowed to assume the role of a "program supervisor", as defined in ARM 16.32.602(22) [37.106.1902].

COMMENT #58: A commentor believes ARM 16.32.616(3) [37.106.1916] presented the biggest concern for mental health centers because it required treatment plans to be reviewed by licensed mental health professionals. If a client has a bachelor-level case manager, and the client is not receiving individual therapy, is the mental health center supposed to provide a licensed mental health professional just to conduct the reviews? This seems to imply that a treatment plan can be written by anybody, but the review could be conducted by someone not even involved in the client's treatment.

RESPONSE: The requirement for a licensed mental health professional to participate in conducting the treatment plan review for a client who only receives case management services was clarified in ARM 16.32.616(1)(g) (renumbered (1)(f)) [37.106.1916]. The proposal to include a licensed mental health professional in the treatment plan development, as provided in ARM 16.32.616(1)(g) (renumbered (1)(f)) [37.106.1916] and the review process, as provided in ARM 16.32.616(3) [37.106.1916] was done to include a clinical supervision component.

The Department will add a new subsection (4) to read:

"If a client is receiving case management and/or medication management services along with one or more additional services from the mental health center, the treatment plan review must be conducted by at least one licensed mental health professional from the mental health center, and include persons with primary responsibility for implementation of the plan. Other staff members must be involved in the review process as clinically indicated. Outside service providers must be contacted and encouraged to participate in the treatment plan review, as clinically indicated." The remaining subsections of the rule were renumbered for easier readability.

COMMENT #59: ARM 16.32.616(3)(a) (renumbered (5)(a)) [37.106.1916], which requires face-to-face treatment team meetings, seems like a good idea but can be extremely difficult, time consuming and resource-draining. Would this be reimbursed as a separate service? Can the treatment plan review time

period be extended to 180 days or when there is a change in level of care? It is more efficient to have the case manager meet with the client separately prior to the treatment team meeting and bring their input to the meeting. With the client present, the process would take at least an hour. Commentor questions the need for treatment team meetings for clients who only receive medication and therapy.

RESPONSE: The Department believes it is important to include clients in the treatment planning and review process, and believes 180 days is too long a period between treatment plan reviews. The Department believes clients are more engaged in treatment when they participate in the process and benefit from treatment team feedback. If the client's attendance at the treatment team meeting is not in their best interest, the rationale must be included in the documentation. If a client is only receiving medication management and outpatient therapy services, a treatment plan review must be completed by the outpatient therapist.

COMMENT #60: One commentor supported the proposed change to ARM 16.32.616(3)(a) (renumbered (5)(a)) [37.106.1916] that requires a treatment team meeting to establish a treatment plan.

RESPONSE: The Department agrees and thanks the commentor for its support.

COMMENT #61: For ARM 16.32.616(3)(a)(i) (renumbered (5)(a)) [37.106.1916], one commentor recommended adding "as clinically appropriate for youth to attend the treatment team meeting".

RESPONSE: The Department agrees and will add "as clinically appropriate" to include both youth and adults.

COMMENT #62: One commentor recommends adding a broader definition to ARM 16.32.616(3)(a)(iii) (renumbered (5)(a)) [37.106.1916] regarding who could be invited to attend treatment team meetings with an adult client. Others can be involved in treatment team meetings upon receiving permission from the client, and based on the client's level of functioning.

RESPONSE: The Department agrees with the commentor and will add the following language to ARM 16.32.616(3)(a)(v) (renumbered (5)(e)) [37.106.1916]: "In the case of an adult client, an adult friend or family member may be invited to participate in the treatment planning or treatment plan review meeting, at the request of and upon written consent of the client and as deemed clinically appropriate by the client's treatment team, prior to the scheduled meeting." The Department believes it is beneficial for clients to have the positive support of nonprofessionals, peers, family and friends involved in their treatment and care.

COMMENT #63: One commentor asked who in the Department's

licensing bureau has the expertise to assess the treatment plan requirements regarding the rationale for intervention provided as specified in ARM 16.32.616(1)(d) [37.106.1916].

RESPONSE: The Department's licensure bureau looks at the treatment plan, the problems addressed, and the professionals and staff involved in the treatment goals and interventions to assure that rule requirements are being met. The licensure bureau will not substitute its expertise for that of the mental health center's professionals and staff.

COMMENT #64: Commentor agrees with the proposed changes for client discharge provided in ARM 16.32.617 [37.106.1917].

RESPONSE: The Department agrees and thanks the commentor for its support.

COMMENT #65: One commentor recommends that mental health centers providing Medicaid or Mental Health Service Plan services should be required to allow State auditors or the Mental Disabilities Board of Visitors to review their programs and facilities.

RESPONSE: The commentor's recommendations are already addressed in Montana statutes, particularly section 53-21-104, MCA, pertaining to the Mental Disabilities Board of Visitors, section 50-5-204(6) pertaining to the Department conducting inspections, and any other statutes or regulations pertaining to other entities making inspections. Because these provisions exist in other statutes or rules, it is unnecessary to reiterate them in this rule.

COMMENT #66: One commentor believes the Department should require licensed mental health centers to provide data concerning the services they provide, i.e. age, sex, diagnosis, nationality, marital status, etc., to the Department's Addictive and Mental Disorders Division.

RESPONSE: The Department believes that specific data reporting requirements fall under a providers participation in the Montana Medicaid and Mental Health Service Plan programs and are not a licensing requirement.

COMMENT #67: One commentor disagrees with the proposed ARM 16.32.622(1)(a)(i) through (1)(a)(iv) [37.106.1919] which require specific items be included on a mental health center's client satisfaction survey. Mental health centers should make their own decisions about what survey information is useful to collect in designing and/or revising their treatment programs.

RESPONSE: The Department disagrees. The mental health center's quality assessment requirements are designed to serve both the center's needs and the state's licensing needs by assessing whether minimum standards are being met and if the minimum

standards are adequate to meet the client's needs.

COMMENT #68: One commentor recommended adding the following language to ARM 16.32.644(2) [37.106.1936], "if they attend public school or in a separate site altogether".

RESPONSE: The Department believes this is clear in the current working of ARM 16.32.644(2) [37.106.1936], therefore it will not make any changes.

COMMENT #69: One commentor recommended keeping ARM 16.32.644(2)(e)(ii) and (e)(iii) [37.106.1936] regarding the option to employ educational staff or utilize interagency agreements. The commentor recommends adding the language "regardless of how educational services are delivered in the day treatment program, the mental health center must maintain written documentation verifying the responsibilities of the child or adolescent's home school district in the client's education, treatment planning and transition/discharge planning". The commentor is concerned that the Department believes these educational options may result in inconsistent educational services or hinder the transfer of clients to a less restrictive setting when clinically indicated. The commentor is concerned that the Department's assertion that providing day treatment educational services via employment of educational staff within the program or through interagency agreements with educational agencies may result in inconsistency in educational services and hinder the facilitation and transfer of clients to less restrictive settings where clinically indicated. Upon what information does the Department make this claim? The commentor's day treatment program employs its own teacher and recommends participating school districts have an interagency agreement with the day treatment provider that clearly delineates responsibilities for the youth's educational needs. The commentor recommends the Department outline specific points that would need to be addressed should interagency agreements be utilized.

RESPONSE: The Department believes outlining specific educational requirements for interagency agreements with a public school district is outside the scope of these rules.

The Department is responsible for licensing mental health centers and believes the educational services provided to day treatment clients are not the responsibility of the mental health center. Educational services should be provided by or through full collaboration with a school district recognized by the Office of Public Instruction.

The Department is eliminating the language in ARM 16.32.644(2)(e)(iii) [37.106.1936] regarding "interagency agreements with educational agencies" because this would allow a mental health center to enter into an interagency agreement with a private educational agency. ARM 16.32.607(2) [37.106.1906]

already requires written agreements with educational institutions and states that "services provided by a mental health center must be rendered by a single administration in a discrete physical facility or multiple facilities or by written agreements with other facilities such as a hospital, clinics, or educational institutions which may combine to provide services". ARM 16.32.644(2)(e) [37.106.1936] is more specific and will require educational services to be provided through full collaboration with a school district recognized by the Office of Public Instruction. Therefore, the wording of ARM 16.32.644(2)(e) [37.106.1936] will be changed to read that a child and adolescent day treatment program must: "coordinate its services with educational services provided through full collaboration with a school district recognized by the Office of Public Instruction".

COMMENT #70: One commentor believes it is important for clinical staff to have access to and be knowledgeable of the Individualized Education Plan. However the commentor recommends the Department reconsider ARM 16.32.616(3) [37.106.1916] that requires a copy of the Individualized Education Plan be included in the client's treatment plan because it is very large and may not physically fit in the clinical file.

RESPONSE: The Department disagrees and believes the most current copy of the client's Individualized Education Plan must be maintained in the client's clinical record so it is integrated in the client's treatment.

COMMENT #71: Several commentors believe the proposed changes in ARM 16.32.644(5) [37.106.1936] are too strict. One commentor said the change would create a problem if the therapist needed to be site based during day treatment hours when the therapist is providing therapy at the home school of a client transitioning back to their home school.

A second commentor believes the proposed changes do not allow the therapist to attend outside meetings such as Citizen Review Boards or Family Preservation meetings, and proposes the following language be added to the rule that the therapist be site based, "or readily accessible either in person or on call during all day treatment hours of operation".

One of the commentors also questions the financial liability of the programs if the therapist's outside therapy services are not allowed to offset program costs with the size limit set at 12. Day treatment programs must average 18 kids to make them cost effective.

RESPONSE: The Department agrees with the commentors and will change the wording in ARM 16.32.644(5) [37.106.1936] to allow the therapist to attend meetings that pertain to a client's treatment off site as follows: " . . . The therapist who carries the caseload must also provide the therapy and must be

on site during the entire day treatment hours of operation, unless the therapist is attending a meeting off site that pertains to one of the day treatment client's treatment . . .". Financial feasibility issues are beyond the scope of these licensure rules, as stated before in previous responses to comments.

COMMENT #72: Several commentors thought ARM 16.32.644(6) [37.106.1936] which requires the therapist to spend at least half their time in the classroom and be readily available at other times, was too strict. Recreational or therapeutic demands pull staff out of the classroom. One commentor recommended the following wording: "this ratio includes the site based therapist or program supervisor who is readily available when the need arises. . . Either the mental health support staff member, the therapist or the supervisor must be in the classroom at all times during operation of the program unless otherwise engaged outside the classroom in the provision of therapeutic activities".

The needs of the clients should dictate how the therapist's time is deployed. The staff to client ratio should not include the amount of time the therapist spends in the classroom.

RESPONSE: The Department agrees that therapeutic and recreational activities pull staff out of the classroom. The wording of ARM 16.32.644(6) [37.106.1936] will be changed to read: ". . . This ratio includes the site based therapist or program supervisor, if the therapist or supervisor spends at least half of the time with the class and is readily available at other times as the need arises . . .".

COMMENT #73: Regarding crisis telephone service requirements in ARM 16.32.650 [37.106.1945], a commentor asked that procedures be added on how crisis workers can access a mental health professional person for the purpose of initiating a commitment.

RESPONSE: The Department believes this is already covered in ARM 16.32.650(1)(b)(iv) [37.106.1945] which requires individuals be trained on the process for voluntary and involuntary hospitalization.

COMMENT #74: One commentor recommended changing the wording in ARM 16.32.650(1)(a) [37.106.1945] to read that mental health centers "ensure 24 hour telephone response to mental health emergencies 7 days a week".

RESPONSE: The Department believes the existing wording in ARM 16.32.650(1)(a) [37.106.1945] is clear on this point and does not require any changes.

COMMENT #75: Several commentors recommended eliminating ARM 16.32.650(1)(e) [37.106.1945] that requires the crisis telephone number to be published in the local telephone directory yellow

pages under mental health. Such a requirement would cause duplication of services and confusion for mental health center clients. Since the Department contracts with the community mental health centers for crisis telephone services, would the contract money be redistributed? Require the mental health centers to report their 24 hour emergency response numbers to their clients.

RESPONSE: The Department agrees and has eliminated ARM 16.32.650(1)(e) [37.106.1945] based on previous similar comments.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 18, 2002.

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 37.76.101)
pertaining to the food stamp)
program, ARM 37.78.102,)
37.78.103, 37.78.201,)
37.78.202, 37.78.216 and)
37.78.506 pertaining to)
temporary assistance for)
needy families (TANF))

TO: All Interested Persons

1. On January 31, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 149 of the 2002 Montana Administrative Register, issue number 2.

2. The Department has adopted the rules 37.76.101, 37.78.102, 37.78.103, 37.78.201, 37.78.202 and 37.78.506 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.

37.78.216 TANF: TANF CASH ASSISTANCE FAMILY INVESTMENT AGREEMENT (1) The family investment agreement (FIA) is a negotiated document listing eligibility requirements, employment and training activities, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

(a) All participants in the TANF cash assistance programs are required to negotiate and comply with their FIA as a condition of eligibility in the ~~pathways and community services programs~~ TANF cash assistance program. A participant who is exempt from time limits as specified in ARM 37.78.202 must enter into a FIA. The FIA activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.

(b) through (2) remain as proposed.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601, 53-4-606 and 53-4-608, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: ARM 37.78.216(1)(a) still refers to pathways and community services program. Since those programs no longer exist, the reference should be changed to TANF cash assistance.

RESPONSE: The Department agrees and ARM 37.78.216(1)(a) has been changed accordingly.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 18, 2002.

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 37.108.507)
pertaining to components of)
managed care plan quality)
assessment activities)

TO: All Interested Persons

1. On February 14, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 349 of the 2002 Montana Administrative Register, issue number 3.

2. The Department has amended the rule 37.108.507 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 18, 2002.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.13.701))
relating to the production)
threshold for beer taxes)

TO: All Concerned Persons

1. On February 14, 2002, the department published notice of proposed adoption of New Rule I (42.13.701) relating to the production threshold for beer taxes at page 379 of the 2002 Montana Administrative Register, issue no. 3.

2. No comments were received regarding this rule.

3. The department has adopted the rule as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The department strives to make the electronic copy of this Adoption Notice 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. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State March 18, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.31.501, 42.31.502,)
42.31.504, and 42.31.510)
relating to retail)
telecommunications excise tax)

TO: All Concerned Persons

1. On December 6, 2001, the department published notice of proposed amendment of ARM 42.31.501, 42.31.502, 42.31.504, and 42.31.510 relating to retail telecommunications excise tax at page 2399 of the 2001 Montana Administrative Register, issue no. 23. An amended notice of public hearing on these rules was published at page 68 of the 2002 Montana Administrative Register, issue no. 1.

2. A public hearing was held on February 20, 2002, to consider the proposed amendments. Written and oral comments were received during and subsequent to the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Geoffrey Feiss, representing the Montana Telecommunications Association (MTA), provided comments regarding the proposed changes to ARM 42.31.501. The proposed amendment to new (1) "internet revenue" which specifically adds the term "on-line services" appears to be an attempt to conform the rules to the federal Internet Tax Freedom Act, which provides that a "state shall not impose a tax on Internet access or online services." Under the department's proposed amendment, "on-line services" therefore, are not taxable.

Further, the proposed amendment includes language that would apply the retail excise tax to the use of on-line services for "management, control or operation of a telecommunications system, or the management of a telecommunications system." The department does not provide a definition of such services. Moreover, "management of a telecommunications system" is repeated. MTA reads such language as applying to internal operations of a telecommunications network.

Internal applications are not retail telecommunications services, and therefore should not be subject to the retail communications excise tax.

MTA recommends deleting this sentence because it is confusing and ill-defined. It appears to apply to internal, not retail, telecommunications services.

RESPONSE NO. 1: Based on the definition of on-line services (USC 47 Sec 153 (20)), the department believes that it is necessary to clarify in rule what is not considered on-line services. The department believes that it is both authorized and required, not only by the state statutes but also by Congress, to identify these services. The new language in (1) clarifies the difference of the taxable and non-taxable services.

With regard to the statement that internal applications are not retail telecommunications services, the department believes the rule clarifies that if an external telecommunication provider provides these customer services, they would be taxable. The department agrees with MTA's comment that the reference to telecommunication systems should be changed to "service" as defined in 47 USC 153(2), and has amended the rule as shown below to reflect this change.

COMMENT NO. 2: Geoffrey Feiss, Montana Telecommunications Association (MTA), Bob Barton, Qwest Corporation, and Kathy Greenwood, on behalf of Nemont Telephone Cooperative, Inc., Project Telephone Company, Valley Telecommunications, Inc., and Sagebrush Cellular, Inc., provided comments concerning the proposed amendments to ARM 42.31.502.

Ms. Greenwood stated that the amendments to this rule seem to imply that the taxpayer is the telecommunications provider but that is not correct. The telecommunications service provider is the collector of the tax. She further stated that the state excise tax is imposed on the purchaser, similar to the federal excise tax. In the case of those companies that she represents, the billing system is designed to identify the billing line items subject to the tax and the customers who are exempt from the tax. As an example, she provided several examples of bills reflecting the line items that are taxable and how the calculations occur.

Ms. Greenwood stated that, "[l]ocal service is subject to the tax but certain customers are exempt from the tax. It is NOT the revenue that is non-taxable - it is the customer who is exempt from the tax." The requirement to separate the revenue by taxable and nontaxable would require them to totally revamp their billing packages.

RESPONSE NO. 2: The department believes that the burden is on the telecommunication services provider to substantiate and separate out the taxable and nontaxable revenue and customers as defined in the law. However, it is not the intent of the department to require a change in the billing system for any company, but rather, upon an audit, to be able to clearly determine through the records that are retained, what is taxable and nontaxable services. In some cases (such as the federal government and enrolled tribal members residing on their reservations), once it is established (proven) that the customer is not taxable then substantiation of nontaxable and taxable revenues is not necessary. The department has changed the rule in consideration to the comments made by Ms. Greenwood, Mr. Feiss and Mr. Barton. Please see other comments below.

The department agrees with Ms. Greenwood that the title of the rule should be changed and has amended the rule below to reflect this change.

COMMENT NO. 3: Mr. Feiss stated on behalf of MTA that a contract for wholesale services should suffice in audit situations to demonstrate that imposition of the excise tax is not applicable. MTA also does not believe that it is necessary

to amend ARM 42.31.502 for wholesale exemption certificates, which it believes is covered in existing ARM 42.31.502(1).

RESPONSE NO. 3: The department agrees with the statement but disagrees that it should be struck. The department does believe that ARM 42.31.502(1) would apply to the wholesale exemption certificates but believes that further clarification is needed. If a contract is not available, wholesale certificates are available on the department's Internet site, which can be used.

COMMENT NO. 4: Mr. Feiss stated that MTA believes the new language in ARM 42.31.502(3) will require substantial new record-keeping requirements. He stated they believe the language contained in (1) of the rule suffices to require each telecommunications service provider who is responsible and liable for the collection of the tax to keep records which show the total retained revenue to support the tax liability as required by the rules.

RESPONSE NO. 4: See response to Comment No. 2 above and edits to the rule below.

COMMENT NO. 5: Bob Barton, representing Qwest Corporation, stated that Qwest believes the department was attempting to address the practice of bundling of services by the telecommunications industry and issuing the consumer an invoice with a single charge for bundled services. Further, it appears the department wants to clarify its position regarding services subject to the Montana Telecommunications Excise Tax that are bundled with services not subject to the tax. Qwest stated it believes the department's intent is positive, however they are concerned the rules will require a change in accounting practices in order for them to be in compliance with the rules. Mr. Barton provided alternative language to address this concern.

RESPONSE NO. 5: See response to Comment No. 2 above and the edit to the rule below.

COMMENT NO. 6: Mr. Feiss stated that MTA accepts the department's assurance that striking ARM 42.31.504(5) will have no affect on either the taxation of cooperatives, or on record-keeping requirements of telecommunication service providers.

RESPONSE NO. 6: The department appreciates MTA's comments and confidence in striking this language.

3. As a result of the comments received and further review by the department, three of the rules require further amendments. In two of the three rules, the implementation cites are further amended to delete cites that were repealed. The department amends ARM 42.31.501, 42.31.502, and 42.31.510 as proposed with the following changes, stricken matter interlined and new matter capitalized:

42.31.501 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

(1) "Internet revenue" is revenue generated from the activity of providing internet access and on-line services by an internet service provider. On-line services do not include any use of any such capability for the management, control, or operation of a telecommunications system, or the management of a telecommunications system SERVICE.

(2) through (5) remain the same.

AUTH: Sec. 15-53-104 and 15-53-155, MCA

IMP: Sec. ~~15-53-101, 15-53-104, 15-53-111, 15-53-129, 15-53-145 and 15-53-147,~~ MCA

42.31.502 TAXPAYER RECORDS REQUIREMENTS (1) and (2) remain the same.

(3) Telecommunications service providers must SUBSTANTIATE ~~separately account for~~ TAXABLE AND nontaxable revenue items FROM THEIR TAXABLE CUSTOMERS. ~~If no separate accounting for nontaxable items is~~ SUBSTANTIATION OF TAXABLE AND NONTAXABLE ITEMS IS NOT provided, the imposition of the retail telecommunications excise tax will apply to the total revenue.

(4) Wholesale exemption certificates or wholesale contracts must support exempt wholesale revenues. THE WHOLESALE EXEMPTION CERTIFICATES ARE AVAILABLE ON THE DEPARTMENT'S INTERNET SITE OR BY CONTACTING THE DEPARTMENT AT P.O. BOX 5805, HELENA, MONTANA 59604-5805.

AUTH: Sec. 15-53-155, MCA

IMP: Sec. 15-53-150, MCA

42.31.510 PENALTY AND INTEREST (1) remains the same.

AUTH: Sec. 15-53-104 and 15-53-155, MCA

IMP: Sec. 15-1-216, ~~15-53-101, 15-53-104, and 15-53-111, 15-53-145, and 15-43-147,~~ MCA

4. The department amends ARM 42.31.504 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice 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. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson

CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme

KURT G. ALME
Director of Revenue

Certified to Secretary of State March 18, 2002

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of)
ARM 44.5.101 through 44.5.110,)
44.5.112 and 44.5.113, adoption)
of new rules I through VIII and) CORRECTED NOTICE
and amendment of ARM 44.2.202 and) OF ADOPTION AND AMENDMENT
and 44.5.111 regarding filing)
and copy fees for corporations)

TO: All Concerned Persons

1. On December 20, 2001 the Secretary of State published a notice at page 2472 of 2001 Montana Administrative Register, Issue Number 24, of the repeal, adoption and amendment of the above-captioned rules which clarify and simplify the copy fees charged by the Secretary of State's Office for its corporate filings.

2. The reason for the correction is that the proposal notice incorrectly cited provisions of the Montana Code Annotated. The corrected rule adoption and amendment read as follows:

VIII (44.5.121) MISCELLANEOUS FEES (1) through (3)(c) remain as adopted.

AUTH: Sec. ~~2-6-103, 30-9-403,~~ 30-9A-525, and ~~35-1-1202,~~
35-1-1206, MCA

IMP: Sec. ~~30-9-403,~~ 30-9A-525, 30-13-320, ~~35-1-1202,~~
35-1-1206, 35-2-1003, and 35-8-211, MCA

44.2.202 FEES FOR FACSIMILE TRANSMISSIONS OF DOCUMENTS
(1) and (2) remain as adopted.

AUTH: Sec. ~~30-9-403,~~ 30-9A-525 and ~~35-1-1202,~~ 35-1-1206,
MCA

IMP: Sec. ~~30-9-403,~~ 30-9A-525 and ~~35-1-1202,~~ 35-1-1206,
MCA

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 18th day of March, 2002

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the petition)
for declaratory ruling on the) NOTICE OF CONTINUANCE
issue of whether the act of) OF HEARING ON PETITION
administering and monitoring) FOR DECLARATORY RULING
a patient during IV conscious)
sedation is within the scope)
of practice of a respiratory)
care practitioner)

1. On February 14, 2002, at page 407 of 2002 Montana Administrative Register, Issue No. 3, the Board of Respiratory Care Practitioners gave notice of a hearing on a petition for declaratory ruling. The Board had originally scheduled a hearing on the petition to be held on March 19, 2002. Due to problems with mailing of the notice, the Board has, on its own motion, continued that hearing date.

2. The hearing on the petition for declaratory ruling will be held as follows:

Date: April 22, 2002
Time: 10:00 a.m.
Place: Room 471
301 South Park Avenue
Helena, Montana

3. In addition to the above change of date for the hearing, the Board has also identified the following persons as potentially also being interested in the subject matter of the petition for declaratory ruling:

all licensed Montana respiratory therapists	Montana Society for Respiratory Care c/o Chad Green 915 Highland Blvd Bozeman, MT 59715
Char Christiaens, RN Benefis Health Care 1101 26th St. South Great Falls, MT 59405	The Montana Board of Nursing 301 South Park Avenue P.O. Box 200513 Helena, MT 59620-0513

4. Terry Spear, attorney, has been designated to preside over and conduct this hearing.

5. The comment period will close at 5:00 p.m., April 30, 2002. The rest of the information contained in the original February 14, 2002, notice remains the same.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
DR. GREGORY PAULAUSKIS, PhD,
RRT, RCP
CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 18, 2002.

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.

Economic Affairs 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 and Local Government 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 and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, 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 | 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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2001. This table includes those rules adopted during the period January 1, 2002 through March 31, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2001, 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 2001 and 2002 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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- 42.26.101 and other rules - Corporation Taxes, p. 2096, 2469, 403
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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 February, 2002, appear. Vacancies scheduled to appear from April 1, 2002, through June 30, 2002, 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 March 6, 2002.

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 FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Appellate Defender Commission (Administration) Mr. Todd Hillier Bozeman Qualifications (if required): attorney/public defender	Governor	Donovan	2/14/2002 1/1/2005
Ms. Randi Hood Helena Qualifications (if required): attorney/public defender	Governor	reappointed	2/14/2002 1/1/2005
Board of Horse Racing (Livestock) Mr. T.J. Graveley Townsend Qualifications (if required): public member representing District 4	Governor	Score	2/6/2002 1/20/2005
Board of Plumbers (Labor and Industry) Ms. Margie Laknar Dillon Qualifications (if required): public member	Governor	Madsen	2/27/2002 5/4/2003
Board of Psychologists (Labor and Industry) Dr. George Watson Bozeman Qualifications (if required): psychologist in private practice	Governor	Birk	2/14/2002 9/1/2004
Board of Public Education (Education) Mr. Kirk J. Miller Havre Qualifications (if required): representative of District 3 and a Republican	Governor	reappointed	2/1/2002 2/1/2009

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Research and Commercialization Technology (Commerce)			
Mr. Tom Kaiserski	House Speaker	not listed	2/11/2002
Columbus			2/11/2004
Qualifications (if required): none specified			
Capital Finance Advisory Council (Administration)			
Mr. Dick Anderson	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required): representative of the Board of Investments			
Ms. Michelle Barstad	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required): representative of the Montana Facility Finance Authority			
Mr. Bud Clinch	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required): representative of the Department of Natural Resources and Conservation			
Mr. Jim Currie	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required): representative of the Department of Transportation			
Mr. Scott Darkenwald	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required): representative of the Department of Administration			
Sen. Royal C. Johnson	Governor	not listed	2/14/2002
Billings			2/14/2004
Qualifications (if required): legislator			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Mr. W. Ralph Peck	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required):	representative of the Department of Agriculture		
Mr. Mark Semmens	Governor	not listed	2/14/2002
Great Falls			2/14/2004
Qualifications (if required):	representative of the Board of Regents		
Ms. Jan Sensibaugh	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required):	representative of the Department of Environmental Quality		
Mr. Mark A. Simonich	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required):	representative of the Department of Commerce		
Sen. Chuck Swysgood	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required):	representative of the Budget Office		
Mr. Bob Thomas	Governor	not listed	2/14/2002
Stevensville			2/14/2004
Qualifications (if required):	representative of the Board of Housing		
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Ms. Jannis Conselyea	Governor	reappointed	2/1/2002
Helena			1/1/2003
Qualifications (if required):	representative of the Department of Public Health and Human Services		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<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.			
Ms. Sylvia Danforth Miles City	Governor	Tallon	2/1/2002 1/1/2003
Qualifications (if required): representative of a service provider			
Ms. Marlene Disburg Helena	Governor	reappointed	2/1/2002 1/1/2003
Qualifications (if required): representative of vocational rehabilitation			
Ms. Kim Evermann Helena	Governor	not listed	2/1/2002 1/1/2003
Qualifications (if required): representative of the Older American Act			
Ms. Bernadette Franks-Ongoy Helena	Governor	reappointed	2/1/2002 1/1/2003
Qualifications (if required): representative of the Montana Advocacy Program			
Ms. Paula Holdeman Plentywood	Governor	reappointed	2/1/2002 1/1/2005
Qualifications (if required): secondary consumer			
Rep. Bob Lawson Whitefish	Governor	reappointed	2/1/2002 1/1/2003
Qualifications (if required): state legislator			
Sen. Bea McCarthy Anaconda	Governor	reappointed	2/1/2002 1/1/2003
Qualifications (if required): state legislator			
Mr. Dan McCarthy Helena	Governor	reappointed	2/1/2002 1/1/2003
Qualifications (if required): representative of the Office of Public Instruction			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<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.			
Mr. Wallace Melcher Helena	Governor	reappointed	2/1/2002 1/1/2005
Qualifications (if required): secondary consumer			
Mr. Len Nopen Great Falls	Governor	Kidd	2/1/2002 1/1/2005
Qualifications (if required): primary consumer			
Dr. Timm Vogelsberg Missoula	Governor	reappointed	2/1/2002 1/1/2003
Qualifications (if required): representative of the University programs			
House District 31 (House)			
Rep. John Sinrud Belgrade	County Commissioners	Vick	2/11/2002 1/1/2003
Qualifications (if required): appointed			
Mental Disabilities Board of Visitors (Governor)			
Mr. Graydon D. Moll Polson	Governor	Pryor	2/6/2002 7/1/2002
Qualifications (if required): having experience with developmentally disabled adults			
Montana Economic Advisory Council (Governor)			
Mr. Turner Askew Whitefish	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required): member of Economic Development Advisory Council			
Mr. Jerry Driscoll Helena	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Economic Advisory Council (Governor) cont. Rep. Dave Kasten Brockway Qualifications (if required): public member	Governor	not listed	2/14/2002 2/14/2004
Mr. Scott Mendenhall Whitehall Qualifications (if required): public member	Governor	not listed	2/14/2002 2/14/2004
Ms. Sharron Quisenberry Bozeman Qualifications (if required): public member	Governor	not listed	2/14/2002 2/14/2004
Mr. Tom Scott Billings Qualifications (if required): member of Economic Development Advisory Council	Governor	not listed	2/14/2002 2/14/2004
Mr. Will Weaver Great Falls Qualifications (if required): public member	Governor	not listed	2/14/2002 2/14/2004
Montana Health Coalition (Public Health and Human Services) Ms. Joan Bowsher Helena Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Mary Caferro Helena Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Health Coalition (Public Health and Human Services) cont. Rep. Edith J. Clark Sweet Grass Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Claudia Clifford Helena Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Dr. Paul S. Donaldson Helena Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Laurie Francis Livingston Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Sen. Duane Grimes Clancy Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Mr. James Holcomb Great Falls Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Kathy Jensen Plentywood Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Kris Kleinschmidt Great Falls Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Health Coalition (Public Health and Human Services) cont. Ms. Marianne Krpan Helena Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Mr. Garfield Little Light Billings Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Mr. Paul Peterson Missoula Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Mr. Larry Robinson Ronan Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Connie Welsh Helena Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Ms. Kristianne Wilson Billings Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004
Mr. Dave Young Bozeman Qualifications (if required): none specified	Director	not listed	2/1/2002 2/1/2004

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Multistate Tax Compact Advisory Council (Revenue)			
Mr. Kurt Alme	Director	not listed	2/27/2002
Helena			2/27/2004
Qualifications (if required):	director of the Department of Revenue		
Mr. Alec Hansen	Director	not listed	2/27/2002
Helena			2/27/2004
Qualifications (if required):	representing the political subdivisions of Montana		
Mr. Gordon Morris	Director	not listed	2/27/2002
Helena			2/27/2004
Qualifications (if required):	representing the political subdivisions of Montana		
Peace Officers' Standards and Training Advisory Council (Justice)			
Mr. Mike Batista	Governor	not listed	2/14/2002
Helena			2/14/2004
Qualifications (if required):	representative of the Montana Law Enforcement Academy		
Ms. Shanna Bulik-Chism	Governor	not listed	2/14/2002
Great Falls			2/14/2004
Qualifications (if required):	representative of juvenile detention administrators		
Dr. James W. Burfeind	Governor	not listed	2/14/2002
Missoula			2/14/2004
Qualifications (if required):	representative of criminal justice educators		
Captain Bill Dove	Governor	not listed	2/14/2002
Bozeman			2/14/2004
Qualifications (if required):	representative of the Police Protective Association		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers' Standards and Training Advisory Council (Justice) cont. Sheriff Lee Edmisten Virginia City Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the Sheriff's Association			
Commissioner Gary Fjelstad Forsyth Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the Montana Association of Counties			
Captain Greg Hintz Missoula Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the Deputy Sheriff's Association			
Sen. Bob Keenan Bigfork Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the Board of Crime Control			
Ms. Anne Kindness Billings Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of 9-1-1 services			
Mr. Dennis McCave Billings Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the Montana Detention Officers Association			
Mr. Christopher Miller Deer Lodge Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the Montana Attorneys Association			
Dr. Raymond C. Murray Missoula Qualifications (if required):	Governor	not listed	2/14/2002 2/14/2004
representative of the public			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers' Standards and Training Advisory Council (Justice) cont. Col. Bert Obert Helena	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required):	representative of the Montana Highway Patrol		
Ms. Winnie Ore Helena	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required):	representative of the Department of Corrections		
Mr. John Ramsey Helena	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required):	representative of the Department of Fish, Wildlife, and Parks		
Mayor Jim Smith Helena	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required):	representative of the League of Cities and Towns		
Chief Mark Tymrak Bozeman	Governor	not listed	2/14/2002 2/14/2004
Qualifications (if required):	representative of the Police Chiefs Association		
State Lottery Commission (Commerce) Mr. Thomas M. Keegan Helena	Governor	reappointed	2/27/2002 1/1/2006
Qualifications (if required):	attorney		
Ms. Betty Wilkins Missoula	Governor	Thomas	2/27/2002 1/1/2006
Qualifications (if required):	public member		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Athletics (Commerce) Mr. John Kinna, Fairfield Qualifications (if required): public member	Governor	4/25/2002
Board of Hail Insurance (Agriculture) Ms. Rebecca McCabe, Ekalaka Qualifications (if required): public member	Governor	4/18/2002
Board of Nursing Home Administrators (Commerce) Ms. Jaena Richards, Deer Lodge Qualifications (if required): representative of an institution concerned with the care of the aged	Governor	5/28/2002
Board of Plumbers (Commerce) Mr. Jerry Lyford, Kalispell Qualifications (if required): master plumber	Governor	5/4/2002
Mr. Terry Tatchell, Helena Qualifications (if required): journeyman plumber	Governor	5/4/2002
Board of Real Estate Appraisers (Commerce) Mr. Thomas C. Moss, Billings Qualifications (if required): real estate appraiser	Governor	5/1/2002
Board of Real Estate Appraisers (Labor and Industry) Mr. Donald Andrews, Ronan Qualifications (if required): real estate appraiser	Governor	5/1/2002
Board of Realty Regulation (Commerce) Mr. Terry Hilgendorf, Great Falls Qualifications (if required): public member	Governor	5/9/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Veterans' Affairs (Military Affairs) Mr. George G. Hageman, Jordan Qualifications (if required): veteran	Governor	5/18/2002
Commission on Practice of the Supreme Court (Justice) Mr. Gary Davis, Helena Qualifications (if required): elected	elected	4/1/2002
Mr. Sam Haddon, Missoula Qualifications (if required): elected	elected	4/1/2002
District Court Council (Supreme Court) Judge Diana G. Barz, Billings Qualifications (if required): none specified	elected	6/30/2002
Judge John Warner, Havre Qualifications (if required): none specified	elected	6/30/2002
Mr. Mike Hutchin, Polson Qualifications (if required): nonvoting member	Supreme Court	6/30/2002
Mr. Tim Smith Qualifications (if required): nonvoting member	Supreme Court	6/30/2002
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) Mr. Tony Harbaugh, Miles City Qualifications (if required): Custer County sheriff/coroner	Director	6/1/2002
Mr. James F. Jacobsen, Helena Qualifications (if required): Montana Veterans Affairs Division	Director	6/1/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council Mr. Henry "Bill" Hopkins, Ismay Qualifications (if required): Disabled American Veterans	(Military Affairs) cont. Director	6/1/2002
Ms. Betty Hopkins, Ismay Qualifications (if required): Disabled American Veterans Auxiliary	Director	6/1/2002
Jess Erickson, Miles City Qualifications (if required): Veterans of Foreign Wars	Director	6/1/2002
Mr. Bob Beals, Forsyth Qualifications (if required): American Legion	Director	6/1/2002
Ms. Linda Dolatta, Terry Qualifications (if required): American Legion Auxiliary	Director	6/1/2002
Mr. Bill Dolatta, Terry Qualifications (if required): Vietnam Veterans of America	Director	6/1/2002
Mr. Jim Bertrand, Miles City Qualifications (if required): Military Order of the Cooties	Director	6/1/2002
Mr. Stanley Watson, Forsyth Qualifications (if required): Marine Corp League	Director	6/1/2002
Mr. Victor Leikam, Billings Qualifications (if required): 40 & 8	Director	6/1/2002
Mr. Frank Stoltz, Miles City Qualifications (if required): Prisoners of War	Director	6/1/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Mr. Ralph Dukart, Miles City Qualifications (if required): Department of Military Affairs	Director	6/1/2002
Mr. Joe Stevenson, Miles City Qualifications (if required): Custer County commissioner	Director	6/1/2002
Ms. Edith Pawlowski, Circle Qualifications (if required): Veterans of Foreign Wars Auxiliary	Director	6/1/2002
Mr. Wayne Kleppelid, Circle Qualifications (if required): Military Order of the Purple Heart	Director	6/1/2002
Helena College of Technology of the U of M Executive Board (University System) Ms. C. Lynn Robson, Helena Qualifications (if required): public member	Governor	4/15/2002
MSU Billings Executive Board (University System) Mr. Jim Sites, Billings Qualifications (if required): public member	Governor	4/15/2002
MSU Northern Executive Board (University System) Mr. David G. Rice, Havre Qualifications (if required): public member	Governor	4/15/2002
MSU Great Falls College of Technology Executive Board (University System) Mr. Jack King, Great Falls Qualifications (if required): public member	Governor	4/15/2002
Montana Agricultural Heritage Commission (Agriculture) Mr. Bob Dompier, Great Falls Qualifications (if required): representative of a tourism industry organization	Governor	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Agricultural Heritage Commission (Agriculture) cont. Ms. Cece Reiner, Bozeman Qualifications (if required): representative of real estate or building industry organization	Governor	6/30/2002
Montana Heritage Preservation and Development Commission (Historical Society) Mr. Jeffrey J. Safford, Bozeman Qualifications (if required): Montana historian	Governor	5/23/2002
Ms. Maureen Averill, Bigfork Qualifications (if required): member of the Tourism Advisory Council	Governor	5/23/2002
Rep. Jeanette S. McKee, Hamilton Qualifications (if required): experienced in historic preservation	Governor	5/23/2002
Montana Public Safety Communications Council (Administration) Mr. Dennis M. Taylor, Billings Qualifications (if required): representative of local government	Governor	5/31/2002
Ms. Barbara Ranf, Helena Qualifications (if required): representative of the Department of Administration	Governor	5/31/2002
Mr. Bill Slaughter, Helena Qualifications (if required): representative of law enforcement	Governor	5/31/2002
Mr. Lloyd Jackson, Pablo Qualifications (if required): tribal representative	Governor	5/31/2002
Mr. William S. Strizich, Great Falls Qualifications (if required): representative of federal government	Governor	5/31/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Public Safety Communications Council (Administration) cont. Mr. John Blacker, Helena Qualifications (if required): representative of state government	Governor	5/31/2002
Mr. Larry Fasbender, Helena Qualifications (if required): representative of state government	Governor	5/31/2002
Mr. Bob Jones, Great Falls Qualifications (if required): representative of law enforcement	Governor	5/31/2002
Mr. Drew Dawson, Helena Qualifications (if required): representative of the emergency medical services community	Governor	5/31/2002
Mr. William Jameson, Bozeman Qualifications (if required): representative of citizens at large	Governor	5/31/2002
Mr. Scott Waldron, Frenchtown Qualifications (if required): representative of fire protection services	Governor	5/31/2002
Ms. Elisabeth S. Rice, Butte Qualifications (if required): representative of Montana Power Company	Governor	5/31/2002
Mr. Robin Stobe, Billings Qualifications (if required): representative of federal government	Governor	5/31/2002
Ms. Anne Kindness, Billings Qualifications (if required): representative of the 9-1-1 community	Governor	5/31/2002
Mr. Dan Gutebier, Livingston Qualifications (if required): representative of local government	Governor	5/31/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) Ms. Cecilia C. Cowie, Helena Qualifications (if required): state agency	Director	6/30/2002
Mr. Hugh Smith, Great Falls Qualifications (if required): private school representative	Director	6/30/2002
Ms. Gwen Beyer, Missoula Qualifications (if required): Part C/IDEA representative	Director	6/30/2002
Rep. Holly Raser, Missoula Qualifications (if required): legislator	Director	6/30/2002
Ms. Patrice MacDonald, Wolf Point Qualifications (if required): regular classroom teacher	Director	6/30/2002
Ms. Kathleen Mudd, Bridger Qualifications (if required): parent of a child with disabilities	Director	6/30/2002
Ms. LaDonna Fowler, Missoula Qualifications (if required): higher education	Director	6/30/2002
Ms. Sarah Eyer, Boulder Qualifications (if required): teacher of children with disabilities	Director	6/30/2002
Ms. Karla Wohlwend, Havre Qualifications (if required): special education program administrator	Director	6/30/2002
Mr. Ellis Parry, Rudyard Qualifications (if required): state/local administrator	Director	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont. Ms. Judith Herzog, Billings Qualifications (if required): business concerned with transitions	Director	6/30/2002
Mr. Tim Ferriter, Boulder Qualifications (if required): representative from juvenile and adult corrections	Director	6/30/2002
Montana State University Executive Board (University System) Mr. Lee Oldenburger, Manhattan Qualifications (if required): public member	Governor	4/15/2002
Montana Tech of the University of Montana (University System) Mr. Dan Berube, Anaconda Qualifications (if required): public member	Governor	4/15/2002
Montana Wolf Management Advisory Council (Governor) Dr. Charles E. Buehler, Butte Qualifications (if required): public member	Governor	4/28/2002
Mr. Hank Fischer, Missoula Qualifications (if required): public member	Governor	4/28/2002
Rep. Chase Hibbard, Helena Qualifications (if required): public member	Governor	4/28/2002
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): public member	Governor	4/28/2002
Ms. Darlyne Dascher, Fort Peck Qualifications (if required): public member	Governor	4/28/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Wolf Management Advisory Council (Governor) cont. Mr. Bruce Malcolm, Emigrant Qualifications (if required): public member	Governor	4/28/2002
Dr. Nelson Wert, Townsend Qualifications (if required): public member	Governor	4/28/2002
Ms. Robin Hompesch, Bozeman Qualifications (if required): public member	Governor	4/28/2002
Mr. James Cross, Kalispell Qualifications (if required): public member	Governor	4/28/2002
Mr. Terry Beaver, Helena Qualifications (if required): public member	Governor	4/28/2002
Mr. Ira Newbreast, Browning Qualifications (if required): tribal representative	Governor	4/28/2002
Mr. Jay Kirkpatrick, Billings Qualifications (if required): public member	Governor	4/28/2002
Native American Advisory Council (Public Health and Human Services) Ms. Clara Spotted Elk, Colstrip Qualifications (if required): none specified	Director	6/2/2002
Mr. Ernie Bighorn, Miles City Qualifications (if required): none specified	Director	6/2/2002
Ms. Arlene Templer, St. Ignatius Qualifications (if required): none specified	Director	6/2/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Native American Advisory Council (Public Health and Human Services) cont. Mr. Tim Zimmerman, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Duncan Standing Rock, Sr., Box Elder Qualifications (if required): none specified	Director	6/2/2002
Mr. Myron Littlebird, Lame Deer Qualifications (if required): none specified	Director	6/2/2002
Ms. Toni Plummer, Kalispell Qualifications (if required): none specified	Director	6/2/2002
Ms. Deborah Wetsit, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Tommy Billing, Jordan Qualifications (if required): none specified	Director	6/2/2002
Mr. Gordon Belcourt, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. William Snell, Billings Qualifications (if required): none specified	Director	6/2/2002
Ms. Carole Lankford, Pablo Qualifications (if required): none specified	Director	6/2/2002
Ms. Evelyn Werk, Harlem Qualifications (if required): none specified	Director	6/2/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Native American Advisory Council (Public Health and Human Services) cont. Ms. Rosemary Lincoln, Crow Agency Qualifications (if required): none specified	Director	6/2/2002
Ms. Loretta Rex, Browning Qualifications (if required): none specified	Director	6/2/2002
Ms. Carol Myers, Missoula Qualifications (if required): none specified	Director	6/2/2002
Ms. Jackie Tang, Lame Deer Qualifications (if required): none specified	Director	6/2/2002
Mr. Jim Baker, Cut Bank Qualifications (if required): none specified	Director	6/2/2002
Ms. Jo Ann Birdshead, Billings Qualifications (if required): none specified	Director	6/2/2002
Ms. Louise Zokan-delos Reyes, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Garfield Little Light, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Walter Denny, Box Elder Qualifications (if required): none specified	Director	6/2/2002
Ms. Roberta Spotted Horse, Billings Qualifications (if required): none specified	Director	6/2/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Native American Advisory Council (Public Health and Human Services) cont. Ms. Teresa Wall McDonald, Pablo Qualifications (if required): none specified	Director	6/2/2002
Mr. Arnie Bighorn, Kalispell Qualifications (if required): none specified	Director	6/2/2002
Ms. Patricia McGeshick, Wolf Point Qualifications (if required): none specified	Director	6/2/2002
Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Daniel Manson, Butte Qualifications (if required): attorney	Governor	6/30/2002
Ms. Linda Cockhill, Helena Qualifications (if required): representing the financial or banking industry	Governor	6/30/2002
Mr. Lee Bruner, Butte Qualifications (if required): an attorney	Governor	6/30/2002
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) Rep. Paul Clark, Trout Creek Qualifications (if required): legislator	Governor	6/30/2002
Mr. Verle L. Rademacher, White Sulphur Springs Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Dan Walker, Billings Qualifications (if required): Fish, Wildlife, and Parks Commissioner	Governor	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Tom Hougen, Melstone Qualifications (if required): landowner	Governor	6/30/2002
Sen. Walter L. McNutt, Sidney Qualifications (if required): legislator	Governor	6/30/2002
Mr. Cecil Noble, Kalispell Qualifications (if required): outfitter	Governor	6/30/2002
Mr. Lee Gustafson, Billings Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Ray Marxer, Dillon Qualifications (if required): landowner	Governor	6/30/2002
Mr. John Wilkinson, Miles City Qualifications (if required): outfitter	Governor	6/30/2002
Mr. Tommy Billing, Jordan Qualifications (if required): landowner	Governor	6/30/2002
Mr. Leland Blatter, Nashua Qualifications (if required): landowner	Governor	6/30/2002
Mr. Daniel Dart, Laurel Qualifications (if required): sportsperson	Governor	6/30/2002
Ms. Mavis M. Lorenz, Missoula Qualifications (if required): sportsperson	Governor	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Bryan Dunn, Great Falls Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Paul Roos, Ovando Qualifications (if required): outfitter	Governor	6/30/2002
Mr. Mike Nathe, Redstone Qualifications (if required): landowner	Governor	6/30/2002
Public Employees' Retirement Board (Administration) Ms. Carole Carey, Ekalaka Qualifications (if required): public employee	Governor	4/1/2002
State Library Commission (Education) Ms. Dorothy Laird, Whitefish Qualifications (if required): public member	Governor	5/22/2002
Mr. Alvin Randall, Troy Qualifications (if required): public member	Governor	5/22/2002
State Small Business Development Center Advisory Council (Commerce) Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	4/26/2002
Mr. Dave Sharpe, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Carol Willis, Billings Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Small Business Development Center Advisory Council Mr. Bud Leuthold, Billings Qualifications (if required): none specified	(Commerce) cont. Director	4/26/2002
Mr. Chris Busch, Ronan Qualifications (if required): none specified	Director	4/26/2002
Mr. Scott Heck, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Shirley Beck, Philipsburg Qualifications (if required): none specified	Director	4/26/2002
Mr. Ryan Reid, Colstrip Qualifications (if required): none specified	Director	4/26/2002
Ms. Nancy Snow, Great Falls Qualifications (if required): none specified	Director	4/26/2002
Ms. Patricia Jurenka, Havre Qualifications (if required): none specified	Director	4/26/2002
Ms. Toni Broadbent, Helena Qualifications (if required): none specified	Director	4/26/2002
Mr. Ken Green, Whitefish Qualifications (if required): none specified	Director	4/26/2002
Mr. Craig Rawlings, Missoula Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Small Business Development Center Advisory Council Mr. James Johnson, Wolf Point Qualifications (if required): none specified	(Commerce) cont. Director	4/26/2002
Mr. Paul Tuss, Cut Bank Qualifications (if required): none specified	Director	4/26/2002
Mr. John Langenheim, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Mr. Rich McLaughlin, Butte Qualifications (if required): none specified	Director	4/26/2002
Dr. Bob Taylor, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Judi Tilman, Butte Qualifications (if required): none specified	Director	4/26/2002
Mr. John Balsam, Missoula Qualifications (if required): none specified	Director	4/26/2002
Ms. Linda Reed, Helena Qualifications (if required): none specified	Director	4/26/2002
Dr. Richard Dailey, Missoula Qualifications (if required): none specified	Director	4/26/2002
Ms. Michelle Johnston, Helena Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State-Tribal Economic Development Commission (Governor) Mr. Lloyd Irvine, Pablo Qualifications (if required): representing the Salish and Kootenai tribes	Governor	6/30/2002
Mr. Jake Parker, Box Elder Qualifications (if required): representing the Rocky Boy tribe	Governor	6/30/2002
Mr. John Woodenlegs, Lame Deer Qualifications (if required): representing the Northern Cheyenne tribe	Governor	6/30/2002
University of Montana Executive Board (University System) Colonel Sam A. Roberts, Missoula Qualifications (if required): public member	Governor	4/15/2002
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality)		
Mayor Judy H. Jacobson, Butte Qualifications (if required): representing local government	Governor	4/26/2002
Mr. Chris Marchion, Anaconda Qualifications (if required): member of the public active in conservation or recreation	Governor	4/26/2002
Commissioner Gail Jones, Deer Lodge Qualifications (if required): local government representative	Governor	4/26/2002
Mr. Jim Flynn, Anaconda Qualifications (if required): businessperson	Governor	4/26/2002
Ms. Mary Seccombe, Butte Qualifications (if required): conservation district representative	Governor	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) cont.		
Mr. Tom Bugni, Butte Qualifications (if required): member of the public active in conservation or recreation	Governor	4/26/2002
Ms. Kathleen Hadley, Deer Lodge Qualifications (if required): local natural resource scientist	Governor	4/26/2002
Mr. Bruce Hall, Milltown Qualifications (if required): local planner or local development specialist	Governor	4/26/2002
Dr. Pat Munday, Walkerville Qualifications (if required): engineer	Governor	4/26/2002
Mr. Rob Collins, Helena Qualifications (if required): representative of the Natural Resource Damage Litigation	Governor	4/26/2002
Mr. Matt Clifford, Missoula Qualifications (if required): representative of a non-profit organization	Governor	4/26/2002
Ms. Carole Lankford, Pablo Qualifications (if required): representative of the Salish and Kootenai tribes	Governor	4/26/2002
Ms. Carol Fox, Helena Qualifications (if required): representative of the Natural Resource Damage Litigation	Governor	4/26/2002
Ms. Jan Sensibaugh, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) cont.		
Mr. M. Jeff Hagener, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks	Governor	4/26/2002
Ms. Sally Johnson, Missoula Qualifications (if required): member of the public who does not represent one of the above interests	Governor	4/26/2002
Western Interstate Commission on Higher Education (Education)		
Sen. Emily Stonington, Bozeman Qualifications (if required): legislator	Governor	6/19/2002
Western Montana College of the University of Montana (University System)		
Ms. Maryellen Wilkerson, Dillon Qualifications (if required): public member	Governor	4/15/2002
Wild Medicinal Plants Task Force (Natural Resources and Conservation)		
Mr. Gary Gingery, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	4/20/2002
Mr. Curley Youpee, Poplar Qualifications (if required): representative of tribal governments	Governor	4/20/2002
Ms. Robyn Klein, Bozeman Qualifications (if required): knowledge of the scientific aspects of indigenous medicinal plants	Governor	4/20/2002

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2002 through JUNE 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Wild Medicinal Plants Task Force (Natural Resources and Conservation) cont. Ms. Kathleen Wagnild, Outlook Qualifications (if required): knowledge of the scientific aspects of indigenous medicinal plants	Governor	4/20/2002
Dr. Rustem S. Medora, Missoula Qualifications (if required): representative of the Montana University System	Governor	4/20/2002
Mr. Peter McCay, Lolo Qualifications (if required): representative of the medicinal plant production industry	Governor	4/20/2002
Mr. Kirk Denny, Lame Deer Qualifications (if required): knowledge of the cultural, historical and spiritual aspects of wild medicinal plants	Governor	4/20/2002
Mr. Kevin Chappell, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	4/20/2002