MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.36.101 through 17.36.104, 17.36.106, 17.36.108, 17.36.110, 17.36.116, 17.36.309, 17.36.310, 17.36.320, 17.36.325, 17.36.327, 17.36.345, 17.36.601, 17.36.605, 17.36.801, 17.36.802, 17.36.804, 17.36.805, the repeal of 17.36.105, 17.36.111, 17.36.301, 17.36.302, 17.36.303, 17.36.305, 17.36.602 and 17.36.606, and the adoption of new rules I through IX pertaining to subdivision review under the Sanitation and Subdivisions Act	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL AND ADOPTION (SUBDIVISIONS)

TO: All Concerned Persons

1. On April 11, 2002, at 3:00 p.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., April 1, 2002, to advise the Department of the nature of the accommodation that you need. Please contact Janet Scaarland, Water Protection Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1801; fax (406) 444-1374; or email jscaarland@state.mt.us.

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

17.36.101 DEFINITIONS ~~(1) "Adequate water supply" means a water supply which meets the following criteria:~~

~~(a) Quality--the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2 may not be exceeded unless a waiver has been provided by the department.~~

~~(b) Quantity--the following flows must be provided:~~

~~(i) For individual water supply systems, the flow indicated in ARM 17.36.303(5).~~

~~(ii) For multiple family water supply systems, requirements provided by department Circular WQB-3, 1992 edition.~~

~~(iii) For public water supply systems, the flow determined by the department in accordance with ARM 17.38.101.~~

~~(c) Dependability--the necessary quantity and quality of water must be available at all times unless depleted by emergencies.~~

(2) remains the same but is renumbered (1).

(2) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered as an additional bedroom.

(3) "Campground" is defined in 50-52-101, MCA.

~~(3)~~(4) "Certificate of survey" ~~means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations~~ is defined in 76-3-103, MCA.

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

~~(5)~~(6) "Condominium" ~~means the ownership of single units with common elements located on property~~ is defined in 70-23-101, MCA.

~~(6) "Condominium living unit" means a part of the property of a condominium intended for occupancy.~~

(7) "Connection" means a water or ~~sewer~~ wastewater line that connects a single building or living unit to a shared, multiple user or public water or ~~sewage~~ wastewater system.

(8) and (9) remain the same.

~~(10) "EPA facility service plan area" means those sites within the serviceable area of a public treatment system as determined in the study and planning phase.~~

(10) "Drainageway" means a course or channel along which stormwater moves in draining an area.

(11) "Dry well" means a stormwater detention structure that collects surface runoff and discharges the water below the natural ground surface.

(12) "Dwelling" or "residence" means any structure, building, or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.

~~(11)~~(13) "Escarpment" means any slope greater than 50% ~~which~~ that extends vertically six feet or more as measured from toe to top.

(14) "Experimental system" means a wastewater treatment system that is not specifically described in DEQ-4, 2000 edition, or in DEQ-2, 1999 edition.

~~(12)~~(15) "Floodplain" means the area adjoining the watercourse or drainway ~~which~~ that would be covered by the floodwater of a flood of 100-year frequency except for sheetflood areas that receive less than one foot of water per occurrence and are considered zone b areas by the federal emergency management agency. The floodplain consists of the floodway and the floodfringe, as defined in ARM 36.15.101.

(16) "Groundwater monitoring" means measuring the depth from the natural ground surface to the seasonally high

groundwater for a long enough period of time to detect a peak and then a sustained decline in the groundwater level.

(13) remains the same but is renumbered (17).

~~(14)~~(18) "Impervious layer" means any layer of material in the soil profile ~~which~~ that has a percolation rate slower than 120 minutes per inch.

~~(15)~~(19) "Individual water system" means any ~~domestic~~ water system ~~which is not a public or multiple family system~~ that serves one living unit or commercial structure. The total number of people served may not exceed 24.

~~(16)~~(20) "Individual ~~sewage~~ wastewater system" means ~~any sewage system which is not a public or multiple family system~~ a wastewater system that serves one living unit or commercial structure. The total number of people served may not exceed 24.

(17) through (19) remain the same but are renumbered (21) through (23).

~~(20)~~(24) "Lot" is synonymous with "tract" or "parcel" for purposes of this chapter.

~~(21) "Major subdivision" means a subdivision of six or more parcels.~~

~~(22) "Minor subdivision" means a subdivision of five or fewer parcels.~~

(25) "Mixing zone" is defined in 75-5-103, MCA.

~~(23)~~(26) "Mobile home" means a trailer equipped with necessary service connections that is designed for use as a long-term ~~dwelling~~ residence.

~~(24)~~(27) "Multiple user ~~sewage~~ wastewater system" means a non-public ~~sewage~~ wastewater system that serves or is intended to serve 3 through 14 living units or 3 through 14 commercial structures. The total number of people served may not exceed 24. In estimating the population served, the ~~department~~ reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data. ~~Individual or shared commercial sewage systems with design flows greater than 700 gallons per day are considered as multiple-user for purposes of design requirements.~~

~~(25)~~(28) "Multiple user water supply system" means a non-public water supply system designed to provide water for human consumption to serve 3 through 14 living units or 3 through 14 commercial structures. The total number of people served may not exceed 24. In estimating the population served, the department shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

~~(26)~~(29) "Municipal" ~~pertains~~ means pertaining to an incorporated city or town.

(27) and (28) remain the same but are renumbered (30) and (31).

(32) "Percolation test" means a standardized test used to assess the infiltration rate in soils.

(33) "Piped water system" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

~~(29)~~(34) "Plat"~~, for the purposes of this chapter, means a graphical representation of a subdivision showing the division into lots, blocks, streets, alleys, and other divisions and dedications, and any document which graphically describes a division of land, including a certificate of survey~~ is defined in 76-3-103, MCA.

(35) "Preliminary plat" is defined in 76-3-103, MCA.

~~(30)~~(36) "Public ~~sewage~~ wastewater system" ~~is defined in 76-4-102, MCA~~ means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in a calendar year. In estimating the population served, the department shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

~~(31)~~(37) "Public water supply system" means a system for the provision of water for human consumption from ~~any~~ a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that ~~is designed to serve 10 or more living units for at least 60 days out of the calendar years~~ has at least 15 service connections or that regularly serves at least 25 ~~or more~~ persons daily for any ~~at least~~ 60 or more days ~~out of the~~ in a calendar year.

(32) remains the same but is renumbered (38).

~~(33)~~(39) "Redoximorphic features" or "mottling" means soil properties associated with wetness that result~~s~~ from the reduction and oxidation of iron and manganese compounds in the soil after saturation and desaturation with water.

(40) "Reviewing authority" is defined in 76-4-102, MCA.

(34) and (35) remain the same but are renumbered (41) and (42).

~~(36)~~(43) "Seepage pit" means a covered underground receptacle ~~which~~ that receives wastewater after primary treatment ~~in a septic tank~~ and allows the wastewater to seep into the surrounding soil.

(44) "Septic tank" means a storage settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(45) "Sewage" is synonymous with "wastewater" for purposes of this chapter.

~~(37)~~(46) "Shared ~~sewage~~ wastewater system" means a ~~sewage~~ wastewater system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(47) "Shared water system" means a water system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed

24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(48) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(38) and (39) remain the same but are renumbered (49) and (50).

(51) "Soil profile" means a description of the soil profile to a depth of eight feet using the USDA soil classification system.

(40) through (44) remain the same but are renumbered (52) through (56).

(45)(57) "Subsurface ~~sewage~~ wastewater treatment system" means the process of ~~sewage~~ wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution ~~through horizontal perforated pipes~~ system.

~~(46)~~(58) "Surface water" means any ~~body of surface water, whether fresh or saline, including bodies such as impoundments, lakes, streams, irrigation ditches or ponds~~ water on the earth's surface including, but not limited to, streams, lakes, ponds, reservoirs, and irrigation ditches, whether fresh or saline.

(47) and (48) remain the same but are renumbered (59) and (60).

~~(49)~~(61) "Wastewater" means ~~liquid~~ water-carried waste that is discharged from a dwelling, building, or other facility, including:

(a) household, commercial, or industrial wastes;

(b) chemicals;

(c) human excreta; or

(d) animal and vegetable matter in suspension or solution.

(62) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, pit privies, subsurface drainage systems, and experimental systems.

(50) and (51) remain the same but are renumbered (63) and (64).

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments would add a number of new definitions that are necessary to clarify the meaning of terms used in the amended rules. Where applicable, statutory definitions are referenced. Definitions for terms not used in the amended rules are deleted. The terms "major" and "minor" subdivision are deleted both in the definitions and the rules because those terms are no longer used in the sanitation in subdivisions statutes, Title 76, chapter 4, part 1. The term

"sewage" is replaced in the definitions and throughout the rules with the term "wastewater". This change is necessary to clarify that the rules apply to all wastewater that is discharged from dwellings, buildings, and other facilities in subdivisions.

17.36.102 APPLICATION--GENERAL (1) To initiate review of a subdivision under 76-4-125, MCA, a person must submit a complete application~~:~~,

~~(a) for review of major subdivisions, to the department;~~

~~(b) for review of minor subdivisions:~~

~~(i) to the local government, if the department has certified the local government to review minor subdivisions pursuant to 76-4-104, MCA; and~~

~~(ii) in all other cases, to the department.~~ signed by the owner of the subdivision or an authorized representative, to the department. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.

(2) A subdivision application must be on a form approved by the department. Copies of the application form may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, http://www.deq.state.mt.us, or from the local reviewing authority.

~~(2)~~(3) A copy of the complete application, including all supporting information supplied to the ~~department or local government~~ reviewing authority, and all resubmittals of the application, must be submitted concurrently to the local health officer having jurisdiction for purposes of reviewing compliance with local laws and regulations, as provided in ARM 17.36.108.

~~(3) A complete application must contain a properly completed application form signed and dated by the owner(s) of the subdivision, plans and specifications for water supply, sewage disposal and stormwater systems, payment of a subdivision review fee as set forth in subchapter 8 of this chapter, and other information required by this chapter.~~

(4) To resume review of an application that has been inactive for more than one year after the issuance of a denial letter by the reviewing authority, the applicant shall reapply and submit fees as required by subchapter 8, unless the file is inactive due to groundwater monitoring or other requirements imposed by the reviewing authority.

(5) In addition to meeting the requirements of this chapter, subdivisions designed for the placement of mobile homes or recreational camping vehicles may be subject to the requirements of Title 37, chapter 111, subchapter 2.

(6) If a proposed subdivision includes subsurface wastewater disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary

site assessment to determine whether the site meets applicable state and local requirements.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.102 clarify the general requirements pertaining to subdivision applications. The separate procedures for major and minor subdivisions are deleted because the 2001 legislature removed the 5-lot limitation on review of subdivisions by local reviewing authorities. Subsection (4) is necessary to clarify when an inactive application is processed as a new application. Subsection (5) is a restatement of ARM 17.36.111, which is proposed for repeal in this notice. Subsection (6) requires pre-application notice to the local board of health when subsurface wastewater facilities are proposed, to allow the local authority an opportunity to conduct a preliminary site assessment. Subsection (6) is necessary to inform applicants of the site assessment procedures that were set out in the 2001 legislative amendments to the sanitation in subdivisions laws. See 76-4-125(1)(a), MCA.

17.36.103 APPLICATION ~~FORMS~~--CONTENTS ~~(1) One copy of the appropriately completed application form must be submitted to the department:~~

~~(a) Subdivision application form DHES Sub-1 is to be used for a proposed major subdivision.~~

~~(b) Subdivision application form DHES Sub-2 is to be used for a proposed minor subdivision.~~

~~(2) Copies of forms DHES Sub-1 and DHES Sub-2 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, or the local sanitarian.~~

(1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

(a) payment of subdivision review fees as required in subchapter 8;

(b) plans and specifications for water supply, wastewater treatment, and stormwater systems;

(c) if public or multiple user water supply or wastewater systems are proposed, three copies of final plans and specifications;

(d) a lot layout document as required by ARM 17.36.104;

(e) if nonmunicipal water supply or wastewater systems are proposed, a vicinity map or plan showing the locations of the following features within the area impacted by mixing zones or within 100 feet (whichever is greater) of the proposed water supply or wastewater system:

(i) lakes, streams, irrigation ditches, wetlands, and springs;

(ii) existing, previously approved, and proposed wells, wastewater treatment systems, and mixing zones;

(f) evidence that the water source for the proposed subdivision is sufficient in terms of quality, quantity, and dependability, as required by [NEW RULES III and IV];

(g) if water is to be supplied by means other than individual on-site wells, information about water right ownership and water use agreements;

(h) if subsurface wastewater treatment systems are proposed:

(i) soil profile descriptions, percolation tests if required, and other pertinent soil information for each proposed drainfield;

(ii) seasonal high groundwater information;

(iii) direction and percentage of slope across the treatment area (or a contour map with a minimum contour interval of two feet); and

(iv) any other evidence to show whether the wastewater treatment systems are sufficient in terms of capacity and dependability;

(i) a copy of the nondegradation analysis and calculations as required by ARM 17.30.715;

(j) a storm drainage map and plan as required by ARM 17.36.310;

(k) the name of the solid waste disposal site that will serve the subdivision;

(l) a copy of any environmental assessment required for the subdivision under Title 76, chapter 3, MCA;

(m) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the proposed subdivision;

(n) a copy of applicable letters of approval or denial from local government officials;

(o) a copy of applicable supporting legal documents, including documents relating to easements, covenants, water rights, water user agreements, and establishment of homeowners' associations and local districts;

(p) if an application involves a change to the plans and specifications for a subdivision previously approved by the reviewing authority, a copy of the certificate of subdivision approval and a copy of the approved lot layout document; and

(q) all additional information that is required under this chapter or that the reviewing authority determines is reasonably necessary for the review of the proposed subdivision.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.103 provide a detailed list of the information that must be submitted with subdivision applications. Most of the listed information in the proposed amendments was contained in the prior rules, but was spread throughout several rules. The proposed amendments are necessary to consolidate the requirements into a single

rule, which will make the rules more clear and will assist applicants in submitting complete applications.

17.36.104 ~~INFORMATION SUBMITTED WITH~~ APPLICATION--LOT LAYOUT DOCUMENT ~~(1) The following information shall be submitted to the department:~~

~~(a) A copy of a preliminary plat or final plat if the subdivision is subject to local review, or if exempt from local review, a certificate of survey suitable for filing with the county clerk and recorder. (See ARM 17.36.106, 17.36.108 and 17.36.110 for details.)~~

~~(b) A completed subdivision application form signed by the owner. (See ARM 17.36.103, 17.36.106, 17.36.108 and 17.36.110 for details.)~~

~~(c) Where individual water supply or sewage disposal systems are proposed, 3 copies of maps or plat(s) showing existing water supply or sewage treatment systems adjacent to the subdivision, surface water bodies in the area, lot layouts specifying locations of proposed water systems and sewage treatment systems, percolation tests and soil tests locations. (See ARM 17.36.304 for details.)~~

~~(d) Storm drainage plans for removal of stormwater run-off including a contour map showing lots, drainages and drainage structures. (See ARM 17.36.310 for details.)~~

~~(e) Where public water supply or sewage systems are proposed, 2 copies of final plans and specifications prepared by a registered professional engineer. (See ARM 17.36.302 for details.)~~

~~(f) Where multiple family systems are proposed, 2 copies of plans and specifications and supporting documents. (See ARM 17.36.305 for details.)~~

~~(g) Where individual water systems are proposed, evidence that the source is adequate in terms of quality, quantity and dependability. (See ARM 17.36.303 for details.)~~

~~(h) Where individual sewage treatment systems are proposed, detailed soils information, percolation tests in the subsurface sewage treatment area, seasonal high groundwater information, and slope across treatment area (or a contour map with a minimum contour interval of 2 feet). (See ARM 17.36.304 for details.)~~

~~(i) The name of the solid waste district and the solid waste disposal site that will serve the subdivision. If on-site disposal is proposed, a plan detailing soils, hydrology and method of handling. (See ARM 17.36.309 for details.)~~

~~(j) A copy of the environmental assessment when required by the local governing body under the provisions of 76-3-504, MCA.~~

~~(k) A copy of all letters of approval from local government officials.~~

~~(l) A copy of applicable legal documents, including documents relating to easements, covenants, and establishment of homeowners' associations or local districts.~~

(1) The applicant shall provide four copies of a lot layout document for the proposed subdivision. The lot layout document must be on a sheet no larger than 11" x 17". Multiple lots should be shown on one sheet, at a scale no smaller than 1" = 200'. Multiple sheets may be used for large developments.

(2) The following information must be provided on the lot layout document. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout document only if the document remains legible:

(a) the name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the proposed subdivision is located;

(b) a north arrow and scale;

(c) the boundaries, dimensions, and total area of each lot;

(d) an identifier or number for each lot (e.g., "Lot 1, Lot 2", "Tract 1, Tract 2", or "Parcel 1, Parcel 2");

(e) locations of existing and proposed easements;

(f) locations of existing and proposed roads;

(g) locations and sizes of existing and proposed stormwater structures (culverts, ponds, dry wells, etc.);

(h) locations of drainageways;

(i) name and affiliation of the person who prepared the lot layout;

(j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed".

The following table is new language.

TABLE 1
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Existing and proposed wells and 100-ft setback	X	X	X	X
Water lines (suction and pressure)			X	X

Water lines (extension and connections)		X	X	
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Groundwater monitoring wells keyed to monitoring results form		X		
Flood plain boundaries	X	X	X	X
Cisterns		X		
Existing building locations		X		

Driveways		X		
Road cuts and escarpments or slopes > 25%		X		
Mixing zone boundaries and direction of groundwater flow	X	X		

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.104 describe the information that must be provided on the lot layout document that is submitted with a subdivision application. The proposed amendments include a table that organizes the lot layout information according to the type of water supply and wastewater system proposed for the subdivision. The requirement for a lot layout document is not new, and most of the listed information in the proposed amendments was contained in the prior rules, but was spread throughout several rules. The proposed amendments are necessary to consolidate the requirements into a single rule and table, which will make the requirements more clear and will assist applicants in submitting complete applications.

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1)~~(a) A person may initiate review of subdivision plans pursuant to 76-4-125, MCA, by presenting an application to the reviewing authority.~~ The procedures for review of subdivision applications by the reviewing authority are as follows:

~~(b)~~(a) Upon receipt of a subdivision application, ~~or~~ a resubmittal, or additional information provided by the applicant, the department will have 60 days to deny, approve, or conditionally approve the subdivision application. If an environmental impact statement is required, action must be taken within 120 days.

(b) If a local department or board of health has been certified as the reviewing authority pursuant to 76-4-104, MCA, the local reviewing authority shall, within 50 days after receipt of a subdivision application, review the application and forward the application to the department together with a recommended action for approval, conditional approval, or denial. The department shall take final action on the application within the time remaining in the 60-day or 120-period set out in (1)(a).

(i) If the local reviewing authority recommends denial of an application, the recommendation must be in the form of a denial letter sent to the applicant within 50 days after

receipt of the application. The local reviewing authority shall send a copy of the application and denial letter to the department. A denial letter issued by the local reviewing authority shall constitute the department's final action regarding the denial unless the department finds, pursuant to ARM 17.36.116, that the recommended denial was in error.

(c) If ~~the~~ an application is incomplete, the ~~department or local review agent~~ reviewing authority shall deny the application, ~~set~~ setting forth, in writing, the deficiencies to the applicant or ~~his~~ the applicant's representative ~~and shall review such additional information when resubmitted~~. When the additional information is submitted, the reviewing authority shall review such additional information within the timeframes specified in (1)(a) or (b) as applicable.

~~(d) When an application for a subdivision is resubmitted and there are changes in the resubmittal which substantially modify the design or operation of the water supply or sewage systems, the department may request an additional review fee.~~

(2) Subdivision lots recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary restrictions in no case shall be lifted from any such undeveloped lot which cannot satisfy any of the following requirements:

(a) ~~where~~ if a subsurface ~~sewage~~ wastewater treatment system is utilized, there must be at least four feet from the natural ground surface to ~~the seasonal high groundwater or impervious layer~~ a limiting layer;

(b) the site for any subsurface ~~sewage~~ wastewater treatment system may not exceed 25% in slope;

(c) no part of the lot utilized for the subsurface ~~sewage~~ wastewater treatment system may be located in a 100 year floodplain;

(d) ~~where~~ if a subsurface ~~sewage~~ wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of ~~sewage~~ wastewater effluent~~.~~; and

(e) the proposed water supply must comply with the requirements of this chapter.

~~(3) The department hereby adopts and incorporates by reference MAC 16-2.14(10)-S14340 (1977); MAC 16-2.14(10)-S14340 (1976, 1975, 1973); Regulation 51.300 (1970); Regulation No. 136 (1961) which set forth former department requirements for sanitary review of subdivisions. Copies of MAC 16-2.14(10)-S14340 (1977); MAC 16-2.14(10)-S14340 (1976, 1975, 1973); Regulation 51.300 (1970); Regulation No. 136 (1961) are available upon request from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.106 clarify the process for review of subdivision applications. The term "reviewing authority" is used here and throughout the rules because it is defined in statute, and refers to either the department or the delegated local reviewer. The proposed amendments include procedures and timelines for review of applications by delegated local reviewers. Most of the procedures are not new, but are consolidated and clarified for ease of access by applicants. The amendments are necessary to inform applicants of the procedures under which their applications will be reviewed. The reference to fees for resubmitted applications in former (1)(d) of this rule is deleted because it repeats ARM 17.36.805. The amendments delete the incorporation by reference in former section (3). The new rules consolidate all incorporations by reference into ARM 17.36.345.

Subsection (1)(b)(i) would allow the local reviewing authority to deny an application without a corresponding denial from the department. This amendment is necessary to expedite the review and resubmittal process when applications are denied for insufficient information.

Subsection (2)(e) would add "water supply" to the list of factors to be considered for approval of systems on lots recorded prior to July 1, 1973. The proposed amendment is necessary to help prevent health problems caused by contaminated drinking water. The term "applicable rules" is added to the title of the rule because (2)(e) addresses requirements applicable to lots recorded prior to July 1, 1973.

17.36.108 COMPLIANCE WITH LOCAL ~~REVIEW~~ REQUIREMENTS

(1) The applicant shall provide the department with evidence, as set out in (2), as to whether facilities for the supply of water, disposal of ~~sewage~~ wastewater, ~~and~~ disposal of solid waste, and drainage of storm water are in compliance with applicable laws and regulations of local government. A facility that has an MPDES surface water discharge permit issued pursuant to ARM Title 17, chapter 30, subchapter 13 is exempt from the requirements of this rule.

(2) The evidence required by (1) must show whether the facilities are in compliance with the laws and regulations of local government relating to water quality, water supply, ~~sewage~~ wastewater disposal, solid waste disposal, and storm water drainage, which are in effect at the time of the submittal of the application to the ~~department or other~~ reviewing authority pursuant to this chapter. The evidence must be in one of the following forms:

(a) remains the same.

(b) if the proposed subdivision is reviewed by the local health officer under authority delegated by the department under Title 76, chapter 4, MCA, a signed certificate of ~~plat~~ subdivision approval; or

(c) and (3) remain the same.

(4) As provided in ARM 17.36.110, the department may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of ~~sewage~~ wastewater are proposed, unless the applicant has submitted evidence, in accordance with this rule, that the design for the non-public water supply and ~~sewage~~ wastewater disposal facilities complies with applicable laws and regulations of local government.

~~(5) The department shall enter into a written review agreement with local governments that have persons determined by the department to be qualified to review water supply, sewage and solid waste disposal facilities for subdivisions involving 5 or fewer parcels except where such subdivisions involve the extension of public water supply or sewer systems.~~

~~(a) When the department and local governments have entered into a review agreement, the applicant shall submit the subdivision application to the designated personnel of the local government.~~

~~(b) The local government shall agree to review water supply, sewage and solid waste disposal systems according to the provisions of this chapter.~~

~~(c) Local governments shall have 50 days from the date of receipt of a subdivision application to forward to the department the complete application and the local government's recommended action on the application.~~

~~(6) The local government shall notify the department of its recommendations for approval by typing a certificate of plat approval, signing it, and mailing it to the department along with the completed application. The department shall have 10 days to take final action upon receipt of the certificate of plat approval.~~

~~(7) The department shall reimburse local governments for services rendered in accordance with subchapter 8 of this chapter.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments would change the title of ARM 17.36.108 to clarify that the rule addresses compliance with local requirements, rather than local review of subdivisions, which is addressed in ARM 17.36.116. The proposed amendments also make minor changes to the rule for clarity and consistency. In (1), storm drainage is added to the list of local requirements for which an applicant must provide evidence of compliance. This addition is necessary to prevent conflicts between local laws regarding storm drainage and review of storm drainage under the sanitation in subdivisions laws. The proposed amendments to (4) would prohibit the reviewing authority from approving an application if the subdivision was not in compliance with local rules regarding water supply. This amendment implements a change to the statute from the 2001 legislature, and is necessary to coordinate state and local approvals of water supply systems.

17.36.110 ~~CERTIFICATION~~ CERTIFICATE OF APPROVAL

(1) Subject to the local certification requirements set out in (2) and (3), the ~~department~~ reviewing authority shall issue a certificate of subdivision approval if:

(a) and (b) remain the same.

(c) the ~~department~~ reviewing authority determines that:

(i) ~~sewage~~ wastewater will not pollute or degrade state waters or endanger public health;

(ii) all ~~sewage~~ wastewater disposal facilities are sufficient in terms of capacity and dependability;

(iii) and (iv) remain the same.

(v) storm drainage will have proper ~~drainage ways~~ drainageways and the drainage will not pollute state waters.

(2) The ~~department~~ reviewing authority may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of ~~sewage~~ wastewater are proposed, unless the applicant has submitted evidence, in accordance with ARM 17.36.108, that the design for the non-public water supply and ~~sewage~~ wastewater disposal facilities complies with applicable laws and regulations of local government.

(3) The ~~department~~ reviewing authority shall identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer in its review pursuant to ARM 17.36.108. Requirements of the local health officer may not be less stringent than state standards for the control and disposal of sewage promulgated pursuant to 75-5-305(2), MCA.

(4) Pursuant to a contract between the department and a local reviewing authority, minor changes to a certificate of subdivision approval may be made through an approval by the local reviewing authority of an "as-built" lot layout document. Amendment of the certificate of approval shall be effective upon filing of the approved "as-built" lot layout document with the clerk and recorder's office, with a copy sent to the department. Only the following changes may be made through the "as-built" procedure:

(a) relocation of structures, water systems, or sewer systems, provided that the changes comply with Title 76, chapter 4, part 1, MCA, this chapter, and all related rules and regulations; and

(b) changes to structures, water, or wastewater systems that do not significantly affect the approval statement of the subdivision.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.110 would make minor changes in terminology for clarity and consistency. The title of the rule is changed to reflect the correct name of the document of approval for subdivisions. The term "water supply" is added to (2), which would prohibit the reviewing authority from issuing a certificate of approval if the

subdivision was not in compliance with local rules regarding water supply. This amendment implements a change to the statute from the 2001 legislature, and is necessary to coordinate state and local approvals of water supply systems.

New (4) provides a procedure for making minor changes to a certificate of approval through an "as-built" drawing that is approved by the local reviewing authority. Changes made through this process do not require resubmittal of an application for review. The "as-built" process must be implemented through a contract between the department and the local reviewing authority. This procedure is necessary to allow for efficient modification of certificates of approval based upon minor changes during the construction process.

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) A local department or board of health ~~will~~, if it requests certification, must be certified ~~to perform the final review of divisions of land described in 76-4-104(3), MCA,~~ as the reviewing authority if the following requirements are met and the sanitarian or engineer is qualified as described in (2) of this rule:

(a) the local department or board of health employs a registered sanitarian or a registered professional engineer responsible to perform the actual ~~final~~ review~~;~~. ~~those~~ Those local governments employing more than one registered sanitarian or registered professional engineer shall designate one such person to be ~~in~~ responsible ~~charge of~~ for the review program; and

(b) the local department or board of health ~~has adopted local regulations for the installation and inspection of individual on-site sewage disposal facilities which are no less stringent than ARM Title 17, chapter 36, subchapters 1, 3, and 6; and~~ is required, pursuant to a written contract, to review subdivision applications according to:

(i) the provisions of Title 76, chapter 4, MCA;

(ii) this chapter;

(iii) applicable department circulars;

(iv) Title 75, chapter 5, MCA;

(v) ARM Title 17, chapter 30, subchapters 5 and 7; and

(vi) other applicable laws and regulations.

~~(c) the local department or board of health accurately completes at least 85% of all subdivision applications submitted to the department under ARM 17.36.108 during a 1-year trial period prior to assumption of the program; those subjects of review permitting 2 or more interpretations may not be considered in determining this performance level.~~

(2) A registered sanitarian or registered professional engineer, prior to performing subdivision review, ~~must~~ shall:

(a) pass, with a score of at least 90%, a written examination administered by the department ~~of environmental quality demonstrating~~ that demonstrates knowledge of~~:~~ ~~the subdivision rules contained in ARM Title 17, chapter 36, certificates of survey interpretation, and site evaluation~~

~~criteria; in order to pass the examination, each applicant must correctly answer 90% of all questions presented~~

(i) Title 76, chapter 4, MCA;

(ii) this chapter;

(iii) applicable department circulars;

(iv) Title 75, chapter 5, MCA;

(v) ARM Title 17, chapter 30, subchapters 5 and 7; and

(vi) other applicable laws and regulations; and

(b) have a minimum of one year's experience performing subdivision review under ~~either ARM 17.36.108 or~~ the direct supervision of the department or of a department-approved registered sanitarian or registered professional engineer.

~~(3) A registered sanitarian or professional engineer, prior to performing a review of alternative treatment systems as described in department Circular WQB-5, 1992 edition, must demonstrate a thorough knowledge of the design and evaluation of these systems by successfully completing a written examination administered by the department of environmental quality regarding this subject matter.~~

~~(4)~~(3) ~~The department of environmental quality may conduct a performance evaluation of local review procedures and perform random on-site evaluations of subdivisions reviewed under this rule. Evaluations may be performed at the option of the department or if a written complaint is received against the local department or board of health. The local department or board of health shall retain a copy of all subdivision applications, supporting documentation, and related information utilized to perform the review of subdivisions.~~ The department's oversight of a certified local reviewing authority's review of subdivision applications shall be limited to the following:

(a) within the 60-day review period, the department shall determine, by reference to the local reviewing authority's review checklist or by other means, whether the local reviewer has conducted a completeness review of the application and whether the local reviewer has completed a compliance review of all systems designated by the contract between the department and the local reviewing authority. If the department determines that either of these tasks was not completed, the department may return the application to the local reviewing authority for further review or may itself complete the review;

(b) within the 60-day review period, the department may check the accuracy of the local reviewing authority's review of subdivision applications. The department's accuracy checks must be limited to 10% of the applications submitted to the department by the local reviewing authority, except that the department may also review an application:

(i) upon the request of the local reviewing authority; or

(ii) when the department has reason to question the local reviewing authority's determination for a particular application;

(c) if the department identifies possible errors or discrepancies in the local reviewer's determination regarding an application, the department shall consult with the local reviewer. If, after consultation, the department does not agree with the local reviewer's determination regarding an application's compliance with applicable state laws, rules, and circulars, the department may, prior to the expiration of the review period for the application, modify the local determination regarding the state requirements;

(d) in addition to, or instead of, examining locally reviewed applications during the 60-day review period, the department may conduct an annual audit of a representative sample of locally reviewed applications.

~~(5)~~(4) The department ~~of environmental quality~~ retains the right to suspend or revoke the certification of the local department or board of health if~~:~~

~~(a) evaluations show the local reviewing authority has failed to perform at the desired accuracy level of 85%; or~~

~~(b) evaluations demonstrate~~ the department determines that the local reviewing authority is not complying with the Sanitation in Subdivisions Act or other applicable statutes or rules.

~~(6) Administrative review fees required by 76-4-105(3), MCA, shall be distributed to the department of environmental quality on a quarterly basis.~~

~~(7) The department hereby adopts and incorporates by reference department Circular WQB-5, 1992 edition, which sets forth requirements for performing a review of alternative treatment systems. A copy of department Circular WQB-5 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.116 would clarify the procedures for department certification of local reviewing authorities. Subsection (1)(b) clarifies that the local review must be pursuant to contract, and identifies the state laws, rules, and circulars that apply to subdivision review. Former (3) is deleted because it repeats (2). The new (3) sets out the procedures for department oversight of local reviewers. In most cases, the department will not re-review an application that has been reviewed by a local authority. Exceptions can be made if the local authority requests re-review, or if the department has reason to question the local reviewer's determination. These procedures are necessary to expedite the subdivision review process and to avoid duplication of review by local and state authorities. Subsection (6) is deleted because it duplicates ARM 17.36.804(4). The amendments delete the incorporation by reference in former (7) because Circular WQB-5 was consolidated in 2000 and replaced with Circular DEQ-4. The

new rules would consolidate all incorporations by reference into ARM 17.36.345.

17.36.309 SOLID WASTES (1) Solid wastes stored within the subdivision ~~shall~~ must be placed in adequate containers and removed at a frequency to prevent a nuisance. When removed from the subdivision, the solid wastes ~~shall~~ must be disposed of at a department-licensed ~~or conditionally licensed~~ site in accordance with ARM 17.50.508 or an appropriate out-of-state waste disposal site.

~~(2) A landowner may dispose of solid waste on his property when the parcel is over 5 acres in size and a plan for the disposition of the solid waste is included. The plan shall include:~~

~~(a) An analysis of soils and hydrology indicating the water pollution potential of the proposed site. The analysis shall be prepared by a professional engineer, soil scientist, or hydrogeologist.~~

~~(b) Tests or information indicating the seasonal high groundwater depth at the proposed site.~~

~~(c) Availability of equipment to operate and maintain the proposed site.~~

~~(d) The proposed method of operation and maintenance of the site.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.309 clarify that disposition of solid waste within subdivisions must be in accordance with department regulations issued under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA. Former (2) is deleted because it is no longer consistent with the department's solid waste regulations.

17.36.310 STORM DRAINAGE ~~(1) The department must receive a contour map showing the lots and the drainages and drainage structures to serve the proposed subdivision. The map shall conform to preliminary plat requirements of local subdivision regulations if subject to local review; if the subdivision is not subject to local review a 7½ minute or 15 minute USGS topographic quad map, or a contour map with contours no greater than 20 feet will be accepted.~~

~~(2) Drainage structures including size shall be shown on the plan.~~

~~(a) In subdivisions with 6 or more lots, the carrying capacity of the drainageway between the subdivision and point of disposal should be presented in the plan. Where large amounts of runoff are probable from subdivisions with 5 or fewer lots, this requirement will also apply.~~

~~(b) Where erosion has been determined to be a problem unless precautionary measures are taken during construction or following construction, information on measures to control erosion shall be provided.~~

(1) The applicant shall submit a storm drainage plan to the reviewing authority. The plan must conform with the requirements of either (2) or (3).

(2) Except as provided in (3), a storm drainage plan must be designed in accordance with department Circular DEQ-8, 2002 edition.

(a) for lots proposed for uses other than as single-family dwellings, a storm drainage plan submitted under (2) must be prepared by a registered professional engineer;

(b) a storm drainage plan submitted under (2) must include a maintenance plan for all drainage structures. The maintenance plan must describe the maintenance structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed off-site storm drainage structures or facilities.

(3) A storm drainage plan is not subject to the requirements of (2) if:

(a) the proposed subdivision has five or fewer lots;

(b) the area of disturbance within the proposed subdivision has a slope of three percent or less;

(c) unvegetated areas including, but not limited to, road surfaces, road cuts and fills, roofs, and driveways, comprise less than 15% of the total acreage of the proposed subdivision;

(d) drainage structures, such as road ditches, will be constructed;

(e) completion of the proposed subdivision will not increase the amount of pre-development stormwater runoff from the area;

(f) the proposed subdivision will not alter pre-development water flow patterns; and

(g) the applicant provides the reviewing authority with a 7 1/2 minute USGS topographic map showing the proposed subdivision and, if available, a map with contour intervals no greater than 20 feet that shows drainage patterns.

(4) If fill material will be placed within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals have been obtained.

(5) If applicable, the applicant shall obtain an MPDES permit for storm water discharges, pursuant to ARM Title 17, chapter 30.

~~(3)~~(6) Storm water that reaches state surface waters must be treated prior to discharge ~~when~~ if the ~~department~~ reviewing authority determines that untreated storm water is likely to degrade the receiving waters.

(a) minimum treatment of stormwater consists of removal of settleable solids and floatable material. The ~~department~~

reviewing authority may require more extensive treatment if deemed necessary to protect state waters from degradation.;

(b) plans for the treatment facility must be approved by the ~~department~~ reviewing authority.

(7) The department may grant a waiver from any of the requirements in this rule pursuant to the provisions of ARM 17.36.601.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.310 expand and clarify the current requirements for storm water drainage plans. The new (1) clarifies that all subdivision applications must include a storm drainage plan under either new (2) or (3). New (3) allows for a "short form" storm drainage plan for certain subdivisions where storm drainage is not complex. For all other subdivisions, new (2) requires a more detailed storm drainage plan prepared in accordance with new department Circular DEQ-8.

The new department Circular DEQ-8 contains requirements for the format and contents of storm water drainage plans. Also included in Circular DEQ-8 are a description of acceptable methods for determining storm water peak flows, and design standards for roadways, culverts, retention/detention ponds, and infiltration facilities. Circular DEQ-8 has three appendices. Appendix A contains precipitation intensity values and tables showing statewide averages for precipitation events. Appendix B contains example calculations for retention ponds. Appendix C contains example calculations for detention ponds.

The sanitation in subdivisions laws require that the department adopt rules setting out standards and technical procedures applicable to storm drainage plans in order to ensure proper drainage ways. Section 76-4-104(6)(e), MCA. The proposed amendments to ARM 17.36.310 and the new Circular DEQ-8 are necessary to establish such standards and procedures and to prevent harm to public health, safety, and welfare caused by improper storm drainage.

17.36.320 SEWAGE SYSTEMS: DESIGN (1) and (2) remain the same.

(3) The proposed subsurface sewage treatment area must include an area for 100% replacement of the system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if the department indicates to the applicant that it has reason to believe that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

TABLE 2
ALLOWABLE SYSTEMS, REQUIREMENTS

	YES - Systems that are allowed NO - Systems that are not allowed			
	~~Must be Designed by a Professional Engineer~~		~~Does not Need to be Designed by a Professional Engineer~~	
DEQ-4 System	Public: > 5000 gpd (1)(7)	Public or Multiple-user: ≥ 2500 gpd and ≤ 5000 gpd (2)(7)	Public or Multiple-user: < 2500 gpd (3)	Individual /Shared: (6)
Standard Absorption Trench	NO	NO	YES	YES
At-Grade Systems	NO	NO	YES	YES
Gravelless	YES	YES	YES	YES
Deep Trench	NO	NO	NO	YES
Elevated Sand Mound	YES	YES	YES	YES
Evapotranspiration (ET) systems	NO	NO	NO	NO (5)
ET-Absorption	NO	YES	YES	YES
Intermittent Sand Filters	YES	YES	YES	YES
Recirculating Sand Filters	YES	NO (5)	NO (5)	NO (5)
Recirculating Trickling Filters	YES	YES	YES	YES

Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems	NO (5)	NO (5)	NO (5)	NO (4)(5)
Pressure Distribution	YES	YES	YES	YES
Sand-lined Absorption Trenches	NO	YES	YES	YES
Experimental Systems	NO (5)	NO (5)	NO (5)	NO (5)

(1) Public systems with design flow greater than 5000 gallons per day (gpd).

(2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.

(3) Public or multiple-user systems with design flow less than 2500 gpd.

(4) Means of securing continuous operation and maintenance of these systems must be approved by the reviewing authority ~~county health department~~ prior to DEQ approval.

(5) May be allowed by waiver, pursuant to ARM 17.36.601.

(6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.

(7) Must be designed by a professional engineer.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.320 would modify Table 2, which lists the allowable wastewater systems and identifies the systems that must be designed by a professional engineer. The proposed modification would allow recirculating sand filters to be used for individual/shared systems through a waiver process. The current table prohibits recirculating sand filters for individual/shared users because the systems tend to be complex and the individual or shared owners may not have the expertise to provide adequate maintenance and operation. However, allowing use of the systems through the waiver process would limit use to owners that provide adequate maintenance and operation plans and agreements. The proposed

amendment is necessary to allow for recirculating sand filter systems in all situations where they are appropriate.

The proposed amendments would implement the term "reviewing authority" in Table 2. This change is necessary to reflect the correct statutory term, and to provide consistent terminology throughout the rules.

The proposed amendments would reformat Table 2 to clarify when a professional engineer is required and which systems are allowed for public, multiple user and individual/shared use. The heading for the columns would indicate what the "yes" and "no" terms mean. The requirement for a professional engineer would be moved from a column heading to footnote number (7). The changes are necessary to clear up confusion that the multiple headings were causing for applicants and consultants.

17.36.325 SEWAGE SYSTEMS: SITE EVALUTION (1) and (2) remain the same.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. Soil descriptions must address the characteristics used in the US Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993). These characteristics include, but are not limited to, soil texture, soil structure, soil consistence and indicators of redoximorphic features. Soil descriptions must meet the following requirements:

(a) remains the same.

(b) At least one test hole must be dug for each individual drainfield and for each shared (2-user) drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. Before a waiver is requested and granted, the applicant must complete test holes for 25% of the proposed drainfield locations in the subdivision, demonstrate that the soils are consistent throughout the area requested for a waiver, and must obtain the approval of the local reviewing authority for reduction in number of test holes. At least three test holes must be dug for each multiple-user and public drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. At least one test hole must be dug in each zone of a pressure-dosed drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. The department shall require additional test holes if it determines that there is significant variability of the soils in the proposed drainfield area;

(c) through (e) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.325(3)(b) would allow a waiver process for the number of soil test holes in areas where the soils are determined to be consistent. The new language would require test holes for 25% of the drainfield locations, a demonstration that the soils are

consistent, and a local approval before the waiver is granted. The department has received subdivision applications with 50 to 300 proposed parcels where the soils were uniform and the 50 to 300 test holes dug did not reveal any differences in soils. In such cases, multiple test holes are not necessary. The amendment is necessary to allow the department to reduce the number of required soil test holes where multiple testing does not provide useful information.

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information:

(a) and (b) remain the same.

(c) evidence that each existing septic tank was pumped within ~~one~~ three years prior to the department's review unless the existing septic tank is less than five years old.

(2) through (4) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.327(1)(c) would require evidence that an existing septic tank has been pumped within three years instead of one year, except when the tank is less than five years old. The change was recommended by the subdivision task force, and many consultants, because a system that has not been in operation for more than five years does not normally need to be pumped. However, older systems should be maintained and pumped on a periodic basis depending on their use. Three years was chosen for systems older than five years because the literature and research indicates that an average household of three people with a typical 1,000 gallon tank should pump the septic tank about every three years.

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department hereby adopts and incorporates by reference:

(a) Department Circular DEQ-1, "Standards for Water Works", 1999 edition;

(b) Department Circular DEQ-2, "Design Standards for Wastewater Facilities", 1999 edition;

(c) Department Circular DEQ-3, "Standards for Small Water Systems", 1999 edition;

~~(a)~~(d) Department Circular DEQ-4, "Standards for On-Site Subsurface Sewage Treatment Systems", 2000 edition; ~~and~~

(e) Department Circular WQB-7, "Montana Numeric Water Quality Standards", 2001 edition;

(f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage", 2002 edition;

(g) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems", 2002 edition;

(h) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems", 2002 edition;

(i) Department Circular PWS-5, "Groundwater Under the Direct Influence of Surface Water", 1999 edition;

(j) Department Circular PWS-6, "Source Water Protection Delineation", 1999 edition; and

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

(2) remains the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments consolidate all formal incorporations by reference into ARM 17.36.345. This is necessary for ease of reference and to facilitate updating of incorporations. The Circulars are also referred to in other rules. A description of the contents of each Circular is provided in the rationale statement for the rule in which the Circular is applied.

17.36.601 WAIVERS--DEVIATIONS (1) ~~Provisions of this chapter may not be waived unless specifically granted in this subchapter or specifically granted in 76-4-125, MCA. Waivers must be requested in writing and must be accompanied by data substantiating the request.~~ The department may grant a waiver from a requirement of this subchapter only if a waiver is specifically authorized for that requirement and the applicant demonstrates that the conditions in the specific waiver authorization and in (3) are met.

(2) The department may grant a deviation from ~~the requirements~~ a requirement of department ~~C~~circulars ~~WQB-3, WQB-4, WQB-5 and WQB-6~~ only if the applicant demonstrates to the department that ~~strict adherence to the requirements is not necessary to protect public health and the quality of state waters~~ all specific waiver conditions in the applicable circular and the conditions in (3) are met.

(3) ~~Department Circulars WQB-3 and WQB-4 are adopted by reference in ARM 17.36.101 and 17.36.305; WQB-5 in ARM 17.36.116 and 17.36.304; and WQB-6 in ARM 17.36.101 and 17.36.304.~~ A request for a waiver or deviation must be in writing and must be accompanied by information substantiating the request and by the appropriate fee. The applicant shall also demonstrate that the waiver or deviation:

(a) would be unlikely to cause pollution of state water in violation of 75-5-605, MCA;

(b) would protect the quality and potability of water for drinking water supplies and domestic uses and would

protect the quality of water for other beneficial uses, including those uses specified in 76-4-101, MCA; and

(c) would not adversely affect public health, safety, and welfare.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.601 are necessary to clarify the procedures for waivers from rules and deviations from circular requirements. The department may not grant a waiver or a deviation without finding that the criteria in (3) are met. The proposed criteria in (3) are not new, and have been applied to deviations in the past. The amendments would extend the criteria to rule waivers as well. Because the rules and circulars serve the same purposes of protecting the basic criteria in (3), waivers and deviations should involve a consideration of how those criteria are impacted. The use of the criteria in (3) for rule waivers is necessary to ensure that the department uses a consistent approach in granting waivers and deviations.

The proposed amendments also clarify that, for a waiver or deviation to be granted, all special considerations in the waived rule or deviated circular requirement are met. In addition, in order for the department to waive a rule, the amendments clarify that there must be specific authorization in the waived rule for the department to consider a waiver.

17.36.605 EXCLUSIONS ~~(1) The following subdivisions exempted from review under 76-3-207(1)(c), 76-3-201, and 76-3-204, MCA, also are not subject to the provisions of this chapter:~~

~~(a) divisions created by order of any court of record in this state or by operation of law, or divisions which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30, parts 1, 2 and 3, MCA);~~

~~(b) divisions created to provide security for construction mortgage, liens or trust indentures;~~

~~(c) divisions which create an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;~~

~~(d) divisions which create cemetery lots;~~

~~(e) divisions created by the reservation of a life estate;~~

~~(f) divisions created by lease or rental for farming and agricultural purposes;~~

~~(g) sale, rent, lease or other conveyance of 1 or more parts of a building, structure, or other improvement situated on one or more parcels of land. (This exemption does not apply to condominiums prior to their construction.)~~

~~(h) divisions made for agricultural or pasture use when no structures requiring water and/or sewage facilities have~~

~~been or are to be erected or utilized, provided the parties to the transaction enter into a covenant running with the land and revocable only by the governing body and the property owner. Any change in land use subjects the division to the provisions of Title 76, chapter 4, part 1, MCA, and this chapter.~~

~~(2) The following divisions of land are also exempt from this chapter and must bear on the survey document the acknowledged certificate of the property owner stating that the division of land in question is exempt from review and quoting in its entirety the wording of the applicable exemption:~~

~~(a) Divisions for the purpose of acquiring additional land to become part of a parcel that does not have sanitary restrictions imposed provided that no dwelling or structure requiring water or sewage will be erected on the additional acquired parcel.~~

~~(b) Divisions made to correct errors in construction where a building, shrubs, or other permanent vegetation may encroach upon the neighboring property.~~

~~(c) Divisions made for convenience when highway relocation divorces a portion of the land from the original tract making it more desirable for the property to be sold to become part of a contiguous tract or if sufficiently large as an individual tract.~~

~~(d) Boundary changes for the purpose of aggregating lots (5 or fewer) in a platted subdivision when the lots are presently served by public water and sewer.~~

~~(e) Parcels where sanitation facilities will not be used, in which no structure requiring water or sewage disposal will be erected. Any change in land use subjects the division to the provisions of Title 76, chapter 4, part 1, MCA, and this chapter.~~

(1) The exclusions in this rule are in addition to the exclusions set out in 76-4-111 and 76-4-125(2), MCA.

(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:

(a) a parcel that has no existing facilities for water supply, wastewater disposal, and solid waste disposal, if no new facilities will be constructed on the parcel;

(b) a parcel that has no existing facilities for water supply, wastewater disposal, or solid waste disposal other than those that were previously approved by the reviewing authority under Title 76, chapter 4, part 1, MCA, or that were exempt from such review, if:

(i) no new facilities will be constructed on the parcel; and

(ii) the division of land will not cause approved facilities to violate any conditions of approval, and will not cause exempt facilities to violate any conditions of exemption.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.35.605 restate the exclusions from subdivision review, although the scope of the exclusions would not change significantly from that of the current rules. The current exclusions in some cases have the effect of excluding parcels that, under the statutes, should be reviewed. In other cases, the current exclusions do not exclude parcels that, under the statute, could be excluded. The amendments are necessary to bring the exclusions into conformity with the statute.

The amendments implement 76-4-125(2)(c), MCA, which allows the department to exclude by rule "divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities." The amendments are intended to require review of all parcels in subdivisions where there are unreviewed, nonexempt facilities for water supply, sewage disposal, or solid waste disposal. The exclusions fall into two categories: (1) parcels in subdivisions that have no reviewable facilities, if no facilities are planned; and (2) parcels in subdivisions that have no facilities other than those already approved or excluded from review, if the new subdivision will not cause a violation of any conditions of approval or exclusion. The new categories are necessary to conform the rule more closely to 76-4-125(2)(c), MCA, and to make the rule easier to apply.

17.36.801 PURPOSE (1) The purpose of this subchapter is to establish a schedule of fees to be paid to the department for the local and state review of ~~plats and subdivisions~~ subdivision applications. The schedule consists of three sections relating to the collection of fees for the review of divisions of land, condominiums and areas providing permanent multiple space for recreational camping vehicles and mobile homes. The fees are based on the complexity of the subdivision, including the number of lots, the type of water system to serve the development, the type of ~~sewage~~ wastewater disposal to serve the development, and the degree of environmental research necessary to supplement the review procedure.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.801 make minor changes in terminology. The current reference to review of "plats" is misleading, and the term "subdivision application" is substituted. The term "sewage" is replaced with "wastewater" throughout these rules to clarify that not only toilet waste systems are subject to review.

17.36.802 FEE SCHEDULES (1) An applicant for approval of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces and tourist campgrounds shall pay the following fees:

	UNIT	UNIT COST
TYPE OF LOTS		
Subdivision lot	lot/parcel	~~$50~~ 75
Condominium/trailer court/ recreational camping vehicle campground	unit/space	~~$25~~ 30
Resubmittal fee – previously approved lot, boundaries are not changed	lot/parcel	$50
TYPE OF WATER SYSTEM		
Individual or shared water supply system (existing and proposed)	unit	~~$40~~ 50
~~Multi-family~~ Multiple user system ~~Water source~~ ~~Pumping and storage facilities~~ ~~Distribution system (new)~~ ~~Extension of existing Distribution system~~ - new system	~~unit~~ ~~facility~~ ~~lot/unit~~ ~~lot/unit~~ each	~~$200~~ ~~$200~~ ~~$10~~ ~~$25~~ ~~$450~~ 250 (plus $50/ hour for review in excess of 5 hours)
- connection to approved existing distribution system	lot/unit	$ 15
- extension to existing distribution system	lot/unit	$ 30
- new distribution system	lot/unit	$ 30

	UNIT	UNIT COST
Public water system New system per ~~WQB~~ DEQ-1	component	per ARM 17.38.106 fee schedule
- connection to existing system - extension of existing system - new distribution system	lot/structure lot/structure lot/structure	$ ~~10~~ 15 $ ~~25~~ 30 $ 30
TYPE OF ~~SEWAGE~~ WASTEWATER DISPOSAL		
Existing systems	unit	$ ~~40~~ 50
New ~~conventional~~ subsurface system~~, shallow-capped, sand-lined~~	drainfield	$ ~~40~~ 60
~~New pressure-dosed conventional, cut/fill, deep systems, artificially drained~~	~~design~~ ~~drainfield~~	~~$150~~ ~~$ 25~~
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, and nutrient removal	design ~~drain field~~	$~~300~~ 150 (plus $50/ hour for review in excess of ~~6~~ three hours) ~~$25~~
Drainfields for pressured-dosed, intermittent sand filter, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, and nutrient removal	drainfield	$ 30
~~New aerobic, package plant systems, recirculating sand filters, nutrient removal~~	~~hour~~	~~$50~~
~~New Multi-family~~ Multiple user ~~sewage~~ wastewater system - connection - extension - new collection system	 lot/unit lot/unit lot/unit	 $ ~~10~~ 15 $ ~~25~~ 30 $ 30

	UNIT	UNIT COST
New public ~~sewage~~ wastewater system per ~~WQB-2~~ DEQ-2	component	per ARM 17.38.106 fee schedule
- New connection to existing system	lot/structure	$15
- New extension to existing public wastewater system	lot/structure	$30
- New public wastewater collection system	lot/structure	$30
~~New connection to existing public sewage system~~	~~lot/structure~~	~~$ 10~~
~~New extension of existing public sewage system~~	~~lot/structure~~	~~$ 25~~
OTHER		
Deviation ~~waiver~~ from circular ~~request~~	request or per design	~~$75~~ 100 (plus $50/ hour for review in excess of two hours
Waiver from rule	request	$100 (plus $50/hour for review in excess of two hours
Reissuance of original ~~plat~~ approval statement	request	$ 50
~~Master plan~~ Municipal facilities exemption checklist (former master plan exemption)	application	$ 75
Nonsignificance determinations/ categorical exemption reviews	~~drain field~~	~~$30~~
- individual/shared systems	drainfield	$ 40
- multiple-user and public systems	lot/structure	$ 20

	UNIT	UNIT COST
Storm drainage plan review - plans exempt from circular DEQ-8 - Circular DEQ-8 review	 plan plan	 $25 $50 (plus $50/hour for review in excess of one hour)
Preparation of environmental assessments/environmental impact statements	----	actual cost

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.802 would increase the fees for a number of aspects of subdivision review. The fee increases are necessary to recover actual costs of reviewing subdivisions, conducting inspections, and conducting enforcement. The proposed fee increases will affect approximately 1200 applications that create approximately 5300 parcels in one year. The fee increases are projected to provide an additional $500,000 per year that will be used for state costs and county reimbursements. The county reimbursements will depend on the number of subdivisions that the counties review. Counties are now reimbursed $10 per lot and 80% of the fee for the remaining components. A typical reimbursement under the existing fees is $98 for each parcel. Under the proposed fee the typical reimbursement would be $165 which includes $25 per lot and 80% of the fee for the remaining components.

17.36.804 DISPOSITION OF FEES (1) The department shall use the fees collected pursuant to ARM 17.36.802 to fund the following functions:

(a) review performed pursuant to subchapter 1 to determine whether:

(i) the application complies with subchapter 3~~,~~; ~~whether~~

(ii) to grant a waiver or deviation pursuant to ARM 17.36.601~~,~~; or ~~whether~~

(iii) the proposed subdivision is excluded from review pursuant to ~~ARM 17.36.602~~ ARM 17.36.605;

(b) through (d) remain the same.

(e) preparation of an environmental impact statement pursuant to ARM 17.4.615 through 17.4.629, including costs of analysis, printing, distribution, and hearing costs, and excluding the costs of information and data gathering, which are subject to fee assessment pursuant to 75-1-202, MCA; ~~and~~

(f) reimbursement of local government entities as provided in (2) and (3) of this rule~~.~~; and

(g) conducting inspections and enforcement activities pursuant to 76-4-107 and 76-4-108, MCA.

(2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

~~(a) For major subdivisions with individual sewage treatment systems, $15 per parcel. A site evaluation must accompany the submittal.~~

~~(b)~~(a) For ~~minor~~ subdivisions with individual ~~sewage~~ wastewater treatment systems, the department shall reimburse ~~$10~~ $25 per lot plus 80% of the review fee under ARM 17.36.802 for each review of water and ~~sewage~~ wastewater systems and nonsignificance determinations and categorical exemptions performed by the local governing body.

(3) The department may reimburse counties ~~which~~ that have not been delegated review authority ~~of subdivisions containing 5 or fewer parcels~~ but ~~which~~ that perform review services~~,~~ including, but not limited to, ~~on-site~~ inspection of proposed and approved facilities and assistance to persons in the application procedure~~,~~ as follows:

(a) ~~$15~~ $25 per parcel for subdivisions ~~containing over 5 parcels~~ with individual ~~sewage~~ or shared wastewater treatment systems. A site evaluation must accompany the submittal.

~~(b) $25 per parcel for subdivisions containing 5 or fewer parcels with individual sewage treatment systems. A site evaluation must accompany the submittal.~~

(4) remains the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.804 make minor changes in terminology and internal references. The amendments also eliminate the distinction between major and minor subdivisions, since that distinction is no longer found in the sanitation in subdivisions statutes. Subsection (1)(g) is added to clarify that, pursuant to SB 167 from the 2001 legislative session, fees must be used to recover costs for inspections and enforcement as well as application review. Subsections (3)(a) and (b) are changed to increase to $25 the parcel fee for review of subdivisions with individual or shared wastewater systems. The fee increase is necessary to recover actual costs of review, inspection, and enforcement. See also the reason for ARM 17.36.802.

17.36.805 CHANGES IN SUBDIVISION (1) ~~Whenever~~ If, during the review process, or after approval, an applicant proposes to change the water supply system, ~~or sewage~~ wastewater treatment system, stormwater drainage plan, or solid waste disposal plan of a subdivision or ~~where~~ if such changes are necessitated by a department determination that

proposed plans are inadequate, such changes must be submitted to the ~~department~~ reviewing authority for review and are subject to ~~an additional~~ the resubmittal review fee ~~for the newly proposed water supply or sewage treatment system~~ and fees for the components proposed for change as listed in ARM 17.36.802.

(2) ~~Whenever an applicant proposes changes to the conditions of the certificate of subdivision plat approval, the changes must be submitted to the department for review and approval and are subject to additional review fees. If the applicant proposes to change components of the approved plans, the newly proposed components are subject to the fees listed in ARM 17.36.802.~~ Other changes for plan components not listed in ARM 17.36.802 are also subject to additional review fees. The department shall determine the exact amount of the additional fee based on how much review time the change(s) require. Review time must be charged at the rate of $50 per hour with a minimum charge of $50.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The amendments to ARM 17.36.805 would make minor changes in format and terminology. The amendments are necessary to standardize terms throughout the rules and to improve the clarity of the rule.

4. The Department is proposing to repeal the following rules:

17.36.105 SUBDIVISION AND PLATTING ACT EXCLUSIONS SUBJECT TO DEPARTMENT REVIEW located at page 17-3331, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-125, MCA

REASON: ARM 17.36.105 is proposed for repeal because it repeats the provisions of the statute at 76-4-125(2)(a), MCA.

17.36.111 MOBILE HOMES AND RECREATIONAL CAMPING VEHICLES located at page 17-3338, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 75-4-125, MCA

REASON: ARM 17.36.111 is proposed for repeal because authority for licensing of trailer courts and campgrounds under ARM Title 16, chapter 10 was transferred in 1995 to the department of public health and human services. The proposed rules contain a new section ARM 17.36.102(5) that informs applicants for subdivision review of the need to meet the requirements of ARM Title 16, chapter 10 (now Title 37, chapter 111).

17.36.301 LOT SIZES located at page 17-3351, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: ARM 17.36.301 is proposed for repeal because it is being replaced by New Rule IX.

17.36.302 PUBLIC WATER AND SEWER located at pages 17-3352 and 17-3353, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: ARM 17.36.302 is proposed for repeal because it is being replaced by New Rule I.

17.36.303 INDIVIDUAL WATER SUPPLY SYSTEMS located at pages 17-3353 through 17-3355, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

17.36.305 MULTIPLE USER WATER SUPPLY SYSTEMS located at page 17-3356, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: ARM 17.36.303 and 17.36.305 are proposed for repeal because they are being replaced by New Rules II through VIII.

17.36.602 SUBDIVISIONS IN MASTER PLANNED AREA located at page 17-3395, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-125, MCA

REASON: ARM 17.36.602 is proposed for repeal because it repeats the provisions of the statute at 76-4-125(2)(d), MCA.

17.36.606 EXCLUSIONS--COMPLIANCE WITH PUBLIC WATER SUPPLY ACT located at page 17-3398, Administrative Rules of Montana.

AUTH: 76-4-104, MCA
IMP: 76-4-125, MCA

REASON: ARM 17.36.606 is proposed for repeal because it repeats the provisions of the statutes at Title 75, chapter 6, part 1, MCA.

5. The proposed new rules will read as follows:

NEW RULE I PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS

(1) A proposed subdivision must be connected to a public water supply or wastewater system if any boundary of the subdivision is within 500 feet of the public system and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM 17.36.601, of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements can not be obtained. For purposes of this rule, a connection is economically practical if the cost of connection is less than or equal to three times the cost of installation of an approvable system on the site.

(2) The reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

(a) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38;

(b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that:

(i) the system has an adequate capacity to meet the needs of the subdivision;

(ii) the connections are authorized; and

(iii) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations; and

(c) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

(3) If the proposed additional connections will create a new public system, the applicant shall submit plans and specifications for the entire system (existing and proposed) for review and approval by the department in accordance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: Proposed new rule I sets out requirements regarding public water supply and wastewater systems in subdivisions. Except as described below, the amendments reformat the rules to improve clarity but would not make substantive changes to the current requirements. The current water supply rules are organized according to type of system (e.g., individual, multiple user, public), and there is some repetition of requirements that are common to all types of systems. The proposed new format is organized according to subject (e.g.,

water quality, quantity, dependability), which will improve readability and minimize repetition.

A new provision in the amendments is the definition of "economically practical" in (1). The definition is necessary to provide guidance to applicants as to when the department would require a proposed subdivision to connect to nearby public systems. A waiver provision in the rule allows flexibility in application. The new rule would also prohibit connections to an existing system if the system is not in compliance with applicable requirements. This is necessary to prevent threats to health and the environment caused by expansion of noncompliant systems.

NEW RULE II WATER SUPPLY SYSTEMS--GENERAL (1) The applicant shall demonstrate that water systems provide an adequate supply by showing that the following criteria are met:

(a) the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2 may not be exceeded;

(b) the following flows must be provided:

(i) for individual and shared water supply systems, the flow indicated in [NEW RULE IV];

(ii) for multiple family water supply systems, the requirements set out in department Circular DEQ-3, 1999 edition; and

(iii) for public water supply systems, the requirements set out in department Circular DEQ-1, 1999 edition;

(c) the necessary quantity and quality of water must be available at all times unless depleted by emergencies.

(2) If groundwater is proposed as a water source, the applicant shall submit the following information:

(a) the location of the proposed groundwater source must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If a potential problem is identified, the reviewing authority may require that all potential sources of contamination be shown in accordance with department Circular PWS-6, 1999 edition; and

(b) a description of the proposed groundwater source, including approximate depth to water bearing zones and lithology of the aquifer.

(3) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule II sets out in more detail the requirements for approval of water supply systems. The new rule consolidates requirements from several current rules into a single rule. The term "adequate supply" is clarified in this rule rather than in the definition section. The requirements

and standards for quality, quantity, and dependability are further clarified and referenced. The reformatting provided by new rule II is necessary to improve the clarity of the rules and to assist applicants in preparing correct and complete subdivision applications.

Section (2)(a) allows the reviewing authority to require an applicant, if potential groundwater quality problems exist, to show all potential sources of contamination in accordance with department Circular PWS-6. Circular PWS-6 is an existing publication that sets out procedures for source water protection delineation. The current subdivision rules do not reference Circular PWS-6, although the department has required applicants to consult the Circular in the past. The new reference to Circular PWS-6 is necessary to better inform applicants of the department's procedural requirements in those situations.

NEW RULE III NON-PUBLIC WATER SUPPLY SYSTEMS: WATER QUALITY (1) For non-public water supply systems, the following water quality requirements must be met:

(a) The applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in department Circular WQB-7, 2001 edition or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) The applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of nitrate (as nitrogen) and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in department Circular WQB-7, 2001 edition or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems.

(i) the applicant shall provide the well log for every well from which a groundwater sample is collected. If a well log is not available, the applicant shall provide information about the well depth and depth to static water level. The reviewing authority may require additional information to demonstrate that groundwater quality is sufficient for the proposed subdivision;

(ii) the applicant shall accurately identify, on a topographic map or lot layout document, the location of every well from which a groundwater sample is taken; and

(iii) the requirement to sample for nitrate (as nitrogen) and specific conductance does not apply if the reviewing authority determines that information from nearby water wells, which are completed in the same aquifer as that proposed for the subdivision water supply, or a hydrogeological report confirms that the proposed water supply will be of acceptable quality.

(c) The minimum setback distances set out in Table 3 of ARM 17.36.323 must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within a groundwater mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5.

(d) The reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants (e.g., giardia lamblia) in the surface water. In determining the appropriate separation between a well and surface water, the reviewing authority may consider factors such as well location, well construction, aquifer material, hydraulic connection between the aquifer and watercourse, and other evidence of the potential for surface water contamination. The reviewing authority may also require that the proposed water source be tested for surface water influence in accordance with department Circular PWS-5, 1999 edition.

(e) Wells must have unperforated casing to a minimum depth of 25 feet below ground surface unless the reviewing authority finds that, based upon geological information provided by the applicant, a lesser depth will ensure that the other requirements of this rule are satisfied. The reviewing authority may require unperforated casing to a depth greater than 25 feet if water of better chemical or microbiological quality can be obtained from a deeper zone.

(f) A surface water or groundwater source under the direct influence of surface water, as described in department Circular PWS-5, 1999 edition, may not be used as a water source for a non-public system.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule III clarifies the requirements for demonstrating that water quality is suitable for a water supply system. The new rule primarily consolidates requirements from several current rules into a single rule. The rule contains new language that references the water quality standards in department Circular WQB-7. The current rules refer to parameters that exist in "harmful quantities". Circular WQB-7 is an existing publication that contains Montana's numeric water quality standards. The department has in the past looked to Circular WQB-7 to define "harmful

quantities". The new rule's reference to the Circular is necessary to inform applicants of the department's standards for determining quantities of pollutants that are harmful to human health. The rule also contains a new requirement that the analyses be conducted by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The requirement for testing by a certified laboratory is necessary to insure the accuracy of analyses performed to determine water quality.

NEW RULE IV NON-PUBLIC WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY (1) The applicant shall demonstrate that groundwater quantity is sufficient for the proposed subdivision. The applicant shall show that the following minimum flows are available:

(a) a single-family water system must provide a sustained yield of at least 10 gallons per minute over a one-hour period, six gallons per minute over a two-hour period, or four gallons per minute over a four-hour period. For purposes of the minimum flows identified in this rule, sustained yield must be based on water that is supplied from the aquifer, not from well bore storage; and

(b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or 10 gallons per minute over a two-hour period.

(2) The minimum flows required in (1)(a) and (b) must be demonstrated through one or more of the following:

(a) test wells within the proposed subdivision;

(b) well logs and testing of nearby wells;

(c) hydrogeological reports; or

(d) groundwater modeling.

(3) Multiple-user water supply systems must comply with department Circular DEQ-3, 1999 edition. For individual and shared water supply systems, the reviewing authority may require pumping tests for one or more wells to demonstrate sufficient quantity and dependability. The tests must be conducted pursuant to department Circular DEQ-3, 1999 edition.

(4) When the proposed water supply is an unconfined aquifer and a significant recharge source is from irrigation ditches or irrigated fields, the reviewing authority may require the applicant to demonstrate that the source will produce a water supply that is sufficient in terms of water quality, quantity and dependability for the proposed subdivision if all irrigation-related recharge to the aquifer is eliminated.

(5) The department may allow, pursuant to a waiver under ARM 17.36.601, a lesser flow than those set out in (1)(a) and (b) if the applicant demonstrates that the water supply system provides a sufficient quantity of water to meet demands and that adequate storage is provided to meet peak demand.

(6) The reviewing authority may require the applicant to submit information in addition to that required in (1) through (5) to demonstrate the dependability of the groundwater supply if the reviewing authority believes that dependability is

questionable. At a minimum, the applicant shall provide evidence that the aquifer can supply, by itself or through recharge from surrounding geologic units, water to wells in an amount equal to the proposed groundwater withdrawals.

(7) If water is to be supplied by means other than individual on-site wells, the reviewing authority shall review the applicant's information about water right ownership and water use agreements to determine the quantity and dependability of the water supply.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule IV sets out minimum flows necessary to demonstrate that groundwater quantity is sufficient for the proposed subdivision. The new rule primarily consolidates requirements from several current rules into a single rule. The rule contains a new provision allowing variable periods of time for demonstrating sustained yield. The allowance for variable periods reflects technically sound practices, and is necessary to provide flexibility to applicants who wish to make the demonstration. Section (7) of the new rule allows the reviewing authority, when reviewing water supply systems that serve more than one user, to review information on water right ownership to determine whether the water supply would be "dependable" for each user. Water sharing agreements may be necessary to clarify the entitlement of all water users to a source owned by one party.

NEW RULE V NON-PUBLIC WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION (1) The applicant shall meet the following requirements relating to the design and construction of non-public water supply systems:

(a) individual and shared wells must be constructed in accordance with ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(b) multiple-user water supply systems must be designed and constructed in accordance with department Circular DEQ-3, 1999 edition, and ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(i) multiple user water supply systems with six or more connections, including connections outside of a proposed subdivision, must be designed by a registered professional engineer and as-built plans must be submitted to the department within 90 days after completion of the system. If an existing system is expanded to serve six or more connections, the expansion must be designed by a registered professional engineer. The reviewing authority may require smaller systems that it determines to be complex (e.g., a water supply system with substantial pressure difference through the distribution system) to be designed by a registered professional engineer;

(ii) if more than one multiple user water system is proposed for a subdivision, the systems must be tied together to ensure greater system reliability. The department may grant a waiver, pursuant to ARM 17.36.601, of this provision if the applicant demonstrates that interconnection of the systems is physically or economically impractical or would create an environmental or public health concern;

(c) the reviewing authority may require additional well construction and/or testing requirements not required in ARM Title 36, chapter 21, subchapter 6 or in department Circular DEQ-3, 1999 edition, to ensure that wells within a particular subdivision will provide an adequate water supply.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule V sets out design and construction requirements for non-public water supply systems. The new rule primarily consolidates requirements from several current rules into a single rule. Section (1)(b)(ii) requires that, if more than one multiple user water system is proposed for a subdivision, the systems be tied together. This requirement is necessary to ensure greater system reliability. Flexibility in application of the requirement is provided through a waiver process. Section (1)(c) would allow the reviewing authority to request additional information. This provision is necessary to ensure that wells within a proposed subdivision will provide an adequate water supply.

NEW RULE VI WATER SUPPLY SYSTEMS: AGREEMENTS AND EASEMENTS (1) If a proposed subdivision includes a multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the multiple-user systems will be adequately operated and maintained. The reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(2) If a proposed subdivision includes a shared water supply system, or includes a water supply system shared by two or more commercial facilities, the reviewing authority may require the applicant to submit a draft user agreement that identifies the rights of each user. The user agreement must be signed by all users when the lots are sold. The applicant must also grant or obtain easements to allow adequate operation and maintenance of the system. Shared user agreements and easements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule VI sets out the requirements for submission of operation and maintenance plans, creation of special entities for operation of systems, and use of easements and agreements. The requirements are not new, but have been consolidated from several rules into one. The new rule is necessary to improve readability and to provide better detail about the nature of the requirements.

NEW RULE VII NON-PUBLIC WATER SUPPLY SYSTEMS: EXISTING SYSTEMS (1) Existing water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM 17.36.601, from the well construction requirements of [NEW RULE V] if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

(2) The applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) the applicant shall submit, for each existing water supply source, water quality analyses for nitrate (as nitrogen) and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrate and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any groundwater constituent exceeds the human health standards in department Circular WQB-7, 2001 edition, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) to characterize the water supply, the applicant must show, through a well log or other means, the depth to static water in the well and the total well depth.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule VII sets out the requirements for approval of existing water supply systems that are proposed for use in subdivisions. The rule requires existing systems to comply with all current requirements, or if the system was approved earlier, with the requirements in effect at the time of approval. A waiver process is provided to allow flexibility

in application of the requirement. The new rule would have the effect of requiring more existing systems to upgrade than under the current rules. This provision is necessary to ensure that water supply systems in new subdivisions do not adversely affect human health.

The new rule also adds a requirement that the applicant submit, for each existing water supply source, water quality analyses for nitrate and specific conductance. The required information is necessary to allow the reviewing authority to assess whether the water quality of the source is adequate for use in the new subdivision.

NEW RULE VIII ALTERNATE WATER SUPPLY SYSTEMS (1) A water source other than a well may be developed only if the applicant:

(a) shows that it is not economically feasible to develop a well or that groundwater quality, quantity, or dependability is unacceptable; and

(b) complies with the other requirements set out in this rule.

(2) The applicant shall provide evidence to the reviewing authority that the alternate water source is sufficient in terms of quality, quantity, and dependability.

(3) Springs, when developed as an alternate water system, must be constructed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-11, 2001 edition. Springs must also meet the requirements for wells regarding quality, quantity and dependability in [New Rules III and IV].

(4) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) testing for pH, temperature, conductivity, and turbidity;

(ii) testing for parameters with human health standards listed in department Circular WQB-7, 2001 edition;

(iii) testing for organisms that indicate direct influence by surface waters according to department Circular PWS-5, 1999 edition; and

(iv) seasonal bacteriological testing.

(b) The reviewing authority may determine the adequacy of water quantity and water dependability based upon flows during the seasonal low-flow period.

(5) Cisterns may be utilized only for individual water supplies. The reviewing authority may authorize such use only if:

(a) a potable water source is available for hauling within a reasonable distance from the cistern and:

(i) a licensed water hauler supplies water for the cistern and provides a letter verifying that the subdivision will be served by the hauler's business; or

(ii) the water supply is from a public water system and the owner of the public water system certifies that water is available from the public water system to serve the applicant's cistern;

(b) all water is hauled and disinfected in accordance with ARM Title 17, chapter 38, subchapter 5, or a reviewing authority-approved plan; and

(c) the cistern is constructed and installed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-17, 2002 edition.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule VIII, together with Circular 11, sets out the requirements for alternate water supply systems and the sampling that may be required to demonstrate quality, quantity and dependability of the water supply throughout the year. The new rule provides more detail than the current rules. The new rule is necessary to inform applicants of the department's requirements for such systems.

Department Circular DEQ-17, referenced in (5)(c) contains standards for cisterns for individual systems. A prior version of Circular DEQ-17 is being updated in this rulemaking. The updated Circular is expanded to reflect current good practice for safeguarding water supply systems involving cisterns. The updated Circular DEQ-17 is necessary to ensure that cistern systems in new subdivisions do not adversely affect human health.

NEW RULE IX LOT SIZES: EXEMPTIONS (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.

(a) If an applicant proposes to use subsurface wastewater treatment systems, as described in department Circular DEQ-4, 2000 edition, the minimum lot size must be one acre for each living unit and one acre per 700 gallons per day of design wastewater flow for commercial and other non-residential uses. The department may allow smaller lot sizes pursuant to waiver as provided in (1)(b) and ARM 17.36.601, or in accordance with the criteria set out in (1)(c) and (d). The reviewing authority may require larger lot sizes as provided in (1)(e).

(b) The department may allow, pursuant to a waiver under ARM 17.36.601, lot sizes smaller than one acre only for lots created before July 1, 1973, and only after approval by the local health department. To qualify for a waiver, the

applicant shall provide adequate evidence as set out in (1)(b)(i) and (ii) to demonstrate that water quality is protected:

(i) the applicant shall provide site-specific information regarding soil and aquifer characteristics, mixing zones, and impacts on surrounding properties taking into account existing and potential uses. The applicant shall also provide evidence showing that:

(A) level two treatment, as defined in ARM 17.30.702(9), is provided if a limiting layer is within 15 feet of the natural ground surface. The reviewing authority may require the applicant to construct soil test pits or groundwater monitoring wells to demonstrate the depth to a limiting layer;

(B) soil properties are suitable for treatment and disposal of wastewater; and

(C) the lot has adequate space for the wastewater treatment system and replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities.

(ii) in order to determine site suitability, the reviewing authority may require the applicant to provide additional site-specific information, including results of groundwater or soils analyses.

(c) The reviewing authority may allow lot sizes smaller than one acre, but not less than 20,000 ft^2 if all of the conditions in any one of (1)(c)(i) or (ii) are met:

(i) the water supply or wastewater treatment for the lots that are proposed to be smaller than one acre is provided by either a multiple user system (designed by a professional engineer) or by a public system; or

(ii) the water supply is provided by a cistern because it is not feasible to develop a water supply for the proposed subdivision that meets the water quality, quantity and dependability requirements in [New Rules III and IV], and the wastewater treatment systems for the proposed subdivision meet all of the requirements of this chapter.

(d) The reviewing authority may allow lot sizes smaller than one acre, including lots with less than 20,000 ft^2, if all of the conditions in any one of (1)(d)(i), (ii), or (iii) are met:

(i) the water supply and wastewater treatment are provided by public or municipal systems, and the well or other source for the water supply is not located on a lot that is proposed for lot size reduction;

(ii) the affected groundwater beneath and surrounding the subdivision has a specific conductance equal to or greater than 7,000 microSiemens/cm at 25°C, and all existing and anticipated uses of the groundwater are protected; or

(iii) the proposed subdivision is within a designated wastewater facility service area, which has been planned for by a local wastewater utility and approved by the department, and the acreage of lots on which drainfields are located is at

least one acre per 700 gallons per day of design wastewater flow; and

(A) the local wastewater utility certifies in writing that the collection systems serving the lots meet the utility's design standards and may be connected to the system when public wastewater mains are available. As-built plans for all collection systems must be submitted to the reviewing authority and to the local wastewater utility; or

(B) a dry-laid wastewater main is provided connecting the lots to a planned municipal wastewater main, with appropriate easements, and the local wastewater utility issues written approval of the design and installation of the main, and certifies that the dry-laid wastewater main, service lines, and related appurtenances may be connected to the municipal system when public wastewater mains are available. As-built plans for all dry-laid systems must be submitted to the reviewing authority and to the local wastewater utility.

(e) The reviewing authority may require lot sizes larger than those allowable under (1)(a) if necessary to protect water quality.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: New rule IX sets out the minimum lot sizes required if an applicant proposes to use subsurface wastewater treatment systems. Both the current and the amended rules require a minimum lot size of one acre, and provide criteria for approval of smaller lots. Under the current rules, the criteria for approval of smaller lots are vague, stating only that smaller lots may be approved if no sanitary problems will occur. See ARM 17.36.301(1). The new rule sets out more specific criteria for approval of smaller lots. Reductions in lot size would be limited to lots created before July 1, 1973, that meet certain requirements, lots with public or multiple user water or wastewater systems designed by a professional engineer, areas where only cisterns can be used, lots with water and wastewater systems provided by public systems, areas where the groundwater beneath the subdivision is of poor quality, and areas where the subdivision is within a designated wastewater facility service area and meets certain criteria.

In general, the new rules would allow fewer approvals of smaller lots compared to current rules. The department, together with the subdivision rules advisory task force, believes that the new rule is necessary to ensure that subsurface wastewater treatment systems do not adversely affect human health. The rule provides for flexibility through waivers for pre-existing lots, where a developer's options are more limited.

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to

Janet Scaarland, Water Protection Bureau, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-1374, or emailed to jscaarland@state.mt.us, no later than 5:00 p.m., April 11, 2002. To be guaranteed consideration, written comments must be postmarked on or before that date.

7. James Madden, attorney for the Department, has been designated to preside over and conduct the hearing.

8. 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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386, emailed to ejohnson@state.mt.us or may be made by completing a request form at any rules hearing held by the Department.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: *JAN P. SENSIBAUGH*
JAN P. SENSIBAUGH,
Director

Reviewed by:

JAMES M. MADDEN
James M. Madden, Rule Reviewer

Certified to the Secretary of State March 4, 2002.

**BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 20.9.101, 20.9.103, 20.9.106, 20.9.110, 20.9.113, 20.9.115, 20.9.116, 20.9.120, 20.9.122; adoption of new rules I through VIII pertaining to Youth Placement Committees; and repeal of ARM 20.9.121	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On April 24, 2002 at 9:00 a.m. a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Ave., Helena, Montana, to consider the proposed amendment, adoption and repeal of the above stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on April 17, 2002, to advise us of the nature of the accommodation that you need. Please contact Sherri Townsend, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301; telephone 406-444-3910; fax 406-444-4920; e-mail stownsend@state.mt.us.

3. The changes in these rules are necessary because the Youth Court Act that contains the statutes these rules implement was substantially changed both in the 1995 and 1997 Legislatures. The changes in 1995 were part of the departmental reorganization, which moved the responsibility for juvenile corrections and the youth placement committees from the Department of Family Services to the Department of Corrections. In 1996 these rules were changed merely to reflect the change of departments. Since the department has had the opportunity to work with the Youth Placement Committee process, there are now substantive changes needed. The changes in the 1997 session were pursuant to a study by the Interim Committee on Juvenile Justice and Mental Health. There were also less extensive statutory changes to the Youth Court Act during the 1999 legislative session. Most of the changes in these rules are necessary either to bring the rules current with the law or reflect operational changes now that the Department of Corrections is the agency responsible for these rules. The rest of the changes are simply for clarification.

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

20.9.101 DEFINITIONS For the purpose of this rule, the following definitions apply~~.~~:

(1) "Allocation account" means an account created by the department for each judicial district pursuant to 41-5-130, MCA, regardless of the district's decision to participate in the juvenile delinquency intervention program.

(2)~~(1)~~ "Change in placement" means the ~~release,~~ transfer or physical movement of an offender from a previously approved residential placement to another placement at ~~the same~~ a higher level of supervision. It does not include an emergency placement of 45 days or less.

(3)~~(2)~~ "Committee" means a youth placement committee with the department of corrections member appointed by the department and the remaining members appointed by the youth court judge pursuant to 41-5-121, MCA.

(4)~~(3)~~ "Committee chair" means the chief juvenile probation officer or designee from the juvenile probation staff who is a member of the youth placement committee ~~representing the department, or the chief juvenile probation officer delegated by the department member to serve in the department member's place~~.

(5)~~(4)~~ "Committee records" means written documents submitted to the committee by the juvenile probation or parole officer, but does not include recordings or documents required by the department for audits or monitoring of the committee process as required by 41-5-2006, MCA.

(6) "Cost containment fund" means funds retained by the department under 41-5-132, MCA for disbursement by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131, MCA.

(8) "Community alternatives" means programs, placements, or services provided or funded through the youth court probation office within the community of residence of the youth's parents or guardian, but does not include pre-adjudicatory detention.

(9) "Deficit" for the purpose of these rules means the point in time when a district's allocation account for a given year is over-encumbered.

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

(11) "Early intervention" means provision of supervision or services to a youth by the youth court upon initial referral to the youth court for a status or misdemeanor offense or services intended to prevent first offenders from further involvement in the juvenile justice system.

(12) "Juvenile delinquency intervention program" means the program established by the Montana legislature and implemented by the department of corrections to more effectively manage juvenile placement services and funding.

(6) remains the same, but is renumbered (13).

(14) "Non-participating district" means a Montana

judicial district that has elected not to participate in the juvenile delinquency intervention program.

(15) "Out-of-home placement" means placement of a youth in a program, facility, or home other than that of the youth's custodial parent, for purposes other than pre-adjudicatory detention or assessment. The term does not include placement in a shelter care or emergency placement facility for a period of less than 45 days.

(16) "Placement" has the same meaning as "out-of-home placement" as used throughout these rules but may include shelter care, detention, and emergency placements of less than 45 days.

(17) "Participating district" means a Montana judicial district that has elected to participate in the juvenile delinquency intervention program.

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

(19)~~(8)~~ "Referred to the youth court or department" means the process of submission from the chair of a youth placement committee to the youth court judge or the department's ~~regional administrator~~ representative of a written request for placement of a youth in out-of-home care intended to last longer than 45 days.

(20)~~(9)~~ "Referring worker" means the youth court probation officer ~~or department of corrections juvenile parole officer~~ or case manager charged with supervision and case management of an offender at the time of referral.

(21)~~(10)~~ "Residential placement" means placement in a youth care facility ~~or a youth correctional facility~~ other than a state youth correctional facility.

(22)~~(11)~~ "Residential treatment" means any psychiatric, medical, behavioral or social treatment provided to a youth in residence by a licensed youth care facility or a child placing agency approved by the department of public health and human services to provide intensive treatment to youth who are suffering from a mental disorder.

(23) "Surplus funds" means funds remaining in the participating district's account from the initial budget allocation at the end of a fiscal year.

(24) "Unused cost containment funds" means funds allocated to the cost containment fund which remain in the cost containment fund at the end of a fiscal year or funds allocated by the cost containment review panel to a participating or non-participating district which remain in the district's allocation account at the end of a fiscal year.

(25)~~(12)~~ "Youth care facility" (YCF) means a licensed or unlicensed facility in which foster care is provided and includes youth foster homes, youth group homes, child care agencies, boarding schools and youth assessment centers.

(26)~~(13)~~ "Youth correctional facility" means a ~~residential~~ facility for the rehabilitation of delinquent youth such as the pine hills youth correctional facility, riverside youth correctional facility, or a youth correctional facility under contract with the department of corrections for the sole purpose of housing and treating adjudicated

delinquent youth.

(27) "CAPS" means child and adult protective services.

(28) "DPHHS" means department of public health and human services.

AUTH: 52-1-103, 53-1-203, MCA
IMP: 41-5-121, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132, 41-5-2006, 52-1-103, 53-1-203, and 53-21-102, MCA

20.9.103 DUTIES OF THE YOUTH PLACEMENT COMMITTEE (1) ~~A department representative shall act as committee~~ The committee chair ~~and~~ shall be responsible for performing the following tasks:

(a) through (e) remain the same.

(f) in the case of non-participating districts, forward primary and alternative recommendations to the department's ~~regional administrator~~ juvenile community corrections bureau chief ~~and juvenile placement bureau~~, as well as~~,~~ the county attorney, the youth's attorney and the youth court judge prior to any scheduled disposition hearing;

(g) in the case of participating districts, forward primary and alternative recommendations to the youth court judge, the county attorney, the department's representative and the youth's attorney prior to any scheduled disposition hearing;

(h)~~(g)~~ forward a copy of the youth court or department representative's ~~regional administrator's~~ agreement or disagreement and any subsequent court orders to the department's juvenile placement ~~bureau~~ unit;

(i)~~(h)~~ notify supervising case managers of placement reviews required by 41-5-122(7), MCA; and

~~(i) present to the committee all juvenile offenders under department care and custody in state correctional facilities whose change of placement is pending as established by 41-5-121(b), MCA; and~~

(j) remains the same.

(2) Committee meetings shall provide a venue for department and youth court compliance and monitoring with 41-5-2003 and 41-5-2004, MCA, through the exchange and gathering of information as directed by department policy.

(3)~~(2) If a~~ A second department representative ~~is a member of the~~ may attend youth placement committee meetings if requested by the committee chair.~~, that person~~ The additional department representative shall act as a resource agent and financial specialist for the committee. This second representative shall be a non-voting member of the committee.

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

(5)~~(4)~~ The department of corrections shall appoint one member, and ~~T~~the ~~department regional administrator~~ youth court judge shall appoint ~~each~~ the remaining committee members who shall serve a term of two years. ~~except for the Department of Corrections representative.~~ A member may be reappointed to additional terms.

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

~~(6) The chief juvenile probation officer may also convene the youth placement committee and chair it at the request of the department representative.~~

AUTH: 52-1-103, 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132 and 41-5-2006, MCA

20.9.106 REFERRALS TO THE COMMITTEE (1) through (3)(c) remain the same.

(d) any school reports available to the ~~probation officer~~ referring worker which may be relevant to the selection of an appropriate placement;

(e) remains the same.

(f) any legal documentation pertaining to the youth; ~~and~~

(g) the referring worker's recommendations as to available facilities which may be appropriate for the youth, including information regarding estimated costs of care and proposed length of treatment necessary for the youth~~.~~; and

(h) an assessment of the youth's treatment needs using a recognized assessment or evaluation instrument which indicates the specific outcomes expected from the treatment or placement and how those outcomes will be measured and documented.

(4) In the case of a change of placement under 41-5-121, MCA, the person responsible for supervision pursuant to 41-5-1523(2), MCA, shall submit a referral to the committee chair when change in a placement lasting longer than 45 days is contemplated. Placement or d~~D~~ischarge of a youth from a state youth correctional facility or a state operated facility is not a change of placement under this rule.

(5) Five copies of the referral form and the social summary or predisposition report must be submitted to the placement committee chair prior to the scheduled meeting for distribution to committee members.

(6) and (7) remain the same.

AUTH: 52-1-103(17), 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, MCA

20.9.110 PROCEDURES FOR YOUTH PLACEMENT COMMITTEE MEETINGS (1) The committee shall conduct regular meetings ~~as necessary~~ and shall meet within 10 working days of receipt of ~~the~~ a referral by the chair.

(2) remains the same.

(3) Each committee member shall be provided a copy of the referral form, the social summary, predisposition report and any other relevant information at least 24 hours prior to the meeting.

(4) Committee deliberations shall be closed to the public to protect the youth's rights of individual privacy. Testimony presented to the committee may be closed to the public and non-voting committee members to protect the youth's rights of individual privacy.

(5) A majority of committee members present at the

meeting must concur in the recommendation forwarded to the department or youth court.

(6) The county attorney, the youth's attorney or the parents, guardian or custodian may submit a written statement pertaining to the selection of an appropriate placement for the youth and may request an opportunity to appear before the committee to present any information relevant to the placement of the youth.

(7) At its discretion, the committee may invite persons with specific or special knowledge to provide information to the committee which will assist the committee in developing placement recommendations for the youth. A committee meeting may not be used by private organizations as a forum for marketing services. Committee members serving on boards or as employees of private facilities which are being considered as either a primary or alternative placement option for a youth may not vote on the placement recommendation for that youth.

AUTH: 41-5-2006, 52-1-103(17), and 53-1-203, MCA
IMP: 41-5-122, 41-5-123, 41-5-124, and 41-5-125, MCA

20.9.113 PLACEMENT RECOMMENDATION PROCEDURES (1) The committee chair shall submit in writing the primary and alternative recommendations prior to disposition:

(a) to the department within 48 hours of the meeting, excluding weekends and legal holidays~~.~~ in non-participating districts;

(b) to the presiding youth court judge within 48 hours of the meeting, excluding weekends and legal holidays in participating districts.

(2) remains the same.

(3) The committee may notify the presiding youth court judge or department of its recommendation by telephone prior to submitting its written recommendation.

(4) In non-participating districts the department shall determine whether to accept the committee's recommendation ~~W~~within 72 hours of receipt of the recommendations, excluding weekends and legal holidays~~, the department shall determine if it will accept the committee's recommendation.~~ and ~~The department~~ shall notify the committee chair of its decision ~~within three working days~~.

(a) If the department approves either of the committee's recommendations, the department shall notify the committee chair~~man~~. ~~who~~ The committee chair will notify the referring worker, who will make the necessary arrangements to place the youth in the approved facility.

(b) Prior to disposition, ~~T~~the committee chair will send a copy of the department's approval for placement to the district court judge who has jurisdiction over the youth, the county attorney and the youth's referring worker.

(5) In participating districts at disposition, the youth court judge shall determine whether to accept either of the committee's recommendations. The youth court may make a placement after considering the recommendations of the committee and the youth court shall enter the placement in the

CAPS system for payment.

(a) If the youth court approves either of the committee's recommendations, the youth court shall notify the committee chair. The committee chair shall notify the referring worker, who will make the necessary arrangements to place the youth in the approved facility.

(b) The committee chair shall send a copy of the youth court's approval for placement to the department, the county attorney, the youth's attorney, and the youth's referring worker.

(6)~~(5)~~ In non-participating districts, i~~I~~f the department rejects both of the committee's recommended placements, the department shall notify the committee chair in writing of the reasons for rejecting each placement following the disposition hearing. The department ~~and~~ shall make arrangements with the youth's probation officer for the placement of the youth in an appropriate ~~facility~~ placement determined by the department. The department shall notify the committee chair, the county attorney and the appropriate ~~district~~ youth court judge in writing of the facility selected for the placement of the youth within ~~72 hours~~ three working days of the department's decision.

(7) In participating districts, if the youth court rejects both of the committee's recommended placements, the youth court shall notify the committee chair in writing of the reasons for rejecting each placement. The youth court shall make arrangements with the youth's probation officer for the placement of the youth in an appropriate facility determined by the youth court. The youth court shall notify the committee chair, the county attorney and the department in writing of the facility selected for the placement of the youth within three working days of the youth court's decision.

(8) All placements and services must be entered accurately into the CAPS system. A copy of the court order placing the youth and any other documents concerning the youth, including the initial youth placement committee referral packet, shall be provided to the department and the placement or service provider within three working days of placement for monitoring purposes.

AUTH: 52-1-103(17), 53-1-203, MCA
IMP: 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.115 CRITERIA FOR APPROVING RECOMMENDATIONS (1) The department ~~will~~ may only approve the recommendation of the youth placement committee in non-participating jurisdictions if the recommended placement meets the following criteria:

(a) through (f) remain the same.

(g) The placement is in a facility which has a contract with the department or youth court to accept youths placed by the department or youth court at the rate determined by the department or youth court, or has otherwise been approved by the department or youth court;

(h) The ~~region~~ judicial district that will be financially responsible for the placement costs has adequate funding

resources with which to pay for the placement without overspending that judicial district's ~~or region's~~ allocated juvenile residential placement budget; ~~and~~

(i) In non-participating districts the placement recommended is in accordance with a disposition under 41-5-1512 and 41-5-1513, MCA, pursuant to an adjudication under 41-5-1502, MCA~~.~~; and

(j) In participating districts the placement recommended is in accordance with a disposition under 41-5-1302, 41-5-1501, 41-5-1512 or 41-5-1513, MCA.

(2) remains the same.

AUTH: 52-1-103, 53-1-203, MCA
IMP 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.116 SIX-MONTH REVIEWS OF YOUTH CONTINUING IN PLACEMENT (1) through (1)(b) remain the same.

(c) continued placement can be maintained within the resources of the department or the judicial district.

(2) Reviews of a youth's placement progress conducted by a citizen review board or foster care review committee may be accepted by the committee chair of the youth placement committee as a substitute for the six-month review provided the review addresses and documents all of the information required in (1)(a), (b) and (c).

AUTH: 53-1-203, MCA
IMP: 41-5-122, MCA

20.9.120 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT OR PLACEMENT (1) The youth placement committee may recommend youth for residential placement ~~in residential~~ or treatment if:

(a) the youth experiences severe delinquent, social, ~~and/or~~ behavioral and/or mental health problems that prevent adjustment to his family, school and/or community;

(b) remains the same.

(c) intensive residential treatment or a residential placement is necessary to restore or develop an acceptable personal or community adjustment;

(d) remains the same.

(e) a current mental health ~~assessment indicates that there is a~~ diagnosis~~,~~ and:

(i) a certificate of need and preauthorization through a DPHHS mental health services contractor, which supports the recommended placement~~.~~ in a residential treatment facility; or

(ii) a formal assessment of the youth which supports the need for a residential placement.

(2) Placement in any residential treatment or a residential placement outside of Montana will not be approved, unless:

(a) there are no available programs, facilities or other placements in Montana accessible during the next 30 days which can provide appropriate treatment or services for the youth; or

(b) and (c) remain the same.

(3) Placement in residential treatment or a residential placement shall not exceed six months, unless extension of the placement is authorized in writing by the department in non-participating districts or the presiding youth court judge in participating districts. Any extension may only be made following the placement committee review and recommendation to the department or the presiding youth court judge.

(a) through (a)(iii) remain the same.

(4) No youth shall be placed in residential treatment or a residential placement unless there is a contract with DPHHS or an individual placement agreement signed by the provider and the placing agency which contains the following:

(a) identification of the problems of the youth which require placement ~~in residential treatment~~;

(b) and (c) remain the same.

(d) desired outcome of the services or treatment to be provided with a description of the instrument to be used to measure the outcome; ~~and~~

(e) the requirement for a discharge plan that includes:

(i) provisions for any medically necessary or recommended mental health services to be provided in the community~~.~~; and

(ii) a description of a step down or transfer plan which may be initiated if emergency removal of the youth is required by either the facility or placing worker;

(f) costs for services or placement; and

(g) identification of financially responsible party.

AUTH: 52-1-103, 53-1-203, MCA
IMP: 41-5-122, 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.122 CONFIDENTIALITY OF COMMITTEE MEETINGS AND RECORDS (1) through (2)(b) remain the same.

(c) the district or youth court judge with jurisdiction over the youth;

(d) through (h) remain the same.

(3) Information such as psychiatric reports, child abuse or neglect reports, or police reports containing confidential information may not be disclosed to any parties named in those reports unless authorized by order of the district or youth court judge.

(4) Recordings or records of committee deliberations used by the department for monitoring or audit purposes may not be disclosed to persons outside of the department or youth court unless such disclosure is authorized by order of the district or youth court judge.

AUTH: 52-1-103, 53-1-203, MCA
IMP: 41-5-123, 41-5-124 and 41-5-125, MCA

5. The proposed new rules provide as follows:

RULE I EVALUATION OF JUDICIAL DISTRICTS (1) All judicial districts will be evaluated annually by the department of corrections. The evaluation will consist of:

(a) a random review of all offenders receiving services through the youth court which were funded wholly or in part by

funds allocated by the department;

(b) a random review of all offenders placed in state youth correctional facilities by the district;

(c) a random review of all information entered into the CAPS system by the district; and

(d) interviews with random members of the youth placement committee in each district.

(2) Each district will receive a copy of the evaluation of their district.

(3) The department shall compare districts to evaluate the effectiveness of programs and shall compare participating districts with non-participating districts.

(4) The evaluation will determine whether intervention programs are effective based upon, but not limited to, the following:

(a) number of offenders served;

(b) recidivism rates;

(c) at risk population in the participating district; and

(d) proper use of evaluation tools.

(5) Each district shall prepare a summary of the use of all of the funds allocated through the department to that district by June 1 of each year to assist the department in conducting the evaluation.

(6) The department shall distribute a copy of a district's evaluation report to the department director, the evaluated district, and each member of the cost containment review panel within 45 days of the completion of an evaluation.

AUTH: 41-5-2006, MCA
IMP: 41-5-2001, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005 and 41-5-2006, MCA

RULE II ACCESS TO DISTRICT RECORDS (1) Each district shall allow the department complete access to any and all records maintained or generated by the district which concern youth who received any service funded in whole or in part by funds allocated by the department.

(2) The department shall provide the district with written notice five business days prior to any visit to gather records for the evaluation.

AUTH: 41-5-2006, MCA
IMP: 41-5-215 and 41-5-216, MCA

RULE III REPORT TO THE LEGISLATURE (1) The department shall submit a report to the legislature on each participating jurisdiction and non-participating jurisdiction at the end of each biennium in compliance with 5-11-210, MCA. The report shall:

(a) assess the effectiveness or ineffectiveness of intervention programs developed by participating jurisdictions; and

(b) make a recommendation to the legislature regarding the juvenile delinquency intervention program.

AUTH: 41-5-2006, MCA

IMP: 41-5-2006, MCA

RULE IV ALLOCATION OF JUVENILE PLACEMENT FUNDS TO JUDICIAL DISTRICTS AND COST CONTAINMENT FUND (1) The department shall allocate funds to each participating and non-participating district for the treatment or placement of youth based on the adolescent population of each district for fiscal year 2002.

(2) Beginning in fiscal year 2002, the cost containment review panel shall determine the allocation formula for juvenile placement funds by April 30 for each subsequent fiscal year. The allocation formula may use, but is not limited to, number of at risk youth in each district, crime statistics, per capita income averages, percentage of youth placed in state youth correctional facilities, referrals, probation officer case loads, poverty level index, and district placement history.

(3) The department may not allocate less than $1 million to the cost containment fund each fiscal year from the juvenile placement fund.

(a) The department shall allocate $1 million to the cost containment fund for fiscal year 2002.

(b) The department, after reviewing recommendations from the cost containment review panel, shall determine any allocation beyond the statutory minimum to the cost containment fund for fiscal year 2003 and all subsequent fiscal years. The additional allocation amount shall be determined by April 30th of the preceding fiscal year.

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131 and 41-5-132, MCA

RULE V DISTRIBUTION OF FUNDS TO PARTICIPATING DISTRICT AT THE END OF A FISCAL YEAR (1) Each participating district shall be entitled to retain all surplus funds in their account at the end of each fiscal year. Surplus funds retained by the participating district must be used by the participating district during the following two fiscal years to fund intervention programs and services for youth in the participating district.

(2) Non-participating districts may not retain any surplus funds in their allocation at the end of a fiscal year. Unused funds in non-participating districts shall be returned to the department.

(3) The department may not release any surplus funds to a participating district until such time as all placements, services, and bills for services have been entered accurately in the CAPS system and a final account balance has been determined by the department for all services which are not paid through the CAPS system. The department shall finalize each participating district's account balance within 180 days after the end of a fiscal year and release the funds to the participating district. The department shall not pay and may not release funds to any participating district for bills presented for payment more than 90 days after the service was

rendered.

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131 and 41-5-132, MCA

RULE VI MONITORING AND AUDITING OF PARTICIPATING AND NON-PARTICIPATING DISTRICTS (1) Each participating district shall keep an accurate accounting of the expenditure of funds which are not required to be entered into the CAPS system for services provided to youth from their account.

(2) Each participating and non-participating district shall input costs for services to youth into the CAPS system.

(a) With department approval, participating districts may expend funds which the department agrees are not able to be processed through the CAPS system. Participating districts shall provide the department copies of the expenditures of all non-CAPS payments within 10 days of incurring the expense.

(b) Non-participating districts may not expend any funds from their allocation account for services which cannot be processed through the CAPS system. In non-participating districts, the department is prohibited from paying any bill for services incurred while a youth is in residence with a custodial parent or guardian, or which are not directly part of an out-of-home, shelter care, or emergency placement.

(c) The department shall conduct desk reviews of expenses for all districts. If the department encounters an error or irregularity in a district's account, the department shall request an audit from the department's internal auditor or shall contract with a reputable auditor to conduct an audit of the district's account.

AUTH: 41-5-2006, MCA
IMP: 41-5-2006, MCA

RULE VII DISTRIBUTION OF COST CONTAINMENT FUNDS (1) The cost containment review panel shall be consulted by any district which is projected to have a deficit in the district's allocation account in a fiscal year. The cost containment review panel shall determine whether to allocate additional funds to a district or require the district to mitigate any projected deficit.

(2) The cost containment review panel shall determine the allocation of any unused cost containment funds to participating districts or the department at the end of the fiscal year. The allocation of unused cost containment funds shall be done to further the purposes and intent of the juvenile delinquency intervention program.

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, and 41-5-2006, MCA

RULE VIII COST CONTAINMENT REVIEW PANEL (1) The cost containment review panel shall be appointed by the director of the department of corrections. Members of the cost containment review panel shall serve for a term of two years and may be appointed to serve additional terms. The cost

containment review panel shall elect a chairman from its membership to serve for the duration of the member's appointment.

(2) The cost containment review panel shall meet at any time that a majority of the members deems necessary. The cost containment review panel may meet telephonically. The cost containment review panel shall meet within 20 business days of a request by a district for additional funding from the cost containment fund.

(3) The department of corrections shall set $5,000 aside from the cost containment fund for reimbursement of members of the cost containment review panel for any travel expenses incurred should the panel determine to meet in person.

(4) The chairman of the cost containment review panel or his designee shall be responsible for scheduling and providing any and all information concerning meeting times and rooms for the cost containment review panel.

(5) The participating or non-participating district shall provide any and all information the district deems appropriate in filing a request for additional funding with the cost containment review panel and shall provide a complete request packet to each panel member five working days prior to any hearing held by the panel on the request.

(6) Upon the request of the cost containment review panel, the department shall provide a complete summary of a district's previous years expenditures on placements by the youth court to the panel.

(7) The participating or non-participating district which requests additional funding from the panel shall present their requests either telephonically or in person, at the discretion of the chairman of the panel.

(8) The cost containment review panel shall issue a decision on whether to release additional funds from the cost containment fund to a district within 10 working days of a hearing on the request. The cost containment review panel shall issue a decision stating the reason for granting or denying additional funding from the cost containment fund. The decision shall also document all requirements that the district must perform in order to receive additional funding, if any.

(9) The cost containment review panel shall meet during the month of April of each year either telephonically or in Helena, to determine the allocation of the juvenile placement fund to all participating and non-participating districts in conjunction with the department. The cost containment review panel shall further recommend the amount the department shall allocate to the cost containment fund above the statutory minimum of $1 million each fiscal year.

(10) The cost containment review panel may request assistance from the department in the development and implementation of internal operating procedures of the panel.

AUTH: 41-5-2006, MCA
IMP: 41-5-132, MCA

6. The rule proposed to be repealed is:

20.9.121 CHANGE OF PLACEMENT BY DEPARTMENT FACILITY on page 20-143.13 of the Administrative Rules of Montana.
AUTH: 41-5-2006 and 53-1-203, MCA
IMP: 41-5-123, 41-5-130, 41-5-2003, 41-5-2004 and 41-5-2005, MCA

7. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the address listed in 9, and must be received no later than May 2, 2002.

8. Colleen White, Rule Reviewer, will preside over and conduct the hearing.

9. The Department of Corrections 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 community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Colleen White, Rule Reviewer, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301, fax to 406-444-4920, e-mail cowhite@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Corrections.

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

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

/s/ Colleen A. White
Colleen A. White, Rule Reviewer

Certified to the Secretary of State March 4, 2002

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

In the matter of the proposed amendment of ARM 8.36.601, pertaining to continuing education	) NOTICE OF PROPOSED) AMENDMENT))

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 1, 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 and 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 8, 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 dlibsdopt@state.mt.us.

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

8.36.601 REQUIREMENTS (1) Each licensed optometrist shall be required to attend not less than 36 hours ~~biannually~~ biennially of scientific clinics, forums or optometric educational studies as may be provided or approved by the board of optometry as a prerequisite for ~~his/her~~ license renewal. Continuing education will be reported every two years on the renewal form commencing with the 1999 renewal form.

(a) through (3) remain the same.

(4) ~~After attendance at an approved continuing education program the optometrist shall submit a completed continuing education report form.~~ The continuing education requirement is waived for the reporting period during which:

(a) the person graduates from an accredited school of optometry and then promptly becomes a licensee; or

(b) the licensee completes a residency program accredited by the accreditation council on optometric education of the American optometric association.

(5) remains the same.

AUTH: 37-1-319, 37-10-202, MCA
IMP: 37-1-306, MCA

REASON: There is reasonable necessity to amend ARM 8.36.601 in order to clarify the continuing professional education requirements for optometrists. The Board notes that the same proposed amendments were previously made in the May 10, 2001, issue of the Montana Administrative Register. A member of the public commented and asked whether the Board would accept residency program courses in satisfaction of the continuing education requirement. As a result of that comment, the Board gathered information from the various schools of optometry concerning their residency programs, and has modified the proposed language of the rule to accept accredited residency program courses.

The Board proposes to amend subsection (1) because "biannually" should have been stricken in a previous notice and amended to the word "biennially" to correctly reflect the Board's intent of the two-year time frame. The deletion of text in subsection (4) is proposed to remove the requirement for licensees to submit attendance forms following each continuing education program. This requirement duplicates the requirement in (5) that the licensees maintain a copy in their own records. This will reduce staff time and storage requirements. The new material added to (4) addresses the problem with the requirement that recent graduates are required to complete the full 36 hours of continuing education prior to the end of their first reporting period, regardless of whether or not it is six months or 20 months away from the date of licensure. These persons have just completed their college education and are viewed to be educated on all of the current procedures and technical knowledge which continuing education is intended to provide to those in practice. Requiring recent graduates to complete the 36 hour requirement at this time is viewed to be duplicative of their recent education and a definite time and cost burden on new licensees. For these reasons the Board proposes to grant them a waiver of the continuing education requirement during the first reporting period following graduation.

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 dlibsdopt@state.mt.us to be received no later than 5:00 p.m., April 12, 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 dlibsdopt@state.mt.us to be received no later than 5:00 p.m., April 12, 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://discoveringmontana.com/dli/opt. The Department strives to make the electronic copy of this Notice of Proposed 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. 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 e-mail address does not excuse late submission of comments.

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 dlibsdopt@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 1, 2002, in Billings to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any

comments concerning the proposed amendments beyond the April 12, 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 4, 2002.

**BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTIITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the proposed amendment of ARM 8.13.301, 8.13.303, 8.13.305, 8.13.306, 8.13.307, and 8.13.308 pertaining to application, fees, minimum standards for licensure, continuing education, inactive status, and reactivation of license and the proposed adoption of new rule I, notification of denial or disciplinary action and new rule II, supervision	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On April 4, 2002, at 10:00 a.m., a public hearing will be held in the Business Standards Division basement conference room, room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

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 Board of Clinical Laboratory Science Practitioners no later than 5:00 p.m., on March 25, 2002 to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2393, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305, e-mail dlibsdcls@state.mt.us.

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

8.13.301 APPLICATIONS FOR LICENSE (1) through (4) remain the same.

(5) An incomplete application shall be returned to the applicant with a statement regarding incomplete portions. The applicant must correct any deficiencies and resubmit the application within ~~10~~ 30 days of the date of the request for information unless the applicant incurs extenuating circumstances. Failure to resubmit the application shall be treated as a voluntary withdrawal of the application.

(6) remains the same.

AUTH: 37-34-201, MCA

IMP: 37-34-201, 37-34-305, MCA

REASON: Because an applicant may need to request information from national certifying agencies, or information from other states, and allowing for the mailing of documents, the Board finds there is reasonable necessity to change the time allowed to reply with extra information required by the board to 30 days, instead of the 10 currently allowed.

8.13.303 FEES (1) remains the same.
(2) remains the same.
(a) remains the same.
(b) temporary license fee ~~100~~ 25
(c) through (e) remain the same.
(f) ~~licensure~~ license by ~~reciprocity~~ endorsement fee 100
(g) through (i) remain the same.

AUTH: 37-1-134, 37-34-201, MCA
IMP: 37-34-201, MCA

REASON: The Board finds there is reasonable necessity to reduce the temporary license fee to more accurately reflect the cost of issuing a temporary license. Because an applicant submits an application for a regular license (which carries a $100 fee) at the same time the applicant applies for a temporary license, the Board believes that the incremental cost for issuing the temporary license involves only about 25% more work than an application without a request for a temporary license. The proposed reduction will save each temporary license applicant $75. With approximately 10 temporary licenses issued a year, the fiscal impact to the Board is estimated to be a $750 per year reduction in revenue.

8.13.305 MINIMUM STANDARDS FOR LICENSURE (1) remains the same.
(a) through (b)(iv) remain the same.
(v) immunohematology; ~~and~~
(vi) cytogenetics~~.~~ ; and
(vii) molecular biology.
(c) remains the same.
(2) through (2)(f) remain the same.

AUTH: 37-34-201, MCA
IMP: 37-34-303, MCA

REASON: The Board finds there is reasonable necessity to require the licensure of the specialty field of molecular biology, which is now sufficiently well recognized as a distinct sub-specialty in the profession of clinical laboratory science practice. The Board voted to add molecular biology as a specialty licensing field at its October 1, 2001, meeting. The proposed new category of license will affect

approximately 2 to 5 licensees a year. This will increase the Board's general revenue $200 to $500 annually.

8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) All applicants for renewal of an active status license~~s~~ shall have completed continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the licensee's first full year of licensure.

(a) through (d) remain the same.

(2) and (3) remain the same.

AUTH: 37-34-201, MCA
IMP: 37-34-201, MCA

REASON: Because of confusion among licensees, the Board finds there is reasonable necessity to clarify the rule to state that only persons with an active status license must comply with the continuing education requirements.

8.13.307 INACTIVE STATUS (1) remains the same.

(a) and (b) remain the same.

(2) remains the same.

(3) With annual renewal, and payment of the required fee in accordance with ARM 8.13.303, ~~A~~ a licensee may remain on inactive status ~~for a period not to exceed three years. After three years, the licensee shall submit a request for further inactive status or reactivate the license~~. Failure to renew an inactive status license ~~or reactivate~~ will result in ~~termination~~ forfeiture of the license pursuant to ARM 8.13.304. ~~The holder of a terminated license will be required to re-apply for licensure.~~

(4) No continuing education hours are required to maintain a license on inactive status.

AUTH: 37-1-131, 37-1-319, 37-34-201, MCA
IMP: 37-1-131, 37-1-141, 37-1-319, 37-34-201, MCA

REASON: Because of confusion among the licensees, the Board finds there is reasonable necessity to clarify that a licensee must annually renew an inactive license. The Board also wants to clarify that there is no requirement for continuing education to keep a license in inactive status.

8.13.308 REACTIVATION OF INACTIVE LICENSE (1) For a licensee to reactivate ~~a~~ an inactive license, the licensee must:

(a) file ~~an updated~~ a reactivation of inactive status application form, as provided by the board, and pay the required fee in accordance with ARM 8.13.303; and

(b) remains the same.

AUTH: 37-1-131, 37-1-319, 37-34-201, MCA
IMP: 37-1-131, 37-1-319, 37-34-201, MCA

REASON: The board finds there is reasonable necessity to clarify that this rule applies to "inactive licenses" only. This will affect approximately only 5-10 licenses a year, and there will be no fiscal impact upon the Board or licensee fees.

4. The proposed new rules provide as follows:

NEW RULE I NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION

(1) The board's screening panel will give any applicant or licensee whose application for licensure is denied, or against whom disciplinary action is proposed, written notice pursuant to 37-1-307, MCA. Notice will be given of:

(a) the reason(s) for the proposed denial or disciplinary action; and

(b) the individual's right to a hearing under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 37-1-131, 37-34-201, MCA
IMP: 37-1-131, 37-1-307, 37-1-309, 37-34-201, MCA

REASON: The Board finds there is reasonable necessity to propose NEW RULE I because a legislative audit that found that the Board had not adopted rules implementing section 37-34-201(3)(f), MCA. The proposed new rule summarizes the Board's duty to provide notice and an opportunity to be heard.

NEW RULE II SUPERVISION (1) The degree of supervision required of the clinical laboratory technician by the clinical laboratory scientist or specialist shall be determined by the supervisor after an evaluation of appropriate factors including, but not limited to the following:

(a) the complexity of the test to be performed;

(b) the training and capability of the technician to whom the laboratory test is delegated; and

(c) the demonstrated competence of the technician in the procedure being performed.

(2) Depending on the evaluation made pursuant to (1), the supervisor shall make a determination of how critical it is for the supervisor to be immediately available to provide guidance and supervision to the technician. The supervisor shall make a determination based on all relevant factors whether to be accessible via onsite, telephonic, or electronic consultation.

AUTH: 37-34-201, MCA
IMP: 37-34-201, MCA

REASON: The Board finds there is reasonable necessity to propose NEW RULE II because of a legislative audit that found

that there were no rules implementing section 37-34-201(3)(g), MCA. The proposed new rule articulates the duty of a supervisor to make individualized determinations about how the supervisor will be available to a technician, and whether that contact is most appropriately made in person, telephonically, or via an electronic (computer) linkage.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdcls@state.mt.us and must be received no later than 5:00 p.m., April 12, 2002. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://discoveringmontana.com/dli/cls, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. 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 e-mail address does not excuse late submission of comments.

7. The Board of Clinical Laboratory Science Practitioners 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 Clinical Laboratory Science Practitioners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdcls@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The Board of Clinical Laboratory Science Practitioners will meet on April 15, 2002, in Helena to consider the comments made by the public, the proposed responses to those

comments, and take final action on the proposed amendments and new rules. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendments and new rules beyond the April 12, 2002, deadline.

9. The estimated economic impact of the various proposals has been noted in the statement of reasonable necessity following each rule.

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

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

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
KAREN MCNUTT, 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's Office March 4, 2002.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed transfer and amendment, repeal, and transfer of ARM Title 8, Chapter 22, pertaining to horse racing	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED TRANSFER AND AMENDMENT, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On April 10, 2002 at 10:30 a.m. a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 9th Avenue at Helena, Montana, to consider the proposed transfer and amendment, repeal and transfer of ARM Title 8, Chapter 22.

2. The Department of Livestock 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 Board of Horse Racing no later than 5:00 p.m. on April 3, 2002, to advise us of the nature of the accommodation that you need. Please contact Janet Bramblett, 1424 Ninth Avenue, PO Box 200512, Helena, Montana 59620-0512; 406-444-4287; TTD 1-800-253-4091; FAX 406-444-4305.

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

8.22.301 (32.28.301) INTRODUCTION ~~(1) Unless inconsistent with chapter 2, these additional rules, ARM 8.22.301 through 8.22.320, shall also be incorporated in the procedural rules. If any section, subsection, sentence, clause, or phrase of ARM 8.22.301 through 8.22.320, be for any reason held to be invalid, such holding shall not affect the validity of the remaining portion of the total rules. The Montana state board of horse racing hereby declares that it would have passed and adopted ARM 8.22.301 through 8.22.320 in each section, subsection, sentence, clause of phrase, separately and irrespective of the fact that any one or more of them be held invalid.~~

(2) will remain the same, but will be renumbered (1).

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-202, MCA

REASON: The proposed amendment will delete (1) of the rule, as the language is not necessary. The clause was originally used as an "invalidity" clause, such as those used in contracts, but these types of clauses are not necessary for administrative rules. Rules may only be declared invalid by a Court or the Legislature, regardless of whether an

"invalidity" clause exists.

8.22.302 (32.28.302) BOARD OF STEWARDS (1) The stewards shall conduct summary hearings with respect to the violations of the rules of the board~~, the customs of the course,~~ and Montana Code~~s~~ Annotated which have occurred during the period of a race meeting.

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

~~(6) On review of a stewards' decision disqualifying a horse in a race, the board shall not substitute its judgment for (second guess) that of the stewards as to the weight of the evidence on questions of fact.~~

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-202, MCA

REASON: The proposed amendment to (1) will remove the phrase "customs of the course," as this is archaic language no longer in use in the horse racing industry.

The proposed amendment to (6) will delete the language on the Board's inability to "substitute its judgment" for that of the stewards on disqualifications. This change is necessary because the Montana Supreme Court ruled that this rule language did not afford licensees a truly impartial de novo review of stewards' disqualifications when they were appealed to the Board. The Board will therefore remove this language from its rule so that all appeals on disqualifications will be fully considered on the basis of the evidence presented.

8.22.324 (32.28.207) STAY OF SUMMARY IMPOSITION OF PENALTY (1) Either the applicable board of stewards or the board of horse racing may stay the imposition of a fine, license suspension and/or other penalty that results from a summary hearing conducted by the stewards with respect to violations of the rules of the board~~, the customs of the course,~~ and the Montana Code Annotated.

(2) will remain the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-202, MCA

REASON: The proposed amendment to (1) will remove the phrase "customs of the course," as this is archaic language no longer in use in the horse racing industry.

8.22.325 (32.28.208) HEARING EXAMINERS (1) In accordance with ~~sections~~ 2-4-611 ~~and 37-1-121~~, MCA, a hearing examiner may be appointed to preside over administrative contested case proceedings under the jurisdiction of the board of horse racing. In those instances in which hearing examiners are appointed, the powers of the board defined by these administrative rules of procedure shall be available to the hearing examiner. The board of horse racing retains jurisdiction under ~~section~~ 2-4-202~~(4)~~, MCA, to make all final orders.

AUTH: Sec. 23-4-202, MCA

IMP: Sec. 23-4-202, 37-1-121, MCA

REASON: The proposed amendment to (1) will delete the statutory reference to Mont. Code Ann. 37-1-121. This change is necessary because the statute refers to duties of the commissioner of the Department of Labor to appoint hearing examiners, hire personnel for boards, etc. The Board of Horse Racing is administratively attached to the Department of Livestock, not the Department of Labor, so the incorrect statutory citation is being removed.

8.22.401 (32.28.401) POWERS AND DUTIES OF EXECUTIVE SECRETARY (1) will remain the same.

(2) The executive secretary shall~~,~~:

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

(c) inspect and approve racing facilities;

(d) through (f) will remain the same.

(g) schedule hearings and have hearing examiners appointed;

(h) and (i) will remain the same.

(j) maintain and preserve the official records of the board~~.~~;

(k) approve all racing officials;

(l) disburse funds; and

(m) represent the board with the department.

AUTH: Sec. 23-4-104, 23-4-106, MCA
IMP: Sec. 23-4-106, MCA

REASON: The proposed amendment to (2)(c) will add approval of racing facilities to the list of duties of the Board's Executive Secretary. The Executive Secretary of the Board is authorized by statute at Mont. Code Ann. 23-4-106 to perform duties as adopted by rule by the Board. The Board is therefore adding approval of race facilities to the Executive Secretary's duties to ensure that all facilities meet minimum licensure requirements for safety and the welfare of the public and licensees.

The proposed amendment to (2)(g) is necessary because the language allowing the Executive Secretary to appoint hearings examiners is not necessary. The Montana Administrative Procedure Act (MAPA) already sets forth agency ability and procedure to appoint hearing examiners for contested cases. It is therefore not necessary for this duty to be repeated in the administrative rule.

The proposed addition of (2)(k),(l) and (m) will add the duties of: approval of race officials, disbursement of funds and representation of the Board to the Department of Livestock to the list of duties of the Executive Secretary. The Executive Secretary of the Board is authorized by statute at Mont. Code Ann. 23-4-106 to perform duties as adopted by rule by the Board. The additional duties are necessary because the Board is mandated to carry out duties of approval of officials, disbursement of funds and representation to the Department by statute, and has chosen to fulfill these duties

through their Executive Secretary.

8.22.501 (32.28.202) DEFINITIONS (1) through (9) will remain the same.

(10) "Board" ~~shall~~ means the Montana board of horse racing in this chapter.

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

(14) "Entrant" or "entry" means according to the requirement of the text~~,~~:

~~(1)~~(a) a horse eligible to run in a race;

~~(2)~~(b) two or more horses which are entered in a race by the same owner or trained by the same trainer.

(15) through (20) will remain the same.

(21) "Lessee" means a person who leases the horse from the actual owner (lessor) and is treated as the owner for racing purposes.

(21) and (22) will remain the same but will be renumbered (22) and (23).

~~(23)~~ (24) "License holder" is the individual or firm issued a~~n occupational~~ license by the board.

(24) through (27) will remain the same but will be renumbered (25) through (28).

~~(28)~~ (29) "Montana bred" is a foal born ~~dropped by a mare~~ in Montana.

~~(29)~~ (30) "Owner" means sole owner~~,~~ or part owner~~, or lessee~~ of a horse. ~~An interest only in the winnings of a horse does not constitute a part ownership. Husband and wife shall be considered as one owner.~~

(30) through (33) will remain the same but will be renumbered (31) through (34).

~~(34)~~ (35) "Race" is a contest between horses or mules for a purse and/or entry fees on a track under the jurisdiction of the board to be conducted under the parimutuel system of wagering with approved officials present ~~and officiating~~.

(35) through (36)(c) will remain the same but will be renumbered (36) through (37)(c).

(d) "Handicap" means a race in which the weights to be carried by the entered horses are ~~adjusted~~ assigned by the racing secretary ~~handicapper or board of handicappers~~ for the purpose of equalizing their respective chances of winning.

~~(e) Highweight handicap means a handicap in which the weight assigned to the top horse is not less than 140 pounds.~~

~~(f)~~ (e) "Invitational handicap" means a handicap for which the racing secretary ~~or handicapper~~ has selected the contestants and assigned the weights.

(g) through (i) will remain the same but will be renumbered (f) through (h).

~~(j) Owner's handicap means a race in which the owner fixes, at time of entry, the weight his horse is to carry.~~

(k) through (r) will remain the same but will be renumbered (i) through (p).

(37) through (45) will remain the same but will be renumbered (38) through (46).

~~(46)~~ (47) "Tote" or "tote board" ~~- (tote board)~~ means the

totalizator system.

(47) and (48) will remain the same but will be renumbered (48) and (49).

(50) "Simulcast facility licensee" means ~~a local fair board or an association approved by a local fair board which operates~~ a simulcast facility licensed by the board. The simulcast facility may be located either at a race track or at an outside location, and is deemed to be an extension of the host track during intrastate wagering and an extension of the simulcast network licensee during interstate wagering.

~~(49)~~ (51) "Simulcast network licensee" means an association licensed by the board to receive and/or originate intrastate simulcast race signals and relay them to licensed simulcast facilities; ~~in certain instances,~~ to receive interstate race signals and relay them to licensed simulcast facilities; and to manage statewide wagering pools on simulcast races.

(51) will remain the same but will be renumbered (52).

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-101, 23-4-104, 23-4-202, MCA

REASON: The proposed amendment to (10), (14)(a) and (b) will bring the punctuation in line with Secretary of State requirements for format of definitional administrative rules and will also clarify the definition of board.

The proposed amendment to (21) will add a definition of "Lessee" to the rules. The term "Lessee" is used elsewhere in the rules, and therefore needs to be defined to clarify who is covered by this term. The definition will also clarify that a "lessee" is to be treated as the owner of the horse for racing purposes.

The proposed amendment to (23) [new (24)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed deletion of the word "occupational" is necessary as the definition of "license holder" is intended to cover all Board licensees, and not just those in the "occupational" category of licenses.

The proposed amendment to (28) [new (29)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed amendment will also change the outdated language from "dropped" to "born," as this is a more common description, and more easily understood in this definition.

The proposed amendment to (29) [new (30)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed deletion of the word "Lessee" is necessary because the word has now been defined in the rule, and it is no longer a part of the "owner" definition. The sentences proposed for deletion are being removed because these standards are no longer in use (interest in the winnings of a horse not constituting part ownership), or are unenforceable (husband and wife being considered as one owner). The Board may not restrain a person's ability to own a horse as an individual, regardless of marital status.

The proposed amendment to (34) [new (35)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed deletion of the phrase "and officiating" is necessary because the phrase is redundant. When officials are present, they are presumed to be "officiating," so the phrase is not needed.

The proposed amendment to (36) [new (37)(d)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed changes will clarify that the racing secretary is the correct official to assign weights.

The proposed deletion of (36) [new (37)(e)] is necessary because Montana has never offered a "highweight handicap" in races in this state. It is therefore unnecessary to define this phrase in rule.

The proposed amendment to (36)(f) [new (37)(e)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed deletion of the phrase "or handicapper" is necessary because the racing secretary selects the contestants and assigns the weights.

The proposed deletion of (36)(j) will remove the definition of "owners handicap" in its entirety. The proposed deletion is necessary because there has never been an owner's handicap race in Montana. Since these types of races are not offered in Montana, it is unnecessary to define the term in administrative rule.

The proposed amendment to (46) [new (47)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed amendment will clarify the language to explain that a "tote board" has the same meaning as "tote," and these terms both refer to a totalizator system.

The proposed amendment to (49) [new (51)] will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed amendment will delete the phrase "in certain instances," as it unnecessary. The simulcast network licensee may receive and/or originate intrastate simulcast signals and relay them to simulcast facilities at any time, not just "in certain instances."

The proposed amendment to (50) will bring the punctuation in line with Secretary of State requirements for format of definitional rules. The proposed amendment will also delete the references to a local fair board as a simulcast facility. Local fair boards were removed from the statutes as separate entities involved in horse racing within the state. The Board is able to license appropriate facilities as "simulcast facilities," without distinguishing between local fair boards and other types of facilities. The deleted language is therefore no longer necessary.

8.22.502 (32.28.501) LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) will remain the same.

~~(2) Each applicant for license to hold a live race meeting shall pay a fee determined by the board for workers' compensation coverage for each race season.~~

(3) will remain the same but will be renumbered (2).

~~(4) All applications shall be acted upon within 30 days after submission; however, only tentative approval will be given prior to the time applications are received from the various fair associations.~~

~~(5)~~ (3) The application for a license to conduct a live race meeting with parimutuel wagering during the next succeeding season of racing must be filed with the secretary of the board over the signature of the applicant or the signature of an executive officer of the applicant no later than ~~September~~ November 1, unless, for good cause shown, the board shall otherwise permit.

(a) will remain the same.

~~(6)~~ (4) The application shall specify the days on which such races or meetings are to be held, the name or names of the applicant or applicants desiring the license together with the location and the enclosure where the same are to be held~~, and if the applicant desires the use of a parimutuel system in connection with such races the application shall so specify and state the terms upon which parimutuel tickets are to be sold~~. If the application is for a license to conduct a live race meeting and the applicant desires to use the parimutuel system in connection with simulcast interstate ~~races,~~ or intrastate races ~~and/or races of local or national prominence~~, the application shall specify which simulcast races it desires to use the parimutuel system with. The board may require additional data and information in writing or it may require the applicant to appear before it. Each application to conduct a race meeting will be handled on an individual basis by the board, and the board will approve those race meetings it deems appropriate. Each application to conduct a live race meeting shall include:

(a) through (c) remain the same.

~~(d) a description of lodging facilities;~~

~~(e)~~ (d) a description of security measures ~~protective facilities~~.

(7) through (7)(c) remain the same but will be renumbered (5) through (5)(c).

(d) a description of security ~~facilities and~~ measures; and

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

~~(8)~~ (6) The board may refuse to issue a license to conduct a live race meeting whenever, in its judgment, such refusal shall appear to be in the best interest of Montana horse racing ~~and the general public~~. Attention will be given to the following considerations:

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

~~(9)~~ (7) The board may refuse to issue a license to conduct a simulcast race meeting whenever, in its judgment, such refusal shall appear to be in the best interest of Montana horse racing ~~and the general public~~. Attention will

be given to the following considerations:

(a) through (d) remain the same.

~~(10)~~ (8) If there ~~shall be~~ are two or more applications requesting licenses to conduct live race meetings on one or more identical dates the applicant shall be notified and a hearing will be held in conformity with subchapter 3 ~~hereof~~. If the board refuses to allot dates or issue a license for a race meeting for any reason other than conflicting dates, the applicant refused dates or a license may appeal to the board and ~~then~~ a hearing will be held in conformity with subchapter 3 ~~hereof~~. Criteria for the award of race meetings and race dates when there are two or more applications for identical dates shall include, but not be limited to, the following:

(a) and (b) remain the same.

~~(c) good-will of the track;~~

(d) will remain the same but will be renumbered (c).

~~(e) good of the breed;~~

(f) through (o) will remain the same but will be renumbered (d) through (m).

(11) through (11)(c) will remain the same but be renumbered (9) through (9)(c).

~~(d) good-will of the applicant;~~

(e) through (n) will remain the same but will be renumbered (d) through (m).

(12) through (15) remain the same but will be renumbered (10) through (13).

~~(16)~~ (14) Each licensee shall submit to the board for approval a list of all officials indicating the position they are to fill and shall include relevant personal data on each individual sufficient to permit processing and licensing. The list shall be submitted in writing ~~and~~ at least 30 days prior to the first day of scheduled racing ~~except for good cause shown~~. All additions or changes in the list of officials and employees shall be immediately reported in writing to the board. No racing official shall be qualified to act until ~~he shall have been approved by the~~ board~~.~~ approval has been given. ~~and then except~~ I~~i~~n cases of emergency the licensee may employ a substitute official to be approved by the board within 24 hours.

(17) through (17)(i) remain the same but will be renumbered (15) through (15)(i).

~~(18)~~ (16) Each simulcast network licensee shall employ ~~the following officials:~~

~~(a)~~ a director of simulcast network~~; and~~.

~~(b) a parimutuel manager.~~

(19) through (29) remain the same but will be renumbered (17) through (27).

~~(30)~~ (28) Each track licensee shall file with the board the condition of races it proposes to hold, together with the stake and purse schedule, no later than ~~December~~ March 1. Failure of a track licensee to submit its stakes conditions on or before ~~December~~ March 1 shall subject the licensee to a fine of $25 for each day the submission is late, to be paid before issuance of the track license. In any stakes race,

~~futurity, maturity, derby and/or added money event,~~ the conditions for said races shall be submitted to the board for approval prior to circulation of any such information by a licensee. ~~The names of all persons, firms or corporations contributing any or all of the purse money must be listed and the amount contributed specified.~~

(31) will remain the same but will be renumbered (29).

~~(32)~~ (30) Each track licensee conducting a live race meeting shall provide adequate first aid ~~and medical facilities~~ for patrons and participants. The board may at any time require the expansion of these facilities. The extent of first aid ~~and medical or hospital facilities~~ required shall be considered on an individual basis by the board.

~~(33)~~ (31) Each track licensee shall promptly pay all purse money and all Montana breeders' awards and in no event shall the payment of the winning purse be delayed more than ~~5~~ five days after the licensee is notified to release the purse by the stewards. All other purse payments shall be made or made available within 48 hours after they have been earned. All breeders' awards shall be paid within ~~30~~ 14 days after they have been earned.

(34) through (46) remain the same but will be renumbered (32) through (44).

~~(47) Each licensee operating under the jurisdiction of this board which has a daily average handle of not less than $15,000 in the previous year's handle must install and use an approved type "film patrol" with not less than two cameras operating from positions designated by the board.~~

(48) through (49)(b) will remain the same but will be renumbered (45) through (46)(b).

(c) all jockey dues~~; and~~.

~~(d) all other contractual obligations.~~

~~(50)~~ (47) All stakes payments, nomination fees and entrance fees shall be placed in an account separate from any other account containing operating capital used by a licensed track. No stakes payments, nomination fees or entrance fees may be used for operating expenses, except for a percentage of the account authorized by the Montana board of horse racing, and interest generated on the account. The ~~state parimutuel supervisors (state auditors)~~ board shall audit the stakes accounts on a ~~weekly~~ monthly basis. The account balance shall be reported as part of the ~~parimutuel~~ bookkeeping records.

AUTH: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA
IMP: Sec. 23-4-104, 23-4-201, 23-4-202, MCA

REASON: The proposed amendment to (2) will delete the subsection in its entirety. The language was formerly used when the Board had responsibility for enforcement of workers' compensation statutes by horse racing licensees in the state, and charged a fee to meet the premium requirement. Legislation passed in 2001 exempted Board licensees, with only one exception, from the requirements of workers' compensation insurance coverage. Therefore, the deleted language requiring a fee for workers' compensation coverage is no longer

necessary.

The proposed amendment to (4) will delete the subsection in its entirety. The language is no longer necessary, because the Board usually cannot act on date applications within the 30 days proscribed, due to failure of all applicants to submit timely applications. The Board always requires additional time to procure all applications and determine whether any date requests conflict, and whether a date hearing will be necessary. The deletion of this language will allow the Board more flexibility to act on the entire set of date applications from throughout the state.

The proposed amendment to (5) [new (3)] will change the deadline for submission of date applications from September 1st to November 1st of each year. The change is necessary to allow the tracks more time to submit date applications. Some race meets are still underway in August and September, making it difficult for that track licensee to prepare and submit a date application for the following year, before the current race year has concluded. The November 1st date will allow more time for receipt of the date applications, to benefit the tracks.

The proposed amendment to (6) [new (4)] will delete unnecessary language from the rule. Since all applicants for race meets intend to use parimutuel wagering, it is not necessary to require the application to repeat this request. All horse racing in Montana has always and will continue to use the parimutuel wagering system. The proposed amendment will also clarify language on interstate or intrastate races, while deleting the phrase "races of local or national prominence." The clarification and deletion will remove rule language that was based on previous specific disputes with simulcast broadcasting during the 1980s. These disputes have been resolved, and all horse and greyhound races may now be simulcast either interstate or intrastate with licensure and permission of the Board. It is not necessary to continue to distinguish that the races must be of "local or national prominence."

The proposed amendment to (6)(d) and (e) [new (4)(d)] will delete the requirement that live race meet applications include a description of the lodging facilities. The Board has no regulatory authority over lodging facilities, and does not therefore need a description of these in the race meet application. Also, the language in new (4)(d) will change the phrase "protective measures," to "security measures" to better describe what information the Board is seeking on a race meet application.

The proposed amendment to (7)(d) [new (5)(d)] will also clarify that the Board is seeking information on "security measures" from the simulcast race meet applications as well. The language will be consistent with new (4)(d) above.

The proposed amendment to (8) [new (6)] will delete the phrase "the general public." The Board does not use the standard given in the rule, that of the best interest of the general public, in considering whether or not to refuse to

issue a license. Therefore, it is more accurate to delete this phrase, to reflect that the Board is considering the best interest of Montana horse racing.

The proposed amendment to (9) [new (7)] will make the language consistent for consideration of simulcast meet applications and live race meet applications.

The proposed amendment to (10) [new (8)] will delete the word "then" to remove awkward wording from the subsection.

The proposed amendment to (10)(c) and (e) [new (8)(c) and (e)] will delete "good will of the track," and "good will of the breed" as criteria for the award of race dates. These two items are not measurable by the Board, nor could a track applicant produce any evidence to prove these items in support of their date application. Therefore, the Board will delete these as unnecessary to the evaluation of a date application.

The proposed amendment to (11)(d) [new 9(d)] will delete those same criteria listed above for simulcast race meet applications for the same reason noted immediately above.

The proposed amendment to (16) [new (14)] will delete the phrase "except for good cause shown" to clarify that all lists of officials shall be submitted to the Board office at least 30 days prior to the first scheduled day of racing. The current phrase allows subjective exceptions to be made to the deadline, while the Board perceives that exceptions will not be made. The exception is therefore deleted, thus holding all track licensees to the same deadline for submission of lists of officials. The language changes to the final sentence of the subsection will streamline and clarify the language, without changing the process of Board approval and procedures in case of emergency.

The proposed amendment to (18)(b) [new (16)(b)] will delete the requirement that a simulcast network licensee must employ a parimutuel manager. This position would continue to be required for all live race meet track licensees. The Board notes that the simulcast director currently serves as the simulcast parimutuel manager also. The Board has been unnecessarily requiring dual licensure for this one person. The position is therefore being deleted for simulcast network licensees only, as the duties will continue to be carried out by the simulcast director under one license.

The proposed amendment to (30) [new (28)] will change the date on which track licensees are required to submit stakes conditions and purse schedules from December 1st of each year to March 1st of each year. The change is necessary because the Board is also changing the date application deadline, to make it later in the year. If date applications are not due until November 1st of each year, the stakes conditions deadline must also be moved to some time later than December to give the Board time to award dates, and the tracks additional time to submit the stakes conditions after the race dates have been awarded. The proposed amendment will also delete the list of stakes races, as it is redundant. The phrase "stakes race" includes all the listed races without the need to repeat them in the rule. The proposed amendment will

also delete the requirement that the track licensee list the names of persons and firms contributing purse money, along with the amounts. The Board does not have a need for this information, and therefore will eliminate the requirement that it be provided by the track licensees.

The proposed amendment to (32) [new (30)] will delete the requirement that track licensees provide "medical or hospital facilities." The existing tracks in Montana do not have the capability of providing medical or hospital facilities, and thus the Board has not enforced this requirement for some time. Instead, the Board will continue to require first aid availability, which all tracks have been providing.

The proposed amendment to (33) [new (31)] will change the current requirement of paying breeders' awards within 30 days to a requirement that the breeders' awards be paid within 14 days. The Board is proposing the change to make the awards paid on a more timely basis for the recipients, while still allowing sufficient time to calculate and pay out the awards.

The proposed amendment to (47) will delete this subsection in its entirety. This subsection is unnecessary, because the position of "patrol judge" was eliminated by the Board previously, and the use of a "film patrol" is also unnecessary. This type of rule requirement pre-dated the use of modern photo finish and videotape equipment, which is currently required by, and in use at, all tracks in Montana.

The proposed amendment to (49)(d) will also delete the phrase "all other contractual obligations," as the Board does not require evidence that the track licensees have paid "other contractual obligations." These contractual obligations are the responsibility of the track licensees to pay, and the Board is not involved in the process of forming the contract or paying the contract.

The proposed amendment to (50) [new (47)] will change the method of auditing stakes accounts, to put this responsibility with the Board. The Board is also eliminating the positions of state parimutuel supervisor (state auditor) as a required official at race meets, thus the auditing function must be transferred to the Board. The Board will audit the stakes accounts on a monthly, rather than a weekly basis. The change is necessary to ensure that all duties previously assigned to the state parimutuel supervisor (auditor) are covered. The proposed amendment will also delete the word "parimutuel" in the last sentence as it is unnecessary.

8.22.503 (32.28.502) ANNUAL LICENSE FEES The following fees shall be charged annually:

(1) Trainer	$ ~~35~~	50
(a) Assistant trainer	~~35~~	50
(2) Owner	~~35~~	50
(3) Owner-trainer	~~40~~	50
(4) Track license	~~115~~	350
(5) Jockey	~~35~~	50

(6) through (9) remain the same.

(10) Parimutuel ~~#1~~

(a) will remain the same.
(b) Track a~~A~~uditor ~~25~~ 50
(c) ~~Totalisator~~ Totalizator company ~~505~~ 1000
(d) will remain the same.
~~(11) Parimutuel #2~~
(a) will remain the same but will be renumbered (10)(e).
~~(12)~~ (11) Official ~~#1~~
(a) will remain the same.
(b) ~~State~~ Official veterinarian 35
~~(13) Official #2~~
(a) through (j) remain the same but will be renumbered (11)(c) through (l).
~~(k)~~ (m) Handicapper ~~25~~ 30
~~(l) Placing judge~~ ~~25~~
(m) through (o) remain the same but will be renumbered (n) through (p).
~~(14)~~ (12) Occupational ~~#1~~
(a) Veterinarian practicing ~~35~~ 50
(b) will remain the same.
~~(15) Occupational #2~~
(a) will remain the same but will be renumbered (12)(c).
~~(b)~~ (d) Exercise person ~~25~~ 30
(c) through (h) will remain the same but will be renumbered (e) through (j).
~~(i)~~ (k) Photo company ~~355~~ 800
(j) through (r) will remain the same but will be renumbered (l) through (t).
~~(s) Parimutuel manager at simulcast network 35~~
(t) through (x) will remain the same but will be renumbered (u) through (y).
~~(y)~~ (z) Lessor ~~35~~ 50
~~(16)~~ (13) Shareholder owner ~~35~~ 50
~~(17)~~ (14) Not requiring licenses but requiring identification~~.~~ (~~[~~Children over 6 years of age and under 16 years of age~~, duplicate (lost i.d. cards)~~]) 15
(15) Duplicate license or lost ID cards 15
AUTH: Sec. 23-4-104, 23-4-201, 37-1-134, MCA
IMP: Sec. 23-4-104, 23-4-201, 37-1-134, MCA;

REASON: The proposed amendments will raise fees for the above license categories. The proposed change is necessary, as the Board derives its income from the license fees, and has been experiencing an income deficit. The Board is charged by statute with being fiscally responsible, and it must therefore take in sufficient income to meet its costs.

The proposed fee increase will result in an increase in revenue of approximately $ 11,538 for the Board. The number of persons affected by the fee increase will be approximately 650 persons, as this is the number of persons or entities who were licensed by the Board in one or more categories during the 2001 race season.

The proposed amendments to (10), (11), (12) [new (11), (13), (14), and (15)] will consolidate and streamline the

language used for licensing categories within this rule. The proposed language will have only one "parimutuel," "official," and "occupational" category, as there was no distinction between the categories as previously set up in rule.

The proposed amendment to (10)(b) will change the category to "track auditor". The Board has determined that the former state auditor function and its duties were primarily necessary before the entire parimutuel wagering system was computerized. Since the universal use of the computerized tote systems, the state auditor function has overlapped and duplicated the duties of the tote manager and the parimutuel manager. The Board therefore proposes to eliminate the auditor position and license, and require only the two positions, that of tote manager and parimutuel manager to perform all duties associated with oversight of the tote parimutuel wagering system. The Board will retain the ability to require a track auditor as set forth in ARM.

The proposed amendment to (13)(l) will eliminate the license position of "placing judge" from the types of licenses issued by the Board. The Board has not required a placing judge at tracks for many years, and will not require this position in the future. Therefore, the position is being eliminated as a type of license issued by the Board.

The proposed amendment to (15)(s) will eliminate the position of "parimutuel manager at simulcast network" from the types of licenses issued by the Board. As noted in the reason stated for ARM 8.22.502(18)(b) [new (16)(b)], the simulcast director currently serves as the simulcast parimutuel manager also. The Board has been unnecessarily requiring dual licensure for this one person. The position is therefore being deleted for simulcast network licensees only, as the duties will continue to be carried out by the simulcast director under one license.

The proposed amendment which adds new (15) will create a license fee category for "duplicate license or lost ID cards." The previous rule language had combined this fee with the identification card category, making it difficult to find in the license fee list. The fee for duplicate license or lost ID cards will remain the same.

8.22.601 (32.28.601) GENERAL PROVISIONS (1) through (2)(c) will remain the same.

(d) ~~state~~ official veterinarian;

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

(g) assistant racing secretary~~.~~;

(h) parimutuel manager;

(i) director of simulcast network.

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

~~(b) placing judge;~~

~~(c) patrol judge;~~

(d) through (j) will remain the same but will be renumbered (b) through (h).

~~(k)~~ (i) ~~licensee's~~ track manager;

~~(l) parimutuel manager;~~

~~(m) state supervisor of parimutuel betting;~~

(n) will remain the same but will be renumbered (j).

~~(o) director of simulcast network; and~~

(p) will remain the same but will be renumbered (k).

(4) will remain the same.

(5) No major official specified in ~~ARM 8.22.601~~(2)(a) through ~~(g)~~ (i) may actively or passively participate in a race meet, nor may ~~his/her~~ a major official's spouse nor any other person who has a permanent or continuous residence in the household of the official actively or passively participate in a race meet, at which the major official is serving in ~~his~~ an official capacity. A starter or an assistant racing secretary may, however, undertake passive participation.

(a) and (b) remain the same.

(6) No minor official specified in ~~ARM 8.22.601~~(3)(a) through ~~(p)~~ (k) may actively participate (as defined in (5)(a) above), at a race meet at which the minor official is serving in ~~his~~ an official capacity.

(7) through (9) remain the same.

AUTH: Sec. 23-4-104, 23-4-202, 37-1-131, MCA
IMP: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

REASON: The proposed amendments to ARM 8.22.601 will eliminate some positions formerly classified as "officials," and add some positions to consolidate duties. The proposed changes are consistent with other rule changes proposed in this notice to streamline the officials and licenses required as officials by the Board at live and simulcast race meets.

The proposed amendment to (2)(d) will change the "state" veterinarian to "official" veterinarian to be more consistent with other Board rules.

The proposed addition of (2)(h) will add the category of "parimutuel manager" as a major official at a live race meet. As explained in the reasons given above for ARM 8.22.502 and 8.22.503, the Board proposes to eliminate the auditor position and license, and require only the two positions, that of tote manager and parimutuel manager to perform all duties associated with oversight of the tote parimutuel wagering system. The parimutuel manager will therefore perform increased duties which will qualify the position more correctly as a major official.

The proposed addition of (2)(i) will add the new category of "director of a simulcast network" as a major official at a simulcast race meet. As explained in the reasons given above for ARM 8.22.502 and 8.22.503, the simulcast director currently serves as the simulcast parimutuel manager also. The Board has been unnecessarily requiring dual licensure for this one person. The position of director of simulcast network is therefore being added as a major official at a simulcast race meet to perform the duties of simulcast management and simulcast parimutuel manager, which will qualify the positions more correctly as a major official.

The proposed amendment to (3)(b) will eliminate "placing

judge" as a racing official position. As noted in the reasons given for ARM 8.22.503 above, the Board has not required a placing judge at live race meets for some time, and will not require this official in the future. The license category may therefore be eliminated.

The proposed amendment to (3)(c) will eliminate "patrol judge" as a racing official position. The Board previously eliminated this position from other administrative rules, but neglected to eliminate the category in ARM 8.22.601. The deletion of this language will make this consistent with other Board rules.

The proposed amendment to (3)(k) [new (3)(i)] will delete the word "licensee" from the license category description. Instead, the Board proposes to use the language "track manager," which more accurately describes the position.

The proposed amendment to (3)(l) will eliminate the "parimutuel manager" from the "minor official" category, as this position is proposed for addition to the "major official" category (see above).

The proposed amendment to (3)(m) will eliminate "state supervisor of parimutuel betting" as a racing official position. As explained in the reasons given for ARM 8.22.502, 8.22.503, and (2)(i) above, the simulcast director currently serves as the simulcast parimutuel manager also. The Board has been unnecessarily requiring dual licensure for this one person. The position of "state supervisor of parimutuel betting" is therefore proposed for elimination, as the duties will be performed under a "simulcast director" license.

The proposed amendment to (3)(o) will eliminate the "director of simulcast network" from the "minor official" category, as this position is proposed for addition to the "major official" category (see above).

The proposed amendment to (5) and (6) will correct the references to new subsection numbers, and make the language gender neutral, as required by the Legislature for on-going rule changes.

8.22.602 (32.28.602) CLERK OF SCALES (1) through (3) remain the same.

~~(4) The clerk of scales shall confirm to the stewards after each race the weights carried by each horse in each race, together with the name of each horse's jockey and the overweight carried by any jockey. He shall also report the post time in each race and other data which may from time to time be required.~~

~~(5)~~ (4) If the overweight is more than ~~2~~ two pounds in excess of the weight the horse is to carry, ~~owner and~~ trainer consenting, the jockey shall declare the amount of overweight to the clerk of scales at least 45 minutes before the time appointed for the race~~, and the clerk shall have the overweight posted immediately on the notice board~~. Failure on the part of any jockey to comply with this rule shall be reported to the stewards.

~~(6)~~ (5) Every jockey must be weighed for a specified

horse not more than 30 minutes before the time fixed for the race~~, see ARM 8.22.602(12)~~.

(7) and (8) will remain the same but will be renumbered (6) and (7).

(a) whip ~~or a substitute for a whip~~;

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

(9) through (13) will remain the same but will be renumbered (8) through (12).

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to (4) will eliminate the subsection in its entirety, as the language is redundant with other subsections within the rule. Subsection (2) already requires the clerk of scales to report information on jockey weight to the proper racing officials. Subsection (13) [new (12)] already requires the clerk of scales to weigh jockeys in after each race and notify the stewards if the weights are correct.

The proposed amendment to (5) deletes the requirement that owner and trainer must consent to an overweight. The horse's owner's consent is not necessary, and would be difficult to obtain, whereas the trainer will be immediately available for consultation and consent. The proposed amendment will also delete the requirement that the clerk of scales shall post the overweight on the notice board. This language is redundant, as (2) already requires the clerk of scales to publish an overweight on the board.

The proposed amendment to (6) [new (5)] will eliminate the internal cross reference to a different administrative rule. All Board administrative rules apply to all licensees, without the need for cross reference from one rule to another.

The proposed amendment to (8)(a) [new (7)(a)] will delete the phrase "or a substitute for a whip," as the Board is not aware of any equipment which would function as a substitute for a whip.

8.22.604 (32.28.604) IDENTIFIER (1) The identification of horses in the paddock shall be made by the horse identifier. ~~He~~ The identifier shall report any identification irregularities to the ~~paddock judge and to the~~ stewards. No horse shall be permitted to start that has not been fully identified by the official identifier.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to (1) will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also eliminate the need for the identifier to report any identification irregularities to the paddock judge and the stewards. Since the identifier and the paddock judge are usually the same person, the identifier need only report to the stewards if irregularities in identification are found.

8.22.605 (32.28.605) PADDOCK JUDGE (1) The paddock judge shall be in charge of the paddock and shall have general jurisdiction over the saddling equipment and changes thereof; and ~~his duties shall be~~ any additional duties as determined ~~from time to time~~ by the stewards~~, see ARM 8.22.502(17)~~.

~~(2) The paddock judge may require a plater to be in attendance at the paddock to see to it that all horses are properly shod.~~

(3) will remain the same but will be renumbered (2).

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to (1) will delete awkward language, make the rule gender neutral as required by the Legislature for on-going rule changes, and delete the internal cross reference, as it is unnecessary.

The proposed amendment to (2) will delete the subsection in its entirety. The proposed change is necessary because tracks do not routinely have a plater available to be in attendance at the paddock. The Board has not actually required a plater be in attendance at the paddock for some time. The proposed change will therefore delete this requirement from rule language.

8.22.607 (32.28.606) RACING SECRETARY (1) will remain the same.

(2) The racing secretary shall discharge all duties required by the racing rules and report to the stewards as the case demands, all violations of these rules~~, or of the regulations of the course, coming under his notice; he shall keep a complete record of all stakes, entrance money, arrears and fines, and pay over all monies so collected by him to such officers or persons as may be entitled to receive the same~~. ~~Winning races shall be recorded by the racing secretary on proper forms,~~ The racing secretary shall record races won on the horse registration papers, not later than the day following the race having been won.

(3) will remain the same.

(4) The program shall indicate the order in which each race is to be run, the purse, conditions, distance of each race, the owner, trainer, and jockey ~~to~~ of each horse, all racing colors, the weight assigned to each horse, ~~his~~ its number and post position, color, sex, age and breeding. The program may show other pertinent data~~, see ARM 8.22.806(4) for the numbering of entries and field~~.

(5) through (5)(b)(ii) will remain the same.

~~(c) total number of two-year old races;~~

~~(i) total added money,~~

~~(ii) total money contributed by horsemen.~~

(d) and (e) will remain the same but will be renumbered (c) and (d).

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

AUTH: Sec. 23-4-202, MCA

IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to (2) will delete the phrase "or of the regulations of the course, coming under his notice" as this phrase is redundant. Since the sentence already refers to the racing secretary's duty to report violations of "rules," this is sufficient to describe the duty assigned to the racing secretary. The other proposed amendments to (2) will make the language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendments to (4) will remove awkward language and make the rule more readable; will clarify that a horse can be of either sex; and will delete an unnecessary cross reference within the rules. All rules apply to licensees equally without need for cross reference internally in the rules.

The proposed amendment to (5) will delete information the racing secretary is required by rule to keep as a record. The information in (c), (i) and (ii) is information that is not used by the Board or track and is not therefore necessary for collection and recording by the racing secretary.

8.22.608 (32.28.607) SECURITY DIRECTOR (1) The security director shall be responsible for maintaining security at the race track ~~or simulcast facility~~. ~~He~~ The security director shall be in charge of the back~~stretch~~side and frontside areas, ~~if at a race track,~~ and the parimutuel area~~,~~. ~~and~~ The security director is authorized to provide for the removal of unauthorized persons from restricted areas and for the removal of persons causing disturbances upon the premises of the race track ~~or simulcast facility~~.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

REASON: The proposed amendment to (1) will delete the requirement that a simulcast race meet have a security director, and delete all references to simulcast facilities from the rule. The position of security director is not necessary at a simulcast meet, but only at a live race meet where the restricted areas must be kept secure to ensure the horses are safe from outside interference before a race. Simulcast facilities obviously have no horses or backside area to keep secure. The proposed amendments will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

8.22.609 (32.28.608) STARTER (1) The starter shall give orders to secure a fair start. After reasonable efforts, if a horse cannot be led or backed into position, the starter shall order the horse to be ~~taken to the outside~~ scratched and notify the stewards. The start must not be delayed on account of a bad-mannered horse. When the stall gate is used, it shall be placed on the track at the discretion of the starter.

(2) The starter shall secure the stewards' approval on

the order have the option of loading horses in the starting gate either in alternating order of post position or numerical order of post position.

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

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to (1) will change the manner in which starters deal with horses that will not load properly. The horses will no longer be "taken to the outside," but will be scratched from the race, with notification to the stewards. The proposed rule language is a more accurate description of what is already happening at tracks in Montana, and will also serve as authority for the starters to scratch a horse that will not load, and keep the race times on schedule.

The proposed amendment to (2) will clarify that the starter is to decide on the order of loading horses in the starting gate, with the stewards' approval. The current rule language on "alternating order of post position" is rarely or never used, and thus is proposed for deletion. The proposed changes will allow the starter to decide on numerical order for loading the horses in the starting gate, or any other method of the starter's choosing with the stewards' permission.

8.22.610 (32.28.609) STEWARDS (1) through (4) will remain the same.

(5) The stewards have general supervision and authorization over owners, trainers, jockeys, grooms or other persons attendant on horses and also over the premises where the meeting is conducted.

(6) through (12) will remain the same.

(13) On each racing day at least one steward shall be on duty at the track from 8:00 a.m. scratch time in the morning until the close of the racing program for the day, and the full board of stewards shall sit in regular session to exercise the authority and perform the duties imposed on them by the rules of racing.

(14) through (17) will remain the same.

(18) There shall be 3 three stewards (no more, no less) in the stand when a race is being run.

(19) through (22) will remain the same.

(23) In case of accident or casualty to a horse before off-time, the stewards may excuse said horse.

(24) (23) The stewards must investigate promptly and render a decision in every project and in every complaint properly made to them.

(25) through (27) will remain the same but will be renumbered (24) through (26).

(28) (27) The board may shall require an proper adequate camera to be installed as an aid to the stewards. However, in all cases, the camera is merely an aid and the decision of the stewards shall be final. In the discretion of the stewards, the photograph of each finish may be posted in a conspicuous

~~place after any race.~~

(29) will remain the same but will be renumbered (28).

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-201, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to (5) will delete the phrase "and authorization" from the rule, as it is redundant. The rule already gives the steward "general supervision" over licensees and premises, thus "authorization" is not necessary.

The proposed amendment to (13) will designate a specific time for at least one steward to be present on race day.

The proposed amendment to (18) will delete redundant language from the rule. Since the rule already requires 3 stewards, it is not necessary to clarify with the parenthetical phrase "(no more no less)."

The proposed amendment to (23) will delete the subsection in its entirety. The subsection is not necessary, as the stewards are already given general authority to oversee race meets and scratch horses from a race when necessary. Therefore it is not necessary to state specifically that the stewards may "excuse" a horse in the case of accident or casualty.

The proposed amendment to (24) [new (23)] will delete the phrase "every project," as this language has no real meaning in rule context. Stewards investigate complaints and render decisions, as the rule states, but stewards do not work on nor investigate "projects."

The proposed amendment to (28) [new (27)] is necessary to better describe the use of a camera. The proposed rule language will make use of a camera mandatory by inserting the word "shall." The proposed amendment will also delete the sentence which allow the stewards discretion to post the photograph of the finish.

8.22.611 (32.28.610) TIMERS (1) The time recorded for the first horse to cross the finish line shall be the official time of the race. The time recorded may be the time recorded by an electric timing device. Any electric timing device must be of a type approved by the board.

(2) ~~In all horse races in Montana where an electric timer is used to determine qualifiers for the finals, if the electric timer fails, the finalists will be selected by order of finish determined by the stewards. The decision of the stewards shall be final in all matters.~~ In all quarter horse races in Montana where qualifiers for the finals are determined by time trials, an electric timer shall be utilized. In the event that the electric timer fails, qualifiers for the finals will be determined by hand times. Hand times will be calculated and utilized according to the American quarter horse association recommended procedures for time trials published January 1, 2002, and incorporated herein by reference. A copy may be obtained from the American Quarter Horse Association, P.O. Box 200, Amarillo, Texas 79168.

(3) Each racing association conducting a race meet consisting in part of quarter horse stakes races with finalists determined by time trials shall appoint, license and assign the persons to serve in the hand timer capacities. These persons must present themselves to the stewards 30 minutes prior to the start of the first trial race and remain until all trial races are completed.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to (2) and (3) is necessary to bring Montana quarter horse racing in line with national standards for timing of quarter horse trial races. The current rule, which allows the stewards to determine qualifiers based on order of finish for quarter horse trial races in the event of an electric timer failure, does not allow the horses to have a time posted for those trial races. If the horses do not post a time, the record of their racing times and speed index cannot be calculated for inclusion in American Quarter Horse Association (AQHA) listings. The proposed amendment will incorporate AQHA procedures for timing trials in the event of an electric timer failure. The proposed amendments will also outline the tracks' responsibilities for appointing, licensing, and assigning persons to conduct the hand timing of the trial races in case the electric timer fails.

8.22.612 (32.28.611) VETERINARIAN: OFFICIAL ~~STATE OR PRACTICING~~ (1) The board shall contract with or hire persons licensed as veterinarians in Montana ~~pursuant to ARM 8.22.502~~ to perform the duties of official veterinarians at horse racing meets. Contracts (or hires) shall be upon such terms as the board and the veterinarians may mutually agree and may contain differing rates of compensation based upon the experience of the veterinarian. Each track shall ~~be assessed a daily fee by~~ reimburse the board for the ~~state~~ official veterinarian services.

~~(2) The board shall establish a committee of at least two board members to meet at least quarterly with representatives of the state veterinarians, and discuss recommendations from the veterinarians. Such meetings may be scheduled the same day as regular board meetings or at the convenience of the board.~~

~~(3)~~ (2) ~~He~~ The official veterinarian shall be present in the paddock to inspect all horses~~; and upon the request of the stewards~~, shall inspect or observe all horses after the finish of a race, and shall perform such other duties as shall be prescribed from time to time by the stewards and board.

~~(4)~~ (3) If for any reason, a horse must be destroyed either in the paddock or on the track, the ~~state~~ official veterinarian ~~or his assistant~~ shall perform the euthanasia. The act of euthanasia shall not take place in view of the public.

~~(5)~~ (4) The ~~state~~ official veterinarian shall be present at the starting gate while horses are being loaded. Any

scratches after horses leave the paddock may be made by the ~~state~~ official veterinarian with the approval of the stewards.

~~(6)~~ (5) The ~~state~~ official veterinarian shall administer medication only in an emergency and if no practicing veterinarian is available.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to the title will change the name of the Board's designated track veterinarian from "state veterinarian" to "official veterinarian." The proposed change is necessary to differentiate between the Dept. of Livestock's "State Veterinarian," who is not connected with horse racing, and the Board's designated veterinarian at the track, who shall now be known as the "official veterinarian." This change in the name of the Board's designated official veterinarian at the race tracks is also being made in subsections (1) through (5) of this rule, as well as other rules contained in this notice such as the permissible medication rule, etc.

The proposed amendment to (1) will delete an internal cross reference to another administrative rule. These internal cross references are not necessary, as all rules apply to all licensees without the need to repeat the information through cross reference. The proposed amendment to (1) will also change the language to state that the tracks shall be responsible for "reimbursement" of the official veterinarian's costs for services to the Board. This change is necessary because the current rule language is not accurate in stating the Board is "assessing a fee" for official veterinarian services at the tracks. Rather, it is the official veterinarian who is assessing the costs. The change will clarify that the track will reimburse the Board for these costs, which are charged by the official veterinarian at the race tracks.

The proposed amendment to (2) will delete the subsection in its entirety. The rule language setting up a committee of board members and official veterinarians has not been used for some time. The Board also does not foresee using this type of committee in the future. Therefore, the subsection requiring a committee to discuss veterinarian recommendations will be deleted.

The proposed amendment to (3) [new (2)] is necessary to make the rule gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the requirement that the stewards must request the official veterinarian to observe the horses after the race. The Board feels it is always necessary for the official veterinarian to observe the horses after each race, and thus proposes to remove the language on the need for this request to be made through the stewards. The proposed amendment will also clarify that the Board may assign duties to the official veterinarian at any time, in addition to the stewards' assignment of duties to the official veterinarian.

The proposed amendment to (4) [new (3)] is necessary

because the official veterinarian does not have an assistant at Montana race tracks. Therefore, it would not be possible to assign euthanasia duties to a veterinarian assistant.

8.22.701 (32.28.701) GENERAL PROVISIONS (1) All persons engaged in racing or any part thereof or employed by any person engaged in racing or any part thereof, or employed by the licensee to engage in racing or any part thereof, ~~including, but not limited to, racing officials, parimutuels managers, parimutuel employees, owners, trainers, jockeys, apprentices, grooms, exercise persons, managers, agents, platers, blacksmiths and veterinarians~~ shall ~~register with and~~ be licensed by the board.

~~(2) Each applicant for owner's, trainer's, owner-trainer's, corporate owner's or lessor's license must provide evidence of workers' compensation insurance or its equivalent as determined by the state compensation insurance fund (state fund) for the protection of the applicant's employees, prior to being issued a license. All applicants shall pay the appropriate workers' compensation fees as determined by the board for each race season.~~

(3) through (9)(b) will remain the same but will be renumbered (2) through (8)(b).

(c) The board will recognize and will uphold all rulings of every racing jurisdiction. Under 23-4-202, MCA, application or reapplication for licensure in Montana will be allowed two years after the date of the original licensing sanction order, regardless of the jurisdictional origin of the original license sanction order. ~~However,~~ T~~t~~he board reserves the right to deny any application for a license from any person whose previous conduct it considers to be detrimental to the best interest of racing regardless of whether ~~he~~ the applicant holds a valid license from another racing jurisdiction. The board shall have discretionary power to issue a license, or refuse to do so, after an investigation. An applicant for licensure or relicensure under this section must complete the reinstatement procedure in (9).

(9) Any person who was licensed by the board but whose license was revoked, or whose license was surrendered while under investigation or while pending a disciplinary proceeding, and who desires to become relicensed by the board must make application for reinstatement by completing a license reinstatement form provided by the board, along with a completed license application and fee. All persons applying for a license after license sanction imposed in another jurisdiction, will be evaluated according to this procedure.

(a) An application for reinstatement of license shall not be accepted by the board for at least two years after the license has been revoked or surrendered either by the Montana board or another racing jurisdiction unless a shorter time period is specified by the Montana board at the time of revocation or surrender.

(b) The application shall be filed in the board office, and reviewed and investigated by board staff. Except for good

cause shown, no less than 90 days after receipt of the application, the executive secretary shall make a recommendation to the board concerning the applicant's compliance with board rules and whether or not the applicant is appropriate for reinstatement.

(c) The board may, but need not, schedule an oral presentation from the applicant or applicant's legal counsel, or may take testimony from witnesses, in addition to reviewing the application, written documents and the recommendation from staff. If the board denies the application, it shall comply with 2-4-601 et seq., MCA, for license denial.

(d) The applicant for reinstatement shall have the burden of proving by clear and convincing evidence that the applicant meets the criteria required by this rule. The applicant also has the burden of producing evidence in support of the applicant's position. If the applicant produces evidence which meets the burden of proof, and it is not overcome by evidence to the contrary, then the applicant may be reinstated. Nothing in this rule precludes the board from issuing a license with conditions attached.

(e) The board may impose such conditions as will tend to prevent a reoccurrence of a situation similar to the applicant's prior problem. The order granting a conditional or probationary license may state that breach of any of the conditions will result in loss of license without the right to a prior hearing.

(f) The following factors must be proven to the board by clear and convincing evidence in favor of the applicant in order to support reinstatement of license:

(i) Applicant must present evidence that the applicant's presence at places under the jurisdiction of the board will not be detrimental to the best interests of racing;

(ii) Applicant has taken responsibility for the applicant's misconduct, and shows sincere remorse for that misconduct;

(iii) If applicable, resolution of substance abuse problems, personal financial problems, and medical, mental and emotional problems which did or may have contributed to the revocation or suspension;

(iv) Willingness to pay restitution to those who were injured or victimized by applicant's prior conduct resulting in the disciplinary action, as well as other similar conduct for which applicant is responsible; and

(v) Willingness to comply with the statutes, rules and orders relating to racing in Montana.

(10) An a~~A~~pplicant for license shall fill out, complete and submit the application to the board licensing secretary on the track, accompanied with the appropriate fee. The validity of that license is subject to the approval of the application by the state steward. The ~~state~~ parimutuel manager ~~supervisor~~ shall approve all parimutuel applications. The licensing secretary shall forward the application and a copy of the receipt to the board office, along with a copy of that day's deposit. The licensing secretary shall make a

deposit at the end of each race day. At the time of receipt of the application and fee, the licensing secretary on the track~~,~~ shall issue to the applicant an identification card which shall serve as the license.

(11) and (12) will remain the same.

(13) In the event of the loss of a license card, the board will ~~may in its discretion,~~ issue a duplicate upon payment of the appropriate fee.

(14) All corporations having any interest in a horse shall file with the Montana board of horse racing at the time of filing application for an owner's license~~,~~ a statement setting forth the names and addresses of all officers, directors and stockholders of said corporation~~, together with the amount of the respective holdings of each stockholder and a statement as to whether or not said stock is paid in full, and including the designation of an authorized agent or agents of said corporation, attested to by its secretary and have the corporate seal attached. Said statement shall also contain an affidavit signed by the president and secretary of the corporation that no officer, director or shareholder of the corporation is at that time under suspension by any racing authority~~.

(15) will remain the same.

~~(16) Multiple ownership with four or more shareholders must designate a managing owner. The designated managing owner must be licensed as an owner by the board. The other shareholders may purchase a shareholder owner license from the board. The shareholder owner license allows access to the backside and grounds, however, it does not allow shareholder access to the paddock or test barn.~~

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-201, MCA

REASON: The proposed amendment to (1) is necessary as it will delete redundant language within the rule. Since the subsection already states that all persons "engaged in racing" will be licensed by the Board, it is not necessary to then list various categories of licensees. "All persons engaged in racing" already adequately describes who is to be licensed.

The proposed amendment to (2) will delete the subsection in its entirety. The subsection dealt with the requirement of certain licensees providing proof of workers' compensation insurance. The 2001 Montana Legislature created statutory exemptions for most horse racing licensees such that workers' compensation insurance is no longer required in Montana for those categories of licensees. Therefore, the Board will not require proof of this insurance by rule language. For those license categories of employees (e.g. grooms) for which workers' compensation insurance coverage is still required, statutes found in the Montana Code Annotated will still require this coverage, as enforced by the Department of Labor, and not enforced by the Board of Horse Racing.

The proposed amendment to (9)(c) [new (8)(c)] is necessary to change the reciprocity rule which covers how

persons licensed in other states may become licensed in Montana. The current reciprocity rule language does not allow a person whose license has been suspended or revoked in another state to become licensed in Montana, no matter how much time has passed since the suspension or revocation. However, under Mont. Code Ann. 23-4-202(3), after suspension or revocation in Montana, the Board may only forbid re-application for licensure for a two year period. Therefore, applicants with suspension or revocation orders from other states are being treated more harshly than applicants with suspension or revocation orders from Montana. The Board's proposed language will clarify that any person whose license was suspended or revoked in another state may apply for licensure in Montana if more than two years have elapsed since the date of the out-of-state order. The proposed rule language then sets forth the procedure for this type of application, and the types of information and documentation that will be required for presentation to the Board, as well as the requirement that the applicant must appear before the Board. The proposed rule language will not guarantee the applicant that a Montana license will be granted, but will leave the decision on licensure up to the discretion of the Board, as it is in all license applications. This change will make the rule consistent with the statutory language in Montana which states a person may re-apply, but not be guaranteed the application will be granted, within two years of suspension or revocation.

The proposed addition of new (9) will add a rule subsection on reinstatement of license after license revocation or suspension. The proposed addition of this language is necessary to inform license applicants of the timelines, procedures and criteria that will be required by the Board for all reinstatement applications. The Board has not previously set forth a reinstatement process in rule, thus the proposed change will benefit applicants by better informing them of the process for reinstatement.

The proposed amendment to (10) will delete the word "state" from the parimutuel supervisor reference. As explained in the reason given for ARM 8.22.502 (see above), the position will be referred to as "parimutuel manager" only.

The proposed amendment to (13) is necessary to clarify that the Board "will" issue a duplicate ID card, rather than relying on its discretion as to whether to issue the card.

The proposed amendment to (14) is necessary to delete corporate requirements to provide extraneous information to the Board. The Board does not need or use information on stockholder holding, designated agents, corporate seals, affidavits on suspension, etc. Therefore, the requirements are proposed for deletion from the rule so that corporate applicants will no longer be required to supply this information.

The proposed amendment to (16) will delete the subsection in its entirety. The Board does not require shareholders to designate a "managing owner" for licensure purposes. Instead,

existing Board rules on the necessity of ownership licensure are sufficient to address the specifics of how and when an owner must be licensed. Since the "managing owner" language is not necessary, it is proposed for deletion.

8.22.702 (32.28.702) AGENTS FOR JOCKEYS (1) Each jockey agent shall obtain a license from the board. A jockey agent may represent two jockeys and one apprentice jockey with approval of the stewards. No jockey agent shall make or assist in making any engagement for any rider other than those ~~he~~ the jockey agent is licensed to represent. ~~Each jockey agent shall keep, on a form provided by the licensee, a record of all engagements he has made for the riders he represents. This record must be kept up to date and held ready at all times for inspection of the stewards.~~ If any jockey agent gives up the making ~~or~~ of engagements for any rider ~~he~~ the jockey agent shall immediately notify the stewards and turn over to the stewards a list of any unfilled engagements ~~he may have made for the relinquished rider~~. A jockey agent may not drop a rider without notifying the stewards and jockeys in writing. ~~All rival claims for the services of a rider will be adjusted by the stewards.~~

(2) Owners, trainers, racing officials, employees of the licensee and employees of any party contracting with the licensee to furnish a racing associated service are not eligible to be licensed as jockey agents.

~~(3) A jockey agent shall not give to anyone directly or indirectly any information or advice pertaining to a race or engage in the practice commonly referred to as "touting" that would influence any person, or would tend to do so, in the making of a wager on the result of any race.~~

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (1) will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the unnecessary requirement that a jockey's agent keep a record of all engagements made for a rider, and also a list of unfilled engagements. The Board does not use this information, and will not require the jockey agent to keep or provide this information to the stewards. Finally, the proposed amendment will delete the out-dated language in the rule on "rival claims." The Board does not require the stewards to undertake a duty regarding "rival claims."

The proposed amendment to (3) will delete the subsection in its entirety. The rule language is archaic in referring to "touting." The Board already has detrimental conduct administrative rules which do not allow anyone to influence the outcome of a race, thus it is not necessary to repeat this prohibition directly for a jockey agent.

8.22.703 (32.28.703) EXERCISE PERSONS (1) will remain the same.

(2) No exercise person shall ride or exercise any horse on the race track without wearing a protective helmet and boots ~~which shall be approved by the board or a representative of the board~~. Each exercise person must wear a safety vest when riding on the track. The safety vest shall be designed to provide shock absorbing protection to the upper body of at least a rating of five as defined by the British equestrian trade association (BETA).

(3) Before approving an application for an exercise person's license, a majority of the members of the board of stewards, the jockey representative and the starter shall concur that the applicant has the ability to safely and correctly perform duties of an exercise person~~, pony person and outrider~~.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (2) will delete the requirement that the Board should approve the helmets and boots of an exercise rider. The Board and its representatives do not currently review or approve this equipment, and will not undertake this review in the future. Therefore, it is not necessary to include this approval language in the rule.

The proposed amendment to (3) will delete the reference to "pony person" and "outrider" from this rule. Separate administrative rules already address the duties and equipment of pony persons and outriders. Therefore, it is not necessary to include those license categories in this rule pertaining to exercise persons.

8.22.705 (32.28.705) JOCKEYS (1) through (4) will remain the same.

(5) No jockey will be permitted to ride pending action on ~~his~~ the jockey's application for license. A person who has never ridden in an official race may be granted a temporary license by the stewards. The temporary license will permit the holder to ride two races. If the rider holding a temporary license rides two races to the satisfaction of the stewards ~~he~~ the rider may receive an ~~regular~~ apprentice jockey license.

~~(6) An apprentice jockey may be permitted to ride in the same races with professional jockeys.~~

~~(7)~~ (6) No licensed jockey shall be the owner or trainer of any race horse~~, except upon special permission from the board~~.

~~(8)~~ (7) If ~~A~~a jockey is under contract to any trainer, the jockey shall not ride or agree to ride in any race without the written consent of the ~~owner or~~ contract trainer ~~to whom he is under contract~~.

(9) and (10) will remain the same but will be renumbered (8) and (9).

~~(11)~~ (10) A jockey may not ride in any race against a starter of ~~his~~ the jockey's contract employer ~~unless his mount and his contract employer's starter are both in the hands of~~

~~the same trainer~~.

(12) through (28) will remain the same but will be renumbered (11) through (27).

~~(29)~~ (28) Every jockey may have only one agent ~~and no more~~. ~~All engagements to ride, other than those for the contract employer, shall be made by his agent.~~

(30) through (33) will remain the same but will be renumbered (29) through (32).

~~(34)~~ (33) If a jockey intends to carry overweight exceeding by more than two pounds the weight which ~~his~~ the jockey's horse is to carry, the owner or trainer assenting, ~~he~~ the jockey must declare the amount of overweight to the clerk of the scales at least 45 minutes before the time appointed for the race, and the clerk shall notify the stewards ~~cause the overweight to be stated on the notice board~~ immediately. Failure on the part of a jockey to comply with this rule shall be reported to the stewards.

(35) and (36) will remain the same but will be renumbered (34) and (35).

~~(37)~~ (36) Except by permission of the stewards, every jockey must, upon returning to the unsaddling area ~~to the placing judge's stand~~, unsaddle the horse ~~he~~ the jockey has ridden and no person shall touch the jockey or the horse, except by ~~his~~ the bridle, nor cover the horse in any manner until the jockey has removed the equipment to be weighed.

(38) and (39) will remain the same but will be renumbered (37) and (38).

~~(40)~~ (39) Each jockey shall weigh in at the same weight as that at which ~~he~~ the jockey weighed out, and if short of it by more than two pounds, the jockey shall be fined or suspended or ruled off at the discretion of the stewards, and ~~his~~ the jockey's mount shall be disqualified.

~~(41)~~ (40) If any jockey weighs in at more than two pounds over ~~his~~ the jockey's proper or declared weight, ~~he~~ the jockey shall be fined or suspended or ruled off at the discretion of the stewards, who shall have regard for any excess weight caused by rain or mud~~, and the case shall be reported to the board for such action as it may deem proper to take~~.

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

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-201, MCA

REASON: The proposed amendment to (5) will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also clarify that a new rider may receive an apprentice jockey license, rather than a regular jockey license if they have never been licensed as a jockey previously, but have demonstrated their competence in two races under a temporary license. This amount of racing would qualify a rider for an apprentice license, but not a regular jockey license, as stated in the proposed rule change.

The proposed amendment to (6) would delete the subsection

in its entirety. Apprentice jockeys are always permitted to ride in races with professional jockeys.

The proposed amendment to (7) [new (6)] will remove the language that states that the Board may give permission for a jockey to be the owner or trainer of any race horse. The Board has never and does not intend to start giving this type of special permission. Instead, the prohibition on jockeys owning or training horses should be universal, and the same standard should apply to all jockeys without the possibility of "special permission" from the Board.

The proposed amendment to (8) [new (7)] will clarify existing awkward language on a jockey who is under contract to a trainer. The result of the rule language will be the same, in that a jockey must have consent of the contract trainer in order to ride for any other trainer, but the rule will be more easily readable. The Board proposes to add the requirement that the contract trainer's consent must be in writing.

The proposed amendment to (11) [new (10)] will clarify language on a jockey's ability to ride in a race against a horse with the same owner, but a different trainer. The Board proposes to make a blanket prohibition on a jockey riding in a race against a starter of the jockey's contract employer. This standard is fair, and easier to apply in an objective manner. The proposed amendment will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (29) [new (28)] will clarify awkward language by stating a jockey may have only one agent. This is the existing standard in the current rule, but the existing language is difficult to read. The proposed amendment will also delete the requirement that the jockey's riding engagements must be made by the jockey's agent. Very few jockeys in Montana have agents, so it is not necessary to impose an agent requirement in this rule.

The proposed amendment to (34) [new (33)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendments will also change the requirement that a jockey overweight be posted on a notice board. The rules already state elsewhere that the clerk of scales shall report the overweights to the stewards, and post the numbers. This change will make the rule consistent with other Board administrative rules on procedures for overweights.

The proposed amendment to (37) [new (36)] will remove the reference to the "placing judge's stand" from the rule. As noted previously, the Board eliminated the position of "placing judge" some time ago, and therefore there is no placing judge or placing judge stand in Montana. The proposed amendment will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (40) [new (39)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also add language on the penalties to be imposed on the jockey for

a difference in weight at weigh in time, in addition to the penalty imposed on the horse.

The proposed amendment to (41) [new (40)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the language on the stewards' requirement to report an overweight at weigh in to the Board. The previous subsection [new 38)] will set forth the penalties which may be imposed on a jockey in an overweight situation, thus it is not necessary to retain language stating the matter will be referred to the Board for action.

8.22.706 (32.28.706) JOCKEYS - APPRENTICE (1) through (3)(a)(ii) will remain the same.

(b) Whenever a jockey from a foreign country, excluding Mexico and Canada, rides in the United States, ~~he~~ the jockey must declare that ~~he~~ the jockey is a holder of a valid license and currently not under suspension. ~~To facilitate this process, the jockey shall present a declaration sheet, in four languages, to the appropriate racing official of the jurisdiction in which he has come to ride. The sheet shall state:~~

~~(i) that he/she is the holder of a valid license to ride;~~

~~(ii) that he/she is not currently under suspension; and~~

~~(iii) that he/she agrees to be bound by the rules and regulations of the jurisdiction in which he/she is riding.~~

~~(A) This sheet shall be retained by the appropriate racing official, and at the conclusion of the jockey's participation in racing, it shall be returned to the jockey, properly endorsed by the appropriate racing official, stating he/she has not incurred any penalty or had a fall. If a penalty has been assessed against the jockey, the appropriate racing official shall notify the racing authority issuing the original license to extend the penalty for the same period of time.~~

~~(c) The holder of the contract at the time the jockey rides his/her first winner shall be considered the original contract employer.~~

(4) will remain the same.

(5) Apprentice ~~contract~~ certificates entered into in the state of Montana must be made on forms supplied by the Montana board of horse racing and a copy shall be filed with the board.

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

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendments to (3)(b) will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendments to (3)(b) will also delete language on licensure of jockeys who had previously been licensed in a foreign country. The foreign country requirements have not been imposed or used by the

Board for some time. It is unlikely the cumbersome procedure outlined in the rule would be applied. Instead, any jockey applicant will be required to meet the same standards outlined elsewhere in the Board rules, whether previously licensed in another state, or in a foreign country.

8.22.707 (32.28.707) OWNERS (1) Each owner shall obtain a license from the board. Persons under the age of 18 ~~Minors~~ shall not be licensed as owners. Any application for owner's license must establish financial responsibility to the satisfaction of the board. Failure to maintain financial responsibility shall be grounds for revocation of license.

~~(2) Owners shall be free to purchase feed and supplies on the open market.~~

(3) will remain the same but will be renumbered (2).

~~(4) All partnerships, and the name and address of every individual having any interest in a horse, the relative proportions of such interest, and the terms of any sale with contingencies, of any lease, or of any arrangement must be stated in writing, signed by all parties or by their authorized agents and be filed with the board before any horse which is a joint property or which is sold with contingencies or is leased can start in any race, and all partners and each of them shall be jointly liable for all stakes and other obligations.~~

~~(a) All statements of partnerships, of sales with contingencies, of leases or of other arrangements shall declare to whom winnings are payable, in whose name the horse will run and who has authority to enter or scratch the horse.~~

(5) through (6)(a) will remain the same but will be renumbered (3) through (4)(a).

~~(b) No person can use his real name for racing purposes, so long as he has a registered one.~~

(c) through (i) will remain the same but will be renumbered (b) through (h).

~~(7) Each owner shall register with the racing secretary at each track all of his horses, giving the name, color, sex, age and breeding of each and shall deposit therewith the official New York Jockey Club registration on each. He shall also state the name of his trainer or trainers.~~

~~(8)~~ (5) If an owner changes trainers, the new trainer ~~he~~ must notify the stewards ~~board and obtain the new trainer's signature on his owner's registration form~~.

(9) will remain the same but will be renumbered (6).

~~(10)~~ (7) No owner shall accept, directly or indirectly, any bribe, gift, or gratuity in any form which might influence the result of any race or races ~~or tend to do so~~.

(8) Owners shall not remove horse registration papers from the race office.

~~(11) No owner shall employ in any capacity any person under 16 years of age, nor shall he employ anyone not licensed by the board.~~

~~(12) No owner or his representative shall employ a veterinarian who is not licensed as such by the state board of veterinarians.~~

~~(13) The personnel of every stable and all additions thereto shall be registered by the owner with the board within 24 hours after employment or discharge.~~

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (1) will substitute the phrase "persons under the age of 18" for the previous word "minors." Since "minors" is not defined in the rule, but some rules prohibit certain activities and licensure by anyone under the age of 16, the proposed change will clarify that persons under age 18 may not be licensed as an owner, and the age 16 requirement found elsewhere in the rules does not apply to this rule on owners.

The proposed amendment to (2) will delete this subsection in its entirety, as the Board does not regulate the ability or place of purchase of feed and supplies by an owner.

The proposed amendment to (4) and (4)(a) will delete the subsection in its entirety. The current rule requiring information on partnerships and the various interests, terms of sale, leases, etc. is not necessary, as this partnership information is not needed by the Board for any licensing or regulatory purpose. The proposed change is necessary to eliminate this requirement for partnerships to provide unnecessary information.

The proposed amendment to (6)(b) will delete the prohibition on a person's use of their real name and registered names. Since the Board is no longer requiring information from corporations or partnerships on registered names, it is not necessary to retain this prohibition in the rules.

The proposed amendment to (7) will delete this subsection in its entirety. Since a trainer is required to turn in a horse's registration papers to the race office before entering the horse in a race, the information set forth in this subsection is readily available to racing officials. It is not therefore necessary to require this information be provided separately under this rule regarding owner licensee requirements.

The proposed amendment to (8) [new (5)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendments will also change the notification of any change in trainer from the Board to the stewards. The Board does not collect this information, but rather requires the stewards to collect and track this information. The proposed change will also delete the requirement that the new trainer must sign on the owner's registration form. The Board does not track the changes in trainers, thus there is no need to require a trainer's signature to evidence the change.

The proposed amendment to (10) [new (7)] will delete the unnecessary phrase "tend to do so." The phrase is not needed for rule clarity, and creates awkward wording.

The proposed amendment to new (8) will add a new

subsection on removal of a horse's registration papers from the race office. Previous practice at tracks was to prohibit removal of the registration papers, unless requested by a trainer, to avoid loss of papers if others were to check the papers in and out. This practice has never been reduced to writing in rule, however, for enforcement by the Board. The Board proposes to impose this new prohibition on tracks to safeguard the trainers from problems that may arise if any other unauthorized persons are allowed to remove a horse's registration papers from the race office.

The proposed amendment to (11) will delete the subsection in its entirety. The subsection is not necessary, as the prohibition on employing persons under age 16 is contained in Montana law. The prohibition on licensing persons under age 16 is contained elsewhere in Board administrative rule. Thus, it is not necessary to repeat these prohibitions in the owner rule.

The proposed amendment to (12) will delete this subsection in its entirety. The subsection is not necessary, because the prohibition on practicing veterinarian medicine without a state-granted veterinarian license is contained elsewhere in Montana law. It is not necessary to repeat the prohibition on the unlicensed practice of veterinary medicine in this administrative rule.

The proposed amendment to (13) will delete this subsection in its entirety. The Board has not required stable personnel to be "registered" with the Board for some time. This is not information the Board collects or uses in any way, thus it is not necessary to require this information to be provided to the Board.

8.22.709 (32.28.709) PONY PERSONS AND OUTRIDERS

(1) Each pony person and outrider shall obtain a license from the board and no person shall be allowed to pony horses or lead horses in a post parade without first obtaining a pony person's or outrider's license~~, except a~~. A trainer~~, who~~ may pony horses trained by ~~him~~ the trainer without a pony person ~~or outrider's~~ license.

(2) No pony person or outrider shall pony or parade any horse on the track without wearing a protective helmet and boots with heels ~~which shall be approved by the board or representative of the board~~. ~~Beginning March 1, 1997,~~ Each ~~each~~ pony person or outrider must wear a safety vest when riding on the track. The safety vest shall be designed to provide shock absorbing protection to the upper body.

(3) will remain the same.

(4) At no time shall ~~lead~~ pony horses be permitted to enter the paddock nor shall outriders or pony persons be allowed to pick up horses in front of the ~~judge's stand~~ unsaddling area after a race has been run.

(5) Before approving an application for a pony person's or outrider's license, ~~a majority of members of~~ the ~~board of~~ stewards~~, the jockey representative and the starter~~ shall concur the applicant has the ability to safely and correctly

perform the duties of a~~n exercise person,~~ pony person ~~and~~ or outrider.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to the title will clarify that the rule is intended to cover both pony persons and outriders. The proposed change will allow the requirements contained in the rule to be applied to both the pony person and outrider license categories.

The proposed amendment to (1) will add the word "outrider" to clarify that licensure requirement applies to both licensing categories. The proposed amendments will also change the awkward wording of the final sentence to make the sentence more readable. The rule requirement that allows a trainer to pony horses trained by that trainer will remain the same, but with more easily understandable language.

The proposed amendment to (2) will remove the requirement that the Board approve equipment such as helmets and boots. The Board does not approve this equipment, and thus will delete the language stating that Board approval is needed for the equipment. The proposed amendment will make the rule consistent with the Board rule on exercise riders, and lack of approval of their equipment also. The proposed amendment will also remove the date "March 1, 1997" from the rule, as this date has passed, and the safety vest requirement now applies uniformly to all pony persons and outriders. Finally, the proposed rule change will add the word "outrider" as needed to clarify that the rule applies to both outrider and pony persons licensing categories.

The proposed amendment to (4) will change the word "lead" to "pony" to clarify that pony horses are being referred to in the rule. The proposed amendment will also change "judge's stand" to "unsaddling area," as there is no judge's stand at Montana race tracks. This rule change will also make the language consistent with other rule changes which delete the use of the phrase "judge's stand."

The proposed amendment to (5) will change the requirement that a majority of the board of stewards, plus the jockey representative, plus the starter must concur that the applicant can safely perform the duties of the license category. It is not necessary for all of these people to evaluate and approve an application. Instead, only the stewards need to evaluate the applicant and make that decision. This procedure will be consistent with steward approval of other license categories as well. The proposed amendment will also delete the words "exercise rider" from the rule, as this rule does not address duties of exercise riders, and add the word "outrider," as this rule does address the duties of outriders.

8.22.710 (32.28.710) TRAINERS (1) Each trainer shall obtain a license from the board. No person under the age of 18 ~~Minors~~ shall ~~not~~ be licensed as a trainer~~s~~. ~~Any application~~

~~for trainer's license must establish financial responsibility to the satisfaction of the board.~~ Failure to maintain financial responsibility shall be grounds for revocation or non-issuance of license.

(2) If an applicant has not previously held a trainer's license in Montana or another horse racing jurisdiction, the applicant may not be issued a trainer license if the applicant fails to attain a passing score of at least 75% on an examination prepared by the board and administered by the board or its representative. If licensed in another racing jurisdiction, proof of licensure shall be provided to the stewards.

(3) will remain the same.

(4) The testing fee for trainers exam will be ~~$20~~ $50. If a passing score is not received, applicant may upon payment of ~~$40~~ $100 retake the test.

~~(5) Trainers shall be free to purchase feed and supplies on the open market.~~

~~(6)~~ (5) Each trainer shall, upon making an entry, furnish the name of the jockey who the trainer desires to rides ~~his~~ the trainer's horse, or if this is not possible, ~~he~~ the trainer shall furnish it no later than scratch time. If no jockey has been named by that time, the stewards shall name an available rider ~~and he shall ride the horse~~.

~~(7)~~ (6) A trainer ~~or owner~~ claiming a first or second preference on a jockey for a specified horse in a particular race shall obtain written proof of same from the jockey or ~~his compensation~~ agent and present said proof at time of entry.

~~(8)~~ (7) If a named rider is not available to ride for any reason ~~whatsoever~~, the trainer shall be immediately notified and may select a substitute jockey from those ~~then~~ available~~,. provided however,~~ T~~t~~he steward may select a substitute jockey if the trainer fails to act within a reasonable time or is unavailable to act in an emergency.

~~(9)~~ (8) The trainer shall be absolutely responsible for the condition of every horse ~~he~~ the trainer enters regardless of the act of third parties.

~~(10)~~ (9) A trainer may represent the owner in the matter of entries, declarations and the ~~employment~~ selection of jockeys.

(11) through (13) will remain the same but will be renumbered (10) through (12).

~~(14)~~ (13) Each trainer shall register with the racing secretary all the horses in ~~his~~ the trainer's charge~~, giving the name, age, sex, breeding, and ownership of same~~.

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

~~(16)~~ (15) Each trainer shall require every jockey and exercise person to wear a safety helmet when exercising horses for the trainer ~~him/her~~. ~~The safety helmet shall be of a type approved by the board and any changes in the helmet must be approved in writing by the stewards.~~

(17) will remain the same but will be renumbered (16).

~~(18)~~ (17) No trainer shall accept, directly or indirectly

any bribe, gift or gratuity in any form which might influence the result of any race ~~or which would tend to do so~~.

~~(19) No trainer shall move or permit to be moved any horse or horses in his care from the grounds of a race meeting without written permission from the stewards.~~

(20) will remain the same but will be renumbered (18).

~~(21)~~ (19) A trainer shall report promptly to the racing secretary and to the ~~track~~ official veterinarian any and all sickness of any horse or horses under ~~his~~ the trainer's care ~~or under his supervision~~.

~~(22) A licensed trainer may pony the horses he trains and may lead any horse which is in his care or under his supervision in the post parade prior to a race without obtaining a pony person or outriders license.~~

~~(23)~~ (20) Trainers acting as pony persons ~~or outriders~~ for the horses they train shall be obligated to observe the same rules of conduct as licensed pony persons ~~and outriders, see ARM 8.22.709~~.

~~(24)~~ (21) No trainer shall employ in any capacity any person under 16 years of age, ~~except as may be permitted by the applicable laws of Montana~~ nor shall ~~he~~ the trainer employ anyone not licensed by the board.

(25) through (27) will remain the same but will be renumbered (22) through (24).

~~(28)~~ (25) The trainer shall be absolutely responsible for the condition of any horse ~~he~~ the trainer enters in a race as disclosed by any test and/or analysis conducted by an approved laboratory ~~chemist~~.

~~(29)~~ (26) Except as provided in the permissible medication rule, ~~(ARM 8.22.1402)~~ a trainer shall not enter or start a horse that is not in serviceably sound racing condition, is a known bleeder, has been ~~tracheс~~ trachea-tubed, has been nerved by alcohol block or otherwise, except a horse that has had a digital neurectomy may be permitted to race subject to a pre-race veterinary examination~~;~~, has impaired eyesight in both eyes, or has been administered any narcotic, stimulant, depressant, local anesthetic, analgesic, or any derivative or compound thereof or any substance that interferes with the testing or masks.

~~(30)~~ (27) A licensed trainer may employ an assistant trainer. Such assistant trainer must be licensed before acting in such capacity on behalf of ~~his~~ the employer. Qualifications for obtaining an assistant trainer's license shall be the same as those for a trainer's license. A licensed assistant trainer shall assume the same duties and responsibilities as imposed on the holder of a trainer's license. The licensed trainer shall be jointly responsible with ~~his~~ the assistant trainer for all acts and omissions of such assistant trainer involving all racing matters.

(28) Horse registration papers may only be released from the race office to the licensed trainer of record.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (1) will delete the word "minors" and clarify that "persons under age 18" are prohibited from licensure as a trainer. Since "minors" is not defined in the rule, but some rules prohibit certain activities and licensure by anyone under the age of 16, the proposed change will clarify that persons under age 18 may not be licensed as a trainer, and the age 16 requirement found elsewhere in the rules does not apply to this rule on trainers. The change will also make the rule consistent with the rule on licensure of owners (see above). The proposed amendment will also delete the requirement that a trainer must establish financial responsibility to the satisfaction of the Board. This requirement is not enforceable by the Board, and is not well defined such that trainers can readily understand what documentation or information is needed to show financial responsibility to the Board. The requirement of financial responsibility is therefore proposed to be eliminated.

The proposed amendment to (2) will establish a requirement that proof of licensure as a trainer in another racing jurisdiction shall be provided to the stewards. The new language is needed to inform trainer applicants what information will have to be provided for licensure on the basis of previous licensure in another jurisdiction.

The proposed amendment to (4) will raise the fees for taking and re-taking the trainers' exam. The increase in fee is necessary to cover the Board costs associated with creating, administering, and grading the trainers' test. The proposed fee increase will result in an increase of $600.00 in Board revenue. The proposed fee increase will affect approximately 20, based on the number of trainer exams administered during the 2001 race season.

The proposed amendment to (5) will delete this subsection in its entirety, as the Board does not regulate the ability or place of purchase of feed and supplies by a trainer.

The proposed amendment to (6) [new (5)] will make the rule language gender neutral, as required by the Legislature in on-going rule changes. The proposed amendment will also clarify awkward language regarding naming an available jockey on a horse, without changing the meaning of the subsection.

The proposed amendment to (7) [new (6)] will delete the word "owner" from this rule, as the rule pertains to trainers, and not owners. The proposed amendment will also delete the phrase "compensation" agent, as this term is not used in the horse racing industry, and thus should not be included in the rules.

The proposed amendment to (8) [new (7)] will clarify previously awkward language on the selection of a substitute jockey by a trainer without changing the meaning of the subsection.

The proposed amendment to (9) [new 8)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (10) [new (9)] will change the word "employment" to "selection," as this more accurately

describes the trainer's actions in selecting a jockey to ride a horse for an owner.

The proposed amendment to (14) [new (13)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the list of information to be reported by the trainer. The list of information is not necessary, because the rule already requires a trainer to register all horses within the trainer's care, and the registration papers provided by the trainer will contain all necessary information previously found in the rule list.

The proposed amendment to (16) [new (15)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the requirement that the Board and the stewards shall approve safety helmets. The Board does not approve equipment, and thus will delete this wording from the rule. The proposed change will also make the rule consistent with other rule changes deleting Board approval of rider equipment.

The proposed amendment to (18) [new (17)] will delete a redundant phrase from the rule. The prohibition in the subsection on a trainer's inability to accept gifts or gratuities will remain the same, but the wording will be more easily readable and enforceable.

The proposed amendment to (19) will delete the subsection in its entirety. The Board does not enforce a requirement that a trainer shall not move horses from the grounds without written permission of the stewards, and does not intend to enforce such a requirement in the future. Therefore, it is unnecessary to retain this prohibition in the rules.

The proposed amendment to (21) [new (19)] will make the rule language gender neutral as required by the Legislature for on-going rule changes. The proposed amendment will also remove a redundant phrase from the subsection, as it is not necessary to convey the meaning of the subsection that a trainer shall promptly report all sicknesses of horses under the trainer's care.

The proposed amendment to (22) will delete the subsection in its entirety. The subsection is not necessary, as a previous Board administrative rule pertaining to pony persons already states that a trainer may pony, or lead, the horses under the trainer's care without obtaining a pony person's license.

The proposed amendment to (23) [new (20)] will delete the license category of "outrider" from this subsection. The rule allows trainers who are acting as pony persons to observe proper rules of conduct, which is consistent with the pony person rule. The pony person rule and the trainer rule do not contemplate, however, that a trainer will act as an outrider during a race. Therefore, the license category "outrider" should be eliminated from this subsection. The proposed amendment will also delete an internal cross reference to a different administrative rule. All administrative rules apply to all licensees, without the need for a cross reference

within this subsection to make the rule applicable.

The proposed amendment to (24) [new (21)] will delete the phrase "except as may be permitted by the laws of Montana" from the subsection, as this phrase is not necessary. The subsection already states that a trainer may not employ a person under 16 years of age, in conformity with Montana Child Labor Laws. It is not necessary to include exceptions to the Montana statutes, as the Department of Labor, not the Board of Horse Racing, would enforce any exceptions to the Child Labor Laws. The proposed amendment will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (28) [new (25)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also change the archaic word "chemist" to the currently used word "lab" for drug testing.

The proposed amendment to (29) [new (26)] will delete an internal cross reference to a different administrative rule. All Board administrative rules apply to all licensees, without the need for an internal cross reference to make the rule enforceable.

The proposed amendment to (30) [new (27)] will make the rule language gender neutral as required by the Legislature for on-going rule changes. The proposed amendment will also clarify awkward wording in the final sentence without changing the meaning of the subsection.

The proposed addition of (28) will add this new subsection to the rule. The new subsection will allow horse registration papers to only be released from the race office to the licensed trainer of record. This rule change is also being added to the rule on owners, thus the change is consistent throughout the rules. Previous practice at tracks was to prohibit removal of the registration papers unless requested by a trainer to avoid loss of papers if others were to check the papers in and out. This practice has never been reduced to writing in rule, however, for enforcement by the Board. The Board proposes to impose this new prohibition on tracks to safeguard the trainers from problems that may arise if any other unauthorized persons are allowed to remove a horse's registration papers from the race office.

8.22.711 (32.28.711) VETERINARIANS (1) Each veterinarian shall ~~be approved by the board and shall~~ obtain a license from the board before ~~he~~ the veterinarian may practice ~~his~~ the veterinarian's profession on the grounds of a race meeting. ~~He~~ The veterinarian shall not be eligible to own, or hold a license to train horses while being licensed to practice veterinary medicine on the grounds of a race meeting.

~~(2) Except as provided in the "permissible medication" rule (ARM 8.22.1402) no medication shall be administered other than in the barn area during the course of a licensed race meeting.~~

(3) and (3)(a) will remain the same but will be

renumbered (2) and (2)(a).

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to (1) will delete the requirement that a veterinarian must be approved by the Board before licensure. Board approval is not necessary for licensure of a practicing veterinarian at the track, thus the rule language on this requirement is not necessary. The proposed amendment will also make the rule language gender neutral as required by the Legislature for on-going rule changes.

The proposed amendment to (2) will delete this subsection in its entirety. The existing rule language does not adequately convey a prohibition on administration of medication consistently with the language in the permissible medication rule. The Board proposes to delete this subsection and clarify the permissible medication language so licensees may better understand what medication is allowed and where and when it may be administered.

8.22.712 (32.28.712) PROGRAM COMPANIES (1) will remain the same.

~~(2) Program companies must provide an accurate printed race program for each licensed race date, which must include, but not be limited to:~~

~~(a) past performance lines;~~

~~(b) horse numbers;~~

~~(c) past position numbers and colors;~~

~~(d) identity of owners, trainer and jockeys; and~~

~~(e) any rule of racing that the board may direct.~~

(3) and (4) will remain the same but will be renumbered (2) and (3).

~~(5) Program companies shall share their information applicable to Montana race meets and horses racing in Montana with other program companies at a reasonable cost payable to the company providing the information.~~

AUTH: Sec. 23-4-104, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (2) will delete the subsection in its entirety. The Board has previously listed the racing secretary's duties to include assignment and recording of horse numbers, post positions, colors, identity of owners and trainers, etc. It is not correct to also assign the duty of recording these items to the program companies. Additionally, the subsection is redundant in repeating the requirements of (1) which already require the program companies to provide a current and complete program, with accurate past performance lines on each horse entered.

The proposed amendment to (5) will delete the subsection in its entirety. The Board does not regulate program companies' ability to share program information, nor what cost should be charged for this service. The subsection is

unenforceable by the Board. The Board therefore proposes to delete it entirely.

8.22.713 (32.28.713) PHOTO COMPANIES (1) through (3) will remain the same.

(4) All ~~offices and~~ employees of photo companies must be licensed before entering the grounds of a race meet.

AUTH: Sec. 23-4-104, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (4) will delete the rule requirement that all photo company "offices" must be licensed. The rules actually require the photo company employees to be licensed, but not the photo company "office." The word "office" is therefore not necessary in the rule.

8.22.714 (32.28.714) TOTE COMPANIES (1) will remain the same.

(2) Tote companies must provide correct and complete betting odds, race results and payoff prices for each race at which wagering is permitted.

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

AUTH: Sec. 23-4-104, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (2) will change previously awkward wording in the subsection to make the rule more easily understandable to licensees and the public.

8.22.801 (32.28.801) GENERAL REQUIREMENTS (1) No horse may ~~enter or~~ start unless a registration certificate is first filed with the racing secretary. All entry forms shall be in the correct form as required by the board, shall be signed and shall be kept by the track management for the duration of the meet, and for 30 days thereafter.

(2) and (3) will remain the same.

~~(4) All appaloosa horses shall be registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.~~

(5) through (11) will remain the same but will be renumbered (4) through (10).

~~(12) In making an entry for a produce race, the produce is entered by specifying the dam and the sire or sires.~~

~~(a) If the produce of a mare is foaled before the first day of January of the year specified, or if there is not produce the entry of such mare is void.~~

~~(b) In produce races, allowances for the produce of untried horses must be claimed before the time of closing and are not lost by subsequent winnings.~~

(13) will remain the same but will be renumbered (11).

~~(14)~~ (12) Entries and declarations shall be made in writing and assigned by the trainer or owner of the horse~~, or his authorized agent or some person deputized by him and~~. Eeach race meeting shall provide blank forms on which entries and declarations are to be made.

~~(15)~~ (13) Entries may be made by telephone or ~~telegraph~~ facsimile but must be confirmed in writing.

(16) through (28) will remain the same but will be renumbered (14) through (26).

~~(29)~~ (27) No Arabian shall run on any track in the state of Montana until it is a three year old. ~~After January 1, 1991,~~ N~~n~~o Arabian maiden seven years old or older shall be eligible to enter or start in any race. For purposes of this rule only, a maiden is a horse which at the time of starting has never won a race on the flat in any country.

(30) will remain the same but will be renumbered (28).

~~(31) No horse involved in a partnership shall be permitted to enter or start until the rules for the registration of partnerships have been complied with.~~

(32) and (33) will remain the same but will be renumbered (29) and (30).

~~(34) No entry shall be accepted from husband or wife, while either is disqualified.~~

(35) and (36) will remain the same but will be renumbered (31) and (32).

(33) No horse on the bleeders list shall be qualified to enter or to start.

(37) through (38)(c) will remain the same but will be renumbered (34) through (35)(c).

~~(39)~~ (36) The ~~licensee~~ race secretary shall have the right to withdraw or change any unclosed race.

(40) through (43) will remain the same but will be renumbered (37) through (40).

~~(44)~~ (41) The nominator is liable for the entrance money ~~or stake~~, and the death of a horse or mistake in its entry when eligible, does not release the subscriber ~~or transferee~~ from liability ~~for stakes, and~~. T~~t~~he entrance money to a purse ~~that is run off~~ shall not be returned on the death of a horse or its failure to start for any cause whatever.

(45) through (54) will remain the same but will be renumbered (42) through (51).

~~(55)~~ (52) If the entries exceed the number required for a full field and an also eligible list, the racing secretary shall keep a list of horses eliminated from the race, and they are to have precedence in any race of similar distance and similar conditions, in which they may be afterward entered and each subsequent time that a horse is so eliminated ~~he~~ the horse shall gain an advance position on the preferred list.

(56) through (63) will remain the same but will be renumbered (53) through (60).

~~(64)~~ (61) Post positions shall be determined publicly by lot in the presence of the stewards, and racing secretary or his assistant. I~~i~~n thoroughbred races only~~.~~, a~~A~~fter a regularly carded horse or horses have been excused from the race, all horses shall move up in post position order. In quarter horse and mixed races utilizing the straightaway, a horse or horses shall assume the post position or positions of the horse or horses excused.

~~(65)~~ (62) Winnings shall include all purse money ~~or~~

~~prizes~~ up to the time appointed for the start, and shall apply to all races in any country, and embrace walking over or forfeit, but not second, third, fourth or less not the value of any prize not paid or paid in money. Winnings during the year shall be reckoned from January 1 preceding. Winner of a certain sum shall mean winner of a single race of that value unless otherwise expressed in the conditions.

(a) will remain the same.

(b) The entrance money, starting and subscription fees in every race shall go to the winner unless otherwise provided in its conditions, but if for any reason a race is not run, all stakes or entrance money shall be refunded to those entries remaining eligible at time of decision to cancel or postpone. If the ~~trails~~ trials of said race have been run and the finals are cancelled due to unforeseeable circumstances, the remaining qualifiers will equally divide the entrance, starting and subscription fees.

(c) will remain the same.

~~(66)~~ (63) In the event that management prefers to use a date system of preference rather than the preferred list referred to in ~~ARM 8.22.801(55)~~ (52) then the racing secretary shall post and adhere to the following procedure. At tracks which choose to use date system, this rule will supersede those rules set down for other forms of determining preference.

(a) Horses will not be eligible to receive a date in a race until their papers are on file in the racing office.

(b) ~~Horses entered will initially receive an entry date corresponding to the date on which they are entered.~~ All horses with registration papers on file with the racing office prior to the first day of racing shall receive an opening day entry date. This date is the earliest possible date a horse may receive. A horse keeps its opening day date until it races or scratches. All horses registered with the racing secretary after the first racing date will receive an entry date corresponding to the date registered with the racing secretary.

(c) through (k) will remain the same.

~~(67)~~ (64) In all thoroughbred races where qualifying races are held to select finalists, the method of determining those finalists will be by order of finish in each qualifying heat. In quarter horse trials, finalists will be selected based on fastest times.

~~(68) All stakes payments, nomination fees and entrance fees shall be placed in an account separate from any other account containing operating capital used by a licensed track. No stakes payments, nomination fees or entrance fees may be used for operating expenses, except for a percentage of the account authorized by the Montana board of horse racing, and interest generated on the account. The state parimutuel supervisors (state auditors) audit the stakes account on a weekly basis. The account balance shall be reported as part of the parimutuel bookkeeping records.~~

(69) and (69)(a) will remain the same but will be

renumbered (65) and (65)(a).

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to (1) will delete the word "enter" as an event for which a registration certificate must first be filed. The subsection will continue to require the filing of a registration certificate for a horse to start, but the certificates are not usually filed before the horses are entered. It is not necessary to include "enter" as an event requiring a registration certificate.

The proposed amendment to (4) will delete the subsection in its entirety. The reference to the Appaloosa Horse Club of Moscow, Idaho is outdated. It is not clear whether such an organization remains, nor where it is headquartered. Instead, Appaloosa horses will be covered by the existing rule language of (5) which requires all officially recognized breeds of horses to be registered with their officially sanctioned breeding or registry associations. This would include Appaloosas, as well as other breeds such as paints, etc.

The proposed amendment to (12) will delete the subsection in its entirety. Montana does not offer "produce races," and will not offer them in the future. Therefore, it is unnecessary to state requirements for qualifications for a "produce race."

The proposed amendment to (14) ([new (12)] will change the persons who shall make entries and declarations to that of owner or trainer. The proposed change will delete "authorized agent" and "some person deputized" by the trainer. The existing rule language is not clear enough on who may make entries, and the proposed changes will clarify this process for licensees.

The proposed amendment to (15) [new (13)] will substitute the word "facsimile" for the outdated word "telegraph." Entries are no longer made by telegraph, but are often made by telephone or facsimile. The requirement that those entries must be confirmed in writing will remain the same.

The proposed amendment to (29) [new (27)] will delete the date "January 1, 1991," as this date has long passed, and all Arabians are now subject to the rule uniformly.

The proposed amendment to (31) will delete this subsection in its entirety. The existing language refers to requirements for horses owned through a partnership. However, the Board has proposed to delete separate partnership requirements for ownership of a horse, as those requirements were not necessary and unenforceable. Therefore, it is consistent with previous proposed rule changes to delete this subsection's requirement that horses owned by a partnership must meet separate registration of partnership standards.

The proposed amendment to (34) will delete this subsection in its entirety. The Board may not enforce a prohibition against an entry simply because the spouse may be disqualified. The Board has no authority to sanction a person's spouse, and not allow an entry, without a separate

sanctionable offense by that person. The Board will therefore delete this subsection as unenforceable and imposing unfair treatment on persons due to their marital status.

The proposed amendment to (33) will add this new subsection to the rule. The proposed amendment is necessary because the Board has created a bleeders list to designate those horses prohibited from certain activities due to their propensity to bleed and endanger their health. The proposed language will prohibit horses on the bleeders list from entering or starting in a race.

The proposed amendment to (39) [new (36)] will clarify that the race secretary has the right to withdraw or change any unclosed race. The previous language did not clearly designate this right to any particular licensed position by the Board. The rule change is therefore necessary to clarify the proper person invested with that right.

The proposed amendment to (44) [new (41)] will clarify awkward language without changing the meaning of the subsection. The change will delete unnecessary and outdated wording, while still making the nominator liable for the entrance money, and clarifying that the entrance money to a purse shall not be returned on the death of a horse or its failure to start.

The proposed amendment to (55) [new (52)] will make the rule language gender neutral for horses also.

The proposed amendment to (64) [new (61)] will clarify that post positions shall be determined in the presence of a steward, as well as the others listed. The stewards have customarily been present, but it is necessary to add this to the rule language to require their presence. The proposed amendments will also clarify the procedure to be followed for thoroughbred horses to move up in post position order. The proposed amendments will also add a sentence to differentiate the method of obtaining post positions for quarter horse races from that of the method for thoroughbred races. The quarter horse post position method language existed elsewhere in rule, but is being moved here for clarity.

The proposed amendment to (65) [new (62)] will delete the words "or prize," as the subsection is intended to address winnings, which do not include "prizes," but rather the purse money. The deletion is necessary to clarify the rule language is referring to winnings in the form of purse money only.

The proposed amendment to (65)(b) [new (62)(b)] will correct a typographical error in the rules and change the word "trails" to the correct word "trials."

The proposed amendment to (66) [new (63)] will correct an internal reference to use the new number assigned during the amendment of the Board rules. The proposed amendment to (b) will also change the method by which a horse obtains an entry date. The existing language on entry dates corresponding with the date the horse is entered will be deleted and replaced. The proposed new language will assign an opening day entry date to all horses with registration papers on file prior to the first day of racing. The proposed new language will also

allow a horse to keep its opening day entry date until it races or scratches. The proposed new language will also allow all horses registered after the first racing date to receive an entry date corresponding to the date registered. The proposed amendments are necessary because the existing system did not promote fairness in assigning entry dates, and the new system will be much more equitable.

The proposed amendment to (67) [new (64)] will add a sentence differentiating quarter horse trials from thoroughbred trials as far as the method of determining finalists for heats. The proposed new language will require finalists in quarter horse races to be selected based on fastest times. This change is necessary to make the rule consistent with other proposed rule changes which also require the fastest times (either electric timer or hand times) to determine the finalist in quarter horse trials (see above).

The proposed amendment to (68) will delete this subsection in its entirety. This subsection is previously stated in ARM 8.22.502(50) [new (47)].

8.22.803 (32.28.803) DECLARATIONS AND SCRATCHES (1) through (5) will remain the same.

(6) Any trainer who has entered a horse, will be allowed ~~the right and privilege of~~ to scratch~~ing~~ from said race prior to scratch time, if horses are present on the also eligible list ~~until there remain in the race only eight interests~~. If there are more requests to withdraw than are available, permission to withdraw shall be granted first to the also eligible horses by lot, and thereafter to the in-today horses in the same manner. However, in all races involving the daily double, no entry may be withdrawn that would reduce the starting field to less ~~that~~ than the number designated by the racing secretary, without permission of the stewards. No other entries will be excused as provided above except upon receipt of a veterinarian certificate of unfitness~~, or other causes acceptable to the stewards~~.

~~(7) Quarter horses which gain a position in a race from the also eligible list shall take the stall of the horse declared out or scratched on the straightaway races only.~~

(8) will remain the same but will be renumbered (7).

(8) Husband and wife will be considered as one entity for entry purposes.

AUTH: Sec. 23-4-202, MCA
IMP: Sec 23-4-104, MCA

REASON: The proposed amendment to (6) will clarify some existing awkward language on trainer's ability to scratch a horse from a race. The proposed amendment will also change the language to state that a horse may be scratched if horses are present on the also eligible list, rather than the previous standard, which stated a horse may be scratched until there remain only eight interests in a race. The proposed change is necessary to make the rule language more consistent with the actual practice at race tracks. The races no longer

attract the same high numbers of horses and entries, thus the language on only eight remaining interests in a race is no longer necessary. Finally, the proposed amendment will delete awkward language on "other causes acceptable to the stewards," which was not clearly enough defined to be enforceable as rule language.

The proposed amendment to (7) will delete the subsection in its entirety. The subsection is no longer necessary, as the proposed rules have already addressed the method by which quarter horses fill a post position, and it is not necessary to repeat the language in this rule.

The proposed amendment to (8) will retain the language that spouses will be considered as one entity for entry purposes. The Board has enforced this requirement throughout its history, as spouses that participate jointly in horse racing should be considered one interest in a race for fairness to other entries in the race.

8.22.804 (32.28.804) CLAIMING (1) through (17) will remain the same.

~~(18) No mare shall be entered in a claiming race when there are any unpaid stud fees against her.~~

(19) through (26) will remain the same but will be renumbered (18) through (25).

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (18) will delete the subsection in its entirety. The Board has no authority nor interest in regulating unpaid bills against horse owners or trainers.

8.22.805 (32.28.805) WALKING OVER (1) and (1)(a) will remain the same.

(b) In stake races, one-half of the winner's share of the added money, ~~pays~~ plus all nomination, sustaining, subscription and entry fees.

(2) In case of a walkover, any money ~~or prize~~ which by the conditions of the race would have been awarded to a horse placed second or lower in the race, shall, if contributed by the owners, be paid to the winner. If it is a payment from any other source, it shall not be awarded.

(3) will remain the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (1)(b) will correct a typographical error in the existing rule in which the word "pays" should read "plus" so the rule reads correctly.

8.22.807 (32.28.807) POST TO FINISH (1) through (7) will remain the same.

(8) Any jockey against whom a foul is claimed shall be given the opportunity to ~~appear before~~ give an explanation to

the stewards before any decision is made by them.

(9) through (11) will remain the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (8) will change the existing language which states that a jockey against whom a foul is claimed shall have the opportunity to "appear before" the stewards to "give an explanation to" the stewards. This proposed change is necessary to more accurately state the actual sequence of events when a foul is claimed during a race. The jockey must be given the opportunity to speak to the stewards on the telephone, but there is not sufficient time for the jockey to make an actual "appearance" before the stewards before the stewards must decide whether or not to allow the objection or foul.

8.22.808 (32.28.808) OBJECTIONS - PROTESTS (1) through (4) will remain the same.

(5) To merit consideration, an objection ~~protest~~ against a horse based on a happening in a race must be made to the stewards before the placing of the horses for that race has been officially confirmed. Objections may be lodged by the horse's owner, trainer or jockey.

(6) If a jockey wishes to ~~protest~~ lodge an objection regarding a happening in a race, ~~he~~ the jockey must notify the clerk of the scales immediately upon ~~his~~ the jockey's arrival at the scales for weighing in. The clerk of scales will thereupon put the jockey in touch with the stewards by telephone.

(7) Pending the determination of a protest~~,~~ against a steward's decision, any money or prize won by a protested horse, or any other money affected by the outcome of the protest shall be held by the licensee until the protest is determined.

(8) A protest against a steward's decision may not be withdrawn without permission of the board ~~stewards~~.

(9) No person shall make frivolous objections or protests.

(10) The stewards shall keep a record of all objections and protests ~~and complaints~~ and of any action taken thereon and shall report both daily to the board.

(11) will remain the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (5) will change the wording from the incorrect word "protest" to the correct word "objection." The correct word to describe the situation where a claim of foul is made against any jockey or horse is an "objection," and not a "protest." The change is necessary to ensure the correct term is used.

The proposed amendment to (6) will also change the wording from "protest" to "lodge an objection" for the same

reason noted immediately above in (5). The proposed amendments will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (7) will add the phrase "against a steward's decision" to clarify that a protest which may cause the purse money to be held would have to be a protest against a steward's decision. A protest during the race, such as an objection against a jockey or horse, would not be sufficient to hold the purse money. The proposed change is therefore necessary to clarify what type of protest may cause the purse money for a race to be held pending the outcome of the protest.

The proposed amendment to (8) will clarify that a protest against a stewards' decision may not be withdrawn without permission of the Board. The existing rule language does not specify what type of protest may not be withdrawn, and could be read to include protests during a race such as an objection, which is not the intent of the subsection. The proposed language is also necessary to specify that the Board, and not the stewards, must approve any withdrawal of a protest against a stewards' decision, as it is the Board who would be hearing those types of protests.

The proposed amendment to (9) will add the word "objection" to again clarify that "objections," as opposed to other types of "protests" shall not be made in a frivolous manner. The change is therefore necessary for clarity in informing licensees of this prohibition.

The proposed amendment to (10) will again add the word "objections" to the types of situations that must be recorded by the stewards. The existing language on "protests and complaints" does not adequately explain what circumstances are being indicated, thus the change is necessary for better clarity for the stewards and licensees.

8.22.809 (32.28.809) DEAD HEATS (1) and (2) will remain the same.

(3) If a dead heat is for first place, each horse shall be considered as winner of the amount received ~~according to the preceding~~.

(4) and (5) will remain the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (3) will delete an unnecessary phrase that made the subsection difficult to read, without adding any meaning to the rule. The intent of the subsection will remain the same in stating that each horse considered a winner in a dead heat situation shall be recorded as a winner of the amount awarded to that horse in the horse's past performance record.

8.22.1102 (32.28.1102) DIRECTOR OF SIMULCAST FACILITY

(1) Each holder of a simulcast facility license shall name a director of simulcast facility for its facility. It

shall be this director's duty to coordinate the selection and transmittal of races and parimutuel information for the simulcast facility. ~~He~~ The director shall act as liaison between the simulcast facility licensee, the simulcast network licensee, ~~host tracks~~ and the board and its representatives.

AUTH: Sec. 23-4-104, 23-4-202, 37-1-131, MCA
IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the phrase "host tracks," from the list of entities for which the simulcast director acts as liaison. The Board requires the director of a simulcast facility to act as liaison among the simulcast facility licensee, the simulcast network licensee and the Board, but does require an on-going liaison relationship with a variety of host tracks which are mostly located out of state.

8.22.1103 (32.28.1103) GENERAL PROVISIONS (1) will remain the same.

~~(2) For out-of-state races simulcast in Montana, subchapters 16 and 18 hereof will apply with respect to exotic wagering, except in the case of interstate trifecta and exacta wagering involving coupled entries and field entries. However no trifecta wagering is permitted on races with less than five horse entries.~~

(3) through (4) will remain the same but will be renumbered (2) through (3).

~~(5)~~ (4) If all video and audio simulcast signals are lost prior to post time, and until the race is run, parimutuel wagering shall cease. ~~the board through its parimutuel supervisor reserves the authority to decide whether parimutuel wagering should continue, provided,~~ However ~~that~~ all wagers made prior to the loss of all such signals shall remain in the pool and winning tickets may be paid therefrom. No further wagers shall be accepted until the signal resumes.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-202, MCA

REASON: The proposed amendment to (2) will delete the subsection in its entirety. The deletion is necessary because the subsection contains internal cross references to administrative rule chapters that will have different numbers after the rules are transferred to the Department of Livestock. The proposed change is also necessary to delete the restriction on exotic wagering for out of state simulcast races in Montana. All forms of exotic wagering offered by the simulcast host track are allowed in Montana.

The proposed amendment to (5) [new (4)] will also clarify the Board's required procedure in the event the simulcast signal is lost while wagering is underway. The existing rule language requires the parimutuel supervisor to decide whether parimutuel wagering should continue. However, it is not

usually possible to consult with the parimutuel supervisor in a timely fashion from each simulcast site, and may result in different subjective decisions being made for different occurrences or sites. Therefore, the new rule language will create a standardized procedure whereby parimutuel betting will cease upon loss of all video and audio signals, and no further wagers shall be accepted until the signal resumes.

8.22.1401 (32.28.1401) GENERAL RULES (1) and (2) will remain the same.

(3) The stewards of the meeting may require at any time that any horse be sent to the testing enclosure for the taking of such specimens of saliva, urine and/or blood as shall be directed, as well as ~~for an examination for "sponging" and~~ other examinations as may be directed.

(4) and (5) will remain the same.

(6) The official veterinarian, the board representatives, the stewards or their authorized representatives may take samples of any medicines, feeds or other materials suspected of containing substances which might affect the performance of a horse in a race which may be found in the stables or elsewhere on the premises of a licensee, or in the possession of any person on the premises of the licensee.

(7) The trainer, groom, assistant trainer and substitute trainer ~~any other person~~ having charge, custody or care of horses racing on any track under the jurisdiction of the board are obligated to protect the horses in their care against the administration of any substance which could affect the performance of a horse in a race. Failure to protect any horse may result in any penalty deemed proper by the stewards and the matter may be referred to the board.

(8) and (9) will remain the same.

~~(10) Except as provided in the "permissible medication" rule (ARM 8.22.1402), no medication shall be administered other than in the barn area during the course of a licensed race meeting.~~

(11) will remain the same but will be renumbered (10).

(a) This rule shall not apply to water, heat or cold treatment or customary liniments or salves, provided the same be applied externally only~~, see ARM 8.22.1401(17)~~.

~~(12)~~ (11) Should any analysis made by any ~~chemist~~ testing laboratory approved by the board, or any urine, saliva, blood or other sample taken from a horse entered in a race, before or after the race, prove positive, i.e. show the presence of any narcotic, stimulant, depressant, or any derivative or compound thereof, or any other identifiable drug or ingredient, the ~~chemist~~ testing laboratory shall report the positive test in the manner described. The approved ~~chemist~~ testing laboratory shall send an original and a duplicate signed copy reporting the results of such analysis and/or test ~~he~~ the testing laboratory has conducted to the office of the board. The board secretary shall file the original and immediately mail ~~in~~ duplicate copy to the state steward.

~~(13)~~ (12) The state steward shall not authorize purse payment of a race until ~~he~~ the state steward has received a report from the approved testing laboratory ~~chemist~~. If the report shows a positive test indicating the presence of a forbidden substance, the stewards will conduct a hearing. T~~t~~he purse shall not be released until ordered by the ~~board~~ stewards after hearing the case.

~~(14)~~ (13) When the stewards receive a written report from the ~~chemist~~ testing laboratory that a positive urine or other test has been found, they shall at once summon the trainer ~~and such security officer or officers of the racing association as they choose to assist them, to contact the foreman of the stable~~, the groom or grooms, and any other employees of the trainer who may have had contact with the horse from which a positive test was obtained. The trainer, ~~foreman,~~ grooms and such other employees shall appear before the stewards.

~~(15)~~ (14) After the stewards have informed the trainer of the positive test, they shall request the security officer or officers ~~whom they have chosen~~ to assist them to accompany the trainer to the stable and to conduct in the presence of the trainer, a thorough search of the trainer's barn, automobile, and any other vehicles which ~~he~~ the trainer may have in ~~his~~ the trainer's possession or under ~~his~~ the trainer's control.

(16) will remain the same but will be renumbered (15).

~~(17) Except as provided in the "permissible medication" rule (ARM 8.22.1402), the use of any narcotic, stimulant, depressant, local anesthetic, analgesic, or any derivative or compound thereof is forbidden. Any substance that interferes with the testing or analysis and any substance that masks the presence of a narcotic, stimulant, depressant, local anesthetic, analgesic, or any derivative or compound thereof is forbidden.~~

~~(18) Any trainer, groom, owner, veterinarian, or other person found to be responsible for administering or permitting to be administered to any horse entered to be raced, any forbidden substance as shown by the test and/or analysis of the approved chemist shall be subject to a fine, suspension or both.~~

(19) and (20) will remain the same but will be renumbered (16) and (17).

~~(21) No punitive action will be taken by the stewards, the board, or their authorized representative against anyone upon the report of a positive test which does not indicate the presence of a forbidden substance.~~

(22) will remain the same but will be renumbered (18).

~~(23)~~ (19) Any time a positive test and/or analysis is reported by the approved ~~chemist~~ testing laboratory and at any other time deemed advisable, the board, the stewards, or duly authorized representative of either may conduct a search for and seize any illegal paraphernalia, forbidden substance, or substance not approved by the U.S. food and drug administration. ~~Searches shall be conducted only after obtaining an appropriate search warrant or with the consent of the person to be searched or the consent of the person in~~

~~control of the place to be searched.~~

AUTH: Sec. 23-4-104, 23-4-202, 37-1-131, MCA
IMP: Sec. 23-4-104, 23-4-202, MCA

REASON: The proposed amendment to (3) will delete the phrase "for an examination for sponging," as this is not a procedure required by the stewards. The other procedures such as urine and/or blood testing are procedures which may be properly ordered by the stewards, and thus those procedures should remain in the rule.

The proposed amendment to (6) will add the word "representative" to clarify that a Board representative may also take samples of medicine, feed, etc.

The proposed amendment to (7) will clarify that the listed persons, including assistant trainers and substitute trainers are obligated to protect the horses in their care. The list should not use the imprecise term "any other person," but should instead list exactly which license categories are charged with this duty.

The proposed amendment to (10) will delete the subsection in its entirety. The Board has proposed rules which regulate the types of permissible medications and times and places of administration of those medications. It is not therefore accurate to make reference to administration of medication in any other time or place than allowed by rule. It is therefore necessary to delete this subsection to avoid conflict with other administrative rules on permissive medication.

The proposed amendment to (11)(a) [new (10)(a)] will delete an internal cross reference within the rule. All administrative rules apply to all licensees without the need for internal cross references to reinforce which rules are intended for enforcement.

The proposed amendment to (12) [new (11)] will change the term "chemist" to "testing laboratory." The term "chemist" is archaic, and does not accurately describe the entity which performs testing and analysis for drug use on the horses and licensees. Instead, "testing laboratory" is the correct term to describe the entity which performs drug testing on behalf of the Board. The proposed amendment will also make the rule gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (13) [new (12)] will make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete use of the archaic word "chemist" (see above). The proposed amendment will also clarify the procedure to be followed in the event of a positive test. The correct procedure is for the stewards to conduct a hearing, and for the stewards to hold or release the purse money, and not the Board. The Board acts as a reviewing body for appeals from stewards decisions, but does not hear the original case for a positive drug test.

The proposed amendment to (14) [new (13)] will delete the use of the archaic word "chemist" (see above). The proposed

amendment will also delete the requirement that the stewards contact the security officer and the foreman of the stable when a positive drug test is received. The security officer is not necessary, as the stewards must hold a hearing with the trainer, and other employees, which does not usually involve the security officer. The "foreman of the stable" is not necessary, as there are no persons designated as "foreman of the stable" at race tracks in Montana.

The proposed amendment to (15) [new (14)] will delete awkward phrasing through use of the term "whom they have chosen" without altering the meaning of the subsection. The proposed amendment will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (17) will delete the subsection in its entirety. The subsection is not necessary because it contains an internal cross reference and summary of the permissible medication rule found elsewhere within the Board's administrative rules. All Board administrative rules apply to all licensees without the need for cross reference or summaries in different subsections to reiterate the restrictions.

The proposed amendment to (18) will delete the subsection in its entirety. The subsection is not necessary because it summarizes a requirement for trainers and other licensees to be responsible for administration of medication to their horses, and the sanctions for a positive drug test. This information is contained in other Board administrative rules, and need not be repeated in this subsection.

The proposed amendment to (21) will delete the subsection in its entirety. The subsection is not necessary because the Board does not impose punitive sanctions for positive drug tests which indicate a permitted medication. It is not therefore necessary to state this lack of Board action in the rules, when this type of action is not authorized anywhere in rule or statute.

The proposed amendment to (23) [new (19)] will delete the archaic word "chemist" and substitute the phrase "testing laboratory" (see above). The proposed amendment will also delete the sentence referring to the use of search warrants for searches by the Board or the stewards. Search warrants are an element of criminal law, not used in the Board's administrative functions, and thus the Board could not obtain a search warrant in fulfilling its administrative and regulatory duties. Therefore, it is not necessary to refer to a search warrant being issued, as this is not a legal remedy available to the Board.

8.22.1402 (32.28.1402) PERMISSIBLE MEDICATION

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

~~(4)(a) Furosemide may be discontinued with written permission of the state veterinarian on a medication request form after a minimum of 30 days from the time that permission to medicate was initially granted. Otherwise, approval will~~

~~expire on December 31 of the year in which it is approved.~~

~~(b) Phenylbutazone may be discontinued by the trainer with written permission of the state steward on a medication request form after a minimum of 30 days from the time that permission to medicate was initially granted. Otherwise, approval will expire on December 31 of the year in which it is approved.~~

(5) will remain the same but will be renumbered (4).

~~(6)~~ (5) Race day medication is allowed in the treatment of exercise induced pulmonary hemorrhage. Up to 250 mg. of furosemide (five cc lasix) IV is permitted up to four hours before race time.

~~(7)~~ (6) A horse which, during a race or following a race, or which, during exercise or following exercise, is found to be hemorrhaging from one or both nostrils or is found to have bled into its trachea as determined by endoscopic examination is eligible to be placed on the ~~medication~~ lasix list and treated on race day to prevent bleeding during its race.

(7) In order to obtain authorization for race day treatment of the bleeder, the horse's trainer must:

(a) provide evidence that the horse was certified as a bleeder by another state; or

(b) provide an affidavit signed by a veterinarian stating that the horse had bled; or

(c) have had the affected horse bleed as witnessed by the official veterinarian on the track or in the test barn. ~~obtain a certificate of examination from the state veterinarian or a practicing veterinarian, which must be approved by the state veterinarian and have the horse placed on the official medication list. The state veterinarian must establish that the horse did in fact hemorrhage from one or both nostrils or that an endoscopic examination showed observable amounts of free blood in the horse's respiratory tract.~~

(8) When confirmed by the ~~state~~ official veterinarian, the horse may be placed on the ~~medication~~ lasix list which is maintained by the ~~state~~ official veterinarian and the stewards. Being on the lasix list will enable the horse to be entered to race on furosemide (lasix). Once on the ~~medication~~ lasix list, a horse may be removed from the ~~medication~~ lasix list by the trainer after 30 days. A horse removed from the ~~medication~~ lasix list cannot be put back on the list for a period of 30 days, and only then after being determined to bleed after a race or work as witnessed by the ~~state~~ official veterinarian or a practicing veterinarian~~, or through endoscopic examination~~. ~~Medication~~ Lasix lists will apply to horses listed at all tracks on a statewide basis. Lasix approval will expire each year on December 31.

~~(a)~~ Horses on the current year's ~~medication~~ lasix list leaving Montana to race in another jurisdiction which does not allow the use of furosemide (lasix) will assume their place back on the ~~medication~~ lasix list upon returning to Montana.

(a) No horse may be entered in a race under the influence of furosemide unless the trainer and veterinarian of

the horse submit to the official veterinarian a drug request form and obtain written approval from the official veterinarian. The board shall supply the drug request form. The drug request form shall include provision for the following:

(i) the name, age, sex and breed of the horse;

(ii) the names of the licensed trainer and licensed veterinarian;

(iii) the nature of the horse's injury or disease as determined the veterinarian;

(iv) a place for a request by the trainer to discontinue medication; and

(v) a place for the signatures of the trainer and veterinarian attending the horse and the board approved official veterinarian.

~~(b) Horses certified as EIPH positive in another jurisdiction and not having run without furosemide (lasix) up until the time they race in Montana will automatically be placed on the Montana medication list, with the out-of-state certificate stating EIPH positive, year and state name.~~

~~(8)~~ (9) Horses observed or certified to have bled during or after racing or exercise will be automatically put on a "bleeder's list." This list will be maintained by the ~~state~~ official veterinarian and steward, and will require that a horse bleeding for the first time will be ineligible to enter a race for a period of 10 days after the bleeding incident. Horses which are placed on the bleeder's list following a second incident of bleeding will be ineligible to enter a race for a period of 20 days after the second incident. Horses which are placed on the bleeder's list following a third or greater incident of bleeding will be ineligible to enter a race for a period of 60 days after the third or greater incident. After the 60-day ineligibility period, a horse may become eligible to enter only after consultation with the ~~state~~ official veterinarian and authorization by the ~~state~~ official veterinarian.

~~(9)~~ (10) A horse on ~~a medication~~ the lasix list cannot be treated ~~within~~ less than four hours prior to post time with furosemide (lasix). No other medication may be administered for bleeder treatment. Lasix ~~Bleeder medication~~ must be administered in the manner approved by the ~~state~~ official veterinarian. Oral administration of furosemide (lasix) is not permitted ~~for such purpose~~. Permitted bleeder medication shall be administered by ~~the horse's regular~~ a licensed veterinarian. Such administration may be performed at the trainer's barn.

(a) Trainers are required to have lasix forms completed by the ~~practicing~~ veterinarian at the time of administration of lasix, not less than four hours prior to post time. The form shall include date, time and amount of lasix administered. After signature by the ~~practicing~~ veterinarian, the lasix form must be returned to the test barn personnel within 10 minutes of the time of administration of lasix.

(b) Test barn personnel, upon receipt of the ~~medication~~

lasix form, shall log in the date and time of receipt. If the time of receipt exceeds the 10 minute grace period, the test barn personnel shall notify the stewards, and the horse will be scratched by the stewards for that day's racing.

~~(10) No horses may be entered into races under the influence of furosemide unless the trainer and veterinarian of the horse submit to the state veterinarian a drug request form and obtain written approval from the state veterinarian. The board shall publish and supply the appropriate drug request form. The drug request form shall include provision for the following:~~

~~(a) the name, age, sex and breed of the horse;~~

~~(b) the name of the licensed trainer and veterinarian;~~

~~(c) the nature of the horse's injury or disease as determined by an examination by a qualified and duly licensed veterinarian;~~

~~(d) a place for a request by the trainer to discontinue medication;~~

~~(e) a place for the signature of trainer and veterinarian attending the horse and the board approved state veterinarian.~~

(11) Horses are allowed to compete in races with phenylbutazone in their system as long as the trainer has declared phenylbutazone at time of entry. ~~No horses may be entered into races under the influence of phenylbutazone unless the trainer of the horse submits to the state steward a drug request form. The board shall publish and supply the appropriate drug request form. The drug request form shall include provision for the following:~~

~~(a) the name, age, sex and breed of the horse;~~

~~(b) the name of the licensed trainer and veterinarian;~~

~~(c) the nature of the horse's injury or disease;~~

~~(d) a place for request by the trainer to discontinue medication;~~

~~(e) a place for the signature of trainer and state steward.~~

(12) Systemic therapy of phenylbutazone consistent with accepted standards of veterinary practice is allowed up to 24 hours before race time. Systemic therapy means the administration of phenylbutazone given at dosage of two grams IV or the oral equivalent thereof at 24 hour intervals on a daily basis, with the final dosage given by injection or the oral equivalent thereof 24 hours prior to post time.

~~(12)~~ (13) The first violation of ~~the foregoing~~ this rule by the trainer ~~shall~~ may result in a fine imposed upon the horse's trainer, loss of purse and such other penalty deemed appropriate.

~~(13)~~ (14) A second violation, and each succeeding violation of ~~the foregoing~~ this rule, by the same trainer, ~~may~~ shall result in ~~suspension,~~ imposition of a fine, loss of purse and such other penalty deemed appropriate.

~~(14)~~ (15) If furosemide (lasix) is not detected in the urine or in any other specimen taken from a horse authorized to be on lasix ~~limited medication~~, then the trainer of record

shall be subject to such penalties deemed appropriate by the stewards as to protect the integrity of the racing industry.

~~(15)~~ (16) If phenylbutazone or furosemide is detected in the urine or in any other specimen taken from a horse not authorized to use the drugs as specified at time of entry, the horse's trainer is subject to such penalties deemed appropriate as provided elsewhere in these rules.

(16) and (17) will remain the same but will be renumbered (17) and (18).

~~(18)~~ (19) Horses that are being treated with phenylbutazone or furosemide ~~need not~~ must be indicated on the daily racing programs ~~or any other publications, but the medication list must be posted at a location at the track designated by the board~~.

~~(19) Systemic therapy consistent with accepted standards of veterinary practice is allowed up to 24 hours before race time. Systemic therapy consistent with acceptable standards of veterinary practice includes the administration of phenylbutazone given at dosage of two grams IV or the oral equivalent thereof at 24 hour intervals on a daily basis, with the final dosage given by injection or the oral equivalent thereof 24 hours prior to post time.~~

~~(20) A fee approved by the board will be assessed against each horse on the medication list before the horse is allowed to run. All medication fees will be retained by the board for administration and regulation of this rule. The fee will be used to offset additional testing costs, veterinarian costs and board regulation costs.~~

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, MCA

REASON: The proposed amendment to (4) will delete the subsection in its entirety. The Board proposes a new system of regulating permissible medication, and thus will delete this existing subsection which explained the old system. The new system will remove phenylbutazone (bute) as a drug for which a horse must be listed on the medication list. The following subsections establish how the trainer will obtain permission to run a horse on bute. The new system will retain furosemide (lasix) as a drug for which a trainer must be listed on the new "lasix list" to allow the horse to run on lasix. The following subsections establish how a trainer will obtain permission and get a horse listed on the new lasix list.

The proposed amendment to (6) [new (5)] will clarify the language by stating that "up to" 250 mg. of furosemide is permitted. The existing language appeared to limit the amount of furosemide to exactly 250 mg. which was not the intent of the subsection.

The proposed amendment to (7) [new (6)] will change the name from the "medication list" to the "lasix list" in keeping with the new permissible medication system proposed by the Board whereby only the use of lasix will be kept on the list. Therefore, the name of the list is proposed to be changed to "lasix list" to more accurately reflect the information that

is being kept on the list.

The proposed amendment to new (7)(a), (b), and (c) will rearrange the existing rule format. The new subsection will address the method by which a trainer will obtain authorization for race day treatment of a bleeder horse. The subsection uses language from existing (6), as well as adding language on the evidence, affidavit or witnesses that are necessary to obtain authorization for race day treatment of a bleeder horse. The change is necessary to more clearly outline the standards to be followed by a trainer in obtaining this authorization. The proposed amendment to new (7) will also delete existing language on obtaining a certificate of examination from an official vet and the need to conduct an endoscopic exam. The deleted language is no longer necessary, as the Board has established new methods of establishing whether a horse is a bleeder as outlined in new (a), (b) and (c).

The proposed amendment to new (8) will also rearrange existing rule language. Some existing language from (6) will be used in new (8), in order to break the rule down into more understandable and readable subsections. The proposed amendment to new (8) will change the name of the "medication list" to the "lasix list," as explained above. The proposed amendment will also add language clarifying that being on the new lasix list will enable a horse to be entered to race on furosemide (lasix). The proposed amendment will also delete the existing phrase on "endoscopic examination," as the Board will be using different methods, other than endoscope, to determine whether a horse is a bleeder [see (7)(a-c)] above. Finally, the proposed amendment will add the requirement that the lasix approval will expire each year on December 31st. This addition is necessary to clarify for the licensees that the lasix approval does not carry over from one race season to the next, but must be renewed each race season, since the previous approvals all expire on December 31st.

The proposed amendment to (8)(a) will set forth the method by which a horse may be entered in a race while using furosemide (lasix). The Board is proposing this new subsection to include some existing rule language that has been moved from other subsections in the rule. The proposed new language will clarify the method of obtaining a drug request form and obtaining written approval for the use of furosemide (lasix) from the official veterinarian. The proposed new language also lists the information that will be required on the drug request form. The proposed change is necessary to make the procedure more understandable to trainers and more readable in the rule.

The proposed amendment to (9) will delete the subsection in its entirety. The existing language on certification as EIPH positive in another state will no longer be used in Montana because the Board has set up a new system for the use of furosemide. The new system will be used for all horses, and will not include the out-of-state certification as a method of obtaining approval for the use of furosemide.

Therefore, it is necessary to delete the subsection entirely.

The proposed amendment to (9) [new (10)] will change the name of the "medication list" to the "lasix list," as explained above. The proposed amendment will also clarify that a horse cannot be treated with furosemide "less than" four hours prior to post time. The existing language did not clearly state this condition and must therefore be changed. The proposed amendments will also clarify existing rule language by changing "bleeder medication" to "lasix"; deleting the unnecessary phrase "for such purpose" and changing the wording to a "licensed" veterinarian.

The proposed amendment to (10)(a) and (b) will make minor language changes to clarify the intent of the rule subsection while retaining the original intent of the rule.

The proposed amendment to (10) will delete the subsection in its entirety. The Board has already proposed rule language in a previous subsection on the permitted drugs and how the drug approvals are obtained, thus it is not necessary to repeat that information in this subsection.

The proposed amendment to (11) will address the ability of horses to compete in races with phenylbutazone (bute) in their systems. The Board is proposing to remove this drug as a permissible medication for which a drug approval form or listing on the former "medication list" will be required. Instead, the Board proposes through this subsection to allow a horse to run on bute as long as the trainer has declared this fact at the time of entry.

The proposed amendment to new (12) will use existing rule language, in a different rule format, to set the standards for use of bute. The subsection will specifically add the word "phenylbutazone" to differentiate it from the previous subsections addressing the drug furosemide. The proposed amendment will also delete the phrase regarding "acceptable standards of veterinary practice," as this is not measurable nor enforceable by the Board.

The proposed amendment to (12) [new (13)] will change the word "shall" to "may" to make the sanctions permissive, rather than mandatory. This change is necessary because the penalty will be decided by the stewards after a hearing on any rule violations, thus the stewards will need flexibility in deciding on a sanction after hearing the circumstances of the rule violations.

The proposed amendment to (13) [new (14)] will also make the sanctions permissive for a second violation of the permissible medication rule, to allow the stewards more flexibility in imposing sanctions. The proposed amendment will also delete the possible sanction of "suspension" from the rule, to clarify that the stewards may impose other, lesser sanctions.

The proposed amendment to (14) [new (15)] will clarify the penalty if lasix has been approved for a horse, and then is not detected in the horse's system. The wording on "limited medication" is proposed to be changed to "lasix" to clarify that this subsection deals with the drug lasix only.

The proposed amendment to (18) [new (19)] will clarify the requirements of listing the horses' status as users of bute or lasix in the daily racing program. The proposed amendments will also delete the requirement that the permissible medication information be published anywhere else besides the program, and that the information be posted at the track. It is not necessary to place the information anywhere besides the racing program to inform the public of the horses's drug status.

The proposed amendment to (19) will delete the subsection in its entirety. The existing language dealing with systemic therapy is not necessary, as other proposed rule amendments already address the amount, method of administration and time of administration elsewhere in this rule.

The proposed amendment to (20) will delete the subsection in its entirety. The Board is proposing to eliminate any fee previously charged for addition to the former medication list. The proposed change will benefit the trainers using permissible medication.

8.22.1501 (32.28.1501) GENERAL PROVISIONS (1) through (13) will remain the same.

(14) All fines, forfeitures and suspensions shall be enforced by the ~~starter with the approval of the~~ stewards~~,~~ or by the board. No other racing official shall have the right to impose a fine or suspension although any racing official may recommend to the stewards that disciplinary action be taken against a named person. Each racing official shall report to the stewards any observed violation of the rules of racing.

(15) through (27) will remain the same.

~~(28) No telephone, telegraph, teletype, semaphore, signal device, radio, television or other method of electrical, mechanical, manual or visual communication shall be installed within the enclosure of any licensee, until same has been approved by the board.~~

~~(29) All public telephone and telegraph wires at the track, or on the grounds of the licensee conducting the meeting, shall be closed with the opening of the pari-mutuel windows for the first race of the day. No calls or wires shall be allowed to be made or received after the telephones and telegraph wires are closed until after the last race has been finished except by the officials of the board, by duly authorized officials of the race meeting or duly accredited members of the press.~~

~~(30) The licensee is responsible to see that no unauthorized person uses their telephones during the period from 30 minutes prior to the first race to 15 minutes after the last race of the day.~~

~~(31) No persons licensed by this board shall knowingly transmit or allow to be transmitted by telephone, telegraph, teletype, semaphore, signal device, radio, television, or visual communication from within the enclosure of the track to any person or receiving device beyond the enclosure of the~~

~~track, the result of any race until at least 15 minutes after said race is declared official, with the exception of the final race of the program and any simulcast races provided for and regulated hereunder unless specifically provided by the board.~~

~~(32) Any licensee desiring to broadcast, televise, or transmit by press wire, pertinent information relating to any horse race run at its track, not inconsistent with the express provisions of these rules, shall first file with the board for its approval, an application at least 10 days prior to the opening day of the licensee's meeting, stating therein the particular races during the meet, and the dates thereof, that the licensee desires to be broadcast, televised or transmitted by press wire, together with the name and address of the representative of the public press, radio or television authorized by said persons to broadcast, televise or transmit by press wire the requested races.~~

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-106, 23-4-202, MCA

REASON: The proposed amendment to (14) will delete the existing reference to the starter as an official who enforces fines and other sanctions. The proposed change is necessary because Board statute and rule delegate sanctioning authority to the stewards, but not the starter. The proposed change will make the rule consistent with other rules on the correct procedure for enforcement of sanctions including fines.

The proposed amendment to (28), (29), (30), (31), and (32) will delete these subsections in their entirety. The existing language in the subsections deals with prohibitions on use of public telephones, telegraphs, press wire, etc. on the grounds of a race meet and during the live race meets. The existing language is outdated, and no longer useful nor appropriate in light of the widespread use of more modern communication devices such as cell phones. The Board is not able to enforce prohibitions on communication devices, nor is it necessary to do so during a race meet. The proposed change will also delete the reference to the necessity of Board approval to broadcast or televise a horse race. The Board does not currently approve the media's coverage of race meets, and does not intend to do so in the future. The deletion of (32) is therefore necessary.

8.22.1502 (32.28.1502) DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTERESTS OF RACING (1) For the purpose of implementing 23-4-202(2), MCA, as amended, and also of defining conduct which the board considers detrimental to the best interest of racing ~~as contemplated by ARM 8.22.701(8)~~, the board rules that the following conduct is detrimental to the best interest of racing but these rules are not intended to limit the application of the phrase or otherwise to be exclusive:

(1) through (8) will remain the same but will be renumbered (a) through (h).

~~(9) being a habitual offender of the laws of racing in this state;~~

~~(10)~~ (i) having been convicted of a crime involving horse racing or a ~~crime involving moral turpitude~~ felony but not having completed state supervision;

(11) through (13) will remain the same but will be renumbered (j) through (l).

~~(14) directly or indirectly buying or selling any contract upon any jockey or apprentice jockey for himself or another, or writing or soliciting horse insurance by any licensed official.~~

(15) and (16) will remain the same but will be renumbered (m) and (n).

~~(17)~~ (o) violating the board's corrupt practices rules ~~set forth in ARM 8.22.1501~~;

(18) through (19)(e) will remain the same but will be renumbered (p) through (q)(v).

AUTH: Sec. 23-4-104, 23-4-202, 370-1-131, MCA
IMP: Sec. 23-4-106, 23-4-202, MCA

REASON: The proposed amendment to (1) will delete an internal cross reference to another administrative rule. All Board administrative rules are enforceable as against all licensees without the need for internal cross references to focus on the pertinent rule.

The proposed amendment to (9) will delete the subsection in its entirety. The subsection repeats language found elsewhere in the rules regarding licensure of persons who have previously violated laws or rules, thus it is not necessary to repeat the language in this subsection.

The proposed amendment to (10) [new (i)] will delete the phrase "crime involving moral turpitude," as this phrase is archaic language. The term is not defined, and is unenforceable by the Board in this context. Instead, the language will set the standard as a conviction for a crime involving horse racing or any other type of felony for which state supervision has not yet been completed.

The proposed amendment to (14) will delete the subsection in its entirety. The existing language on buying or selling contracts on jockeys or writing horse insurance is outdated and no longer applicable. The Board does not enforce this prohibition as conduct detrimental to racing, therefore it is necessary to delete the language from the rule.

The proposed amendment to (17) [new (o)] will delete an internal cross reference to another administrative rule. All Board administrative rules are enforceable as against all licensees without the need for internal cross references to focus on the pertinent rule.

8.22.1503 (32.28.1503) ALCOHOL AND DRUG TESTING ~~RULE~~

(1) No licensee ~~or employee~~ of any entity associated with the conduct of racing while on the grounds of a licensed ~~or franchised~~ race track or simulcast facility shall have present within ~~his/her~~ the licensee's system any amount of

alcohol which would constitute legal impairment or intoxication.

(2) will remain the same.

(3) For a subsequent alcohol related violation such licensee ~~or employee may~~ shall be subject to procedures outlined in (18) ~~following positive chemical analysis (below)~~.

(4) No licensee ~~or employee~~ of any entity associated with the conduct of racing while on the grounds of a licensed ~~or franchised~~ race track or simulcast facility shall have within ~~his/her~~ the licensee's system any controlled substance as listed in the U.S. Code, Title 21 (Food and Drug Laws) or any prescription ~~legend~~ drug unless such prescription ~~legend~~ drug was obtained directly or pursuant to valid prescription or order from a ~~duly~~ licensed physician ~~who is acting in the course of his/her professional practice~~.

(a) Jockeys shall be required to furnish urine or blood samples as part of their pre-licensing medical examination for drug screening purposes. ~~The testing procedure and safeguards set forth in this rule shall be followed by the examining physician and others involved in the testing procedure.~~

(b) through (5)(a)(i) will remain the same.

(ii) has ~~reduced productivity, excessive vehicle accidents,~~ high absenteeism, or other behavior inconsistent with previous performance.

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

(c) when there is serious on-duty injury to the licensee or another person; ~~and~~ or

(d) if two or more representatives of the jockey~~'~~s ~~guild~~ at any race track advise the stewards at the track that they believe a jockey, who is scheduled to ride, is under the influence of drugs and/or alcohol, the stewards or their agents have probable cause for conducting such drug and/or alcohol tests on such jockeys as they deem appropriate.

~~(e) after a second steward or administrator agrees to the need for the test.~~

(7) will remain the same.

(8) Test results reporting a presence of illegal drugs or narcotics, or the use of prescription, or the abuse of any over-the-counter drug, will be provided to the stewards by the board ~~submitted as a part of a written report by the state steward~~.

(9)~~(a)~~ The licensee designated to give a sample must be positively identified prior to any sample being obtained.

~~(b)~~ (a) The room where the sample is obtained must be private and secure~~, with documentation maintained that the area has been searched and free of any foreign substance~~. An observer of the appropriate sex shall be present for direct observation to ensure the sample is from the employee and was actually passed at the time noted on the record. Specimen collection ~~will occur in a medical setting, and the procedures~~ should not demean, embarrass, or cause physical discomfort to the licensee.

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

~~(10)(a) The testing or processing phase shall consist of the following two-step procedure:~~

~~(i) initial screening step, and~~

~~(ii) confirmation step.~~

~~(b) The urine sample will first be tested using a screening procedure. A specimen testing positive will undergo an additional confirmatory test. An initial positive report should not be considered positive, rather, it should be classified as "confirmation pending."~~

~~(c) The confirmation procedure will be technologically different than the initial screening test. Notification of test results to the steward or chief of security will be held until the confirmation test results are obtained. In those cases in which the second test confirms the presence of a drug or drugs in the sample, the sample will be retained for six months to allow further testing in case of a dispute.~~

~~(d) The testing methods selected must be capable of identifying marijuana, cocaine, and every major drug that is known to be abused, including heroin, amphetamines and barbiturates. Hospital laboratory personnel utilized for testing must be certified as qualified to conduct urinalysis and blood tests.~~

(e) will remain the same but will be renumbered (10).

(11) Licensees shall not take any narcotics or dangerous substance unless prescribed by a person licensed to practice medicine. ~~Licensees who are required to take prescription medicine shall notify their stewards, in advance, of the medication prescribed and the nature of the illness or injury.~~ Licensees shall submit, when requested by a steward, a doctor's statement attesting to their ability or inability to competently perform their work functions while under the influence of the prescriptive drugs.

(12) Members of the board and its designated representatives shall have the authority to full and complete entry on and to any and all parts of the grounds and mutuel plants of any licensee. Licensees who have a reasonable basis to believe that another licensee is illegally using drugs or narcotics~~,~~ shall report such facts and circumstances immediately to the state steward of the live race meet or the ~~chief of security~~ simulcast director of the simulcast facility. Any licensee who refuses to take the required drug test or to follow this rule is subject to be immediately relieved from duties pending administrative review.

(13) through (16) will remain the same.

(17) All testing shall be at the expense of the person being tested ~~board of horse racing and the racing association on a 50-50 basis~~.

(18) through (18)(d) will remain the same.

AUTH: Sec. 23-4-104, MCA

IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to (1) will delete the reference to an "employee" of a licensee. The Board does not have regulatory authority over "employees," but rather over

the Board licensees. The proposed amendment will also delete the word "franchised," as there are no "franchised" race tracks in Montana. The proposed amendment will also make the rule language gender neutral, as required by the Legislature for on-going rule changes.

The proposed amendment to (3) will clarify that the alcohol related offenses are treated the same as drug related offenses insofar as the Board's system of differing treatment for first, second and later offenses. The proposed change will refer the rule reader directly to (18) for alcohol related offenses, as the subsections following deal with drug related offenses, and thus may be skipped if alcohol related offenses are the subject of Board sanction.

The proposed amendment to (4) will delete the reference to an "employee" of a licensee. The Board does not have regulatory authority over "employees," but rather over the Board licensees. The proposed amendment will also delete the word "franchised," as there are no "franchised" race tracks in Montana. The proposed amendment will also make the rule language gender neutral, as required by the Legislature for on-going rule changes. The proposed amendment will also delete the word "legend," as it is redundant. The words "prescription" and "legend" mean the same, thus it is not necessary to have both words in the rule. Finally, the proposed amendment will clarify the language on licensed physicians to simplify the rule language and make it more readable.

The proposed amendment to (4)(a) will clarify that jockeys are required to submit urine or blood samples for drug screening purposes, and no other purposes. The proposed amendment will also delete the requirement that the testing procedures outlined in Board administrative rule must be followed by physicians and other testing labs. The Board does not have regulatory authority over physicians or testing labs, thus it is not appropriate for the Board to dictate testing procedures for those persons.

The proposed amendment to (5)(a)(ii) will delete the requirements that "reduced productivity" and "excessive vehicle accidents" may be used as standards by which the Board judges whether licensees will be required to submit to drug and alcohol tests. These terms are not defined in rule, and are therefore difficult for the Board to enforce, and should be eliminated from the rule.

The proposed amendment to (6)(d) will delete the reference to the jockey "guild" representative. It is no longer commonplace for all jockeys to be members of the jockey guild, and thus have readily accessible guild representation at the track. Instead, the Board will allow any type of jockey representatives to make recommendations on drug testing to the stewards.

The proposed amendment to (6)(e) will delete the requirement that a second steward or administrator must agree to the need for a drug or alcohol test. This requirement is not necessary, as it is sufficient for one steward or Board

representative to make this determination. The requirement of a second opinion may unnecessarily delay the testing procedure.

The proposed amendment to (8) will clarify the language on the requirement that the Board will provide test results to the stewards, rather than the stewards submitting a written report to the Board. The proposed procedure is the correct procedure which will be used by the Board.

The proposed amendment to (9)(b) [new (9)(a)] will delete some testing procedure requirements that are not necessary and are not used by the Board and its representatives. The Board will not require that the sample room be "searched," or that the collection occur in a "medical setting." The existing requirements are not used by the Board, and should therefore be eliminated from the rule.

The proposed amendment to (9)(d) [new (9)(c)] will change the language to clarify it is the Board licensee being tested, and make the subsection easier to read and understand.

The proposed amendment to (10)(a) through (d) will delete those subsections in their entirety. The existing rule language addresses a testing process that is not used by, nor necessary for the Board to conduct drug testing. Instead, the Board contracts with a professional drug testing laboratory, who have their own internal professional testing procedures. The Board does not have regulatory authority over the testing lab, and thus cannot dictate the lab's testing processes. It is therefore necessary to delete this requirement from the rules.

The proposed amendment to (11) will delete the requirement that all licensees notify the stewards when they are taking prescription medication. The Board and the stewards do not use this information routinely, except in the event that a drug test is performed on a licensee. If a drug test is being performed, the licensees could properly notify the Board representative of the prescription drug at that time. The requirement that all prescriptions be routinely reported should therefore be deleted from the rule.

The proposed amendment to (12) will clarify that suspected illegal drug use should be reported to the simulcast director at a simulcast race meet, rather than the chief of security. The Board has proposed a rule change to eliminate the requirement of a chief of security at a simulcast race meet, thus this subsection must be changed to be consistent with the previous change.

The proposed amendment to (17) will change the manner in which drug testing is paid for. Existing language requires the Board and the racing association (track) to pay for the testing. This cost is not appropriately allocated to the Board and the track. Instead, under the proposed amendment, a licensee who requires testing must pay the cost of the test so that the costs may appropriately be paid by the person for whose benefit the test is performed.

8.22.1601 (32.28.1601) GENERAL RULES (1) Betting will

only be permitted by means of a ~~pre-printed ticket,~~ parimutuel system or totalizator system that has been approved by the board of horse racing.

~~(2) The board shall have a representative(s) to be known as parimutuel auditor(s) who shall be stationed at any licensed tracks during the time of their live race meets and may also include roving auditors at the locations of one or more simulcast facilities. Their duties shall be to supervise the conduct of the mutuel operations during each live or simulcast race meeting. They shall be given free access to all of the records, books and papers of any association under jurisdiction of the board and to any room or enclosure of any association at any and all times. The officers and employees of all associations shall promptly give such auditors such information as they may request from time to time, and shall freely and fully cooperate with them in every way so that they may be certain that the mutuel operations are being properly and efficiently operated in strict accordance with the laws and rules of the board. If the auditors find defects in the parimutuel operations, they have the authority to stop wagering until remedied.~~

(3) and (4) will remain the same but will be renumbered (2) and (3).

AUTH: Sec. 23-4-104, 23-4-202, MCA

IMP: Sec. 23-4-104, 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (2) will delete the subsection in its entirety. The Board is proposing to change the way in which oversight is provided for parimutuel operations at both live race meets and simulcast race meets. The Board's new proposed system will eliminate the "parimutuel auditor" or "state auditor" position. The live race meets will instead govern parimutuel operations through the "parimutuel manager" and the "tote manager." Simulcast race meets will govern parimutuel operations through the simulcast director. It is therefore necessary to change existing rule language to clarify which duties previously assigned to the "state auditor" will be performed by the parimutuel manager, or the tote manager, or the simulcast director, or the Board. Existing (2) must be deleted as it previously set up the position of "state auditor" and outlined various access to facilities and reports to which that position was previously entitled.

8.22.1602 (32.28.1602) DUTIES OF THE LICENSEE

(1) and (2) will remain the same.

(3) The licensee shall ensure that all parimutuel tickets sold during a race meeting are purchased or cashed from the front of the regular ticket windows~~, properly designated by signs indicating the type of tickets sold or cashed~~.

(4) and (5) will remain the same.

(6) ~~A licensee~~ The mutuel department, at every race

meeting, must be conducted in a strict, dignified and proper manner. All parimutuel selling machines must be located only in places easily accessible and in plain view of the general public. ~~The association at all times shall endeavor to procure employees therein of intelligence. All employees coming in contact with patrons must at all times demean themselves in respectful and temperate fashion.~~

(7) All employees shall be given instructions as to their duties in a mutuel department before the meet begins. These instructions are to be given by ~~in the presence of~~ the parimutuel manager ~~supervisor, so these instructions will meet with the approval of the Montana board of horse racing~~.

(8) will remain the same.

(9) The licensee shall ensure that not less than three complete quotations of odds are posted for the purpose of informing the public of the actual betting odds. ~~on each horse as disclosed by the actual take-off of the straight pool at the time such odds are posted and also a~~ A final line after the closing of betting~~,~~ and before the finish of the race shall be posted. ~~Such final odds shall compare favorably with the actual odds.~~

(10) The licensee shall ensure that the final odds for each race remain on the infield board a minimum of 30 seconds after the official race prices for that race have been posted~~, except in extenuating circumstances~~.

(11) will remain the same.

~~(12) At the discretion of the board, a licensee, including a simulcast network or facility licensee may be required to furnish a blanket fiduciary bond before issuance of a license to operate a race meet.~~

~~(13)~~ (12) Wherever economically possible the licensee, including a simulcast network ~~or facility licensee~~, may be required ~~(at the discretion of the board)~~ to furnish a certified ~~or licensed~~ public accountant, licensed to practice in the state of Montana and the accountant shall have the following duties:

(a) ~~C~~completion of the forms summarizing the day's mutuel operation~~, and~~;

(b) verification of the pay-off computations~~, and~~;

(c) completion of such other forms as may be required by the board ~~supervisor of parimutuel betting.~~; and

~~(b)~~(d) ~~S~~submission of financial statements covering parimutuel operations for the entire race meet~~, and including in these statements a source and application of funds statement~~.

~~(14)~~ (13) The ~~licensee~~ parimutuel manager shall ensure that no seller ~~or cashier~~ is advised of a shortage or overage in ~~his~~ the seller's money, until the completion of the days race program ~~it has been authorized by the parimutuel supervisor~~.

~~(15)~~ (14) Sellers ~~and cashiers~~ shall be responsible to the licensee for their shortages; sellers shall not be permitted to count the contents of their money box~~, unless under extenuating circumstances permission is granted by the~~

~~supervisor of parimutuel betting~~.

~~(16)~~ (15) A licensee must deposit all receipts by the next banking day and submit to the board, statements showing parimutuel receipts, percentages retained, and such other information as may be required for the proper administration of the law. Said information shall be submitted within ~~5~~ five days after the close of the meeting. ~~The supervisor of parimutuel betting must be given access to the books of the licensee for this purpose.~~

(a) will remain the same.

~~(17) The licensee shall submit to the board, at the completion of each race meeting, a statement showing the name of each cashier, denomination of tickets cashed, and any shortage or overage incurred on a daily basis.~~

(18) and (19) will remain the same but will be renumbered (16) and (17).

AUTH: Sec. 23-4-104, 23-4-202, MCA

IMP: Sec. 23-4-104, 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (3) will delete out-dated language on the necessity to install signs at the parimutuel windows which indicated the type of tickets sold. With the universal use of computerized tote systems, all windows may sell all types of tickets, thus no sign designating different types is necessary.

The proposed amendment to (6) will clarify language referring to the mutuel department, without the unnecessary word "licensee." The proposed amendment will also delete the undefined and unenforceable requirements of types of employees to be hired by the mutuel department. The Board does not regulate the types of employees hired as parimutuel employees.

The proposed amendment to (7) will clarify that parimutuel employees are to be under the direction of the parimutuel manager, as opposed to any other type of licensee or official. The proposed amendment will also clarify that the Board does not approve the types of instructions given, but allows the parimutuel manager the discretion to instruct the parimutuel employees. It is therefore necessary to delete rule language setting up this Board approval.

The proposed amendment to (9) will clarify existing rule language on computation of odds. The odds are based on the win pool, and thus the existing rule language on "take off of the straight pool" is unnecessary and not easily understandable. The proposed amendments will also clarify that a final line of odds must be posted at the close of betting, without unnecessary language on whether the odds posted were the actual odds. Much of the existing language is out-dated, as it predates the universal use of computerized tote systems.

The proposed amendment to (10) will delete the phrase "except in extenuating circumstances," as it is not necessary for clarity in the rule. The existing language appears to set up an exception situation, whereas the Board intends that the final odds remain on the tote board for the time indicated in

all circumstances.

The proposed amendment to (12) will delete the subsection in its entirety. The Board has never required a blanket fiduciary bond before issuing a license, and does not intend to impose this requirement in the future. Therefore, the existing rule language on this requirement should be deleted from the rule.

The proposed amendment to (13) [new (12)] will delete language on "facility licensee," as it is redundant. The proposed amendment will also delete the phrase "at the discretion of the Board," as the rule language already sets up the permissive nature of any request for the licensee to furnish a certified public accountant by use of the word "may" in the sentence. The proposed amendment will also delete the language allowing a "licensed" public accountant, as this is not the standard intended by the Board. Instead, if an accountant is required to be furnished, the Board will require that person to be a certified public accountant.

The proposed amendment to (13)(a) [new (12)(a)] will delete the reference to "supervisor of parimutuel betting," as the Board is deleting this former licensee position. Instead, the language will state that the Board will require forms as necessary to summarize the day's mutuel operation.

The proposed amendment to (13)(b) [new (12)(b)] will delete the requirement for submission of a source and application of funds statement. The Board does not collect nor review this information, thus the requirement that the information be furnished should be deleted from the rule.

The proposed amendment to (14) [new (13)] will clarify that the "parimutuel manager" will be the one person to whom money discrepancies shall be reported. The proposed amendment will also delete the word "cashier," as there no longer exists a different position as "seller" and "cashier." This differentiation predates the use of computerized tote systems for ticket sales. The proposed amendment will also delete a reference to authorization of the activity by the "parimutuel supervisor," as this position will no longer exist. Instead, the activity shall occur at the "completion of the day's race program."

The proposed amendment to (15) [new (14)] will delete the word "cashier," as this is no longer a position separate from the "seller." The proposed amendment will also delete the possibility of "extenuating circumstances" existing for counting the money boxes, etc. The Board does not intend to grant exceptions to the process for counting money boxes and assigning responsibility for any shortages.

The proposed amendment to (16) [new (15)] will delete an access grant given to the former position of parimutuel supervisor. The Board is proposing a system which uses a parimutuel manager and tote manager only.

The proposed amendment to (17) will delete the subsection in its entirety. The Board does not collect or review information on the cashier activities during the race day. Therefore, the requirement to collect and submit this

information should be deleted from the rule.

8.22.1603 (32.28.1603) DUTIES OF THE PARIMUTUEL MANAGER

(1) The parimutuel manager is responsible for the accuracy of all pay-off prices.

(2) If for any reason a change is made in any figure on the calculator's sheet or any sub-sheet thereof, in the recording of the wagering, such change must be approved by the parimutuel manager after consultation with the tote manager ~~explained to and meet the approval of, and be initiated by the supervisor of the parimutuel betting~~.

(3) A copy of each completed pool calculation sheet ~~hand take-offs~~ and other supporting documents~~,~~ shall be turned over to the ~~supervisor of~~ parimutuel manager ~~betting~~ upon completion of each race.

(4) At the end of each race day, the parimutuel manager shall prepare or have prepared a parimutuel recapitulation form. ~~form and submit two copies of this form to the supervisor of parimutuel betting.~~ One copy of the recapitulation form shall be submitted to the board, the other copy retained by the licensee. The recapitulation form shall be provided by the Montana board of horse racing.

(5) The parimutuel manager shall balance the parimutuel recapitulation against the cash room report for each race day and file a report explaining any discrepancy.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-301, 302, 303, MCA

REASON: The proposed amendment to the title of the rule will make the name of this position, that of "parimutuel manager," consistent with other proposed rule changes whereby some positions will be eliminated and the duties consolidated under the position of "parimutuel manager."

The proposed amendment to (1) will make the title "parimutuel manager," to be consistent with other proposed rule changes being made by the Board.

The proposed amendment to (2) will reconfigure the system whereby changes may be made to the calculator's sheet. The Board will now require that the parimutuel manager will approve any changes, after consultation with the tote manager. This change is necessary to reallocate duties among the two parimutuel positions which will remain.

The proposed amendment to (3) will delete the phrase "hand take-off," as this phrase is not defined and is not used by the Board. The proposed amendment will also make the position title that of "parimutuel manager," to make the change consistent with other rule changes being proposed by the Board.

The proposed amendment to (4) will make the position title "parimutuel manager" consistent with other proposed rule changes. The proposed amendments will also set forth the procedure for submission of the recapitulation form to the Board, with another copy to be retained by the licensee (track). The existing rule language did not clarify the

proper procedure for submission of this form.

The proposed amendment to (5) will make the position title "parimutuel manager" consistent with other proposed rule changes.

8.22.1604 (32.28.1604) IMPROPER OPERATION (1) will remain the same.

(2) All overpayments shall be borne by either the licensee or the tote company as agreed between the above parties prior to the opening of the race meet. ~~A certificate of liability for overpayments shall be filed with the supervisor of parimutuel betting prior to the start of betting on the first race of the race meeting.~~

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

(6) The licensee shall be responsible for all ~~cashier and~~ seller's errors. Any customer complaint concerning a ~~cashier or~~ seller's error shall be immediately called to the attention of the ~~supervisor of~~ parimutuel manager ~~betting~~, and ~~his~~ the parimutuel manager's decision shall be final.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (2) will delete the requirement that a "certificate of liability" be filed before the start of betting. The Board has never and does not intend to require this type of certificate, nor does the Board intend to regulate liabilities for overpayments as between the licensee (track) and the tote company. The unnecessary language is therefore proposed for deletion.

The proposed amendment to (6) will delete the word "cashier," as this is no longer a position separate from the "seller." The proposed amendment will also make the position title "parimutuel manager" consistent with other proposed rule changes. Finally, the proposed amendment will make the rule language gender neutral, as required by the Legislature for on-going rule changes.

8.22.1605 (32.28.1605) PROGRAMS (1) All licensees are required to print a program which may be sold to the public.

~~(2) The name of the licensee conducting the race meeting must appear on the daily race program.~~

~~(3)~~ (2) The daily race program shall give the names of the horses which are scheduled to run in each of the day's races; indicate the order in which each race is to be run; the purse; distance of each race; permissive medication; equipment; ~~his number of~~ the post position; past performance lines; color; sex; and age.

~~(4)~~ (3) ~~Where preprinted tickets are utilized,~~ T~~t~~he daily race program must carry the parimutuel number opposite each horse.

(5) will remain the same but will be renumbered (4).

~~(6) All daily racing programs must state: "If a winner's share of a purse is $600 or less, it does not count as a win at tracks offering purses greater than $600 in the~~

~~state of Montana."~~

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (2) will delete this subsection in its entirety. The Board notes that all race programs already state the name of the licensee conducting the race meet. The Board is not aware of any circumstances under which this would not be done. Therefore, it is not necessary to place redundant requirements in the rule.

The proposed amendment to (3) will make the language gender neutral for the horses also. The proposed amendment will also add the requirements that any medications and equipment used by a horse be listed in the daily program. The Board notes that these requirements have been met in the programs for some time, but will place the requirements in rule to ensure that this practice continues.

The proposed amendment to (4) will delete a reference to "preprinted tickets." The language is outdated, as preprinted tickets have not been used since the universal use of computerized tote systems.

The proposed amendment to (6) will delete the subsection in its entirety. The Board notes that there are no races in Montana in which the purse is $600 or less, thus it is not necessary to require the programs to contain a statement about such races.

8.22.1606 (32.28.1606) TYPES OF BETS (1) The ~~quiniela (sometimes called "~~quinella~~")~~ is a contract by the purchaser of a ~~quiniela~~ quinella ticket to select the first two horses to finish in a race in any order.

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

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (1) will change the language to refer to the more common spelling and usage of the word "quinella." The existing spelling of the word in the rule is not used in Montana, thus the spelling should be standardized to make the rule more understandable.

8.22.1608 (32.28.1608) THE MUTUEL SYSTEM (1) Betting shall not commence for the race day until the tote ~~mutuel~~ manager has demonstrated to the satisfaction of the ~~supervisor of~~ parimutuel manager ~~betting~~ that the mutuel system is ~~capable of~~ operating properly ~~operation~~.

(2) ~~If the system is automated,~~ T~~t~~he ~~supervisor of~~ parimutuel manager ~~betting~~ shall not allow the opening of the day's betting if:

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

(d) The parimutuel manager has failed to draw a test ticket from every machine prior to the first race of the race day~~, in the presence of the supervisor of parimutuel betting for his verification, certification and permanent possession~~.

(3) If new rolls of tickets are to be inserted during the course of the race day, the ~~mutuel~~ tote manager shall inform the ~~supervisor of~~ parimutuel manager ~~betting~~.

~~(4) If the system uses preprinted tickets, the supervisor of parimutuel betting shall not allow the opening of the day's betting if he is not satisfied that the parimutuel manager is able and willing to comply with the following rules:~~

~~(a) Licensee operating the preprinted ticket system shall provide proper safeguard of unsold tickets, ticket racks and adequate facilities for ticket checking.~~

~~(b) Licensee shall be responsible for the hiring of sufficient mutuel employees to make a prompt and accurate count of the had tickets both for the purpose of calculating odds and for the purpose of calculating pools.~~

~~(c) Licensee shall ensure that where extra decks of tickets are inserted, a proper marker (indicating previous number of sales) is used.~~

~~(d) Where preprinted parimutuel tickets are sold, the licensee shall be charged with hiring sufficient employees to provide for separation and delegation of duties to insure good internal control, i.e., the same person shall not also cash tickets or sell tickets at a window, or supervise the selling of tickets, unless the parimutuel equipment is capable of performing both functions at the same time.~~

~~(5)~~ (4) If the ~~supervisor of a~~ parimutuel manager ~~betting~~ refuses to authorize the opening of wagering, ~~he~~ the parimutuel manager shall ~~explicity~~ explicitly explain to the ~~mutuel manager~~ stewards the reason for ~~his~~ the refusal. When the defects in the mutuel system are remedied and its adequacy demonstrated, the ~~supervisor of~~ parimutuel manager ~~betting~~ shall authorize the opening of wagering. ~~The parimutuel manager shall not open the day's betting without the approval of the supervisor of parimutuel betting.~~

~~(6)~~ (5) Any faulty operation of the ~~totalisator~~ totalizator or infield board shall be explained in detail in a written report by the tote manager ~~technician~~ and a copy of said report given to the parimutuel manager ~~and to the parimutuel supervisor~~.

~~(7) The licensee is not required to have a track auditor if on a computerized system, as the auditor's functions are done in part by the system.~~

~~(8)~~ (6) A random testing program shall be performed on a computerized system to verify that all functions of the system are working properly. This shall be done prior to the opening of each race day by the ~~state~~ parimutuel manager ~~supervisor~~. Approval shall be given by the ~~state~~ parimutuel manager ~~supervisor~~ to begin operation.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (1) will change the position titles to clarify that the tote manager must demonstrate the proper operation of the mutuel system to the

parimutuel manager each race day before the start of betting. This change will make the rule consistent with other proposed rule changes which create only two parimutuel operations oversight positions.

The proposed amendment to (2) will delete outdated language on whether the tote system is automated, as all tote systems are now automated. The proposed amendment will also change the position title to "parimutuel manager," to be consistent with other proposed rule changes which create only two parimutuel operations oversight positions.

The proposed change to (2)(d) will change the position title to "parimutuel manager," to be consistent with other proposed rule changes which create only two parimutuel operations oversight positions. The proposed change will also clarify duties for the parimutuel manager, as a "supervisor of parimutuel betting" will no longer exist.

The proposed amendment to (3) will clarify duties of the tote manager and parimutuel manager, as well as changing the titles to be consistent with other proposed rule changes.

The proposed amendment to (4) will delete the subsection in its entirety. The subsection addresses "preprinted tickets," which are no longer in use at tracks since the universal use of computerized tote systems. It is not therefore necessary to address preprinted tickets in rule.

The proposed amendment to (5) will clarify duties of the tote manager and parimutuel manager, as well as changing the titles to be consistent with other proposed rule changes. The proposed amendment will also delete the requirement in the last sentence, as it is repetitive of language found elsewhere in the rule.

The proposed amendment to (6) will clarify duties of the tote manager and parimutuel manager, as well as changing the titles to be consistent with other proposed rule changes.

The proposed amendment to (7) will delete the subsection in its entirety. The subsection is not necessary, as all tote systems are now computerized, so no differentiation with non-automated systems should remain in the rules.

The proposed amendment to (8) will change the position title to "parimutuel manager," to be consistent with other proposed rule changes which create only two parimutuel operations oversight positions.

8.22.1609 (32.28.1609) POST TIME (1) The minimum elapsed time between the previous race being declared ~~OFFICIAL~~ "official" and the next official post time, shall be, at the discretion of the steward after giving due consideration to the facilities of the parimutuel plant and the requirements of the ~~supervisor of the~~ parimutuel manager ~~betting~~.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (1) will change the position title to "parimutuel manager," to be consistent with other proposed rule changes which create only two parimutuel

operations oversight positions.

8.22.1610 (32.28.1610) CLOSING OF BETTING (1) will remain the same.

~~(2) At race meetings where preprinted ticket systems are operating, all betting must cease at the order of the steward and in no case later than the time the horses leave the starting gate.~~

(3) will remain the same but will be renumbered (2).

~~(4)~~ (3) The steward shall lock all issuing machines when ~~before~~ the last horse is loaded in the starting gate.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment to (2) will delete the subsection in its entirety. The subsection addresses "preprinted tickets," which are no longer in use at tracks since the universal use of computerized tote systems. It is not therefore necessary to address preprinted tickets in rule.

The proposed amendment to (4) will clarify rule language to make the rule more easily understood.

8.22.1617 (32.28.1617) ~~QUINIELA~~ QUINELLA FEATURE

(1) The ~~quiniela~~ quinella is not a parlay, and all tickets on the ~~quiniela~~ quinella will be calculated in an entirely separate pool.

(2) The principle of ~~quiniela,~~ quinella is in effect a contract by the purchaser of a ~~quiniela~~ quinella ticket to pick (select) the winning and the second horses in the ~~quiniela~~ quinella race.

(3) If a horse in the ~~quiniela~~ quinella race is scratched or excused by the stewards before off-time, all money wagered on any horse or horses so scratched or excused shall be deducted from the ~~quiniela~~ quinella pool and be refunded to the purchasers of tickets on the horse or horses so scratched or excused.

(4) Should any horse in the ~~quiniela~~ quinella race be prevented from racing because of the failure of the stall doors of the starting gate to open, all tickets combining that horse with either of the first two finishers shall be refunded.

(5) will remain the same.

(6) If for any reason the ~~quiniela~~ quinella race is cancelled or declared "no race" full and complete refund shall be made of the ~~quiniela~~ quinella pool.

(7) Except for the contingencies stated below the ~~quiniela~~ quinella is calculated in the same general manner as the straight pool.

(8) If no ticket is sold combining the winning and second horse of the ~~quiniela~~ quinella, the net pool shall then be apportioned between those having tickets including the winner and those having tickets including the second horse, and shall be calculated and distributed as place pool.

(9) In the event of a dead heat for the win, the net

~~quiniela~~ quinella pool shall be apportioned between those having tickets on the two horses finishing in the dead heat for the win.

(10) If two horses finish the race in a dead heat for second, the ~~quiniela~~ quinella pool will be figured in the same manner as a place pool with holders of tickets on the winner and each second place horse participating equally in the ~~Quiniela~~ quinella ~~P~~pool.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-301, 302, 303, MCA

REASON: The proposed amendments throughout the rule will change the language to refer to the more common spelling and usage of the word "quinella." The existing spelling of the word is not used in Montana, thus the spelling should be standardized to make the rule more understandable.

4. The rules proposed to be repealed are as follows:

8.22.202 found on ARM page 8-615
AUTH: Sec. 23-4-202, MCA
IMP: Sec. 2-4-201, MCA

8.22.321 found on ARM page 8-621 and 8-622
AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-202, MCA

8.22.606 found on ARM page 8-650
AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: ARM 8.22.202 is proposed for repeal. The rule refers to a former Department of Commerce citizen participation rule. Since the Board of Horse Racing is administratively attached to the Department of Livestock, it is not appropriate nor necessary to retain this rule. Citizen participation in Board matters is already governed by Mont. Code Ann. Sec. 2-3-101 et seq., thus it is not necessary to retain a rule repeating the information on public participation in governmental operations.

ARM 8.22.321 is proposed for repeal. The rule is archaic and outdated, as it refers to a National Association of State Racing Commissioners which no longer exists, and of which the Montana Board of Horse Racing is no longer a member. In addition, the rule language is aspirational in nature, and not regulatory, and does not set forth requirements or procedures which are enforceable by the Board through rule.

ARM 8.22.606 is proposed for repeal. The rule should be repealed because the Board has previously eliminated this position of patrol judge as a required official at live race meets. The Board deleted the position from its licensing category rules, but neglected at that time to repeal this rule which outlined the duties of the position. The rule should be repealed to be consistent with previous Board rule changes.

The position of patrol judge no longer exists at Montana race tracks.

5. The Department of Livestock has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.22.101	32.28.101	Organization
8.22.201	32.28.201	Procedural Rules
8.22.303	32.28.203	Institution of Proceedings by Petition
8.22.304	32.28.204	Institution of Proceedings by Notice
8.22.307	32.28.205	Intervention
8.22.310	32.28.206	Who May Appear
8.22.603	32.28.603	Custodian of Jockey Room
8.22.613	32.28.612	Director of Racing
8.22.704	32.28.704	Grooms
8.22.708	32.28.708	Platers (Farriers, Shoers, Blacksmiths)
8.22.802	32.28.802	Weight - Penalties and Allowances
8.22.806	32.28.806	Paddock to Post
8.22.1101	32.28.1101	Director of Simulcast Network
8.22.1104	32.28.1104	Portion of Exotic Wagering for Purses
8.22.1607	32.28.1607	Equipment and Operation
8.22.1611	32.28.1611	Breakage, Minus Pools and Commissions
8.22.1612	32.28.1612	Distribution of Pools
8.22.1613	32.28.1613	Dead Heats
8.22.1614	32.28.1614	Entry or Mutuel Field
8.22.1615	32.28.1615	Dead Heats Involving Entry or Mutuel Fields
8.22.1616	32.28.1616	Daily Double Feature
8.22.1618	32.28.1618	Twin Quin Feature
8.22.1619	32.28.1619	Exacta Betting
8.22.1620	32.28.1620	Refunds
8.22.1621	32.28.1621	Withholding Tax
8.22.1622	32.28.1622	Definition of Exotic Forms of Wagering
8.22.1801	32.28.1801	Trifecta
8.22.1802	32.28.1802	Requirements of Licensee
8.22.1803	32.28.1803	Pool Calculations
8.22.1804	32.28.1804	Twin Trifecta
8.22.1805	32.28.1805	Pick (N) Wagering
8.22.1806	32.28.1806	Superfecta Sweepstakes
8.22.1807	32.28.1807	Tri-Superfecta Wagering
8.22.1808	32.28.1808	Superfecta
8.22.1809	32.28.1809	Pick Three Pools

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 the

Board of Horse Racing, Attn: Janet Bramblett, 1424 Ninth Avenue, P.O. Box 200512, Helena, MT 59624-0512, and must be received no later than April 11, 2002.

7. Carol Grell-Morris, attorney, has been designated to preside over and conduct the hearing.

8. The Board of Horse Racing maintains a list of 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 address of the person to receive notices. Such written request may be mailed or delivered to Janet Bramblett, Department of Livestock, Board of Horse Racing, 1424 Ninth Avenue, PO Box 200512, Helena, MT 59624-0512 or may be made by completing a request form at any rules hearing held by the board.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges	BY: /s/ Bernard A. Jacobs
Marc Bridges, Exec. Officer,	Bernard A. Jacobs,
Board of Livestock	Rule Reviewer
Department of Livestock	Livestock Chief Legal Counsel

Certified to the Secretary of State, February 28, 2002.

**BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 32.2.401 as it relates to various fees charged by the department of livestock for inspecting livestock	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 15, 2002, the board of livestock proposes to amend ARM 32.2.401 as it relates to various fees charged by the department of livestock for inspecting livestock.

2. The board of livestock 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 department of livestock no later than 5:00 p.m. on March 27, 2002, to advise us of the nature of the accommodation that you need. Please contact Jack Wiseman, 301 N. Roberts St. - Rm. 202, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-2045; TTD number: 1-800-253-4091; fax:(406)444-2877; e-mail: jawiseman@state.mt.us.

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

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES, PERMIT FEE, AND MISCELLANEOUS FEES (1) The department of livestock shall charge:

(a) through (c) remain the same.

(d) for inspection of livestock before removal from a county or before change of ownership as required by 81-3-205, MCA, a fee of ~~35~~ 50 cents per head; for cow/calf pairs to pasture only, a fee of ~~35~~ 50 cents per pair;

(e) and (f) remain the same.

(g) for inspection of livestock before being sold or offered for sale at a licensed livestock market as required by 81-3-205, MCA, a fee of ~~35~~ 50 cents per head;

(h) for releasing an animal for purposes of removal from a licensed livestock market as required by 81-3-205, MCA, a fee of ~~35~~ 50 cents per head;

(i) through (al) remain the same.

AUTH: 81-1-102, MCA
IMP: 81-3-205, MCA

4. ARM 32.2.401 is being amended to alert the public to changes in certain fees that are currently charged by the department for the services it provides.

(a) The fee for inspecting livestock leaving the county of changing ownership, as proposed in ARM 32.2.401(1)(d),

(1)(g), (1)(h), is being increased to reflect the increased costs associated with providing this service.

5. Livestock must be inspected before leaving the county or before change of ownership, according to 81-3-205, MCA. The ten-year average (1991-2000) for total annual cattle inspected in Montana is 2,531,000. It is assumed that the average will remain consistent in the coming years. In 2001, there were 13,300 livestock producers in Montana who were susceptible to these fees. Based on this data, the following computations estimate cumulative amounts resulting from the proposed increases:

(a) FY 2003: 658,000 cattle sold through and released through a livestock market X 15 cents X 2 (in and out) = $197,400.

(b) FY 2003: 1,873,000 cattle inspected in the country X 15 cents = $280,950. On this basis, the cumulative amount will be $478,350 and 13,300 persons or entities may be affected.

6. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2002, or e-mailed to mbridges@state.mt.us to be received no later than April 11, 2002.

7. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The request for hearing and comments must be received no later than April 11, 2002.

8. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; 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 more than 25 based upon the population of the state.

9. The divisions of the Montana department of livestock maintain 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 a list shall make a written request that includes the name and mailing address of the person to receive notices and specifies the particular subject area of interest that the person wishes to receive

notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street – Room 308A, PO Box 202001, Helena, MT 59620-2001, or may be made by completing a request form at any rules hearing held by the board.

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

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State February 25, 2002.

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

In the matter of the adoption of new Rules I through VI and the amendment of ARM 37.5.304, 37.5.307, 37.5.331, 37.80.101 through 37.80.103, 37.80.201 and 37.80.202, 37.80.205, 37.80.206, 37.80.301, 37.80.306, 37.80.315, 37.80.316, 37.80.501, 37.80.502 and 37.97.118 pertaining to child care assistance and hearing appeal rights	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On April 4, 2002 at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

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 or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 25, 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. The rules as proposed to be adopted provide as follows:

RULE I CHILD CARE ASSISTANCE HEARING RIGHTS (1) A parent who has applied for or is receiving child care assistance under this chapter and who is subject to any adverse action, as defined in ARM 37.5.304, by the department or the department's agent is entitled to a fair hearing in accordance with ARM 37.5.103.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-713, MCA

RULE II REQUIREMENT TO REPORT CHANGES (1) Applicants and recipients of child care assistance must report to the resource and referral agency administering their case any change in their child care provider within 1 business day of the change.

(2) Applicants and recipients of child care assistance must report to the resource and referral agency administering their case any change in the following circumstances within 10 calendar days from the date the applicant or recipient learns of the change:

(a) persons living in the applicant's or recipient's household;

(b) employment of any household member, including new employment, loss of employment, increase or decrease in working hours, and increase or decrease in earned income;

(c) increase or decrease in the household's monthly gross income;

(d) training or school attendance, including changes to the location or hours of the training and circumstances regarding satisfactory progress; and

(e) mailing address, residential address, and phone number.

(3) Changes that are required to be reported under this rule must be reported to the resource and referral agency administering the child care assistance case. A report to any other employee, contractor, or agent of the department does not satisfy the reporting requirements set forth in this rule.

(4) A household that receives any amount of child care assistance to which the household was not entitled, including due to the parent's failure to report changes in circumstances as required by this rule, shall repay all child care assistance received but to which the household was not entitled.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 53-2-108 and 53-2-201, MCA

RULE III BEST BEGINNINGS QUALITY CHILD CARE MINI GRANTS (1) The purpose of the best beginnings quality child care mini grants program is to improve the quality of care offered to young children attending licensed or registered day care, by awarding funds for the purpose of:

(a) replacing or acquiring equipment;

(b) purchasing developmentally appropriate toys or supplies;

(c) assisting new providers with purchasing child care liability insurance;

(d) assisting providers with costs associated with regulatory requirements;

(e) hiring substitute care, to enable the provider or their staff to attend early childhood training conferences; or

(f) to complete other pre-approved projects that improve the overall quality of care offered in the facility.

(2) To be eligible for a mini grant, applicants must:

(a) be either licensed as a child care center or registered as a group or family child care home; or

(b) be participating in the early childhood career development practitioner registry.

(3) To be eligible for a mini grant, applicants shall not:

(a) be presently subject to a licensing or registration

corrective action with the quality assurance division (QAD) child care licensing program; or

(b) be a contractor participating in the best beginnings infant/toddler demonstration project or best beginnings provider grants program.

(4) Day care centers may apply for a maximum grant amount of $1,500. Group and family child care homes may apply for a maximum grant amount of $1,000.

(5) The application and award process is as follows:

(a) Applications are accepted on a form provided by the department at any time during the year. Applicants must include with the application form, proof of participation in the early childhood practitioner registry.

(b) Awards are made quarterly. The deadline for consideration is the last day of the quarter immediately preceding the quarter in which the award is made.

(c) Notice of acceptance or denial will be sent within 30 days of the closing date for the quarter.

(d) Mini grants are valid for payment for 12 months from the award date.

(6) Payment procedures for the mini grants are as follows:

(a) Awardees must request payment of a mini grant on a billing form provided by the department. The department will issue payments as a one-time reimbursement. Receipts for approved expenses must be attached to the billing form. Receipts for purchases made under the mini grant must be dated after the award date, but within 12 months of the date of the award.

(7) Awards are subject to the availability of funds.

AUTH: Sec. 52-2-704, 53-2-201 and 53-4-212, MCA
IMP: Sec. 52-2-704, MCA

RULE IV BEST BEGINNINGS QUALITY CHILD CARE: MERIT PAY

(1) The purpose of the Montana child care merit pay program is to improve the quality of services provided to young children, by providing a monetary incentive payment to care givers employed in licensed or registered child care facilities who complete continuing education, approved through the early care and education training approval system, or college course work in the early care and education knowledge base areas as outlined at ARM 37.95.620 and 37.95.701.

(2) To qualify for a Montana child care merit pay award, an individual must work a minimum of 15 hours a week in a child care facility that is either registered or licensed by the department.

(3) To receive a merit pay award, applicants may apply for either a 68 hour track or a 38 hour track.

(a) Those participants completing and verifying 68 hours of pre-approved early childhood training will receive an award of $400.

(b) Those participants verifying 38 hours of pre-approved early childhood training will receive an award of $200.

(4) Participants must complete an application form and a

training plan indicating:

(a) which track they wish to complete;

(b) the course work they plan to complete;

(c) their place of employment including the day care license or registration number;

(d) an attestation regarding whether they have previously received a merit pay award;

(e) an attestation regarding whether they have previously completed a degree in early childhood or child development; or

(f) an indication of early childhood or child development educational program enrollment.

(5) The application and training plan is submitted to the department of public health and human services (DPHHS), human and community services division, early childhood services bureau for approval. Participants are accepted into the program based upon priority ranking and availability of funds.

(6) If a participant does not complete the number of hours of training required for their track, she or he will not receive a merit pay award.

(7) All training must be completed between August 1 of the current year and August 31 of the following year.

(8) Child and adult care food program training in excess of the 4 hours required for participation in that program is allowable as long as the training has been approved through the career development training approval system.

(9) Credit hours are converted as follows:

(a) one college credit is equal to 15 hours of instructional time;

(b) one continuing education unit (CEU) is equal to 10 hours of instructional time.

(10) Priority is given in the following order:

(a) Providers who have not previously received a merit pay award and are completing training that leads to completion of an early childhood credential or accreditation through the national association of family child care, the national association for the education of young children or the national school age care association have first priority.

(b) Providers who have not previously received a merit pay award and who have not completed a credential in early childhood education, who are completing training that will enhance their ability to work with young children have second priority.

(c) Providers who have previously received a merit pay award and are completing training that leads to completion of an early childhood credential or accreditation through the national association of family child care, the national association for the education of young children or the national school age care association have third priority.

(d) Providers who have received merit pay in the past, and have not completed a credential in early childhood education, which are completing training that will enhance their ability to work with young children have last priority.

(e) For purposes of this rule, a credential means completion of a child development associate (CDA), an associates degree (AA), a bachelors degree (BA), or higher in early

childhood education, child development or an early childhood minor or early childhood permissive special competency (ECPSC) or a child care development specialist apprenticeship.

(11) Merit pay is dependent on the availability of funding.

AUTH: Sec. 52-2-704 and 52-2-111, MCA
IMP: Sec. 52-2-704, 52-2-111 and 52-2-112, MCA

RULE V INFANT/TODDLER CARE GIVER CERTIFICATION

(1) The department has established an infant/toddler care giver certification. In order to be certified as an infant/toddler care giver, a child care provider must complete at least one of the following training requirements:

(a) a current infant/toddler CDA certificate;

(b) a current family child care CDA that includes at least 30 hours of documented infant/toddler course work;

(c) the complete, four module, program for infant/toddler caregivers that is a minimum of 60 hours of instruction, 12 hours classroom per module and 3 hours of on-site lab;

(d) a child care development specialist apprenticeship that includes 30 hours of documented infant/toddler course work;

(e) an AA in early childhood/child development that includes 30 hours of documented infant/toddler course work; or

(f) a BA in early childhood/child development that includes 30 hours of documented infant/toddler course work.

(2) The process for becoming certified as an infant/toddler care giver is set forth in the Child Care Manual, Section 7-3, dated October 1, 1999, is hereby adopted and incorporated by this reference. This manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.

AUTH: Sec. 52-2-111, 52-2-704 and 53-2-201, MCA
IMP: Sec. 52-2-704, MCA

RULE VI AT-HOME INFANT CARE (1) Notwithstanding any other rule, payments may be made for qualifying parents who stay at home with their infant child and siblings, for up to 24 months, as provided in the Child Care Manual Section 2-3a, dated January 1, 2002. The Child Care Manual Section 2-3a, dated January 1, 2002, is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request

at the aforementioned address.

(2) Payments for at-home infant care are subject to the availability of funding.

AUTH: Sec. 52-2-111, 52-2-704, 53-2-201 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.5.304 DEFINITIONS For purposes of this subchapter, unless the context requires otherwise, the following definitions apply:

(1) remains the same.

(2) "Adverse action" means:

(a) through (f) remain the same.

(g) an action by the department establishing the rate of reimbursement for a ~~medical assistance~~ provider or denying in whole or in part a ~~medical assistance~~ provider's claim for services or items;

(h) an action by the department demanding repayment of or to recover an overpayment made to a ~~medical assistance~~ provider, or to impose a penalty or sanction against a medical assistance provider under ARM Title 37, chapter 85, subchapter 5;

(i) and (j) remain the same.

(k) a determination that the department intends to impose a lien upon the applicant's or recipient's real property pursuant to 53-6-171, MCA~~.~~ ;

(l) an action by the department denying or reducing a provider's quality incentive adjustment as provided in ARM 37.80.205; or

(m) an action by the department denying or reducing a special needs adjustment as provided in ARM 37.80.205.

(3) through (11) remain the same.

(12) "Provider" means an individual or organization licensed, enrolled or registered by the department or authorized by the department to provide services to a person eligible for benefits, except the term does not include contractors. For purposes of this subchapter, "provider" includes:

(a) through (d) remain the same.

AUTH: Sec. 2-4-201, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-3-107, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-5-504, 53-6-111, 53-6-113, 53-7-102 and 53-20-305, MCA
IMP: Sec. 2-4-201, 41-3-1103, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305, MCA

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department shall be

afforded the opportunity for a hearing as provided in this ~~subchapter~~ chapter.

(a) remains the same.

(b) The freedom to request a hearing shall not be interfered with in any way. The local office of public assistance or child care resource and referral agency shall assist a claimant who seeks help in requesting a hearing.

(c) through (d) remain the same.

(2) A provider other than a medical assistance provider who is aggrieved by an adverse action of the department shall be granted the right to hearing as provided in this ~~subchapter~~ chapter, except as otherwise provided in other department rules.

(a) remains the same.

(b) A request for a hearing from a day care facility applicant, licensee, ~~or~~ registrant or legally unregistered provider must be received by the department in writing within 10 days after the date of mailing of notice of the department's adverse action denying, suspending, cancelling, reducing, modifying or revoking a legally unregistered provider payment number or a day care license or registration certificate.

(3) remains the same.

(4) There is no opportunity for hearing under this ~~subchapter~~ chapter on departmental activities that are not defined as an adverse action in ARM 37.5.304, unless a right to hearing under this ~~subchapter~~ chapter is specifically granted by other department rule. A dispute regarding a contract between the department and a provider or other person or entity is not an adverse action by the department and there is no opportunity for fair hearing concerning such disputes.

AUTH: Sec. 2-4-201, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305, MCA
IMP: Sec. 2-4-201, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305, MCA

37.5.331 NOTICE OF APPEAL AND REVIEW OF PROPOSAL FOR DECISION (1) remains the same.

(2) The notice of appeal must be made to and shall be decided by the Board of Public Assistance, Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 in cases arising from the following programs:

(a) through (c) remain the same.

~~(d) block grant child care;~~

(e) through (i) remain the same but are renumbered (d) through (h).

(3) through (7)(b) remain the same.

AUTH: Sec. 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA

IMP: Sec. 52-2-704, 53-2-201 and 53-2-606, MCA

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) This ~~subchapter of rules~~ chapter pertains to payment for child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990," as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act," of 1996. These rules also pertain to subsequent re-funding of this program. In addition, this ~~subchapter's~~ chapter's requirements for certification of legally unregistered providers under ARM 37.80.306 apply to all child care programs administered by the department where the department allows participation of legally unregistered providers.

(2) Child care assistance may be available to cover the cost of child care incurred by working parents who are income eligible and who demonstrate a need for child care assistance in support of employment.

(a) If all or part of the cost of child care is provided by another source, child care assistance will be reduced by the amount paid by the other source.

(b) If child care services are provided to a parent who is an employee of a child care business free or at a reduced cost as an employment benefit, the parent's child care assistance will be based on the amount the parent is required to pay out of the parent's own pocket for care of the parent's own child.

(c) A parent may not receive child care assistance for providing care to the parent's own child, but child care assistance may be available to pay for child care provided by another provider to allow the parent to attend child care education or training activities.

~~(2)~~ (3) Eligibility of parents and the amount of ~~benefits~~ child care assistance provided under this ~~subchapter depend generally~~ chapter is based on income as set out in ARM 37.80.202. Households whose gross income exceeds 150% of federal poverty level are not eligible.

(4) Households that are not receiving temporary assistance for needy families (TANF) may receive child care assistance for 30 days while eligibility is being verified. Households may benefit from 30 days of presumptive eligibility only once during any 12 month period. To apply for presumptive eligibility, households must:

(a) submit a completed child care application which indicates the household is likely to be eligible;

(b) provide a completed authorization to release information form; and

(c) submit an appropriate child care service plan.

~~(3)~~ (5) All providers must be certified for the purpose of receiving payment under a state assisted child care program. Certification under a state assisted child care program is separate and apart from registration as a group or family child care home, or licensure as a child care center, and means simply that the provider has been approved as eligible to receive state

payment for child care services as allowed by this ~~subchapter~~ chapter. Those operating as a group or family child care home or child care center as defined by department rule and the Montana Child Care Act remain subject to child care facility registration and licensing rules in addition to requirements for certification under this ~~subchapter~~ chapter.

~~(4)~~ (6) Eligibility of parents and providers for child care ~~benefits~~ assistance is contingent on meeting all applicable requirements under this ~~subchapter~~ chapter.

~~(5)~~ (7) Payment of funds under this ~~subchapter~~ chapter also depends on continued federal funding. Termination of any and all benefits may occur based on the loss or depletion of federal funding.

~~(6)~~ (8) Provision of benefits for child care services under this ~~subchapter~~ chapter, or under any other department child care program, does not create an employer-employee relationship between the department and the provider and shall not be deemed to obligate the department to ~~pay~~ provide employment-related benefits to child care providers.

(9) Except as provided in (4), child care assistance payments are not available unless both the parent and the provider meet all eligibility requirements specified in this chapter.

(10) An application for child care assistance will be denied if the applicant fails to submit all required documentation within 30 days of the date on which the application is received by the resource and referral agency. Applicants may receive one 15 day extension to submit required documentation in the possession of a third party provided the applicant submits a request for extension prior to the expiration of the 30 day period.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611 ~~and 53-4-612~~, MCA

37.80.102 DEFINITIONS As used in this ~~subchapter~~ chapter, the following definitions apply:

(1) "Certification plan" means a notice issued by the child care resource and referral agency which authorizes child care assistance and specifies the number of children for whom child care assistance is authorized, the number of hours per week for which assistance is authorized, the number of months for which authorization is granted, the name of the child care provider, and the amount of the monthly copayment which the parent must pay to the provider. Certification plans are subject to change based on circumstances affecting eligibility or the provision of child care assistance.

~~(1)~~ (2) "Child care" means supplemental parental care as defined in ARM 37.95.102~~(6)~~ provided by either a child care facility or by a legally unregistered provider, for a child:

(a) from birth through the month of the 13th birthday; ~~or~~

(b) who ~~has attained 18 years of age; or~~ is a child with special needs under the age of 18;

(c) who is a child with special needs that has not attained 19 years of age and is a full-time student in a secondary school, ~~(~~or in ~~the equivalent level of vocational or technical training) and who has a medical record with the appropriate written verification of an emotional, physical, or mental disability and who, because of the disability or cognitive delay, is not able to care for him or herself or his/her property without assistance.~~ a high school equivalency, or GED program; or

(d) who is under the age of 18 and under the supervision of a court.

~~(2)~~ (3) "Child care facility" has the same meaning as the term "day care facility" as defined in ARM 37.95.102~~(1)~~.

(4) "Child care resource and referral agency" or "resource and referral agency" means the entity or organization with which the department contracts to administer the child care assistance program, including determination of eligibility for benefits, certification of providers to receive payments, and the payment of providers.

~~(3)~~ (6) "Copayment" means the portion of child care expenses ~~paid by parents under~~ which the parent is responsible for paying in accordance with the sliding scale established in ARM 37.80.202.

(4) remains the same but is renumbered (7).

(8) "Federal poverty guideline (FPG)" means poverty guidelines published annually by the U.S. department of health and human services based on information compiled by the office of management and budget.

~~(5)~~ (9) "~~Family~~ Household size" means the number of household members including the parents, as the term is defined in this ~~subchapter~~ chapter, and the children of the parents, but not including adults living in the household other than the parents, unless the income of such adults is counted in computing the ~~family's~~ household's monthly income under this ~~subchapter~~ chapter.

(10) "Individual with a disability" means a person with a physical, mental, or emotional defect, illness, or impairment diagnosed by a licensed physician, psychiatrist, or psychologist which is sufficiently serious as to eliminate or substantially reduce the individual's ability to obtain and retain employment for a period expected to last at least 30 days.

~~(6)~~ (11) "Legally unregistered provider" means a person providing child care under this ~~subchapter~~ chapter, or under any child care program administered by the department allowing for legally unregistered providers, who is not required to be registered or licensed as a child care facility and is not a preschool or drop-in facility, including providers whose child care services are provided in the home of the parents.

(a) A legally unregistered provider certified under this ~~subchapter~~ chapter, or under any child care program administered by the department allowing for participation of legally unregistered providers, may care for up to two children or all the children from the same household ~~be a relative of the child~~, and may provide child care in the home of the parents~~,~~

~~notwithstanding the definition of supplemental parental care in ARM 37.95.102(6)~~.

~~(7)~~ (12) "Monthly income" means gross monthly income of the parent~~(s)~~ or parents residing with the child~~(ren)~~ and the income of adults in the household who are included in the calculation of ~~family~~ household size ~~under this subchapter~~ as provided in ARM 37.80.202. The income of a parent not residing with the child~~(ren)~~ shall be counted as monthly income under this ~~subchapter~~ chapter only in cases where such parent's income is available to support the household of the child~~(ren)~~. Any child support provided by a parent not residing with the child~~(ren)~~ to the household of such child~~(ren)~~ shall be counted as monthly income, and such child support shall be deemed to constitute the extent to which the non-residential parent's income is available to the household. The following sources of income are the only sources that will not be counted in determining gross monthly income:

(a) Pell grants;
(b) national merit scholarships;
(c) Carl Perkins federal scholarships;
(d) state student incentive grants;
(e) national direct student loan program funds;
(f) guaranteed student loan program, section 502 funds;
(g) congressional teachers scholarships;
(h) nursing student loans;
(i) other needs-based scholarships;
(j) earned income tax credit;
(k) tribal per capita payments;
~~(l) VISTA volunteer stipends;~~
~~(m) work study grants for which no income is received (unless the work study recipient elects to count hours worked under the grant to meet the 15-hour-work-week requirement under ARM 37.80.201(1). In such cases, the cash equivalent of the work study grant shall be counted as income);~~

(n) through (p) remain the same but are renumbered (l) through (n).

~~(q)~~ (o) a minor's ~~children's~~ earned income, if attending secondary education;

~~(r)~~ (p) supplemental security income (SSI) payments; and

~~(s)~~ (q) ~~high school, college or junior college~~ secondary or post secondary education scholarships.

~~(8)~~ (13) "Parent" means the birth or adoptive parent, legal guardian, or other person acting in loco parentis ~~who may be deemed to bear financial responsibility for procuring child care for a particular child~~.

(14) "Person acting in loco parentis" means a person who lives with the child and has assumed the care and control of the child.

(9) remains the same but is renumbered (15).

~~(10) "Subchapter" means ARM 37.80.101 through 37.80.316.~~

(16) "Short-term emergency" means a break in employment which does not exceed 3 months and which is caused by an unforeseen medical condition of a parent or a child, excluding a normal pregnancy or normal delivery of a child.

(17) "A child with special needs" means a child who is age 17 or younger who requires additional assistance because of an emotional or physical disability and or cognitive delay which is verified by medical records or other appropriate documentation.

(18) "Teen parent" means a parent who has not yet attained the age of 20 years.

~~(11)~~ (19) "Training" means vocational or educational training meeting the requirements of this ~~subchapter~~ chapter.

~~(12)~~ (5) "Children from the same ~~family~~ household" means children who are of the same sibling group.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, and 53-4-611 ~~and 53-4-612~~, MCA

37.80.103 CONFIDENTIALITY (1) ~~Applicant or participant~~ Use and disclosure of information ~~may be shared with other state and federal agencies who are supporting or assisting in administration of the program~~ pertaining to an applicant for, or recipient of child care assistance is allowed only for the following purposes:

~~(a) to report child abuse and neglect to the appropriate agency or authority;~~

~~(b)~~ (a) to administer ~~and establish eligibility, to determine the amount of assistance, to provide the service, and to conduct audits, investigations, prosecution of criminal or civil proceedings involving state and federal public assistance programs;~~ child care assistance under this chapter, which includes but is not limited to:

(i) determining eligibility and the amount of assistance;

(ii) providing assistance to eligible persons;

(iii) conducting audits and investigations; and

(iv) prosecuting criminal or civil proceedings relating to assistance;

(b) to determine eligibility and amount of assistance for any other needs-based federally funded public assistance program for low income persons;

(c) to report possible child abuse or neglect to the appropriate agency or authority or respond to requests for information from an appropriate agency or authority investigating possible child abuse or neglect;

(d) to assist the child support enforcement division or any other agency or entity authorized to conduct child support enforcement activities;

~~(c)~~ (e) to provide the applicant or ~~participant's~~ recipient's current address to a state or local law enforcement officer, if the officer documents that the person is a fugitive felon whose arrest is the responsibility of the officer. The officer shall provide the name and social security number of the ~~participant~~ recipient by written request; ~~or~~

~~(d)~~ (f) to provide information necessary for emergency medical or other critical needs. Notice of release shall be given as soon as possible to the applicant or participant~~.~~ ;

(g) to provide information relevant to a child care licensing investigation; and

(h) any other disclosure required by law.

(2) An applicant or recipient of child care assistance is entitled to information regarding the applicant or recipient's case upon request, except:

(a) when release of the information is prohibited by law; or

(b) when the requested information was provided on the condition that it not be shared with the applicant or recipient; or

(c) when release of the information would impede law enforcement.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 53-2-211, MCA

37.80.201 ~~ELIGIBILITY OF PARENTS FOR PAYMENT~~ NON-FINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE

(1) ~~In addition to other requirements, for payments under this subchapter, each parent (or other adult who is included in the calculation of family size) in the household must be working a minimum of 60 hours each month; two parent families must work a total of 120 hours per month, with any combination of work hours. This work requirement does not apply to FAIM families, teen parent families attending high school or an equivalency program and working families experiencing short-term medical emergencies. Non-FAIM parents may receive benefits under this subchapter to cover child care while at training if one or both parents (or other adult who is included in the calculation of family size) in the household are employed. If the parent(s) educational program requires a temporary full time field experience, such as student teaching or a clinical practicum, the work requirement may be temporarily waived during the field experience. Hours worked under a work study grant shall be counted in meeting the work requirement if income is earned, or if the cash equivalent of benefits received is counted as income for purposes of computing the benefit amount under the sliding scale in ARM 37.80.202.~~ In addition to the income requirements of ARM 37.80.202, the following non-financial requirements must be met in order for payments under this chapter to be made:

(a) parents must work the following minimum number of hours each month:

(i) for two-parent households, parents must work a total of 120 hours per month, but there is no minimum number of hours which each parent must work each month; or

(ii) for single parent households:

(A) the parent must be working a minimum of 60 hours each month; or

(B) the parent must be working a minimum of 40 hours each month if attending school or training full time.

(b) the monthly minimum hourly work requirement does not apply to:

(i) households receiving cash assistance funded by

temporary assistance for needy families (TANF);

(ii) households in which the parent, or both parents in a two-parent household are attending high school or an equivalency program;

(iii) households containing working parents who are experiencing short-term medical emergencies;

(iv) households containing parents who lost a job either in the current month or in the month just preceding the current month, provided the parents are actively seeking work that have reported the change in circumstance in a timely manner in accordance with [Rule II] and who have applied for a grace period and have been approved;

(v) an individual parent with a severe disability who is not able to meet a minimum hourly work requirement and has a need for child care during work hours;

(vi) the minimum hourly work requirement may be waived for a parent, in a two-parent household, who is severely disabled and unable to care for their child.

(2) Households which are not receiving cash assistance funded by TANF may be eligible for child care assistance under this chapter while a parent is participating in education or training reasonably expected to lead to gainful employment if:

(a) either the parent or another adult who is included in the calculation of household size as provided in ARM 37.80.202 meets the minimum hourly work requirement provided in this rule; or

(b) the minimum hourly work requirement is waived while a parent participates in a full-time field experience required for graduation in the parent's curriculum.

(3) Child care assistance under this chapter for parents who are pursuing training or education is subject to the following limitations:

(a) assistance is not available to parents seeking post-secondary education beyond the level of a bachelor's degree or its equivalent, except that assistance may be provided while a parent is participating in training which lasts no more than 6 weeks if the department or its designated agent determines that such training has a high probability of leading to employment in the near future;

(b) the training is for the purpose of obtaining employment in a recognized occupation in which job openings exist in Montana;

(c) the training is obtained through an institution approved by the board of regents or other recognized accrediting body; and

(d) the parent must verify that he or she is making satisfactory progress in the training or education as defined by the training or educational institution or by the department.

~~(2)~~ (4) If a birth or adoptive parent ~~is absent from the household~~ of a child for whom child care costs are being incurred does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with child support enforcement services from the

department's child support enforcement division. A custodial parent ~~failing~~ who fails without good cause to apply for such services and to cooperate with the child support enforcement division ~~may~~ will be decertified for benefits under this ~~subchapter~~ chapter as of the date of such failure. Good cause ~~exemptions may be granted by child care eligibility workers or the child support enforcement division~~ is defined as specified in ARM 37.78.215.

~~(3) The household of the parents must also meet eligibility requirements based on income under the sliding scale set out in ARM 37.80.202.~~

~~(4)~~ (5) The parents may apply for certification/recertification under this ~~subchapter~~ chapter at the nearest child care resource and referral agency~~, local county office of human services or office of public welfare. Child care resource and referral agencies are located in Billings, Bozeman, Butte, Glasgow, Great Falls, Helena, Kalispell, Miles City, Havre, Glendive, Lewistown and Missoula. Following completion and submission of all applicable forms, the child care resource and referral agency, for non-FAIM cases, will approve or deny the application. FAIM cases will be approved or denied by the (WoRC) operator or office of public assistance case manager in cooperation with the child care resource and referral agency. If approved, the parents will be certified eligible for benefits under this subchapter according to the sliding scale in ARM 37.80.202. The parents must obtain eligibility recertification every 6 months or as designated by their worker~~.

~~(5)~~ (6) ~~Families will be prioritized for services as follows:~~ Due to limited funding for child care assistance, some households which meet all requirement for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) ~~Families~~ households receiving ~~services through~~ assistance funded by ~~the temporary assistance for needy families/families achieving independence in Montana (TANF/FAIM) programs~~ TANF program are guaranteed needed child care when participating in ~~mandated~~ family investment agreement activities which require child care;~~.~~

(b) households containing a child with special needs are guaranteed child care when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502;

~~(b) Other families must compete for child care depending on the availability of child care funds as follows:~~

~~(i) the highest priority for services, after FAIM/TANF families are families with each parent in the household working a minimum of 60 hours each month; two parent families must work a total of 120 hours per month, with any combination of work hours, teen parents attending high school or equivalency programs, and families experiencing short-term (expected to last fewer than 3 months) medical emergencies who need the child care so they may return to work;~~

~~(ii) among families listed in (5)(b)(i), those with lower income are a higher priority than those with higher income; and~~

~~(iii) the family whose application is received sooner than another family with equal priority will be a higher priority than a family whose application is received at a later date.~~

(c) all other households shall be prioritized in the following manner:

(i) single-parent and two-parent households, who meet minimum hourly work requirement provided in ARM 37.80.201 have first priority;

(ii) teen parents attending high school or equivalency programs have second priority; and

(iii) households experiencing short-term medical emergencies who need the child care so they may return to work have last priority.

(d) if there are two or more non-TANF households at the same level of priority as set forth in (6)(c)(i) through (iii), the household whose income is a lower percentage of the federal poverty guidelines has a higher priority;

(e) if there are two or more non-TANF households at the same level of priority as set forth in (6)(d), the household whose application was received first has a higher priority.

~~(c)~~ (7) Payment may only be made for care provided during the time both parents or, in single parent households, the parent, and any other adult included in calculating ~~family~~ household size under this ~~subchapter~~ chapter, ~~is/~~are required to be out of the home to attend work or training or due to a short-term medical emergency. Under no circumstances may payment be made for child care provided by a parent or person acting in loco parentis of the child~~(ren)~~, even if such parent does not reside in the child's household. In addition, no payment under this ~~subchapter~~ chapter may be made for child care provided by any person ~~residing in the household whether or not such person is included in calculating family size~~ who is included as a member of the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this ~~subchapter~~ chapter.

~~(d)~~ (8) ~~non-FAIM families~~ Households experiencing unemployment, due to good cause ~~reason (ARM 46.18.136(5))~~ as defined in ARM 37.78.508 may elect to extend child care benefits until the end of the month following the job loss, if the department has sufficient funds to provide extended child care benefits. ~~Extended child care benefits will be determined by the availability of funds.~~

~~(i)~~ (a) ~~families~~ households must request the extension within 10 days ~~of beginning unemployment~~ after the parent's last day of employment;

~~(ii)~~ (b) the usual child care schedule ~~will~~ may continue during the extension; and

~~(iii) families must use the extension of child care benefits to seek employment.~~

(c) the unemployed parent or parents must actively seek new employment during the period of extended child care.

~~(6) Parents previously awarded a bachelor's degree or having completed a recognized vocational course of post-secondary education within 5 years from the date of application~~

~~are ineligible for block grant payment under this subchapter for training.~~

~~(7) Child care benefits allowed for training under this subchapter are also limited to:~~

~~(a) training for the purpose of obtaining employment in a recognized occupation in which job openings exist in Montana;~~

~~(b) training obtained through an approved training institution; and~~

~~(c) training for which written verification of satisfactory progress is (or, in cases where the training has just begun, may be) presented by the parents.~~

~~(8) Parents receiving public assistance are guaranteed child care pursuant to all applicable requirements including the sliding fee scale copayment requirements.~~

(9) ~~Parents may only claim payment~~ Child care assistance is only available under this ~~subchapter~~ chapter for child care provided by:

(a) a legally unregistered provider who is certified under this ~~subchapter~~ chapter; or

(b) a licensed or registered child care facility certified under this ~~subchapter~~ chapter.

(10) Households eligible for head start full day/full year may receive child care assistance as provided in the Child Care Manual, Sections 5-1 through 5-3, dated August 1, 2001. The Child Care Manual sections 5-1 through 5-3 are hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual sections are also available upon request at the aforementioned address.

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611, MCA

37.80.202 ~~INCOME ELIGIBILITY AND COPAYMENTS~~ FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT ~~(1) The child care sliding fee scale chart, and other subsections of this rule, set the maximum and minimum benefits to be paid under this subchapter.~~

~~(2) The child care sliding fee scale is based on federal poverty level (FPL) income guidelines and state median income (SMI) for the current federal fiscal year.~~

~~(3) Parents eligible for benefits under this subchapter are required to pay or make arrangements to pay a monthly copayment. The parents will be charged a percentage of their gross monthly income for the applicable family size according to the chart. Households with income exceeding 85% of SMI or 150% of the FPL appearing in the chart are ineligible for benefits. The department may establish other priorities for distributing~~

~~available benefits.~~

~~(4) The department will provide benefits for eligible participants according to a sliding fee scale that will be revised periodically. Revisions to the sliding fee scale may occur due to changes in the federal poverty level, changes in the state median income or changes in budget allocations. The child care sliding fee scale chart is established pursuant to the requirements of 45 CFR 98.16 (1991). The chart sets forth the copayments paid by parents receiving payment for child care services under this subchapter. A copy of the child care sliding fee scale chart is located at the end of this rule.~~

~~(5) The daily/hourly payment rate for child care services under this subchapter is the applicable rate in ARM 37.80.205. Once the appropriate rate is multiplied by the number of child care hours/days in any month which may be paid under this subchapter, the monthly benefit amount paid by the department is reduced by the amount of the copayment.~~

~~(6) Each family eligible under this subchapter may receive benefits covering hours/days of child care for all eligible children in the household. Family size is one factor in determining the amount of copayment.~~

~~(7) The amount of the monthly copayment in the child care sliding fee scale chart is paid by the parents to the provider regardless of the number of children in care or number of days/hours child care is provided.~~

~~(8) Parents are solely responsible for paying or making arrangements to pay the copayment. Parents failing to pay or make arrangements to pay copayments to their provider may be decertified for benefits under this subchapter.~~

~~(9) Parents certified under this subchapter for benefits must report immediately any change in:~~

~~(a) income, household membership, employment, training or medical status which may reasonably be expected to affect their eligibility under this subchapter;~~

~~(b) the identity of their provider and/or reduction in the amount of child care for which payment may be made under this subchapter; and~~

~~(c) address or phone number.~~

~~(10) Reports under (9) of this rule must be made to the child care resource and referral agency, or if a FAIM family, to the WoRC operator or office of public assistance case manager certifying eligibility for the parents. The certifying child care resource and referral agency, WoRC operator or office of public assistance case manager may act to change, reduce, or deny benefits under this subchapter based on information received from the parents or from any source.~~

~~CHILD CARE SLIDING FEE SCALE~~								
~~FAMILY SIZE~~		~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~
~~%Poverty~~	~~Gross Income~~	~~Below 95.5% +$1 of the Federal Poverty Level~~						
~~%Income~~	~~CoPay~~	~~$5~~	~~$5~~	~~$5~~	~~$5~~	~~$5~~	~~$5~~	~~$5~~

~~95.5% + $1~~	~~Gross Income~~	~~$882~~	~~$1,105~~	~~$1,329~~	~~$1,553~~	~~$1,777~~	~~$2,003~~	~~$2,227~~
~~3%~~	~~CoPay~~	~~$26~~	~~$33~~	~~$40~~	~~$47~~	~~$53~~	~~$60~~	~~$67~~
~~100%~~	~~Gross Income~~	~~$922~~	~~$1,157~~	~~$1,392~~	~~$1,627~~	~~$1,862~~	~~$2,097~~	~~$2,332~~
~~4%~~	~~CoPay~~	~~$37~~	~~$46~~	~~$56~~	~~$65~~	~~$74~~	~~$84~~	~~$93~~
~~105%~~	~~Gross Income~~	~~$968~~	~~$1,215~~	~~$1,461~~	~~$1,708~~	~~$1,955~~	~~$2,202~~	~~$2,448~~
~~5%~~	~~CoPay~~	~~$48~~	~~$61~~	~~$73~~	~~$85~~	~~$98~~	~~$110~~	~~$122~~
~~110%~~	~~Gross Income~~	~~$1,014~~	~~$1,272~~	~~$1,531~~	~~$1,789~~	~~$2,048~~	~~$2,306~~	~~$2,565~~
~~6%~~	~~CoPay~~	~~$61~~	~~$76~~	~~$92~~	~~$107~~	~~$123~~	~~$138~~	~~$154~~
~~115%~~	~~Gross Income~~	~~$1,060~~	~~$1,330~~	~~$1,600~~	~~$1,871~~	~~$2,141~~	~~$2,411~~	~~$2,681~~
~~7%~~	~~CoPay~~	~~$74~~	~~$93~~	~~$112~~	~~$131~~	~~$150~~	~~$169~~	~~$188~~
~~120%~~	~~Gross Income~~	~~$1,106~~	~~$1,388~~	~~$1,670~~	~~$1,952~~	~~$2,234~~	~~$2,516~~	~~$2,798~~
~~8%~~	~~CoPay~~	~~$88~~	~~$111~~	~~$134~~	~~$156~~	~~$179~~	~~$201~~	~~$224~~
~~125%~~	~~Gross Income~~	~~$1,152~~	~~$1,446~~	~~$1,740~~	~~$2,033~~	~~$2,327~~	~~$2,621~~	~~$2,915~~
~~9%~~	~~CoPay~~	~~$104~~	~~$130~~	~~$157~~	~~$183~~	~~$209~~	~~$236~~	~~$262~~
~~130%~~	~~Gross Income~~	~~$1,198~~	~~$1,504~~	~~$1,809~~	~~$2,115~~	~~$2,420~~	~~$2,726~~	~~$3,031~~
~~10%~~	~~CoPay~~	~~$120~~	~~$150~~	~~$181~~	~~$212~~	~~$242~~	~~$273~~	~~$303~~
~~135%~~	~~Gross Income~~	~~$1,244~~	~~$1,562~~	~~$1,879~~	~~$2,196~~	~~$2,513~~	~~$2,831~~	~~$3,148~~
~~11%~~	~~CoPay~~	~~$137~~	~~$172~~	~~$207~~	~~$242~~	~~$276~~	~~$311~~	~~$346~~
~~140%~~	~~Gross Income~~	~~$1,290~~	~~$1,619~~	~~$1,948~~	~~$2,277~~	~~$2,606~~	~~$2,935~~	~~$3,264~~
~~12%~~	~~CoPay~~	~~$155~~	~~$194~~	~~$234~~	~~$273~~	~~$313~~	~~$352~~	~~$392~~
~~145%~~	~~Gross Income~~	~~$1,336~~	~~$1,677~~	~~$2,018~~	~~$2,359~~	~~$2,699~~	~~$3,040~~	~~$3,381~~
~~13%~~	~~CoPay~~	~~$174~~	~~$218~~	~~$262~~	~~$307~~	~~$351~~	~~$395~~	~~$440~~
~~150%~~	~~Gross Income~~	~~$1,383~~	~~$1,735~~	~~$2,088~~	~~$2,440~~	~~$2,793~~	~~$3,145~~	~~$3,498~~
~~14%~~	~~CoPay~~	~~$194~~	~~$243~~	~~$292~~	~~$342~~	~~$391~~	~~$440~~	~~$490~~

(1) Financial eligibility for child care assistance is based on the household's monthly income as defined in ARM 37.80.102. Households whose income exceeds 150% of the federal poverty guidelines (FPG) as published by the U.S. department of health and human services for a household of their size are not eligible for child care assistance.

(2) Assets owned by the members of the household or in which the member of a household have an interest are not considered in determining whether a household is eligible for child care assistance.

(3) Parents eligible for assistance are responsible for paying a monthly copayment in the amount specified in the sliding fee scale table incorporated in (14).

(a) In general, the household's copayment is a percentage of the household's gross monthly income, based on the household's gross monthly income as compared to the FPG for a household of that size. Generally, households with income which is a higher percentage of the FPG are required to pay a higher percentage of their gross monthly income as a copayment than households whose income is a smaller percentage of the FPG. All parents receiving TANF-funded cash assistance shall pay the $5 minimum copayment amount as specified in the sliding fee scale, regardless of household size or income.

(b) In the event that the actual cost of child care for the month is less than the copayment which the parent would be required to pay according to the sliding fee scale the parent will be required to pay the actual cost of care rather than the specified copayment.

(c) Parents are solely responsible for paying the copayment to the child care provider. Parents who fail to make the required payment or make arrangements satisfactory to the provider for payment will be ineligible for child care assistance until the amount due has been paid or arrangements satisfactory to the provider have been made.

(d) Children in child care placements due to protective services provided by the department are not subject to a copayment.

(4) In computing a household's size for purposes of determining eligibility and the parent's copayment, the following persons must be included as members of the household:

(a) the child or children for whom child care is being provided;

(b) all persons who live in the same household as the child or children and who are the child's:

(i) natural or adoptive parents, or stepparents;

(ii) brothers and sisters, or stepbrothers and stepsisters, or half brothers and half sisters who are age 17 and younger;

(c) a person who lives in the same household as the child or children and who is the child's legal guardian or is acting in loco parentis for the child; and

(d) parents residing outside of the child's home, provided the parents of the child are not separated or divorced.

(5) In computing a household's size for purposes of determining eligibility and the parent's copayment, the household has the option of choosing to include or exclude as a household member any other person residing with the child.

(a) After the household exercises its option to include or exclude a person when eligibility is initially being determined, the household cannot subsequently choose a different option, unless the optional members leaves the household.

(6) In computing the household's income for purposes of determining eligibility and the parent's copayment, the income of all persons counted in computing household size must be

counted. The income of persons not counted in computing household size will not be counted.

(7) In determining the household's need for child care assistance, the work hours, school schedules and ability to care for the child or children of each adult included in calculating household size will be considered. The work hours and ability to care for the child or children of adults excluded in calculating household size will not be considered.

(8) Persons providing child care services subsidized under this chapter will be paid at the lesser of the providers usual and customary rate or the rates specified in ARM 37.80.205. This total monthly payment due to the child care provider is computed by multiplying the applicable payment rate times the number of child care hours or days for the month for which payment is allowed under this chapter. The portion of the total monthly payment which the department is required to pay is computed by subtracting the parent's monthly copayment from the total monthly payment due.

(9) Eligible households may receive child care assistance for each child in the household who meet the age requirement for child care contained in ARM 37.80.102 and whose care meets all other requirements of this chapter for payment.

(10) No child care assistance payments can be issued until a certification plan has been issued by the child care resource and referral agency.

(11) The child care certification plan sets limits for child care benefits. Certification plans may change. The most recent certification plan is the effective plan. No further notice is provided when benefits expire at the end date of a certification plan.

(12) Benefits will only be paid for actual care provided during the certification period, except as provided in ARM 37.80.205 and 37.80.206.

(13) A household that receives any amount of child care assistance to which the household was not entitled shall repay all child care assistance to which the household was not entitled, regardless of whether the applicant, the recipient or the department caused the overpayment.

(14) The household's monthly copayment shall be the amount specified in the department's child care assistance sliding fee scale as amended June 30, 2001. The sliding fee scale is hereby adopted and incorporated by reference and shall be in effect until June 30, 2002. A copy of the sliding fee scale is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, P.O. Box 202952, Helena, MT 59620-2952. The household's size and income are taken into consideration in determining the copayment amount each household must pay.

(15) For the period beginning July 1, 2002, the household's monthly copayment shall be the amount specified in the department's child care assistance sliding fee scale as amended July 1, 2002. The sliding fee scale is hereby adopted and incorporated by reference and shall be in effect beginning

July 1, 2002. A copy of the sliding fee scale is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, P.O. Box 202952, Helena, MT 59620-2952. The household's size and income are taken into consideration in determining the copayment amount each household must pay.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601 and 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) and (2) remain the same.

(3) Child care certification plans may ~~allow~~ authorize payment for extended care of more than 10 hours during a calendar day. When care is provided for 10 to 16 hours per day, the daily rate applies to the first 10 hours of service. The hourly rate applies up to 6 hours of additional service. If the certification plan specifies service exceeding 16 hours of care during a calendar day, the state may pay up to twice the daily rate.

~~(a) Following are the state rates by resource and referral district. Child care providers will be paid the rate for the district in which their facility is physically located.~~

~~(i) Billings District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~15.00~~	~~2.25~~
~~Infant~~	~~16.00~~	~~2.50~~
~~Special Needs~~	~~15.00~~	~~2.00~~
~~Group Home~~		
~~Regular~~	~~15.00~~	~~2.50~~
~~Infant~~	~~16.00~~	~~2.50~~
~~Special Needs~~	~~15.00~~	~~2.50~~
~~Center~~		
~~Regular~~	~~16.50~~	~~3.00~~
~~Infant~~	~~22.00~~	~~3.50~~
~~Special Needs~~	~~16.00~~	~~2.65~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

~~(ii) Bozeman District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~17.00~~	~~2.50~~
~~Infant~~	~~18.00~~	~~2.90~~
~~Special Needs~~	~~18.00~~	~~2.50~~
~~Group Home~~		
~~Regular~~	~~17.75~~	~~2.75~~
~~Infant~~	~~20.00~~	~~2.75~~
~~Special Needs~~	~~16.75~~	~~2.50~~
~~Center~~		
~~Regular~~	~~17.75~~	~~2.75~~
~~Infant~~	~~20.00~~	~~3.00~~
~~Special Needs~~	~~18.00~~	~~2.90~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

(iii) Butte District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	15.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Group Home		
Regular	15.00	2.00
Infant	16.00	2.25
Special Needs	16.00	2.25
Center		
Regular	15.00	2.50
Infant	16.10	2.65
Special Needs	15.25	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	2.00

(iv) Glasgow District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.15
Special Needs	15.00	2.15
Center		
Regular	16.00	2.50
Infant	16.00	2.40
Special Needs	16.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(v) Glendive District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Center		
Regular	14.50	2.50
Infant	16.00	2.40
Special Needs	15.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(vi) Great Falls District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Center		
Regular	14.50	2.50
Infant	16.00	2.50
Special Needs	15.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

~~(vii) Havre District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.00~~
~~Special Needs~~	~~15.50~~	~~2.00~~
~~Group Home~~		
~~Regular~~	~~15.40~~	~~2.50~~
~~Infant~~	~~16.00~~	~~2.50~~
~~Special Needs~~	~~16.00~~	~~2.50~~
~~Center~~		
~~Regular~~	~~14.50~~	~~2.50~~
~~Infant~~	~~16.00~~	~~2.50~~
~~Special Needs~~	~~15.50~~	~~2.50~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

~~(viii) Helena District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~14.25~~	~~2.00~~
~~Infant~~	~~16.00~~	~~2.25~~
~~Special Needs~~	~~15.00~~	~~2.00~~
~~Group Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.25~~
~~Special Needs~~	~~15.00~~	~~2.25~~
~~Center~~		
~~Regular~~	~~15.50~~	~~2.75~~
~~Infant~~	~~17.00~~	~~2.50~~
~~Special Needs~~	~~16.00~~	~~2.50~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

~~(ix) Kalispell District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.25~~
~~Special Needs~~	~~15.00~~	~~2.15~~
~~Group Home~~		
~~Regular~~	~~15.00~~	~~2.35~~
~~Infant~~	~~16.00~~	~~2.50~~
~~Special Needs~~	~~15.00~~	~~2.50~~
~~Center~~		
~~Regular~~	~~14.75~~	~~2.50~~
~~Infant~~	~~16.00~~	~~2.75~~
~~Special Needs~~	~~15.00~~	~~2.50~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

~~(x) Lewistown District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.00~~
~~Special Needs~~	~~15.00~~	~~2.50~~
~~Group Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.25~~
~~Special Needs~~	~~15.50~~	~~2.25~~
~~Center~~		
~~Regular~~	~~16.45~~	~~2.50~~
~~Infant~~	~~17.20~~	~~2.45~~
~~Special Needs~~	~~17.20~~	~~2.75~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

~~(xi) Miles City District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.00~~
~~Special Needs~~	~~15.00~~	~~2.00~~
~~Group Home~~		
~~Regular~~	~~14.00~~	~~2.00~~
~~Infant~~	~~15.00~~	~~2.25~~
~~Special Needs~~	~~15.00~~	~~2.25~~
~~Center~~		
~~Regular~~	~~14.50~~	~~2.50~~
~~Infant~~	~~16.50~~	~~2.40~~
~~Special Needs~~	~~15.00~~	~~2.50~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

~~(xii) Missoula District~~

~~Provider Type~~	~~Day Rate~~	~~Hour Rate~~
~~Family Home~~		
~~Regular~~	~~15.90~~	~~2.50~~
~~Infant~~	~~16.75~~	~~2.50~~
~~Special Needs~~	~~16.00~~	~~2.50~~
~~Group Home~~		
~~Regular~~	~~16.00~~	~~2.50~~
~~Infant~~	~~17.00~~	~~2.75~~
~~Special Needs~~	~~16.25~~	~~2.75~~
~~Center~~		
~~Regular~~	~~16.00~~	~~2.50~~
~~Infant~~	~~17.00~~	~~2.75~~
~~Special Needs~~	~~16.00~~	~~2.50~~
~~Legally Unregistered~~		
~~Regular~~	~~11.25~~	~~1.50~~
~~Infant~~	~~12.00~~	~~1.50~~
~~Special Needs~~	~~12.00~~	~~1.75~~

(4) Child care ~~operators will be allowed to claim a day's care~~ providers are entitled to payment only when care is actually provided to the child, with the following two exceptions:

(a) ~~L~~licensed or registered child care facilities may ~~charge the state for holidays for which the program charges non-state paid families for the same service. A day of authorized child care must fall on the holiday when the provider is closed for business.~~ be paid for care for any of the holidays specified in (4)(a)(iii) even though the facility is closed for business if:

(i) the facility charges private pay households for the holiday; and

(ii) the holiday falls on a day for which the certification plan authorizes care.

(iii) The holidays for which facilities may be paid if the above conditions are met are New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

(b) ~~The licensed or registered child care facility participates in~~ a household may use the child care subsidy program to pay for days when care is not actually provided to the child in accordance with the requirements for the certified enrollment program ~~defined~~ as specified in ARM 37.80.206~~.~~;

(c) a household may use the child care subsidy program to pay for days when care is not actually provided when the child's slot is vacant for a period of not more than 30 days and the child's slot will be lost to a child on the provider's waiting

list if payment is not made.

(5) The rates set forth in ~~this rule~~ the Child Care Manual Section 1-4, dated July 1, 2001, are the maximum rates payable. The Child Care Manual Section 1-4 is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address. ~~The~~ Additionally, the rate charged by the child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private ~~paying~~ pay parents for the same service. The following exceptions apply for quality child care providers:

(a) Providers who qualify for a one star quality child care rating will receive 110% of the respective rate and providers who qualify for a two star rating will receive 115% of the respective rate. The criteria to qualify for quality incentive adjustments are set forth in Section 7 of the Child Care Manual, dated July 1, 2001. The Child Care Manual Section 7, dated July 1, 2001, is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.

(6) Rates for children with special needs may be adjusted for special accommodations which increase the cost of care. A special needs subsidy rating scale and/or an individual child care plan must be completed to determine the appropriate rate adjustment. The criteria used to determine special needs adjustments is set forth in Section 1-4a of the Child Care Manual, dated July 1, 2001. The Child Care Manual Section 1-4a is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.

(7) Child care payments provided under this chapter will be calculated using the rates in the department's tables of child care provider rates as amended through June 30, 2002. The tables of child care provider rates are hereby adopted and incorporated by this reference. A copy of the child care provider rates is available upon request from the Department of Public Health and Human Services, Human and Community Services

Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The rates vary by resource and referral district. The provider's payment will be calculated using the applicable rate for the district in which the child care facility is physically located.

(8) When child care is provided in the child's home by a provider who does not live with the child, the state payment will be made to the parent. The parent is responsible to pay the provider, and failure to do so will result in the parent's ineligibility for child care assistance until the provider has been paid in full or the parent has made arrangements for payment which are satisfactory to the provider.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 53-2-713, MCA

37.80.206 CERTIFIED ENROLLMENT (1) Certified enrollment is intended to assist ~~families~~ households to pay child care facilities requiring payment when a child is temporarily absent.

~~(3) Specific guidelines must be followed for all certified enrollment including:~~

(2) The following requirements must be met in order for a provider to be paid under certified enrollment:

(a) Certified enrollment ~~shall be used for full-time child care receivers only. Part-time child care is not eligible for certified enrollment benefits~~ is available only for children receiving full-time child care. It is not available if the child is receiving care on a part-time basis.

(b) ~~Certified enrollment enables child care operators to charge for days of temporary absence of a child for reasons of vacation, illness, or other similar reasons within the limits expressed in the department of public health and human services child care manual.~~ There must be a definite plan for the child to return to the facility as soon as the reason for an absence, such as a vacation or illness of the child or parent, is resolved.

(c) ~~A child care provider shall not claim certified~~ Certified enrollment may not be used for more than ~~10 consecutive working days~~ 150 certified enrollment hours in a state fiscal year per child.

~~(d)~~ (3) Child care ~~operators shall~~ providers may not charge for children under certified enrollment ~~when~~ if the parent has not indicated ~~the~~ an intent ~~either verbally or through actions of not returning the child(ren)~~ to return the child to the facility for additional child care services. The intent to return a child may be manifested either:

(a) verbally;

(b) in writing; or

(c) by actions of the parent which would lead a reasonable person to believe that the child would be returning to the facility in the foreseeable future.

~~(i)~~ (4) Child care facilities ~~shall be responsible for notifying~~ must notify the child care resource and referral agency ~~worker~~ when ~~an unexplained absence of~~ a child is absent

without explanation for 5 consecutive working days.

~~(ii) Child care facilities shall charge for actual days of care provided only. The child care eligibility shall be terminated for the facility the last day of care actually provided.~~

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) Child care facilities must be in compliance with applicable licensing and registration requirements as specified in ARM 23.7.109 and 37.95.101 through 37.95.1021 to receive payment under this chapter. Loss of eligibility for funds under this chapter for failing to comply with child care facility licensing and registration requirements is in addition to other remedies available for such violations.

(2) The provider ~~bears responsibility~~ is responsible for informing parents ~~for whom benefits are provided that loss of eligibility due to failure to comply with child care facility licensing and registration rules has occurred~~ who are receiving child care assistance under this chapter that the provider has lost their license, registration, or payment number. The provider may not bill the household for payments denied by the department due to the provider's failure to comply with licensing, certification, or registration requirements.

(3) Child care facilities must be certified or recognized by the department or its designated agent as eligible ~~for~~ to receive payment under this chapter ~~through the nearest child care resource and referral agency or district office of DPHHS~~. All applicable forms must be completed and submitted ~~to such office~~ for approval. Registered and licensed facilities are certified by the child care licensing bureau of the department's quality assurance division. Legally unregistered providers are certified by the early childhood services bureau. Facilities licensed or registered by other entities must be recognized by the child care licensing bureau of the department's quality assurance division.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

37.80.306 LEGALLY UNREGISTERED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) remains the same.

(2) An application for certification or recertification will be denied under any of the following circumstances:

(a) the applicant fails to submit all required documentation within 30 days of the date on which the application is received by the resource and referral agency except the applicant may receive one 15 day extension to submit required documentation in the possession of a third party provided the applicant submits a request for extension prior to

the expiration of the 30 day period;

(b) the applicant is the child's parent or a person who is living with the child and acting in loco parentis or is a person who is included in the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this chapter;

(c) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, or natural origin of the parent or the child;

(d) the applicant has currently been denied a child care provider registration or license or would be denied a registration or license if the applicant applied, or the applicant has been denied a child care provider registration or license in the past or has had a child care provider registration or license revoked for cause in the past.

(3) The applicant and any adult who resides in the applicant's home who might come in contact with children to whom care is provided must provide authorization for criminal and child protective services background checks for the period of time from the present date back to the date of the individual's 18th birthday.

(a) If an individual required to have a background check has lived outside the state of Montana at any time after the individual's 18th birthday and is unable to obtain the necessary out-of-state background checks, the individual must complete a Montana department of justice criminal justice information network fingerprint background check at the applicant's expense.

~~(2)~~ (4) In addition to completing all required application forms for certification under this chapter, applicants for certification to provide child care as legally unregistered providers must truthfully attest in writing that he or she:

(a) has not been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and ~~Developmentally Disabled~~ Persons with Developmental Disabilities Abuse Prevention Act or of a person protected by a similar law in another jurisdiction or had parental rights terminated while an adult;

(b) through (e) remain the same.

~~(3)~~ (5) ~~The provider~~ An applicant proposing to provide care outside the home of the parents must also truthfully attest in writing that, to the best information and belief of the applicant, no member of the applicant's household, and no person coming in contact with children for whom the provider applicant proposes to provide child care under this ~~subchapter~~ chapter:

(a) has been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and ~~Developmentally Disabled~~ Persons with Developmental Disabilities Abuse Prevention Act or had parental rights terminated while an adult;

(b) through (e) remain the same.

~~(4) An applicant for legally unregistered provider status~~

~~under this subchapter will be denied eligibility if such applicant is included in the FAIM/TANF cash assistance payment of the parents.~~

~~(5) When child care is provided in the child's home, the state payment shall be paid to the parent. The parent must pay the provider or lose eligibility for services.~~

~~(6) Legally unregistered providers who discriminate as to serving particular parents or children based upon the race, sex, religion, creed, color or national origin of such parents or children are ineligible for benefits under this subchapter.~~

~~(7)~~ (6) Legally unregistered providers must also meet the following requirements to be registered under this ~~subchapter~~ chapter:

(a) remains the same.

~~(b)~~ (c) limit the care they provide to a period less than 24 hours in any day;

~~(c)~~ (d) care for no more than two children at a time, unless the children are from the same family. If the children are from separate families, then a legally unregistered provider may care for no more than two children; and

~~(d)~~ (b) within 6 months of application, attend a training or orientation session provided or approved by the department which includes health and safety issues~~.~~;

~~(8)~~(e) ~~The department may require~~ must provide appropriate verification of the attestations and other requirements in this rule~~, and~~ upon request from the department. The department may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to and during certification, the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to safely care for children.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

37.80.315 RIGHTS AND RESPONSIBILITIES AGREEMENT (1) In addition to complying with all other certification requirements, providers must sign a rights and responsibilities agreement under this ~~subchapter along with the parent and a department representative,~~ chapter on the form provided by the department. The provider must return the signed agreement to the child care resource and referral agency. Parents are provided a copy of the providers's rights and responsibilities.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

37.80.316 ~~PROCEDURE FOR PAYMENT TO PROVIDERS~~ REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS ~~(1) Certified providers may be paid directly by the department or, upon request, the department may pay the parents, who in turn, must pay the~~

~~provider. In the case of direct payment to the parents, the parents and/or the provider bear sole responsibility:~~

~~(a) for obtaining provider certification through this subchapter prior to claiming payment for covered child care hours/days under this subchapter; and~~

~~(b) for resolving any and all disputes as to proper payment arising between the parent(s) and the provider.~~

~~(2) For direct payment to the provider, the provider must submit a billing form for covered child care hours/days to the department using the form required by the department. The billing form is submitted by the 5th of each month following child care services in which the parents and provider are eligible, whether or not eligibility is for the entire month.~~

~~(3) Parents may be decertified for benefits under this subchapter for failure to reimburse providers for child care services the department has paid by direct payment to the parents.~~

(1) Except as provided in (2), the provider will receive payment for child care services when the care is provided outside the child's home or when the care is provided by a great grandparent, grandparent, aunt or uncle who resides in the parent or child's home. If the parent and the provider both agree payment should be made to the parent, payment may be made to the parent.

(2) Payment will be made to the parent when a care giver, who does not live with the parent or child, provides child care in the child's home.

(3) In the case of direct payment to the parents, the parents and/or the provider bear sole responsibility:

(a) for obtaining provider certification through this chapter prior to claiming payment for covered child care under this chapter; and

(b) for resolving any and all disputes as to proper payment arising between the parent(s) and the provider.

(4) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (3)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment.

(a) If the certification plan is not completed until after the calendar month in which the child care is provided, the claim will be considered to be filed timely if a completed billing form with all information and documentation necessary to process the claim is received by the department or the entity designated by the department for this purpose within 60 days after the billing document is sent to the provider.

(b) If corrections or adjustments to a submitted claim are necessary, they must be received by the department or its designated entity within the 60 day period prescribed by this rule for timely filing of the claim.

(5) In cases where payments are made directly to the parent, a parent who fails to pay the provider will be ineligible for further child care assistance until the provider has been paid in full or the parent has made arrangements for payment which are satisfactory to the provider.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

37.80.501 TERMINATION OF CHILD CARE ~~SERVICES~~ ASSISTANCE

(1) ~~Payments for child care will be terminated in the following situations and upon written notification mailed 10 days prior to the effective date to the recipient and the child care facility:~~ Child care assistance will be terminated if any of the following occurs:

(a) ~~when~~ the child care resource and referral agency ~~disapproves the recertification plan~~ does not recertify the household or the certification plan expires;

(b) ~~when the working~~ a parent terminates the employment or training that made the parent eligible for child care assistance;

(c) ~~when~~ the parent ~~misuses~~ no longer needs child care ~~or abuses child care services~~ to allow the parent to participate in an activity specified in ARM 37.80.201;

(d) ~~when~~ the parent voluntarily ~~requests by clear written notice~~ makes a written request to the child care resource and referral agency worker that child care services be closed;

(e) ~~when~~ the child care ~~operator~~ provider no longer meets licensing standards or loses certification for payment;

(f) ~~when the participant has been terminated from either pathway, job supplement or community services and no longer meets eligibility for day care services~~ a parent who was participating in the TANF funded cash assistance program is no longer a participant in that program and is not otherwise eligible for child care assistance under the provisions of ARM 37.80.201;

(g) ~~when~~ the child ~~is~~ no longer ~~within~~ meets the age ~~limit~~ requirements of ARM 37.80.102; or

(h) ~~when~~ the child no longer ~~is using~~ receives care at the child care facility specified in the certification plan and ~~a review of the child care situation indicates~~ there is no ~~intent to use the~~ indication that the child will be receiving care at that facility in the near future.

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), or (g), notice of termination must be sent to both the parent and the provider at least 10 days prior to the effective date of termination. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h).

(a) The notice sent to the parent must state the reason for the termination and must inform the parent of the right to a hearing as provided in [Rule I].

(b) The notice of termination sent to the provider must

include the child's name, the parent's name, and the date of termination but must not disclose any confidential information about the parent or child.

~~(2)~~ (3) ~~Where~~ When the child care resource and referral agency ~~disapproves the initial child care plan, written notice of termination is required although the 10 day notice period is not required. Such notice shall include reasons for termination and inform the client of their right to a fair hearing and the procedure of requesting said hearing~~ denies an initial application for child care assistance, written notice must be sent to both the parent and the provider, but there is no requirement for advance notice of the denial.

(a) The notice to the parent shall include reasons for the denial and inform the parent of the right to a hearing as provided in [Rule I].

(b) The notice to the provider must include the child's name and the parent's name but must not disclose any confidential information about the parent or child.

~~(3) Written notice to the child care facility shall preserve confidentiality of client information, but shall include the date of termination, child's name, and parent's name.~~

~~(4) All notices of termination shall include reasons for termination and inform the client of their right to a fair hearing and the procedure for requesting said hearing.~~

~~(5) The department is not responsible for notice obligations between parents and child care providers when they modify or terminate child care arrangements.~~

(4) The department is obligated to the parent and/or the provider only to the extent specified in the certification plan and the rules governing child care assistance. No agreement or arrangement between the parent and provider purporting to modify or terminate any provision of the certification plan is binding on the department.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

37.80.502 CHILD CARE UNDERPAYMENT~~,~~ AND OVERPAYMENT~~, FRAUDULENT OBTAINING OF ASSISTANCE~~: CRIMINAL PROSECUTION

(1) ~~The~~ A child care provider or ~~the participant~~ a parent who has reason to believe an overpayment or underpayment of child care assistance has occurred shall ~~promptly~~ notify the department ~~of any overpayment or underpayment~~ within 10 days.

(2) The department is entitled to ~~promptly~~ recover the amount of any child care ~~overpayment~~ payment made to a child care provider or to a ~~participant. Recovery will be accomplished by the provider or the participant making payment of the overpayment within 30 days of notification of the overpayment. If the provider or the participant fails to repay the overpayment within 30 days, the department may reduce future child care payments or increase family child care copayments until the overpayment is recovered in full~~ parent which is in excess of the amount to which the provider or parent was

entitled, regardless of whether the overpayment was caused by the department, by the provider, or by the parent.

(a) If an overpayment is due to any error, act, or omission of the parent, whether intentional or otherwise, the parent must repay the overpayment to the department.

(b) If an overpayment is due to any error, act, or omission of the provider, whether intentional or otherwise, the provider must repay the overpayment to the department.

(c) If an overpayment is due to any error, act, or omission of the department, the department may recover the overpayment from either the provider, the parent, or from both, but the total amount recovered from the provider and the parent may not exceed the amount of the overpayment.

(3) The provider or the parent must repay the overpayment within 30 days after the department sends notice of the overpayment with a demand for repayment.

(4) If the provider or the parent fails to repay the overpayment within 30 days, the department may reduce future child care payments or increase household child care copayments until the overpayment is recovered in full.

~~(3)~~ (5) ~~Where~~ If an underpayment of child care payments occurs, ~~is made it~~ the underpayment will be corrected by increasing the payment for the following month to cover the underpayment.

~~(4) The department may demand repayment, and may pursue civil remedies for overpayment against any person who may be reported under (5) of this rule for overpayment of benefits.~~

~~(5) The department may report to the appropriate office of the county attorney, as a theft, the actions of whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device, public assistance to which such person is not entitled under this subchapter.~~

(6) When a provider or a parent receives child care assistance in excess of the amount to which the provider or parent is entitled due to a willful action of the provider or parent, the department may pursue criminal charges against the provider or parent. Criminal prosecution may be pursued in addition to recovery of the overpayment as provided in (2) and (3) of this rule.

(a) A willful action includes but is not limited to the making of a false or misleading statement, a misrepresentation, or the concealment or withholding of facts or information.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 53-2-713, MCA

37.97.118 YOUTH CARE FACILITY, HEARING PROCEDURES

(1) Any person aggrieved by an adverse department action denying or revoking a license for a YCF may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, ~~37.5.311,~~ 37.5.313, 37.5.316, ~~37.5.318,~~ 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

AUTH: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-622, 52-2-704 and 53-4-111, MCA
IMP: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111, 52-2-113, 53-2-201, 52-2-602, 52-2-622, and 53-4-113, MCA

4. The Montana Department of Public Health and Human Services' Early Childhood Services Bureau administers the Child Care and Development Fund and the child care assistance program. The child care assistance program provides child care subsidies for eligible households that need child care assistance in order to pay for child care while parents work.

Historically, the Department has provided applicants and participants of the child care assistance program with a right to a hearing when the applicant or participant has been subjected to an adverse action by the Department or its agent. The new rule proposed as Rule I makes the right to a hearing upon an adverse action express and indicates the appropriate fair hearing procedures. While the Department could have continued to provide an opportunity for persons affected by adverse actions to review the decision in a hearing without making the right express, the Department determined that it is necessary to adopt an express rule in order to ensure greater protection to those seeking to exercise their due process rights and to clarify the appropriate procedures. Thus, the Department proposes to adopt Rule I in order to make the right to a hearing express and to indicate the appropriate process. Because the Department has been providing applicants and participants of the child care assistance program an opportunity to review adverse actions at hearing, the Department anticipates that adopting Rule I will not have an effect on benefits, costs, or fees.

Rule II proposed by the Department excises and clarifies language that was previously set forth in ARM 37.80.202. The Department determined that the requirement to report changes, especially those changes that affect a household's eligibility, is extremely important to the integrity of the child care assistance program and to the ability of households to manage their financial affairs. Consequently, the Department determined that the reporting requirements should be set forth in a separate rule, rather than including the requirements in a rule governing financial eligibility. The Department could have retained the language in ARM 37.80.202, but setting the requirements out in a separate rule focuses attention on the requirements and signifies their importance. Consequently, the Department proposes Rule II in order to highlight and clarify the reporting requirements. Because the reporting requirements already existed, they simply were not set forth in a separate rule, the Department believes that moving the requirements into a separate rule will have no impact on benefits, fees, or costs of the program.

The Department proposes Rule III in order to specify the purpose, criteria, and award process governing the Best

Beginnings Quality Child Care Mini Grants. The Department administers limited federal funds for the purpose of providing mini grants. These grants are intended to improve the quality of child care offered to young children in the State by funding the purchase or improvement of child care equipment, funding the purchase of developmentally appropriate toys or supplies, assisting new providers in purchasing liability insurance, assisting providers with the costs associated with regulatory requirements, enabling providers to hire substitute care so that providers can access training, and to complete similar projects approved by the Department that will improve the quality of child care offered by the awardee.

Rule III lists the eligibility criteria for consideration to receive a mini grant and provides that awardees may not be presently subject to a licensing or registration corrective action. The rule sets forth the limits of the grants and the time limit during which the grant must be used. The rule is necessary, therefore, to specify the criteria and limits governing the mini grant program. In the past, the Department administered the grants through the letting of proposals and the contracting process. However, the Department believes that adopting the criteria governing the mini grants as a rule will foster public participation in the administration of the grants and will create a broader knowledge of the program's availability, subject to funding limits. The Department expects that approximately 125 people will be awarded mini grants in the next year and the grants will total approximately $125,000. Because the mini grant program has historically been administered through the contracting process and the federal funds supporting the program are already included in the Department's appropriation, the Department expects that the adoption of this rule will not change benefits, fees, or costs of the mini grant program.

The Department proposes Rule IV in order to set forth the purpose, criteria, and limitations governing the merit pay program for child care providers. The purpose of the program is to provide a small financial incentive to child care providers seeking child care training through either a 38 hour program or a 68 hour program. The Department believes that better trained providers provide better quality child care. Thus, the Department wishes to provide an incentive for training and to reward those providers that complete approved training. The proposed rule provides the process for applying for merit pay and lists the priority for payments, given that funding for merit pay is limited. Setting forth the purpose, criteria and limitations of the merit pay program in rule is necessary in order to foster public participation in and knowledge of the administration of the program. The Department anticipates that approximately 260 providers will be awarded merit pay in the next year. The merit pay program is expected to cost approximately $95,000 during the 2002 State fiscal year. The costs of the program are already included in the Department's

appropriation and will not constitute new spending. The merit pay program does create an additional benefit for providers who seek approved training. It is the Department's hope that better trained providers will improve the quality of care available to Montana families. The proposed rule will not increase or decrease fees.

The Department proposes Rule V in order to set forth the criteria providers must meet before they will be certified as infant/toddler caregivers. The Department believes that infants and toddlers have unique needs and their growth and development occur so rapidly that it is especially important for providers to understand the various stages of development and to provide age appropriate care. Consequently, the Department proposes Rule V in order to administer certification for infant and toddler caregivers. Parents of infants and toddlers who wish to ensure that their provider is trained in the unique needs of young children can do so by inquiring as to whether their provider of choice is a certified infant/toddler caregiver. If the provider has been certified, the parent can be sure that the provider has obtained at least 30 hours of documented infant/toddler course work. Again, the ultimate goal is to ensure quality, age appropriate care. The Department expects that approximately 85 providers will become certified in infant/toddler care. The Department does not expect the proposed rule to impact benefits, costs, or fees with respect to the child care programs administered by the Department.

The Department proposed Rule VI in order to introduce a pilot project that will fund at-home infant care. The pilot project provides minimal child care assistance payments to qualifying parents who opt to stay home to provide care to their children who are aged 24 months or younger and their siblings. The Department acknowledges that parents who remain home to care for their children often sacrifice job opportunities, employer-sponsored health insurance, and the ability to increase monthly gross income. At the same time, the Department acknowledges that infancy is a unique time for parents and baby to bond and is a time of extreme growth and development. Furthermore, it can be a significant challenge, particularly in less populated areas of the State, for parents to locate quality care for children aged 24 months or younger. Consequently, the Department proposes to introduce a pilot project that will make limited subsidies available to low income households when a parent stays home to provide care to an infant and his or her siblings. The subsidy is expected to help defray the costs associated with lost job opportunities and lost earned income. The Department expects to provide payments to approximately 47 households each month in State fiscal year 2002 and approximately 28 households in State fiscal year 2003 through the pilot project proposed in Rule VI. The Department expects the pilot project to cost approximately $250,000 in biennium 2002-2003. That amount was included in the Department's appropriation for the biennium. The pilot project does create a

new benefit to certain low income families. It is not expected to impact fees.

ARM 37.5.304 lists the definitions of certain terms commonly used in the fair hearing provisions governing the administrative review process used by the Department. The proposed amendment to ARM 37.5.304 is necessary to include within the definition of "adverse action" actions by the Department that result in a denial or reduction of quality incentive adjustments or special needs adjustments as provided by ARM 37.80.205. The proposed amendment also clarifies that actions setting rates for services and denying claims constitute "adverse actions" for purposes of the administrative review process for all providers, not just medical assistance providers. Finally, the proposed amendment clarifies that the term "provider" does not include contractors. Persons or entities that contract with the Department are governed by the contract and have certain legal remedies by reason of their status as contractors. Contractors, however, are not afforded the opportunity to review contract disputes through the administrative review process.

The proposed changes to ARM 37.5.304 are necessary to clarify the definitions within the rule and to protect the due process rights of participants, and providers. There are approximately 5,800 households receiving child care assistance during any given month in the State of Montana. There are approximately 2,200 child care providers registered, certified, or licensed during any given month in the State of Montana. These changes may impact all households and providers receiving child care assistance payments. The proposed amendments to ARM 37.5.304 do not create any new benefit, do not increase or decrease costs, and have no impact on fees associated with the program.

The proposed amendments to ARM 37.5.307 are necessary to substitute the word "chapter" for "subchapter" and to clarify that persons seeking assistance in making a request for a fair hearing may obtain help at either the local office of public assistance or the local child care resource and referral agency. In addition, the amendment to subparagraph (2)(b) is necessary to clarify that legally unregistered providers may seek administrative review if their State payment number has been revoked, denied, or terminated by the Department. Legally unregistered providers have traditionally been afforded due process, but the proposed amendment makes the right to administrative review express. The Department could have retained the rule in its unamended state, but the Department opted to clarify the rule and to better protect due process. There are approximately 700 legally unregistered providers at any given time in Montana. The Department does not expect the proposed amendments to ARM 37.5.307 to have any impact on benefits, fees, or costs of the child care assistance program.

The proposed amendment to ARM 37.5.331 is necessary to delete the reference to block grant child care in subsection (2). Upon

a careful review of the statutory authority governing the Board of Public Assistance, it is apparent that the Board lacks statutory authority to review contested cases involving block grant child care. Consequently, the proposed amendment is necessary to remove contested cases involving block grant child care from the list of cases presented to the Board on appeal. In accordance with the remaining provisions of ARM 37.5.331, following implication of the proposed amendment, appeals of proposed decisions involving child care assistance are to be taken to the Department director or the Department director's designee. The Department does not expect this amendment to change fees, costs, or benefits of the program.

The proposed amendments to ARM 37.80.101 are necessary to substitute the word "chapter" for "subchapter" and to clarify the criteria governing when child care assistance may be available. The amendments specifically provide that households whose gross income exceeds 150% of federal poverty level are not eligible for assistance. In addition, the amendments clarify the availability of child care assistance when the child for whom assistance is requested receives care at the facility where the parent works. The amendment to subparagraph (7) expressly provides that State payment of child care assistance does not create an employee-employer relationship between the provider and the Department and does not entitle the provider to employee-related benefits paid for by the Department.

The amendments also provide for presumptive eligibility for qualifying households that are not receiving Temporary Assistance for Needy Families (TANF). Presumptive eligibility was piloted in two regions of the State. Through the pilot, the Department learned that presumptive eligibility can alleviate much of the stress and uncertainty that accompanies many parents' fears regarding beginning a new job and placing their children in child care. The time associated with administrative processing of child care applications to verify eligibility is no longer an issue if the household can qualify for presumptive eligibility. The Department received a great deal of positive feedback both from households that benefitted from the pilot and from resource and referral workers who indicated that presumptive eligibility relieved the time pressure associated with verifying applications immediately and fostered a more positive working relationships with households taking advantage of the program.

During the pilot, 139 applications for presumptive eligibility were received in the Missoula region and 19 were received in Glasgow. Of those, approximately 44% qualified for presumptive eligibility. Of those 44%, eight cases did not result in eligibility following the 30 day period: one due to failure to pay copayment and seven because the household failed to complete the verification process. These eight cases resulted in additional child care assistance costs averaging $97.62 per household. Thus, the Department anticipates that implementing

presumptive eligibility statewide will increase the costs of the child care assistance program by approximately $400,000. Presumptive eligibility does create a new benefit for qualifying families, but it is not expected to impact the fees associated with the program.

The proposed amendments to ARM 37.80.101 are necessary in order to clarify the parameters of the program, to implement presumptive eligibility, and to foster a better general understanding. While the Department could have retained the rule in its present form, the Department rejected that option because the Department believes the clarifications proposed herein will aid in a general understanding of the program and that presumptive eligibility will benefit parents attempting to begin work. Furthermore, the present language of the rule does not address what is to occur when the child for whom care is provided receives care at a facility that employs the child's parent. Thus, the Department believes it is prudent and necessary to incorporate the proposed amendments into the rule and to facilitate public participation in and understanding of the program. Again, there are approximately 5,800 household receiving child care assistance during any given month in the State of Montana. While the parameters explained in the proposed amendments to ARM 37.80.101 may impact all of those households, the Department does not expect that the amendments will cause any significant changes to the benefits, costs, or fees of the program.

ARM 37.80.102 lists the defined terms pertinent to the chapter. The proposed amendments to ARM 37.80.102 are necessary to add definitions of the terms "certification plan", "child care resource and referral agency", "federal poverty guideline", "individual with a disability", "short-term emergency", "child with special needs", and "teen parent". The amendments are also necessary to clarify the definitions of "child care", "child care facility", "copayment", "household size", "legally unregistered provider", and "monthly income". The remaining changes simplify the terminology by substituting "chapter" for "subchapter" and deleting the definition of "subchapter"; and, substituting "household" for "family" in order to be consistent with terminology used throughout the rules.

These defined terms create the common language necessary to create an understanding of the rules and to aid in their interpretation. The definition of "child care" as amended by these proposed changes does expand the definition to include substitute care provided to children with special needs who are over age thirteen, as well as children over age thirteen who are under court supervision. Historically, the Montana State Plan for the Child Care Development Fund has allowed child care assistance to be provided to these categories of eligible children. However, the Department had not adopted rules addressing these categories. So, while the Department could have left these terms undefined or unclarified, the Department

determined that the additional definitions and the clarifications proposed herein would create a better public understanding of the program, would ensure that assistance would be provided uniformly to qualified children with special needs or who were under court supervision, and would aid reviewing bodies that are required to apply and interpret the rules. Consequently, the Department proposed the amendments. The Department does not expect these amendments to have any significant change on the benefits provided by the program, or on the costs or fees associated with the program.

ARM 37.80.103 governs the use and disclosure of information maintained for the purpose of the child care assistance program. The proposed amendments to ARM 37.80.103 are necessary to inform participants that they have the right to obtain information maintained for purposes of the program except when release of the information is prohibited by law, or the information was obtained on the condition that it would not be shared, or when release of the information would impede law enforcement. The proposed amendments are also necessary to clarify when information may be disclosed by the Department without a release from the participant, including: for purposes of administering the program, determining eligibility for other needs-based federally funded programs, for purposes related to reports of child abuse or neglect, to assist child support enforcement activities, for purposes related to child care licensure, and other disclosures required by law. While the Department could have retained the rule in its original state, the Department felt it would be in the best interest of the participants, third parties, and the Department and its contractors to set forth a concise rule governing when information maintained for purposes of the program can be used, released, or disclosed. The Department does not expect these amendments to change benefits, costs, or fees associated with the program.

ARM 37.80.201 specifies the non-financial eligibility requirements and the priority for provision of benefits under the child care assistance program. The proposed amendments to ARM 37.80.201 are necessary to revise and clarify the requirements. The proposed amendments specify, in a more concise manner, the minimum monthly work requirements for two-parent and single-parent households. The proposed amendments also identify those households or individuals that are not subject to the minimum monthly work requirement, i.e., households receiving cash assistance funded by Temporary Assistance for Needy Families, households in which the parents are attending high school or an equivalency program, households containing working parents who are experiencing short-term medical emergencies, households containing parents who recently lost a job but who are actively seeking work, individuals who are severely disabled, or households for whom the requirement has been waived. The proposed amendment clarifies that child care assistance is not available for time spent seeking post-secondary education if the parent has obtained a bachelor's

degree or its equivalent.

In addition, the amendments clarify the requirement for parents who have custody of children with absent parents to cooperate with and apply for child support enforcement. The amendments also clearly state that child care assistance is subject to limited funds, and thus, that some eligible households may not receive benefits due to lack of available funds. The amendments also specify that households eligible for full day/full year Head Start may be eligible for child care assistance and incorporate the pertinent sections of the child care manual. Section 5-1 of the Child Care Manual describes the application process for Head Start Full Day/Full Year child care scholarships. Section 5-2 of the Child Care Manual lists the household requirements for the Head Start scholarship program. Section 5-3 of the Child Care Manual provides the activity requirements that households must meet in order to qualify for the scholarship program. These manual sections were incorporated by reference, rather than repeated verbatim in the rule, in order to conserve time and resources.

All of the amendments proposed to ARM 37.80.201 are necessary in order to revise and clarify the non-financial requirements households must satisfy in order to receive child care assistance. While the Department could have retained the rule in its present state, that option was rejected because the Department believes the proposed amendments will foster a better general understanding of the program and will aid in consistent application of the non-financial requirements statewide.

ARM 37.80.202 sets forth the financial criteria and copayment requirements of the child care assistance program. Eligibility for the child care assistance program is determined, in large part, on the basis of household composition and monthly gross income. The proposed amendments to ARM 37.80.202 are necessary to revise and clarify the financial criteria governing the program and to acknowledge the often unconventional living arrangements of Montana families. The amendments, again, expressly limit eligibility to households whose gross monthly income does not exceed 150% of federal poverty level. The amendments also clarify that the household's copayment is a function of household size and percentage of income as compared to the federal poverty level. The amendments make it clear that parents are solely responsible for payment of all copayments. The amendments also exempt children who receive child care due to involvement with child protective services; those children are not subject to a copayment requirement. The proposed language clarifies the composition of households for purposes of the program and creates some new flexibility for households to exempt from the calculation siblings over age 18 in some circumstances, as well as grandparents, great-grandparents, etc., who reside with a child, but who the parents opt to exempt from the calculation of household size.

The proposed amendments to ARM 37.80.202 expressly state that child care assistance shall not be paid unless or until a child care certification plan has been completed. The proposed language also expressly provides that households that receive child care assistance to which they were not entitled must repay the benefits, whether the error was caused by the recipient, the provider, or the Department. The proposed amendments incorporate by reference the sliding fee scale/copayment schedule. While the Department could have retained the rule in its present state, the Department determined that the rule should be amended in order to clarify the language, make the rule easier to read, and to incorporate some flexibility as to the composition of households for purposes of determining eligibility.

ARM 37.80.205 provides information pertaining to child care rates and payment requirements. The proposed amendments are necessary to delete the rate tables and to clarify when child care payments are available for holiday pay or for purposes of retaining a child care slot during a short period of absence. The proposed amendments incorporate Section 1-4 of the Child Care Manual which lists the child care rates by region. The Department decided to incorporate the rate tables by reference, rather than by continuing to set the tables out in the rule in order to conserve resources and to avoid having to reprint each of the tables when minor revisions to the rule were necessary.

The proposed amendments to ARM 37.80.205 are also necessary in order to introduce a system of quality incentives. The Department determined quality providers should be rewarded and that financial incentives provided to quality providers could serve to motivate additional providers to improve the quality of their care and facilities. Consequently, the Department proposed to increase reimbursement rates by 10% for those providers who qualify as one star providers and by 15% for those providers who qualify as two star providers. The qualifying criteria for quality incentive adjustments is set forth in Section 7-6f of the Child Care Manual. That section describes the tiered reimbursement program, its qualifying criteria, and the circumstances under which a quality incentive adjustment may be terminated or reduced. Section 7-1 of the Child Care Manual is adopted by reference in order to avoid the expense of setting forth the information verbatim in the rule. The Department hopes that providing quality incentive adjustments will raise the quality of care available to Montana children and will increase the number of accredited facilities, thereby improving access. The Department expects that there will be approximately 100 facilities that will qualify for one star quality incentive adjustments and approximately 45 facilities that will qualify for two star quality incentive adjustments. These quality incentive adjustments are expected to increase the costs of the child care assistance program by approximately $35,000 per State fiscal year. The adjustments are not expected to impact fees.

The proposed amendments to ARM 37.80.205 are also necessary to introduce rate adjustments available to fund special accommodations that are required by children with special needs. The qualifying criteria for special needs adjustments are set forth in Section 1-4a of the Child Care Manual. That section is incorporated by reference for the same reasons mentioned above. The Department believes that rate adjustments to fund special accommodations are required in order to comply with the Americans with Disabilities Act as children with special needs must be accommodated if such accommodation is not prohibitively expensive. By integrating children with special needs into child care facilities, the Department hopes to alleviate some of the stigma and feeling of isolation that comes with disability. The Department anticipates that approximately 60 special needs rate adjustments will be funded during the next State fiscal year. The Department expects the special needs rate adjustments to increase the costs of the child care assistance program by approximately $48,000 each year. The adjustments are not expected to impact fees.

ARM 37.80.206 sets forth the rule governing certified enrollment. Certified enrollment is available to children in care full time who need child care assistance to pay for days the child is not actually receiving care under certain qualifying circumstances. Certified enrollment payments are limited to 150 hours per State fiscal year per child. The Department acknowledges that many providers require payment for child care slots whether or not the child actually uses the care on any particular day. If payment is not made for the slot, the child's slot will be lost and the household will be forced to find another provider. The proposed amendments to ARM 37.80.206 clarify that certified enrollment payments are only available to children in full time care and specify the limits. In addition, the amendments indicate how an intent to return a child to the facility may be manifested, i.e., verbally, in writing, or by actions leading a reasonable person to believe the child will return. Because certified enrollment payments have been available and the proposed amendment merely clarify the limits, the Department does not anticipate that the amendments will change benefits, fees, or costs of the program.

ARM 37.80.301 sets forth the requirements for child care facilities. The proposed amendments are necessary to clarify the language in the rule and to prohibit regulated providers who lose their license, registration, or certification from billing households receiving child care assistance for care provided after the facility is no longer licensed, registered, or certified, and State payment has been denied. The Department recently was forced to litigate payment claims denied due to a facility's failure to renew its licensure after the facility billed parents receiving child care assistance. A facility that loses its license but continues to provide care is providing care illegally and that facility should not be permitted to bill low-income parents for claims that would have been paid by the

State had the facility not been negligent in renewing its licensure and providing illegal care. Consequently, the Department proposes the amendments herein. The Department does not expect these amendments to change benefits, fees, or costs of the child care assistance program.

ARM 37.80.306 governs legally unregistered providers (LUPs) and lists the certification criteria and procedure. The proposed amendments add criteria permitting an application for LUP status to be denied when the applicant fails to submit required documentation within 30 days; discriminates on the basis of race, sex, religion, creed, color, or natural origin; the applicant is the child's parent or a person acting in loco parentis; or, the applicant has been denied registration or licensure as a child care facility. The proposed amendments also provide that an application may be denied if an applicant's parental rights have been terminated while the applicant was an adult. In addition, the amendments specify that applicants (and household members that may have contact with the children in care) must submit to a background check. The background check is necessary in order to protect children in care and to improve the quality of care available. The proposed amendments are necessary to clarify the reasons an application may be denied and to inform applicants that a background check is necessary. The Department receives approximately 2000 applications for LUP status a year. There are approximately 700 LUPs providing care across the State during any given month. The Department does not expect these amendments to change benefits or costs of the program. However, applicants are responsible for the costs of the background check. Fees for background checks range from $8.00 to $32.00.

ARM 37.80.315 indicates that child care providers must sign a rights and responsibilities agreement if they choose to provide child care that will be subsidized by State payment. The proposed amendment is necessary to provide notice to the providers that a copy of the agreement will be supplied to the parents. The Department does not expect the proposed amendment to change benefits, fees, or costs of the program.

ARM 37.80.316 specifies the requirements and procedures for receipt of State payment. The proposed amendments clarify when payments will be made directly to the provider and when payments will be made to the parent. The proposed amendments also indicate that disputes regarding payment must be resolved by the parents and providers and shall not involve the Department. In addition, the amendments specify the time limitations for submitting claims for payment. Time limits are necessary in order to facilitate fiscal administration of the program. The Department must be able to budget and track costs of the program. If claims are not submitted in a timely manner, the Department cannot manage the financial aspects of the program. While the Department could have retained the rule in its present state, the Department rejected that option in favor of adopting

the amendments so that fiscal responsibility can be ensured and clarification to the procedures can be made. The Department does not anticipate that these amendments will change benefits, costs, or fees associated with the program.

ARM 37.80.501 governs termination of child care assistance. The proposed amendments are necessary in order to clarify the circumstances under which child care assistance may be terminated by the Department and the notice provisions that apply under the various circumstances. In addition, the proposed amendments clarify that the Department is obligated to provide child care assistance only to the extent set forth in the household's certification plan. At times, parents, providers, or third parties have attempted to modify the certification plan governing particular households. These modifications are not binding on the Department and the amendment is necessary to make that clear. The Department has historically provided notice, out of respect for due process, in the circumstances listed herein. However, the Department felt it would be best to set the requirement out in rule so that there would be no question as to what notice participants are entitled to and the Department could be sure the policy was consistently applied statewide. The Department does not anticipate and change to the benefits, fees, or costs of the program as a result of these amendments.

ARM 37.97.118 specifies the hearing rights available to a youth care facility. The proposed amendments are necessary to clarify which administrative rules are applicable to such facilities when a license is revoked or denied. The clarifications are necessary to alleviate confusion in the application of the rule and to ensure that Youth Care Facilities have an opportunity to participate in the rules governing the procedure. The Department does not expect the amendments to change benefits, fees, or costs of the program. There are approximately 932 licensed youth care facilities in the State at any given time, all of which may be affected by this amendment.

Again, there are approximately 5,800 households that benefit from the child care assistance program during any given year. Furthermore, there are approximately 2,150 child care providers that receive State subsidized child care payments. All of these may be impacted by the amendments proposed herein.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on April 11, 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.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State March 4, 2002.

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

In the matter of the amendment of ARM 37.50.315 pertaining to the foster care classification model	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 13, 2002, the Department of Public Health and Human Services proposes to amend 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 5, 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. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.50.315 FOSTER CARE CLASSIFICATION MODEL (1) Each facility shall be classified according to the department's classification model. The model identifies ~~6~~ 7 levels of supervision and 3 levels of treatment. A model rate has been assigned to each level of supervision and treatment.

(2) remains the same.

(3) There are ~~6~~ 7 levels of supervision in the classification model:

(a) through (f) remain the same.

(g) In Level VII, a facility must be licensed as a child care agency-maternity home. A facility at this level provides the basic living needs of pregnant and parenting youth, including food, shelter, transportation, recreation and clothing. The facility also provides the basic living needs of the child or children of the parenting youth, including food, shelter, baby formula, diapers, transportation, clothing, and access to day care services. Shift staff shall be employed to provide 24-hour intensive supervision in a home-like environment with back-up staff available. The facility may reduce the number of shift staff required for intensive supervision during hours in which the youth attend public school when a professional staff is on the premises who is able to perform all shift staff duties as necessary. In addition, the facility will employ a program manager who provides program oversight and the functions described in ARM 37.97.206(10), and administrative support personnel. Professional staff shall be employed to

provide counseling and case management services, to include: individual and group counseling designed to address the youth's mild delinquent, emotional, social and/or behavior problems; development, implementation, and monitoring of individualized written case plans for each youth; to assist shift staff in the initial and ongoing assessment of the safety and well being of each youth and child in residence; and will assist shift staff in teaching skill-building techniques, parenting, and life management skills to parenting youth to facilitate the acceptable adjustment to a community and/or family setting.

(4) There are 3 levels of treatment in the classification model:

(a) and (b) remain the same.

(c) In intensive treatment, intensive group and individual therapeutic services are provided by the facility to youth ~~experienceing~~ experiencing severe delinquent, emotional, social and/or behavior problems which prevent an acceptable adjustment to ~~his~~ the youth's family, school and/or community. Treatment strategies are based upon an individual assessment of the youth and are administered according to a written treatment plan developed by the facility's professional staff. Group, individual and family therapy ~~is~~ are provided by the facility's professional staff. The youth's medical and psychological needs are addressed in the youth's treatment plan and qualified, professional staff monitors the medical and psychological needs of the youth. All services are provided by the facility as part of the regular services provided.

(5) remains the same.

(6) The department's model rate matrix, effective ~~July 1, 1997~~ May 1, 2002, is hereby adopted and incorporated by this reference. Copies of the model rate matrix of the department are available upon request from the Department of Public Health and Human Services, Child and Family Services Division, Operations and Fiscal Bureau, P.O. Box 8005, Helena, MT 59604. The department shall review and revise its model rate matrix at least once every ~~two~~ 2 years.

AUTH: Sec. ~~41-3-1103 and~~ 52-1-103 and 52-2-603, MCA
IMP: Sec. ~~41-3-1103, 41-3-1122 and~~ 52-1-103 and 52-2-611, MCA

3. ARM 37.50.315 describes the classification model utilized by the Child and Family Services Division (CFSD) to establish the appropriate payment rate for a placement facility. The rule currently refers to six levels of supervision and three levels of treatment. The CFSD proposes to establish an additional level of supervision specifically for "child care agencies, maternity home".

The rule change proposed is necessary because maternity homes do not "fit" within the established levels of supervision and treatment. Maternity homes do not serve a consistent population, but may vary widely in numbers of youth placed at any given time. Therefore, it is burdensome to require the

maternity home to maintain child/staff ratios at the same level as a therapeutic youth group home, which more often maintains a consistent number of youth placed in the facility. Instead, new Level VII will allow a maternity home to reduce the staff on duty when the youth are away from the facility for extended periods of time such as school hours. This will allow a lower cost to the maternity home for staff salaries.

The alternative is to not amend the rule. This alternative would likely result in the closure of the maternity home component of the Florence Crittenton program. Currently, Florence Crittenton operates the only maternity home in Montana. If the program closes, pregnant adolescents in the custody of the State of Montana (and any other pregnant adolescent or young adult) will not have access to the services provided under the program.

The proposed amendment will also delete the references cited in the authority and implementing sections to statutes which have been renumbered by the Code Commissioner. 41-3-1103, MCA has been renumbered 52-2-603, MCA. 41-3-1122, MCA has been renumbered 52-2-611, MCA. The proposed amendment will also add a citation to 52-1-103, MCA, as this is the general statutory authority for the Department to adopt necessary rules and provide services to youth care facilities.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on April 11, 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, 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 13, 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 one based on the one licensed child care agency-maternity home affected by rules covering the foster care classification model level VII.

Dawn Sliva	**/s/ Gail Gray**
Rule Reviewer	**Director, Public Health and Human Services**

Certified to the Secretary of State March 4, 2002.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.402 and 4.12.404 and adoption of New Rule I (4.12.406) relating to feed penalties	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On January 17, 2002 the Department of Agriculture published notice of the proposed amendment of ARM 4.12.402 and 4.12.404 and adoption of New Rule I, relating to feed penalties at page 1 of the 2002 Montana Administrative Register, Issue Number 1.

2. The agency has amended ARM 4.12.402 and 4.12.404 exactly as proposed.

3. The agency has adopted New Rule I (ARM 4.12.406) with the following changes, stricken matter interlined, new matter underlined:

4.12.406 ANALYTICAL ACTION LEVELS (1) through (4) remain the same.

(5) Action levels are as follows:

Determination	Analytical Variances (AV%)	Deviation allowed below a minimum guaranteed claim	Deviation allowed above a maximum guaranteed claim
Moisture	12	*	1 AV
Crude Protein	20/x + 2	2 AV's	*
NPN equiv	80/x + 3	*	2 AV's
Crude fat	10	2 AV's	*
Crude fiber	30/x + 6	2 AV's**	2 AV's
Calcium	10	2 AV's	2 AV's
Phosphorus	3/x + 8	2 AV's	*
Salt	15/x + 9	2 AV'S	2 AV's
Magnesium	20	35%	*
Potassium	15	25%	*
Sodium	20	30%	30%
Selenium	25	40%	*
Zinc	20	35%	*
Iron	25	40%	*
Iodine	40	45%	*
Copper	30	40%	*
Vitamin A	30	45%	*

x = % guarantee

* no action level established
** applies only to rabbit feeds

(6) Remains the same.

AUTH: 80-9-103 and 80-9-204, MCA
IMP: 80-9-303, MCA

REASON: The action level pertaining to crude protein was inadvertently left out of the printed notice of the proposed amendment that was published in the Montana Administrative Register, Issue Number 1 dated January 17, 2002. The language shown here is the language that was used throughout all discussions on the matter of action levels.

4. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State March 4, 2002.

**BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 10.41.101 through 10.41.104, 10.41.106, 10.41.109, 10.41.111, 10.41.115, 10.41.118, 10.41.120, 10.41.124 through 10.41.126, 10.41.130 and the amendment and transfer of ARM 10.44.103, 10.44.104, 10.44.106 and 10.44.211 and the repeal of ARM 10.41.105, 10.41.107, 10.41.108, 10.41.116, 10.41.117, 10.41.119, 10.41.127, 10.41.129, 10.44.102 and 10.44.105 pertaining to vocational education	)	NOTICE OF AMENDMENT, AMENDMENT AND TRANSFER ADOPTION AND REPEAL

TO: All Concerned Persons

1. On September 20, 2001, the Superintendent of Public Instruction published notice of the proposed amendment, amendment and transfer and repeal of rules concerning vocational education at page 1784 of the 2001 Montana Administrative Register, Issue Number 18. On November 8, 2001, the Superintendent of Public Instruction published notice of extension of comment period to November 28, 2001 at page 2206 of the 2001 Montana Administrative Register, Issue No. 21.

2. The Superintendent of Public Instruction has amended ARM 10.41.103, 10.41.106, 10.41.109, 10.41.111, 10.41.115, 10.41.118, 10.41.120, 10.41.124, 10.41.125, 10.41.126, and 10.41.130 exactly as proposed.

3. After consideration of the comments received, the Superintendent of Public Instruction has amended the following proposed rules with the following changes, stricken matter interlined, new matter underlined:

10.41.101 DEFINITIONS Terms used in reference to career and vocational/technical education are defined as follows:

(1) and (2) remain as proposed.

~~(3) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.~~

(4) remains as proposed but is renumbered (3).

~~(5)~~ (4) "Career and technical student organization" or "CTSO" means an organization of students in career and vocational/technical programs that serves members by providing opportunities for leadership, citizenship and skill development. Activities are

an integral part of the program and are carried out at local, state and national levels in affiliation with the following organizations: FFA, family, career and community leaders of America (FCCLA), DECA, business professionals of America (BPA), SkillsUSA-VICA, health occupations students of America (HOSA), ~~and~~ technology students association (TSA) and other CTSO's affiliated with new and emerging programs.

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

~~(8)~~ (7) "Career and vocational/technical education programs" means ~~a planned sequence of secondary courses in the following program areas~~ organized educational activities, as defined in 20-1-101(8), MCA which may include the following programs:

(a) agriculture education;

(b) business and marketing education;

(c) family and consumer sciences education;

(d) health occupations education; ~~and~~

(e) industrial technology education~~.~~;

(f) trade and industrial education; and

(g) OPI approved new and emerging programs.

~~(9)~~ (8) "Career and vocational/technical instructor certification" means certification of instructors in accordance with the board of public education requirements and endorsed in the program area for which they are making application. ~~As certification relates to program approval under ARM 10.41.132 exceptions may be made by OPI for emerging career and vocational/technical programs where industry certification is required for a specific skill area, such as CISCO academies, and where such certification is an industry standard.~~

~~(10)~~ (9) "Career experience supervision" is an option available to districts and, if chosen by a district, must include a minimum of five days of student-related instruction ~~which~~ that relates to the program for which the enrollment report is generated. ~~and must be based on a contractual agreement between the school, teacher and district at the teacher's current rate of pay.~~ Compensation for this supervision is subject to collective bargaining, or where there is no recognized bargaining agent, to board policy.

(11) and (12) remain as proposed but are renumbered (10) and (11).

~~(13)~~ (12) "Incentive f~~F~~unding ~~distribution~~ formula" means a formula determined by the superintendent of public instruction according to additional costs of career and vocational/technical education programs based on weighted factors. ~~The funding formula shall be equally applied to each career and vocational/technical education program. The formula includes, but is not limited to:~~

~~(a) K-12 career and vocational/technical education enrollment;~~

~~(b) approved career and technical student organizations:~~

~~(i) approved chapters; and~~

~~(ii) number of members;~~

~~(c) career experience supervision of students beyond the school year for K-12 career and vocational/technical education; and~~

~~(d) district expenditures related to the K-12 career and vocational/technical education programs.~~

(14) through (16) remain as proposed but are renumbered (13) through (15).

~~(17)~~ (16) "Secondary career and vocational/technical education program" means ~~a program of sequential courses for persons~~ organized educational activities, as defined in 20-1-101(8), MCA, in high school (grades 9 through 12) which may include the following programs:

(a) agriculture education;

(b) business and marketing education;

(c) industrial technology education;

(d) family and consumer sciences education;

(e) health occupations education; ~~and~~

(f) trade and industrial education~~.~~; and

(g) OPI approved new and emerging programs.

(18) remains as proposed but is renumbered (17).

(a) and (b) remain as proposed.

(c) employs, with the confirmation of the superintendent of public instruction, professional staff consisting of individuals prepared in agriculture education, business and marketing education, health occupations education, family and consumer sciences education, ~~and~~ industrial technology education, and other new and emerging vocational/technical education fields.

(19) and (20) remain as proposed but are renumbered (18) and (19).

10.41.102 STATE PLAN (1) There shall be a state plan for career and vocational/technical education in Montana. The superintendent of public instruction shall be the governing agent to disburse federal and state K-12 career and vocational/technical education funds and to plan, coordinate, govern and provide leadership for the state K-12 career and vocational/technical education system.

(2) remains as proposed.

10.41.104 EMPLOYMENT OF STATE STAFF (1) The state director of K-12 career and vocational/technical education shall employ, with the confirmation of the superintendent of public instruction, ~~professional~~ those staff ~~consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education~~ positions required in 20-7-308, MCA. In addition, the state director may employ, upon approval of the superintendent of public instruction, professional staff in health occupations education and other new and emerging vocational/ technical education fields.

4. The Superintendent of Public Instruction has determined that some of the language proposed in 10.41.101(13) should be contained in a separate rule and has adopted new rule I as follows:

NEW RULE I [ARM 10.41.136] INCENTIVE FUNDING FORMULA

(1) The incentive funding formula defined in ARM 10.41.101(12) shall be equally applied to each career and vocational/technical education program. The formula includes, but

is not limited to:

(a) K-12 career and vocational/technical education enrollment;

(b) approved career and technical student organizations:

(i) approved chapters; and

(ii) number of members;

(c) career experience supervision of students beyond the school year for K-12 career and vocational/technical education; and

(d) district expenditures related to the K-12 career and vocational/technical education programs.

Auth: Sec. 20-7-301, MCA
IMP: Sec. 20-7-306, 20-7-208, MCA

5. The Superintendent of Public Instruction has amended and transferred rules exactly as proposed as follows:

OLD	NEW	CATCHPHRASE
ARM 10.44.104	ARM 10.41.133	PROCEDURES FOR APPLYING TO RECEIVE STATE CAREER AND VOCATIONAL/TECHNICAL EDUCATION FUNDING
10.44.106	10.41.134	ACCOUNTING AND REPORTING
10.44.211	10.41.135	STANDARDS AND GUIDELINES FOR SECONDARY CAREER AND VOCATIONAL/TECHNICAL EDUCATION IN MONTANA

6. After consideration of the comments received, the Superintendent of Public Instruction has amended and transferred the following rule with the following changes, stricken matter interlined, new matter underlined:

10.44.103 (10.41.132) ELIGIBILITY REQUIREMENTS FOR STATE CAREER AND VOCATIONAL/TECHNICAL EDUCATION FUNDING (1) through (1)(f) remain as proposed.

(g) The program shall develop personal, career and leadership skills that promote the transition from school to careers. Career and technical student organizations (CTSO's) that foster these skills are: FFA, FCCLA, DECA, BPA, HOSA, SkillsUSA-VICA, and TSA;

(h) through (p) remain as proposed.

(q) Local education agencies shall use career and vocational/technical education funds to add to or enhance local funds to improve career and vocational/technical programs. Funds will not be approved when it has been determined that replacement of local funds will occur~~. A school must not decrease the amount spent in the career and vocational/technical program from one year to the next, figured either on an aggregate or per student basis, unless "unusual circumstances" exist, such as large expenditures in previous years for equipment~~;

(r) and (2) remain as proposed.

7. The Superintendent of Public Instruction has repealed ARM 10.41.105, 10.41.107, 10.41.108, 10.41.116, 10.41.117, 10.41.119, 10.41.127, 10.41.129, 10.44.102 and 10.44.105 as proposed.

8. The following comments were received and appear with the Superintendent of Public Instruction's responses:

ARM 10.41.101(3)

COMMENT 1: A commentor stated that he had worked on the funding formula this past summer and questioned why (3) is needed. He stated that the funding formula that was agreed upon doesn't deal with ANB, it deals with student numbers in the program and recommended that we strike the definition of ANB.

RESPONSE: The State Superintendent of Public Instruction concurs with the comment and (3) has been stricken from the rule as amended.

ARM 10.41.101(5), (8) and (18)

COMMENT 2: The Central Montana Tech Prep Consortium requested that OPI allow the inclusion of other career and technical student organizations as they are developed and stated that HOSA was missing in (5).

RESPONSE: The State Superintendent of Public Instruction concurs with the comment and the affected subsections have been amended accordingly.

ARM 10.41.101(9)

COMMENT 3: The Montana Education Association - Montana Federation of Teachers (MEA-MFT) stated that the definition of "career and vocational/technical instructor certification" along with corresponding rule changes in 10.41.104, 10.41.109 and 10.44.103 broaden Montana's current standards of teacher certification to allow "exceptions ... for emerging career and vocational/technical programs where industry certification is required... ." MEA-MFT maintains that all proposed changes to teacher certification rules must be presented to the Board of Public Education (BPE) for consideration. MEA-MFT feels that OPI overstepped its constitutionally and legislatively designated powers with this proposed rule amendment. MEA-MFT requests that the proposed changes regarding instructor certification in the identified rules be withheld until the BPE has approved the exception in question through a change in Montana's certification standards.

COMMENT 4: The Association for Career and Technical Education (ACTE) referred to the comment from MEA-MFT and stated: "In no way does this language alter teacher cert rules" and disagrees with their recommendation.

RESPONSE: The State Superintendent of Public Instruction has considered the comments and concurs with MEA-MFT's position. The last sentence of (9) [renumbered (8)] has been deleted from the proposed rule.

ARM 10.41.101(10)

COMMENT 5: Comments were received from 46 members of the Montana Rural Education Association (MREA) stating that (10) violates the constitutional rights of local school boards to negotiate contract conditions with employees of the local school district. They suggested ending the last sentence after the word "generated."

COMMENT 6: One commentor stated that he recommended ending the definition of "career experience supervision" after the word "generated." He objected to "a state rule that negotiates a contract between a local school district employee and the local school district." He feels that to require the district to provide a minimum of five days of experience supervision and that the employee will be paid his per diem rate of pay preempts the constitutional rights of the school board.

COMMENT 7: ACTE responded to the above comment and stated that it disagreed with his recommendation and that if the supervision is an extension of the teacher's contract, the teacher should be paid a per diem rate.

RESPONSE: The State Superintendent of Public Instruction has considered all comments received and following consultation with interested parties has amended this subsection as set forth above.

ARM 10.41.101(17)

COMMENT 8: Comments were received from 46 members of the MREA. They are requesting that the definition of "secondary career and vocational/technical education program" be changed to be the same as the original language in House Bill 134.

COMMENT 9: A comment was received from MEA-MFT stating that the definition of "secondary career and vocational/ technical education program" may be overly restrictive and requires sequential courses in almost all common areas of career and technical education. MEA-MFT questions the necessity of requiring a school district to provide sequential courses in all areas and further states that it is a different definition than what is contained in House Bill 134.

COMMENT 10: A comment was received from ACTE wherein ACTE responded to MEA-MFT's comment by stating that the language has not changed and that House Bill 134 does have specific reference to agriculture, business and marketing, family and consumer sciences and industrial technology as the areas supported by the

career and vocational/technical education services of OPI. ACTE disagrees with MEA-MFT's recommendations.

RESPONSE: The State Superintendent of Public Instruction has considered all of the comments and has amended the rule to incorporate the subject definition in House Bill 134.

ARM 10.41.102

COMMENT 11: The Montana School Board Association (MSBA) commented that under ARM 10.41.102 the Superintendent of Public Instruction continues to serve as the governing agent to disburse federal and state career and vocational/technical education funds. At the same time, the Superintendent no longer serves, "...to plan, coordinate, govern and provide leadership for the state K-12 vocational education system." ARM 10.41.104 calls for the State Director to employ professional staff with the apparent role stated as "...determine that career and vocational/technical education activities within the state are being conducted according to federal and state rules and regulations." [ARM 10.41.106] MSBA questions whether there is another entity that will take up the role of planning, coordinating, governing and providing leadership at the state level.

RESPONSE: The State Superintendent of Public Instruction has considered the comment and has amended the rule to reinsert the language "to plan, coordinate, govern and provide leadership for the state K-12 career and vocational/technical education system".

ARM 10.41.104

COMMENT 12: The Central Montana Tech Prep Consortium stated that "health occupations education" is missing from this rule.

RESPONSE: The State Superintendent of Public Instruction has considered the comment, concurs with the recommendation and has amended the rule to include a provision that the director may employ professional staff in health occupations education and other new and emerging fields.

ARM 10.41.130

COMMENT 13: A commentor testified at the hearing that he feels that the most important duty of the Career and Technical Division of OPI is in the evaluation and improvement of CTE programs throughout the state and eliminating this responsibility from the CTE Division is a serious mistake. He wants CTE to take more of a leadership role and get out in the programs and help teachers (especially new teachers). He feels that the CTE Division specialists should be evaluated by the

people they serve in order to gauge their effectiveness.

COMMENT 14: A commentor testified at the hearing that she concurred with the comments stated at Comment 13.

RESPONSE: The State Superintendent of Public Instruction has considered the comment. The evaluation suggestion is impractical given OPI's staffing and level of appropriation. The rule is amended as originally proposed.

ARM 10.44.103(1)(g)

COMMENT 15: The Central Montana Tech Prep Consortium stated that CTSO's are listed but not HOSA.

RESPONSE: The State Superintendent of Public Instruction has considered the comment, concurs with the suggestion and has amended the rule as suggested.

ARM 10.44.103(1)(q)

COMMENT 16: Comments were received from 46 members of the MREA. They felt that the proposed language could restrict local school districts from reducing their local career and technical education budgets even during situations such as declining enrollments. They suggested that (q) be ended after the first sentence.

COMMENT 17: MEA-MFT stated that they were alarmed by the proposed amendment and feels this language would restrict local school districts from ever reducing their career and technical education budgets even in times of declining enrollments. MEA-MFT states that the amendment is unrealistic and requires school districts to make career and technical education a higher priority than other program areas. They suggest that the third sentence in (q) be eliminated.

COMMENT 18: MSBA states that this subsection is unrealistic and that it is unfair to expect school district trustees to treat career and vocational/technical education budgets differently than other programs during budget development. They suggest that the third sentence be eliminated.

COMMENT 19: A commentor stated that he objects to OPI or BPE setting such limiting parameters upon local school districts that are struggling to meet all program needs. He feels state officials need to become innovative and flexible. He recommends that (q) end after the first sentence.

COMMENT 20: A representative of ACTE stated that the language in (q) has not changed from the previous rules. He stated that when the committee met, there was discussion on keeping the language used in the current rules and the general

guidelines consistent with federal "non-supplant" requirements. ACTE is in favor of amending the rule as proposed.

RESPONSE: The State Superintendent of Public Instruction has considered the comments, consulted with interested parties and concurs that the last sentence of (q) should be eliminated. The rule has been amended accordingly.

General comments

COMMENT 21: Two commentors testified at the hearing in support of the rule amendments.

RESPONSE: The State Superintendent of Public Instruction thanks the commentors for their support.

COMMENT 22: One commentor stated that he has a problem with referring to "adequate funding." He doesn't feel the funding is adequate. He stated how important visitations were to teachers in the field and would like it increased. He stated that teachers needed OPI staff to visit them.

RESPONSE: The State Superintendent of Public Instruction thanks the commentor for his comment and concurs that public school funding is a critical issue.

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

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

Certified to the Secretary of State, March 4, 2002.

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.53.102, 17.53.105, 17.53.107, 17.53.111, 17.53.112, 17.53.113, 17.53.208, 17.53.301, 17.53.402, 17.53.502, 17.53.602, 17.53.802, 17.53.902, 17.53.1002, 17.53.1202, 17.53.1301 and 17.53.1303 pertaining to management of hazardous wastes	)	NOTICE OF AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On January 17, 2002, the Department of Environmental Quality published a notice of public hearing on the proposed amendment of the above-stated rules at page 35, 2002 Montana Administrative Register, Issue No. 1.

2. The Department has amended ARM 17.53.102, 17.53.105, 17.53.107, 17.53.111, 17.53.112, 17.53.113, 17.53.208, 17.53.301, 17.53.402, 17.53.502, 17.53.602, 17.53.802, 17.53.902, 17.53.1002, 17.53.1202, 17.53.1301 and 17.53.1303 exactly as proposed.

3. No comments or testimony were received.

**MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

By: *JAN P. SENSIBAUGH*
JAN P. SENSIBAUGH, Director

Reviewed by:

DAVID RUSOFF
David Rusoff, Rule Reviewer

Certified to the Secretary of State March 4, 2002.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.30.101 through 8.30.1006 pertaining to the Board of Funeral Service	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Funeral Service is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 147.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.30.101	24.147.101	Board Organization
8.30.201	24.147.201	Procedural Rules
8.30.202	24.147.202	Citizen Participation Rules
8.30.501	24.147.301	Continuing Education Definitions
8.30.1002	24.147.302	Funeral Service Definitions
8.30.402	24.147.402	Applications
8.30.404	24.147.501	Licensure of Out-of-State Applicants
8.30.405	24.147.504	Internship
8.30.406	24.147.405	Examination
8.30.407	24.147.401	Fee Schedule
8.30.408	24.147.403	Inspections
8.30.412	24.147.502	Inactive Status and Reactivation
8.30.413	24.147.2401	Complaint Filing
8.30.414	24.147.411	Contract for Funeral Goods and Services
8.30.415	24.147.412	Records
8.30.416	24.147.406	Federal Trade Commission Regulations
8.30.502	24.147.2101	Continuing Education Requirements
8.30.504	24.147.2102	Sponsors
8.30.510	24.147.2108	Exceptions - Not Engaging in the Practice of Funeral Service
8.30.515	24.147.2109	Penalty for Non-Compliance
8.30.516	24.147.503	Conditional Permission to Practice While on Inactive Status
8.30.601	24.147.901	Sanitary Standards - Preparation Room
8.30.607	24.147.903	Transfer or Sale of Mortuary License

OLD	NEW	
8.30.608	24.147.902	Disclosure Statement on Embalming
8.30.701	24.147.2301	Unprofessional Conduct
8.30.702	24.147.2302	Licensee Responsibility in Case of Crime or Violence in Connection with Cause of Death
8.30.703	24.147.2303	Freedom of Choice Rights of Next of Kin and Family
8.30.704	24.147.2304	Unlawful Practice
8.30.411	24.147.2305	Screening Panel
8.30.801	24.147.1101	Crematory Facility Regulation
8.30.802	24.147.1102	Casket/Containers
8.30.803	24.147.1103	Shipping Cremated Human Remains
8.30.804	24.147.1110	Identifying Metal Disc
8.30.805	24.147.1111	Processing of Cremated Remains
8.30.806	24.147.1112	Crematory Prohibitions
8.30.807	24.147.1113	Designation as Crematory Operator or Technician
8.30.808	24.147.1114	Licensure as a Crematory Operator
8.30.809	24.147.1115	Licensure as a Crematory Technician
8.30.901	24.147.1301	Applications for Cemetery Certificates of Authority
8.30.902	24.147.1302	Managers
8.30.903	24.147.1303	Cemetery Contracts; Price Disclosure
8.30.904	24.147.1304	Perpetual Care and Maintenance Fund Reports
8.30.905	24.147.1310	Requirements for Burials
8.30.906	24.147.1311	Cemetery Authority Rules
8.30.907	24.147.1312	Restrictions on Officers
8.30.908	24.147.1313	Transfer of Cemetery Ownership
8.30.909	24.147.1314	Perpetual Care and Maintenance Funds
8.30.1001	24.147.1501	Branch Facility
8.30.1003	24.147.1502	Prearranged, Prefinanced or Prepaid Funerals
8.30.1004	24.147.1503	Requirements for Sale of At-Need, Pre-Need and Prepaid Funeral Arrangements
8.30.1005	24.147.1504	Pre-Need Funeral Agreements
8.30.1006	24.147.1505	Trust Funds

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 FUNERAL SERVICE
JEAN RUPPERT, 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 4, 2002

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.30.406, 8.30.502 and 8.30.504 pertaining to examination, continuing education and sponsors and the adoption of new rule I pertaining to renewal	) CORRECTED NOTICE OF) AMENDMENT AND ADOPTION)))))

TO: All Concerned Persons

1. On January 17, 2002, the Board published a notice at page 84, 2002 Montana Administrative Register, issue number 1, of the amendment and adoption of the above-stated rules.

2. The reason for the correction is that an erroneous permanent rule number was assigned to NEW RULE I. The correct rule number for NEW RULE I, RENEWAL OF LICENSE, is ARM 24.147.505.

3. The new rule is being assigned to ARM Title 24, chapter 147, to reflect the re-organization of the Board of Funeral Service from the Department of Commerce to the Department of Labor and Industry.

BOARD OF FUNERAL SERVICE
JEAN RUPPERT, 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 4, 2002.

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

In the matter of the amendment of ARM 8.40.401 through 8.40.404, 8.40.407, 8.40.408A, 8.40.413, 8.40.416, 8.40.417, 8.40.502, 8.40.601 through 8.40.607, 8.40.901 through 8.40.907, 8.40.909, 8.40.1001, 8.40.1003, 8.40.1004, 8.40.1203, 8.40.1207, 8.40.1208, 8.40.1213, and 8.40.1215 pertaining to substantive pharmacy rules, automated data processing, certified pharmacies, internship regulations, continuing education for pharmacists, the dangerous drug act and the adoption of new rule I pertaining to collaborative practice agreement requirements, new rule II pertaining to security of certified pharmacy, and new rule III pertaining to the administration of vaccines by pharmacists and the repeal of ARM 8.40.405 and 8.40.408 pertaining to explosive chemicals and prescription copies for legend drugs	) CORRECTED NOTICE OF AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On January 31, 2002, the Board published a notice at page 178, 2002 Montana Administrative Register, issue number 2, of the amendment, adoption, and repeal of the above-stated rules.

2. The reason for the correction is that erroneous permanent rule numbers were assigned to NEW RULE I, NEW RULE II and NEW RULE III. The correct rule number for NEW RULE I, COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS, is ARM 24.174.524. The correct rule number for NEW RULE II, SECURITY OF CERTIFIED PHARMACY, is ARM 24.174.814. The correct rule number for NEW RULE III, ADMINISTRATION OF VACCINE BY PHARMACISTS, is ARM 24.174.503.

3. The new rules are being assigned to ARM Title 24, chapter 174, to reflect the re-organization of the Board of Pharmacy from the Department of Commerce to the Department of Labor and Industry.

BOARD OF PHARMACY
ALBERT A. FISHER, R.Ph.,
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 4, 2002.

**BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the amendment of ARM 8.40.1301 through 8.40.1308 pertaining to pharmacy technicians and the adoption of new rule I and new rule II pertaining to registration of pharmacy technicians and renewal	)))))))	CORRECTED NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On January 17, 2002, the Board published a notice at page 86, 2002 Montana Administrative Register, issue number 1, of the amendment and adoption of the above-stated rules.

2. The reason for the correction is that erroneous permanent rule numbers were assigned to NEW RULE I and NEW RULE II. The correct rule number for NEW RULE I, REGISTRATION REQUIREMENTS, is ARM 24.174.701. The correct rule number for NEW RULE II, PHARMACY TECHNICIAN - RENEWAL, is ARM 24.174.2102.

3. The new rules are being assigned to ARM Title 24, chapter 174, to reflect the re-organization of the Board of Pharmacy from the Department of Commerce to the Department of Labor and Industry.

**BOARD OF PHARMACY
ALBERT A. FISHER, R.Ph.,
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 4, 2002.

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

In the matter of the adoption of new Rule I pertaining to independent diagnostic testing facilities and the amendment of ARM 37.85.204, 37.85.212, 37.85.406, 37.85.415, 37.86.1406, 37.86.2905 and 37.86.3005 pertaining to medicaid reimbursement	)))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On January 17, 2002, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 56 of the 2002 Montana Administrative Register, issue number 1.

2. The Department has adopted new rule I [37.85.220] and amended 37.85.212 as proposed.

3. The Department has 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.

37.85.204 RECIPIENT REQUIREMENTS, COST SHARING (1) through (2)(ac) remain as proposed.

(3) remains as proposed but is renumbered (4).

(3) For purposes of this rule, "medicaid allowed amount" means the amount allowed in accordance with the reimbursement methodology for the particular service, before third party, liability, incurment, and other such payments are applied.

~~(4)~~ (5) Cost sharing may not be charged for services provided for the following purposes:

(a) through (g) remain as proposed.

(h) eyeglasses purchased by the medicaid program under a volume purchasing arrangement; ~~and~~

(i) early and periodic screening, diagnostic and treatment EPSDT services; and

(j) laboratory and x-ray services.

(5) remains as proposed but is renumbered (6).

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (20) remain the same.

(21) There is an emergency reimbursement reduction in effect for the following provider types for services provided

January 1, 2002 through June 30, 2002:

(a) inpatient hospital;

(b) outpatient hospital;

(c) early periodic screening;

(d) diagnostic and treatment;

(e) nutritional services;

~~(f) private duty nursing;~~

(g) through (ab) remain as proposed, but are renumbered (F0 through (aa).

(22) through (22)(c) remain as proposed.

(23) Notwithstanding any other provision, critical access hospital interim reimbursement is ~~90% of billed charges~~ based on hospital specific medicaid cost to change ratio. Critical access hospitals will still be reimbursed their actual allowable costs determined on a retrospective basis as provided in ARM 37.86.2801.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131 and 53-6-141, MCA

37.85.415 MEDICAL ASSISTANCE MEDICAID PAYMENT

(1) Medicaid will pay only for medical expenses:

(a) through (d) remain the same.

(e) which are not the ~~copayment~~ cost sharing provided for in ARM 37.85.204; and

(f) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-131, MCA

37.86.1406 CLINIC SERVICES, REIMBURSEMENT (1) Ambulatory surgical center (ASC) services as defined in ARM 37.86.1401(2) provided by an ASC will be reimbursed on a fee basis as follows:

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

(b) For ASC services where no medicare fee has been assigned, the fee is ~~61%~~ 55% of usual and customary charges.

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

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) For inpatient hospital services, the Montana medicaid program will reimburse providers as follows:

(a) through (b) remain the same.

(c) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana will be reimbursed ~~61%~~ 50% of usual and customary billed charges for medically necessary services.

(i) Medicaid reimbursement shall not be made to hospitals located more than 100 miles outside the borders of Montana unless the provider has obtained authorization from the department or its designated review organization prior to

providing services. All planned services require prior authorization. Services provided in an emergent situation must be authorized within 48 hours.

(2) through (18) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Out-of-state facilities more than 100 miles from the nearest Montana border will be paid at ~~61%~~ 50% of usual and customary billed charges for medically necessary services.

(3) and (4) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

4. In reviewing the rules, the Department has discovered that there is a typographical error in ARM 37.86.2905(1)(c). The underlined language was inadvertently deleted from the final rule. It should read and is corrected to read as follows:

(c) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana will be reimbursed ~~61%~~ 50% of usual and customary billed charges for medically necessary services.

(i) Medicaid reimbursement shall not be made to hospitals located more than 100 miles outside the borders of Montana unless the provider has obtained authorization from the department or its designated review organization prior to providing services. All planned services require prior authorization. Services provided in an emergent situation must be authorized within 48 hours.

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Why did the Department decide to double the copay for inpatient admissions?

RESPONSE: The copay and coinsurance amounts are increased in order to help alleviate the budgetary shortfall currently plaguing the Medicaid program. On average, these cost sharing amounts are nearly doubled (about 182% of current levels). However, the copayment amount being implemented is still well under the amount permitted by federal law. Due to the extensive restructuring concurrent with changing from the current copayment system to a simpler co-insurance system for most services, the cost-sharing associated with some services will increase more than with others.

COMMENT #2: Why did the Department decide not to require copay for emergency room visits? We get emergency room visits with non-emergent symptoms, symptoms that have been going on for days, sometimes weeks (colds, sore throats, headaches, etc). There is no copay for ER visits. So, I believe you are encouraging Medicaid recipients to use the ER instead of the physician office where they will be charged a copay. Wouldn't it make more sense to put the copay on the ER visit instead of the inpatient stay?

RESPONSE: Emergency services are exempt from cost sharing by federal law. See 42 USC 1396o(a)(2)(D). Regulations embodied in Emergency Medical Treatment and Active Labor Act (EMTALA) and the Balanced Budget Act are carefully worded to distinguish between emergency services and services rendered in an emergency room. To the extent that providers continue to provide routine services in the emergency room, these exempt services will escape cost sharing requirements.

COMMENT #3: Why are providers expected to take the brunt of the Department's financial trouble?

RESPONSE: The shortfall in the Medicaid budget totals $12 million. As indicated in the original proposed adoption and amendment notice, the amendments proposed are expected to result in a savings of $4.2 million. The remaining $7.8 million savings are the result of the Department's own efforts. These include reductions in operating costs, leaving staff positions unfilled, foregone equipment purchases, restrictions on in-state and out-of-state travel, transfers of funds from other programs within the Department and increased efforts at collecting monies owed the Department by third party payers of medical costs. Because of the budget shortfall, the Department is trying to administer benefits to an increased caseload with fewer staff. Consequently, while the Department acknowledges that reductions in reimbursement rates may be difficult for the providers, the Department disagrees that providers are being expected to take the brunt of the program's budgetary shortfall.

COMMENT #4: What is the Department doing to ensure that Medicaid recipients are properly utilizing the system in order to prevent fraud? How can Medicaid recipients be held accountable?

RESPONSE: The Department has several measures in place to prevent, detect and eliminate fraud. Perhaps the most comprehensive fraud control activity is the post-payment review of claims by the Surveillance, Utilization and Review Bureau. The Department employs specially-developed software and fraud detection techniques to detect overuse or misuse of Medicaid services, and to verify that services provided were medically necessary. These surveillance efforts result in financial recoveries, education of both Medicaid individuals and

providers, and sometimes in stricter control of Medicaid individuals' careseeking through the Restricted Card Program. Under the Restricted Card Program, Medicaid individuals who overuse the program are restricted to one physician and one pharmacy and action is taken to limit the number of unnecessary emergency room visits. If further actions are required, the Medicaid Fraud Control Unit is notified and the situation is pursued by the Department of Justice.

Providers, Medicaid individuals and all members of the public are encouraged to report suspected fraud or abuse, on the part of providers or of Medicaid individuals, by calling the Quality Assurance Division at (406)444-2037.

COMMENT #5: We are extremely concerned about possible ramifications upon communities in Montana. We believe a real possibility exists that certain physicians will not be able to absorb an additional decrease in the already marginal reimbursement. Some of these doctors have office financial situations so compromised they will feel forced to close their practices or to retire early because they see no alternative. The patients in these communities where there are no other physicians to turn to will be greatly harmed. Has the Department calculated the amount of adverse effects on the providers?

RESPONSE: The Department did make a concerted effort to minimize impacts on Medicaid providers in order to ensure access. Of the $12 million budget shortfall, the Department has been asked to absorb in excess of $7.8 million, nearly 2/3 of the budget deficit. The cost containment measures which adversely affect providers for State Fiscal Year 2002 are the 2.6% rate reduction, changes in payment methodologies for co-surgeons and assistant surgeons, and reductions for out-of-state hospitals, critical access hospitals, and ambulatory surgery centers. These provisions are expected to reduce costs by $3,489,236. The annual impact to providers of the provisions which carry over into FY03 (all but the 2.6% rate reduction) will amount to $1,708,833.

COMMENT #6: Since health care providers are forced to take a 2.6% reduction in revenues from Medicaid, have the employees of the DPHHS had their income cut by 2.6%, benefits reduced, layoffs, or has consolidation of services been considered by the Department? If no, why not? Has the DPHHS taken a 2.6% reduction in its budget?

RESPONSE: As described in earlier answers, the Department is absorbing the majority of the budget shortfall ($7.8 million of the $12 million shortfall). In addition to reductions in operating costs such as travel and equipment, the Department is asking its employees to absorb some of the cost reductions by leaving vacant positions unfilled. This requires consolidation of duties and requires existing staff to shoulder more of the

workload at a time when administrative requirements have increased due to the demands of implementing cost containment measures and the demands of growing caseloads.

COMMENT #7: The Department would not have to make this reduction if it restricted enrollment in Medicaid. How can Medicaid state leaders be held accountable?

RESPONSE: The Department did consider eliminating one or more of the very few optional categories of Medicaid enrollment, but realized that this would merely exacerbate the serious problem of rising numbers of uninsured. Montana, as well as the rest of the country, is struggling to increase the numbers of people who have access to some kind of health coverage. With one of the highest percentages of uninsured citizens in the country, Montana has been conducting community forums and convening special legislative committees to devise ways to extend health coverage to more citizens. Withholding Medicaid benefits from those who can be included under federal law would merely worsen this problem. The financial impact would not be limited to those people cut from the Medicaid rolls. Providers would bear the burden of the unreimbursed care which would, of necessity, continue to be provided and result in more cost shifting to private payers and insurance plans.

Medicaid state leaders are held accountable to the electorate, in the case of elected positions, and to their elected and appointed supervisors, in the case of non-elected positions. Public input exerts a very real influence on the decisions made at all levels of government.

COMMENT #8: Rate reductions to providers will impact the growing business of health care (in Montana). Why "penalize" one of the largest and most stable business sectors in Montana?

RESPONSE: The Department did not choose to "penalize" a business sector. The measures taken to eliminate substantial budget deficits were chosen from among several alternatives, and in each case care has been taken to minimize the impact to specific groups by adopting a variety of measures.

COMMENT #9: The proposed rule reduces interim payments to Critical Access Hospitals (CAHs) by 10%, which is a 10% reduction in cash payment, and has a real impact on rural economies. It would be more fair to use a hospital-specific cost to charge ratio.

RESPONSE: The department agrees that using a hospital-specific cost to charge ratio would be fairer to critical access hospitals and agrees to change the proposed rule from paying 90% of billed charges, to a Medicaid hospital specific cost to charge ratio for both inpatient and outpatient services. The department will continue to pay on the department's fee schedule for applicable outpatient procedure codes as it presently does.

COMMENT #10: Commentors ask "Has the Department considered the effect of changing from copay to coinsurance and its effect on facilities? Has the Department considered the effect of increasing cap size to $500?" Others note that the proposed budget cuts would shift increased financial liability to the patients who already can't pay, making this a shift ultimately to the hospitals.

Commentors also urge the Department to spread the shortfall over all health care providers and not just hospitals.

RESPONSE: Yes, the Department has considered the effect of increased coinsurance charges and has concluded that Medicaid individuals will incur more expense per visit and that they will participate more fully in their health care; providers' total reimbursement will continue to be reduced to the extent they are unsuccessful in collecting coinsurance/copayments.

Though cost sharing is set at the rate of 5% of the allowed amount, the amount of cost sharing actually imposed averages less than 2.5% of total reimbursement because not all Medicaid individuals and services are subject to cost sharing. Exemptions from cost sharing requirements include children, pregnant women, nursing homes, and emergency services. Another reason cost sharing does not equate to 5% overall is because some Medicaid individuals reach their caps and are not subject to any further cost sharing during a given year. For example, cost sharing on hospital services will represent less than 1.5% of net hospital payments.

The changes to the cost sharing system will be somewhat less far-ranging in their impact than is immediately apparent. The Department's analysis indicates that only about 33% of Medicaid individuals pay any copay during a given year, and less than 4% of those will reach their $500 cap.

Finally, the cost sharing measure and the 2.6% reduction in reimbursement will affect virtually all providers governed by these rules, not just hospitals.

COMMENT #11: A commentor asked the Department to perform a study that would identify non-health care sources of funding for the new 5,500 recipients in Medicaid.

RESPONSE: Federal Medicaid regulations prohibit non-comparable treatment of one group of Medicaid individuals versus another; for this reason newly-eligible Medicaid individuals can not be relegated to a funding source which is any less stable or available than that supporting other Medicaid individuals.

The Department is, however, investigating and adopting innovative funding arrangements which expand the leverage of our scarce state general funds in ways permitted by state and

federal regulations. Optimizing the use of general funds has in some cases already positively affected the Medicaid budget, and these effects have been taken into account.

COMMENT #12: A commentor said the continued Medicaid cuts to providers and recipients will increase cost shifting to private pay patients, other insurers, and increase private insurance premiums.

RESPONSE: We do not disagree with your conclusions, however, Medicaid does not have the financial resources to prevent implementing these changes. The Department has proposed the budget cuts in an attempt to minimize the cost shifting impacts, and to minimize impact on any one provider group by establishing an across-the-board reduction. Alternative proposals would have targeted specific provider types and optional services which would have increased the cost shifting to private payers, insurance plans and specific provider groups.

COMMENT #13: Our hospital has already contributed a portion of the $5 million general fund money that was used to help shore up the current budget because our hospital participated in the intergovernmental transfer (IGT) program for our nursing home.

RESPONSE: The Department appreciates your participation in the intergovernmental transfer program. However, the IGT program for nursing facility services does not address the budget shortfall currently faced by the Department.

COMMENT #14: Reduction in the Resource Based Relative Value Scale (RBRVS) conversion factor will have a negative impact on facilities.

RESPONSE: The proposed 2.6% reimbursement reduction impacts the net Medicaid amount, not the conversion factor. The Department agrees that reducing the RBRVS net payment for physician services by 2.6% may have a negative financial impact on facilities which bill physician services.

COMMENT #15: Health care providers have already cut costs to bare minimum, they are finding it hard to absorb any continued financial loss. Medicaid only paid my cost before, now because of the 2.6% rate reduction and copay changes, my costs are not covered.

RESPONSE: The Department is sympathetic to the hardships created by these budget cuts. However, Medicaid does not have the financial resources to prevent implementing these changes. The Department makes every attempt to set reimbursement rates that are reasonable and adequate to cover the cost of health care in order to ensure access to health care services.

COMMENT #16: Reduction in the base paid for Diagnosis Related Groups (DRG) reimbursement will essentially negate the provider

increases implemented FY2002.

RESPONSE: The reduction to hospital reimbursement is not affected by a change in the DRG base, but rather by a reduction of the net payment amount. The Department agrees that the 2.6% reduction to hospital reimbursement essentially negates the provider increases implemented in FY2002.

COMMENT #17: We believe these reductions have been made too early in the state fiscal year without adequate budget analysis and using growth trend figures that may not be valid.

RESPONSE: These reductions have been made half way through the fiscal year, on the basis of extensive analysis of claims paid during the first five months of the fiscal year. Any further delay in implementing reductions would mean that the full year's reduction would have to be achieved by reducing reimbursement rates by a larger percentage applied to fewer remaining months of services.

COMMENT #18: Emergency rule procedures are allowed at 2-4-303, MCA. "In the event of imminent peril to the public health, safety, or welfare." This circumstance hardly represents an imminent peril to the public. The Department's use of the emergency rule procedure is inappropriate.

RESPONSE: The emergency rule procedure was used because the standard rule-making process causes delays which would necessitate achieving all of the required reductions for the year in half as many months (three rather than six) before the fiscal year ends. This would at least double the percentage magnitude of reductions and could prove so disruptive that the stability and effectiveness of the public programs would be threatened. This is an appropriate use of the emergency rule procedure.

COMMENT #19: Medicare pays rural providers less than urban providers, the Medicaid budget cuts further exacerbate this situation.

RESPONSE: Medicaid has no control over what other insurers reimburse.

COMMENT #20: Does the amendment in the subject line have any effect on private insurers who provide long term care insurance in Montana?

RESPONSE: No, these rules are not addressed and should not directly affect private insurers who provide long term care insurance in Montana.

COMMENT #21: A commentor said the reduction in reimbursement will adversely affect access to care for Medicaid patients, therefore, will limit the number of patients a provider can

afford to see.

RESPONSE: The Department understands that reductions in reimbursement rates may be difficult for Medicaid providers. However, the Department does not expect the reduction in reimbursement to result in a significant impact on access to health care services.

COMMENT #22: A commentor recommends the State utilize its computer system to the best of its ability, where the system would deny claims that are not appropriate for reimbursement. The commentor further suggests implementing concise, clear-cut manuals and rules, and place denial mechanisms in its computer system that will deny claims which it should not pay for.

RESPONSE: The Department recognizes the merit of using efficient computer systems and well-written rules and manuals to reduce inappropriate claims and payments, and contracts with a private-sector specialist for claims processing in order to benefit from the best the industry has to offer. The Department believes that its claims editing procedures, rules and materials are well conceived and the Department is committed to continuous improvement in all aspects of the operation.

COMMENT #23: Certified Registered Nurse Anesthetists (CRNAs) have a long history of providing high quality anesthesia care to the citizens of Montana in a cost efficient manner. While accepting a reimbursement reduction may cause difficulty, we will not change our practice. CRNAs are committed to providing excellent healthcare in our communities regardless of reimbursement systems.

RESPONSE: The Department sincerely appreciates providers' dedication to the health care of Montanans. We look forward to continuing this outstanding working relationship.

COMMENT #24: The proposed rule requires Private Duty Nursing to participate in the 2.6% reduction. The Department was notified by several Private Duty Nursing providers that as a result of this cut and the shortage of nurses in the community they could no longer provide this service. Therefore, all patients would be notified of the cut in services and would be transferred from their homes to inpatient hospitals where they would receive skilled nursing care.

RESPONSE: After further review, the Department of Public Health and Human Services has exempted the Private Duty Nursing Program from the 2.6% net rate reduction. This decision was based on the need to keep children in their homes rather than admit them to long-term care facilities or hospitals at a prohibitive cost to the State of Montana.

COMMENT #25: The proposed rule states "the rate of coinsurance is 5% of the Medicaid allowed amount". Please define "Medicaid

allowed amount".

RESPONSE: The "Medicaid allowed amount" is defined as the amount that Medicaid will allow based on reimbursement methodology for a particular service, before third-party liability payments, incurments, and other deductions.

COMMENT #26: The Department has apparently not factored into its analysis savings that will accrue to the budget due to payment reductions imposed by the Medicare program.

RESPONSE: Yes, the Department has factored these savings into its analysis.

COMMENT #27: It was noted that the Department stated its intention to incorporate the updated fee schedule in its legal notice, but did not mention this issue in the administrative rule.

RESPONSE: The Department anticipated a new Medicare fee schedule for hospitals, imaging and other diagnostic services but implementation has been delayed by CMS (Center for Medicaid and Medicare Services, formerly HCFA). Consequently, the Department could not incorporate the updated fee schedule as it did not exist.

COMMENT #28: Regardless of the Department's final decision on interim payment methodology for critical access hospitals, the commentor believes it is inappropriate to subject these providers to the 2.6% payment in reduction proposed in ARM 37.85.406(21).

RESPONSE: The 2.6% is across the board for all hospitals. However, the 2.6% reduction will become irrelevant at settlement for those hospitals that are paid at cost.

COMMENT #29: The commentor requested that the Department rescind the rule changes.

RESPONSE: The Department considered many alternatives when approaching the imminent budget deficit and has adopted those which, though painful, appear least disruptive in terms of cost-shifting, cost acceleration or avoidable social costs. Therefore, the Department does not intend to rescind the rule.

COMMENT #30: Commentor notes that the Department has not provided any reduction in the number of drugs or prescriptions available to provide them all at a reduced rate. While there is a dramatic increase in use of drugs by recipients, there has been no change in reimbursement. Rural pharmacies will also have to close and will drop out of the Medicaid system.

RESPONSE: The Department has taken steps to control drug utilization by instituting a mandatory generic substitution

policy, requiring prior authorization on many drugs, and by prospectively and retrospectively reviewing drug use. Additionally, the Department believes that the change to Medicaid individual cost-sharing, effective March 1, 2002, will encourage Medicaid individuals to more carefully consider which prescriptions they need, which will also reduce the number of prescriptions filled. Some other states have implemented limits on the number of prescriptions Medicaid beneficiaries can receive. The Department will consider this strategy as another way to control costs. Higher utilization of drugs does not warrant an increase in reimbursement to providers. Pharmacy providers are reimbursed for the product (based on established pricing methodology) and their time in preparing the drug (dispensing fee).

COMMENT #31: Temporary Assistance for Needy Families (TANF) and Mental Health areas will also experience cutbacks. Providers are also experiencing cutbacks in Medicare.

RESPONSE: This rule amendment does not pertain to these two groups, but the Department does acknowledge that these difficult economic times impact all of us from several different fronts.

COMMENT #32: Commentor notes that criticisms of the proposed rule really apply to the Legislature, not the Department. Commentor suggests that a special session is necessary to solve the problems.

RESPONSE: The Department has no authority to call a legislative special session.

COMMENT #33: Commentor notes that the options available are few but doesn't believe that the Department's situation is as bad as it claims.

RESPONSE: The Department is responding to standard financial reporting which indicates that, if unchanged, spending will exceed appropriations by $12 million for FY2002 and to regulations and directives that require the Department to stay within its appropriations for the year. These circumstances do not allow much in the way of subjective interpretation. Projected overexpenditures have been confirmed by the Legislative Fiscal Division and by the Governor's Budget Office.

COMMENT #34: Commentor notes that the rule doesn't appear to specify an end date for the rule changes in the rule, which makes them permanent. Commentor requests clarification of whether or not the rule change is permanent or not.

RESPONSE: The 2.6% rate reduction is in effect for services specified in ARM 37.85.406(22), provided from January 1, 2002 through June 30, 2002. Other provisions in the rule change do not have an end date.

COMMENT #35: Independent laboratory and x-ray services were not addressed in the proposed rule. Please clarify whether or not they are exempt from copay.

RESPONSE: Independent laboratory and independent x-ray facilities have been and will continue to be exempt from cost-sharing. The Department will clarify in the final rule that these services are exempt from copay.

COMMENT #36: In the heading of the notice of public hearing on proposed adoption and amendment, ARM 37.86.212 is cited. There is no such rule.

RESPONSE: This is a typo. The correct citation is ARM 37.85.212.

COMMENT #37: On page 8 of the notice of public hearing on proposed adoption and amendment, ARM 37.85.405 is cited. There is no such rule.

RESPONSE: This is a typo. The correct citation is ARM 37.85.406.

COMMENT #38: Commentor urges the Department to exempt from co-insurance requirements those prescriptions that treat chronic conditions, such as asthma and diabetes, and life threatening diseases, such as cancer, HIV and AIDS. Additionally, the commentor urges the Department to specify the maximum prescription drug copayment, as authorized under the federal Medicaid statute, to be not greater than $3.00. Commentor feels that improperly designed cost sharing requirements cause low-income patients to inappropriately establish personal financial barriers that interfere with treatment recommendations. Commentor offers other ideas for program improvements and cost containment such as fraud and abuse efforts and disease state management.

RESPONSE: The Department recognizes that pharmaceuticals offer a cost-effective way to treat disease. Additionally, the Department realizes that it is extremely important for patients suffering from chronic conditions and life threatening diseases to get the prescriptions their physicians recommend. In fact, the Department argues that it is important for all patients needing prescriptions to receive the drug therapy they require. The federal $3.00 limit applies only to copay, not to coinsurance. In analyzing the impact of 5% co-insurance, the Department found that 75% of all co-insurance requirements for prescriptions will not exceed $3.00 and 90% of prescriptions will not exceed $5.00. Therefore, the Department concluded that for the vast majority of Medicaid individuals, the cost-sharing requirements would not present an insurmountable financial obstacle. It is also important to note that cost-sharing for all Medicaid services will count towards the maximum cap of $500 per Medicaid individual per fiscal year. That is, all co-

insurance requirements, whether in a physician's office or at a pharmacy, will accumulate until the Medicaid individual has reached $500 out-of-pocket payments. The Department also understands that fraud and abuse investigations and disease management initiatives help curtail expenditures and the Department plans to continue pursuing those options.

COMMENT #39: Commentor indicates that providers who must purchase actual inventory will incur greater losses than those who merely have professional fees reduced. Commentor feels that pharmacies distributing drugs will actually incur a true financial loss against monies paid out to purchase the drugs. Additionally, commentor feels that payments to pharmacies were already reduced in 2000 when Montana Medicaid implemented the Medicaid Average Wholesale Price (AWP) reimbursement.

RESPONSE: The Department recognizes that pharmacies are a unique provider type in relation to other providers, and has taken care to keep reimbursement above levels which would generally result in uncovered costs. The Department implemented Medicaid AWP pricing based on extensive investigation by the Office of Inspector General and Medicaid Fraud Control Units. Since the implementation, it has become apparent that the Medicaid AWP investigation may have been flawed and is in need of re-examination. The Department intends to analyze the Medicaid AWP, along with all other pricing methodologies as soon as possible.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State March 4, 2002.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the adoption of New Rule I (42.19.1103) and amendment of ARM 42.19.1102 relating to treatment of gasohol production facilities	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 17, 2002, the department published notice of proposed adoption of New Rule I (42.19.1103) and amendment of ARM 42.19.1102 relating to treatment of gasohol production facilities at page 65 of the 2002 Montana Administrative Register, issue no. 1.

2. No comments were received regarding these rules.

3. The department has adopted and amended the rules 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 4, 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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