ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.55.909 relating to student records	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 1, 2004 at 9:00 a.m. a public hearing will be held in the conference room at the Office of the Commissioner of Higher Education, 2500 Broadway, Helena, Montana, to consider the amendment of a rule relating to student records.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on August 18, 2004 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

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

10.55.909 STUDENT RECORDS (1) Each school shall keep, in secure storage, a permanent file of students' records, that shall include:

(a) the name and address of the student~~,~~ ;

(b) his/her parent or guardian~~,~~ ;

(c) birth date~~,~~ ;

(d) academic work completed~~,~~ ;

(e) level of achievement (grades, standardized achievement tests)~~,~~ ;

(f) immunization records as per 20-5-406, MCA~~,~~ ; ~~and~~

(g) attendance data;

(h) and a record of any disciplinary action taken against the student that is educationally related. For the purposes of this rule, a disciplinary action that is educationally related is an action that results in the expulsion or out of school suspension of the student.

(2) and (3) remain the same.

AUTH: Sec. 20-2-114, MCA
IMP: Sec. 20-2-121, 20-1-213, MCA

Statement of Reasonable Necessity: The Board of Public Education finds that it is reasonable and necessary to amend this rule to comply with the requirements of Section 4155 of

the No Child Left Behind Act. This rule together with the provisions contained in 20-1-213, MCA, meet those requirements.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on September 3, 2004.

5. Steve Meloy has been designated to preside over and conduct the hearing.

6. The Board of Public Education 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 student records or other school related rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to smeloy@bpe.montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

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

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

Certified to the Secretary of State July 26, 2004.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of of ARM 10.57.201, 10.57.215, 10.57.216, 10.57.301 and 10.57.606 relating to educator licensure	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 2, 2004 at 9:00 a.m. a public hearing will be held in the conference room of the Office of Higher Education, 2500 Broadway, Helena, Montana, to consider the amendment of the above-stated rules relating to educator licensure.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on August 19, 2004 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

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

10.57.201 GENERAL PROVISIONS TO ISSUE LICENSES

(1) through (2) remain the same.

(3) Applicants for initial class 4 licensure who have a current career and vocational/technical license from another state in an area that can be endorsed in Montana shall be licensed as class 4A, 4B, or 4C depending on the level of education and extent of training.

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

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend this rule because individuals moving to Montana from out of state with a current, valid license endorsed in career and vocational/technical education are not granted reciprocity under ARM 10.57.201. The streamlined application process granted to out of state license holders endorsed in other areas has not been available to career and vocational/

technical educators. The proposed amendment to this rule will make reciprocity available to this class of educators.

10.57.215 RENEWAL REQUIREMENTS (1) ~~Sixty units of renewal activities are required for renewal of class 1, 3, and 7 licenses. Sixty units of renewal activities are also required for renewal of class 2 licenses, 40 of which must be earned through college credit. Four graduate semester credits or equivalent renewal units are required for renewal of class 6 licenses. All renewal units must be earned during the valid term of the license.~~ Requirements for renewal of Montana educator licenses are as follows:

(a) Class 1, 3, and 7 licenses require 60 renewal units;

(b) Class 2 licenses require college credit and renewal units as follows:

(i) three semester credits and 15 renewal units;

(ii) four semester credits;

(iii) four quarter credits and 20 renewal units;

(iv) five quarter credits and 10 renewal units; or

(v) six quarter credits;

(c) Class 4 licenses require 60 renewal units. The requirements specific to each type of license are set forth in ARM 10.57.421, 10.57.422 and 10.57.423;

(d) Class 6 licenses require college credit or renewal units as follows:

(i) four graduate semester credits;

(ii) six graduate quarter credits; or

(iii) 60 renewal units.

(2) Participation in renewal activities is equivalent to the following renewal units:

(a) one hour of attendance at a workshop = one renewal unit;

(b) one quarter college credit = 10 renewal units;

(c) one semester college credit = 15 renewal units.

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

~~(3) Participation in renewal activities is equivalent to the following renewal units:~~

~~(a) one renewal unit = one hour of attendance at a workshop~~

~~(b) 10 renewal units = one quarter college credit~~

~~(c) 15 renewal units = one semester college credit~~

(4) All renewal units must be earned during the valid term of the license.

(5) The license holder shall be solely responsible for retaining the renewal unit verification to be used in the application for license renewal.

~~(5) State validated professional development activities other than college/university credit earned by appropriately licensed educators from states other than Montana may be accepted for the renewal of Montana licenses when the intent and structure of the process assures the meeting or exceeding of Montana renewal unit requirements for licensure.~~

(6) Educators licensed in Montana who are living out of state and participate in another state's validated

professional development activities other than college/university credit may use these renewal unit activities when the intent and structure of the process assures the meeting or exceeding of Montana renewal unit requirements for licensure.

(7) Educators licensed in Montana who are living in state and who wish to participate in professional development activities offered by providers who have not been approved as a renewal unit provider pursuant to ARM 10.57.216 may apply to the state superintendent for approval prior to beginning the program.

~~(6) Renewal requirements for class 4 licenses are set forth in ARM 10.57.421, 10.57.422 and 10.57.423.~~

AUTH: Sec. 20-2-121~~(1)~~, 20-4-102, MCA
IMP: Sec. 20-4-102~~(1)~~, 20-4-108, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend this rule to update and clarify existing language and detail renewal requirements to eliminate confusion. Sections (6) and (7) were partially extracted from ARM 10.57.216(1)(d) and provide clarification of the requirement to obtain prior approval for professional development activities.

10.57.216 APPROVED RENEWAL ACTIVITY (1) and (1)(a) remain the same.

(b) accredited school districts, upon submission and approval of an application for status as a provider of professional development renewal unit credit; and

(c) professional education organizations and government agencies (federal, state, tribal, county, city), upon submission and approval of an application for status as a provider of professional development renewal unit credit~~; and~~.

~~(d) an individual license holder not currently under contract or any organization not approved as a provider in Montana may request participation with an approved provider, or apply directly to the superintendent of public instruction, in advance of the beginning of a program.~~

(2) through (6) remain the same.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-108, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to eliminate (1)(d) because it refers to individual educators rather than renewal unit providers. This language has been clarified and properly placed in ARM 10.57.215 which describes the renewal unit requirements for individual educators and when prior approval is required.

10.57.301 ENDORSEMENT INFORMATION (1) through (3) remain the same.

(4) Appropriate career and vocational/technical education areas acceptable for endorsement on the class 4 license include but are not limited to: ~~auto body, auto mechanics, building trades/construction, drafting/CAD, electronics, graphic arts, machine shop, metal working, power mechanics, welding, computer network administration, and health occupations~~ automotive technology, welding, auto body, industrial mechanics, small engines, heavy equipment operations, electronics, horticulture, agriculture mechanics, building trades, building maintenance, culinary arts, metals, drafting, computer information systems, graphic arts, aviation, health occupations, machining, and diesel mechanics.

(5) through (9) remain the same.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, 20-4-106, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend this rule to update the Class 4 endorsements. Representatives from accreditation, licensure, and the career and vocational/technical staff at OPI met to analyze the list of available endorsements for career and vocational/technical education. Since a comprehensive review of the endorsement areas had not been done for several years, it was discovered that some endorsements listed are antiquated and not aligned with current coursework available in our schools. Other endorsements are redundant or difficult to define in terms of the vocational needs of today.

The endorsement committee reviewed each endorsement currently available and suggested changes that align with school curriculum and the demands of business and industry. Unnecessary endorsements are proposed to be eliminated, similar endorsements collapsed into one endorsement, and current endorsements renamed to broaden the number of individuals that could be endorsed in one area.

10.57.606 REPORTING OF THE SURRENDER, DENIAL, REVOCATION OR SUSPENSION OF A LICENSE (1) remains the same.

(2) Upon receipt of a license surrendered pursuant to ARM ~~10.65.605~~ 10.57.605, the superintendent of public instruction shall report to the NASDTEC clearinghouse that the superintendent accepted the surrender of a license held by the teacher, specialist or administrator.

(3) through (6) remain the same.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-110, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend this rule to correct a typographical error.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on September 3, 2004.

5. Steve Meloy has been designated to preside over and conduct the hearing.

6. The Board of Public Education 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 educator licensure or other school related rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to smeloy@bpe.montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

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

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

Certified to the Secretary of State July 26, 2004.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption of New Rules I through XXXVII, pertaining to licensure, fees and regulation of barbers, cosmetologists, electrologists, estheticians and manicurists under the new Board of Barbers and Cosmetologists, and the proposed repeal of all the rules in Chapter 120, Board of Barbers, and Chapter 132, Board of Cosmetologists, and ARM 24.121.101, interim rule	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 30, 2004, at 9:00 a.m., a public hearing will be held in room 438, 301 South Park Avenue, Helena, Montana to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists no later than 5:00 p.m., August 23, 2004 to advise us of the nature of the accommodation needed. Please contact Royce Poe, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; or e-mail dlibsdcos@state.mt.us.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2003 Montana Legislature enacted Chapter 243, Laws of 2003 (House Bill 196), an act combining the former Board of Barbers and the former Board of Cosmetologists into the new Board of Barbers and Cosmetologists (Board). The bill was signed by the Governor on April 8, 2003, became effective on October 1, 2003, and is codified at Title 37, chapter 31, Montana Code Annotated (MCA).

The Board is now proposing the New Rules in order to timely implement the new legislation. The rules will function as guidelines for the conduct of Board business and the qualification, examination and registration of applicants to practice barbering, cosmetology, electrology, esthetics and manicuring, and applicants for booth rental licenses. The New Rules also address the regulation and instruction of students and schools within the Board's jurisdiction, and the general conduct of individuals and organizations affected by the legislation. The Board is also proposing to adopt rules related

to the sanitary operation of shops, salons and schools and the sanitary practices of licensed barbers, cosmetologists, electrologists, estheticians and manicurists.

The Board has been operating since October 2003 with interim rules. There is reasonable necessity to adopt the proposed New Rules to provide a single integrated set of rules applicable to the Board's licensees, and to repeal the interim rule which has been in place since October 2003. In addition, it is reasonable and necessary to repeal the rules of the former Board of Barbers and the Board of Cosmetologists in their entirety, as those rules are replaced by the proposed New Rules.

4. The Board proposes to adopt the following NEW RULES:

NEW RULE I BOARD ORGANIZATION (1) The board of barbers and cosmetologists adopts and incorporates the organizational rules of the department of labor and industry (department) as listed in chapter 1 of this title.

AUTH: 37-31-203, MCA
IMP: 2-4-201, MCA

NEW RULE II PROCEDURAL RULES (1) The board of barbers and cosmetologists adopts and incorporates the procedural rules of the department as listed in chapter 2 of this title.

AUTH: 37-31-203, MCA
IMP: 2-4-201, 37-31-203, MCA

NEW RULE III DEFINITIONS The following definitions shall apply as used in this chapter:

(1) "Blood spill kit" means a kit containing the equipment necessary to follow all of the blood spill procedures as required by [NEW RULE VI].

(2) "Booth rental" means an establishment or business attached to or within a licensed salon or shop that is operated independently by a licensed booth renter.

(3) "Booth renter" means an independent contractor who operates in a licensed salon or shop and is not an employee or owner of the salon or shop and abides by the requirements of 39-51-204, MCA.

(4) "Cadet" or "student" instructor means a licensee who is enrolled in a school for the teacher-training program.

(5) "Clean" means the absence of, or the removal of, soil, dirt, dust, hair or foreign material, by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.

(6) "Demonstration" means a planned educational instruction that illustrates and explains with examples the merits of products or services to one or more enrolled students. Members of the public may not be charged for any service performed in connection with a demonstration.

(7) "Dermabrasion" or "open dermabrasion" means the

surgical application of a wire or diamond frieze by a physician to abrade the skin, vaporizing from the epidermis and possibly down to the papillary layer of the dermis.

(8) "Dermaplane" means the use of a scalpel or sharp, bladed instrument by a physician to "shave" the upper layers of the epidermis.

(9) "Direct supervision" means the on-site physical presence of a supervisor in the clinic and basic areas of the school, where students perform educational activities and services requiring licensure, and includes communication, direction, observation and evaluation on a consistent basis.

(10) "Embellishment and beautification" means the improvement of an individual's appearance to meet the individual's need or desire through noninvasive procedures and practices.

(11) "Employee" means a person employed by a salon, shop or school and paid wages and/or commissions in accordance with federal, state and local regulations.

(12) "Exfoliation" means the sloughing off of nonliving (dead) skin cells by very superficial and noninvasive means.

(13) "Member of the public" means any person that is not enrolled as a student or employed as an instructor of the school in which the student is attending. Payment or compensation for services shall not be a consideration.

(14) "Microdermabrasion" means a gentle, progressive, very superficial mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system that utilizes aluminum oxide or corundum crystals as the abrasive material.

(15) "Noninvasive" means procedures confined to the nonliving cells of the epidermis, specifically the stratum corneum layer, and through which living cells are never altered, cut or damaged. At no time shall individuals licensed in this chapter perform services where the germinative or basal layers of the skin are compromised.

(16) "Patch test" or "predisposition test" means a test required by federal law under the Food and Drug Act, whereby a small amount of the chemical preparation is applied to the skin of the arm or behind the ear to determine possible allergies (hypersensitivity) of the client.

(17) "Sanitized", "sanitary" or "sanitation" means the absence of agents of infection, disease, or infestation by insects, vermin, soil, dust, dirt, hair or foreign material, or the removal of agents of infection, disease, or infestation by insects, vermin, soil, dust, dirt, hair or foreign material from items, implements, tools and surfaces.

(18) "Sterilization" means to completely destroy all living organisms on a surface.

(19) "Very superficial" means confined to the uppermost stratum corneum layer of the epidermis.

(20) "Working area" means the area of a salon, shop or school where students or licensees perform services upon clients or members of the public.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-103, 37-31-203, MCA

NEW RULE IV GENERAL REQUIREMENTS (1) Applicants for all licensure types shall submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation.

(2) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has 90 days in which to supply the remaining information or documents. If the application is not completed within 90 days, the application is rejected, and the applicant shall be required to submit a new application package and fees.

(3) All licensees, including salons, shops and schools, shall display all licenses conspicuously for members of the public to view. The address on the personal license may be covered.

(a) Booth renters shall display conspicuously at their working areas all current licenses and a clear legible sign, of at least six inches by three inches, stating that the booth/station is a booth rental and is rented by the booth renter.

(b) Booth renters shall clearly label all other areas of the salon or shop maintained by the renter, including but not limited to retail, roll-abouts, carts, and manicure tables.

(4) Licensees shall ensure that their correct name and current mailing address is on file with the board by notifying the board of changes in name or address in writing within 30 days, and including the licensee's name, profession and license number.

(5) Licenses must not be defaced or altered.

(6) Licensees shall immediately notify the board of lost, damaged or destroyed licenses and obtain a duplicate license by submitting a written request and appropriate fees to the board or through the board's website.

(7) All licensees practicing barbering, cosmetology, electrology, esthetics or manicuring shall provide a suitable place equipped to provide adequate services to clients, as specified in rule and subject to inspection by the department or board designee.

(8) Licensees seeking to offer mechanical exfoliation or microdermabrasion services shall obtain an endorsement by the board prior to practicing.

(a) To obtain an endorsement, licensees shall complete an additional 50 hours of continuing education in the field of microdermabrasion as follows:

(i) histology of the skin;
(ii) bacteriology;
(iii) client consultation and protection;
(iv) client pre-care and post-care;
(v) product knowledge;
(vi) theory of technical application of microdermabrasion;
(vii) sanitation and safety;
(viii) disposal of waste products; and

(ix) practical application and observation.

(b) A minimum of 50% of the required hours must be taught in theory.

(9) Licensees shall submit to the board a notarized copy of a certificate of completion of training for each machine or device to be used by the licensee. Each certificate must include:

(a) licensee name;

(b) date training was completed;

(c) number of hours of training;

(d) name of manufacturer; and

(e) model number of the machine.

(10) Licensees shall advise clients of the necessity for protection of the skin prior to and following an exfoliation procedure.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-309, 37-31-311, MCA

NEW RULE V VARIANCES (1) Upon application, the board may grant a variance from requirements of the safety and sanitation rules upon the board's determination that:

(a) strict compliance with the rules would be overly burdensome or impractical due to special conditions or cause;

(b) the public or private interest in the granting of a variance clearly outweighs the application of uniform rules; and

(c) alternative measures will provide adequate public health and safety protection.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE VI PREMISES AND GENERAL REQUIREMENTS (1) The premises of all salons, shops and schools must be kept clean, sanitary and in a safe condition at all times.

(2) No services connected with a salon, shop or school can be conducted in any room used as living or sleeping quarters.

(3) No other business can be conducted in a salon, shop or school, except those regulated by the board or related to the industries regulated by the board, unless separated by a full-length partition.

(4) If there is another salon, shop and school connected to a salon, shop or school, there must be a door between the establishments that must remain closed during business hours.

(5) Salons, shops and schools must provide direct entry into the salon, shop or school from a public access area.

(6) Furniture must be kept clean, sanitary and in a safe condition at all times.

(7) Animals are permitted on the premises of a salon or shop only as follows:

(a) Animals assisting individuals with disabilities must be accompanied as specified in 49-4-214, MCA.

(b) Dogs may be permitted on the premises at any time at

the discretion of the licensee, after the licensee:

(i) provides the board with proof of current rabies vaccination records for each dog on the premises, and makes such proof available to the board inspector;

(ii) provides the board with a certificate of insurance for liability insurance covering each dog on the premises and maintains a copy of the certificate on the premises; and

(iii) posts a legible sign at or near the entrance of the salon or shop indicating that there is a dog present on the premises.

(c) Fish are permitted in enclosed tanks or aquariums only.

(d) All other animals are prohibited on the premises of salons or shops at any time, unless the licensee has submitted a request for a variance that has been approved by the board as provided in rule.

(8) Food must not be prepared and sold or stored in a salon, shop, school or booth. Beverages that are prepared beyond the addition of water are prohibited. The following exceptions apply:

(a) food and non-alcoholic beverages that the licensee has for the licensee's own consumption;

(b) items dispensed from vending machines if the machines comply with federal, state and local laws; or

(c) if the salon, shop or school is licensed as a food purveyor in accordance and in compliance with all state and county regulations.

(9) Single service disposable drinking cups must be available for client use unless the salon, shop or school is licensed as a food purveyor as above.

(10) Alcoholic beverages are prohibited in a salon, shop or school, except where permitted in accordance with the state regulations of the department of revenue.

(11) If a blood spill should occur, the licensee, student or cadet instructor shall follow the blood spill procedure adopted by the national interstate council of state boards of cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

(12) The NIC blood spill procedure must be posted in all salons, shops and schools.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-311, MCA

NEW RULE VII FEES (1) Original and renewal license to practice $ 45

(2) Active instructor license 60

(3) Inactive instructor license 50

(4) Original and renewal school license 150

(5) Additional courses within a cosmetology school 50

(6) School/course inspection 150
(7) Original and renewal salon or shop license 50
(8) Salon or shop inspection 100
(9) Original and renewal booth rental license 40
(10) Late renewal penalty 75
(11) Out-of-state license by endorsement 45
(12) Duplicate license 15
(13) Student enrollment/re-enrollment 25
(14) Document 20

(15) Examination fees must be paid to the examination administration service as contracted by the board. If the board does not contract examination services, the fees must be paid to the board.

(16) All individual licenses must be renewed on a biennial basis and expire on December 31 of the renewal year.

(a) If the completed renewal application is postmarked after December 31, or after the first business day of the new year if December 31 is a Sunday, the licensee shall pay a late renewal fee in addition to the license renewal fee.

(17) All school licenses must be renewed on an annual basis and expire on December 31 of each year.

(a) If the completed school renewal application is postmarked after December 31, or after the first business day of the new year if December 31 is a Sunday, the licensee shall pay a late renewal fee in addition to the license renewal fee.

(18) All salon, shop and booth rental licenses must be renewed on an annual basis and expire on July 1 of each year.

(a) If the completed salon, shop or booth renewal application is postmarked after July 1, or after the first business day of the renewal year if July 1 is a Sunday, the licensee shall pay a late renewal fee in addition to the license renewal fee.

(19) Any portion of a year is considered a full year. Fees may not be prorated.

(20) Fees are nonrefundable.

AUTH: 37-1-131, 37-1-134, 37-31-203, MCA
IMP: 37-1-134, 37-31-302, 37-31-304, 37-31-305, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-31-323, MCA

REASON: Section 37-1-134, MCA, requires licensing boards to establish fees commensurate with costs. In the past, under the separate Board of Barbers and Board of Cosmetologists, several of the fees associated with barbers were higher than those for licensees under the Board of Cosmetologists. With the creation of the new Board of Barbers and Cosmetologists, the licensure fees for all types of licensees have been combined and simplified so that fees are not separated according to type of profession practiced. For example, all licensees will pay the same fee for original and renewal licensure to practice, regardless of the type of profession. As well, all individual practice licenses are renewable on a biennial basis and now renew on December 31. School licenses are annual licenses and renew on December 31. Licenses for salons, shops and booth

rentals are annual renewals also but renew on July 1. These changes have resulted in a much more simple and concise rule for all licensure fees.

FISCAL IMPACT: The fees proposed in New Rule VII are set at the same level as those set by the former Board of Cosmetologists at ARM 24.132.404, with the exception of the fee for out-of-state licensure by endorsement in (11). The Board determined that applications for endorsement licensure are processed in exactly the same manner as applications for licensure by examination. The fee is proposed at $45 instead of the former fee of $195. This change will affect an estimated 55 endorsement licensees each biennium and will result in a reduction in revenue of $8,250 biennially.

The Board bases its estimates on the number of licensees from the former Board of Barbers and the former Board of Cosmetologists for the last state fiscal year, 2004. Where there is an increase or decrease in the amount to be paid by a specific group of licensees or applicants, this fiscal impact estimate will specifically identify the class of individuals who will be so affected. All revenue estimates represent biennial amounts, except for salons, shops and schools, which renew on an annual basis.

Fee Category	Persons/ licenses	Amount	Revenue	Notes
Original/renewal	7,091	$ 45	$319,095	1
Active instructor	38	60	2,280	2
Inactive instructor	49	50	2,450	
School license	12	150	1,800	3
Additional courses	17	50	850	
School/course inspection	1	150	150	
Original/renewal salon or shop	1,492	50	74,600	4
Salon/shop inspection	60	100	6,000	
Booth rental	2,000	40	80,000	
Late renew penalty	300	75	22,500	
Endorsement	55	45	2,475	5
Duplicate license	72	15	1,080	6
Student enrollment	367	25	9,175	
Document charge	185	20	3,700	

Notes:
1. Reduction of $5 each for 617 barbers for a net decrease of $3,085.
2. Reduction of $40 each for 7 barbers for a net decrease of $280.
3. Reduction of $50 each for 0 barber schools for a net decrease of $0.
4. Reduction of $25 each for 262 barber shops for a net decrease of $6,550.

5. Reduction of $105 each for 0 barbers and $150 each for 55 cosmetologists, for a net decrease of $8,250.
6. Reduction in fees of $15 each for 62 cosmetologists and $10 each for 10 barbers, for a net decrease of $1,030.

Accordingly, the Board estimates that approximately 750 persons and 262 shops will recognize an aggregate decrease of approximately $19,195 per biennium with the fees proposed.

NEW RULE VIII APPLICATIONS FOR LICENSURE (1) Applicants for licenses to practice shall apply for licensure within five years of the applicant's graduation date from a licensed school.

(2) Applicants for licensure shall submit the following documentation:

(a) hour records showing the following hours completed:

(i) barbering - 1,500;

(ii) cosmetology - 2,000;

(iii) electrology - 600;

(iv) esthetics - 650; or

(v) manicuring - 350;

(b) a barbering, cosmetology, electrology, esthetics or manicuring school diploma;

(c) proof of high school graduation or equivalency;

(d) copy of a birth certificate or other verifiable evidence of applicant's birth date; and

(e) proof of passage of a board approved examination.

(3) In lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:

(a) certified copies of applicant's high school transcripts; and/or

(b) lists of courses completed, including:

(i) adult education courses;

(ii) postsecondary education courses; and

(iii) other experiences providing evidence to equivalency of a high school diploma.

(4) The board shall accept hours of instruction from schools located outside Montana towards fulfillment of the hour requirements for the various categories of licenses.

(5) Out-of-state student applicants shall meet the same requirements as in-state barbering, cosmetology, electrology, esthetics or manicuring students.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-303, 37-31-304, 37-31-308, 37-31-321, MCA

NEW RULE IX OUT-OF-STATE APPLICANTS (1) Applicants tested and licensed in states administering a board approved examination and having received a scaled score as required for licensure in Montana may qualify for licensure by endorsement.

(a) "Board approved" means the examination is written and administered by the national interstate council of state boards of cosmetology or any other nationally recognized examination.

(2) To qualify for licensure by endorsement, an out-of-

state barber shall submit an application including the following documentation:

(a) proof of completion of 1,500 hours of training in an approved school of barbering or barbering course;

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for barbers means 1,500 hours of formal training and successful completion of a board approved examination by a passing score set forth in rule. Applicants who have not completed 1,500 hours of formal training shall be required to pass the board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a barbering applicant's qualifications or credit for hours.

(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.

(b) copy of a birth certificate or other verifiable evidence of applicant’s birth date;

(c) proof of high school graduation or equivalency; and

(d) an original state board transcript or verification from each state in which the applicant holds or has held a license.

(3) To qualify for licensure by endorsement, an out-of-state cosmetologist shall submit an application including the following documentation:

(a) proof of completion of 2,000 hours of training in an approved school of cosmetology;

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for cosmetologists means 2,000 hours of formal training and successful completion of a board approved examination by a passing score set forth in rule. Applicants who have not completed 2,000 hours of formal training shall be required to pass the board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a cosmetologist applicant's qualifications or credit for hours.

(ii) The applicant shall be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.

(b) copy of a birth certificate or other verifiable evidence of applicant’s birth date;

(c) proof of high school graduation or equivalency; and

(d) a certified state board transcript or verification from each state in which the applicant holds or has held a license.

(4) To qualify for licensure by endorsement, an out-of-state electrologist shall submit an application including the following documentation:

(a) proof of completion of 600 hours of training in an approved school of electrology;

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for electrologists means 600 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants

who have not completed 600 hours of formal training shall be required to pass the board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an electrologist applicant's qualifications or credit for hours.

(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.

(b) copy of a birth certificate or other verifiable evidence of applicant’s birth date;

(c) proof of high school graduation or equivalency; and

(d) an original state board transcript or verification from each state in which the applicant holds or has held a license.

(5) To qualify for licensure by endorsement, an out-of-state esthetician shall submit an application including the following documentation:

(a) proof of completion of 650 hours of training in an approved school of esthetics or esthetics course;

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for estheticians means 650 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who have not completed 650 hours of formal training shall be required to pass the board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an esthetician applicant's qualifications or credit for hours.

(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.

(b) copy of a birth certificate or other verifiable evidence of applicant’s birth date;

(c) proof of high school graduation or equivalency; and

(d) an original state board transcript or verification from each state in which the applicant holds or has held a license.

(6) To qualify for licensure by endorsement, an out-of-state manicurist shall submit an application including the following documentation:

(a) proof of completion of 350 hours of training in an approved school of manicuring or manicuring course;

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for manicurists means 350 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who do not possess 350 hours of formal training shall successfully pass the board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a manicurist applicant’s qualifications or credit for hours.

(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.

(b) copy of a birth certificate or other verifiable

evidence of applicant's birth date;

(c) proof of high school graduation or equivalency; and

(d) an original state board transcript or verification from each state in which the applicant holds or has held a license.

(7) To qualify for licensure by endorsement, an out-of-state instructor shall submit an application including the following documentation:

(a) proof of completion of the applicable minimum hours of teacher training required under 37-31-305, MCA;

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for instructors means the minimum hours of formal teacher training specific to the applicant's area of instruction and successful completion of a board approved examination with a passing score set forth in rule. Applicants who have not completed either the applicable minimum hours of formal training or the work experience provisions of [NEW RULE XI] shall be required to pass the board approved examination as specified in rule.

(ii) Applicants shall be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.

(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;

(c) proof of high school graduation or equivalency; and

(d) an original state board transcript or verification from each state in which the applicant holds or has held a license.

(8) Out-of-state applicants whose licensure has lapsed and who are not currently licensed in another state shall:

(a) meet the requirements for licensure in the state of Montana;

(b) satisfy the statutes and rules of the board with regard to the formal training hour requirements; and

(c) pass a board approved examination in the field in which the training hours were received.

(9) Applicants from foreign countries shall be held to the same licensure requirements as out-of-state applicants. Applicants shall first receive board approval for the foreign hours of training in accordance with the established curriculum set forth in rule.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

NEW RULE X APPLICATION FOR SCHOOL LICENSURE (1) The board may give preliminary approval to applicants for school licensure before inspections are scheduled and conducted. If preliminary approval is denied, the applicant shall correct any deficiencies and resubmit the application. Failure to resubmit within 90 days shall be treated as a voluntary withdrawal of the application and the fees shall be forfeited.

(2) Applicants shall designate the type of school and which courses are to be offered as follows:

(a) barbering school;
(b) school of cosmetology, consisting of a cosmetology course and one or more of the following:
(i) barbering course;
(ii) esthetics course; or
(iii) manicuring course;
(c) school of electrology;
(d) school of esthetics;
(e) school of manicuring; or
(f) teacher training course.

(3) School applicants shall present a bond or other security in the amount of $5,000 and in a form and manner prescribed by the board.

(a) The bond or other security may only be used to provide a refund of prepaid tuition to enrolled students in the event the school ceases to operate or otherwise is unable to complete the course of instruction.

(b) Cosmetology schools offering courses in barbering, esthetics, and/or manicuring shall be required to post a single $5,000 bond or other security.

(4) Schools shall not allow the bond or other security to be cancelled or expire as long as the school is licensed and shall submit to the board proof of continuous annual renewal of the bond or other security in the form of a certificate of insurance.

(5) As part of the application, the school applicant shall submit a financial report prepared by a certified public accountant (CPA) indicating the financial solvency of the school.

(6) Schools shall provide true and accurate copies of all current school policies, procedures, rules, student contracts, tuition costs and required deposits, including but not limited to those policies, procedures and rules addressing:
(a) students;
(b) school operating standards;
(c) disciplinary procedures;
(d) permissible attire;
(e) ethics/conduct;
(f) leaves of absence;
(g) attendance;
(h) holidays and school closures;
(i) hours of operation;
(j) refunds;
(k) withdrawals;
(l) grounds for termination;
(m) grading standards;
(n) final practical examination and passing score;
(o) requirements for satisfactory progress;
(p) release of information; and
(q) instructional demonstrations.

(7) Schools shall be subject to unscheduled on-site inspections or audits by a designee directed by the board to determine:
(a) compliance with board statutes, rules, policies and

procedures; and/or

(b) adequacy of student files and required school documentation.

(8) As part of the inspection, investigation or audit process the board may use information found by or prepared for the department of education or national accrediting commission of cosmetology arts and sciences (NACCAS) reviews.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-302, 37-31-311, 37-31-312, 37-31-321, MCA

NEW RULE XI APPLICATION FOR INSTRUCTOR LICENSE

(1) Applicants for instructor's licenses shall submit the following documentation:

(a) Applicants having completed the applicable minimum hours of teacher training required under 37-31-305, MCA, shall submit:

(i) hour records showing the number of hours completed;

(ii) a diploma issued for a teacher course;

(iii) a copy of a birth certificate or other verifiable evidence of applicant's birth date;

(iv) proof of current Montana licensure in barbering, cosmetology, electrology, esthetics or manicuring, in good standing; and

(v) proof of passage of the board approved examination.

(b) Pursuant to 37-31-305, MCA, if the applicable hours of teacher training have not been obtained, the applicant may provide documented proof, such as employer/contractor affidavits and proof of income, i.e., W-2 or 1099 forms, verifying the applicant's three years of continuous full-time practice immediately prior to the application submission.

(2) Applicants having graduated from a teacher-training course administered by a licensed school with an approved teacher's training program shall apply for a license within five years of the applicant's graduation date.

(3) Pursuant to 37-31-305, MCA, "immediately" means the last day of employment as a barber, cosmetologist, electrologist, esthetician or manicurist being not more than 90 days prior to taking the teacher's examination and "continuous years" means full-time employment of not less than 32 hours per week.

(4) The board shall accept hours of instruction from out-of-state schools towards fulfillment of the hour requirements for licensure.

(5) Out-of-state student applicants shall meet the same requirements as in-state instructor students.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-302, 37-31-303, 37-31-305, 37-31-308, 37-31-321, MCA

NEW RULE XII LAPSED LICENSE (1) Pursuant to 37-1-141, MCA, if a license has lapsed for a period of up to, but no longer than, three years, the license may be renewed upon

payment of licensure fees plus late renewal fees for each year due.

(2) A completed lapsed license application must be submitted to the board with the appropriate fees.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-141, 37-31-322, MCA

NEW RULE XIII EXAMINATION REQUIREMENTS AND PROCESS

(1) Applicants sitting for the examination shall adhere to the standards and requirements for admission to the examination, including the payment of appropriate fees.

(2) Applicants shall obtain a scale score of at least 75% to pass the examination for licensure to practice or for an instructor's license.

(3) In addition to the requirements of 37-31-308, MCA, candidates who have taken the examination and failed shall apply to be re-examined and pay the necessary examination fees as required.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-304, 37-31-305, 37-31-308, 37-31-321, MCA

NEW RULE XIV INSPECTION - SCHOOL LAYOUT (1) School applicants shall be inspected by a designated inspector or a board designee before a license is issued.

(2) Schools shall maintain the following square footage:

(a) Barbering and cosmetology schools shall have floor space of at least 1,500 square feet for the first 25 students and 60 square feet for each additional student, including locker room and office space.

(b) Electrology schools shall have floor space of at least 1,000 square feet for the first 10 students and 60 square feet for each additional student, including locker room, office space and reception area.

(c) Esthetics schools shall have floor space of at least 900 square feet for the first 10 students and 90 square feet for each additional student, including locker room and office space.

(d) Manicuring schools shall have floor space of at least 450 square feet for the first 10 students and 45 square feet for each additional student, including locker room and office space.

(3) Schools shall be inspected at least once a year for compliance with board statutes and rules. Inspections must be conducted during the school's business hours as stated on the school application. The board administrator or board members may accompany inspectors on inspections.

(4) Schools shall maintain the most current inspection report and shall make it available upon request by the inspector or board designee.

(5) Schools shall address all inspection report violations and provide a detailed written response, including all corrective action taken, to the board office within 30 days of the inspection date.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, 37-31-312, MCA

NEW RULE XV SCHOOL REQUIREMENTS (1) Schools or courses licensed after April 1, 2001, shall provide a separate classroom, other than the clinic floor, for theory/basic classes.

(2) Schools shall provide a separate lunch/break room for students.

(3) Separate restrooms with sinks for male and female persons must be provided and shall include hot and cold running water connected to a sewer system.

(4) Schools shall have a mechanical ventilation or portable air purifier system that provides the total cubic square feet of the school with at least four air exchanges per hour. The ventilation system must operate continuously during business hours of the school. Doors and windows are not acceptable for the ventilation requirement.

(5) Schools shall display at the entrance a large legible sign with letters not less than two inches in size with the words "School of Barbering," "School of Cosmetology," "School of Electrology," "School of Esthetics" or "School of Manicuring" permanently affixed to the facility as to not be easily altered or removed by weather or individuals. Similar signs with the words "Student Work Only" shall be posted within each classroom and on the clinic floor.

(6) Barbering schools or cosmetology schools offering a separate barbering course shall provide the following equipment:

(a) one barber style chair and work station with mirror per student on the clinic floor;

(b) one serviceable school first aid kit;

(c) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and

(d) the following equipment shall be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) two shampoo bowls;

(ii) one stationary or rollabout portable hair dryer;

(iii) one hot lather machine; and

(iv) two covered wet sanitizers;

(e) one closed cabinet for clean linens;

(f) one covered soiled linen container;

(g) two covered garbage containers;

(h) one locker per two students;

(i) one protective covering per student;

(j) one current board law and rule book per student; and

(k) one barbering kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:

(i) a barbering textbook;

(ii) a barbering workbook;

(iii) two dozen assorted clips;
(iv) one blow dryer;
(v) one marcel curling iron;
(vi) six brushes;
(vii) one dozen styling combs;
(viii) six tail combs;
(ix) one dozen taper combs;
(x) six flat top combs;
(xi) two capes;
(xii) one water bottle;
(xiii) two pair of shears (one at least 7.5 inches);
(xiv) one straight razor and blades;
(xv) one styling razor with guard;
(xvi) one pair thinning shears;
(xvii) one electric clipper;
(xviii) one T-edger;
(xix) one tint bottle;
(xx) one color bowl and brush;
(xxi) one mannequin and holder;
(xxii) one box of rubber gloves;
(xxiii) one color drape for student; and
(xxiv) 30 dozen permanent rods of assorted sizes.

(7) Cosmetology schools shall provide the following equipment:

(a) one styling chair and work station with mirror per student on the clinic floor;

(b) one serviceable school first aid kit;

(c) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and

(d) the following equipment shall be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) two shampoo bowls;
(ii) two stationary or rollabout portable hair dryers;
(iii) two manicure tables; and
(iv) two covered wet sanitizers;

(e) one closed cabinet for clean linens;
(f) one facial chair;
(g) one covered soiled linen container;
(h) two covered garbage containers;
(i) one locker per two students;
(j) one protective covering per student;
(k) one current board law and rule book per student; and

(l) one cosmetology kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:

(i) a cosmetology textbook;
(ii) a cosmetology workbook;
(iii) a roller rack and rollers;
(iv) assorted single and double prong clips;
(v) one blow dryer;

(vi) one marcel curling iron;
(vii) one dozen brushes;
(viii) one dozen wave combs;
(ix) one dozen tail combs;
(x) two capes;
(xi) one water bottle;
(xii) one pair of shears;
(xiii) one razor;
(xiv) one cuticle pusher;
(xv) one cuticle nipper;
(xvi) two orange wood sticks;
(xvii) one tweezer;
(xviii) one file or assorted emery boards;
(xix) one manicure bowl and brush;
(xx) one acrylic nail brush;
(xxi) one tint bottle;
(xxii) one color bowl and brush;
(xxiii) 10 assorted duck bills;
(xxiv) one mannequin and holder;
(xxv) one pair of rubber gloves;
(xxvi) one color drape per student; and
(xxvii) 30 dozen permanent rods of assorted sizes.

(8) Electrology schools shall provide the following equipment:

(a) a practice workroom, including:
(i) one bead sterilizer; and
(ii) one sink, with hot and cold running water for hand washing;

(b) a minimum of two stations for the first three students enrolled, with one station added for each additional two students. Each station shall include:
(i) one epilator;
(ii) one table or chair for patron;
(iii) one stool, adjustable in height;
(iv) one illuminated magnifying lamp;
(v) one stand for placing instruments and sterilizers;
(vi) liquid sanitizer and an autoclave;
(vii) one dry container for sterile instruments;
(viii) one covered soiled linen container;
(ix) 15 pair of tweezers; and
(x) one covered garbage container;

(c) needles of various sizes per student upon completion of 50 hours of basic training; and

(d) one locker per two students.

(9) Only pre-sterilized, disposable needles may be used for electrolysis services on any individual in a licensed school, unless a properly installed, serviced and operated autoclave is utilized for sterilization of reusable needles.

(10) The clinical area of an electrology school must be divided into workstations that are enclosed by partitions or curtains. Each workstation must measure at least 10 feet by six feet in area.

(11) Esthetics schools or cosmetology schools offering a separate esthetics course shall provide the following equipment:

(a) one locker per two students;
(b) one sink for hand washing, not used for restroom facilities;
(c) one facial bed or chair;
(d) one magnifying lamp;
(e) one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp and woods lamp;
(f) one current board law and rule book per student;
(g) one serviceable school first aid kit;
(h) one fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority;
(i) the number of sinks, facial beds or chairs, and lamps must be increased by one for each additional five students (e.g., six to 10, 11 to 15, etc.);
(j) the following equipment shall be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:
(i) two covered wet sanitizers;
(ii) one covered soiled linen container; and
(iii) one covered garbage container; and
(k) one basic esthetics kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:
(i) esthetics textbook covering basic esthetics including manual, chemical and mechanical exfoliation;
(ii) esthetics text workbook;
(iii) protective covering;
(iv) spatulas;
(v) hair cover;
(vi) one client cape;
(vii) rubber gloves;
(viii) spray bottle;
(ix) disposal facial sponges;
(x) tweezers;
(xi) extractor;
(xii) fan brush;
(xiii) cosmetic brushes;
(xiv) basic skin care and makeup kit; and
(xv) sanitizing container.
(12) Manicuring schools or cosmetology schools offering a separate manicure course shall provide the following equipment:
(a) one locker per two students;
(b) one manicure table with chairs per student on the clinic floor;
(c) one current board law and rule book per student;
(d) one serviceable school first aid kit;
(e) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the

manufacturer or local authority;

(f) the following equipment shall be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) two covered wet sanitizers; and

(ii) one sink for hand washing, not used for restroom facilities;

(g) one closed cabinet for clean linens;

(h) one covered container for soiled linens;

(i) two covered waste containers;

(j) electric nail file and appropriate bits; and

(k) one manicuring kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:

(i) a manicuring textbook;

(ii) a manicuring workbook;

(iii) one protective covering;

(iv) one lap cover;

(v) rubber gloves;

(vi) a cuticle pusher;

(vii) emery boards;

(viii) a manicure brush;

(ix) a manicure bowl;

(x) acrylic nail brushes;

(xi) toenail and nail clippers;

(xii) acrylic nail clippers;

(xiii) toe separators;

(xiv) orange wood sticks;

(xv) cuticle nipper;

(xvi) a pedi-paddle;

(xvii) one two-ounce dispenser bottle and one four-ounce dispenser bottle;

(xviii) sanitizing container; and

(xix) dappen dishes.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

NEW RULE XVI SCHOOL OPERATING STANDARDS (1) Schools shall not advertise, enroll or admit students until properly licensed.

(2) Schools shall not use deceptive statements or false promises to induce students to enroll. All advertising must clearly disclose that the establishment is a school.

(3) School licenses are not transferable. Upon a change in ownership and/or location, schools shall submit a new school application accompanied by the appropriate fees.

(4) Schools shall submit student registrations to the board office within five working days of the first day of instruction.

(5) Schools shall adopt written policies and procedures.

(a) The policies and procedures must describe the following:

(i) areas of responsibility;

(ii) administrative lines of authority; and

(iii) school administration operating procedures.

(b) The policies must include provisions:

(i) allowing students access to their records;

(ii) requiring written requests for all information;

(iii) requiring student written consent for release of student records to third parties, unless required by law; and

(iv) requiring maintenance of records for no less than five years.

(6) Schools shall make available for student review:

(a) a copy of the student contract; and

(b) a complete and current copy of all school policies, procedures and rules.

(7) Schools shall maintain for not less than five years, and protect from loss, damage and tampering, a registration file on each student who attended the school. Each file must include:

(a) name, address and phone number;

(b) course of study;

(c) enrollment date;

(d) daily attendance records;

(e) academic records, including copies of written progress evaluations, signed by the student and the school designee;

(f) grades;

(g) final practical examination with scores;

(h) evaluations;

(i) breakdown of curriculum requirements and completion;

(j) disciplinary action;

(k) student counseling;

(l) original contracts;

(m) tuition costs;

(n) accepted transfer of hours from other schools;

(o) withdrawals; and

(p) leaves of absence.

(8) The school shall keep accurate, verifiable daily attendance records and shall track the number of hours received by each student within the course curriculum as set forth in rule.

(a) Schools may convert clock hours to credit hours using the conversation rate of 30 clock hours equaling one credit hour.

(9) Schools shall record student daily attendance records onto monthly hour sheets, either as provided by the board or using the school's own form, provided it contains the same information as the board's form.

(a) The monthly hour sheets must:

(i) be received in the board office on or before the 15th of each month;

(ii) accurately reflect attendance by all students; and

(iii) be available upon request of the inspector or designee.

(b) Clock hours must be verified by a time-keeping system sufficient to protect against tampering and capable of rounding attendance to the nearest quarter hour. Monthly hour

calculations shall be submitted to the board office in hours and minutes (000:00).

(10) Appropriately licensed instructors shall directly supervise students at all times on the school premises in the classroom and on the clinic floor. One instructor shall supervise no more than 25 cosmetology, barbering, esthetics or manicuring students, and no more than 10 electrology students, at any time.

(11) Instructors with inactive licenses shall not substitute teach for more than 10 days in any calendar year.

(12) Instructors shall wear name badges or insignia indicating they are instructors.

(13) Schools shall not allow instructors to practice on members of the public, unless solely for educational demonstration purposes to instruct students in a classroom setting, as defined in rule.

(14) Each student shall complete the following hours of basic training, prior to working or performing any services on members of the public, with or without compensation to the school:

(a) barbering students - 225 hours;

(b) cosmetology students - 300 hours;

(c) electrology students - 200 hours for facial services and 50 hours for other services;

(d) esthetics students - 150 hours; and

(e) manicuring students - 80 hours.

(15) Schools shall not call students out of class to perform services on members of the public.

(16) Schools shall not deduct or reduce hours earned by students as a form of disciplinary sanction or for any other reason.

(17) Upon completion by students of at least 90% of the required hours of a course of study in barbering, cosmetology, electrology, esthetics, manicuring, or instructing, and prior to graduating and receiving a diploma, the student shall take the school’s final practical examination. The final practical examination must include all components for evaluation as provided in [NEW RULE XVII] for each course of study. The final practical examination passing score shall be at least equal with the school's academic passing requirements.

(18) Schools shall send each student's final hour records to the board within five days of the student's completion of the applicable required hours of training and graduation.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

NEW RULE XVII SCHOOL CURRICULA (1) Barbering, cosmetology, electrology, esthetics, manicuring, and instructor students shall complete the course of study within five years of the student's original enrollment date.

(2) The required curriculum for barbering students is as follows:

(a) 1,125 hours of training, of which at least 150 hours

is in theory, distributed as follows:

(i) haircutting (including proper use of implements, e.g., shears, razor, clippers, thinning shears), 250 hours;

(ii) shampoo and scalp treatment, 60 hours;

(iii) skin care (including facial shaving, facials, massage, essential oils, facial masks), 60 hours;

(iv) hair styling (thermal and air styling, finger waving, hair pieces to include weaves and extensions), 170 hours;

(v) chemical waving, 250 hours;

(vi) chemical relaxing, 40 hours;

(vii) hair coloring and lightening, 170 hours;

(viii) bacteriology, sanitation and sterilization, safety, skin, hair and scalp anatomy, physiology, blood spill procedure, disease and disorders of hair and scalp, 85 hours;

(ix) state board laws, rules, and regulations, 20 hours; and

(x) business ethics and personal grooming, 20 hours.

(b) The remaining 375 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.

(c) An applicant who has completed 1,500 hours of barbering instruction or more and possesses a current barbering license, and enrolls in a course of cosmetology, shall receive 1,500 hours of credit towards the 2,000-hour requirement for a cosmetologist license.

(3) The required curriculum for cosmetology students is as follows:

(a) 1,500 hours of training, of which at least 200 hours is in theory, distributed as follows:

(i) manicuring, 130 hours, to include:

(A) manicures (including water, oil, hand and arm massage, paraffin wax treatments and polish);

(B) pedicures (including foot and ankle massage, paraffin wax treatments and polish);

(C) application of artificial nails (including sculptured, nail tips, nail wraps, fills, repairs, tip overlays, fiberglass, gel and acrylic);

(D) chemistry, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the nail; and

(E) the use of manicuring implements including the electric nail file;

(ii) esthetics, 150 hours, to include:

(A) skin care (including facials, cosmetics, makeup, massage, essential oils);

(B) skin exfoliation (including manual, chemical and mechanical exfoliation);

(C) waxing and tweezing; and

(D) chemistry, electricity, light therapy, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the skin;

(iii) shampoo (including scalp treatment), 55 hours;

(iv) chemical waving, 265 hours;

(v) chemical relaxing (ammonium thioglycolate, sodium

hydroxide methods), 40 hours;

(vi) hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, wet setting), 250 hours;

(vii) hair coloring and hair lightening, 225 hours;

(viii) hair cutting (including the proper uses of implements, e.g., shears, razor, clippers, thinning shears), 250 hours;

(ix) salon management, business methods, customer service, appointment book and professional ethics, 110 hours;

(x) current state board laws and rules, 40 hours; and

(xi) bacteriology, sanitation and sterilization, safety, anatomy, physiology, blood spill procedure, disease and disorders of hair and scalp, 75 hours.

(b) The remaining 500 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.

(c) An applicant who has completed 2,000 hours of cosmetology instruction and possesses a current cosmetology license shall complete an additional 125 hours in clipper cuts and 25 hours in shaving to qualify for barbering licensure.

(4) The required curriculum for electrology students includes 600 training hours as follows:

(a) 200 hours of technical instruction (demonstration, lecture, classroom participation or examination); and

(b) 400 hours of practical operations (the actual performance by the student of a complete service on another person) to include:

(i) a minimum of 30 hours of practical operations obtained in each of the following subjects:

(A) electrolysis;

(B) thermolysis; and

(C) the blend.

(ii) The remaining 310 hours of practical operations shall be at the discretion of the school, provided they are within the applicable curriculum.

(c) Technical instruction and practical operations shall be obtained within the following topics:

(i) causes of hair problems;

(ii) structure and dynamics of hair and skin;

(iii) practical analysis of hair and skin;

(iv) neurology and angiology;

(v) bacteriology and disinfection;

(vi) dermatology;

(vii) principles of electricity and equipment;

(viii) electrolysis;

(ix) thermolysis;

(x) the blend;

(xi) the needle;

(xii) general treatment procedure;

(xiii) treatment of specific areas;

(xiv) state board laws and rules; and

(xv) development of a practice.

(5) The required curriculum for esthetics students is as

follows:

(a) 490 hours of training, of which at least 65 hours is in theory, distributed as follows:

(i) bacteriology, sanitation and sterilization, safety, anatomy, physiology, blood spill procedure, disease and disorders of the skin, 55 hours;

(ii) electricity, chemistry, light therapy (including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit and lamps), 130 hours;

(iii) massage, skin care and makeup, cosmetics, facials, essential oils, 170 hours;

(iv) skin exfoliation (including manual, chemical and mechanical exfoliation), 50 hours;

(v) current state board laws and rules, 40 hours;

(vi) waxing (face, neck, hands and superfluous hair anywhere on the body, including tweezing), 15 hours; and

(vii) salon management, business methods, appointment book, customer service, professional ethics, 30 hours.

(b) The remaining 160 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(c) An applicant who has completed 650 hours of training or more and possesses a current esthetics license, and enrolls in a course of cosmetology, shall receive 650 hours of esthetics credit towards the 2,000-hour requirement for a cosmetologist license.

(6) The required curriculum for manicuring students includes 350 hours of training, of which at least 35 hours is in theory, distributed as follows:

(a) 265 hours of training, distributed as follows:

(i) salon management, business methods, customer service, appointment book, professional ethics, 20 hours;

(ii) bacteriology, sanitation and sterilization, safety, anatomy and physiology, diseases and disorders, 40 hours;

(iii) manicures (including water, oil, hand and arm massage, polish, paraffin wax treatments), 20 hours;

(iv) pedicures (including foot and ankle massage, polish, paraffin wax treatments), 15 hours;

(v) application of artificial nails, sculptured nails, nail tips, nail wraps, tip overlays, fills and repairs (including fiberglass, gel and acrylic), 110 hours;

(vi) the proper use of manicuring implements including the electric nail file, five hours;

(vii) manicure chemistry and nail care, 15 hours; and

(viii) current state board laws and rules, 40 hours.

(b) The remaining 85 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(c) Any applicant who has completed 350 hours of training or more, possesses a current manicurist license, and enrolls in a course of cosmetology will be granted 350 hours of credit towards the 2,000-hour requirement for a cosmetologist license.

(7) Students seeking licensure in a state other than Montana that requires additional hours of training, who do not

possess a Montana license, may remain enrolled in the school and be permitted to work on members of the public.

(8) The board shall not grant credit for hours earned by students for postsecondary education, under any circumstances.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-304, 37-31-305, 37-31-311, MCA

NEW RULE XVIII STUDENT WITHDRAWAL, TRANSFER (1) Students withdrawing from a school shall obtain a statement of good standing from the school in order for their hours to transfer. Schools shall provide a copy of the statement to the board within five days of the withdrawal.

(2) Upon the withdrawal of a student, schools shall submit to the board office a statement of total hours and grades within the required curriculum areas and the student's standing on a form prescribed by the board. The verification must set forth the hours of training in which the student was enrolled as provided in rule.

(3) Upon transfer between licensed schools and receipt of a statement of good standing and hour verification from the previous school(s), the new school shall grant full credit for all hours completed by the transferring student within five years of the student's original enrollment date.

(4) Schools shall not allow a student who re-enrolls to practice on members of the public until the school receives a verified transcript of the student's hours and grades within the required curriculum areas.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

NEW RULE XIX FIELD TRIPS (1) The board may grant credit for hours spent in alternative educational offerings under the following conditions:

(a) students shall be accompanied by an instructor from the school in which the student is enrolled;

(b) the alternative education must relate to the required curriculum specified in rule;

(c) names of attendees must be supplied on a form provided by the board; and

(d) attendance must be taken at the beginning and ending of each program segment and provided to the board.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-311, MCA

NEW RULE XX APPLICATIONS TO OFFER TEACHER-TRAINING COURSES (1) The teacher-training unit application must be completed on a form prescribed by the board and submitted with appropriate fees for approval.

(2) Student or cadet instructors shall not be registered or enrolled until the board has inspected and approved the teacher-training unit.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-305, 37-31-311, MCA

NEW RULE XXI INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) Schools licensed to offer teacher-training programs shall employ at least one full-time licensed instructor per student or cadet instructor on the premises of the school at all times during school hours.

(2) Instructors, student instructors, and cadet instructors shall wear badges or insignia indicating their appropriate instructor status.

(3) Student or cadet instructors shall be under the direct on-site supervision of a full-time licensed instructor while practice teaching and shall not be allowed to work on members of the public during their teacher-training program.

(4) Upon application by the student or cadet instructor enrolled in a licensed school of barbering, cosmetology, electrology, esthetics or manicuring, the board may grant credit for hours toward the teacher-training curriculum when the student or cadet instructor has completed, with not less than a "C" grade, a teacher-training course offered by an accredited postsecondary educational institution.

(5) All student or cadet instructors shall register with the board.

(6) Schools shall keep and maintain on the school's premises daily records of curriculum, attendance, and classes taught and practiced by the student or cadet instructor, until the applicant has become a licensed instructor.

(7) Upon completion by the student of at least 90% of the teacher-training course, and prior to graduation and issuance of a diploma, the school shall administer a final practical examination that must:

(a) include all components for evaluation as provided in [NEW RULE XXII]; and

(b) be consistent with the school's academic passing requirements.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-305, 37-31-311, MCA

NEW RULE XXII TEACHER-TRAINING CURRICULUM

(1) Cosmetology, esthetics and manicuring teacher-training courses shall consist of 650 hours and include the following:

(a) teaching methods - 325 hours, including:

(i) task analysis;

(ii) developing instructional objectives;

(iii) visual aids and their construction;

(iv) motivational tools;

(v) preparation of instructive materials;

(vi) lesson planning, including:

(A) practical theory classes; and

(B) practical demonstration classes;

(vii) fundamentals of speech and public speaking;

(viii) methods of test construction;
(ix) methods of evaluation or grading; and
(x) curriculum planning and development;
(b) general psychology - 100 hours, including:
(i) general principles in relation to teaching and counseling;
(ii) conflict resolution;
(iii) student counseling;
(iv) student and teacher relationships; and
(v) public relations;
(c) business methods - 100 hours, including:
(i) recruitment;
(ii) job analysis;
(iii) student registration and withdrawal forms and hours (tracking, completing, calculating and verifying);
(iv) ethical employee and employer relationship;
(v) salon/booth rental relationship; and
(vi) professional ethics;
(d) advanced theory of cosmetology, esthetics or manicuring, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, diseases and disorders that apply to each course - 75 hours; and
(e) current state board laws and rules - 50 hours.
(2) Barbering teacher-training courses shall consist of 500 hours and include the following:
(a) teaching methods - 250 hours, including:
(i) task analysis;
(ii) developing instructional objectives;
(iii) visual aids and their construction;
(iv) motivational tools;
(v) preparation of instructive materials;
(vi) lesson planning, including:
(A) practical theory classes; and
(B) practical demonstration classes;
(vii) fundamentals of speech and public speaking;
(viii) methods of test construction;
(ix) methods of evaluation or grading; and
(x) curriculum planning and development;
(b) general psychology - 70 hours, including:
(i) general principles in relation to teaching and counseling;
(ii) conflict resolution;
(iii) student counseling;
(iv) student and teacher relationships; and
(v) public relations;
(c) business methods - 70 hours, including:
(i) recruitment;
(ii) job analysis;
(iii) student registration and withdrawal forms and hours (tracking, completing, calculating and verifying);
(iv) ethical employee and employer relationship;
(v) salon/booth rental relationship; and
(vi) professional ethics;
(d) advanced theory of barbering, and the chemistry,

safety, sanitation, bacteriology, physiology, anatomy, diseases and disorders that apply to each course - 60 hours; and

(e) current state board laws and rules - 50 hours.

(3) Electrology teacher-training courses shall consist of 100 hours and include the following:

(a) teaching methods - 75 hours, including:

(i) task analysis;

(ii) developing instructional objectives;

(iii) visual aids and their construction;

(iv) motivational tools;

(v) preparation of instructive materials;

(vi) lesson planning, including:

(A) practical theory classes; and

(B) practical demonstration classes;

(vii) fundamentals of speech and public speaking;

(viii) methods of test construction;

(ix) methods of evaluation or grading; and

(x) curriculum planning and development;

(b) general psychology - five hours, including:

(i) general principles in relation to teaching and counseling;

(ii) conflict resolution;

(iii) student counseling;

(iv) student and teacher relationships; and

(v) public relations;

(c) business methods - five hours, including:

(i) recruitment;

(ii) job analysis;

(iii) student registration and withdrawal forms and hours (tracking, completing, calculating and verifying);

(iv) ethical employee and employer relationship;

(v) salon/booth rental relationship; and

(vi) professional ethics;

(d) advanced theory of electrology and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, diseases and disorders that apply to each course - five hours; and

(e) current state board laws and rules - 10 hours.

(4) When a student or cadet instructor has completed the required hours of teacher training, the school shall send the student's final hour records to the board within five days.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-305, 37-31-311, MCA

NEW RULE XXIII SALONS/BOOTH RENTAL (1) Mobile homes, moveable trailers and structures on skids are not considered fixed places of business.

(2) The board shall inspect and approve all salons, shops and booths.

(a) The most current inspection report must be made available to the inspector or designee upon request.

(b) Within 30 days of an inspection, the salon or shop owner, booth renter, or manager shall respond to all inspection report violations by submitting a detailed written response,

including any corrective action taken, to the board office.

(3) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan when filing a salon or shop application.

(4) Minimum requirements for a licensed salon or shop are as follows:

(a) at least one sink basin, appropriate for the practice, within the confines of the salon or shop. The sink basin must have hot and cold running water and be connected to an appropriate sewer system;

(b) one covered wet sanitizer of suitable size and depth and containing a sufficient amount of approved sanitizing agent for complete immersion of all implements, tools and equipment (uncovered cleansers and sanitizing agents may be used, provided the cleansing and sanitizing agent is changed after each use);

(c) one covered soiled linen container;

(d) one covered garbage container;

(e) one enclosed dust free cabinet for the storage of clean towels;

(i) towels to be used during the day may be removed from the cabinet at the beginning of the business day and stored on a shelf;

(ii) any towels not used during the course of the day shall be removed from the shelf, laundered and placed in the dust free cabinet; and

(f) a mechanical ventilation or air purifier system:

(i) providing the total cubic square feet of the salon or shop with at least four air changes per hour; and

(ii) operating continuously during business hours. Doors and windows are not acceptable for the ventilation requirement.

(5) In addition to the above requirements, electrology salons or shops shall have:

(a) either a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod or water jar, necessary for electrology treatments);

(b) needles in assorted sizes;

(i) only pre-sterilized, disposable needles may be used for electrolysis services on any individual in a licensed salon, unless a properly installed, serviced and operated autoclave is utilized for sterilization of reusable needles;

(c) covered containers for all lotions, soaps and cotton to be used on clients;

(d) four fine-pointed epilation forceps; and

(e) six draping sheets or towels.

(6) All residential salons and shops shall have:

(a) outside entrances with doors; and

(b) a separate restroom within the confines of the salon that is not available for the personal use of the residents.

(7) Salon and shop licenses are not transferable. Upon a change in ownership and/or location, the salon or shop shall submit a new salon or shop application accompanied by the appropriate fees.

(8) Salon or shop owners shall be responsible for safety

and sanitation in the salon or shop except sanitation and safety violations caused by the booth renter or taking place in the working area.

(9) It is the responsibility of the licensee to ensure that all personnel comply with the board's statutes and rules.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-302, 37-31-309, 37-31-312, MCA

NEW RULE XXIV PREMISES SANITATION (1) Carpeting is prohibited in the working areas, dispensaries and restrooms of all salons, shops and schools licensed on or after [the effective date of this rule].

(a) Salons, shops and schools licensed prior to [the effective date of this rule] shall use appropriate, nonabsorbent floor covering.

(b) Upon alteration or remodeling of any working areas, dispensaries and restrooms, carpeted flooring must be removed and replaced with appropriate, nonabsorbent floor covering.

(2) Floors, walls, ceilings, doors, windows, screens, entrances and receptacles, including those in the restrooms, must be maintained in a clean, sanitary and safe condition at all times.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXV LIGHTING (1) All areas must be adequately lighted and light fixtures must be kept clean.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-204, MCA

NEW RULE XXVI RESTROOMS (1) Every salon, shop and school must provide a restroom, including a hand washing basin.

(a) The restroom must be located within the new salon, shop or school. A restroom located in another part of the building that houses the salon, shop or school is not sufficient for the purpose of this rule.

(b) Following a change in ownership or location of an existing salon, shop or school, a restroom must be provided within the new salon, shop or school, or a variance requested from the board.

(c) In a residential salon or shop, clients shall not walk through any living area of the residence to access the restroom.

(2) Hand washing instructions directing individuals to wash their hands before returning to work must be posted in each restroom.

(3) A restroom must be completely enclosed by walls, door and ceilings.

(a) Restroom fixtures must be maintained in a clean, sanitary and safe condition at all times.

(4) If restrooms are used for storage, a closet or cabinet shall be provided and must be locked if used to store chemicals.

(5) All restrooms must have mechanical ventilation.

(6) Single service sanitary towels or a workable hot air blower is required.

(7) A soap dispenser containing liquid soap must be provided.

(8) A covered waste container must be provided.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXVII HAND WASHING FACILITIES (1) Every shop, salon and school must have a hand washing facility that is convenient to the work areas, but not located in a restroom.

(a) The hand washing facility must have hot and cold running water, and be connected to an approved sewer.

(b) A soap dispenser containing liquid soap must be provided.

(c) Single service towels or a workable hot air blower are required.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXVIII IMPLEMENTS, TOOLS, INSTRUMENTS, SUPPLIES AND EQUIPMENT (1) The board shall approve all new machines and devices used in the practice of barbering, cosmetology, electrology, esthetics or manicuring prior to the use of such machines and devices by licensees.

(2) All machines, devices, implements, tools and equipment, shelves, tables, sinks and other equipment used in connection with the operation of salon, shop or school must be:

(a) constructed to be easily cleaned; and

(b) clean, sanitary and in a safe condition at all times.

(3) Only electric file machines specifically manufactured for use in the nail industry are allowed be used in nail services. Modified craft or hobby tools are prohibited.

(a) Only bits specifically manufactured for use on the natural nail plate shall be used on the natural nail.

(b) Metal bits and disposable sanding bands made specifically for use on natural nail may be used in that manner and may be used on the acrylic surface covering the nail.

(4) Only microdermabrasion machines specifically manufactured for use in esthetics services and approved by the board are permitted. Modified or medical machines shall not be used.

(a) Microdermabrasion machines for use in esthetics services must be:

(i) closed systems only;

(ii) kept in a clean, sanitary and safe manner at all times; and

(iii) used only in accordance with specific manufacturer directions.

(5) Aluminum oxide crystals or manufacturer approved corundum used in microdermabrasion machines are:

(a) for single use purposes and shall:

(i) be discarded after each use in accordance with federal, state and local disposal regulations; and

(ii) have a granule size of at least 120.

(b) The board shall approve the use of abrasives, other than aluminum oxide crystals or approved corundum, prior to the use of such abrasives by licensees.

(6) Only single use plastic tips are allowed to be used in microdermabrasion machines and must be disposed of after each client.

(7) Microdermabrasion machines must be maintained and filters changed in accordance with OSHA and manufacturer requirements.

(8) The use of roller or roll-on waxing systems is prohibited.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXIX CLEANING AND SANITIZING TOOLS AND EQUIPMENT

(1) All tools, equipment and electrical instruments must be thoroughly cleaned and subjected to an approved sanitizing process before being reused. Cloth towels and other linens must be laundered before use. Single service items must be used only once and properly disposed of after use.

(2) A sink or container must be of appropriate size to hold all tools to be cleaned plus a detergent solution.

(a) After removing all hair from tools, the tools must be thoroughly washed in warm water and detergent solution in a clean sink or container.

(b) After washing, tools must be thoroughly rinsed in clean warm water.

(3) All tools and implements must be completely immersed in a board approved sanitizing agent of proper strength and for the necessary time period according to manufacturer instructions.

(a) Sanitizing containers must be large enough to completely cover all tools with sanitizing agent.

(b) Contact points of all nonimmersible equipment and metal implements must be cleaned with a detergent solution and wiped or sprayed with a board approved sanitizing agent.

(4) Sanitized implements and tools must be stored in a disinfected, dry, covered container and separated from used or soiled implements and tools.

(5) In addition to the above requirements, the following rules apply to the practice of electrology:

(a) Chair and table headrests must be covered with a single use towel for each patron.

(b) Before use, each electrolysis needle or tweezers must be first cleansed with warm water and soap, rinsed thoroughly and placed into an ultrasonic cleanser or chemical sterilant presoak, and then sterilized by one of the following methods:

(i) sterilizing packets with saturated steam, 15 PSI, and 250°F for 30 minutes; or

(ii) sterilizing packets with dry heat lab oven, 340°F for 60 minutes.

(c) Equipment for steam, dry heat and glass bead sterilization methods must be checked weekly for determining equipment to be in proper working order and reaching required temperature.

(6) Sanding bands used on electric file mandrels are for single use purposes and must be discarded after each use.

(7) Metal bits for electric files must be properly sanitized after each client.

(8) If a blood spill should occur, the licensee, student or cadet instructor shall follow the procedure adopted by the national interstate council of state boards of cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513 and must be posted in public view in the salon, shop or school.

(9) Paraffin treatments must be administered in a safe and sanitary manner by a single service or sanitized method of application to avoid cross contamination.

(10) Foot baths must be cleaned and sanitized after each use to include removal of all screens for cleaning and sanitizing. Tubing for airflow or water must be cleaned and sanitized.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXX SANITIZING AGENTS (1) Tools, equipment and implements used in barbering, cosmetology, electrology, esthetics or manicuring which:

(a) have come into contact with blood, bodily fluids and/or mucous membrane must be cleaned and disinfected, at a minimum, by complete immersion in an EPA-registered disinfectant that is:

(i) effective against HIV-1 and human hepatitis B virus and tuberculocidal; and

(ii) mixed and used according to the manufacturer's directions; and

(b) have not come in contact with blood, bodily fluids and/or mucous membrane, shall be disinfected by complete immersion in an EPA-registered, bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions.

(2) Detergent solutions, disinfectants and sanitizing agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.

(3) Alcohol used at 70% or higher strength may be used as a sanitizer with a minimum of 20 minutes contact time.

(4) Chlorine compounds, hypochlorited in liquid or powder form (household bleach), may be used as a sanitizing agent at 200 parts per million concentration with a five-minute contact

time.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXXI TOOL AND EQUIPMENT STORAGE AND HANDLING

(1) Soiled tools, equipment and implements must be stored separately from those sanitized.

(2) Separate and clean towels must be used for each client. Soiled towels must be kept in an appropriate container and laundered regularly.

(3) Sanitary neck strips or towels must be used to keep hair clippings and capes from contacting the client's neck, unless a freshly laundered cape is used for each client.

(4) Tools, instruments and other implements must not be placed onto garments or in garment pockets.

(5) Tools, instruments, equipment and implements dropped on the floor must be cleaned and sanitized before reuse.

(6) Single service disposable drinking cups must be available for client use unless the establishment is licensed as a food purveyor by the department of public health and human services in accordance and compliance with all state and county regulations.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXXII SALON PREPARATION STORAGE AND HANDLING

(1) All salon and shop preparations must be:

(a) stored, handled and applied to protect against contamination; and

(b) dispensed from containers to prevent contamination of the unused portion, either by use of pump, spray, or single-service spatulas.

(2) Use of the following items is prohibited:

(a) pumice stones;

(b) natural sponges;

(c) styptic pencils or lump alum;

(d) methyl methacrylate monomers for artificial nails; and

(e) for chemical exfoliation:

(i) phenol;

(ii) resorcinol;

(iii) trichloroacetic acid (TCA); and

(iv) jessner's solution.

(3) Liquid or powder astringent must be stored and applied with a separate clean sterilized gauze or cotton pad.

(4) All acids for use in chemical exfoliation must be used in concentrations of 30% or less, a pH level of not less than 3.0 and shall be applied in a manner and for a duration as recommended by the manufacturer.

(5) Only commercially available products may be used for chemical exfoliation purposes. The mixing or combining of skin exfoliation products or services is strictly prohibited.

(6) When using bulk products poured into another or

smaller storage container, the new storage container must be labeled with the same product name, ingredients and warnings as the original container.

(7) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets and any tools that invade the skin or living cells are prohibited.

(8) The use of laser energy, as prescribed in ARM 24.156.501, as "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation", constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXXIII WASTE DISPOSAL (1) Waste must be disposed of in easily cleanable, leak proof, plastic lined, nonabsorbent containers with lids.

(a) Waste containers must be kept clean and sanitary and plastic lined at all times.

(b) Plastic liners must be tightly secured and double bagged if necessary upon removal from the premises to prevent spillage of waste contents.

(c) Waste must be removed frequently to prevent overflow.

(2) Liquid waste must be disposed of in a public sewer or by a method conforming to state and local requirements and meeting with the approval of the health officer or sanitarian. Discharge of any liquid waste on the ground surface or in any other exposed manner is strictly prohibited.

(3) Chemical waste must be disposed of in accordance with manufacturer's directions and federal, state and local regulations.

(4) Hair clippings must be swept after each client.

(5) Materials, chemicals, tools or implements shall be disposed of in accordance with current OSHA hazard communication standards.

(6) Aluminum oxide crystals or approved corundum crystals must be disposed of in accordance with federal, state and local regulations.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXXIV PERSONAL HYGIENE (1) Licensees and students shall keep their hands and fingernails clean, and wear clean, professional attire. Shoes shall be worn at all times.

(2) Licensees and students shall thoroughly wash their hands:

(a) prior to starting work;

(b) during work hours as often as necessary to remove soil and contamination; and

(c) immediately after using the restroom.

(3) The use of an instant, waterless, antibacterial hand

sanitizer may be used in place of hand washing before and after servicing each client, but does not void the requirement in (1).

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXXV DISEASE CONTROL (1) A licensee or student shall not be required to provide services to a client while the licensee, student or client has an infectious, contagious, or a communicable disease or condition that has been epidemiologically demonstrated to be transmitted through casual contact.

(2) A licensee or student having an infectious, contagious or communicable disease or condition, epidemiologically demonstrated to be transmitted through casual contact, shall take all reasonable and necessary steps to avoid transmitting such disease or condition to clients and coworkers.

(3) A licensee or student with a discharging or infected sore on any exposed portion of the body shall be excluded from salons, shops or schools while such sore is present, unless the sore is adequately covered to prevent transmission of the infection.

(4) If a licensee or student detects that a client has pediculosis capitis (head lice), the licensee or student shall refuse to provide service and may provide necessary information and/or products for home self-treatment.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE XXXVI CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) Active instructors shall complete 30 hours of continuing education per renewal period to maintain active status licensure.

(2) The board shall approve each continuing education course before credits are granted to any licensee for such course.

(3) Continuing education courses must be germane to the practice of barbering, cosmetology, electrology, esthetics, manicuring or instructing.

(4) Requests for approval of continuing education courses must be submitted on a form prescribed by the board and including the following information:

(a) course dates;
(b) course location;
(c) course instructor and credentials of the instructor;
(d) a detailed course syllabus/outline;
(e) number of credits requested; and
(f) method of verifying attendance.

(5) A maximum of 10 of the required 30 credits per renewal period may be obtained at trade shows where products are being promoted.

(6) At renewal, licensees shall submit either certified statements, certificates or affidavits showing dates and hours

as proof of continuing education attendance.

(7) Continuing education courses must be completed prior to applying for renewal of an active instructor license.

(8) To activate an inactive instructor license, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to activating the license. Licensees shall also be required to complete an additional 30 hours of continuing education before the December 31 renewal date.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA
IMP: 37-1-306, MCA

NEW RULE XXXVII UNPROFESSIONAL CONDUCT (1) For the purpose of implementing Title 37, chapter 1, MCA, and in addition to the provisions of 37-1-316, MCA, the board defines unprofessional conduct as follows:

(a) failing of a licensee to comply with any statute or rule under the board's jurisdiction;

(b) attempting to procure a license under the board's jurisdiction by fraud or deception;

(c) breaching a contract with a client, student, salon or shop owner, booth renter, employee or employer, if established as a final judgment in a court of law;

(d) failing to cooperate with an inspection or investigation conducted by the department on behalf of the board;

(e) knowingly submitting false records or documents to the board or the department;

(f) violating any final order of the board;

(g) impersonating a licensee or representing oneself as a licensee for which one has no current license;

(h) using the traditional symbol known as the "barber pole", or any likeness thereof, in any manner that may lead the public to believe either that barbering was being practiced in, or that a licensed barber was employed by, a salon or shop that does not employ barbers;

(i) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading (does not apply to any filing of complaint or providing information to the board when done in good faith);

(j) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 1 or 31, MCA, or any rule promulgated thereunder, or any order of the board;

(k) being convicted of a misdemeanor or any felony involving the use, consumption or self-administration of any dangerous drug, controlled substances or alcoholic beverage or any combination of such substances;

(l) using any dangerous drug or controlled substance illegally or alcohol while providing services regulated under this chapter;

(m) acting in such a manner as to present a danger to

public health or safety, or to any client including, but not limited to, incompetence, negligence or malpractice;

(n) maintaining an unsanitary or unsafe salon, shop, booth or school or practicing under unsanitary or unsafe conditions;

(o) performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure unless such services are not licensed or inspected by the state of Montana;

(p) failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees or students practicing under the licensee's supervision or control, according to generally accepted standards of practice;

(q) failing to provide the board with a response to a request or inquiry;

(r) damaging, destroying or attempting to destroy property or equipment of a licensee or a member of the public in a salon, shop, booth or school;

(s) intentionally misrepresenting an individual's type of licensure;

(t) advertising or otherwise implying that the licensee is providing treatment, healing, correcting or diagnosing any medical condition; and/or

(u) aiding or abetting unlicensed practice by intentionally or unintentionally encouraging, assisting or failing to prevent the commission of unlicensed practice.

(2) Unprofessional conduct is subject to discipline by the board.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA
IMP: 37-1-136, 37-1-137, 37-31-301, 37-31-331, MCA

5. The rules proposed for repeal are as follows:

24.120.101 BOARD ORGANIZATION found at ARM page 24-9009.
AUTH: 37-30-203, MCA
IMP: 2-4-201, MCA

24.120.201 PROCEDURAL RULES found at ARM page 24-9011.
AUTH: 37-30-203, MCA
IMP: 2-4-201, MCA

24.120.202 CITIZEN PARTICIPATION RULES found at ARM page 24-9011.
AUTH: 37-30-203, MCA
IMP: 2-3-103, MCA

24.120.401 FEE SCHEDULE found at ARM page 24-9031.
AUTH: 37-1-134, 37-30-203, MCA
IMP: 37-1-134, 37-30-303, 37-30-307, 37-30-310, 37-30-402, 37-30-404, 37-30-423, MCA

24.120.402 GENERAL REQUIREMENTS found at ARM page 24-9032.
AUTH: 37-30-203, 37-30-422, MCA

IMP: 37-30-422, MCA

24.120.403 COMPLIANCE WITH APPLICABLE REGULATIONS found at page 24-9033.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.404 INSPECTIONS found at ARM page 24-9033.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-403, 37-30-423, MCA

24.120.601 EXAMINATION found at ARM page 24-9061.
AUTH: 37-1-131, 37-30-203, MCA
IMP: 37-30-203, 37-30-303, 37-30-305, 37-30-311, MCA

24.120.602 APPLICATION REQUIREMENTS found at ARM page 24-9067.
AUTH: 37-30-203, MCA
IMP: 37-30-203, MCA

24.120.603 OUT-OF-STATE APPLICATION found at ARM page 24-9068.
AUTH: 37-1-131, 37-30-203, MCA
IMP: 37-1-303, 37-1-304, MCA

24.120.607 TEMPORARY PRACTICE PERMIT found at ARM page 24-9093.
AUTH: 37-1-319, MCA
IMP: 37-1-305, 37-1-319, MCA

24.120.608 REPLACEMENT LICENSES found at ARM page 24-9093.
AUTH: 37-30-203, MCA
IMP: 37-30-203, MCA

24.120.609 POSTING OF LICENSES found at ARM page 24-9093.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.801 SCHOOL REQUIREMENTS found at ARM page 24-9115.
AUTH: 37-1-131, 37-30-203, MCA
IMP: 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, MCA

24.120.802 INSTRUCTOR TRAINING REQUIREMENTS found at ARM page 24-9117.
AUTH: 37-1-131, 37-30-203, MCA
IMP: 37-30-311, MCA

24.120.1001 TOILET FACILITIES found at ARM page 24-9159.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1002 SINK AND BASIN REQUIREMENTS found at ARM page 24-9160.

AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1003 TOWELS AND LINENS found at ARM page 24-9160.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1010 ARTICLES AND SUBSTANCES IN CONTACT WITH A CLIENT found at ARM page 24-9255.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1011 WASTE MATERIAL found at ARM page 24-9255.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1012 CHEMICAL USE, STORAGE AND DISPOSAL found at ARM page 24-9256.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1013 SERVING CLIENTS found at ARM page 24-9273.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1014 DISINFECTING REQUIREMENTS AND STANDARDS found at ARM page 24-9273.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.1015 VARIANCES found at ARM page 24-9274.
AUTH: 37-30-203, 37-30-422, MCA
IMP: 37-30-422, MCA

24.120.2301 UNPROFESSIONAL CONDUCT found at ARM page 24-9435.
AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, MCA

24.121.101 INTERIM RULE found at ARM page 24-9439.
AUTH: 37-31-203, MCA
IMP: 37-1-131, 37-31-203, MCA

24.132.101 BOARD ORGANIZATION found at ARM page 24-11009.
AUTH: 37-31-203, MCA
IMP: 2-4-201, MCA

24.132.201 PROCEDURAL RULES found at ARM page 24-11011.
AUTH: 37-31-203, MCA
IMP: 2-4-201, MCA

24.132.202 CITIZEN PARTICIPATION found at ARM page 24-11011.
AUTH: 37-31-203, MCA

IMP: 2-3-103, MCA

24.132.301 DEFINITIONS found at ARM page 24-11013.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-203, MCA

24.132.401 GENERAL REQUIREMENTS found at ARM page 24-11017.
AUTH: 37-31-203, 37-32-201, MCA
IMP: 37-31-101, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-311, 37-31-331, 37-32-201, 37-32-306, MCA

24.132.402 VARIANCES found at ARM page 24-11018.
AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-311, 37-31-312, MCA

24.132.403 PREMISES AND GENERAL REQUIREMENTS found at ARM page 24-11018.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.404 FEES - INITIAL, RENEWAL, LATE RENEWAL AND REFUND FEES found at ARM page 24-11021.
AUTH: 37-1-134, 37-31-203, 37-31-323, 37-32-201, MCA
IMP: 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-309, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, MCA

24.132.501 APPLICATION FOR SCHOOL LICENSE found at ARM page 24-11035.
AUTH: 37-31-203, 37-31-204, 37-31-302, 37-32-201, MCA
IMP: 37-31-203, 37-31-204, 37-31-311, 37-32-304, MCA

24.132.502 APPLICATION FOR INSTRUCTOR'S LICENSE found at ARM page 24-11037.
AUTH: 37-31-203, MCA
IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, 37-31-321, MCA

24.132.503 APPLICATIONS FOR LICENSE - COSMETOLOGIST, MANICURIST, ESTHETICIAN found at ARM page 24-11038.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-303, 37-31-304, 37-31-308, 37-31-321, MCA

24.132.504 APPLICATION - OUT-OF-STATE COSEMTOLOGISTS, MANICURISTS, ESTHETICIANS found at ARM page 24-11040.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-308, MCA

24.132.505 DUPLICATE LICENSES found at ARM page 24-11042.
AUTH: 37-31-203, MCA
IMP: 37-31-323, MCA

24.132.506 LAPSED LICENSE found at ARM page 24-11043.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-131, 37-1-141, 37-31-322, MCA

24.132.511 EXAMINATION REQUIREMENTS AND PROCESS found at ARM page 24-11051.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-304, 37-1-319, 37-31-304, 37-31-305, 37-31-308, 37-31-321, MCA

24.132.701 SCHOOLS - APPLICATION found at ARM page 24-11071.
AUTH: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
IMP: 37-32-201, 37-32-302, 37-32-304, MCA

24.132.702 SCHOOL REQUIREMENTS found at ARM page 24-11072.
AUTH: 37-1-131, 37-32-201, 37-32-304, 37-32-305, 37-32-306, MCA
IMP: 37-32-302, 37-32-304, MCA

24.132.703 ELECTROLOGY LICENSE APPLICATION AND EXAMINATION PROCESS found at ARM page 24-11074.
AUTH: 37-1-131, 37-32-201, 37-32-302, MCA
IMP: 37-32-201, 37-32-302, 37-32-304, MCA

24.132.709 INSPECTION AND EQUIPMENT found at ARM page 24-11085.
AUTH: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
IMP: 37-32-302, 37-32-304, MCA

24.132.710 INSTRUCTOR QUALIFICATIONS found at ARM page 24-11086.
AUTH: 37-32-201, MCA
IMP: 37-32-301, MCA

24.132.711 STUDENT OR CADET INSTRUCTOR REGISTRATION found at ARM page 24-11086.
AUTH: 37-1-131, 37-32-201, 37-32-302, MCA
IMP: 37-32-201, 37-32-302, MCA

24.132.712 CURRICULUM - ELECTROLOGY STUDENTS found at ARM page 24-11086.
AUTH: 37-1-131, 37-32-201, 37-32-302, MCA
IMP: 37-32-301, 37-32-302, MCA

24.132.713 SALON found at ARM page 24-11088.
AUTH: 37-1-131, 37-32-201, 37-32-306, MCA
IMP: 37-32-304, 37-32-306, 37-32-331, MCA

24.132.901 FLOORS found at ARM page 24-11111.
AUTH: 37-32-201, MCA
IMP: 37-32-201, 37-32-304, MCA

24.132.902 WALLS AND CEILINGS found at ARM page 24-11111.
AUTH: 37-32-201, MCA
IMP: 37-32-304, MCA

24.132.903 LIGHTING found at ARM page 24-11111.
AUTH: 37-32-201, MCA
IMP: 37-32-201, 37-32-304, MCA

24.132.904 REST ROOM FACILITIES found at ARM page 24-11111.
AUTH: 37-1-131, 37-32-201, MCA
IMP: 37-32-201, 37-32-304, 37-32-306, MCA

24.132.905 HANDWASHING FACILITIES found at ARM page 24-11112.
AUTH: 37-1-131, 37-32-201, 37-32-306, MCA
IMP: 37-32-201, 37-32-304, 37-32-306, MCA

24.132.911 CONSTRUCTION, CLEANING AND SANITIZING TOOLS AND EQUIPMENT found at ARM page 24-11121.
AUTH: 37-1-131, 37-32-201, 37-32-304, MCA
IMP: 37-32-201, 37-32-304, MCA

24.132.912 DISPOSAL OF WASTE found at ARM page 24-11122.
AUTH: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
IMP: 37-32-201, 37-32-304, 37-32-306, MCA

24.132.913 PERSONAL HYGIENE found at ARM page 24-11122.
AUTH: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
IMP: 37-32-201, 37-32-304, 37-32-306, MCA

24.132.914 PREMISES found at ARM page 24-11123.
AUTH: 37-1-131, 37-32-201, MCA
IMP: 37-32-301, 37-32-304, 37-32-306, MCA

24.132.915 DISEASE CONTROL found at ARM page 24-11123.
AUTH: 37-32-201, MCA
IMP: 37-32-304, MCA

24.132.1101 INSPECTION - SCHOOL LAYOUT found at ARM page 24-11161.
AUTH: 37-31-203, 37-31-311, MCA
IMP: 37-31-311, 37-31-312, MCA

24.132.1102 SCHOOL OPERATING STANDARDS found at ARM page 24-11167.
AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-301, 37-31-304, 37-31-311, 37-31-312, MCA

24.132.1103 SUBSTITUTE INSTRUCTOR found at ARM page 24-11170.
AUTH: 37-1-131, 37-31-203, 37-31-322, MCA
IMP: 37-31-311, 37-31-322, MCA

24.132.1104 CURRICULUM - COSMETOLOGY, MANICURING AND ESTHETICS STUDENTS found at ARM page 24-11171.
AUTH: 37-31-203, MCA

IMP: 37-31-304, 37-31-311, MCA

24.132.1105 STUDENT REGISTRATION found at ARM page 24-11175.
AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-304, 37-31-311, 37-31-312, 37-31-323, MCA

24.132.1111 TRANSFER POLICIES - RECRUITMENT - FIELD TRIPS found at ARM page 24-11191.
AUTH: 37-31-203, MCA
IMP: 37-31-311, 37-31-312, MCA

24.132.1112 INSTRUCTIONAL SPACE AND FACILITIES found at ARM page 24-11191.
AUTH: 37-31-203, MCA
IMP: 37-31-311, 37-31-312, MCA

24.132.1113 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGY, MANICURING, ESTHETICS found at ARM page 24-11192.
AUTH: 37-31-203, MCA
IMP: 37-31-311, MCA

24.132.1114 FIVE-YEAR COMPLETION REQUIREMENT found at ARM page 24-11192.
AUTH: 37-31-203, MCA
IMP: 37-31-304, 37-31-305, 37-31-311, MCA

24.132.1115 EDUCATION EXCEPTION found at ARM page 24-11193.
AUTH: 37-31-203, MCA
IMP: 37-31-304, MCA

24.132.1301 APPLICATIONS FOR AUTHORITY TO OFFER TEACHER-TRAINING COURSES found at ARM page 24-11221.
AUTH: 37-31-203, MCA
IMP: 37-31-305, 37-31-311, MCA

24.132.1302 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS found at ARM page 24-11221.
AUTH: 37-31-203, MCA
IMP: 37-31-305, 37-31-311, 37-31-312, MCA

24.132.1303 TEACHER TRAINING EQUIPMENT found at ARM page 24-11222.
AUTH: 37-31-203, MCA
IMP: 37-31-305, 37-31-311, 37-31-312, MCA

24.132.1304 CURRICULUM - TEACHER-TRAINING UNITS found at ARM page 24-11223.
AUTH: 37-31-203, MCA
IMP: 37-31-305, 37-31-311, MCA

24.132.1501 SALONS/BOOTH RENTAL - COSMETOLOGY, MANICURING OR ESTHETICS found at ARM page 24-11241.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-301, 37-31-302, 37-31-312, MCA

24.132.1502 BOOTH RENTAL LICENSES - APPLICATIONS found at ARM page 24-11243.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-203, 37-31-301, 37-31-302, MCA

24.132.1503 RESPONSIBILITY OF SALON OWNER found at ARM page 24-11244.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-203, 37-31-302, MCA

24.132.1701 SANITATION FOR FACILITIES found at ARM page 24-11261.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1702 LIGHTING found at ARM page 24-11261.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1703 RESTROOM FACILITIES found at ARM page 24-11262.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1704 WATER SUPPLY found at ARM page 24-11262.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1705 HANDWASHING FACILITIES found at ARM page 24-11263.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1706 IMPLEMENTS, TOOLS, INSTRUMENTS, SUPPLIES AND EQUIPMENT found at ARM page 24-11263.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1716 CLEANING AND SANITIZING TOOLS AND EQUIPMENT found at ARM page 24-11291.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1717 SANITIZING AGENTS found at ARM page 24-11292.
AUTH: 37-31-203, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1718 STORAGE AND HANDLING OF TOOLS AND EQUIPMENT found at ARM page 24-11293.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1719 STORAGE AND HANDLING OF SALON PREPARATIONS found at ARM page 24-11294.
AUTH: 37-31-203, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1720 DISPOSAL OF WASTE - SEWAGE found at ARM page 24-11295.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1721 PERSONAL HYGIENE OF PERSONNEL found at ARM page 24-11296.
AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-331, MCA

24.132.1722 DISEASE CONTROL found at ARM page 24-11297.
AUTH: 37-31-203, MCA
IMP: 37-31-204, 37-31-331, 37-31-332, MCA

24.132.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS found at ARM page 24-11321.
AUTH: 37-1-131, 37-1-306, 37-1-319, 37-31-203, MCA
IMP: 37-1-306, 37-31-322, MCA

24.132.2301 UNPROFESSIONAL CONDUCT found at ARM page 24-11331.
AUTH: 37-1-136, 37-1-137, MCA
IMP: 37-1-136, 37-1-137, MCA

24.132.2302 AIDING AND ABETTING UNLICENSED PRACTICE found at ARM page 24-11333.
AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-316, MCA

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 Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2335, or by e-mail to dlibsdcos@state.mt.us and must be received no later than 5:00 p.m., September 8, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/cos, 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 do not excuse late submission of comments.

8. The Board of Barbers and Cosmetologists 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 that 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 Barbers and Cosmetologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdcos@state.mt.us or made by completing a request form at any rules hearing held by the Department.

9. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

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

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, CHAIR

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State July 26, 2004

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of amendment of ARM 36.23.101 Purpose; 36.23.102 Definitions; 36.23.104 Use of the State Revolving Fund; 36.23.106 Application; 36.23.107 Evaluation of Projects and Applications; 36.23.110 General Obligation Bonds; 36.23.111 Revenue Bonds; 36.23.112 Special Improvement Districts; 36.23.113 Loans to Disadvantaged Municipalities; 36.23.114 Other Types of Bonds or Additional Security or Covenants for Municipalities; 36.23.116 Covenants Regarding Facilities Financed by Loans; 36.23.117 Fees; 36.23.118 Evaluation of Financial Matters and Commitment Agreement; 36.23.119 Requirements for Disbursing of Loan; and 36.23.120 Terms of Loan and Bonds	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On September 23, 2004, the Montana Department of Natural Resources and Conservation proposes to amend the above-stated rules all related to the implementation of the Drinking Water State Revolving Fund Act.

2. The Department of Natural Resources and Conservation 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 agency no later than 5:00 p.m. on September 1, 2004, to advise us of the nature of the accommodation that you need. Please contact Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; e-mail annam@state.mt.us.

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

<u>36.23.101 PURPOSE</u> (1) The purpose of this ~~chapter~~ <u>subchapter</u> is to implement the provisions of the Drinking

Water State Revolving Fund Act pursuant to Title 75, chapter 6, part 2, MCA; and the Federal Safe Drinking Water Act, 42 USC 300f to 42 USC 300j-26, inclusive, as amended to January 1, 1997.

(2) through (5) remain the same.

(6) The department of environmental quality may adopt rules ~~or amend existing rules~~ to implement the program.

(7) The act authorizes the use of the state revolving fund to make loans to community water systems and nonprofit community water systems and to provide financial and technical assistance to any public water system as part of a capacity development strategy.

(8) The department proposes rules to implement the making of loans to community water systems and nonprofit noncommunity water systems from the state revolving fund. The act further authorizes the state revolving fund to be used to purchase insurance for or to guarantee obligations issued by municipalities. The department reserves the right to adopt rules to implement a guarantee and insurance component of the program if it determines it is necessary or desirable.

AUTH: 75-6-205 and 75-6-232, MCA
IMP: 75-6-221, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes and have consistency between the Act and these rules in referring to the state revolving fund.

36.23.102 DEFINITIONS In this ~~chapter~~ subchapter, the following terms have the meanings indicated below and certain of the terms are supplemental to the definitions contained in Title 75, chapter 6, parts 1 and 2, MCA; sections 300f through 300j-26 of the Federal Safe Drinking Water Act, 42 USC, as amended, and ARM 17.38.101, et seq. and 17.38.201, et seq. Terms used but not defined herein have the meanings prescribed in ARM 17.38.101, et seq. and 17.38.201, et seq. or the indenture of trust. (Definitions (2), (16), ~~(19),~~ (23), (28), (29), (30), (33), (35), (36), (40), (41), (42), (43) and ~~(47)~~ (52) are statutory definitions.)

(1) through (8) remain the same.

(9) "Borrower resolution" means a resolution of a municipality authorizing the issuance of bonds and establishing the terms and conditions and providing security ~~therefore~~ therefor.

(10) through (26) remain the same.

(27) "Indenture of trust" means the indenture of trust between the board of examiners and a trustee establishing and implementing the program, establishing certain terms and conditions for the sale and issuance of the state's bonds to fund the program, providing for the application of the proceeds of the state's bonds and the repayments of the state's bonds and establishing the funds and accounts for the program as amended or supplemented from time to time.

(28) remains the same.

(29) "Intended use plan" means the annual plan adopted by the department of environmental quality and submitted to the EPA that describes how the state intends to use the money in the state revolving fund.

(30) "Loan" means a loan of money from the state revolving fund for project costs.

(31) and (32) remain the same.

(33) "Municipality" ~~means a state agency, city, town, or other public body created pursuant to state law or an Indian tribe~~ has the meaning set forth in 75-6-202, MCA.

(34) through (36) remain the same.

(37) "Origination fee" means ~~the fee imposed on borrowers to pay a proportionate share of costs of issuing the state's bonds to fund the program, as adjusted from time to time as may be required by the department~~ a fee in an amount equal to a percentage of the committed amount of the loan, as specified by the department, payable by the borrower at closing to the department either from proceeds of the loan or other funds of the borrower.

(38) through (40) remain the same.

(41) "Program" means the drinking water state revolving fund program established by ~~Title 75, chapter 6, part 2, MCA~~ the act.

(42) and (43) remain the same.

(44) "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of a bond as set forth in the commitment agreement, which amount shall be the ~~lesser of~~:

(a) maximum annual debt service on the bond in the then current or any future fiscal year during the term of the bond; or

(b) if other bonds payable from the revenues of the system are then outstanding, the maximum aggregate annual debt service on all outstanding bonds and the additional bond proposed to be issued in the then current or any future fiscal year during the term of the outstanding bonds and the additional bond proposed to be issued.

~~(a) 10% of the principal amount of the bond; or~~

~~(b) maximum annual debt service on the bond in the then current or any future fiscal year.~~

(45) "Revenue" means revenues (gross or net) received by the municipality from or in connection with the operation of the system or project.

(46) remains the same.

~~(47) "Revolving fund" means the drinking water state revolving fund established by 75-6-211, MCA.~~

(48) through (51) remain the same, but are renumbered (47) through (50).

~~(52)~~ (51) "State bonds" means the state's general obligation drinking water state revolving fund program bonds.

~~(53)~~ (52) "State revolving fund" means the drinking water state revolving fund established by 75-6-211, MCA.

(54) and (55) remain the same, but are renumbered (53) and (54).

AUTH: 75-6-205, MCA
IMP: 75-6-202, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes, to provide consistency between the Act and these rules in referring to the state revolving fund, and to amend definitions to clarify the meanings of certain terms and phrases to assure that these terms are interpreted properly and are used in the context intended by the department.

36.23.104 USE OF THE STATE REVOLVING FUND (1) The program must be administered in accordance with the act and the federal act and these rules. To the extent of any conflict therein, the act and the federal act take precedence over the rules.

(2) Money in the state revolving fund may be used, subject to limitations and compliance in any fiscal year with the intended use plan, to:

(a) and (b) remain the same.

(c) leverage the total amount of state revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the state revolving fund.

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

(5) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of (3)(c)(i) apply to the system. ~~[With the exception of (1), this rule repeats statutory language.]~~

AUTH: 75-6-205, MCA
IMP: 75-6-212, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes and have consistency between the Act and these rules in referring to the state revolving fund.

36.23.106 APPLICATION (1) through (2)(g) remain the same.

(h) any other information that the department or the department of environmental quality may require. ~~[With the exception of the phrase "after consultation with the department of environmental quality," this rule repeats statutory language.]~~

AUTH: 75-6-205, MCA

IMP: 75-6-223, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes.

36.23.107 EVALUATION OF PROJECTS AND APPLICATIONS

(1) The department ~~and the department~~ of environmental quality shall evaluate projects and the department shall evaluate loan applications. In evaluating projects and applications, the following factors must be considered:

(a) through (f) remain the same.

(g) the total amount of loan funds available for financial assistance in the state revolving fund;

(h) through (j) remain the same.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes and to clarify the distinct roles of the department of environmental quality and the department of natural resources and conservation.

36.23.110 GENERAL OBLIGATION BONDS (1) remains the same.

(2) The department may accept general obligation bonds issued by county water and sewer districts upon the following terms:

(a) all statutory requirements for the issuance of such bonds shall have been met prior to the issuance of the bonds; and

(b) remains the same.

AUTH: 75-6-205, MCA
IMP: 75-6-222, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes.

36.23.111 REVENUE BONDS (1) through (1)(b) remain the same.

(c) the municipality shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve, and to produce net revenues during each fiscal year not less than 125% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year, or, if the municipality calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year;

(d) the municipality shall agree not to incur any additional debt payable from the revenues of the system,

unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued, or, if the municipality calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year.

(i) For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the municipality, except that if the rates and charges for service provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the municipality estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued.

(ii) In no event may any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the municipality is in default in any of the other provisions;

(e) remains the same.

(i) if requested by the department, audited financial statements of the system for the last two completed fiscal years;

(ii) if requested by the department, a certificate as to the municipality's current population and number of system users, a schedule of the 10 largest users of the system showing the percentage of total revenues provided by such ~~user~~ users and the amount of outstanding system debt;

(iii) through (vi) remain the same.

(vii) any other information deemed necessary by the department to assess the feasibility of the project and the financial security of the bonds;

~~(A)~~ (f) notwithstanding the fact that the municipal revenue bond act does not require that the issuance of revenue bonds be approved by the voters, the department may require the municipality to conduct an election to evidence community support and acceptance of the project or require the bonds be authorized by the electors and issued as general obligation bonds in accordance with 7-7-4202, MCA. A municipality shall conduct an election to evidence community support and acceptance of the project when in the opinion of the department there are projected large rate increases due to the improved facility or the facility is a projected high-cost facility.

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

(c) the district shall covenant that it will cause taxes to be levied to meet the district's obligation on any bond issued to the department in the event that the revenues of the system are inadequate ~~therefore~~ therefor in accordance with the provisions of 7-13-2302 through 7-13-2310, MCA;

(d) remains the same.

(e) the district shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve and to produce net revenues during each fiscal year not less than ~~110%~~ 120% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year, or, if the district calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year;

(f) remains the same.

(g) the district shall agree not to incur any additional debt payable from the revenues of the system without the written consent of the department, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least ~~110%~~ 120% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued, or, if the district calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year.

(i) For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the district, except that if the rates and charges for services provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the district estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued.

(ii) In no event shall any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the district is in default in any of the other provisions;

(h) remains the same.

(i) if requested by the department, financial statements of the system for the last two completed fiscal years if there is an existing system (the department in its discretion may

require that at least one year's financial statement be audited);

(ii) through (v) remain the same.

AUTH: 75-6-205, MCA
IMP: 75-6-222, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes, to clarify the ability of a municipality to calculate debt service, to change certain percentages, and to clarify the discretion of the department to request certain information.

36.23.112 SPECIAL IMPROVEMENT DISTRICTS (1) through (1)(a) remain the same.

(b) the city or county agrees to maintain a state revolving fund as authorized by 7-12-2181 through 7-12-2186 and 7-12-4221 through 7-12-4225, MCA~~,~~ (respectively, the state revolving fund statutes)~~,~~ and covenants to secure the bonds by such state revolving fund and agrees to provide funds for the state revolving fund by levying such tax or making such loan from the general fund as authorized by the state revolving fund statutes;

(c) five percent of the principal amount of the loan be deposited into the state revolving fund and the city or county shall agree to maintain in the state revolving fund to the extent allowed by law~~,~~ an amount not less than 5% of the principal of the bonds secured by the state revolving fund. The department may, if the financial risks associated with a proposed district warrant it, as a condition to the purchase of such bond, require the city or county to establish a district reserve fund and fund it from the proceeds of the loan, as permitted by law;

(d) the special improvement district be at least 75% developed, except if the loan is for the purpose of acquiring an existing system. For purposes of this rule, a district will be deemed to be 75% developed if 75% of the lots or assessable area in the district has a habitable residential dwelling thereon that is currently occupied or there is a commercial, professional, manufacturing, industrial, or other ~~non-residential~~ nonresidential facility thereon;

(e) and (f) remain the same.

AUTH: 75-6-205, MCA
IMP: 75-6-222, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes, to provide consistency between the Act and these rules in referring to the state revolving fund, and to provide an exception from the 75% developed rule on existing systems.

36.23.113 LOANS TO DISADVANTAGED MUNICIPALITIES

(1) ~~The department may provide additional subsidies to disadvantaged municipalities in the form of interest rates below that set for other borrowers under the program. A municipality is considered economically disadvantaged when its combined monthly water and wastewater system rates are greater than or equal to 2.2% of the municipality's median household income (MHI), as defined by United States bureau of census. If the municipality has only a water system, the percentage is 1.4% of the municipality's MHI. If a municipality is determined to be a disadvantaged municipality, the department will waive the loan loss surcharge which will result in a lower annual rate on interest on the loan. The amount of subsidies available to disadvantaged municipalities is set annually in the intended use plan. The awarding of subsidies to disadvantaged municipalities will be allocated on a first come, first served basis. The value of subsidies provided for disadvantaged municipalities during a federal fiscal year may not exceed 20% of the annual capitalization grant for that year~~ Based on a consideration of socioeconomic factors and measures of financial condition, and in accordance with the provisions of the intended use plan, the department may agree not to impose the loan loss surcharge on the borrowers.

(2) remains the same.

AUTH: 75-6-205, MCA
IMP: 75-6-224 and 75-6-226, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to clarify the discretion of the department to agree not to impose a loan loss surcharge.

36.23.114 OTHER TYPES OF BONDS OR ADDITIONAL SECURITY OR COVENANTS FOR MUNICIPALITIES (1) If a municipality wishes to secure a loan by a type of bond not specifically authorized in these rules, the department may accept the bond if the bond is duly authorized and issued in accordance with Montana law as evidenced by an opinion of bond counsel to that effect and the department determines that the terms and conditions of the bond, including the security ~~therefore~~ therefor, are adequate. The department may impose upon the municipality wishing to issue such bonds such terms, conditions, and covenants consistent with the provisions of the law authorizing the issuance of such bonds that it deems necessary to make the bonds creditworthy and thus protect the viability of the program.

AUTH: 75-6-205, MCA
IMP: 75-6-212 and 75-6-223, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to reflect editorial changes.

36.23.116 COVENANTS REGARDING FACILITIES FINANCED BY LOANS (1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the bond resolution ~~or loan agreement~~ of the municipality, forms of which are available from the department, and may include the requirements and covenants set forth herein. The bond resolution ~~or loan agreement~~ should be consulted for more specific detail as to each of these covenants. Given that a loan agreement cannot be reduced to general form, no such general form exists, and would need to be developed for each proposed loan under the program for the benefit of a private person.

(2) through (5) remain the same.

(6) The borrower at all times shall acquire and maintain with respect to the system property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by state law, against such risks and in such amounts, and with such deductible provisions, as are customary in the state in the case of entities of the same size and type as the borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance.

(a) All such insurance policies shall name the department as an additional insured, unless the department expressly agrees otherwise.

(b) Each policy must provide that it cannot be canceled by the insurer without giving the borrower and the department 30 days' prior written notice.

(c) The borrower shall give the department prompt notice of each insurance policy it obtains or maintains to comply with this rule and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. The notice shall specifically note any adverse change as being an adverse change.

(7) remains the same.

(8) The borrower that is a municipality agrees that it will comply with the provisions of the Montana Single Audit Act, Title 2, chapter 7, part 5, MCA, and to the extent not required by the Single Audit Act ~~to also~~, a borrower, whether a municipality or a private person, agrees that it will provide for each fiscal year to the department and the department of environmental quality, promptly when available:

(a) through (14) remain the same.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

Reason: There is a reasonable necessity for amendment of this rule in order to clarify covenant requirements concerning bond resolutions, clarify the department's discretion to require

that the department be a named insurer, and clarify compliance with the Single Audit Act.

36.23.117 FEES (1) The following fees and charges are established and imposed for participation in the state revolving fund program.

(a) remains the same.

(b) An administrative fee up to 1% of the amount of the ~~committed~~ maximum authorized principal amount of the loan as reflected in the bond resolution or loan agreement must be charged each borrower, unless excepted from this requirement by the department.

(i) The department shall retain the administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund ~~administration~~ administrative account as provided in the indenture of trust.

(ii) The department and department of environmental quality may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) Each borrower shall be charged an administrative expense surcharge on its loan equal to .75% per annum on the outstanding principal amount of the loan, as such percentage may be adjusted pursuant to this subsection, payable on the same dates that payment of principal and interest on the loan are due.

(i) The department and department of environmental quality may determine and establish from time to time~~,~~ the precise amount of the administrative expense surcharge to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(ii) The ~~administration~~ administrative expense surcharge must be deposited in the special administrative costs account as provided in the indenture of trust.

(d) Each borrower shall be charged an origination fee up to 1% of the amount of the commitment loan that must be charged to each borrower, unless excepted from this requirement by the department. Each borrower's origination fee shall be paid at closing by the retention by the department of such amount from the proceeds of the loans or from the funds of the borrower.

(i) The department ~~and department of environmental quality~~ may determine, establish and revise from time to time~~,~~ the precise amount of the ~~administrative~~ origination fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(e) All borrowers, unless meeting the requirements of a disadvantaged municipality and awarded a subsidy by the department, shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, as such percentage may be adjusted as set forth in this subsection, payable on the same dates that payments of principal and interest are paid.

(i) The loan loss surcharge must be deposited in the loan loss reserve account established in the indenture of trust until the loan loss reserve requirement as defined in the indenture is satisfied at which point it can be deposited in the state allocation account or to such other fund or account in the state treasury authorized by state law as a department of environmental quality or department representative shall designate, or segregated in a separate subaccount in the loan loss reserve account and applied to any costs of activities under the program authorized by state law as a department of environmental quality or department representative shall designate.

(ii) The department and department of environmental quality may determine and establish from time to time~~,~~ the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account.

(iii) The borrower shall repay the following items:

(A) the loan at an interest rate determined in accordance with ARM ~~36.24.110,~~ 36.23.120;

(B) plus the loan loss reserve surcharge plus the administrative expense surcharge.

(iv) The borrower shall propose rates and charges for all water services necessary to repay the above items.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

REASON: There is reasonable necessity for amendment of this rule in order to provide consistency between the Act and these rules in referring to the state revolving fund, and to clarify the discretion in the department to except the payment of fees, and to adjust percentages in accordance with the guidelines in the rule.

36.23.118 EVALUATION OF FINANCIAL MATTERS AND COMMITMENT AGREMMENT (1) remains the same.

(2) Upon approval of the application, if the borrower is a municipality, the department may require the municipality, upon approval by its governing body, to enter into a commitment agreement in the form provided by the department with the department, pursuant to which the municipality agrees to adopt the bond resolution and issue the bond described therein, and to pay its origination fee in the event the municipality elects not to issue its bond, unless excepted from the requirement to pay the origination fee by the department.

(3) Upon approval of the application, if the borrower is a private person, the department may require the private person, upon approval by the appropriate person or entity, to enter into a commitment agreement in the form provided by the department with the department, pursuant to which the private person agrees to adopt the loan agreement and issue the bond described therein, and to pay its origination fee in the event

the private person elects not to issue its bond, unless excepted from the requirement to pay the origination fee by the department.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

REASON: There is reasonable necessity for amendment of this rule in order to clarify the discretion in the department to except the payment of origination fees.

36.23.119 REQUIREMENTS FOR DISBURSING OF LOAN

(1) Loans will be disbursed by warrants drawn by the department of administration or wire transfers authorized by the state treasurer or the department in accordance with the provisions of this rule, and the indenture of trust. No disbursement of any loan shall be made unless the department has received from the borrower~~,~~ the following:

(a) through (d) remain the same.

(e) in the case of a borrower who is a private person, an opinion of bond counsel to the department that the note and loan agreement are valid and binding obligations of the private ~~party~~ person payable in accordance with ~~its~~ their terms and that the making of the loan will not cause any bonds issued as tax-exempt bonds by the state to finance the program to become taxable;

(f) remains the same.

(g) if all or part of a loan is being made to refinance a project or reimburse the borrower for the costs of a project paid prior to the closing, evidence satisfactory to the department and the bond counsel:

(i) that the acquisition or construction of the project was begun no earlier than ~~March 7, 1985~~ July 1, 1993;

(ii) through (n) remain the same.

(o) payment of the administrative fee and the origination fee, unless excepted from these requirements by the department.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect editorial changes, to provide for the authorization of wire transfers by the department, and to clarify the discretion in the department to except the payment of administrative fees and origination fees.

36.23.120 TERMS OF LOAN AND BONDS (1) The source of funding of the loans under this program initially will be ~~83.33%~~ 80% from the EPA and ~~16.67%~~ 20% from the proceeds of the state's bonds, but may be adjusted from time to time if required or permitted by the federal act, the act, and applicable program documents. The interest rate on the loan will be determined by the department at the time the loan is

made. The rate on a loan must be such that the interest payments thereon and on other loans funded from the proceeds of the state's bonds will be sufficient, if paid timely and in full, with other available funds in the state revolving fund including investment income, from which the loan was funded to pay the principal of and interest on the state's bonds issued by the state.

(2) remains the same.

(3) Unless the department otherwise agrees, each loan shall be payable, including principal and interest thereon and the administrative expense surcharge and loan loss reserve surcharge, if any, over a term approved by the department, not to exceed 20 years after the completion date of a project, or such longer period as may then be permissible under the federal act or the act, provided that the department may allow a disadvantaged municipality to repay its loan over a term not to exceed 30 years, provided that the term of the loan does not exceed the expected design life of the project being financed. In no case shall the term of a loan exceed the useful life of the project being financed.

(a) Interest, administrative expense surcharge and loan loss reserve surcharge, if any, payments on each disbursement of each loan or portion thereof which is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 45 days prior to the next following interest payment date).

(b) For construction loans, the department may permit principal amortization to be delayed until as late as one year after completion of the project, provided that the payment of interest on each disbursement of a construction loan shall begin no later than 45 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 15 days prior to the next following interest payment date) unless the state has provided for the payment of interest on its bonds by capitalizing interest.

(c) In any event, the payment of interest must commence no later than the payment of principal.

(4) remains the same.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

REASON: There is reasonable necessity for amendment of this rule in order to clarify the source of funding, and to clarify the term in which payments are to be made.

4. Concerned persons may submit their data, views or arguments in writing to Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-

2074; FAX (406) 444-2684; or e-mail to annam@state.mt.us and must be received no later than 5:00 p.m. on September 7, 2004.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mail to annam@state.mt.us.

6. If the agency receives request 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 greater than 25 based on the issuance of 6 municipal loans in 2003 impacting in excess of 10,000 municipal residents.

7. An electronic copy of this Notice of Proposed Amendment is available through the department’s site on the World Wide Web at http://www.dnrc.state.mt.us. 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.

8. The agency 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 conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Bud Clinch
ARTHUR R. CLINCH
Director

By: /s/ Tim Hall
Tim Hall
Rule Reviewer

Certified to the Secretary of State July 26, 2004.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of amendment of ARM 36.24.102 Definitions and Construction of Rules; 36.24.107 Fees; 36.24.108 Evaluation of Financial Matters and Commitment Agreement; and 36.24.109 Requirements for Disbursing of Loan	))))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On September 23, 2004, the Department of Natural Resources and Conservation proposes to amend the above-stated rules all related to the implementation of the Wastewater Revolving Fund Act.

2. The Department of Natural Resources and Conservation 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 agency no later than 5:00 p.m. on September 1, 2004, to advise us of the nature of the accommodation that you need. Please contact Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mail annam@state.mt.us.

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

36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES In this ~~sub-chapter~~ subchapter, the following terms have the meanings indicated below and, in certain cases, are supplemental to the definitions contained in Title 75, chapter 5, part 11, MCA, sections 601 through 607 of the Federal Water Pollution Control Act, 33 U~~.~~S~~.~~C~~.~~ 1251 through 1387, as amended, and ARM 17.40.302. Terms used but not defined ~~herein~~ have the meanings prescribed in ARM 17.40.302 or the indenture of trust. Any conflict between this ~~sub-chapter~~ subchapter and the indenture of trust shall be resolved in favor of the indenture of trust.

(1) through (32) remain the same.

(33) "Origination fee" means ~~the fee imposed on borrowers to pay a proportionate share of costs of issuing the state's bonds to fund the program, as adjusted from time to time as may be required~~ a fee in an amount equal to a percentage of the committed amount of the loan, as specified by the department, payable by the borrower at closing to the

department either from proceeds of the loan or other funds of the borrower.

(34) through (54) remain the same.

AUTH: 75-5-1105, MCA
IMP: 75-5-1102, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect editorial changes and to clarify what constitutes the fee and how it may be paid by the borrower.

36.24.107 FEES (1) and (1)(a) remain the same.

(b) An administrative fee up to 1% of the amount of the maximum authorized principal amount of the loan as reflected in the bond resolution or loan agreement must be charged each borrower, unless excepted from this requirement by the department. The department shall retain the administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund ~~administration~~ administrative account as provided in the indenture of trust. The department and department of environmental quality may determine and establish from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) Each borrower shall be charged an administrative expense surcharge on its loan equal to .75% per annum on the outstanding principal amount of the loan, as such percentage may be adjusted pursuant to this subsection, payable on the same dates that payment of principal and interest on the loan are due. The department and department of environmental quality may determine and establish from time to time, the precise amount of the administrative expense surcharge to be charged, based on the projected costs of administering the program and other revenues available to pay such costs. The ~~administration~~ administrative expense surcharge must be deposited in the special administrative costs account as provided in the indenture of trust.

(d) Each borrower's origination fee shall be paid at closing by the retention by the department of such amount from the proceeds of the loans or from proceeds of the borrower, unless excepted from this requirement by the department.

(e) All borrowers, unless excepted from the requirement by the department, shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, as such percentage may be adjusted as set forth in this subsection, payable on the same dates that payments of principal and interest on the loan are due. The loan loss reserve surcharge must be deposited in the loan loss reserve account established in the indenture of trust until the loan loss reserve requirement as defined in the bond resolution or loan agreement is satisfied. At this point it can be deposited in the state allocation account or to such other fund or account in the state treasury authorized by state law

as a department of environmental quality or department representative shall designate, or segregated in a separate ~~sub-account~~ subaccount in the loan loss reserve account and applied to any costs of activities under the program authorized by state law as a department of environmental quality or department representative shall designate. The department and department of environmental quality may determine and establish from time to time~~,~~ the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account.

(i) The borrower shall repay the loan at an interest rate determined in accordance with ARM 36.24.110, plus the loan loss reserve surcharge plus the administrative expense surcharge. The borrower shall propose rates and charges for all wastewater services necessary to repay the above items. The department and the department of environmental quality shall rank all applications. Based on a consideration of ~~social economic~~ socioeconomic factors and measures of financial condition, and in accordance with the provisions of the intended use plan, the department may agree not to impose the loan loss reserve surcharge on the borrower. Any excess fees on revenues generated within or by the program shall be used exclusively for purposes authorized by the federal act.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect editorial changes, to clarify the discretion in the department to except the payment of fees, and to adjust percentages in accordance with the guidelines in the rule.

36.24.108 EVALUATION OF FINANCIAL MATTERS AND COMMITMENT AGREEMENT (1) remains the same.

(2) Upon approval of the application, the department may require the municipality, upon approval by its governing body, to enter into a commitment agreement in the form provided by the department with the department, pursuant to which the municipality agrees to adopt the bond resolution and issue the bond described therein, and to pay its origination fee in the event the municipality elects not to issue its bond, unless excepted from the requirement to pay the origination fee by the department.

(3) Upon approval of the application, if the borrower is a private person, the department may require the private person, upon approval by the governing body of the person or entity, to enter into a commitment agreement (in the form provided by the department) with the department, pursuant to which the private person agrees to adopt the loan agreement and issue the bond or promissory note described therein, and to pay its origination fee in the event the private person elects not to issue its bond or proceed with the loan

agreement, unless excepted from the requirement to pay the origination fee by the department.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to clarify the discretion of the department to except the payment of an origination fee by an applicant.

36.24.109 REQUIREMENTS FOR DISBURSING OF LOAN

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

(n) payment of the administrative fee and origination fee, unless excepted from these requirements by the department.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to clarify the need for the payment of an administrative fee in addition to an origination fee and to clarify the discretion of the department to except the applicant from the payment of such fees. The purpose of the rule is to allow the department to except payment of the administrative fee and the origination fee. Based on FY 2004, there were 8 loans made for a total of $6 million. The loans were made to municipalities so no individuals are directly impacted by the rule. The administrative fee is .00575% of the loan and the origination fee is 1% of the loan. Based on $6 million in loans in FY 2004, the total potential reduction in administrative fees would be $345 and the potential reduction in origination fees would be $60,000. Should the department not exercise its discretion to except payment of a fee, the potential fiscal impact of the new rule would be an increase of $345 in administrative fees.

4. Concerned persons may submit their data, views or arguments in writing to Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mail to annam@state.mt.us and must be received no later than 5:00 p.m. on September 7, 2004.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mail to annam@state.mt.us.

6. If the agency receives request 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 greater than 25 based on 17 municipal loans issued in 2003 impacting in excess of 100,000 municipal residents.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at http://www.dnrc.state.mt.us. 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.

8. The agency 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 conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Bud Clinch
ARTHUR R. CLINCH
Director

By: /s/ Tim Hall
Tim Hall
Rule Reviewer

Certified to the Secretary of State July 26, 2004.

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

In the matter of the amendment of ARM 37.49.112 pertaining to IV-E foster care eligibility: living with a specified relative	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 4, 2004, 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 August 25, 2004, 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.

37.49.112 IV-E FOSTER CARE ELIGIBILITY: LIVING WITH A SPECIFIED RELATIVE (1) As a condition of IV-E eligibility, ~~at any time within six months immediately prior to the month of eligibility, the~~ a child who is removed from the custody of a parent or other relative must have been living with any ~~relation, from whose custody the child is being removed,~~ relative who is related by blood, including ~~those of~~ half blood, or by marriage~~,~~ or adoption, and who is within the fifth degree of kinship to the child. At some time during the six months immediately prior to the month of eligibility, the child must have lived with the relative in a place of residence maintained as ~~their~~ the relative's home.

~~(a)~~(2) The specified relative with whom the child resided~~,~~ ~~within~~ during the ~~previous~~ six months prior to the month of eligibility ~~and from whose legal custody the child is being removed,~~ must be the child's parent, grandparent, great grandparent, great-great grandparent, great-great-great grandparent, sibling, uncle, aunt, great uncle, great aunt, great-great uncle, great-great aunt, first cousin, first cousin once removed, nephew, or niece~~,~~ . ~~or steprelative~~ Steprelatives of the same degree of kinship are also considered to be within the required degree of kinship; for example, stepparent, stepgrandparent or stepsibling.

~~(b)~~(3) A spouse of any of the relatives named ~~above~~ in (1) or (2) is considered to be within the required degree of

kinship, even after the marriage ~~is~~ has been terminated by death or divorce.

~~(c)~~(4) ~~The specified relative, who signed the parental agreement or against whom the petition is filed, must have legal custody of the child.~~ The child must be placed in foster care after being removed from the legal custody of a parent or other legal custodian. Removal may occur under the terms of an agreement providing for foster care placement signed by a person with legal custody of the child or as a result of a petition filed by the department, a tribe, another state agency or a licensed child placing agency seeking to declare the child a youth in need of care.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201 and 53-6-131, MCA

3. The existing rule sets as a condition of eligibility under Title IV-E of the Social Security Act, 42 USC 670 through 679A (which provides for federal payments for foster care and adoption assistance), that a child must be removed from the legal custody of an eligible relative with whom the child was living within six months immediately prior to the eligibility determination. The proposed amendment is necessary to provide consistency with the ruling of the Ninth Circuit Court of Appeals in Rosales v. Thompson, 321 F.3d 835 (9th Cir. 2003). The department has been making eligibility determinations for IV-E eligibility by applying the ruling in the Rosales v. Thompson case since July 1, 2003, in order to comply with federal IV-E requirements as a result of that decision.

In the Rosales v. Thompson decision, the child was informally placed with a grandmother after being abused by his mother and the grandmother was then subsequently designated as the legal foster parent of the child. The California state plan addressed by the court in the Rosales v. Thompson decision provides that where a child is eligible for AFDC benefits while living with one of the relatives enumerated in the rule, the child is eligible for California's higher AFDC-FC benefits after being placed in foster care.

In Montana, Title IV-A eligibility is determined under Montana's Title IV-A plan. Title IV-A of the Social Security Act, 42 USC 601 through 617, provides federal block grants to states for Temporary Assistance for Needy Families (TANF). The Title IV-A plan was adopted on July 16, 1996, and includes an "AFDC-relatedness test." Any child who meets the "AFDC-relatedness test" and who also meets other criteria adopted by state rule for Title IV-E eligibility is Title IV-E eligible. [NOTE: The "AFDC-relatedness test" in the Title IV-A plan remains designated as the "AFDC-relatedness test" pursuant to federal mandate, even though the Aid to Families with Dependent Children (AFDC) program no longer exists and has been replaced by TANF.]

In the Rosales v. Thompson case, the United States Secretary of

the Department of Health and Human Services contended that the child was not eligible for AFDC-FC (foster care) benefits because the child had not been eligible for AFDC benefits in his mother's home, from which he was legally removed. However, the child was eligible for AFDC benefits while living informally in his grandmother's home. The Ninth Circuit held that nothing in 42 USC 672(a) or its legislative history indicates that the child's ineligibility for AFDC in his home of removal precluded the child's eligibility for AFDC-FC.

The proposed rule amendment clarifies that a child's Title IV-E eligibility is not dependent upon the child's eligibility for Title IV-A services in the home from which the child is legally removed. If the child is Title IV-A eligible while residing in the home of a relative enumerated in the rule, under Montana's Title IV-A plan the child is then Title IV-E eligible once the child is removed from the legal custody of the legal custodian, if the child meets the other eligibility requirements adopted in state rule.

If this rule is not amended, it will result in a substantial negative fiscal impact on Child and Family Services Division's ability to claim Title IV-E funding for all eligible foster children. Prior to the court decision, approximately 50% of the children in foster care with the Department were Title IV-E eligible in any given month. Under the criteria applied following the Rosales v. Thompson ruling, the Department is seeing an increase in Title IV-E eligibility and it appears that once all cases are reviewed, approximately 60% of children in foster care will be Title IV-E eligible. There are approximately 1960 children in foster care with the Department at any given time. There has been an increase of approximately 185 children in any month that will become Title IV-E eligible pursuant to this proposed rule change. The benefits involved average approximately $450 per month per child. Federal monies pay 72% of the Title IV-E services. This proposed rule change will allow the State of Montana to access approximately $83,250 per month in additional Title IV-E funds.

4. The Department intends to apply the proposed rule amendments effective retroactive to July 1, 2003. A retroactive application is necessary in order to comply with federal IV-E requirements implemented on July 1, 2003 as a result of the ruling in the Rosales v. Thompson case.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, and must be received no later than 5:00 p.m. on September 2, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 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. 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 Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us and must be received no later than 5:00 p.m. on September 2, 2004.

7. 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 196 based on the 1960 children affected by rules covering Title IV-E Foster Care Eligibility.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State July 26, 2004.

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

In the matter of the proposed adoption of New Rule I, pertaining to Motor Carrier Protestant Filing Requirements, and amendment of ARM 38.3.402, pertaining to Motor Carrier Application Fees	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 10, 2004, at 1:00 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of New Rule I and the proposed amendment of ARM 38.3.402.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 30, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I COMPLETION OF MOTOR CARRIER PROTEST TO APPLICATION (1) Motor carriers and motor carrier applicants protesting an application for a certificate of public convenience and necessity must include in the protest:

(a) a statement that the application is being protested in whole or in part and, if being protested only in part, a statement of the limitations of the protest;

(b) an identification of the specific application-proposed service areas in which a protesting motor carrier perceives a service conflict;

(c) a statement of the protesting motor carrier's annual revenues received for services provided in the specific application-proposed service areas in which the protesting motor carrier perceives a service conflict.

(2) The protest must be sworn to as true and correct and signed by the protestant before a notary public.

(3) In addition to filing before the commission, a copy of the protest must be served on the applicant.

AUTH: 69-12-201, MCA
IMP: 69-12-311, 69-12-312, 69-12-313, 69-12-314, and 69-12-321, MCA

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

38.3.402 APPLICATION AND PROTEST FEES (1) Every application for operating authority must be accompanied by the appropriate filing fee: ~~as required by the Montana Motor Carrier Act.~~

(a) The application fee for a certificate of public convenience and necessity to operate as a motor carrier is ~~$100~~ $500, $300 to be refunded by the commission if the application does not proceed to hearing.

(b) remains the same.

(c) The protest fee for a motor carrier protest or motor carrier applicant protest of an application for a certificate of public convenience and necessity is $200, all to be refunded by the commission if the application does not proceed to hearing.

AUTH: 69-12-201, MCA
IMP: 69-1-114, MCA

5. Adoption of the new rule is necessary to obtain information critical to the understanding and processing of protests to applications for motor carrier authority. Amendment of the existing rule is necessary because PSC fees must be commensurate with costs in accordance with 69-1-114, MCA. The average cost of processing an application for motor carrier authority is approximately $200 if there is no hearing and is approximately $1,400 if there is a hearing. There is a $500 limitation on commission fees in accordance with 69-1-114, MCA. Therefore, to comply with the referenced statute the commission must collect an increased fee from applicants and a new fee from motor carriers protesting the application. This rulemaking involves a monetary amount. It is estimated that the proposed increase and new fees will result in a cumulative monetary amount of $4,500 (increase) in payments made to the agency per year. It is estimated that the number of persons affected will be 40 per year.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than September 10, 2004, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than September 10, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-04.04.1-RUL.")

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

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

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State July 26, 2004.

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

In the matter of the proposed adoption of New Rule I, pertaining to Utility Implementation of Rate Changes and Billing Practices	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 10, 2004, at 9:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of New Rule I.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 30, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The proposed new rule provides as follows:

RULE I UTILITY IMPLEMENTATION OF RATE CHANGES

(1) Temporary and permanent changes in utility rates must be implemented on the basis of services rendered on or after the rate-change effective date. The commission may waive this requirement for good cause shown.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-110, 69-3-201, 69-3-305, MCA

4. Adoption of the new rule is necessary because utility implementation of rate changes on a basis other than a services-rendered basis (e.g., a bills-rendered basis) results in usage and bills for that usage not corresponding during a period up to and including the number of days in the utility's billing cycle. Waiver is necessary to address unique circumstances that may justify utility implementation of rate changes on other than a services-rendered basis.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than September 10, 2004, or may be submitted to the PSC through the PSC's web-based comment form at

http://psc.state.mt.us (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than September 10, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-04.07.3-RUL.")

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

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State July 26, 2004.

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

In the matter of the proposed amendment of ARM 38.5.3403, pertaining to Operator Service Providers	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 10, 2004, at 9:00 a.m. a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.3403.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 30, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

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

38.5.3403 ALLOWABLE RATE (1) and (2) remain the same.

(3) The categories and types of service for which allowable rates will be established are:

(a) assisted – calls including operator dialed calling card; collect call; third party billed; person to person; operator dialed called number; and customer dialed calling card, non-company; ~~and customer dialed calling card, company card;~~

(b) message telecommunications service interLATA – calls per minute (if the operator service provider has more than one per minute rate, e.g., distance, time of day, and so forth, per minute" will be the average per minute); and

(c) message telecommunications service intraLATA – calls per minute (if the operator service provider has more than one per minute rate, e.g., distance, time of day, and so forth, "per minute" will be the average per minute).

(4) remains the same.

AUTH: 69-3-103, 69-3-1103, MCA
IMP: 69-3-201, 69-3-1101, 69-3-1102, 69-3-1105, MCA

4. Amendment of the existing rule is necessary because it conflicts with statute, 69-3-1102(4)(b), MCA.

5. Concerned persons may submit their data, views, or

arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than September 10, 2004, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than September 10, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-04.07.4-RUL.")

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

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State July 26, 2004.

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

In the matter of the proposed repeal of ARM 38.5.301 through 38.5.313 and ARM 38.5.701 and 38.5.702, all pertaining to Municipality-Owned Utilities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On September 10, 2004, at 9:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the repeal of ARM 38.5.301 through 38.5.313 and ARM 38.5.701 and 38.5.702.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 30, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. ARM 38.5.301 through 38.5.313, which begin on page 38-457.5 of the Administrative Rules of Montana, are proposed to be repealed because the rules are in conflict with statutes 69-7-101 through 69-7-201, MCA.

AUTH: 69-3-103, MCA
IMP: 69-3-103, MCA

ARM 38.5.701 and 38.5.702, which can be found on page 38-515 of the Administrative Rules of Montana, are proposed to be repealed because the rules are in conflict with statutes 69-7-101 through 69-7-201, MCA.

AUTH: 69-3-102 and 69-3-103, MCA
IMP: 69-7-101, 69-7-102, 69-7-113, and 69-7-201, MCA

4. Repeal of the existing rules is necessary because the rules conflict with statute.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than September 10, 2004, or may be

submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than September 10, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-04.07.6-RUL.")

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

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State July 26, 2004.

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

In the matter of the proposed amendment of ARM 38.5.1111 and 38.5.1112, pertaining to Guarantee in Lieu of Deposit for Utility Service	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 10, 2004, at 9:00 a.m. a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.1111 and 38.5.1112.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 30, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

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

38.5.1111 GUARANTEE IN LIEU OF DEPOSIT (1) In lieu of a cash deposit required by these rules, a utility shall accept the written or voice-recorded guarantee of a responsible party as surety for a customer service account. For the purpose of this rule, a "responsible party" shall mean:

(a) and (b) remain the same.

AUTH: 69-3-103, MCA
IMP: 1975 HJR 27

38.5.1112 GUARANTEE TERMS CONDITIONS (1) A guarantee accepted in accordance with these rules is subject to the following terms and conditions:

(a) It shall be in writing or voice recording, and if necessary shall be renewed in a similar manner annually.

(b) and (c) remain the same.

(2) remains the same.

AUTH: 69-3-103, MCA
IMP: 1975 HJR 27

4. Amendment of the rules is necessary for convenience in arranging for public utility service.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than September 10, 2004, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than September 10, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-04.07.8-RUL.")

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

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State July 26, 2004.

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

In the matter of the proposed adoption of New Rules I through VIII, pertaining to Energy Utility Service Standards	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 10, 2004, at 2:00 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of New Rules I through VIII.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 30, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS In this subchapter the following definitions shall apply unless the context otherwise clearly demands:

(1) "Interruption" means a loss of service to one or more customers.

(2) "Interruption duration" means the period of time, in minutes, between the time a electric utility first becomes aware of a service interruption and the time of restoration of service to the customer(s).

(3) "Major event" means a catastrophic event that:

(a) exceeds the design limits of the electric power system;

(b) causes extensive damage to the electric power system; and

(c) results in a simultaneous sustained electric service interruption to more than 10% of the customers in an operating area.

(4) "Operating area" means a geographical subdivision of an electric utility's Montana service territory that is a distinct area for administration, operation, or data collection. These areas may also be referred to as regions, divisions, or districts.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE II ENERGY UTILITY SERVICE INTERRUPTION NOTIFICATION (1) Each energy utility shall report promptly to a local radio station and other local news media capable of timely dissemination of information on any specific occurrence or development which interrupts or is likely to interrupt the utility's natural gas and/or electric service to a substantial number of its customers ("substantial" meaning the smaller of 25% or 100 customers in the area affected) for a time period longer than two hours.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE III ENERGY UTILITY PLANNED OUTAGES (1) In the event that service must be interrupted for more than four hours for planned work on utility facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers, including consideration of weather conditions. The utility shall attempt to notify each affected customer at least 24 hours in advance of the interruption, either personally or, when personal notification would be impractical, by advance notice in local media outlets.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE IV GENERAL OBLIGATIONS OF ENERGY UTILITIES (1) Each electric utility shall make reasonable efforts to avoid and prevent interruptions of service. However, when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety.

(2) Each energy utility's transmission and distribution facilities shall be designed, constructed, maintained, reinforced, and supplemented as required to reliably perform the natural gas and power delivery burden placed upon them in the storm and traffic hazard environment in which they are located.

(3) Each energy utility shall carry on an effective preventive maintenance program and shall be capable of emergency repair work on a scale which its storm and traffic damage record indicates as appropriate to its scope of operations and to the physical condition of its transmission and distribution facilities.

(4) In appraising the reliability of the electric utility's transmission and distribution system, the commission will consider the condition of the physical property and the size, training, supervision, availability, equipment, and mobility of the maintenance forces, all as demonstrated in actual cases of storm and traffic damage to the facilities.

(5) Each energy utility shall keep records of interruptions of service on its primary distribution system and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions.

(6) Each energy utility shall make reasonable efforts to reduce the risk of future interruptions by taking into account the age, condition, design, and performance of transmission and distribution facilities and providing adequate investment in the maintenance, repair, replacement, and upgrade of facilities and equipment.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE V ELECTRIC UTILITY SYSTEM RELIABILITY (1) The following service reliability indices measure the frequency and duration of service interruptions. They are recognized as standard reliability indices for the electric utility industry and may be applied to entire distribution systems, operating areas, sub-operating areas, or individual circuits. For purposes of this rule, "interruption" means the loss of service for five minutes or more.

(a) "Customer average interruption duration index" is the average interruption duration for those customers of electricity service who experience interruptions during the year. It is calculated by dividing the annual sum of all customer interruption durations by the total number of customer interruptions.

(b) "System average interruption duration index" is the average interruption duration per customer served during the year. It is calculated by dividing the sum of the customer interruption durations by the total number of customers served during the year.

(c) "System average interruption frequency index" is the average number of interruptions per customer during the year. It is calculated by dividing the total annual number of customer interruptions by the total number of customers served during the year.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE VI RECORD-KEEPING REQUIREMENTS FOR ELECTRIC UTILITIES (1) Each electric utility shall maintain and record complete records of service interruptions. These records shall enable the utility to calculate the customer average interruption duration index, system average interruption duration index, and system average interruption frequency index, both with and without the data associated with major events.

(2) An electric utility shall retain the records required by this rule for a minimum of five years and shall provide them to the commission upon request.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE VII ANNUAL ELECTRIC RELIABILITY REPORT (1) Each electric utility shall submit to the commission on or before

March 1 of each year an annual reliability report for the previous calendar year for the Montana jurisdiction. The report shall include the following information:

(a) Aggregate system reliability performance, comprised of customer average interruption duration index, system average interruption duration index, and system average interruption frequency index for the previous calendar year for the Montana service territory and each defined Montana operating area. These indices shall be calculated twice, once with the data associated with major events and once without. This assessment should contain tabular and graphical presentations of the trend for each index as well as the trends of the major causes of interruptions.

(b) The customer average interruption duration index, system average interruption duration index, and system average interruption frequency index reliability average values for the previous three calendar years for the Montana service territory and each defined Montana operating area. These average values shall be calculated twice, once with the data associated with major events and once without.

(c) Individual circuit reliability performance, comprised of customer average interruption duration index, system average interruption duration index, and system average interruption frequency index for each circuit in each operating area. Each circuit in each operating area shall then be listed in order separately according to its customer average interruption duration index, system average interruption duration index, and system average interruption frequency index, beginning with the highest values for each index.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE VIII ELECTRIC RELIABILITY STANDARDS (1) Each electric utility shall maintain and operate its electric distribution and transmission system so that each year's aggregate system and operating area values for the customer average interruption duration index, system average interruption duration index, and system average interruption frequency index do not exceed the average of the aggregate system and operating area values for these indices for the three immediately previous reporting years.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

4. Adoption of the new rules is necessary to allow the commission to more accurately track and monitor energy utility quality of service performance.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701

Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than September 10, 2004, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than September 10, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-97.06.4-RUL.")

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

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State July 26, 2004.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.51.102 relating to board membership) NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 8, 2004, the Board of Public Education published MAR Notice No. 10-51-232 regarding the proposed amendment of a rule concerning board membership at page 695 of the 2004 Montana Administrative Register, Issue Number 7.

2. The Board of Public Education has amended ARM 10.51.102 with the following changes, stricken matter interlined, new matter underlined:

10.51.102 BOARD MEMBERSHIP (1) The board of public education consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction and commissioner of higher education are ex officio non-voting members of the board. A student representative, selected by the Montana association of student councils, also sits as a non-voting member of the board for a term not more than two years. In order to assure geographical and political representation on the board of public education, the law provides that not more than four of the seven board members may be from one ~~congressional~~ commission district or affiliated with the same political party. Board members elect a chairman and vice-chairman annually.

3. The following comment was received and appears with the Board of Public Education's response:

COMMENT 1: The Secretary of State’s office commented that Montana no longer had congressional districts. These have been changed to commission districts pursuant to 5-1-102, MCA.

RESPONSE: The Board of Public Education thanks the Secretary of State’s office for their comment and has amended this rule accordingly.

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

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer

Certified to the Secretary of State July 26, 2004.

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

In the matter of the adoption of new rules I through XI pertaining to translocation of prairie dogs	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 26, 2004, the Fish, Wildlife and Parks Commission (commission) and the Department of Fish, Wildlife and Parks (department) published notice of the proposed adoption of new rules I through XI pertaining to translocation of prairie dogs at page 370 of the 2004 Montana Administrative Register, Issue Number 4.

2. The commission and department have adopted the following new rules exactly as proposed:

Rule III (ARM 12.9.1010)
Rule IV (ARM 12.9.1015)
Rule V (ARM 12.9.1020)
Rule IX (ARM 12.9.1040)
Rule X (ARM 12.9.1045)
Rule XI (ARM 12.9.1050)

3. The commission and department have adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

Rule I (ARM 12.9.1001)
Rule II (ARM 12.9.1005)
Rule VI (ARM 12.9.1025)
Rule VII (ARM 12.9.1030)
Rule VIII (ARM 12.9.1035)

NEW RULE I (ARM 12.9.1001) DEFINITIONS (1) "Confirmed sylvatic plague" means the presence of plague-positive fleas, prairie dogs or other mammals has been documented.

(2) "Historically occupied range" means the area encompassed by the outer limits of the historic distribution of a species. The historic range of the black-tailed prairie dogs is depicted on page 12 of the "Conservation Plan for Black-tailed and White-Tailed Prairie Dogs in Montana" published in 2002. This document is posted on the department webpage http://fwp.state.mt.us.

(3) "Presumed sylvatic plague" means that visual observation indicates evidence of numerical declines in prairie dog numbers in the absence of poisoning or other known sources of prairie dog mortality.

(1) through (3) remain as proposed, but are renumbered (4) through (6).

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE II (ARM 12.9.1005) PROPOSALS TO TRANSLOCATE PRAIRIE DOGS (1) and (2) remain as proposed.

(3) A proposal for translocation of prairie dogs must conform to the Montana Environmental Policy Act (MEPA) and must include the following information:

(a) name(s) of the willing owner(s) of the sending area and name(s) of the willing owner(s) of the receiving area;

(b) a map illustrating land ownership and public lands leases, for the sending area and land ownership and public land leases within a six-mile radius of the receiving area;

(c) a rationale explaining the need for and the objectives of the translocation, and an explanation of why relocation of prairie dogs from the sending area to the receiving area is desirable;

(d) evidence that landowners and/or public land managers ~~adjacent to~~ within a six-mile radius of the receiving area ~~have been contacted and informed~~ have been notified by certified mail of the proposed translocation of prairie dogs. Any comments by these potentially affected landowners ~~from the adjacent landowners~~ and/or public land managers regarding the proposed translocation must be included in the proposal;

(e) a description of both the sending and receiving areas which should include, but are not limited to, the following:

(i) general topography;

(ii) vegetation types;

(iii) landscape setting; and

(iv) a discussion of recent and historic occupancy of the area by prairie dogs, incidence of disease, past poisoning efforts if known, presence or absence of other associated species in the area for both the sending and the receiving areas, and any other ~~pertinent~~ information supporting the ultimate success of the translocation such as site preparation or natural habitat features that promote retention of translocated prairie dogs and that are conducive to long-term maintenance of prairie dogs and other wildlife species associated with prairie dogs ~~that provides supporting evidence for the proposed translocation~~;

(3)(f) through (4) remain as proposed.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE VI (ARM 12.9.1025) CONFLICT RESOLUTION PLAN

(1) A conflict resolution plan approved and signed by the landowner or land manager at the receiving site must be included with or attached to the proposal for translocation. The conflict resolution plan must detail the following information:

(a) potential conflicts with private lands or public lands adjacent to the receiving area, including conflicts with agricultural production;

(b) ~~proposed~~ solutions ~~for resolving~~ that will be implemented to resolve conflicts with agricultural production and other landowner conflicts, including identification of the person(s)/party(s) responsible for implementing proposed solutions;

(c) potential conflicts between prairie dogs and other wildlife species; ~~and~~

(d) ~~proposed~~ solutions ~~for resolving~~ that will be implemented to resolve conflicts between prairie dogs and other wildlife species, including identification of the person(s)/party(s) responsible for implementing proposed solutions~~.~~; and

(e) a statement signed by the landowner/land manager at the receiving area that acknowledges responsibilities to other landowners/land managers that will be incurred upon translocation of prairie dogs, and commitment to implement all provisions of the conflict resolution plan.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE VII (ARM 12.9.1030) CAPTURE AND TRANSPORTATION OF PRAIRIE DOGS (1) Persons who have department approval to translocate prairie dogs shall comply with the following criteria when capturing and transporting prairie dogs:

(a) prairie dogs may be captured and translocated between the dates of June 30 and October 31. Prairie dogs shall not be moved earlier or later than this time period unless a written exception is granted by the regional supervisor;

(b) persons translocating prairie dogs shall attempt to capture an entire town or portion of a town in order to move entire family units together;

(c) a translocation group ~~must~~ should consist of at least 100 black-tailed prairie dogs or 30 white-tailed prairie dogs ~~unless a written exception~~. Permission to translocate a smaller number of individuals ~~is~~ may be granted by the regional supervisor;

(d) persons authorized to translocate prairie dogs shall monitor the sending and receiving areas for sylvatic plague as outlined in ARM 12.9.1035 and must notify the department immediately if ~~any suspected~~ presumed plague is noted;

(e) any prairie dogs that become sick or die during transport shall be examined by a qualified individual. If there is a possibility that plague is implicated in the cause of death, the entire group of animals shall be placed and remain under quarantine while the animal(s) in question is referred to a laboratory to determine whether plague is the cause of the sickness. If sylvatic plague is ~~diagnosed~~ confirmed, the sylvatic plaque precautions described in ARM 12.9.1035 and the quarantine procedures described in ARM 12.9.1040 must be followed.

(2) The white-tailed prairie dog is the only species of prairie dog that may be translocated from a sending area outside of Montana to a receiving area within Montana. White-tailed

prairie dogs from sending areas outside of Montana must be quarantined under the procedures established by ARM 12.9.1040.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE VIII (ARM 12.9.1035) SYLVATIC PLAGUE PRECAUTIONS

(1) Prairie dogs may not be moved from an area with ~~know, active occurrence of~~ presumed or documented sylvatic plague to an area ~~with no active plaque~~ where plague is not present.

(2) At a minimum, sending and receiving areas must be monitored 14 days prior to trapping and again within 48 hours of trapping to determine whether any evidence of plague is ~~active~~ present.

(3) If presumed plague is ~~active~~ indicated at a sending or receiving area, the department must be notified immediately and the translocation proposal may be altered or cancelled.

(4) Prairie dogs may not be transported from a sending area within five miles of ~~active, ongoing, sylvatic plaque occurrence unless quarantine standards are employed~~ a site with presumed or confirmed sylvatic plague for a minimum of one year after the site was presumed or confirmed to have plague.

(5) Where there is no evidence of ~~ongoing or active~~ presumed or documented plague, or if the receiving area is within 50 miles of the sending area, quarantine is unnecessary if the following conditions are met:

(a) there is no evidence of numerical declines in population numbers that would suggest plague;

(b) pre-capture ~~visual count of prairie dogs has been conducted and repeated under similar conditions, and visual counts do not indicate~~ monitoring at the sending site 14 days prior and within 48 hours prior to trapping indicates no evidence of rapid or unexplained declines in prairie dog ~~populations~~ numbers or the presence of prairie dog carcasses that ~~could~~ would signal ~~the presence of~~ presumed plague; and

(c) prairie dogs are treated for fleas at the capture area with carbaryl, permethrin, or other appropriate pulicide.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

4. The following comments were received and appear with the commission and department's responses:

COMMENT 1: In proposed rule I (ARM 12.9.1001), define the terms "historically occupied range," "presumed sylvatic plague," "confirmed sylvatic plague," "enzootic plague," "epizootic plague," and "qualified individual" (to identify plague).

RESPONSE: The terms "historically occupied range," "presumed sylvatic plague" and "confirmed sylvatic plague" were added to new rule I (ARM 12.9.1001) and defined. The terms "enzootic plague" and "epizootic plague" are not used and therefore were not defined. "Qualified individual" was not defined due to the

fact that experience, rather than any specific credential, may qualify a person to note presumed plague and actual confirmation of plague is the result of laboratory analysis (ARM 12.9.1030).

COMMENT 2: In new rule II(3)(a) (ARM 12.9.1005), this subsection should be modified to clarify that a prairie dog translocation must have the voluntary, willing consent of the landowner at the receiving site as well as the voluntary, willing consent of adjacent landowners. This could be accomplished by requiring a permission form (notarized written permission or certified letter) signed by the landowner at the receiving site and adjacent landowners be included in the translocation proposal. The translocation proposal should just include the comments of landowners and land managers, rather than written permission.

RESPONSE: The utility of translocation is its use as a strategy to achieve management objectives at the receiving site. Therefore, translocation of prairie dogs cannot occur in the absence of desire of the landowner/land manager at the receiving site to conduct the translocation. However, the term "willing" has been inserted before "owner(s)" in two places in (3)(a) to emphasize that use of prairie dog translocation as a management tool is dependent upon the willing participation of landowners/land managers at both the sending and receiving sites. The suggested signature requirement has been incorporated into new rule VI (ARM 12.9.1025) conflict resolution plan.

COMMENT 3: In new rule II(3)(b) (ARM 12.9.1010), the map included in the translocation proposal should illustrate landownership within a specified radius of the landowner choosing to reintroduce prairie dogs. This illustration would help the regional supervisor get a clear picture of the area and the potential conflicts. "Federal lands permittees" should be added wherever notification or involvement of "landowners and public land managers" is referred to. Additionally, all landowners, lessees and public land managers within a certain radius should be notified and involved in translocation proposals.

RESPONSE: To address this concern, "within a six-mile radius" has been inserted in new rule II(3)(b) (ARM 12.9.1010) as the radius within which land ownership must be illustrated on the map. Six miles is the maximum distance that prairie dogs are known to travel from an existing colony – (page 29 of the "Conservation of Black-tailed and White-tailed Prairie Dogs in Montana," 2002).

COMMENT 4: There is never a rationale or supporting information for any prairie dog translocation. See, new rule II(3)(c) (ARM 12.9.1005).

RESPONSE: The rationale for a prairie dog translocation in new rule II(3)(c) (ARM 12.9.1005) would reflect the management objectives of the landowner/manager at the receiving site and benefits that would accrue to prairie dogs and species associated with prairie dogs. If reintroduction or augmentation of prairie dogs is contrary to management objectives at the receiving site, then no rationale or supporting information for a translocation would exist. However, if re-establishment or augmentation of prairie dogs is a management objective, then the rationale for the translocation would be stated in terms of those management objectives. New rule II(3)(e)(iv) (ARM 12.9.1005) was clarified to say that supporting information could include information about habitat suitability for prairie dogs and other wildlife species associated with prairie dogs at the receiving site, or a description of site preparation techniques designed to encourage retention of translocated prairie dogs at the receiving site.

COMMENT 5: In new rule II(3)(d) (ARM 12.9.1005), the term "adjacent" landowners should be replaced by a specific distance (3 miles, 5 miles, 10 miles or 5 times the distance a prairie dog can travel, etc.). The term "adjacent landowner" should be defined as landowners "immediately next to the release area." Reliance upon the term "adjacent" landowner is inadequate in some cases because it would include a very small area encompassed by narrow slivers of land, due to land ownership patterns.

Wherever notification of "landowners and federal land managers" is stated, "federal lands lessees/permittees" should be inserted. Notification of permittees should remain the responsibility of the land manager, whether it is the Bureau of Land Management or state of Montana. A notice in the local paper directing people to the department’s website would be sufficient notification to potentially affected landowners.

RESPONSE: This issue garnered the most comments. The term "adjacent landowners" in new rule II(3)(d) (ARM 12.9.1005) has been replaced with "landowners within a six-mile radius" (the maximum distance that prairie dogs are documented to travel). However, we believe that the land manager should be responsible for identifying and notifying individual permittees rather than the proposer of the prairie dog translocation because contact information for permittees resides with the state or federal land management agency.

COMMENT 6: In new rule II(3)(f) (ARM 12.9.1005), "potential threats to agricultural production that may occur" should be rewritten as "threats to agricultural production that will occur." There are absolutely no benefits to be realized by an introduction of prairie dogs and therefore there are no potential benefits to contrast with significant threats.

RESPONSE: Potential threats to agricultural production, as well as potential benefits for prairie dogs and other wildlife species associated with prairie dogs, will reflect unique characteristics of the receiving site, where agricultural production may not necessarily be the primary management goal.

COMMENT 7: New rule II(3)(f) and (g) (ARM 12.9.1005) merely perpetuate misconceptions about prairie dogs. These subsections should be removed from the new rules. It is difficult or impossible to conduct a cost-benefit analysis contrasting the economic impacts of prairie dogs on agricultural production versus wildlife diversity because of conflicting opinion about the values/worth in both cases. It is doubtful that prairie dogs could really have detrimental effects on other wildlife species since plague-infected fleas may threaten wildlife whether or not prairie dogs are present. Sylvatic plague precautions should be adequate to make this a moot point, even in areas with black-footed ferrets.

RESPONSE: This portion of the proposal is designed to be pre-emptive to reduce the potential that conflicts will occur that will require resolution per the Conflict Resolution Plan provided for in new rule VI (ARM 12.9.1025). The contrast between potential benefits and potential threats to other wildlife species must be a consideration for each translocation proposal to comply with the requirements of 87-5-711, MCA, (that transplantation poses no harm to native wildlife or plants or agricultural production) and would be stated at a level of detail corresponding with the best information available, which may preclude portrayal of a cost-benefit analysis in strictly economic terms.

COMMENT 8: In new rule II(3)(g) (ARM 12.9.1005), the word "minimize" should be replaced with "resolve." It is the responsibility of the applicant who is receiving the prairie dogs to mitigate these potential threats, and everyone who is "potentially affected" should receive a copy of the entire proposal so that they can identify and be aware of potential impacts of newly established prairie dog colonies.

REPONSE: The term "minimize" reflects the pre-emptive focus of a prairie dog translocation proposal – as opposed to reliance on resolution of conflicts per provisions of the Conflict Resolution Plan in new rule VI (ARM 12.9.1025). The better the translocation addresses potential conflicts in a pre-emptive manner, the more likely it has garnered acceptance by other potentially affected landowners and the more likely it is to be approved. The requirement that translocation proposals comply with MEPA in new rule II (ARM 12.9.1005) guarantees public disclosure and public participation in the translocation proposal, including all parties that could potentially be affected by the translocation.

COMMENT 9: In new rule II(3)(i) (ARM 12.9.1005), the monitoring plan should include the department as the agency that will conduct the monitoring. The ultimate responsibility is the department's and should not be contracted out to some third party.

RESPONSE: It is anticipated that implementation and monitoring of prairie dog translocations will be conducted by the land management entity at the receiving site, as has been the case in all prairie dog translocations that have taken place to date. While the department is available to advise land management entities, it would be inappropriate to pre-empt the landowner or land management agency at the receiving site by requiring that the department insert itself into the resource management programs and processes administered by private landowners or public land management agencies. It follows that evaluation of a translocation proposal will include consideration of the ability of the proposer to implement provisions of the Monitoring Plan required by new rule V (ARM 12.9.1020) and Conflict Resolution Plan provided for in new rule V (ARM 12.9.1025) as well as the proposer’s commitment to do so.

COMMENT 10: In new rule III(1)(a) (ARM 12.9.1010), control at the sending area would be best accomplished through lethal means (poisons, predators or firearms) rather than translocating prairie dogs to new areas. Sending sites should be limited to areas where prairie dogs are threatened by lethal control rather than colonies that are secure. Relocating animals should always be a last resort because even the best-designed prairie dog translocation will result in animals being accidentally injured or killed, separated from family units, exposed to extremely stressful situations, forced to find food and escape from predators in completely unknown surroundings, and subjected to new territorial disputes.

RESPONSE: The direction provided by new rules I through XI (ARM 12.9.1001-12.9.1050) guides use of translocation as a tool to augment or re-establish prairie dog populations at the receiving site as its primary purpose, rather than use of translocation to achieve management at the sending site. However, there may be cases where translocation can achieve management objectives at both the sending and receiving sites.

COMMENT 11: Subsection (1)(b) in new rule III (ARM 12.9.1010) should be removed on the basis there should be enough donor sites within the scenarios described in (1)(c) and (d) that the department should not permit removal of prairie dogs from secure colonies.

RESPONSE: The primary purpose of programmatic guidance provided by new rules I through XI (ARM 12.9.1001-12.9.1050) is to guide the use of translocation as a strategy to achieve management objectives at the receiving site, rather than the sending site. The benefits of maintaining flexibility with regard to sending

sites include reducing the potential for plague or other diseases to be spread inadvertently during translocation and maintaining the opportunity for translocation proposers to select sending sites with habitat and population characteristics that resemble conditions at the receiving area.

COMMENT 12: In new rule IV(1)(a) (ARM 12.9.1015), would it be unnatural to translocate prairie dogs to an area that had been plagued out, especially if recolonization is likely to occur naturally? Would prairie dogs translocated to a plagued-out site pick up plague anyway?

RESPONSE: While translocation does constitute intervention in natural processes, it has in several cases been deemed to be a necessary or desirable tool to expedite recovery of plagued-out colonies to benefit prairie dogs and wildlife species associated with prairie dogs. The dynamics of plague are not well understood; in some cases translocated prairie dogs did succumb to plague and in others, they did not.

COMMENT 13: In new rule IV(1)(b) (ARM 12.9.1015), the last part of (1)(b) is in direct contradiction of (2) and should be stricken after "population."

RESPONSE: Historically occupied range is considered the area encompassed within a boundary line linking locations that represent the outer extremes of known, historic occupancy by prairie dogs. Prairie dog colonies isolated from other colonies by distance or by geographic barriers that prevent interchange of prairie dogs between colonies are located within the area encompassed by this boundary line as well as along the outside boundary of historically occupied range.

COMMENT 14: In new rule IV(1)(c) (ARM 12.9.1015), "increased prairie dog density will assist enhancement of prairie dogs" should be deleted from this rule since it is restated in (1)(e), and the department must manage prairie dogs below and above objectives equally. Also, prairie dogs should be moved from colonies where they are threatened, and areas described in new rule IV(1)(c) (ARM 12.9.1015) should be the lowest priority for translocation since prairie dogs relocated to areas already occupied will be least successful as a result of territorial disputes.

RESPONSE: New rules I through XI (ARM 12.9.1001 – 12.9.1050) are intended to accommodate and guide the use of translocation as a management tool rather than limit translocation to specific situations or direct translocation of prairie dogs to specific locations in Montana. Therefore, it is important that the programmatic guidance maintain flexibility so that translocation can be used by individual landowners and land managers to achieve management objectives at potential receiving sites. New rule IV(1)(c) (ARM 12.9.1015) is geared specifically toward prairie dogs, and (1)(e) of this rule addresses translocation of

prairie dogs for the benefit of other wildlife species commonly associated with prairie dogs.

COMMENT 15: In new rule IV(1)(d) (ARM 12.9.1015), introducing prairie dogs into a completely new area where their presence has never been documented is a notion which flies in the face of common sense.

RESPONSE: This provision recognizes that historical documentation of prairie dog occupancy is far from complete. While previous occupancy by prairie dogs (remnants of burrows and mounds) is observable at some sites, physical evidence has been lost or destroyed at other sites as time passed or as a result of land use practices. This provision would allow translocation of prairie dogs to sites within their historic range where historic presence of prairie dogs is considered highly probable, but physical proof of previous occupancy is no longer present.

COMMENT 16: New rule IV (ARM 12.9.1015) should prioritize receiving areas.

RESPONSE: The purpose of programmatic guidance for prairie dog translocations is not to direct where prairie dog translocations can occur, but to accommodate and guide the use of translocation where it can be used to achieve management objectives at receiving sites without inadvertent detrimental results.

COMMENT 17: In new rule IV (ARM 12.9.1015), the department should require site preparation at receiving sites. The proposed rule requires an analysis of receiving site conditions, but appears to allow for "hard" releases where prairie dogs are simply dumped on the ground and wished the best. Hard release has been shown to be unsuccessful. We strongly encourage the department to consult with these seasoned prairie dog translocators to develop site preparation requirements for sites where burrows are not present.

RESPONSE: In light of the expense of planning and conducting a prairie dog translocation, it is highly unlikely that site preparation would be overlooked by the translocation proposers in cases where usable burrows are not present at the receiving site, or where vegetation treatments would enhance the suitability of a site for prairie dogs. In fact, site preparation was a measure included in all prairie dog translocation proposals approved by the commission to date. Rather than require site preparation at receiving sites, the department believes that it is advantageous to maintain flexibility to permit the translocation proposer to tailor site preparation techniques to individual receiving sites. The opportunity to enhance a translocation proposal by describing site preparation has been clarified in new rule II(3)(d)(iv) (ARM 12.9.1005).

COMMENT 18: In new rule IV (ARM 12.9.1015), the department should require that receiving sites be managed for prairie dog recovery and persistence. The proposed rule requires a description of conditions at the receiving site, but does not specify what type of management is consistent with a suitable receiving site. Receiving sites should be off-limits to prairie dog shooting and poisoning. The department should require that prairie dog recovery be a major management goal in any receiving area.

RESPONSE: Land management goals and strategies at the receiving site are the prerogative and responsibility of the landowner/land manager, rather than the department.

COMMENT 19: In new rule V (ARM 12.9.1020) it should be stated who will be responsible (e.g., "willing landowner," which state or federal agency, etc.) for monitoring.

RESPONSE: The proposer (most likely the landowner/land management entity at the receiving site) is responsible for designing and implementing the monitoring plan in new rule V (ARM 12.9.1020). However, the entity enlisted to conduct the actual monitoring may vary among translocation proposals. We believe that the landowner/land manager should retain the flexibility to decide how monitoring will be conducted and how monitoring will be incorporated into existing land management programs and procedures.

COMMENT 20: In new rule V (ARM 12.9.1020), the monitoring plan is needlessly complex and more like a research project than a means to achieve management objectives and subsection (2)(e) would be ample by itself. It is unclear how monitoring data will be used to provide information for future translocation projects.

RESPONSE: Monitoring is essential to evaluating the success of translocation as a management tool, to better understand the dynamics of plague, and to ensure that inadvertent detrimental impacts to other land ownerships do not occur. Therefore, the department considers it necessary to require monitoring to evaluate the use of translocation as a management tool and to apply lessons learned to future translocations.

COMMENT 21: In new rule VI (ARM 12.9.1025) what would happen if prairie dogs move to other lands whose owners did not want them? Could they be eradicated if this should occur? The proposed rule should state who will be responsible for the removal of translocated prairie dogs that invade and occupy land whose owners do not want prairie dogs. The proposed rule should also state who will be responsible for the loss of production due to translocated prairie dogs that invade and occupy land whose owners do not want them. The rule should state that "translocation of prairie dogs cannot be approved by the department's regional supervisor(s) unless a conflict resolution

plan is signed by the landowner and adjacent landowners." New rule VI (ARM 12.9.1025) should include in subsection (1)(e) language that requires a "written document signed by sending/receiving landowners and adjacent landowners, agreeing to conditions set forth in resolution plan."

RESPONSE: The conflict resolution plan provided for in new rule VI (ARM 12.9.1025) requires the proposer(s) to identify solutions that will be implemented if translocated prairie dogs move onto land ownerships where they are not wanted. Eradication will likely be one of the provisions of the conflict resolution plan. The party responsible for implementing solutions for resolving conflicts is identified in new rule VI(1)(d) (ARM 12.9.1025). Concerns about loss of production could be addressed in the conflict resolution plan in new rule II (ARM 12.9.1005).

COMMENT 22: In new rule VI (ARM 12.9.1025), who is responsible for enforcing terms of the conflict management plan?

RESPONSE: The landowner/land manager at the receiving site is responsible for carrying out provisions of the conflict management plan. In the event that this does not occur willingly, the department would likely become involved in an oversight role.

COMMENT 23: New rule VI (ARM 12.9.1025) should be dropped altogether because it puts recovery of a native species hostage to landowner concerns adjacent to the relocation site, and a similar requirement does not exist for all other wildlife species.

RESPONSE: Commitment to a conflict resolution plan is essential to acceptance and support of a translocation proposal by surrounding, potentially affected landowners/land managers. Conflict resolution measures are routinely incorporated into translocations of other wildlife species conducted by the department, such as the department’s commitment to relocate or kill bighorn sheep that move away from the translocation site to locations where they cause conflicts with other land uses.

COMMENT 24: Prairie dog translocations should not adversely impact ranchers within a 10-mile radius of the translocation. Moving prairie dogs into an area could cause loss of livestock forage on private lands and loss of forage on grazing allotments on public land guaranteed to ranchers under federal statutes and grants. Impacts to grazing should be plainly addressed and a mechanism established to remove uninvited and unwanted prairie dogs from a grazing allotment, or compensation should be offered to purchase an equivalent amount of forage to replace forage consumed by prairie dogs.

RESPONSE: Translocation guidance outlined in new rules I through XI (ARM 12.9.1001-12.9.1050) is intended to supplement,

rather than pre-empt or direct existing management programs and program administration on federal lands, which remain in force in the case of any translocation involving federal lands. Concerns expressed in this comment would be addressed in the conflict resolution plan in new rule VI (ARM 12.9.1025).

COMMENT 25: In new rule VII (ARM 12.9.1030), the provisions limiting translocations to a minimum number of prairie dogs and requiring capture of an entire town or portion of a town are problematic for 2 reasons: 1) trapping success may be less than desired due to a variety of factors outside the trapper's control; and 2) trappers will only be able to remove prairie dogs from large, high density colonies. These provisions are impractical and should only be recommendations, not requirements. However, these provisions might be useful as recommendations in the case of sending areas not scheduled for lethal control or complete removal so that the source population will not be hugely reduced by the trapping efforts.

RESPONSE: Specifying a minimum number of prairie dogs to constitute a translocation group is intended to promote short-term retention of translocated prairie dogs at the receiving area and, ultimately, to promote successful establishment of a prairie dog population at the receiving site. In recognition of the fact that conditions beyond the control of the trappers conducting the prairie dog translocation (weather and road conditions for example) may preclude trapping of the minimum numbers of prairie dogs, this section of new rule VII (ARM 12.9.1030) has been changed from a requirement to a recommendation that may be waived by the regional supervisor.

COMMENT 26: In new rule VII (ARM 12.9.1030), the minimum translocation group sizes have no scientific basis and inappropriately consider emotional damage to prairie dog families. Translocation of 100 or more prairie dogs improves establishment of prairie dogs at the receiving location, but there should not be a minimum number of prairie dogs required for a translocation.

RESPONSE: Requiring that a minimum number of individuals constitutes a translocation group is based on evidence that translocation of larger numbers of individuals, and moving family groups together, results in higher retention rates at the receiving area and thereby ultimately promotes success of the translocation. Since retention at the receiving area is one measure that can be taken to prevent inadvertent detrimental impacts to adjoining landowners, the minimum sizes of translocation groups will be maintained as a recommendation, which can be waived by the regional supervisor.

COMMENT 27: In new rule VII (ARM 12.9.1030), we concur with the requirement that prairie dogs cannot be moved prior to June 30 based on our observation that pups cannot survive on their own until this time, but it seems odd that the seasonal prairie dog

shooting closure on federal lands is lifted June 1, before orphaned pups can survive on their own.

RESPONSE: This comment is noted by the department and commission.

COMMENT 28: In new rule VII (ARM 12.9.1030), October 31 is likely much too late to be moving white-tailed prairie dogs because they are obligate hibernators. Adults go into torpor as early as mid-July and any white-tailed prairie dogs active in October would be juveniles lacking the fat reserves to survive both hibernation and relocation. Early July should be the target date for translocation of white-tailed prairie dogs.

RESPONSE: The commission and department note that there are differences between black-tailed prairie dogs and white-tailed prairie dogs. New rules I through XI (ARM 12.9.1001-12.9.1050) were designed to provide guidance to accommodate successful translocation of both species.

COMMENT 29: In new rule VII (ARM 12.9.1030), identification of who determines whether there is presence of plague or evidence of on-going plague is absent. This assessment should be done by an objective individual with scientific expertise. We recommend that "qualified individual" be defined.

RESPONSE: Since presumed plague may be noted on the basis of experience rather than specific credentials and documentation of plague is documented by laboratory analysis, the term "qualified individual" is maintained and supplemented by the terms "presumed plague" and "documented plague" to clarify two levels of certainty regarding the presence of plague.

COMMENT 30: I don't appreciate being exposed to the health risk of bubonic plague that is associated with prairie dogs.

RESPONSE: Prairie dogs are not good carriers of plague because of their susceptibility to the disease and their rapid response of death once they contact plague. However, infected fleas may be present on prairie dog colonies where plague is present. New rules VIII and IX (ARM 12.9.1035 and 12.9.1040) have been approved by state epidemiologist at Montana Department of Public Health and Human Services (DPHHS) as adequate to minimize human exposure to plague.

COMMENT 31: In new rule VIII (ARM 12.9.1035), section (1) is very vague. On our first reading, we were concerned that section (1) could preclude any white-tailed prairie dog relocation because plague is present throughout its range, and it is very difficult to conclusively determine where white-tailed prairie dogs are actively infected at any given time. However, section (5) is very reassuring given the white-tailed's narrow range in Montana. We are also pleased to note that subsection (5)(c) of this rule would allow dusting for fleas in

lieu of quarantine. This is commonly done with black-tailed prairie dogs relocated in Colorado, and should be much less stressful (and expensive and labor-intensive) than quarantine.

RESPONSE: The terms "presumed sylvatic plague" and "documented sylvatic plague" were inserted in new rule VII (ARM 12.9.1030) as clarification. Section (2) of this rule does require that any white-tailed prairie dogs translocated from outside Montana would be subject to quarantine.

COMMENT 32: Prairie dog monitoring requirements outlined in new rule VIII (ARM 12.9.1035) are confusing because the visual monitoring technique provided for in new rule VII(2) (ARM 12.9.1030) and the pre-capture visual count of prairie dogs that is repeated under similar conditions (see, rule VII(5) (ARM 12.9.1030)) are different techniques. We recommend that the technique referred to in new rule VII(2) also be used in (5)(b) of this rule for consistency.

RESPONSE: The suggested change was made to new rule VII(5)(b) (ARM 12.9.1030).

COMMENT 33: We recommend that the terms "active plague" and "ongoing sylvatic plague" be replaced with more precise and descriptive language. Definitions were provided for "presumed sylvatic plague" and "confirmed sylvatic plague." We recommend that any choice of words describing plague (i.e., active, ongoing, presumed, confirmed, etc.) needs to be clearly defined in new rule I (ARM 12.9.1001).

RESPONSE: The terms "active plague" and "ongoing sylvatic plague" were stricken from rule VIII (ARM 12.9.1035) and replaced by the terms "presumed sylvatic plague" and "confirmed sylvatic plague," using the definitions suggested.

COMMENT 34: In new rule VIII(4) (ARM 12.9.1035), we recommend that prairie dogs are NOT permitted to be translocated from a donor site that is presumed or confirmed to have sylvatic plague and that the department and commission specifically state a time period of 1 year during which translocation from a donor site is prohibited after an area is presumed or confirmed to have sylvatic plague.

RESPONSE: This suggestion was incorporated in new rule VIII (ARM 12.9.1035).

COMMENT 35: Has DPHHS been formally consulted about the quarantine procedure in new rule X (ARM 12.9.1045) and have they given their stamp of approval to it and other measures to reduce the risk that plague poses to human health? I recommend formal consultation with DPHHS with regard to quarantine procedures.

RESPONSE: New rules VIII and IX (ARM 12.9.1035 and 12.9.1040) (sylvatic plague precautions and quarantine standards) were

reviewed by Todd Damrow, state epidemiologist with DPHHS, and he approved them as covering all of the bases to protect the public from plague.

COMMENT 36: The term "animals at risk" in new rules VIII and IX should be changed. The way it reads could mean that all prairie dogs in Montana would need to be quarantined because they are all susceptible to plague. We suggest different terminology.

RESPONSE: This suggestion was not incorporated for lack of terminology that would be more definitive.

COMMENT 37: In new rule VIII(4) (ARM 12.9.1035), delete the word "may" and substitute the word "will".

RESPONSE: Since the Montana Prairie Dog Working Group is an informal forum which includes volunteer participants, it cannot be required to assume the responsibility of reviewing proposed sending and receiving areas and prioritizing them. However, it is anticipated that the department regional supervisors will seek the expertise that this group can offer.

COMMENT 38: In new rule X(2) (ARM 12.9.1045), a regional supervisor must include an explanation of any deficiencies in the proposal. These deficiencies should include new rule II(3)(d) (ARM 12.9.1005) comments from adjacent landowners and/or public land managers that are not in favor of a translocation taking place. It will be very important to get agreement by all parties before a translocation takes place.

RESPONSE: Evaluation of the translocation proposal would by necessity require full attention to new rule II(3)(d) (ARM 12.9.1005).

COMMENT 39: In new rule X (ARM 12.9.1045), add that all prairie dog translocation proposals must be made available to the chair and all members of the Montana Prairie Dog Working Group.

RESPONSE: We think that it is unnecessary to require that this information be provided directly to the Montana Prairie Dog Working Group since it will be easy for a department representative to that group to obtain this information from the department regional supervisors and compile and present it to the group.

COMMENT 40: While we generally support processes that allow the public to appeal decisions, we are concerned that the way new rule XI (ARM 12.9.1050) is written prevents the department from acting rapidly in emergency situations. We suggest that 1) the department and commission consider building in an emergency clause that allows for expedited process for colonies threatened with imminent destruction, which would make managers more inclined to postpone control until the translocation process ran its course, if only so that they could avoid the cost of

control; 2) the department should maintain a list of pre-approved receiving sites that could be used in such an emergency situation; and 3) the department and commission should consider shortening the appeal and response periods because the two months provided for makes the time period for translocation excessive.

RESPONSE: In order to minimize the potential of inadvertently spreading disease during translocation and due to the necessity to minimize the potential for inadvertent detrimental impacts to occur as a result of translocation, no prairie dog translocation can be taken lightly. The types of development-prompted "emergency situations" prevalent in more populous states are uncommon in Montana. The department and commission believe that potential risks to prairie dog populations and to potentially affected landowners/land managers are too great to justify establishment of an expedited review process to accommodate "emergency" prairie dog translocations.

COMMENT 41: The new ARMs were initiated by anti-agriculture interests and they are a smoke screen being used to stop the hunting of prairie dogs. Translocation of prairie dogs is inappropriate because moving prairie dogs into a different area will always result in economic impacts. The money necessary for translocation could be put to better use and the department and commission have no business being involved in translocation of prairie dogs. Relocation of pests is crazy because they are no different than mosquitoes, ticks, snakes and rats and a bounty should be put on prairie dogs instead to get rid of them altogether.

RESPONSE: The need to develop ARM rules to guide prairie dog translocations was identified by the Montana Prairie Dog Working Group. This group represented diverse interests. The need for programmatic guidance for prairie dog translocation was also stated on page 22 of the "Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana" (2002). New rules I through XI (ARM 12.9.1001-12.9.1050) have no impact on prairie dog shooting. The new rules do not constitute a department or commission directive but they do recognize the use of translocation as a management tool that some landowners and land managers want to use to achieve management objectives, which may or may not emphasize agricultural production. The new rules feature safeguards designed to reduce the potential that a prairie dog translocation will inadvertently result in detrimental impacts. The cost of translocation is borne by the proposer, which in most cases will be the landowner/land manager at the receiving site. While some people view prairie dogs merely as pests, others view prairie dogs as an important keystone species of prairie ecosystems and are dedicated to maintaining prairie dog populations on the lands they own or manage.

COMMENT 42: Translocation is a little-used but valuable tool for managing prairie dog numbers and distribution. It also provides an opportunity for prairie dogs to be removed from places where they aren't wanted. These ARMs contain appropriately strenuous guidelines by setting forth policy and procedure, instead of being forced to treat translocation needs or requests in an "ad hoc" manner. Montana has taken the high road on the issue of relocating prairie dogs versus just poisoning them and this is appropriate given that the black-tailed prairie dog is an important species in line to be protected under the Endangered Species Act. Tools such as translocation are vitally important, given widespread commitment by diverse stakeholders to implement practices that are flexible, science-based, and responsive to changing needs and opportunities. Regulations and recommendations for translocation are needed and should be adopted.

RESPONSE: The department and commission acknowledge these comments.

COMMENT 43: We have seen very little evidence that the state of Montana is serious about conducting prairie dog management in a way that benefits this native species. The proposed translocation protocol is yet again another example of this reluctance to manage this species.

RESPONSE: The department and commission are very serious about conservation of prairie dogs and wildlife species commonly associated with prairie dogs. However, the statutes under which we function and our mission require that our management actions integrate biological considerations with social and economic factors.

COMMENT 44: We regret that the department and commission have taken a series of suggested and desirable steps that were recommended by the committee developing this protocol and turned many of them into mandates in these new rules. The proposed protocol is so complex and requires so many layers of approval that it will be of very little help in recovering prairie dogs in Montana. Prairie dogs are reduced to occupying only about 2% of their former range in Montana, and the way to remedy this situation is to make it relatively easy to translocate prairie dogs to areas of suitable habitat. These new ARMs, in contrast, make it needlessly hard.

RESPONSE: Translocation of any wildlife species is not to be taken lightly. A myriad of issues must be addressed in order to minimize the potential for detrimental effects to occur inadvertently, some of which may even be irreversible. An extra degree of caution is required in the case of a prairie dog translocation because many landowners view prairie dogs as pests. The advent of just one prairie dog translocation "gone bad" would likely preclude future use of translocation as a

management tool for prairie dogs and wildlife species associated with prairie dogs.

COMMENT 45: The difficulties conducting translocation under these new ARM rules are in marked contrast to the total lack of regulations in the state on shooting and poisoning of prairie dogs on private lands. The state has no meaningful regulations or any proposals to develop such rules. Unlike prairie dog translocations, shooting and poisoning of prairie dogs remain completely unregulated on private lands in Montana. In contrast biologists wanting to recover prairie dogs by translocation onto lands where they are welcome must: 1) Get a regional supervisor from the department to approve a proposal; 2) Get proposals from both sending and receiving areas; 3) Provide evidence that landowners and/or public land managers adjacent to the translocation area have been contacted; 4) Provide a history of prairie dog occupancy of the receiving area and other information such as presence of associated species; 5) Provide a description of "potential threats" to other wildlife species and to "agricultural production" that may result because of the translocation; 6) Provide a cost-benefit analysis of these "threats" and "benefits"; 7) Describe the measures that will be used to minimize "impacts" to other wildlife species or "agricultural production"; and 8) create a "conflict resolution plan." See, new rule VI (12.9.1025).

RESPONSE: Montana statutes are fairly stringent with respect to moving wildlife from one location to another. Thorough consideration of all the potentially detrimental results that could occur is necessary to prevent worst case scenarios from becoming reality. The department and commission regard steps 1 through 8 as necessary to comply with state laws and appropriate, given widely divergent opinions of role and value of prairie dogs. Movement of live animals from one place to another poses potential threats that from some perspectives are of greater concern than the killing of prairie dogs.

COMMENT 46: When we take a step back from the details of this process and look at the big picture, what stands out is the amount of paperwork and hoop jumping required to perform an act of conservation of a native species. Yet, when the public wants to kill prairie dogs, it is a matter of getting in the vehicle, driving to the nearest prairie dog colony and killing as many as possible without a single piece of paperwork.

RESPONSE: It must be kept in mind that the contrast drawn by this comment includes two entirely different sets of considerations. There are certain risks associated with translocating prairie dogs from one site to another that could prove harmful to prairie dogs (and wildlife associated with prairie dogs), as well as to private landowners. Montana statutes appropriately address the biological risks associated with translocation and include provisions that protect agricultural production on private lands.

COMMENT 47: These rules are an assault on private property rights.

RESPONSE: The department and commission maintain that the new rules acknowledge the management prerogatives of all landowners, including landowners who do not want prairie dogs, as well as those who do. Furthermore, the new rules provide numerous protections to landowners such as public notification requirements, opportunities for landowners to participate in consideration of a translocation proposal, the requirement that a translocation proposal address potential conflicts pre-emptively, and that a translocation proposal include a conflict resolution plan.

COMMENT 48: The new rules do not adequately address soil erosion and air quality due to increased particulate matter in the air found where prairie dog colonies are located. A farmer or rancher who caused this type of environmental degradation would be reprimanded in some form.

RESPONSE: An environmental assessment complying with the Montana Environmental Policy Act (MEPA) is a requirement of new rule II(3) (ARM 12.9.1005). Analysis of the effects of the translocation proposal on soil, air and water is required by MEPA.

COMMENT 49: Can the department arbitrarily use its own rules to translocate prairie dogs – outside of the public comment process and in the face of public opposition?

RESPONSE: The department and commission are bound by statutes and ARMs just as every other entity is, including preparing a translocation proposal featuring an environmental assessment to determine potential environmental impacts. Even prior to advent of new rules I through XI (ARM 12.9.1001-12.9.1050), the department would have been obligated to conduct an environmental assessment and to obtain commission permission to translocate prairie dogs.

COMMENT 50: The new ARMs do not include provisions for public notification of translocation proposals through conventional media, even though new rules II, X and XI (ARM 12.9.1005, 12.9.1045 and 12.9.1050) provide for the public to have input. A public notice provision would ensure that anyone who has an interest has an opportunity to find out before the fact instead of after the fact. Also, an environmental assessment may be required to translocate prairie dogs.

RESPONSE: The requirement in new rule II(3) (ARM 12.9.1005) that translocation proposals comply with MEPA triggers all of the public notification and public participation requirements of MEPA and thus ensures public notification and public

participation in consideration of prairie dog translocation proposals.

COMMENT 51: The new rules do not include a provision for an annual report of the results of translocations to the public and the Montana Prairie Dog Working Group. Such a summary could provide "oversight" over the new rules.

RESPONSE: The department will, as a function of the responsibility of regional supervisors to render decisions on prairie dog translocation proposals, have a complete record of all prairie dog translocations and can provide that information to the Montana Prairie Dog Working Group, and other entities as requested.

COMMENT 52: These ARMs do not include a provision for amending these rules, which would be necessary if any provision of this rule needs to be revised.

RESPONSE: Since the new rules are ARM rules, the process for adopting, amending or repealing them is mandated by state law. This process is outlined in the Montana Administrative Procedure Act (MAPA) 2-4-101, MCA, et seq. Any future revisions of these ARMs will follow the procedures outlined in MAPA.

COMMENT 53: Any possible conflict with these new ARMs and with "The Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana" (2002) should be addressed in favor of the conservation plan wherever possible.

RESPONSE: The department and commission can find no conflict between the new rules and the "Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana" (2002). In fact, these ARMs implement the programmatic guidance for prairie dog translocation called for on page 22 of the conservation plan.

COMMENT 54: Montana’s prairie dog conservation plan calls for white-tailed prairie dog translocation. In future communications about the translocation program, the department and commission should include a discussion of how this program fits in with white-tailed prairie dog recovery goals.

RESPONSE: These ARMs were designed to provide guidelines for both black-tailed and white-tailed prairie dogs.

COMMENT 55: Although they were minority participants, at NO time was there approval of or support for the "Conservation Plan for Black-tailed and White-tailed Prairie Dogs" (2002) in Montana by private landowners or any Montana agricultural group.

RESPONSE: The "Conservation Plan for Black-tailed and White-tailed Prairie Dogs" (2002) was formally approved by eight state and federal agencies, including the Montana Department of

Agriculture, Montana Department of Natural Resources and Conservation (DNRC), Natural Resources Conservation Service, and the United States Department of Agriculture: Wildlife Services. Individual landowners and representatives of agricultural groups participated in development of the plan and a representative of the Montana Stockgrowers Association served as a member of the editorial subcommittee. Although signature by non-governmental organizations was considered, the Montana Prairie Dog Working Group ultimately decided that the signature page should include only the governmental entities that have legal responsibilities for management and conservation of prairie dogs.

COMMENT 56: Language in paragraph 4 on page 378 of the Proposal Notice should be stricken because there are no state regulations regarding prairie dog translocation. This is misleading as it pretends there are existing regulations for translocation of prairie dogs in Montana.

RESPONSE: The statutes referred to in paragraph 4 of the rule proposal notice are statutes that pertain to wildlife that is imported or transplanted within the state. Prairie dog translocations or importations fall under the jurisdiction of these statutes. New rules I through XI (ARM 12.9.1001-12.9.1050) were designed to clearly outline requirements that a prairie dog translocation proposal must fulfill in order to comply with these statutes. The following is a synopsis of those statutes:

Section 87-5-711, MCA, prohibits introduction and transplantation of wildlife except as authorized by the commission. This statute spells out some criteria the commission should use to make a determination about a transplantation or introduction.

Additionally, 87-5-713, MCA, requires commission approval to transplant a wildlife species contingent upon the existence of a plan to assure that the population can be controlled if any unforeseen harm should occur.

Also, 87-5-715, MCA, provides for any introduced or transplanted wildlife or feral species to be exterminated or controlled by the department if the commission determines that the species poses harm to native wildlife or plants or to agricultural production.

Previously approved prairie dog translocation proposals were required to comply with the above statutes, and to comply with the Montana Environmental Policy Act (MEPA). Specific guidance and criteria outlined in the new rules set the standards that a translocation proposal must meet in order to be considered for approval, promote consistency in decision making, and reduce the potential that oversights in the planning and implementation of a prairie dog translocation could result in inadvertent or unforeseen detrimental impacts.

COMMENT 57: The statutory requirements in 87-5-102, MCA, state that prairie dogs are nongame wildlife and control by DNRC on state trust lands is permitted as long as the management and control are consistent with any management plan approved by the department, DNRC and the Department of Agriculture. The ARM rules must include the involvement of these agencies and their roles in implementing control plans when translocations make control plans necessary. The statute further states, "Nothing in this part may be interpreted to limit a landowner's ability to control prairie dog concentrations on private lands." This also needs to be stated clearly in the ARM rules.

In 87-5-712 and 87-5-713, MCA, the issue of control is also noted. These statutes state that translocation can only occur if "that species of wildlife poses no threat of harm to native wildlife and plants or to agricultural production" and "subject to a plan developed by the department to assure that the population can be controlled if any unforeseen harm should occur." It will be important to reference these statutes or state them in the rules to alleviate some of the control concerns.

Most importantly the language in 87-5-716, MCA, needs to be included in the translocation ARM rules. It states the "the department shall consult with the departments of agriculture and livestock in all matters relating to the control of wildlife species that may have a harmful effect on agricultural production or livestock operations in the state." Including this statutory language in the new rules will also ensure all relevant state agencies and the general public are informed of the current activities related to translocations.

RESPONSE: The function of ARM rules is to clarify requirements and processes that are required to ensure compliance with the statutes they are designed to implement. Under 2-4-302, MCA, rules may not unnecessarily repeat statutory language. The department and commission believe repeating this language is unnecessary. New rules I through XI (ARM 12.9.1001-12.9.1050) do not interfere with the ability of landowners to control prairie dogs on private lands, nor do they interfere with the ability of the Montana Department of Natural Resources and Conservation to control prairie dogs on state school trust lands. Compliance with MEPA required by Section 3 of new rule II provides the "scientific investigation" called for by 87-5-711, MCA. The conflict resolution plan required in new rule VI (ARM 12.9.1025) addresses requirements in 87-5-713, MCA. Subsections (3)(f) and (g) of this rule ensure that potential impacts to agricultural production, native wildlife and plants are considered as required by 87-5-711, 87-5-713 and 87-5-715, MCA.

COMMENT 58: Historic court cases show that landowners have vested water rights and forage rights on public land. These rules do not address these rights that are constitutionally

guaranteed to ranchers. Based on FLPMA, Valley county has a natural resource use plan and the commissioners can defend the position that grazing cannot be cut on federal lands and also ask for cooperative agency status regarding activities that affect grazing within the boundaries of Valley County.

RESPONSE: The new rules are not designed to affect water rights. These new rules are designed to complement rather than direct or supercede management programs and policies that apply to federal lands. Topics of concern stated in the above comment would be addressed by the appropriate land management agency and may also be addressed in the conflict resolution plan provided for in new rule VI (ARM 12.9.1025).

COMMENT 59: Paragraph 4 on page 377 of the Proposal Notice contains the drafter's remarks and reflects an obvious bias. Statements such as what the plan "recognizes" or "envisions" are arbitrary and capricious. They have no bearing on the rulemaking process and should be stricken.

RESPONSE: Section 2-4-302, MCA, requires a statement of reasonable necessity for a proposed rule adoption. The commission and department have also found that giving some background information is often helpful to the public. Paragraph 4 of the rule proposal notice included a summary of the history of the Montana Prairie Dog Working Group, reference to the "Conservation Plan for Black-tailed and White-tailed Prairie Dog" (2002) produced by that group, and the list of objectives stated in the "Programmatic Guidance for Translocation of Prairie Dogs," a document produced by the Montana Prairie Dog Working Group which served as the basis for new rules I through XI (ARM 12.9.1001 through 12.9.1050).

By: /s/ Dan Walker
Dan Walker,
Chairman, Fish, Wildlife and Parks Commission

By: /s/ M. Jeff Hagener
M. Jeff Hagener
Director, Department of Fish, Wildlife and Parks

By: /s/ Rebecca J. Dockter
Rebecca J. Dockter
Rule Reviewer

Certified to the Secretary of State July 26, 2004

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

In the matter of the amendment of ARM 24.17.127 pertaining to prevailing wage rates for public works projects - building construction services and heavy and highway construction services	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 3, 2004, the Department of Labor and Industry published MAR Notice No. 24-17-184 at page 1286, Issue No. 11, to consider the amendment of the above-stated rule.

2. On June 25, 2004, a public hearing was held in Helena concerning the proposed amendment at which oral and written comments were received. Additional written comments were received prior to the closing date of July 2, 2004.

3. The Department has thoroughly considered the comments and testimony received on the proposed journey-level wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Bob Hall, Business Agent for International Brotherhood of Boilermakers submitted a current collective bargaining agreement and letter stating the 2003 wage, benefit and travel rates.

Response 1: The Department accepts the data and has recomputed the rates accordingly.

Comment 2: Susan Wortman, Laborers Union 1334 submitted additional data for Laborers Group 1, District 2.

Response 2: The Department accepts the data and recomputed the rates accordingly.

Comment 3: Carrie Keane, President of K&K Roofing submitted additional data for Roofers in Districts 3 and 5.

Response 3: The Department accepts the data and recomputed the rates accordingly.

Comment 4: Keith Allen, IBEW 233 submitted additional data for communication technicians in Districts 1, 2, 3, 6 and 8.

Response 4: The Department accepts the data and recomputed the rates accordingly.

Comment 5: Warren Smeltzer, Laborers Local Union 1334 questioned the wages and benefits in Group 2 and Group 3 Laborers.

Response 5: The Department has reviewed the wages, benefits and calculations and the Department concludes that they are correct.

Comment 6: David Warner, Montana Carpenters Union questioned the Drywall Applicator rates and provided a new collective bargaining agreement for the Drywall Applicator occupation. Mr. Warner also asked about the Heavy and Highway rates.

Response 6: The Department accepts the collective bargaining agreement and re-computed the rates accordingly.

Comment 7: Mr. Warner also questioned the Drywall Applicator rates in the Heavy Construction and Highway Construction publications.

Response 7: The Department has reviewed the Heavy Construction and Highway Construction rates and calculations and the Department concludes that they are correct.

Comment 8: Dennis Denehy, Montana Carpenters Union mentioned a double digit rate of inflation and wondered how the rates were calculated.

Response 8: As provided by section 18-2-401, MCA, and ARM 24.17.127, prevailing wage rates are based upon a survey of the actual wages paid by Montana employers engaged in work of a similar nature during the past year. The Department collects historical data and computes the wage rates that are supported by that data and the statutory provisions. The Department does not have the discretion to set wages at a rate that might be deemed as being particularly "desirable" or "beneficial." Rates are not tied to an external measure such as the consumer price index (CPI) or similar general economic indicators.

Comment 9: Gordon Whirry commented via e-mail in support of the Department's approach to rate setting.

Response 9: The Department acknowledges the comment.

Comment 10: Ms. Margaret Morgan, Executive Director, Treasure State Independent Electrical Contractors, Inc., asked that ARM 24.17.127 be amended to specify which fringe benefits are included in prevailing wage rates. She stated that when asking Department staff questions about whether specific fringe benefits were included, she got inconsistent answers depending on whom she spoke with.

Response 10: Pursuant to section 18-2-401(8) and (13)(a)(ii), MCA (2003), the term "wages" includes "fringe benefits for health and welfare and pension contributions, that meet the

requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor . . . ." Whether or not a particular employer's fringe benefit package meets the requirements of ERISA can only be answered on a case-by-case basis. Because of the income tax implications, the question of whether a particular benefit plan meets the requirements of ERISA is usually answered by tax professionals and/or the Internal Revenue Service.

The Department notes that its attempts to provide categorical answers about hypothetical benefits plans or payments identified by a particular name cannot have the effect of changing the statutory definitions. Likewise, the Department notes that whether a particular fringe benefit, such as a "training program" has been approved as a "bona fide program" by the United States Department of Labor is far more likely to be within the knowledge of the employer paying such benefits than within the knowledge of the Montana Department of Labor and Industry.

Finally, the Department notes that not only may it not adopt rules that contradict statutory provisions, it cannot adopt rules that engraft additional, noncontradictory requirements not provided by statute.

On the basis of the foregoing analysis, the Department concludes that it cannot properly amend ARM 24.17.127 to include the detailed list sought by the commenter. The Department will, however, attempt to work with the commenter in identifying whether specific "fringe benefits" plans meet the statutory criteria.

4. The Department has amended the rule as proposed, but with the following rate changes, deleted material interlined, new material underlined:

Boilermaker	wage		benefit	
District 1	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 2	~~$23.49~~	$25.24	$12.89	
District 3	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 4	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 5	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 6	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 7	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 8	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 9	~~$23.49~~	$25.24	~~$13.54~~	$14.49
District 10	~~$23.49~~	$25.24	~~$13.54~~	$14.49

Travel, all districts

~~0-70 mi. free~~	0-120 mi. free
~~70-120 mi. $16/day~~	
~~120 + mi. $.50 mi.~~	120+ mi. $.375/mile

Per Diem, all districts
~~$28/day~~ 0-70 mi. free
70-120 mi. $25/day
120 mi. + $35/day

Communications technicians:	wage		benefits	
District 1	~~$18.07~~	$18.72	~~$5.94~~	$6.31
District 2	~~$17.66~~	$18.72	~~$4.51~~	$6.31
District 3	~~$13.83~~	$18.72	~~$6.19~~	$6.31
District 6	~~$14.75~~	$18.72	~~$2.53~~	$6.31
District 8	~~$17.84~~	$17.95	~~$6.19~~	$6.31

Drywall applicator:	wage		benefits	
District 1	~~$16.35~~	$18.65	~~$5.90~~	$5.15
District 2	~~$16.35~~	$18.65	~~$5.90~~	$5.15
District 3	~~$19.00~~	$19.08	~~$8.13~~	$5.97
District 4	~~$16.35~~	$16.99	~~$5.90~~	$5.15
District 5	~~$16.35~~	$16.99	$1.45	
District 6	$14.00		~~$8.13~~	$5.15
District 7	~~$19.00~~	$16.99	~~$8.13~~	$5.15
District 8	~~$19.00~~	$19.55	~~$8.13~~	$5.15
District 9	~~$19.00~~	$16.99	~~$8.13~~	$5.15
District 10	~~$19.00~~	$16.99	~~$8.13~~	$5.15

Travel and Per Diem:

~~All Districts~~
~~0-10 mi. free zone~~
~~Over 10 mi. $.20/mi., plus $32/day~~

Dist.	0-15 miles	15-30 miles	30-50 miles	50+ miles
1	free	$ .75/hr	$ 1.00/hr	$ 1.50/hr
2	free	$ .75/hr	$ 1.00/hr	$ 1.50/hr
3	free	free	$ 18/day	$ 25/day
4	free	$ 2.50/hr	$ 3.75/hr	$ 6.25/hr
5	free	$ 1.00/hr	$ 1.50/hr	$ 2.00/hr
6	free	$ 1.00/hr	$ 1.50/hr	$ 2.00/hr
7	free	$ 1.00/hr	$ 1.50/hr	$ 2.00/hr
8	free	$ 1.00/hr	$ 1.50/hr	$ 2.00/hr
9	free	$ 1.00/hr	$ 1.50/hr	$ 2.00/hr
10	free	$ 1.00/hr	$ 1.50/hr	$ 2.00/hr

Laborers, Group 1:	wages		benefits
District 2	~~$9.00~~	$13.68	$5.55

Roofers	wage		benefits	
District 3	~~$13.79~~	$16.15	~~$2.90~~	$5.10
District 5	~~$15.75~~	$16.15	~~$0.00~~	$5.10

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State July 26, 2004

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

In the matter of the amendment of ARM 24.21.414 pertaining to the adoption of wage rates for certain apprenticeship programs	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 3, 2004, the Department of Labor and Industry published MAR Notice No. 24-21-185 at page 1289, Issue No. 11, to consider the amendment of the above-stated rule.

2. On June 25, 2004, a public hearing was held in Helena concerning the proposed amendment at which oral and written comments were received. Additional written comments were received prior to the closing date of July 2, 2004.

3. The Department has thoroughly considered the comments and testimony received on the proposed journey-level wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Mr. Keith Allen, IBEW Local 233, stated the wages for apprentices were set artificially low and suggested that the Department use the same rates established for public works projects for which the prevailing rate of wages are established. Similar comments were made by Mr. Jerry Driscoll, Executive Secretary, Montana State AFL-CIO, who also suggested that low wage rates do not provide a sufficient incentive for individuals to want to enter an apprenticeship program.

Response 1: Prior to the 1995 adoption of the current administrative rule concerning base level wages for apprenticeship, the Department convened an advisory committee regarding how to set apprenticeship wage rates. The advisory committee membership included representatives of employers (both "union shops" and non-union shops), representatives of organized labor, and legislators, with a mix of members from the more urban and the more rural regions of Montana. The existing wage-setting process is the result of the consensus reached by the advisory committee and recommended to the Department.

The advisory committee wanted to ensure that the wage rates would reflect the local market and economic diversity that changes geographically within the state. Outside of the seven major counties that are polled for the survey, the remainder of the state was divided into five rural regions. Due to the "sparseness" of registered apprenticeship programs, the five rural regions system allows for a higher return of the survey and a more accurate sample of the journeymen wage rate for a given geographical region.

Finally, the Department notes that its rate-setting methodology does not reflect what wage rates might be considered desirable; it only reflects what wage rates are actually paid in each given occupation in a given area.

Comment 2: Mr. Gene Fenderson of the Montana District Council of Laborers, and Mr. Ronald Seaburg of Sheet Metal Workers Local 103 Joint Apprenticeship Training Council, both objected to the Department's use of the rule methodology adopted in 1995, with the seven urban counties and the five non-urban regions. They prefer the use of the 10 districts established for prevailing wage purposes. They suggested that the Department undertake a new study of the equity of the wage setting process and recommended legislation to address the issue.

Response 2: The Department agrees that legislation addressing the issue of what geographical divisions to use for apprenticeship wage rate setting would remove the Department's discretion in that respect. The Department respectfully suggests that the commenters make their recommendation known to members of the Legislature. The Department will keep in mind the commenter's suggestions when it makes its periodic review of the rule, but as noted in Response 1, the methodology being used is the result of the consensus recommendation of the advisory body. The Department is not aware of any significant changes in the field of apprenticeship that appear to warrant a new study, and no such changes have been documented to the Department to date.

Comment 3: Mr. Keith Allen, IBEW Local 233, stated there are no registered apprenticeship programs for residential electricians in Silver Bow County.

Response 3: The Department notes that it does not establish or operate any apprenticeship programs for any occupations. The Department, by statute, merely acts as the registration agency to recognize apprenticeship programs established by private sector employers and labor organizations. At this point in time, and during the survey process time frame, in Silver Bow County, there does not exist registered apprenticeship programs for residential electricians, so a rate cannot be established.

Comment 4: Mr. James R. Ryan Jr., Business Manager, Sheet Metal Workers International Association, Local 103, questioned the accuracy of the wage rates for sheet metal workers in Gallatin and Yellowstone counties.

Response 4: The Department surveys eligible employers in order to establish the wage rates used for apprenticeship purposes. Except when there are insufficient data submitted, the rates calculated are the weighted average of the wages paid (and reported in response to the survey) in that occupation in the area. The Department believes that the wage rates established in Gallatin and Yellowstone Counties accurately reflect the

information returned and provided to the Department by employers from those counties.

Comment 5: Ms. Margaret Morgan, Executive Director, Treasure State Independent Electrical Contractors, Inc., asked that ARM 24.21.414 be amended to address the treatment of benefits as they pertain to wages for apprentices.

Response 5: ARM 24.21.414 does not include direct or indirect language relative to the payment of benefits to apprentices. The rule deals only with the payment and establishment of wage rates for apprentices, because the underlying statute (37-6-106, MCA) speaks only to a "progressively increasing scale of wages to be paid the apprentice." Benefits paid to apprentices are either paid voluntarily by a sponsor/employer or as prescribed by law or contract, i.e., public works projects subject to state prevailing wage laws (the "Little Davis-Bacon Act") or the federal Davis-Bacon Act, or as stated by a collective bargaining agreement. The state prevailing wage rates are used to establish apprentice wage rates in the seven urban counties, and the registered sponsor of apprentices is only obligated to pay benefits if actual work is being performed under contract as stated. In the case of both state and federal public works projects, required benefits are clearly stated in those contracts, with benefit requirements changing per geographical location.

Comment 6: Ms. Morgan also commented that ARM 24.17.127 should be amended to specify what fringe benefits are included in prevailing wage rates.

Response 6: The Department respectfully notes that ARM 24.17.127 is not a part of this particular rulemaking project, but that ARM 24.17.127 is the subject of MAR Notice No. 24-17-184. The Department's response to Ms. Morgan's comments is found in the Notice of Amendment for MAR Notice No. 24-17-184, which is published elsewhere in this same issue of the Montana Administrative Register.

Comment 7: Bob Hall, Business Agent for International Brotherhood of Boilermakers submitted a current collective bargaining agreement identifying the 2003 wage, benefit and travel rates.

Response 7: The Department accepts the collective bargaining agreement and has changed the rates accordingly.

Comment 8: Carrie Keane, President of K&K Roofing submitted additional data for Roofers in Districts 3 and 5.

Response 8: The Department accepts the data and recomputed the rates accordingly.

Comment 9: David Warner, Montana Carpenters Union questioned the Drywall Applicator rates and provided a new collective bargaining agreement for the Drywall Applicator occupation.

Response 9: The Department accepts the collective bargaining agreement and has changed the rates accordingly.

4. The Department has amended the rule as proposed, with the following change in the document entitled "Base Journey-Level Rates for Apprentice Wages (Urban Counties) 2004", deleted material interlined, new material underlined:

Boilermaker:	wage	
Flathead Co.	~~$23.49~~	$25.24
Missoula Co.	~~$23.49~~	$25.24
Silver Bow Co.	~~$23.49~~	$25.24
Cascade Co.	~~$23.49~~	$25.24
Lewis & Clark Co.	~~$23.49~~	$25.24
Gallatin Co.	~~$23.49~~	$25.24
Yellowstone Co.	~~$23.49~~	$25.24

Drywall applicator:	wage	
Flathead Co.	~~$16.35~~	$18.65
Missoula Co.	~~$16.35~~	$18.65
Silver Bow Co.	~~$19.00~~	$19.08
Cascade Co.	~~$16.35~~	$16.99
Lewis & Clark Co.	$16.35	
Gallatin Co.	$14.00	
Yellowstone Co.	~~$19.00~~	$19.55

Roofer:	wage	
Silver Bow Co.	~~$13.79~~	$16.15
Lewis & Clark Co.	~~$15.75~~	$16.15

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State July 26, 2004

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

In the matter of the amendment of ARM 37.30.101, 37.30.401, 37.30.405, 37.30.406 and 37.30.407 pertaining to the Montana Vocational Rehabilitation Financial Standard	)))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 6, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-328 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to the Montana Vocational Rehabilitation Financial Standard, at page 1115 of the 2004 Montana Administrative Register, issue number 9.

2. The Department has amended ARM 37.30.101, 37.30.401, 37.30.405, 37.30.406 and 37.30.407 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The proposed change to ARM 37.30.405(2) conflicts with section 53-7-108(2), MCA. The proposed rule states that an applicant or a consumer is not responsible for paying the costs for the provision of vocational rehabilitation services concerning: assessment for eligibility and priority for services, with certain exceptions; vocational rehabilitation counseling and guidance; referral and related services; job development and placement related services; personal assistance services; and any auxiliary aid or service or other rehabilitation technology, including reader services, that DPHHS determines a person with a disability may require in order to apply for or receive vocational rehabilitation services. Section 53-7-108, MCA, provides:

> (1) The department, in accord with this part and the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-105 any vocational rehabilitation services listed in 53-7-101 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.
>
> (2) The following vocational rehabilitation services are available without cost to an eligible person:
>
> (a) counseling and guidance;
>
> (b) diagnostic evaluation; and
>
> (c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

Section (2) of the proposed rule adds services not authorized by 53-7-108(2), MCA. Proposed ARM 37.30.405(4) accurately reflects 53-7-108(3), MCA. Although the definition of "vocational rehabilitation services" in section 53-7-101(12), MCA, authorizes DPHHS to add services by rule, the addition of those services must still comply with section 53-7-108, MCA.

RESPONSE: The rule change to section (2) of ARM 37.30.405 revises the list of those types of services provided for purposes of vocational rehabilitation for which the Department does not require financial participation upon the part of the consumer. The comment indicates that this change is not permissible under the state statutory scheme. The existing section (2) of 53-7-108, MCA expressly provides a list of services that no consumer need participate in the reimbursement for their costs. The amended list in the rule includes services in addition to those appearing in the statutory list. The State, in amending the list in the rule, is bringing the state program into conformance with the federal requirements for the administration by the states of vocational rehabilitation programs. The conformance with federal authority is in accord with the direction of the state statutory scheme for implementation of the vocational rehabilitation program.

The amendment of the list of exempted services in ARM 37.30.405(2) is for the purpose of expressly conforming that list with the exclusion list appearing in federal regulation at 34 CFR 361.54, "Participation of individuals in cost of services based on financial need". Section (3) of the federal regulation reads as follows.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual--

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under Sec. 361.48(a), except those non-assessment services that are provided to an individual

with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under Sec. 361.42(e) or an extended evaluation under Sec. 361.42(f).

(B) Assessment for determining vocational rehabilitation needs under Sec. 361.48(b).

(C) Vocational rehabilitation counseling and guidance under Sec. 361.48(c).

(D) Referral and other services under Sec. 361.48(d).

(E) Job-related services under Sec. 361.48(l).

(F) Personal assistance services under Sec. 361.48(n).

(G) Any auxiliary aid or service (e.g., interpreter services under Sec. 361.48(j), reader services under Sec. 361.48(k)) that an individual with a disability requires under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

As provided by 34 CFR 361.2 and 34 CFR 361.10, conformance with the federal regulations governing the state participation in and administration of the federally authorized and funded vocational rehabilitation program is a necessary aspect of the State's conduct of the program. 34 CFR 361.2 predicates the receipt of federal monies upon the submission of a state plan that meets the requirements of section 101(a) of the Rehabilitation Act of 1973. 34 CFR 361.10(a) likewise provides for the submittal of a state plan that is to be in accord with the requirements of the federal regulations. Federal approval of a state plan, as provided at 34 CFR 361.10(h), is expressly predicated upon conformance with the requirements of the governing federal regulations and section 101(a) of the Act. Likewise, 29 U.S.C. 721, "State plans", requires that a state submit a state plan to the Commissioner of Rehabilitation Services Administration that in turn must be approved by the Commissioner of Rehabilitation Services Administration.

In Montana the implementation of the federally authorized and funded vocational rehabilitation program is generally governed by a state statutory scheme at part 1 of Title 53, chapter 7, MCA. Among several provisions, citing to the federal authority for the vocational rehabilitation program, are two that provide generally for the implementation of the program in accord with the federal authority. 53-7-103, MCA expressly directs the Department of Public Health and Human Services to cooperate, pursuant to agreements with the federal government, in carrying out the purposes of the federal Rehabilitation Act of 1973 and

may adopt methods of administration as required by the federal government for state participation in programs funded under the federal act. 53-7-102(1), MCA directs the Department to adopt rules necessary for the administration of the state statutes pertaining to the implementation of the federal vocational rehabilitation program.

The rule change to section (2) of ARM 37.30.405, specifying further services for which a consumer does not have to be financial responsibility for, is undertaken to bring the administration of this aspect of the vocational rehabilitation program into conformance with the specific requirements of the federal authority governing the vocational rehabilitation program. That conformance is expressly mandated by the state statutory scheme at part 1 of Title 53, chapter 7, MCA by which the program is implemented in Montana.

COMMENT #2: ARM 37.30.405(4)(a). This new item states " . . . calculated at 250% of the 2003 U.S. department of health and human services poverty guidelines . . .". Why doesn't this refer to using the previous year's guidelines rather than identifying a specific year since it changes yearly? For example: " . . . calculated at 250% of the previous calendar year's U.S. department of health and human services poverty guidelines . . ."

RESPONSE: The Department agrees that the continual obligation to reincorporate authorities or materials as they may change can be an inconvenience in many circumstances not only for the Department but for consumers and others.

Under Montana law, as interpreted by the Montana Supreme Court, a state agency in promulgating rules incorporating other authorities, such as federal statutes, or commonly relied upon materials, such as the poverty guidelines, must do so by specific reference to the authority or material as it exists on a certain date. This differs from the law in many other states. Montana law is predicated upon the principle that an adoption in rule by incorporation of other authority or material must be to that authority or material in a form that can be known as to its substance at the time of the adoption of the rule. As a consequence, in Montana it is not permissible to prospectively in rule adopt by reference authorities or materials, inclusive of those federally derived, in all their future forms and substance. This necessitates periodic reincorporation by rule amendment when necessary to accommodate changes in the referenced authority or material.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State July 26, 2004.

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

In the matter of the adoption of Rules I and II and the amendment of ARM 37.47.301 pertaining to the centralized intake system for reporting child abuse and neglect	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On February 12, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-316 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to the centralized intake system for reporting child abuse and neglect at page 253 of the 2004 Montana Administrative Register, issue number 3. On March 11, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-321 extending the time period to submit comments on these proposed changes at the request of interested parties at page 550 of the 2004 Montana Administrative Register, issue number 5.

2. The Department has adopted rules I (37.47.302) and II (37.47.303) as proposed.

3. The Department has amended ARM 37.47.301 as proposed.

4. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: A commentor stated that they supported the current model of Centralized Intake (CI) and said that all the members of the CI system they have come in contact with have been professional, prompt and willing to listen to input as they investigate school referrals.

RESPONSE: The Department appreciates feedback on all aspects of the system, CI and field.

COMMENT #2: The same commentor stated they have had multiple reasons to make referrals to Child Protective Services and that the current model, CI, has met the needs for children involved in those reports.

RESPONSE: One of the reasons for establishing CI was to find ways to stretch departmental resources without compromising the safety of children. The Department is glad to hear that CI is working to meet the needs of the children they serve.

COMMENT #3: Four commentors expressed concern that CI puts a

screen between mandatory reporters or other concerned professionals and the actual field social workers. Their concern was that this extra layer weakens communication if certain details are left out the initial reported information when it is provided to the field.

RESPONSE: The social worker who conducts the investigation frequently contacts the reporter to determine if the reporter has additional information. Prior to the creation of CI, there still was often a screening person between callers and the actual field social workers who followed up on any given referral.

The Department also wishes to allay the concerns of these commentors by explaining the training and qualifications of the people who staff the CI unit. These workers, who receive the reports of child abuse or neglect, are social workers, required by current policy and under the proposed amendments to ARM 37.47.301, to have the same knowledge, skills and abilities as those in the field. They also receive significant additional training as to what information is critical to include in a report, and have guidelines for questioning a reporter so that the information gathered is definitive and useful.

The specialized training now given to CI workers is designed to improve the accuracy and completeness of information provided to the field.

The Department wishes to assure all commentors that it is committed to continually improving its services. As such, part of the responsibility of CI supervisors is to monitor calls on a random basis, assessing if CI workers are making appropriate inquiry to adequately assess the seriousness of reports and that the information gathered is contained in reports sent to the field.

COMMENT #4: A commentor stated that reports are screened and categorized more consistently, and therefore, the priority one reports get out to the field as soon as possible.

RESPONSE: The Department is glad to hear that the system is allowing more prompt and appropriate responses.

COMMENT #5: A commentor was concerned that there is a lack of training in the Child and Family Services Division (CFSD) workers, that a certain level of required training and actual experience for these workers should be set by the Department, and those requirements should be set forth in the rules.

RESPONSE: The qualification and training of social workers is outlined in statute at 41-3-102(24), MCA. Both CI social workers and field social workers are required to have the same essential knowledge, skills and abilities. Both receive ongoing training. CI social workers are specially trained to

receive reports of child abuse or neglect, assess those reports, review the system for family history, and enter the reports on the system. Field social workers are specially trained to investigate reports, evaluate the safety of identified children, and make a determination as to the level of intervention required to keep children safe.

COMMENT #6: A commentor stated it was useful and efficient for calls to be screened by CI. This commentor stated that CI is the "best thing since sliced bread". The commentor stated that field workers do more quality work and spend less on-call time during nights and weekends taking unnecessary time and effort trying to figure out what, if any, response is appropriate. When the field is called by CI after hours, they know a response is required, and thus unnecessary call-outs are now less frequent.

RESPONSE: The Department recognized that social workers were often called after hours and on weekends about situations not requiring an immediate response. When CI was developed, the various responses CI could recommend to help the children and families served by CFSD as well as the field social workers were reviewed. Input and ideas on various topics were gathered from the field social workers across the state to make CI able to provide effective and efficient service. The time saved by having CI screen calls and prioritize the appropriate responses allows CFSD to make more efficient use of its existing resources.

COMMENT #7: A commentor stated that the CI system provides a prompt response and most cases are investigated the same day the referral is made.

RESPONSE: Part of the reason for establishing the program was to free up the field to respond immediately to reports of a more urgent nature.

COMMENT #8: A commentor said that the level of urgency of callers is "filtered out" by CI. The commentor also stated concern that a sense of urgency is replaced by a priority level assigned by CI.

RESPONSE: CI is, in a sense, the "911" of the Child Protection System. Like dispatchers who answer 911 calls, CI social workers are required to remain calm and objective in order to get the information needed to determine the appropriate response. Although not all calls result in an immediate response, likewise, not every call to 911 results in law enforcement being immediately dispatched. In both cases, calls are prioritized based on the information provided, and the proper people are notified in an appropriate and timely manner.

COMMENT #9: The same commentor expressed a belief that CI prioritizes calls as not needing investigation unless there is

proof of actual abuse or neglect, expressing concern that reasonable suspicions are not given sufficient attention. The commentor reminded the Department that mandatory reporters must report when they "have reasonable cause to suspect" child abuse or neglect.

RESPONSE: Child Protective social workers have education and training to enable them to recognize and assess risk and safety factors. However, their assessment can only be based on the quality of information provided. The task of the CI social worker is to gather information to help determine if a child is abused or neglected, or in danger of being abused or neglected. When enough information is given to warrant an investigation, that report is sent to the field for investigation. If there is insufficient information provided to warrant an investigation, it is still entered into the system and is available for review by the local field offices. If additional reports add further facts, the total data gathered from all reporters may then allow a case to be forwarded for investigation.

COMMENT #10: A commentor stated that CI has been positive in weeding out cases not involving child abuse or neglect.

RESPONSE: Prior to CI, field social workers spent considerable time responding to matters not directly related to child protection, such as issues involving custody disputes or visitation. Calls that are received by CI are now screened and only those pertaining to child abuse or neglect are entered on the system.

COMMENT #11: The same commentor stated that they appreciate being able to have a category on a report changed if the field determines it is warranted to do so.

RESPONSE: Reports that come in to CI may be modified when additional information is obtained.

COMMENT #12: A commentor expressed support for CI and the improvements that have developed because of this program. Prior to implementation of CI, as a former child protective services supervisor, the commentor was required to screen calls to determine if a call represented a report of possible child abuse or neglect. The commentor pointed out that more than 25 other supervisors around Montana also screened calls to make that determination. Prior to CI, the commentor explained that there were no established criteria for determining if a report would be investigated, or how quickly an investigation would occur.

RESPONSE: The Department appreciates receiving information about the historical handling of reports. In addition to the calls being screened by more than 25 supervisors around the state for a determination as to the correct response, those reports were received by about 175 social workers from various parts of the state and entered. CI has narrowed that to 14

social workers who receive all reports and two supervisors who screen referrals when appropriate.

COMMENT #13: Two comments were received stating that recording calls and using standard protocols for entering information has led to increased accuracy.

RESPONSE: All calls are recorded for several reasons that enhance quality, and the responses of social workers in CI are highly scrutinized. Recording calls allows staff to verify the information reported and make corrections if necessary, thus maintaining the integrity of the report. It also is possible for social workers entering information to go back and double-check the information reported. Recording calls allows supervisors to review the skills and accuracy of a social worker, the appropriateness of response to the caller, and to oversee other quality assurance issues. Recording calls also allows CI to maximize the use of social workers' time by distributing workload.

COMMENT #14: A commentor stated that there is no mention that telephone calls in to the CI system are recorded and there is no mention of this in the rules. The commentor believed this should be in the rules. The commentor stated that a rule should state the reasons recordings are made, who keeps the recordings, how long they are kept, how the reporter can obtain access to the recorded call if they believe that the report they made was not properly entered into the system.

RESPONSE: All callers to the toll free number are advised that the call is being recorded. To add a rule about recording calls is beyond the scope of the current proposed rules as noticed. However, the Department will consider if specific administrative rules for recording and retaining calls are appropriate for future rulemaking.

COMMENT #15: The same commentor asked if the reporter had the right to verify that a report was made and that the information was noted correctly.

RESPONSE: If there is specific concern that a report was not entered correctly, any supervisor can communicate with CI and review the voice recording.

COMMENT #16: The same commentor questioned what would happen if a caller called back with more information and wondered if they could be given a reference number so the information is correctly included in the right report, or if it would be a separate report and why.

RESPONSE: The Department will consider the idea of providing reference numbers to reporters. Callers are not currently given a reference number when they call reports in to CI. However, the current system allows CI social workers to cross-check

information against existing reports. If additional information is called in regarding an already existing report, that information is added and the field office is notified in a timely manner, depending on the level of concern contained in the added information.

COMMENT #17: The same commentor asked if a reporter, mandatory or otherwise, could contact a review person if they didn't believe a situation was being properly handled. The commentor questioned what the process was for this and stated that if there was not one, there should be, and it should be in the rules.

RESPONSE: At present, a reporter with concerns as to how initial reports or subsequent investigations are handled is certainly able to contact a CI or field supervisor to make their concerns known. The Department will consider if this procedure needs to be explicitly stated in administrative rule in a future rule notice. To do so at this time would exceed the scope of the existing rule notice.

COMMENT #18: The same commentor asked what safeguards were in place to make sure that there is not a staff member conflict of interest in a report that is being made or in the investigation of that report.

RESPONSE: CI staff are held to the same standards as all other social workers. All CFSD staff are aware of the need for special handling when potential conflicts of interest arise and to respond in accordance with employee policies already in place.

COMMENT #19: The same commentor asked if anyone ever reviewed reports which were not sent to a local office to determine if the CI worker's action in not assigning the report was correct or not. The commentor suggested this should all be in rule.

RESPONSE: Protocols such as these are a part of CI's procedures, and the Department will consider the suggestion to add this policy to the ARM in future rulemaking.

All reports of possible child abuse and neglect are currently entered on the system, regardless of whether or not they are identified as requiring investigation, and thus are available to the field office. All reports are identified by county area and each county can (and often does) review reports not identified as needing investigation. Further, CI supervisors, as a part of quality assurance, randomly review a portion of those reports not assigned to the field to make certain they are accurately categorized.

COMMENT #20: The same commentor asked what steps were in place when a child reported their own abuse and the investigating worker did not pursue the investigation of the child's claims.

RESPONSE: If a report is made which rises to the level requiring investigation, children are typically interviewed. If the report does not require investigation, no one is contacted. It would not be appropriate for the Department to contact children when no investigation was being conducted.

COMMENT #21: Four commentors expressed concern that the Department was forced to fund the CI system without additional funds, thus moving field social worker positions to the CI unit. They expressed concern that time saved by referrals going to CI was lost by staff cutbacks which might hinder the ability of local offices to handle large child abuse caseloads.

RESPONSE: In creating the CI system, the Department believes that the time saved by referrals going to CI offsets any loss from shifting social work positions to the CI Unit. The previous system inefficiently kept individuals in 41 separate county offices away from their fieldwork, tied to a telephone, waiting for reports of child abuse and neglect from just their local area. The 14 CI specialists in the unit actually free up workers in the field to provide investigations and services needed for children and families. Field social workers, both in rural areas and urban areas, have expressed appreciation that they are able to actually spend more time doing the necessary field work without having to worry about receiving referrals. They know that if a referral requires immediate attention, they will be contacted by CI so they can respond to emergencies.

Section 41-3-302, MCA, mandates that the Department respond to reports of child abuse and neglect 24 hours a day, seven days per week. The number of workers shifted from the field to CI was determined by using Fiscal Year 2000 and 2001 data and report logs. CFSD assessed the numbers of individuals in the field then required to be available 24/7 to accept all reports of child abuse or neglect, the time spent assessing the level of response required for each referral, and time spent entering the information in the system. This established the base staff level and the number of positions shifted to the central office.

COMMENT #22: Two commentors stated that CI has freed up a great deal of field social worker time in answering and screening calls that come in to CI.

RESPONSE: Freeing up time for field workers to do other work in the field was one of the primary reasons for the development of the CI program.

COMMENT #23: A commentor expressed the opinion that CI provides consistency and accountability in Montana's child protection system. The commentor stated that in the 80's and 90's, she worked as a CPS social worker and an Intake/Investigation supervisor in one of Montana's busiest offices. Prior to the implementation of CI, one or more workers each day were assigned to "intake" calls, and thus were required to stay by the phones

to receive calls. Consequently, they were unable to do investigations or provide services in the community.

RESPONSE: CI was designed to alleviate this type of stress on the field workers/offices.

COMMENT #24: A commentor recommended that the Legislature should sufficiently fund CI and restore the lost field social worker positions.

RESPONSE: It is the position of the Department that time saved by the creation of CI has offset the loss of field workers, but agrees with the commentor than additional positions and funding would be useful.

COMMENT #25: A commentor questioned if the $473,848 budgeted for CI was new money or money transferred from the field.

RESPONSE: The figure quoted by the commentor may be some sort of composite figure because it does not align with any of CFSD's budget categories. Thus the Department cannot answer without knowing the source of the commentor's data.

COMMENT #26: The same commentor suggested CFSD work more collaboratively with the educational community, noting that from a statewide perspective, the educational community is a strong lobbying group who could help DPHHS get more funding from the legislature, noting this is a separate issue from CI.

RESPONSE: The Department will refer this comment to the appropriate parties.

COMMENT #27: A commentor stated that CI will ultimately help determine a fair allocation of resources through the gathering of accurate statistics.

RESPONSE: The division is reviewing data on a continuing basis to be able to utilize this data in exactly that manner.

COMMENT #28: A commentor expressed initial enthusiasm about CI and hoped the situation would improve delivery of services to clients; however, the commentor stated that comprehensive services provided to the client have diminished. The commentor recommends that a thorough review of the program be conducted before it is continued.

RESPONSE: The Department wishes to respond with specificity to this comment. However, there was insufficient information to determine which comprehensive services are at issue. However, CI does not determine which services are necessary as a result of referrals sent to the field. Field supervisors review field social worker response to referrals for appropriateness of intervention.

COMMENT #29: A commentor stated that Montanans depend on relationships and trust in the individuals with whom they are doing business and expressed concern about police, physicians, and neighbors having to discuss sensitive and complicated issues with an unknown person in a central office.

RESPONSE: This has worked both ways, as some reporters are more comfortable giving a report over the hotline to a neutral party outside of their community. However, that said, there are currently only fourteen CI social workers, and they receive reports for the entire State of Montana. Many mandatory reporters have become well acquainted with the CI social workers.

COMMENT #30: A commentor stated that while referrants still call the local office, they do in fact follow up by calling the toll free number, and community relationships have not been negatively impacted.

RESPONSE: The Department believes this may reflect that the community has adapted to the procedural changes brought about by CI.

COMMENT #31: A commentor asked if CI was accepted more in larger towns such as Billings than in Thompson Falls, a small rural town.

RESPONSE: CI seems to be accepted at equal rates in both large urban communities and small rural communities. It may be that the benefits from CI are more obvious in the larger communities where there are a greater number of reports, making the relief provided to the field by CI more obvious. It is probably also accurate to say that some areas of the state are not as supportive of CI, which may be due in part to a lack of understanding as to how CI actually works. The goal of CI is to enhance field ability to respond to emergencies in a timely manner and to provide services to families already identified as needing services.

COMMENT #32: The same commentor stated that the current system should be kept in place until there is more statistical data available.

RESPONSE: CI was implemented in 2000 and the Department continually is evaluating CI in an ongoing manner. The system allows for greater data analysis than was available in the past.

COMMENT #33: A commentor stated that their referrals are generally made based on monthly Child Protection Team Meetings, and that requiring the reporting of those situations to CI is unnecessary, bureaucratic and will cause inefficiency and delay in a system that is working well. Further, the commentor mentioned that it might discourage some of those who might report abuse and neglect directly to a social worker.

RESPONSE: The Department wishes again to clarify that the CI has already been operational for well over two years. In this time, there does not appear to be a significant decline in the numbers of reports. The Department also urges the public to report promptly, not to wait to report child abuse or neglect until after a monthly meeting. It is best for a person with first hand knowledge to make a report to be sure all relevant information is conveyed.

COMMENT #34: Two commentors stated that CI has increased consistency across the state as far as what constitutes a report of child abuse or neglect and what does not, keeping within statutory guidelines. Further, one commentor believed this process will help both the public and community partners understand at what level the Department has authority to intervene with a family.

RESPONSE: Available data support these comments. The Department believes there may be additional benefit in further educating communities about the statutory guidelines.

COMMENT #35: A commentor discussed a situation wherein reports were made regarding a mother who moved to be near her boyfriend during his incarceration. The commentor was concerned about delays in the length of time that it took to get CFSD involved and the inability of CFSD to locate the children. The commentor stated an opinion that CI lacks the knowledge of the community where reports generate and believes reports would have been handled differently if the reports were made to local social workers.

RESPONSE: Families often move from one community to another. Thus, local reporting is ineffective with many transient families. The 14 CI social workers have become familiar with many different situations in Montana, as well as mandatory reporters who frequently call to report child abuse and neglect. Primary dissatisfaction with the field response time seems primarily due to the inability to locate the children.

COMMENT #36: A commentor stated that the standardized process for gathering referral information helps ensure the referral contains necessary and specific information on the circumstances that necessitated the report. The commentor stated that the format used for recording reports of child abuse or neglect, (including background checks) is useful for the field. It is well-organized and provides the necessary information all in one document.

RESPONSE: The Department appreciates feedback on how CI reports are used in the field and is glad to know that they have been beneficial.

COMMENT #37: A commentor expressed concern that the CI Risk

Assessments are arbitrary and in matters of medical neglect, cause ". . . great alarm, frustration and confusion among reporters."

RESPONSE: CI's risk assessments are based on consistent guidelines and the Department is continually working to further refine the system.

COMMENT #38: The same commentor discussed the use by CI of a risk assessment directory or protocol manual which has not been seen by mandatory reporters. The commentor suggested that mandatory reporters should have access to that information so that reporters and DPHHS can be on the same page.

RESPONSE: CI has its own risk assignment guidelines, based on Montana statute, to assist with evaluating reports and determining the correct response. However, these social workers have specialized training on how to apply these guidelines when they make an assessment of abuse or neglect.

The Department does not want to influence reporters by suggesting that the reporter should apply a specific risk assessment before making the call. The reporter needs to make the call based on the reporter's own analysis of whether a child is at risk of abuse or neglect.

The Department has developed a booklet titled "Montana School Guidelines for the Identification and Reporting of Child Abuse and Neglect" which is available to the public. Many mandatory reporters find this a helpful tool for use in identifying when and what to report.

COMMENT #39: A commentor stated that CI provides greater accountability, noting that, before CI, there were instances where non-critical reports were misplaced or lost or simply kept in a pile until it was too late to investigate. Often this occurred because many of the larger, urban offices are not adequately staffed, and there are also several one-social worker offices.

RESPONSE: CI does provide more accurate documentation, through recording of all calls and protocols that require that all information pertaining to child abuse or neglect be entered on the system.

COMMENT #40: A commentor stated that, initially in their rural community, professionals were apprehensive about CI, perhaps in part because they were accustomed to contacting the field social worker directly. In addition they had concerns that the public would not respond to calling the Hotline and feared that reporting would decline and subsequently children in their communities would be placed at further risk. However, the commentor found that the response has been quite the opposite and that it turned out to be a very beneficial tool.

RESPONSE: The Department appreciates knowing that some who may not have been initially in favor of the idea of CI have had their concerns alleviated.

COMMENT #41: A commentor questioned what happened with reports which were not referred for investigation and how long they were kept.

RESPONSE: CI is a part of the CFSD and therefore, record retention policy is that of the overall records retention policy for CFSD. Retention of records is governed first by 41-3-202(5), MCA, and the confidentiality restrictions of 41-3-205, MCA, then generally by the general records retention policy of the State of Montana, outlined in Title 2, chapter 6, MCA.

COMMENT #42: The same commentor asked what option they had if a reporter believes a child is in danger and the worker does not take it seriously. The commentor discussed instances where reports have been made that a child was living in a home with no heat, food, water, or electricity, and claimed the reporter was told that none of that was considered life threatening. The same commentor also discussed a situation where they believed nothing was done, even after a couple of credible reports and an incident where the child was beaten in full view of witnesses.

RESPONSE: If calls are made to CI and reporters feel the reported information was handled in a manner which they do not feel is appropriate, the reporter can ask to speak with a supervisor or to have a supervisor contact them. The supervisor is able to review the information and, if needed, contact the reporter to further discuss their concerns. The Department also wishes to point out that while CI sends reports to the field, it has no control over further decisions that are made in the field.

COMMENT #43: A commentor representing the Montana County Attorney's Association was concerned that important information is screened out of the system.

RESPONSE: All calls are recorded and all information related to the welfare of a child is placed into the Child and Adult Protective Services (CAPS) system. If this does happen, it would be helpful to look at specific situations in order to determine the cause of the problem. Perhaps more in depth information could be furnished to the Department for specific case review.

COMMENT #44: Two commentors recommended that all calls that include even reasonable suspicions relating to child abuse or neglect should be entered into CAPS.

RESPONSE: That is exactly what does occur.

COMMENT #45: The same commentor stated a concern that CI

degrades the relationship between mandatory reporters and field social workers. The commentor pointed out that rapport between social workers, school counselors, or other professional reporters working with a child allows helpful communication in both directions regarding how a child is doing.

RESPONSE: CI only has the responsibility of receiving the initial report and it is expected that professionals will continue to communicate with one another in ongoing cases as they have been able to do in the past. Reports are still to be responded to by field staff in a timely and appropriate manner, and establishing good rapport with others who are concerned about the welfare of a child is a continuing part of the job of field social workers. Prior to the creation of CI, an individual taking the initial report also was not the same person who investigated that report.

COMMENT #46: The same commentor said that the credibility of a person calling in a report of child abuse or neglect, as well as the past history of the family who is the subject of the report, are not always known by CI. The commentor expressed concern that a mandatory reporter who is a master's level professional is treated the same as a "nosy neighbor or disgruntled ex-spouse." The commentor asserted that not enough additional attention or higher priority is given to a call based on the reputation of the reporter.

RESPONSE: CI cannot ignore or discount a potential risk to a child based on the reputation of a reporter. Further, 41-3-202, MCA also allows callers to make anonymous reports. Thus, in some cases, credibility or reputation cannot be assessed at all. CI gathers information from a reporter in a systematic manner, and makes a judgment based on the total information gathered. All reporters are treated equally.

COMMENT #47: The same commentor expressed concern that not enough information is contained in CAPS, noting in particular that CI may not find information on individuals who may have remarried or have a name misspelled, suggesting this information is more readily detected by field workers.

RESPONSE: The CAPS system has the ability to cross-check this information. The Department wishes to further alleviate the commentor's concerns by explaining briefly how the CAPS computer system works:

CAPS is part of the official record keeping system for the CFSD. The CAPS system is designed to alert the person entering information that there is another individual with the same birth date, same social security number, or other identifying data. Next, all reports received by CI are available for review by the appropriate field workers in the local community. If there is insufficient information at the time of the initial report, the field worker is able to gather additional information, and that

information is also entered in the CAPS system.

While there may be some information about specific individuals not found in CAPS, in other cases, more information may be available through CAPS than from a local office; as many families with whom the Department is involved are transient and thus unfamiliar to the field workers in the area where they currently live.

COMMENT #48: The commentor expressed concern that there were calls regarding domestic abuse which were not sent to the field and not referred for further investigation. The commentor is concerned that because some calls were not sent to the field, the CI worker may not even have had access to them when additional calls came in to CI.

RESPONSE: Both CI and the field have access to all reports, even those which do not require investigation. Reports have a county designation, and social workers in each county may access all reports for their county, even those not requiring investigation. CI can access reports statewide. Thus, a later call can be cross-checked against existing reports.

COMMENT #49: Two commentors offered positive comments about the way that a family's history with CFSD, if any, is summarized on the TEXT screens, thus providing immediate overview for the worker.

RESPONSE: This is another time saver for the field. History is summarized on the text report created by CI, so that field workers are saved the time of having to look up history on CAPS before responding.

COMMENT #50: Several commentors suggested that local staff should be allowed to directly open, enter and accept new referrals, especially from mandatory reporters. Some of these commentors added that this solution might allow staff positions to be transferred back into the field. One of these commentors also suggested that when Child Protection Teams meet, the information from several professionals on the Team could be pooled to create a report that is given greater weight.

RESPONSE: This would negate some of the primary advantages of CI, the higher levels of efficiency and consistency in intake and assessment of reports. In emergency situations, field workers can respond first and then call CI as soon as possible after to make certain all necessary information is entered on the system so it is available to other field workers for follow up action. One of the goals of CI was to free up social workers in the field to be able to work with families already identified as needing services and to coordinate those services with other professionals. Having field social workers tied to a telephone to accept information and enter reports during the day would be counter-productive, as noted in Response #21 above. More

reporters do not necessarily raise the potential for a report to be investigated. Any reported information must still rise to the level of concern requiring an investigation. Child Protection Team meetings may result in pooled information sufficient for a report to be made to CI, but any member of a team can make the report.

COMMENT #51: A commentor stated that CI workers are trained specifically to take reports, so they do a much more detailed and thorough job. The commentor also stated that CI staff are more polite to the public making those reports because they are not feeling rushed to get out of the office to do investigations. Because of that, the public gets a more interested ear.

RESPONSE: At the time CI was being studied and developed, careful consideration was given to having it be designed in such a way to enhance information available to the field and free up social worker time in the field to allow the field social workers time to focus on services they are providing to children and families.

COMMENT #52: Five commentors expressed concern that they receive inadequate feedback, status updates, or follow-up to reporters on the outcomes of calls to CI.

RESPONSE: The Department shares appropriate, relevant information when necessary and when allowed by statute. The confidentiality constraints of 41-3-205, MCA often prohibit Department staff from revealing information about the results of a report or investigation to anyone not statutorily authorized to receive such information. The Department also recognizes that not only do children have the right to be protected, families also have the right to be free from unwarranted interference in their lives. Thus, sometimes it is not appropriate to inform reporters of the outcome of their calls.

Mandatory reporters may ask the CI social worker to whom they have made the report if the report will be sent to the field for investigation. CI social workers are instructed that if mandatory reporters do not agree with the CI social worker's decision, they may request to speak with a supervisor.

COMMENT #53: A commentor stated that the proposed rules are incomplete and questioned as to how the caller would know if the information is actually entered into the system.

RESPONSE: The caller would not necessarily know if the information is entered into the system by CI any more than they would have known if the information was entered into the system prior to CI. Further, the confidentiality constraints of 41-3-205, MCA may limit what information can be given back to individuals who call in a report. The proposed rules establish a basic set of guidelines for CI. Additional rules may be added

in future rulemaking.

COMMENT #54: Two commentors expressed concern that CI allows "everyone" to avoid responsibility for safeguarding the welfare of children. One commentor stated that CI staff say the calls have been sent to the local office, but field workers deny receiving referrals, and this is viewed as failure to take responsibility to make sure that cases do not fall through the cracks.

RESPONSE: All calls to CI are recorded, and all calls with information concerning the welfare of a child are entered into the system in some fashion. Thus reports to CI are not to fall through the cracks. If the field worker alleges that a report has not been received, field supervisors can contact CI to determine what may have happened. In addition, many field workers have expressed that CI actually helps to make the field more accountable because all reports are entered on the system.

COMMENT #55: A commentor stated there was a problem with CI procedures. The commentor stated that a social worker did not handle the investigation the way the commentor believed it should have been handled, and that because of that the child continues to be at risk. Further, the commentor states that the mother of this child is no longer willing to call CI with her observations and has lost confidence in CI and CFSD. The commentor expressed the opinion that this case would have been handled differently if the reports were made directly to the local field social workers.

RESPONSE: From the commentor's remarks, the dissatisfaction seems to be with the field response, not the actions of CI. CI has no ability to dictate field response to referrals. However, if there are issues of this sort, supervisors should be notified.

COMMENT #56: A commentor was concerned that CI will undermine the relationship the community has with its local services and result in a lack of service.

RESPONSE: The Department wishes to clarify that CI has already been in operation for over two years. By allowing field workers to work in their communities providing services instead of waiting in the office for the telephone to ring, CI provides local offices more opportunities to go into the field and enhance community relationships.

COMMENT #57: A commentor remarked that CI workers are courteous and professional. This commentor also stated their experience with CI has been positive, and that losing CI would be a tremendous loss and that CI has made all of the field social worker jobs a little easier.

RESPONSE: The Department appreciates receiving feedback from

those who have had direct experience with the program.

COMMENT #58: Two commentors recommended that the digital recordings of calls should routinely be made available to local offices so that all available information from the call can be listened to by the assigned social worker, especially because some information may be missed the first time it is heard.

RESPONSE: Where there are questions or concerns that indicate it would be necessary and helpful for calls to be sent to the field, that already occurs. It would be an inefficient use of time to have field workers listen to all calls.

COMMENT #59: Two commentors expressed concern that the field social workers use CI as an excuse not to respond to a report by suggesting a report made to CI did not come back to them. One commentor further questioned what they could do if they were told there was no record of a report.

RESPONSE: CI and field social workers both have responsibility for protecting children. The existence of CI does not prevent the field from acting first if they need to do so. If an individual states that they called CI at a particular time and date, it is also possible to verify the call and report. Reports entered into CAPS are available to the field offices, as are the voice recordings. CI can locate any call and determine if a report was made or if information was left off the report.

Part of the responsibility of CI is to screen referrals and send only those referrals to the field that warrant investigation. If anyone believes information provided to CI was not recorded nor sent to the field, the individual or the field office can contact CI. If a field worker has additional information, they can add it to the report as well. Then, the field social worker or supervisor can determine, in conjunction with CI, if the report should be investigated.

COMMENT #60: A commentor suggested that the rule be amended to add the following sentence to Rule I(3) (ARM 37.47.302): "Nothing in this rule shall relieve the local department office or its staff of the obligation to promptly respond to the complaint."

RESPONSE: The requirement for prompt action currently exists in statute at 41-3-202(1), MCA and binds the Department. As stated in 2-4-305, MCA, rules may not unnecessarily repeat statutory language.

COMMENT #61: A commentor stated that information which is provided to the CI social worker does not always get passed along to the field, and this is verified in Child Protection Team Meetings.

RESPONSE: All calls are recorded, and all reports are available

to the field. If a failure is occurring, it should be brought to the attention of the field supervisor who is to follow up with CI to determine if and why this is occurring.

COMMENT #62: A commentor stated that law enforcement complains that CI staff require too much detail yet to be discovered through the process of investigation.

RESPONSE: CI is developing a shortened version of questions for law enforcement when a social worker is requested to assist with an emergency.

COMMENT #63: A commentor suggested that other CI programs should be reviewed and considered and, after detailed reviews, make significant changes or even abolish the CI system.

RESPONSE: CI programs in other states were reviewed and carefully researched prior to the creation of the Montana CI program. CI was created so that the Department could continue to provide services even though additional resources were not available to account for an expanding workload. Ultimately, Montana's program was patterned closely after that of the state of Arizona due to demographic similarities including population idiosyncrasies, proportion of rural and urban communities, and presence of Indian reservations. In addition, Montana has provided information and assistance to other states that are considering centralizing their intake for child abuse reporting.

COMMENT #64: A commentor, recently retired from CFSD, wrote to provide supportive background information on CI. Prior to implementation, the commentor explained that CI was carefully researched by a committee of supervisors, social workers and bureau chiefs, and the programs of several states were researched. As part of that research, some committee members spent several days in Phoenix observing their program. The supervisor of the Arizona CI program assisted in training Montana CI staff.

RESPONSE: In the period of time since CI has been in operation, the Department has also provided information and assistance to other states who inquired about Montana's CI program.

COMMENT #65: A commentor recommended that the Department should undertake a thorough analysis and review of the CI system.

RESPONSE: The Department formed a CI review team, established to conduct an ongoing assessment of the CI system. Thus, the Department exercises ongoing responsibility to analyze and review the CI system, recognizing that any new program periodically requires adjustment in order to more effectively and efficiently accomplish the tasks for which it was designed.

COMMENT #66: A commentor stated that prior to the implementation of CI, there should have been more input from

local agencies.

RESPONSE: The development of the CI system was viewed at the time as an internal change in the operating process of CFSD. However, the Department agrees that more communication with other entities may have been useful.

COMMENT #67: A commentor stated that the dedicated line for law enforcement is most beneficial.

RESPONSE: CFSD is appreciative of this information. The Dedicated Line for Law Enforcement was set up so that law enforcement would not have to wait in the queue along with other callers given that most of the law enforcement calls to CI would be of an emergency nature.

COMMENT #68: A commentor expressed concern that when law enforcement needs to report abuse, they need a social worker NOW, not three days later when the report percolates back to the local office.

RESPONSE: CI is able to call out on-call field social workers for immediate response in most communities. The Department understands that when there is a child protective service issue with which law enforcement needs assistance, it is important to respond quickly. The CI Review Team is currently looking at ways to become even more responsive to the needs of law enforcement.

COMMENT #69: A commentor stated that CI has improved consistency. Field investigation of non-crisis reports used to sometimes depend on how many investigations a worker had, how many workers were available, as well as the worker's or supervisor's opinion of the validity of the report and community standards and expectations.

RESPONSE: With the implementation of CI, reports are assigned in accordance with established guidelines. Those requiring an immediate response are identified as Priority One and called to the field to make certain that a response is timely.

COMMENT #70: A commentor stated that having to call CI adds an additional step, and has heard that law enforcement in their community found the process to be too time consuming, and so they handle referrals without calling CI.

RESPONSE: The Department receives calls from law enforcement in the commentor's county. Law enforcement calls reports into CI if they need a social worker to conduct further investigation or if a child needs to be placed into protective care. However, 41-3-202(1), MCA, states that a "peace officer" is one of the individuals who may conduct an investigation into an allegation of child abuse or neglect, so a report is not required before law enforcement can act.

COMMENT #71: A commentor stated that the criteria used by CI to determine level of danger and intervention is confusing and expressed that it seems like the reporter is required to investigate prior to reporting.

RESPONSE: CI does ask many questions. It is not the purpose of CI to criticize a reporter. Rather, questions asked by CI simply are designed to obtain as much information as possible. The more information available, the better CI is able to make a decision as to the best response to a report. The criteria for questions used by CI is based on Montana statute and is less confusing than in the past when the Department had no objective criteria to use when assessing the level of risk to a child.

COMMENT #72: A commentor stated having been advised when the system was first set up, some agencies were notified of key words or phrases which would "red flag" the intake workers of the severity or impending danger of a situation.

RESPONSE: This appears to be a common misconception that was not true when the system was first set up, nor is it true now. CI does not look for key words or phrases, but the live, trained, social workers at CI consider all information regarding risk to a child provided by reporters to evaluate the severity of a situation.

COMMENT #73: A commentor stated that with CI, the communication is great and even though with the implementation of CI, they do not speak directly with the field worker to make the report, they still have contact with field social workers soon after the referral.

RESPONSE: CI was designed to enhance communication between the field and community professionals as much as possible.

COMMENT #74: A commentor stated that the CI process is very impersonal and not as productive as it should be in assisting youth in need of intervention and care.

RESPONSE: The Department recognizes that some reporters have a personal connection to local social workers; however, this is not universal across the state. When reports come in, CI assigns cases to local social workers, and the field workers still provide a human face to the local community.

COMMENT #75: Six commentors stated that by receiving, prioritizing and entering reports of child abuse or neglect CI allows social workers more time to focus on investigation, identifying issues and developing plans for children and families. One commentor added that CI has been a "Godsend" in that regard. Another noted prioritizing based on standard criteria was better than relying on a variety of individual interpretations concerning level of risk.

RESPONSE: These were among the original goals in the development of CI.

COMMENT #76: A commentor stated that the existing system in their county seems to be working well. They were concerned that the CI system would have a chilling effect, stating that some people are already reluctant to report and a toll free number and electronic voice mail may silence them altogether, especially when dealing with an unknown receptionist, rather than a known and trusted social worker. The commentor suggested, "If it ain't broke, don't fix it."

RESPONSE: The Department is not certain the commentor realizes that CI has already been operational for over two years. However, to clarify current practice, CI was a necessary solution to the looming problem of needing to deal with an increased workload with shrinking resources. In terms of CI's operation, the system does not route people to voice mail, though there is an electronic initial voice greeting. Further, under some circumstances, callers may feel that a hotline number gives their confidentiality greater protection. Most of all, CI standardizes reporting practices statewide, allows field workers more time to work in their communities, and provides a level of follow through that did not always exist in the past.

COMMENT #77: A commentor expressed concern that the system is not responsive to local community needs, and that caseworkers are slow to respond after something has been reported.

RESPONSE: As a general rule, field social workers and mandatory reporters have expressed the belief that it is now easier to make timely responses. Some mandatory reporters have commented that field workers are quicker to follow up. However, the Department is also very committed to improving the services it provides to protect Montana's children. Therefore, it would be helpful for the Department to have specific information on the cases of concern to the commentor, so that there can be follow up to determine the genesis of the perception that there is a slow response in the commentor's area.

COMMENT #78: The same commentor stated that caseworkers are reluctant to work with children over the age of 10.

RESPONSE: The Department works with children of all ages. CFSD data does not support that statement.

COMMENT #79: A commentor was concerned that the Department does take claims of abuse seriously if the child turns 13 before the abuse is reported or investigated, even if the child has been molested or abused for a period of time prior to this age. The commentor inquired how these cases will be handled in the future and suggested that guidelines should be available to children.

RESPONSE: Reports of child abuse and neglect are taken

seriously regardless of the age of the child. The age of a child is a consideration when determining safety factors. The level of response required for any report of child abuse or neglect is based on the level of danger present to the child. The Department will consider the suggestions offered.

COMMENT #80: A commentor expressed concern that there is little community collaboration and a lack of accountability to local community agencies.

RESPONSE: The Department has statutory responsibility for the protection of children within the state of Montana and makes its best efforts to work on their behalf. Under the provisions of 41-3-107, MCA, the Department seeks cooperation and involvement with all appropriate public and private agencies. There is variation across Montana in the level of collaboration between local CFSD offices and other community resources. The Department encourages the commentor to contact field social workers and supervisors to discuss how greater collaboration might benefit children and families, and develop a way to make collaboration happen.

COMMENT #81: A commentor expressed a firm belief that CI is the most ethical and professional method of taking calls and reports, that it provides consistency and accountability in Montana's Child Protection system.

RESPONSE: In researching other CI systems, consistency and accountability were among the positive outcomes for other states.

COMMENT #82: A commentor asked that the Department clarify what constitutes medical neglect. The commentor specifically noted a situation where the commentor felt a child had severe, inappropriately treated multiple mental illness and was left at risk. The commentor was particularly concerned when a decision made by CI as to whether or not a report requires investigation was not consistent with the reporter's view.

RESPONSE: When individuals are licensed or otherwise considered qualified to provide care, it is not appropriate for CI to second-guess medical judgments. CI assesses risk to the child and sends reports to the field with appropriate recommendations based on the information called in.

COMMENT #83: A commentor stated that field input was stifled so as to make it appear that all local offices were in favor of CI.

RESPONSE: The Department has insufficient information to comment on these concerns. Based on available information, 27 of 28 field supervisors voted to implement a CI system. There was a supervisor from each region involved in the planning for CI. The Department notes that the supervisor from the commentor's region was especially helpful and involved in

deciding how CI would function.

COMMENT #84: The same commentor stated statistics indicating only 9,739 calls were accepted as referrals last year out of 25,000 phone calls to CI, and only 945 of the 9,739 were substantiated by the field.

RESPONSE: These figures are incorrect. Actually, in 2000, there were a total of 15,435 reports entered, 10,070 designated for investigation; in 2001 there were 15,201 reports entered, 9,610 designated for investigation; in 2002, there were 16,898 reports entered, 10,389 designated for investigation. It should be noted that in early 2003 the Department changed the way reports of child abuse or neglect are entered. Thus, in 2003 there were 14,433 reports entered, 8,343 designated for investigation.

CI does not determine whether a report is substantiated or not. Those decisions are made by the field. Also, when additional reports are made on an individual for whom there is already an open report on the system, that additional report is added to the already existing report and will be investigated as one.

COMMENT #85: A commentor stated concern over a drop in the numbers of substantiated referrals between FY 2001 and 2002.

RESPONSE: CI has no role in deciding whether to substantiate reports of child abuse and neglect. Those decisions are made by field social workers following an investigation. Thus, this issue is outside the scope of CI.

COMMENT #86: The same commentor asked why the numbers of unfounded referrals went from 786 to 2131 with the new system.

RESPONSE: The data cited by the commentor appear to be a combination of unfounded referrals with other findings. A review of data actually reflects there were 143 unfounded reports in 2001, 207 in 2002, and 97 in 2003.

COMMENT #87: A commentor stated that data regarding numbers of reports from around the state are now more reliable.

RESPONSE: Data derived from CI will more clearly reflect numbers of reports assigned in each area and will reflect when category changes are made on reports. This information will be a part of the information used to further refine the allocation of the Department's resources.

COMMENT #88: A commentor stated that an article in the Montana Standard said that less than 50% of CI referrals had been filtered to county levels in Montana.

RESPONSE: Field offices have access to ALL reports involving individuals residing in their county, including those not

designated as requiring an investigation.

COMMENT #89: A commentor believes that CI gives the impression that only the poor abuse their children, stating that, based on cases he has seen in court during the current year, all cases involved low income people, unable to afford attorneys.

RESPONSE: CI may provide more assurance to families that decisions as to whether or not an investigation occurs are based on objective information and not on extraneous knowledge of a family's living or financial situation. Under 41-3-202(1), MCA, ". . . the department may not inquire into the financial status of the child's family or of any other person responsible for the child's care . . ."

COMMENT #90: A commentor stated that, prior to CI, professionals could talk with field social workers who could work with them to intervene with families. The commentor further stated that CI removes field workers further from community supports in stopping the cycle of abuse.

RESPONSE: There is absolutely nothing about the structure of CI and the field that prevents continuing collaboration and communication. Social workers may provide contact information to other professionals so they can be reached directly. By freeing the social worker from having to take initial information, research history, and enter reports in CAPS, CI actually frees up social worker time to afford more of an opportunity to discuss concerns.

COMMENT #91: A commentor asked if there were differences in opinion between the support of CI when one compared the feelings of school staff to CFSD staff.

RESPONSE: The Department has not actually made a comparison of feelings of school staff versus CFSD staff; however, there have been frequent positive responses to CI from school staff in many different parts of the state with varying populations. One of the advantages reported by school personnel is that with CI, they are now able to make their reports when they have the time available to do so, instead of having to leave messages when local workers were currently not available. It is difficult for teachers to leave their classes or wait to get a call back, and this often could result in a delay in reporting.

COMMENT #92: Public comment was made during the rules hearing regarding a specific case situation and how it was handled.

RESPONSE: Due to the privacy and confidentiality issues concerning the individuals who were the subjects of the report, a public response is not appropriate, but the Department will follow up with this commentor.

COMMENT #93: A commentor expressed concern that in a case where

the child was deceased, there was not a priority one call to the field.

RESPONSE: In the specific situation referenced above, the report was not called to the field as a priority one because there were no other children in the household, thus no immediate safety response was required of the social worker. The report was called to the field as a courtesy so that the worker would not learn of the situation in some other manner.

COMMENT #94: A commentor stated, "this system and its lack of responsiveness has created havoc here", commenting that clinical providers, especially schools, call the County Attorney's Office because they know that the County Attorney will call the social worker and/or supervisor and get them going.

RESPONSE: Again, although CI sends reports to the field, CI has no control over local field responses. This is a situation where it would be helpful to meet with the individual commentor to discuss what havoc has been created and address the situation.

COMMENT #95: A commentor stated that CI cuts down on the number of referrals. This individual admitted to being unhappy about having to call the hotline number along with everyone else and so has not been following it all that much.

RESPONSE: Data available to CFSD, adjusted for the manner in which additional reports on a report already open to the field are handled, indicate little difference in the numbers of reports from 2002 to 2003. Prior to CI, there were fewer reports than in the last two years.

Russ Cater
Rule Reviewer

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

Certified to the Secretary of State July 26, 2004.

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 LXXVI pertaining to the outdoor behavioral program	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On April 22, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-323 pertaining to the public hearing on the proposed adoption of the above-stated rules relating to the outdoor behavioral program, at page 903 of the 2004 Montana Administrative Register, issue number 8.

2. The Department has adopted rules II (37.106.1703), III (37.106.1704), IV (37.106.1705), VI (37.106.1709), VII (37.106.1710), VIII (37.106.1711), IX (37.106.1712), X (37.106.1713), XIV (37.106.1720), XV (37.106.1721), XVII (37.106.1724), XVIII (37.106.1725), XXII (37.106.1731), XXIII (37.106.1732), XXIV (37.106.1733), XXVI (37.106.1735), XXVII (37.106.1736), XXVIII (37.106.1737), XXIX (37.106.1738), XXX (37.106.1739), XXXI (37.106.1740), XXXIX (37.106.1751), XLIII (37.106.1755), XLV (37.106.1757), XLVIII (37.106.1763), XLIX (37.106.1764), L (37.106.1765), LI (37.106.1766), LIV (37.106.1771), LV (37.106.1772), LVI (37.106.1773), LVII (37.106.1774), LVIII (37.106.1775), LX (37.106.1777), LXI (37.106.1778), LXIII (37.106.1780), LXIV (37.106.1781), LXVIII (37.106.1788), LXIX (37.106.1789), LXX (37.106.1790), LXXI (37.106.1791), LXXII (37.106.1792), LXXIII (37.106.1793), LXXV (37.106.1795) and LXXVI (37.106.1796) 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.

RULE I [37.106.1701] DEFINITIONS The following definitions apply to this subchapter:

(1) through (20) remain as proposed.

(21) "Nonviolent crisis intervention strategies" means preventive measures that are used to manage the behavior of the youth and include the use of de-escalation techniques, physical assists and physical restraints.

(21) remains as proposed but is renumbered (22).

(23) "Physical restraint" means any physical method of restricting a person's freedom of movement that prevents the person from independent and purposeful functioning. This activity includes seclusion, controlling physical activity, or restricting normal access to the body.

(22) remains as proposed but is renumbered (24).

(25) "Practitioner" is defined at 50-5-101, MCA.

(23) through (30) remain as proposed but are renumbered (26) through (33).

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE V [37.106.1708] ADMINISTRATOR QUALIFICATIONS

(1) remains as proposed.

(2) The administrator shall meet, at a minimum, the following qualifications:

(a) remains as proposed.

~~(b) completion of a minimum of 30 semester or 45 quarter hours of education in recreational therapy or related field or one year outdoor youth program field experience;~~

~~(c)~~ (b) two years experience working with youth and two years experience in staff supervision and administration;

~~(d)~~ (c) completion of initial staff training; and

~~(e)~~ (d) have evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the program.

(3) through (3)(a)(ii) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XI [37.106.1717] STAFF (1) through (9) remain as proposed.

(10) Program volunteers and interns shall:

(a) and (b) remain as proposed.

~~(c) not provide direct care or supervise youth at any time;~~

~~(d)~~ (c) not be included in the staff to youth ratios; and

~~(e)~~ (d) be under the direct and constant supervision of program staff.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XII [37.106.1718] PROGRAM PROFESSIONAL STAFF AND QUALIFICATIONS (1) through (1)(e) remain as proposed.

(2) At a minimum, each program professional staff must consist of:

~~(a) a licensed physician;~~

~~(b)~~ (a) a licensed health care professional~~. If a licensed physician is selected as the licensed health care professional, then the program must select a different licensed physician for (2)(a)~~;

~~(c)~~ (b) a licensed mental health professional who may be either a licensed clinical psychologist, a licensed clinical social worker or a licensed clinical professional counselor; and

~~(d)~~ (c) a licensed addiction counselor~~.~~ if the program is treating youth for chemical dependency.

AUTH: Sec. 50-5-220, MCA

IMP: Sec. 50-5-220, MCA

RULE XIII [37.106.1719] PROGRAM EXPEDITION FIELD DIRECTOR QUALIFICATIONS (1) through (4) remain as proposed.

(5) Each program shall have a senior field staff member working directly with each group of program youths. Each senior field staff member shall meet the following minimum qualifications:

(a) and (b) remain as proposed.

(c) have six months, or 130 24-hour field days of outdoor youth program field experience or comparable experience ~~which shall~~ serving youth with behavior problems that endanger the youth's health, interpersonal relationships, or educational functioning. Such experience must be documented in the individual's personnel file;

(d) through (6)(d) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XVI [37.106.1723] YOUTH/STAFF RATIOS (1) A program shall maintain the following minimum staff ratios:

(a) remains as proposed.

(b) Youth/staff ratio for residential outdoor services may not be more than 8:1 each night for a nine-hour period beginning no earlier than 15 hours from the time daytime staffing of 4:1 starts. Staff must be awake during the nine-hour period.

(2) remains as proposed.

(3) The youth/staff ratio requirement for the expedition components of the program is contained in RULE LXVII (ARM 37.106.1787).

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XIX [37.106.1726] CARE AND GUIDANCE (1) through (2)(b) remain as proposed.

~~(3) A program shall encourage youth to continue any socially appropriate activities, classes or participation in clubs or groups. Each youth must be allowed to become voluntarily involved in community programs that meet his or her needs, interests and abilities.~~

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XX [37.106.1727] NUTRITION (1) through (5) remain as proposed.

(6) Hands must be washed with warm water and soap before the handling of food. Hand sanitizer gels may be used in lieu of washing hands with soap and water.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXI [37.106.1730] RELIGION AND CULTURE (1) The program shall provide youth with a reasonable opportunity to practice their respective religions. ~~Youth must be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths.~~ Youth must be permitted to have religious materials of their choice.

(2) The program shall ~~give~~ document giving encouragement and opportunity to each youth to identify with his or her cultural heritage.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXV [37.106.1734] TRAINING AND EMPLOYMENT (1) For youth age 16 and older a program ~~shall~~ may assist in:

(a) through (3) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXII [37.106.1741] PHYSICAL EXAMINATION (1) All physical examinations must be completed by an appropriate licensed ~~health care professional~~ practitioner. A youth must have a physical examination:

(a) through (c) remain as proposed.

(2) The result of the physical examination must be recorded on a standard form provided by the program. The form shall clearly identify to the examining ~~professional~~ practitioner the type and extent of physical activity which the youth will be asked to participate in.

(3) The physical examination must include:

(a) a complete blood count (CBC), a urinalysis and an electrolyte screen, if deemed necessary by the examining practitioner;

(b) a pregnancy test for each female if deemed necessary by the ~~health care professional conducting the physical examination~~ examining practitioner;

(c) through (f) remain as proposed.

(g) a record of immunizations as defined in ARM 37.114.701 through 37.114.716. In addition the immunization record must include:

(i) evidence of hepatitis A series, if deemed necessary by a practitioner. ~~If the record indicates no hepatitis A series, then the series must be started immediately. The hepatitis A series consists of two injections given six months apart~~;

(ii) evidence of hepatitis B series, if deemed necessary by a practitioner. ~~If the record indicates no hepatitis B series, then the series shall be started immediately. The hepatitis B series consists of three shots, including one initial shot, one shot given at one month or two months after the initial shot, and one shot given six months after the initial shot~~;

(h) through (l) remain as proposed.

(4) If a youth is in a risk group for circulatory or auto-immune syndrome disorder, written approval must be included on the physical examination form by the ~~licensed health care professional~~ practitioner for participation in the program.

(5) The ~~licensed health care professional~~ practitioner conducting the examination must give written approval on the examination form for participation in the program, taking into consideration the factors specified in this rule and any other factors the ~~professional~~ practitioner deems to be relevant to the youth's participation in the program. The ~~licensed health care professional~~ practitioner conducting the physical examination must give separate written approval on the examination form for the youth's participation in the following situations or activities:

(a) remains as proposed.

(b) exposure to cold and hot temperatures; and

(c) remains as proposed.

(6) A program may not admit a youth who is not approved by the examining ~~licensed health care professional~~ practitioner for admission to the program. The program shall comply with all restrictions or limitations placed on a youth by the examining ~~professional~~ practitioner.

(7) remains as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXIII [37.106.1745] ASSESSMENTS (1) through (2)(t) remain as proposed.

(3) The program shall establish a minimum body mass index. Body mass for each youth must be assessed to assure that the youth has sufficient body mass to fully participate in the strenuous elements of the program.

(3) through (3)(d) remain as proposed but are renumbered (4) through (4)(d).

~~(4)~~ (5) A subsequent assessment must be done before the youth leaves for the expedition portion of the program. The subsequent assessment must include the following evaluations:

(4)(a) and (b) remain as proposed but are renumbered (5)(a) and (b).

(c) For a youth with a history of mental illness, a psychological ~~evaluation~~ assessment must be prepared by an appropriate program professional staff member prior to the youth's entrance into the expedition portion of the program. On the basis of this psychological ~~evaluation~~ assessment, the program professional staff member shall decide whether the youth will be allowed to enter the expedition portion of the program. A written summary of this ~~evaluation~~ assessment, including special needs of the youth and services required of the expedition staff, must be placed in the youth's file before the youth enters the field.

(4)(d) remains as proposed but is renumbered (5)(d).

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXIV [37.106.1746] DEVELOPMENT AND CONTENT OF THE CASE PLAN (1) A case plan for each youth must be developed within 14 days of admission and prior to entering into the expedition portion of the program. The case plan team must include at minimum the appropriate members of the program professional staff and the field director. Members of the case plan team shall develop and sign the case plan. The youth's parent, guardian and/or the placing agency staff, along with the youth, if appropriate, must be encouraged to participate in the development of the case plan.

(2) through (2)(l) remain as proposed.

(3) The case plan must be reviewed and updated by the case plan team every 90 days or whenever there is a significant change in the youth's condition. The youth's parent, guardian, and/or the placing agency must be informed that case plan reviews are available for inspection.

(4) and (5) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXV [37.106.1747] DISCHARGE SUMMARY (1) Within ~~one week~~ 10 business days of the discharge of a youth from the program, a discharge report must be completed, including:

(a) through (2) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXVI [37.106.1748] BEHAVIOR MANAGEMENT POLICIES

(1) A program shall have and follow written behavior management policies and procedures including a description of the model, program or techniques to be used with youth. The program shall have policies addressing discipline, therapeutic de-escalation of crisis situations, ~~passive physical restraint,~~ nonviolent crisis intervention, and time out. Behavior management must be based on an individual assessment of each youth's needs, stage of development and behavior. It must be designed with the goal of teaching youth to manage their own behavior and be based on the concept of providing effective treatment by the least restrictive means.

(2) through (4) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXVII [37.106.1749] USE OF NONVIOLENT CRISIS INTERVENTION STRATEGIES (1) through (1)(c) remain as proposed.

(2) The nonviolent crisis intervention strategies, policies and procedures must comply with the following:

(a) remains as proposed.

(b) Appropriate use of physical assists occurs when staff members physically aid, support or redirect youth who are not physically resisting. Physical assists include staff leading youth along the trail or moving youth to his or her campsite by gently pulling on a backpack strap, guiding him or her by the hand or elbow, or placing a hand on the youth's back. If a youth resists reasonable staff direction, staff must assess whether the use of physical restraint is warranted based on the program's written ~~nonviolent~~ physical restraint policy.

(c) Physical restraint must be used to safely control a youth until he or she can regain control of his or her own behavior. Physical restraint must only be used in the following circumstances:

~~(i) when a youth's behavior is out of control;~~

(c)(ii) through (c)(iv) remain as proposed but are renumbered (c)(i) through (c)(iii).

(d) through (f) remain as proposed.

(g) Program policies must require documentation of:

(i) the behavior which required the physical restraint~~,~~;

(ii) the specific attempts to de-escalate the situation before using physical restraint~~,~~;

(iii) the length of time the physical restraint was applied including documentation of the time started and completed~~, and~~;

(iv) the identity of the specific staff member(s) involved in administering the physical restraint;

(v) the type of physical restraint used;

(vi) any injuries to the youth resulting from the physical restraint; and

(vii) the debriefing completed with the staff and youth involved in the physical restraint.

(h) remains as proposed.

(3) The program shall train staff in the therapeutic de-escalation of crisis situations provided through a nationally recognized training system to ensure the protection and safety of the youth and staff. The training must include the use of physical and nonphysical methods of managing youth, and must be updated at least annually to ensure the maintenance of necessary skills.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXVIII [37.106.1750] TIME OUT (1) and (2) remain as proposed.

(3) ~~If the duration of the time out exceeds one hour, or there is visual separation of the youth, a~~ For each time out, a report must be written and placed in the client's file in sufficient detail to provide a clear understanding of the occurrence or behavior which resulted in the youth being placed in time out, and staff's attempts to help the youth avoid time out.

(4) and (5) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XL [37.106.1752] POTENTIAL WEAPONS (1) through (3) remain as proposed.

(4) Large animal repellants must be stored under lock and key when not being carried by program staff, and be safeguarded from youth. Youth shall only use large animal repellants under the supervision of staff.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLI [37.106.1753] CONTRABAND (1) A program shall define prohibited contraband in a written policy.

(2) Law enforcement must be notified as appropriate when ~~prohibited~~ illegal contraband is discovered.

(3) ~~It is the responsibility of the program administrator or designee to dispose of all contraband not confiscated by law enforcement in accordance with the program's contraband policy.~~ All contraband that is not illegal must be returned to the youth's parent or guardian, or must be destroyed in accordance with the program's contraband policy. When contraband is disposed of, the disposal must be witnessed by at least two other staff members and must be documented in the youth's case record.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLII [37.106.1754] PROGRAM REQUIREMENTS: SEARCHES

(1) through (5)(c) remain as proposed.

(6) Youth may be not subjected to urinalysis testing unless the testing has been ordered by a court, is required pursuant to a case plan for monitoring drug or alcohol use, as approved by the parent or legal guardian, or requested by the youth's parent or legal guardian. The following requirements must be met by the program utilizing urinalysis testing:

(a) and (b) remain as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLIV [37.106.1756] HEALTH CARE (1) through (6) remain as proposed.

(7) The program shall ~~immediately~~ transport any youth with an illness or physical complaint that needs immediate care or treatment to appropriate medical care.

(8) through (14) remain as proposed.

(15) Staff must be trained to recognize eating disorders. This training must be documented in staff records. If the staff suspects the youth has an eating disorder, staff shall report the suspicions immediately ~~to the youth's legal guardian and~~ to the appropriate program professional staff members.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLVI [37.106.1758] MEDICATION STORAGE AND ADMINISTRATION (1) through (7) remain as proposed.

(8) All unused and expired medication must be disposed of. ~~Disposal of unused medication must be witnessed by at least two other staff members, and the disposal method must be documented in the youth's record.~~ The disposal of unused medication must be done by two licensed health care professionals, and the disposal must be recorded in a medication destruction log.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLVII [37.106.1759] SAFETY POLICY (1) through (5)(d) remain as proposed.

(6) Emergency information for youth must be easily accessible at the field office and on an expedition. Emergency information for each youth must include:

(a) through (c) remain as proposed.

(d) a copy of the youth's most recent health examination; ~~and~~

(e) a signed release for emergency medical treatment from the parent or legal guardian~~.~~; and

(f) a copy of the youth's current medical insurance card.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LII [37.106.1767] TRANSPORTATION (1) through (5) remain as proposed.

(6) Youth may ride in a snowmobile or on a sled pulled by a snowmobile driven by a staff member. The youth must wear a helmet and be instructed on safety procedures.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LIII [37.106.1770] OUTDOOR BEHAVIORAL PROGRAM: HIGH ADVENTURE GENERAL REQUIREMENTS (1) through (4) remain as proposed.

(5) ~~No youth must~~ Youth may not be forced to participate in any high adventure activity.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LIX [37.106.1776] HIGH ADVENTURE REQUIREMENTS: REQUIREMENTS FOR ALL ROCK CLIMBING (1) remains as proposed.

(2) The following requirements apply to all rock climbing activities:

(a) through (j) remain as proposed.

(k) Youth must be connected to a safety rope during rock

climbing.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXII [37.106.1779] HIGH ADVENTURE REQUIREMENTS: ROPE COURSES (1) through (10) remain as proposed.

(11) Youth must be connected to a safety rope during all activities on a rope course.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXV (37.106.1785) EXPEDITION: FIELD OFFICE REQUIREMENTS (1) through (4)(b) remain as proposed.

(5) The following items must be maintained at the field office:

(a) through (f) remain as proposed.

(g) program participant files, which include:

(i) youth case record including case plan;

(ii) admission and subsequent assessments;

(iii) physical examination completed as part of program admission process and any subsequent physical exams; ~~and~~

(iv) medical treatment authorization~~.~~;

(v) list of current medications taken by the youth;

(vi) identifying marks of the youth such as scars, tattoos and piercings;

(vii) health insurance information; and

(viii) list of contact persons in case of emergenices.

(6) remains as proposed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXVI [37.106.1786] EXPEDITION: STAFF TRAINING

(1) through (6) remain as proposed.

(7) A program shall provide, at a minimum, ~~15~~ 20 hours annually of ongoing training to staff to improve proficiency knowledge of skills. Additionally, the program shall ensure certifications are maintained by staff.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXVII [37.106.1787] EXPEDITION: YOUTH/STAFF RATIO

(1) through (1)(c) remain as proposed.

(2) The field director has primary responsibility for field activities and must visit the field a minimum of two days a week, with no more than ~~five~~ eight days between visits.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXIV [37.106.1794] EXPEDITION: HEALTH CARE

(1) Additional health care requirements for youth on expedition include the following:

(a) remains as proposed.

(b) Each youth's physical condition must be assessed by a staff member trained as a wilderness first responder at least every seven days while on expedition. The assessments must be documented and must at a minimum include:

(i) blood pressure, if deemed necessary by a licensed health care professional;

(b)(ii) through (c)(iii) remain as proposed.

(2) Copies of the following documentation for each youth must be carried by the staff in a waterproof container when the youth is away from the field office:

(a) physical examination completed as part of the program admission process and any subsequent physical exams;

(b) medical treatment authorization;

(c) list of current medications taken by the youth;

(d) identifying marks of the youth such as scars, tattoos and piercings;

(e) health insurance information; and

(f) list of contact persons in case of emergencies.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: These rules do not apply to the vast majority of wilderness therapy programs operating in Montana. There are over 10 wilderness programs operating in Montana, and 10 other residential programs exist which are linked to these programs, none of which are covered by the rules because they do not accept public funding. These rules do not protect any of the hundreds of youth currently participating in non-public funded wilderness therapy programs.

RESPONSE: The Department has no statutory authority to enact rules for wilderness therapy programs that do not receive public funding. Section 50-5-220(1), MCA, provides: "The department shall provide for licensure of a qualified outdoor behavioral program that accepts public funding. An outdoor behavioral program that does not accept public funds or governmental contracts is exempt from licensure." The Department cannot adopt rules that contradict a statute.

COMMENT #2: The rules appear to be written primarily for relatively large, for-profit organizations with significant residential, non-wilderness, segments.

RESPONSE: The Department disagrees. The rules are written for outdoor behavioral programs that provide "all or part of its

services in the outdoors", as specified in 50-5-101(40)(a)(iii), MCA. Thus, outdoor behavioral programs without a residential component are also covered by the rules.

COMMENT #3: It is difficult to sort out which rules apply to wilderness programs without facilities and which apply only to the facility component of a combined program. There is no clear distinction about what separates an expedition program from a residential program.

RESPONSE: The Department disagrees. The rules that do not have "residential outdoor services" or "expedition" in the rule title apply to all aspects of the outdoor behavioral program. Furthermore, the Department believes that the definitions of "expedition" found in Rule I(10) (ARM 37.106.1701), and "residential outdoor services" in Rule I(27) (ARM 37.106.1701), assist in distinguishing between what rules apply.

COMMENT #4: It would make more sense to separate the licensing requirements for residential programs and expedition programs, and offer different licenses for each.

RESPONSE: The Department disagrees. As provided in 50-2-101(40)(a)(iii), MCA, the definition of an outdoor behavioral program includes "all or part of its services" that are provided "in the outdoors". The residential component of an outdoor behavioral program is the "part of the services" not provided "in the outdoors". The expedition component of an outdoor behavioral program is the "part of the services" which is provided "in the outdoors". The license covers both components of an outdoor behavioral program.

COMMENT #5: There are a number of rules that require items to be placed under lock and key. These requirements may be difficult in a backpacking setting.

RESPONSE: The Department requires items to be locked to protect the safety of participating youth. For backpacking or other events requiring portability, lightweight portable locking containers are readily available for transporting medical supplies and other items.

COMMENT #6: There should be a definition for "nonviolent crisis intervention strategies".

RESPONSE: The Department agrees. The following definition was added to Rule I (ARM 37.106.1701): "'Nonviolent crisis intervention strategies' means preventive measures that are used to manage the behavior of the youth and include the use of de-escalation techniques, physical assists and physical restraints."

COMMENT #7: There should be a definition for "physical restraint".

RESPONSE: The department agrees. The following definition was added to Rule I (ARM 37.106.1701): "'Physical restraint' means any physical method of restricting a person's freedom of movement that prevents the person from independent and purposeful functioning. This activity includes seclusion, controlling physical activity, or restricting normal access to the body." This definition parallels the definition of "restraint" in ARM 37.106.2902 which covers restraint use in health care facilities.

COMMENT #8: A definition is needed for "outdoor behavioral program", which should be defined as "a residential treatment center that operates in the outdoors rather than within a building".

RESPONSE: The department disagrees. "Outdoor behavioral program" is defined in 50-5-101(40), MCA, as "a program that provides treatment, rehabilitation and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that (i) serve either adjudicated or nonadjudicated youth; (ii) charges a fee for its services; and (iii) provides all or part of its services in the outdoors". The Department cannot adopt a definition that contradicts statutory language.

COMMENT #9: The term "residential outdoor services" in Rule I(27) (ARM 37.106.1701) describes programs that have both a residential, in-building treatment phase and outdoor phase. Another definition should be added for "base camp services", which should be defined as "services offered in an outdoor setting at a designated permanent site in which mostly semi-permanent structures (teepees, wall tents, yurts) are available for youth to use and the permanent structures only support the outdoor activities but are not the main place of residence for youth at the base camp".

RESPONSE: The Department disagrees. "Expedition camp" and "residential outdoor services" are the two types of settings in the rules. These two settings are sufficient to cover expedition and residential aspects of an outdoor behavioral program. For the health and safety of the youth served by programs, semi-permanent structures are defined as "residential outdoor services".

COMMENT #10: Add to the requirement in Rule I(32) (ARM 37.106.1701), which defines "wilderness first responder", that at least one instructor per course hold a current wilderness certification.

RESPONSE: The Department disagrees. Qualifications of the instructor are beyond the scope of these outdoor behavioral rules. The educational institution is responsible to select qualified instructors to teach the wilderness first responder

course. Rule I(32) (ARM 37.106.1701) specifies that "wilderness first responder" course, at the minimum, meets the standards of "the national association of search and rescue".

COMMENT #11: There is mention of a fee for licensing within Rule II(1) (ARM 37.106.1703). It is not the case for licensing other programs that would contract with the state, such as group homes or foster care programs. Outdoor behavioral programs should not be singled out for paying the license fee.

RESPONSE: The Department disagrees. Licensing of outdoor behavioral programs is authorized by 50-5-101(40) and 50-5-220, MCA. License fees are required for all programs listed in Title 50, chapter 5, MCA, by 50-5-202, MCA, which states: "The department shall collect fees for each license issued."

COMMENT #12: The Department should provide an initial provisional license until the licensure process can be completed.

RESPONSE: The Department agrees but believes no rule change is needed. The licensing requirements in ARM 37.106.310, which describe the general procedures for licensure for programs defined in Title 50, chapter 5, MCA, apply to outdoor behavioral programs. ARM 37.106.310(2)(c) allows for an initial provisional license. A provisional license, following submission and approval of the required document to the licensure bureau, provides a period for the program to become operational before a survey of the program is completed for the initial license.

COMMENT #13: Rules V(2)(b) (ARM 37.106.1708) and XIII(3)(a) (ARM 37.106.1719) have the same educational requirements for the administrator and the field director. Both have a minimum of 30 semester hours or 45 quarter hours of education in recreational therapy or related field or one year outdoor youth program field experience. The duplicative educational requirements of Rule V(2)(b) (ARM 37.106.1708) and XIII(3)(a) (ARM 37.106.1719) should be modified or eliminated.

RESPONSE: The Department agrees that the administrator does not need 30 semester hours or 45 quarter hours of education in recreational therapy or related field or one year outdoor youth program field experience. Rule V(2)(b) (ARM 37.106.1708) has been deleted.

COMMENT #14: In Rule VIII(4) (ARM 37.106.1711), a limit must be placed on what information must be available to the department for the purposes of licensing, relicensing or investigating the program of youth not placed by or in the custody of the department. This requirement must comply with the federal Health Insurance Portability and Accountability Act (HIPAA) regulations.

RESPONSE: The Department disagrees that limits must be placed on information available to it. Section 50-5-204(6), MCA, provides: "The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times." Rule VIII (ARM 37.106.1711) is in compliance with HIPAA regulations as defined at 45 CFR 164.512(d) which provides that protected health care information may be disclosed to a health oversight agency for inspection and licensure activities.

COMMENT #15: Rule XI(10)(c) (ARM 37.106.1717) provides that volunteers and interns may "not provide direct care or supervise youth at any time". Direct care is not defined in Rule X(10)(c) (ARM 37.106.1713). Also, there seems to be no reason for prohibiting volunteers from providing direct care or contact. Volunteers, if they meet the same requirements that the proposed rules have for program staff (minimum ages, experience, background checks, training, etc.) should be able to mentor youth.

RESPONSE: The Department disagrees that "direct care" is not defined for Rule XI(10)(c) (ARM 37.106.1717). Direct care is defined as providing "care, supervision and guidance" in Rule I(9) (ARM 37.106.1701), which defines "direct care staff". The department agrees that volunteers who meet the direct care staff requirements should be able to mentor youth. Rule XI(10)(c) (ARM 37.106.1717) has therefore been deleted.

COMMENT #16: Rule XII(2)(a) and (b) (ARM 37.106.1718) require a licensed physician and an additional licensed health care professional to be paid by the program and require that they be involved in the "treatment" and "rehabilitation" of the participants. While it is agreed that a therapeutic program should have licensed mental health professionals working for the organization and involved in the participants' treatment process, the inclusion of two licensed health care professionals may be unnecessary and cost-prohibitive for many programs.

RESPONSE: The Department agrees that two licensed health care professionals are unnecessary to protect the health and safety of the youth. Rule XII(2)(a) (ARM 37.106.1718) and the second sentence in XII(2)(b) (ARM 37.106.1718) have been deleted.

COMMENT #17: Rule XII(2)(c) and (d) (ARM 37.106.1718) require two licensed mental health professionals to be on the staff team. In smaller programs with 10 or fewer youth at any time, it seems likely that one licensed mental health professional would suffice. A licensed addiction counselor should be required only if the primary purpose of the program is to serve youth with addictions problems.

RESPONSE: The Department agrees that both a licensed mental

health professional and a licensed chemical dependency counselor are not needed for programs serving youth without chemical dependency problems. Rule XII(2)(d) (ARM 37.106.1718) has been modified to state that a licensed chemical dependency counselor must be on staff "if the program is treating youth for chemical dependency".

COMMENT #18: The rules should permit programs to use outside professionals to make an assessment instead of the program's professional staff.

RESPONSE: The Department disagrees. Rule XXXII (ARM 37.106.1741) provides for a physical exam by an outside health care practitioner. The assessments by the program professional staff balance the outside practitioner's evaluation.

COMMENT #19: A board of directors is the governing body of a nonprofit organization. Would their involvement in program design and implementation meet the requirements for "program professional staff"?

RESPONSE: No. The governing body is charged with the governance of the organization and is not to be involved with the program's design and implementation of treatment services. "Program professional staff" provide professional services to the youth as defined in Rule XII(1) (ARM 37.106.1718).

COMMENT #20: Rule XIII(5)(b) (ARM 37.106.1719) should require a senior field staff member to hold an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a field related to recreation and adventure activities such as child or adolescent education, child or adolescent treatment, or natural science.

RESPONSE: The Department disagrees that adding this subset of specific educational experiences clarifies "field related to recreation and adventure activities" in Rule XIII(5)(b) (ARM 37.106.1719).

COMMENT #21: Rule XIII(5)(c) (ARM 37.106.1719) requires that a senior field staff member have six months experience in outdoor youth programs. Six months of experience is very likely to be insufficient. It is recommended that the experience be increased to a minimum to 12 months, or 180 actual 24-hour field days.

RESPONSE: The Department disagrees. The present requirements are consistent with standards established by outdoor accrediting agencies and other state regulations. The Department agrees to clarify Rule XIII(5)(c) (ARM 37.106.1719) by adding "130 24-hour field days" after "six months experience".

COMMENT #22: Rule XIII(5)(c) (ARM 37.106.1719) should not limit

the required experience to outdoor youth programs, but should include experience in outdoor youth programs serving at-risk or adjudicated youth.

RESPONSE: The Department agrees that experience serving at-risk or adjudicated youth in an outdoor program is necessary experience for senior field staff. Rule XIII(5)(c) (ARM 37.106.1719) has been amended to state that senior field staff have "experience serving youth with behavioral problems that endanger the youth's health, interpersonal relationships or educational functioning".

COMMENT #23: Rule XV(5) (ARM 37.106.1721) requires a minimum of 20 hours of training annually; however, Rule LXVI(7) (ARM 37.106.1786) pertaining to expedition staff training states that the minimum number of training hours is 15. Do these requirements need to be the same?

RESPONSE: The Department agrees that the training requirements should be consistent. Rule XV(5) (ARM 37.106.1721) will continue to require 20 hours of training annually. Rule LXVI(7) (ARM 37.106.1786) has been changed to 20 hours.

COMMENT #24: Rule XV (ARM 37.106.1721) should be amended to include training in STD/HIV, eating disorders and medication procedures required by Rules XLIV(14) and (15) (ARM 37.106.1756), and Rule XLVI (ARM 37.106.1758).

RESPONSE: The Department disagrees that Rule XV (ARM 37.106.1721) should be modified to include training requirements. Rule XV(5) (ARM 37.106.1721) provides a general statement of training requirements. Training requirements for specific populations of youth are addressed in the appropriate section of the rules.

COMMENT #25: It is recommended that cultural competence be added to the staff training required in Rule XV(3) (ARM 37.106.1721).

RESPONSE: The Department disagrees that all programs should train staff in cultural competence. When the population of youth served is from cultural backgrounds different from the staff, then cultural competence becomes an issue. Under these circumstances a program should provide cultural competence training as part of their ongoing training of staff, as required by Rule XV(4) and (5) (ARM 37.106.1721).

COMMENT #26: Rule XVI (ARM 37.106.1723) requires a 4:1 student/staff ratio which should be increased to 3:1. A second suggestion is to have the ratio be no less than two staff present at any one time, regardless of youth numbers, to a maximum of 12 youth.

RESPONSE: The Department disagrees that the ratio should be changed. Other similar residential programs serving at-risk youth adequately provide for the health and safety of these youth with a 4:1 ratio.

COMMENT #27: With respect to the required youth/staff ratios, it is difficult to sort out which rules apply to wilderness programs without facilities versus those that apply only to the facility component of a combined program.

RESPONSE: The Department agrees that the youth/staff ratio in Rule XVI (ARM 37.106.1723) should be differentiated from that contained in Rule LXVII (ARM 37.106.1787). A new section has been added to Rule XVI (ARM 37.106.1723) to state: "(3) The youth/staff ratio requirement for expeditions are in Rule LXVII" (ARM 37.106.1787).

COMMENT #28: Does Rule XVI(1)(b) (ARM 37.106.1723) require awake staff at all times? Awake night staff should not be required when at the base camp or the wilderness. It is suggested that there not be a requirement for awake night staff in the expedition child/staff ratios.

RESPONSE: The Department agrees that Rule XVI(1)(b) (ARM 37.106.1723) is not clear. Rule XVI(1)(b) (ARM 37.106.1723) has been changed to read that the youth/staff ratio for "residential outdoor services" may not be more than 8:1 each night for a nine-hour period beginning no earlier than 15 hours from the time daytime staffing of 4:1 starts and that staff must be awake during this nine-hour period.

COMMENT #29: It is unclear in Rule XVII (ARM 37.106.1724) whether the lead clinical staff must be present at all individual and group sessions, or whether they must simply oversee and supervise such treatment.

RESPONSE: The Department disagrees that Rule XVII's (ARM 37.106.1724) language is unclear. The language is permissive allowing the lead clinical staff to decide the procedure for oversight.

COMMENT #30: Rule XIX(3) (ARM 37.106.1726) provides that youth must be involved in community programs. That provision is not feasible for youth participating in wilderness programs, therefore this requirement should be removed.

RESPONSE: The Department agrees that youth may not be able to be involved in community programs. Rule XIX(3) (ARM 37.106.1726) has been deleted.

COMMENT #31: Rule XX(6) (ARM 37.106.1727) requires that hands be washed with warm water and soap before the handling of food. While this is feasible for most meals, it would be difficult to implement during an expedition before every snack on the trail.

Approved hand sanitizers, gels in particular, are able to reduce the chance of transmitting disease or illness as effectively as warm water and soap, and they should be allowed as a viable substitute.

RESPONSE: The Department agrees that hand sanitizer gels provide equivalent protection. Rule XX(6) (ARM 37.106.1727) has been amended to include hand sanitizer gels.

COMMENT #32: Rule XXI(1) (ARM 37.106.1730) requires youth to participate in community religious services. Youth in a wilderness program will be unable to travel to a community to attend religious services. It is suggested that the second sentence in Rule XXI(1) (ARM 37.106.1730), "Youth must be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths" be stricken and be changed to: "Youth must be permitted to have religious materials of their choice available to them."

RESPONSE: The Department agrees that while a youth is on expedition they cannot participate in church activities. Sentence two of RULE XXI(1) (ARM 37.106.1730) has been deleted and the statement "Youth must be permitted to have religious materials of their choice" has been added.

COMMENT #33: Rule XXI(2) (ARM 37.106.1730) should be strengthened by requiring documentation of the "encouragement and opportunity to identify with cultural heritage".

RESPONSE: The Department agrees documentation will improve compliance with this rule. Rule XXI(2) (ARM 37.106.1730) has been amended to read that the program shall document giving encouragement and opportunity to each youth to identify with his or her cultural heritage.

COMMENT #34: Rule XXI(2) (ARM 37.106.1730) should require providers making any special claims of cultural competence to provide evidence of that competence to the Department. Providers not claiming cultural competence should be required to provide a plan for the acquisition of that competence if they serve Native American children. Perhaps the Department's Native American Advisory Council could be a clearing house for or participate in the certification of cultural competence.

RESPONSE: The Department disagrees. A provider may offer more than one program. For example, an outdoor behavioral program and cultural education program could be offered by a provider. Providers that offer cultural education programs and claim cultural competency do not fall under the scope of these rules. Secondly, when the population of youth served is from cultural backgrounds different from the staff, then cultural competence becomes an issue. Under these circumstances a program may provide "cultural competence" training as part of their training

of staff under Rule XV(4) and (5) (ARM 37.106.1721). Certification of cultural competency is beyond the scope and authority of the Department's Native American Advisory Council.

COMMENT #35: Rule XXII(2) (ARM 37.106.1731) should require that youth in a wilderness program have clothing that provides safety and is appropriate for the weather. It is suggested that the provision be changed as follows: "Within the clothing available and suitable for the wilderness experience, students may have some choice in the selection of their clothing."

RESPONSE: The Department disagrees that Rule XXII (ARM 37.106.1731) should address wilderness clothing. Rule LXXII(1) (ARM 37.106.1792) addresses expedition clothing. This rule does not limit the youth choice of clothing.

COMMENT #36: It is suggested that Rule XXIII(1) (ARM 37.106.1732) be changed to read: "A program shall provide a separate bed or sleeping bag or area, separate storage space or backpack (including primitive backpack) for clothing and personal articles, and a place for each youth to display or transport his or her socially appropriate creative works and symbols of identity."

RESPONSE: The Department disagrees that expedition requirement should be added to Rule XXIII (ARM 37.106.1732). Rule LXXII (ARM 37.106.1792) provides for equipment and supplies on expedition and should remain separate from the general requirements of privacy and individualism in Rule XXIII (ARM 37.106.1732).

COMMENT #37: Rule XXIII(2) (ARM 37.106.1732) should provide that youth in the wilderness may not be out of eyesight of staff except when they are bathing or going to the bathroom. It is suggested that the word "alone" be removed.

RESPONSE: The Department disagrees that expedition requirement should be added to the general requirement for all programs in Rule XXIII(2) (ARM 37.106.1732). Expedition requirements are discussed in rules with "expedition" in the title.

COMMENT #38: In Rule XXV (ARM 37.106.1734), "training and employment" to youth over 16 would not seem to apply when they are engaged in wilderness activities. It is recommended that the rule be permissive in requiring training and employment activities based on the treatment plan for the individual child. Also, it is suggested that a wilderness program may or may not focus on employment activities.

RESPONSE: The Department agrees that youth in an outdoor behavioral program may or may not focus on employment activities depending on the case plan. The term "shall" has been changed to "may" in Rule XXV(1) (ARM 37.106.1734).

COMMENT #39: Education is of great concern with programs serving youth placed by the state because the educational credits received at a facility/program often do not transfer back to the public school system. Please consider language in Rule XXVIII (ARM 37.106.1737) which would ensure that the youths do not lose ground educationally as a result of being placed in one of these programs.

RESPONSE: The Department disagrees. Education programs and certification are outside the scope of these rules and fall under the jurisdiction of the state's Office of Public Instruction and the school districts.

COMMENT #40: The second sentence in Rule XXIX (ARM 37.106.1738) states: "However, when available, the program shall provide the youth access to community recreation and cultural events when they are appropriate to the youth's needs, interests and abilities." In this sentence change "shall" to "may".

RESPONSE: The Department disagrees that the requirement in Rule XXIX (ARM 37.106.1738) should be more permissive. Flexibility is already provided in Rule XXIX (ARM 37.106.1738) through the use of the words "when available" and "appropriate to the youth's needs, interests and abilities".

COMMENT #41: Change Rule XXXII(1)(a) (ARM 37.106.1741) to allow physical exams after the child enters the program.

Change wording in Rule XXXII(6) (ARM 37.106.1741) to read: A child "may" not enter or go into expedition phase without having received a physical examination that allows for participation by the examining professional.

Rule XXXIII(2) (ARM 37.106.1745) should allow a student to come to the program but not go to the expedition phase until the assessments listed in the rules have been completed.

RESPONSE: The Department disagrees with all three proposals. High adventure activities may take place either during the residential or the expedition aspect of the program. For the health and safety of youth involved in the program, a physical exam and program assessment are required before the youth enter the program.

COMMENT #42: In Rule XXXII(3)(a) (ARM 37.106.1741), delete the requirement for a complete blood count (CBC) and electrolyte screening. Allow the examiner to use his or her professional judgment if further testing is needed.

RESPONSE: A CBC and electrolyte screening provides baseline information on the youth and they are important for determining whether the youth can successfully participate in the program. The Department agrees that a licensed practitioner should be allowed to use his or her professional judgment to determine

when a CBC, a urinalysis and an electrolyte screening are needed. Rule XXXII(3)(a) (ARM 37.106.1741) has been amended to state that such tests be conducted "if deemed necessary by the examining practitioner".

The Department has further amended Rule XXXII (ARM 37.106.1741) by replacing all references to "licensed health care professional" with "practitioner". The definition of "practitioner" has also been added to Rule I (ARM 37.106.1701). A practitioner, as defined in 50-5-101(46), MCA, is "an individual licensed by the department of labor and industry who has assessment, admission and prescription authority". A licensed health care professional can include a non-practitioner registered nurse who does not have assessment, admission and prescription authority. Such a person cannot conduct physical examinations that are required under Rule XXXII (ARM 37.106.1741).

COMMENT #43: Rules XXXII(3)(g)(i) and (ii) (ARM 37.106.1741) require Hepatitis A and B vaccinations for all youth. While the requirement may be appropriate for some programs of extended duration, or for those occurring in foreign countries, it seems excessive. The inherent risk of such vaccinations, the amount of time it takes to complete a Hepatitis series (six months), and the actual risk of contracting such diseases, which is not higher in the back country than in a residence, would make the vaccination requirement absurd for youth engaging in programs of brief duration (1 to 8 weeks). It is recommended that the Department approach a medical team to evaluate under what circumstances such vaccinations should be required, or to leave such a decision to the youth's doctor. In programs shorter than six months, there should not be a requirement for the Hepatitis A and B series since the series consists of shots given six months after the first shot.

RESPONSE: The Department agrees that Hepatitis A and B vaccinations are not necessary for all youth. Hepatitis A and B vaccinations for the circumstances that are encountered in an outdoor program should be at the discretion of the examining licensed practitioner. Rule XXXII(3)(g)(i) (ARM 37.106.1741) has been amended to read: Evidence of hepatitis A series "if deemed necessary by a practitioner". The remainder of Rule XXXII(3)(g)(i) (ARM 37.106.1741) has been deleted. Rule XXXII(3)(g)(ii) (ARM 37.106.1741) has been amended to read: Evidence of hepatitis B series "if deemed necessary by a practitioner". The remainder of Rule XXXII(3)(g)(ii) (ARM 37.106.1741) has been deleted.

COMMENT #44: Rule XXXII(5)(b) (ARM 37.106.1741) states that a licensed health care professional must give separate written approval for the youth's participation in activities which may include "exposure to cold temperatures". The approval should also address activities related to extremely hot temperatures

since expeditions could also be completed during the hot summer months in either the mountainous or plains areas of the state.

RESPONSE: The Department agrees. For the health and safety of the youth, Rule XXXII(5)(b) (ARM 37.106.1741) has been amended to include exposure to hot temperatures.

COMMENT #45: Rule XXXII(7) (ARM 37.106.1741) should require that a medical information data sheet for each student be carried by the staff in a waterproof container when away from the field office. The medical information data sheet contains more information than a physical form, and it includes: current medications, allergies, vitals, health insurance information, health history, identifying marks (scars, tattoos, piercings) and lists the contact person in the event of an emergency.

RESPONSE: The Department agrees that additional information should be maintained at the field office and carried by the staff in a waterproof container when away from the field office. Statements will be added to Rule LXXIV (ARM 37.106.1794) and Rule LXV(5)(g) (ARM 37.106.1785) requiring that current medications, identifying marks (scars, tattoos, piercings), health insurance information, and a list of contact persons in the event of an emergency be maintained for each youth.

COMMENT #46: Rule XXXIII (ARM 37.106.1745) should have a minimum body mass index to assure that youth have sufficient body mass to carry a backpack and fully participate in the strenuous excursion element of the program.

RESPONSE: The Department agrees that a body mass index should be established for the health and safety of the youth. Rule XXXIII (ARM 37.106.1745) has been amended to read: "The program shall establish a minimum body mass index. Body mass for each youth must be assessed to assure that the youth has sufficient body mass to fully participate in the strenuous elements of the program."

COMMENT #47: Rule XXXIII(3) (ARM 37.106.1745) should be amended to include "eating disorders" as criteria to exclude youth from participating in the excursion portion of the program.

RESPONSE: The Department disagrees. The program professional staff are responsible to make the decision as to the severity of a particular disorder. During the assessment the professional staff, on a case-by-case basis, may decide that an eating disorder is severe enough to preclude a youth from participating in expeditions.

COMMENT #48: Rule XXXIII(4)(c) (ARM 37.106.1745) requires a psychological evaluation for a youth with a history of mental illness. In Montana "psychological examination" carries a very specific definition and can only be conducted by a licensed

clinical psychologist. It is recommended that "examination" be changed to "assessment".

RESPONSE: The Department agrees that "psychological examination" is too specific. In order to avoid misunderstandings, "psychological examination" will be changed to "psychological assessment" in Rule XXXIII(4)(c) (ARM 37.106.1745).

COMMENT #49: Rule XXXIII(4)(d) (ARM 37.106.1745) should be changed to allow or require a broader based decision making process for a youth's suitability for entry to the expedition phase. The senior field staff member, along with the therapist, admission director, and education and medical personnel should make this decision.

RESPONSE: The Department disagrees that a broader based decision making process for a youth's suitability for entry to the expedition phase is not defined in the rules. With the assessments described in Rule XXXIII(4)(a), (b) and (c) (ARM 37.106.1745), the professional staff of the program decide whether the youth is suitable for the expedition portion of the program. Under XXXIII(4)(d) (ARM 37.106.1745), a senior field staff member provides an additional assessment.

COMMENT #50: Rule XXXIV (ARM 37.106.1746) requires case plans within 14 days of admission. That time frame should be shorter given the duration of most wilderness efforts are between 30 and 45 days. The case plan for treatment should be in place on or about the first day of wilderness travel.

RESPONSE: The Department disagrees that time frame would need to be shorter given the duration of most wilderness efforts. The case plan must be developed "prior to entering into the expedition portion of the program" as specified in Rule XXXIV(1) (ARM 37.106.1746).

COMMENT #51: Regarding Rule XXXIV (ARM 37.106.1746), in order to promote more informed case plans, please include the parent (if appropriate), the placing agency staff, and the youth on the case plan team. These individuals often have vital information that may contribute to a more effective case plan. The youth's involvement is important to gain the cooperation of the youth.

RESPONSE: The Department agrees. A sentence has been added to Rule XXXIV(1) (ARM 37.106.1746) allowing a parent or guardian, placing agency, and the youth, if deemed appropriate, to participate in case planning.

COMMENT #52: Rule XXXIV(3) (ARM 37.106.1746) should require case plan progress be reported to the parent, guardian, or placing agency. The case plan progress is an important factor for these individuals to evaluate the effectiveness of the program for the youth.

RESPONSE: The Department agrees and has amended Rule XXXIV(3) (ARM 37.106.1746) to include that the program make case plan reviews available for the inspection of the parent or guardian or placing agency.

COMMENT #53: It is recommended that Rule XXXV(1) (ARM 37.106.1747) be changed to require discharge reports be completed within 10 business days after discharge.

RESPONSE: The Department agrees and has made the recommended change.

COMMENT #54: There needs to be a definition for "passive physical restraint" as that term is used in Rule XXXVI(1) (ARM 37.106.1748).

RESPONSE: The Department agrees that the use of "passive physical restraint" is unclear. The term is only mentioned in Rule XXXVI(1) (ARM 37.106.1748). "Passive physical restraint" adds nothing to the understanding of behavioral management. The Department has deleted "passive physical restraint" from Rule XXXVI(1) (ARM 37.106.1748).

COMMENT #55: There needs to be a definition for "nonviolent physical restraint" as that term is used in Rule XXXVII(2)(b) (ARM 37.106.1749).

RESPONSE: The Department agrees that the use of "nonviolent physical restraint" is unclear. The term is only mentioned in Rule XXXVII(2)(b) (ARM 37.106.1749). "Nonviolent physical restraint" adds nothing to the understanding of behavioral management. "Nonviolent physical restraint" has been deleted and replaced by "physical restraint" in Rule XXXVII(2)(b) (ARM 37.106.1749).

COMMENT #56: Rule XXXVII(2)(c)(i) (ARM 37.106.1749) states that physical restraints may be used "when a youth's behavior is out of control". The term "out of control" is of concern because the criterion that the youth is a danger to self or others would not necessarily be met, and this would place the staff member in the position of determining when a youth is "out of control". In order to provide more safety to the youth and guidance to the programs, please either define "out of control" or, more preferably, remove the language which permits youth to be physically restrained when the youth is out of control.

RESPONSE: The Department agrees that "out of control" is unclear. Rule XXXVII(2)(c)(i) (ARM 37.106.1749) has been deleted to clarify when physical restraints may be used by program staff.

COMMENT #57: Please consider adding to Rule XXXVII(2)(f) (ARM 37.106.1749) that a psychiatric or emotional condition should be

a reason to restrict physical restraint use. Some youth have extreme physical or sexual abuse issues which have resulted in post-traumatic stress disorder or other extreme fears, and the use of physical restraints can be counterproductive or even harmful to such youth.

RESPONSE: The Department disagrees that Rule XXXVII(2)(f) (ARM 37.106.1749) is the appropriate place to address psychiatric or emotional conditions that lead to the decision to restrict physical restraint of a youth. The case plan is the appropriate place to address psychiatric or emotional conditions related to restraint use on a case-by-case basis.

COMMENT #58: Please add to the documentation requirements for Rule XXXVII(2)(g) (ARM 37.106.1749) the identity of the specific staff member(s) involved in the physical restraint, the restraint technique, and any injuries resulting from the restraint. This information will assist the department in determining if there are particular issues with a particular staff person when implementing a restraint, the safety concerns for particular restraint methods and tracking youth injuries.

RESPONSE: The Department agrees and has added to the documentation requirements in Rule XXXVII(2)(g) (ARM 37.106.1749) the identity of the specific staff member(s) involved in administering the physical restraint, the restraint technique itself and any resulting injuries. Tracking these factors will allow the program and the department to protect the health and safety of the youth more adequately.

COMMENT #59: Rule XXXVII (ARM 37.106.1749) requires "nonviolent crisis intervention strategies". Are there any standards by which nonviolent crisis intervention strategies will be evaluated and deemed appropriate?

RESPONSE: The Department agrees that standards for nonviolent crisis intervention strategies will better provide for the safety of the youth. Rule XXXVII(3) (ARM 37.106.1749) has been amended to state: "The program shall train staff in the therapeutic de-escalation of crisis situations provided through a nationally recognized training system to ensure the protection and safety of the youth and staff. The training must include the use of physical and nonphysical methods of managing youth and must be updated at least annually to ensure the maintenance of the necessary skills."

COMMENT #60: Please provide for documentation of all time out events in Rule XXXVIII(3) (ARM 37.106.1750), not just those exceeding an hour. Tracking time outs can be an important tool for improvement of the program, the youth's case plan, and can be important information for the placing agent, whether a parent or an agency.

RESPONSE: The Department agrees that all time out events should be tracked by program staff for the safety of youth. "If the duration of the time out exceeds one hour, or there is visual separation of the youth" will be deleted and will be replaced with "for each time out" in Rule XXXVIII(3) (ARM 37.106.1750).

COMMENT #61: Add a section to Rule XXXVIII (ARM 37.106.1750) stating that "a youth may be taken away from his or her group with a minimum of two staff for extensive periods of time up to a week or more if approved by the treatment team to address treatment issues when approved by the child's therapist".

RESPONSE: The Department disagrees that a section should be added to Rule XXXVIII (ARM 37.106.1750) concerning extensive periods of time out. Specific treatment methods of this nature can be addressed on a case-by-case basis in the case plan.

COMMENT #62: Regarding Rule XL(3) (ARM 37.106.1752) concerning weapons, youth may learn trust and be able to have knives in their possession. The use and possession of the knife is an important part of the outdoor program and treatment. It is recommended that language be added allowing youths to have knives in their possession.

RESPONSE: The Department disagrees that youth should be allowed to have knives in their possession. The youth in the program have behavioral problems that endanger their health, interpersonal relationships, or educational functions. In order to assure the safety of the staff and youth, potential weapons, including knives, must be carefully monitored by staff.

COMMENT #63: Rule XL(4) (ARM 37.106.1752) requires that large animal repellant must be stored under lock and key. This would make repellant unusable in emergency situations. It is recommended that the rule specify that repellant be locked "when not being carried by program staff".

RESPONSE: The Department agrees and has made the recommended change to Rule XL(4) (ARM 37.106.1752).

COMMENT #64: Please add to Rule XLI(3) (ARM 37.106.1753) that the personal items of the youth which are determined to be contraband and are not illegal be returned to the youth's parent, guardian or placing professional. Simply identifying an item as contraband for the program should not mean that the item is destroyed.

RESPONSE: The Department agrees that contraband that is not illegal should be returned to family and that only illegal contraband shall be reported to law enforcement. The statement "contraband that is not illegal must be returned to the youth's parents or guardian" has been added to Rule XLI(3) (ARM 37.106.1753). In Rule XLI(2) (ARM 37.106.1753), "illegal" has been inserted to replace "prohibited".

COMMENT #65: In order to ensure that the legal rights of the youth are preserved, please add to Rule XLII(6)(a) (ARM 37.106.1754) that prior to drug testing, written approval must be granted from the youth's legal guardian or the court.

RESPONSE: The Department disagrees. Rule XLII(6) (ARM 37.106.1754) states "Youth may be not subjected to urinalysis testing unless the testing has been ordered by a court, is required pursuant to a case plan for monitoring drug or alcohol use or requested by the youth's parent or legal guardian". The Department agrees to clarify the rule and has added "approved by the parent or guardian" after "is required pursuant to a case plan for monitoring drug or alcohol use" in Rule XLII(6) (ARM 37.106.1754).

COMMENT #66: Rule XLIV(7) (ARM 37.106.1756) states that "the program shall immediately transport any youth with illness or physical complaint". This language does not take into consideration instances when youth should not be moved except by a medical professional.

RESPONSE: The Department agrees that in some cases the youth should not be "immediately transported". "Immediately" has been removed from Rule XLIV(7) (ARM 37.106.1756).

COMMENT #67: In Rule XLIV(10) (ARM 37.106.1756), does monitoring youth regularly on personal hygiene include watching the youth shower?

RESPONSE: The Department disagrees that watching youth shower would be part of monitoring personal hygiene under this rule. Unless watching a youth shower is part of a case plan, this practice is not accepted.

COMMENT #68: In Rule XLIV(11) (ARM 37.106.1756), please add that the program must develop policies and procedures for routine medical and dental care rather than just emergency care. Routine medical and dental care are often overlooked by programs when developing policies because emergency care typically takes precedence.

RESPONSE: The Department disagrees that medical and dental care is not required under this rule. Rule XLIV(1) (ARM 37.106.1756) states medical and dental care must be obtained for the youth as needed.

COMMENT #69: Rule XLIV(15) (ARM 37.106.1756) does not go far enough. After reporting the suspicion of a youth's eating disorder to the legal guardian and the appropriate program professional staff member, all responsibility seems to end.

RESPONSE: The Department disagrees. Professional staff are retained by the program to make decisions about the youth's

condition and well being. Decisions pertaining to eating disorders fall within the scope of the professionals' practice and do not need to be spelled out in the rules.

COMMENT #70: Rule XLIV(15) (ARM 37.106.1756) requires staff who "suspects" a youth of suffering from an eating disorder to immediately report their suspicion to the youth's legal guardian and to the appropriate program professional staff member. Of concern is the requirement of reporting "suspicions". Perhaps a more appropriate rule would require staff to report their suspicions to an appropriate health care professional who would be required to work with the family or legal guardian.

RESPONSE: The Department agrees that reporting suspicions of an eating disorder to a legal guardian is not appropriate. The statement "to the youth's legal guardian" has been deleted from Rule XLIV(15) (ARM 37.106.1756).

COMMENT #71: Rule XLVI(8) (ARM 37.106.1758) does not specify that the disposal of medication should be done in a manner that will make the medications inaccessible by youth. The rule should follow nursing guidelines, which include the disposal of the medication by two licensed health care professionals, and recording the disposal in a drug destruction log.

RESPONSE: The Department agrees. Sentence two in Rule XLVI(8) (ARM 37.106.1758) has been changed to read: "Disposal of medication must be done by two licensed health care professionals, and the disposal must be recorded in a medication destruction log."

COMMENT #72: Rule XLVII(6) (ARM 37.106.1759) should include the youth's current medical insurance card being maintained in the field office.

RESPONSE: The Department agrees and has amended Rule XLVII(6)(f) (ARM 37.106.1759) to state that "a copy of the youth's current medical insurance card" be at the field office.

COMMENT #73: Rule LI (ARM 37.106.1766) should be made clear that it pertains only to those programs that have residential outdoor services, and that programs are not required to have residential outdoor services.

RESPONSE: The Department disagrees. The rule is specific to residential outdoor services as seen in its title "Residential Outdoor Services: Physical Environment". "Residential Outdoor Services" is defined in Rule I(27) (ARM 37.106.1701).

COMMENT #74: Rule LII(6) (ARM 37.106.1767) should contain the following language: "Students may ride on a snowmobile or on a sled pulled by a snowmobile driven by a staff member. The student must wear a helmet and be instructed on safety procedures."

RESPONSE: The Department agrees and has made the recommended change.

COMMENT #75: Rule LIII (ARM 37.106.1770) should address the following activities which are often utilized by outdoor behavioral programs in Montana: mountaineering, cross country or back country skiing, river crossing, snow and ice climbing, glacier travel and snow shoeing.

RESPONSE: The Department disagrees that it must list an exhaustive list of activities. All other activities are covered under Rule LIII(1)(p) (ARM 37.106.1770), which states "other activities approved by the department".

COMMENT #76: In Rule LIII(5) (ARM 37.106.1770), change the word "must" to "may".

RESPONSE: The Department agrees and has made the recommended change.

COMMENT #77: For many of the activities listed under Rule LXXIII (ARM 37.106.1793) regarding "high adventure" activities, the nature of the activity could take the staff and youth quite a distance from the field office, which is identified as the closest site for communication. Please consider adding that a staff must take a satellite phone or a cell phone that works in the area for communication purposes when the activity takes the group more than a certain distance from the field office.

RESPONSE: The Department disagrees that a distance needs to be specified. Terrain and conditions make a specific distance an unreliable indicator for the need of specific communication equipment. Rule LXXIII(1)(a) (ARM 37.106.1793) states that "each group away from the field office must have a satellite phone and extra charged battery packs for the satellite phone".

COMMENT #78: Rule LXXIV (ARM 37.106.1794) pertaining to health care for expeditions does not address evacuation of a youth should the assessment of the youth's physical condition require removal from the expedition.

RESPONSE: The Department disagrees. Rule XLIII (ARM 37.106.1755) addresses evacuations under these conditions.

COMMENT #79: In Rule LIX (ARM 37.106.1776) pertaining to requirements for all rock climbing and Rule LXII (ARM 37.106.1779) regarding rope courses, please include that youth climbing over a certain height (e.g., 4 feet) be required to have a safety rope of some sort. The current rule language appears to allow free climbing at any height in the ropes course and in the advanced/multi-pitched rock climbing, which is a concern.

RESPONSE: The Department agrees that for the safety of the youth that safety ropes be used in rock climbing and rope courses. Rule LIX (ARM 37.106.1776) has been amended to read: "Youth must be connected to a safety rope during rock climbing." Rule LXII (ARM 37.106.1779) also has been amended to read: "Youth must be connected to a safety rope during all activities on a rope course."

COMMENT #80: Rule LXIII (ARM 37.106.1780) does not appear to include teaching the youth to properly pack or adjust a backpack. As this could contribute to medical concerns of a youth, please add language to address this.

RESPONSE: The Department disagrees that properly packing or adjusting a backpack is not part of the rule. Rule LXIII(13) (ARM 37.106.1780) states that "the program shall have written safety procedures for hiking and backpacking". Properly packing or adjusting a backpack is part of these procedures.

COMMENT #81: Rule LXIII (ARM 37.106.1780) does not address proper footwear for hiking/backpacking. Is this part of the protective clothing stated in Rule LXIII(7) (ARM 27.106.1780)?

RESPONSE: Yes, proper footwear is part of protective clothing under Rule LXIII(7) (ARM 37.106.1780).

COMMENT #82: Clarify Rule LXV(3) (ARM 37.106.1785) to state that the field staff office is considered staffed if an on-call person has a phone and is available for response within 30 minutes of receipt of a phone call.

RESPONSE: The Department disagrees. Documents on file at the field office may provide essential information during an emergency. The staff must have quick access to these files. Also, a 30-minute response time in emergency cases may be too long to ensure the health and safety of the youth.

COMMENT #83: It is recommended that a new rule provide for the physical environment of a base camp. The rules governing the expedition portion of treatment will cover a base camp operation with this exception: septic, drain field, and water systems (if such systems exist at the base camp) must meet applicable county or state sanitation standards.

RESPONSE: The Department disagrees that the suggested change is necessary. Base camps or "field offices" having permanent structures are considered residential outdoor services and must meet the health and safety requirements of state and local laws.

COMMENT #84: Rule LXVII(1)(a) (ARM 37.106.1787) is not in agreement with the 1 staff per four students ratio and must be changed to reflect an actual 1:4 ratio. The way the rule is written makes it difficult for a program to adjust group sizes in an efficient and cost effective manner. Example: If there

were nine youth, then four staff would be required. Actually, with three staff, the ratio of staff to students is 1:3 which is above the 1:4 requirement. The following change is recommended: Two staff members for the first four youth or fraction thereof, with the ratio of one staff to four youth being maintained regardless of the number of youth. Perhaps the rule could contain two parts, one for Medicaid requirements, and one for more reasonable staff requirements when Medicaid is not paying for a child's placement.

RESPONSE: The Department disagrees that the ratio needs to be changed in Rule LXVII(1)(a) (ARM 37.106.1787). Under 50-5-101(40)(a), MCA, an outdoor behavior program is to provide "treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth". The 1:4 staff/youth ratio does not provide sufficient staff to meet the health, safety and treatment needs of this at-risk youth population while on expeditions. These licensing rules exist to protect all youth. There is no reason to consider Medicaid or any other reimbursement source when determining whether a licensing standard is needed.

COMMENT #85: For Rule LXVII (ARM 37.106.1787), the staff to youth ratios are higher than necessary when you consider a program might contract with the state to take a group of foster children for a backpacking trip. The level of supervision, it seems, is not a licensing issue but rather a contracting one.

RESPONSE: The Department disagrees. The program does not serve foster children.

COMMENT #86: Rule LXVII(2) (ARM 37.106.1787) should be changed to read that the field director "or field director's designee" has primary responsibility for field activities and must visit the field a minimum of two days a week, with no more than five days between visits. In a program in which there is more than one group in the field at a time, each group may have a director who is responsible for the group. Due to vacations or illness, that person may need to designate someone to visit the field in his or her place.

RESPONSE: The Department disagrees that a field director's designee can take the place of the field director in the program. The field director has training and skills that are necessary for the health and safety of the youth. Additional field directors can be hired by the program when the number of field directors is insufficient to provide the services needed by the youth.

COMMENT #87: Rule LXVII(2) (ARM 37.106.1787) should be changed to have the field director visit the field a minimum of two days within a 10 day period. This time period would be more workable

than the rule's requirement that the visits be two days with no more than five days in between.

RESPONSE: The Department agrees that two days in an eight day period in the field is sufficient to oversee the field activities. "Two days a week, with no more than five days between visits" in Rule LXVII(2) (ARM 37.106.1787) has been changed to read "two days a week, with no more than eight days between visits".

COMMENT #88: Concerning Rule LXXII(2)(I) (ARM 37.106.1792), washing clothing once per week is difficult in a wilderness program. It requires staff to either backpack clothing in and out for washing, or the youth washing clothing in the field. Especially in the winter, washing clothing in the field is very difficult and is not particularly safe. It is suggested that the rule be changed to read: "The program shall make an effort to clean clothing or provide youth with a way to clean clothing when youth return to their base camp or community."

RESPONSE: The Department disagrees that this rule should be changed. The program has a choice between providing a change of clean clothes or washing clothing each week. The health, hygiene, and cleanliness needs of the youth outweighs the possible inconvenience to the program.

COMMENT #89: Concerning Rule LXXIV(1)(b)(I) (ARM 37.106.1794), it is no problem to take blood pressure but it is probably not necessary unless it is required by the MD or RN responsible for the child's care.

RESPONSE: The Department agrees that monitoring blood pressure of the youth should be at the discretion of the licensed health care professional. Rule LXXIV(1)(b)(i) (ARM 37.106.1794) has been modified to read: "blood pressure at the discretion of a licensed health care professional".

COMMENT #90: Concerning Rule LXXV(2) (ARM 37.106.1795), 3000 calories may be excessive for some students. Students may gain weight in an unhealthy manner, and they may complain about their backpack weight because they would have to carry so much food. It is suggested that the rule be changed to read that the "food supplied to the youth must provide a minimum calorie amount as determined by a qualified dietitian or nutritionist with knowledge of the program activities and levels, with adjustments made for weight and gender".

RESPONSE: The Department disagrees. The 3000 calorie requirement contains the average amount needed for the nutritional needs of the youth in outdoor programs. If the youth has special dietary needs, then a qualified dietitian or nutritionist should participate in the development of the youth's case plan.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State July 26, 2004.

VOLUME NO. 50 OPINION NO. 7

COURTS, DISTRICT - Upon waiver of extradition, state district courts retain jurisdiction only to effect transport of the fugitive;
CRIMINAL LAW AND PROCEDURE - a fugitive prisoner, after waiver of extradition, is not entitled to bail; state district courts retain jurisdiction only to effect transport;
EXTRADITION - a fugitive prisoner, after waiver of extradition, is not entitled to bail; state district courts retain jurisdiction only to effect transport;
JURISDICTION - Upon waiver of extradition, state district courts retain jurisdiction only to effect transport of the fugitive;
MONTANA CODE ANNOTATED - Title 46, chapter 30; sections 46-30-101 to -413, -303;
UNITED STATES CODE - Title 18, section 3182 (1976);
UNITED STATES CONSTITUTION - Article IV, section 2, clause 2.

HELD:
1. A fugitive prisoner, after waiver of extradition, is not entitled to bail under the Uniform Criminal Extradition Act as set forth in Mont. Code Ann. Title 46, ch. 30.

2. Upon waiver of extradition, our state district courts retain jurisdiction only to effect transport of the fugitive.

July 19, 2004

Ms. Cyndee L. Peterson
Hill County Attorney
County Courthouse
315 Fourth Street
Havre, MT 59501-3923

Dear Ms. Peterson:

You have requested my opinion concerning the following questions:

1. Is a fugitive prisoner, after waiver of extradition, entitled to bail under the Uniform Criminal Extradition Act as set forth in Mont. Code Ann. Title 46, Chapter 30?

2. Does our state district court retain jurisdiction over a fugitive prisoner after the prisoner has waived extradition?

The right of extradition is set forth in article IV, section 2, clause 2 of the United States Constitution. Congress has implemented this constitutional provision in 18 U.S.C. § 3182 (1976). Further, the State of Montana has adopted the Uniform

Criminal Extradition Act (Act), Mont. Code Ann. § 46-30-101 through -413.

The intent of the extradition clause to the United States Constitution is to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense occurred. Bazaldua v. Hanrahan, 592 P.2d 512 (N.M. 1979). The purpose of the clause is to prevent any state from becoming a sanctuary for fugitives from justice of another state. Id.

Under the Act, bail is allowed during the period before a governor's extradition warrant has been served. Mont. Code Ann. § 46-30-303. However, there is no provision for bail after an arrest on a governor's extradition warrant. There is also no provision for bail upon waiver of extradition.

Although Montana has not had occasion to interpret whether bail is afforded under these circumstances, a number of other states have examined the issue of whether bail must be afforded after an arrest on an extradition warrant. If a prisoner waives extradition, a governor's extradition warrant is unnecessary. Thus, the analysis regarding whether bail should be afforded is the same whether on a governor's extradition warrant or upon waiver of extradition, since the detainee is in the same position: awaiting transport to the extraditing state.

The majority rule is that there is no right to bail after an arrest on a governor's extradition warrant. State v. Jacobson, 526 P.2d 784 (Ariz. App. 1974); Deas v. Weinshienk, 533 P.2d 496 (Colo. 1975); Grano v. State, 257 A.2d 768 (Del. 1969); Buchanan v. State, 166 So. 2d 596 (Fla. Dist. Ct. App. 1964); State v. Second Judicial Dist. Court, 471 P.2d 224 (Nev. 1970), cert denied, 401 U.S. 910 (1971); State v. Pritchett, 530 P.2d 1348 (Wash. App. 1975).

A minority of states allow bail to be set after an arrest on a governor's extradition warrant. Winnick v. Reilly, 123 A. 440 (Conn. 1924); Application of Haney, 289 P.2d 945 (Idaho 1955). However, I decline to follow the minority view and accept the majority view.

The rationale for accepting the majority view is that: "Because the fugitive is being held for another state he should be readily available to be turned over to those who arrive to return him." Deas v. Winshienk, 533 P.2d at 497. Denial of bail pending extradition is based upon the presumption that the detainee will be promptly extradited and provided his legal right to bail in the demanding state. Meechaicum v. Fountain, 696 F.2d 790, 792 (10th Cir. 1983).

Therefore, it is my opinion:

1. A fugitive prisoner, after waiver of extradition, is not entitled to bail under the Uniform Criminal

Extradition Act as set forth in Mont. Code Ann. Title 46, ch. 30.

2. Upon waiver of extradition, our state district courts retain jurisdiction only to effect transport of the fugitive.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/pdb/jym

VOLUME NO. 50 OPINION NO. 8

COUNTIES - A county with general government powers only has legislative powers as provided or implied by law;
INITIATIVE AND REFERENDUM - The closing of a county-owned incinerator is an administrative act not subject to initiative and referendum;
LOCAL GOVERNMENT - A county with general government powers only has legislative powers as provided or implied by law;
REFUSE DISPOSAL - The closing of a county-owned incinerator is an administrative act not subject to initiative and referendum;
SOLID WASTE - The closing of a county-owned incinerator is an administrative act not subject to initiative and referendum;
MONTANA CODE ANNOTATED - Title 69, chapter 7; sections 7-1-201, -2101(2), -2103, -2104, -4122(1), -4123, 7-3-703, -704, -1104, -1203, 7-5-131, (1), -134(3), 7-13-203, 61 12-101(14);
MONTANA CONSTITUTION - Article XI, sections 4(1)(b), 6, 8;
OPINIONS OF THE ATTORNEY GENERAL - 48 Op. Att'y Gen. No. 14 (2000); 47 Op. Att'y Gen. No. 18 (1998); 45 Op. Att'y Gen. No. 5 (1993); 40 Op. Att'y Gen. No. 51 (1984); 40 Op. Att'y Gen. No. 17 (1983); 37 Op. Att'y Gen. No. 105 (1978).

HELD: The closing of a county-owned incinerator by the Park County Commission is an administrative act not subject to initiative and referendum.

July 20, 2004

Ms. Tara DePuy
Park County Attorney
414 East Callender Street
Livingston, MT 59047

Dear Ms. DePuy:

Your letter requests an opinion on the following two questions:

1. Is the closing of the incinerator in Park County an administrative decision or a legislative act by the Park County Commission?

2. If the closing of the incinerator in Park County is a legislative act subject to the right of initiative and referendum by the electors, do the electors in the county (including within the City of Livingston) have the right to vote on a ballot issue?

Because I hold that the closing of the incinerator is an administrative decision, I will not address the second question.

Before a petition proposing a local government resolution may be circulated for signatures, the county attorney "shall review the sample petition for form and compliance with 7-5-131." Mont. Code Ann. § 7-5-134(3). If the county attorney determines that the sample petition proposes an ordinance outside the powers of initiative or referendum specified in Mont. Code Ann. § 7-5-131, she may advise that the election administrator reject the petition. See 45 Op. Att'y Gen. No. 5 (1993).

The Montana Constitution provides that "[t]he legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit." Art. XI, § 8. In implementing this provision the legislature has granted to local electors the power to propose "resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government". Mont. Code Ann. § 7-5-131(1). The closing of the incinerator is subject to jurisdiction only if it is within Park County's "legislative jurisdiction and power".

In your request, you urge consideration of a line of cases concerning the meaning of "legislative jurisdiction and power" in the local initiative context beginning with City of Billings v. Nore, 148 Mont. 96, 104, 417 P.2d 458 (1966), which set forth a test of "whether the act was one creating a new law (legislative) or executing an already existing law (administrative)." You place particular reliance on the four-part standard for legislative acts that the Supreme Court elaborated the in Town of Whitehall v. Preece, 1998 MT 53, 956 P.2d 743. These cases deal with the legislative jurisdiction and power of municipalities, however, and not with the distinct authority of counties at issue here. Where the Supreme Court has addressed county initiatives and referenda, it has not directly addressed the fundamental question of county legislative power. See Ravalli County v. Erickson, 2004 MT 35, ¶ 19, 320 Mont. 31, 85 P.3d 772 (holding that a district court must determine whether a proposed county obscenity ordinance by initiative would be valid and constitutional if passed); DeLong v. Downes, 175 Mont. 152, 157, 573 P.2d 160 (1977) (holding that proposed county initiative to limit gambling was beyond the confined powers of the county), overruled by Tipco Corp. v. City of Billings, 197 Mont. 339, 642 P.2d 1074 (1982); Chouteau County v. Grossman, 172 Mont. 373, 379, 563 P.2d 1125 (1977) (holding that proposed county resolution to withhold funds from paving project was administrative and not subject to referendum), overruled in part by Preece, ¶ 27.

To resolve this question, a determination of the extent of a county's "legislative jurisdiction and power" must be addressed, beginning with the description of county powers in the Montana Constitution. "A county has legislative, administrative, and other powers provided or implied by law." Mont. Const. art. XI, § 4(1)(b). While the subsection (2) of this provision instructs that "[t]he powers of . . . counties shall be liberally construed," those powers must spring from a source "provided or implied by law." This general government rule may be inverted by a local government's adoption of a self-government charter granting "any power not prohibited by th[e] constitution, law, or charter," Mont. Const. art. XI, § 6, but absent such a charter a county's power is limited to that expressed or implied by the legislature. "Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed." Mont. Code Ann. 7-1-2101(2).

The Local Government Committee report to the Constitutional Convention explained the reasoning behind the provisions eventually incorporated into article XI, section 4(1)(b):

> Through stringent court interpretations . . . Montana counties have been denied the local legislative, or ordinance-making powers possessed by cities and towns.
>
> . . . .
>
> The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.

II 1972 Mont. Const. Conv. 793-94.

While the Montana Constitution gives the legislature power to grant the exercise of legislative power to general government counties, the Montana Code does not provide for it in this instance. Instead, the legislature clearly has distinguished the narrower powers of counties from the broader powers of municipalities. The enumeration of county powers in Mont. Code Ann. § 7-1-2103 does not include legislative powers. In

contrast, "a municipality has legislative . . . powers," Mont. Code Ann. § 7-1-4122(1), including broadly enumerated public order and welfare powers. See Mont. Code Ann. § 7-1-4123.

Similarly, counties organized as charter governments must provide for a legislative body, see Mont. Code Ann. § 7-3-704, and may enumerate their own legislative powers in the charter, see Mont. Code Ann. § 7-3-703. A county may also gain the legislative powers of a municipality by forming a consolidated city-county government. See Mont. Code Ann. §§ 7-3-1104, -1203; see also 48 Op. Att'y Gen. No. 14 at [__] (2000) (holding that the consolidated and chartered City and County of Butte-Silver Bow has the powers of a municipality under Mont. Code Ann. title 69, chapter 7.)

This office has reiterated that, absent a charter granting self-government powers, "those counties which exercise only general powers are limited to whatever powers the legislature expressly or implicitly grants." 37 Op. Att'y Gen. No. 105 at 447 (1978); 47 Op. Att'y Gen. No. 18 at [__] (1998). [One such explicit grant of legislative powers, Mont. Code Ann. § 61-12-101(14) empowers local authorities to enact traffic ordinances. See 40 Op. Att'y Gen. No. 51 (1984).]

Even though the Montana Constitution extends initiative and referendum authority to voters of local government entities, that power is limited to the local government's legislative authorization. "Even under the policy of broadly construing the powers of initiative and referendum," those powers "have been reserved under the Constitution as to legislative acts only." Preece at ¶ 24. "Recognition of 'inherent' powers of general power county governments would effectively obliterate the distinction between general powers and self-government powers, a result which is obviously inconsistent with article XI of the Montana Constitution". 40 Op. Att'y Gen. No. 17 at 66 (1983). In an early examination of county self-government powers under the 1972 Constitution, the Supreme Court observed that "had Madison County been acting as a general power jurisdiction, we should perforce be required to hold that Madison County had only such powers as were expressly or impliedly delegated to it," but "[a]s a self-governing unit, Madison County has shared powers of legislative . . . authority." State ex rel. Swart v. Molitor, 190 Mont. 515, 521, 621 P.2d 1100 (1981).

Beyond the basic corporate powers enumerated by Mont. Code Ann. § 7-1-2103 and exercised by the board of county commissioners (or its agents) under Mont. Code Ann. § 7-1-2104, a general government county may function through administrative boards, districts, and commissions it may create under specific statutory authority. See Mont. Code Ann. § 7-1-201. The Park County Refuse District is such an administrative district, created under the statutory authority of the predecessor to Mont. Code Ann. § 7-13-203. By

definition, and in the absence of any grant of legislative powers to the county and its board of commissioners by law or charter, the actions of the administrative district are administrative and therefore outside of the legislative jurisdiction and power subject to initiative.

THEREFORE, IT IS MY OPINION:

> The closing of a county-owned incinerator by the Park County Commission is an administrative act not subject to initiative and referendum.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/aj/jym

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;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

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.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

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 March 31, 2004. This table includes those rules adopted during the period April 1, 2004 through June 30, 2004 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six 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 March 31, 2004, 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 2003 and 2004 Montana Administrative Registers.

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