ISSUE NO. 3

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the end 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 adoption of new rule I student discipline records and the amendment of ARM 10.55.909 relating to student records	)))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 14, 2005, the Board of Public Education proposes to adopt new rule I student discipline records and amend ARM 10.55.909 relating to student records.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on February 22, 2005 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 proposed new rule provides as follows:

NEW RULE I STUDENT DISCIPLINE RECORDS (1) Each school shall maintain a record of any disciplinary action that is educationally related, with explanation, taken against the student. 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. This record is subject to transfer to a local educational agency or accredited school pursuant to 10-1-213(4), MCA. Upon request, a copy of this record shall be sent to a nonpublic school pursuant to 20-1-213(7), MCA, and the No Child Left Behind Act, 20 USC 6301.

4. 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, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to adopt New Rule I and amend ARM 10.55.909 to provide clarity for the retention and transfer of disciplinary records and to align the time of retention of the disciplinary records to that of the juvenile justice system.

5. Concerned persons may submit their data, views or arguments concerning the proposed adoption and amendment in writing to the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601 or by e-mail to smeloy@bpe.montana.edu to be received no later than 5:00 p.m. on March 10, 2005.

6. If persons who are directly affected by the proposed adoption and amendment 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 the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601, or by e-mail to smeloy@bpe.montana.edu. A written request for hearing must be received no later than 5:00 p.m. on March 10, 2005.

7. If the Board of Public Education receives requests for a public hearing on the proposed adoption and amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption and amendment; 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 34 persons based on approximately 345 school district clerks in the State of Montana.

8. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to

receive notices regarding rules promulgated by the Board of Public Education. Such written request may be mailed or delivered to the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601, faxed to the office at (406) 444-0847, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

9. The bill sponsor 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 January 31, 2005.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.147.1101, crematory facility regulation, and repeal of ARM 24.147.1113, designation as crematory operator or technician	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On March 3, 2005, at 9:00 a.m., a public hearing will be held in room 471, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service no later than 5:00 p.m., on February 24, 2005, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2393; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdfnr@mt.gov.

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

24.147.1101 CREMATORY FACILITY REGULATION (1) and (2) remain the same.

(3) A licensed crematory shall notify the board office promptly, in writing, of any change of crematory operator.

(3) through (10) remain the same, but are renumbered (4) through (11).

AUTH: 37-1-131, 37-19-202, 37-19-703, MCA
IMP: 37-19-702, 37-19-703, 37-19-705, MCA

REASON: There is reasonable necessity to amend ARM 24.147.1101 in order to maintain the requirement that crematories identify for the Board the crematory operator licensee who is responsible for the operation of the crematory, in conjunction with the proposed repeal of ARM 24.147.1113, which is explained below. In addition, there is reasonable necessity to amend the IMP citations to appropriately identify statutes being implemented.

4. The Board proposes to repeal the following rule:

24.147.1113 DESIGNATION AS CREMATORY OPERATOR OR TECHNICIAN found at ARM page 24-13645.

AUTH: 37-19-202, MCA
IMP: 37-19-702, MCA

REASON: There is reasonable necessity to repeal ARM 24.147.1113 in order to implement the provisions of 37-1-134, MCA, regarding setting fees commensurate with costs. ARM 24.147.1113(1) has the effect of granting a licensed mortician a separate, additional license as a crematory operator or crematory technician without the payment of a fee. The Board has determined that cost to issue, track, and renew a crematory operator or crematory technician license is the same regardless of whether the applicant also has a license as a mortician. The Board now believes it is inequitable to not charge a license fee for certain applicants (those who hold a mortician's license) while charging a license fee to all other applicants.

Based on the number of existing licensees and anticipated applicants, the Board estimates that approximately 78 persons annually (73 existing licensees and 5 applicants) will be affected by the proposed changes. The Board estimates that it will receive approximately an additional $4,890 in revenue annually. The Board finds that the increase in revenue will also serve to avoid or postpone the need for raising fees for these two classes of licenses.

The Board notes that the reporting requirement presently contained in ARM 24.147.1113(2) is proposed to be moved to ARM 24.147.1101.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., March 11, 2005.

6. An electronic copy of this Notice of Public Hearing is available through the Department’s and Board’s site on the World Wide Web at http://www.discoveringmontana.com/dli/fnr. 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.

7. The Board of Funeral Service maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Funeral Service administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdfnr@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

9. Jack Atkins, attorney, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
JERED SCHERER, CHAIRMAN

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 31, 2005.

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

In the matter of the proposed amendment of ARM 24.168.401, pertaining to fees) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 4, 2005, at 10:00 a.m., a public hearing will be held in room 471, Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry no later than 5:00 p.m., February 25, 2005, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdopt@mt.gov.

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

24.168.401 FEE SCHEDULE

(1)	~~Original certificate of registration~~ Application by examination	$175
(2)	Annual renewal	~~125~~ 250
(3)	Penalty for late renewal	150
(4)	Out-of-state license application	300
(5)	Copies per page	.25
(6)	TPA certificate application fee	~~50~~ 75
(7)	List of licensees	20

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-1-134, 37-1-304, 37-10-302, 37-10-307, MCA

REASON: The Board of Optometry (Board) has determined that there is reasonable necessity to make the proposed fee changes in order to comply with the provisions of 37-1-134, MCA, and to keep the Board's fees commensurate with program costs. The Department of Labor and Industry (Department), in providing administrative services to the Board, has determined that unless the licensure fees are increased as proposed, the Board will have a shortage of operating funds by the 2006 licensure renewal period. The Board estimates that approximately 285 persons (275 active licensees and 10 new applicants) will be affected by the proposed fee changes. The Board last raised its fees in fiscal

year 2003.

The estimated annual increase in revenue is approximately $35,625. Under the proposed fee schedule, the Board's projected annual revenue is $74,080. The Board's appropriation for fiscal year 2005 is $53,036. The Department has reevaluated the current budget allocations for all professional and occupational licensing boards, including the Board of Optometry. This reevaluation was done as part of an internal reorganization of the Department's Healthcare Licensing Bureau (Bureau) and resulted in an increase in expenditures for the Board to be implemented beginning fiscal year 2005. The Board's cash projections for 2005 are approximately $37,000. After considering the current income base and deducting Board expenses of $53,036, it was concluded that the Board would not have adequate cash available to meet the next several fiscal years' projected expenditures. The percentage of the total board-allocated charges is based upon the daily time distribution sheet, personnel services charges for the Bureau, personnel allocation without investigator (4 FTE), Bureau budget, Business Standards Division (Division) recharge and Bureau legal allocation. The Board has determined it is both reasonable and necessary to increase the fees as proposed to establish a fiscally sound budget and to meet the Board's obligation for fiscal responsibility.

There is reasonable necessity to add 37-1-131, MCA, as an AUTH cite while the rule is otherwise being amended, to reflect the additional authority of the Board.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdopt@mt.gov and must be received no later than 5:00 p.m., March 10, 2005.

5. 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/opt, 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.

6. The Board of Optometry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request 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 Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdopt@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF OPTOMETRY
LARRY OBIE, CHAIRMAN

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 31, 2005.

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

In the matter of the proposed amendment of ARM 36.24.102, and the proposed adoption of New Rule I relating to tax increment revenue bonds under the Water Pollution Control State Revolving Fund Act	))))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

To: All Concerned Persons

1. On March 17, 2005, the Montana Department of Natural Resources and Conservation proposes to amend ARM 36.24.102 and to adopt New Rule I pertaining to tax increment revenue bonds under the Water Pollution Control 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 February 28, 2005, 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-mailed to annam@state.mt.us.

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

<u>36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES</u> In this 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 USC 1251 through 1387, as amended, and ARM 17.40.302. Terms used but not defined have the meanings prescribed in ARM 17.40.301 or the indenture of trust. Any conflict between this subchapter and the indenture of trust shall be resolved in favor of the indenture of trust.

(1) through (51) remain the same.

<u>(52) "Tax increment revenue bond" means a tax increment urban renewal revenue bond issued by a municipality pursuant to Title 7, chapter 15, parts 42 and 43, MCA, or other applicable law.</u>

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

AUTH: 75-5-1105, MCA
IMP: 75-5-1102 <u>and 75-5-1113</u>, MCA

REASON: There is reasonable necessity for amendment of this rule in order to define the term "tax increment revenue bond" as a type of bond approved by the Department of Natural Resources and Conservation as evidence of indebtedness for a loan made under the Water Pollution Control Revolving Fund Act.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I TAX INCREMENT REVENUE BONDS (1) The department may accept as evidence for a loan a tax increment revenue bond subject to the following terms and conditions:

(a) The urban renewal plan or industrial district ordinance shall contain a tax increment financing provision as authorized in 7-15-4282 to 7-15-4293, MCA.

(b) All tax increments shall be irrevocably pledged and appropriated and shall be credited as received to the debt service fund for the bonds and shall be applied, to the extent required, to pay debt service on the bonds and maintain the reserve account required in (1)(c). The bonds shall be secured by a first lien on the tax increment, which lien may be granted on a parity with the lien securing other outstanding or additional revenue bonds of the municipality payable from the tax increment, which collectively are referred to as parity bonds.

(c) The payment of principal of and interest on the bonds and any parity bonds shall be secured by a reserve account, to be established and thereafter maintained from available tax increment in an amount deemed sufficient by the department to provide adequate security for the bonds.

(d) The estimated tax increment to be received by the municipality and any other revenues pledged to the payment of the bonds, which collectively are referred to as pledged revenues, are determined by the governing body of the municipality to be sufficient to pay the principal of and interest on the bonds and other outstanding parity bonds when due.

(e) The municipality shall agree not to issue additional parity bonds payable from or secured by the tax increment and other pledged revenues, if any, without the prior written consent of the department, which consent shall not be granted unless either:

(i) the pledged revenues collected in the last completed fiscal year were equal to at least 130% of the maximum annual debt service, during the term of the outstanding parity bonds, on all outstanding parity bonds and the additional parity bonds proposed to be issued; and

(ii) the pledged revenues collected in the last completed fiscal year, adjusted as provided in (2) were, and the pledged revenues estimated to be received in the next succeeding three fiscal years, adjusted as provided in (2), are estimated to be, equal to at least 140% of the maximum annual debt service, during the term of the outstanding parity

bonds, on all outstanding parity bonds and the additional parity bonds proposed to be issued.

(A) For this purpose, the tax increment received by the municipality in the last completed fiscal year may be adjusted by adding any increase in tax increment which would have resulted from applying the tax rates effective for the last completed fiscal year to the value, as determined by certification of the county assessor, of any projects which have been completed in the urban renewal area or industrial district before the date of issuance of the additional parity bonds and the taxable values of which as so completed are not included in the "actual taxable value" of the urban renewal area or industrial district.

(2) For purposes of (1)(e)(ii), in estimating the tax increment to be received in any future fiscal year, the municipality shall assume that:

(a) 90% of the taxes levied in the urban renewal area or industrial district will be collected in any fiscal year;

(b) no taxes delinquent in a prior fiscal year will be collected in any subsequent fiscal year; and

(c) there will be no increase in the tax increment to be received in any future fiscal year resulting from:

(i) the projected inflation in property values or projected increases in tax levies;

(ii) the completion of improvements to real property which are under construction at the time of the issuance of the additional parity bonds unless the improvements are substantially completed at the time of the issuance of the additional parity bonds and officers of the municipality certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made;

(iii) the completion of an improvement to real estate for which construction has not commenced or is not substantially completed at the time of the issuance of the additional parity bonds unless:

(A) the municipality has entered into an agreement with the person or entity undertaking the improvement wherein the person or entity agrees to complete the improvement in accordance with a described plan and within the period for which the estimate is to be made and to pay and satisfactorily secure to the municipality, in the event the improvement is not completed in accordance with the described plan, the difference between the estimated tax increment to be derived from such improvement and the actual tax increment derived therefrom (adjusted upwards to reflect reductions in the mill rates from those assumed in the estimate); and

(B) the officers of the municipality certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made;

(iv) improvements to be completed later than the end of the second full fiscal year following the issuance of the additional parity bonds, provided, however, that in estimating the tax increment to be derived from future development in

cases under (2)(c)(ii) or (iii), the municipality shall assume the taxable value of the development upon completion to be 66 2/3% of the estimated taxable valuation; or

(v) if the conditions in (1)(e)(i) through (iii) are not met, the department determines that there is adequate security for the payment of the bonds based on other terms, conditions, and limitations it imposes in its discretion.

(3) The municipality shall agree not to adjust the tax incremental base of the urban renewal area or industrial district pursuant to 7-15-4287, MCA, so long as the bonds are outstanding.

(4) The municipality shall agree that it will remit the annual surplus tax increment to other taxing jurisdictions pursuant to an agreement with such jurisdictions only if the balance in the reserve account is equal to the required amount, and officers of the municipality certify that no default exists under the bond resolution or any collateral document securing payment of the parity bonds.

(5) The municipality shall agree that, in the event the Montana Constitution or laws of Montana are amended to abolish or substantially reduce or eliminate real or personal property taxation and Montana law then or thereafter provides to the municipality an alternate or supplemental source or sources of revenue specifically to replace or supplement reduced or eliminated tax increment, then the municipality pledges, and covenants that it shall appropriate annually, subject to the limitations of then applicable law, to the debt service fund for the parity bonds from such alternate or supplemental revenues an amount that will, with money on hand in the debt service fund or available and to be transferred to the debt service fund during such fiscal year, be sufficient to pay the principal of, premium, if any, and interest on the outstanding parity bonds payable in that fiscal year.

(6) Notwithstanding anything to the contrary contained in this subchapter, the opinion of bond counsel to be delivered by the borrower need not conclude that interest on the bonds is not includable in gross income for purposes of federal income taxation.

(7) The department may waive, to the extent it finds such requirements inapplicable, any or all of the provisions contained in ARM 36.24.106.

(8) The department may impose upon the municipality such additional terms, conditions, and covenants consistent with the provisions of the law authorizing issuance of the bonds, which may include terms, conditions, and covenants to be imposed upon any owner or user of facilities located in the urban renewal area or industrial district or any guarantor of the obligations thereof, that it deems necessary to make the bonds creditworthy and to protect the viability of the program.

(9) In addition to other items required by statute or other provisions of these rules, an application for a loan to be evidenced and secured by tax increment revenue bonds shall be accompanied by:

(a) a map depicting the boundaries of the urban renewal area or the industrial district and showing the authorized land uses therein;

(b) audited financial statements of the urban renewal area or the industrial district for the last two completed fiscal years, if available;

(c) one or more certificates as to:

(i) the ownership of property in the urban renewal area or the industrial district;

(ii) its base taxable value;

(iii) its current incremental taxable value;

(iv) the estimated market value and taxable value of taxable property in the urban renewal area or the industrial district allocated among the various property tax classifications;

(v) the 10 largest taxpayers in the urban renewal area or the industrial district:

(vi) the mill rates of jurisdictions levying property taxes in the urban renewal area or industrial district for the last five years; and

(vii) the delinquency rate in property tax collections in the urban renewal area or the industrial district for the last five years;

(d) a certified copy of the ordinance establishing the urban renewal area or the industrial district, as amended, including the tax increment financing provision;

(e) if a private person or entity is providing security for the bonds, audited financial statements of the person or entity for the last three fiscal years, together with copies of the principal loan documents, if any, to which such person or entity is a party;

(f) a pro forma financial statement (which need not be prepared by an accountant) showing pledged revenues sufficient to pay maximum annual debt service on the bonds and outstanding parity bonds, if any, and otherwise comply with applicable requirements of these rules, including a statement of all significant assumptions; and

(g) such other information as the department deems necessary to assess the feasibility of the project to be financed and the financial security of the bonds.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for adoption of this rule in order to establish tax increment revenue bonds as a type of bond approved by the Department of Natural Resources and Conservation as an evidence of indebtedness for a loan made under the Water Pollution Control Revolving Fund Act.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment and adoption, 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-mailed to annam@state.mt.us and must be received no later than 5:00 p.m. on March 10, 2005.

6. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to 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-mailed to annam@state.mt.us and must be received no later than 5:00 p.m. on March 10, 2005.

7. 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.

8. An electronic copy of this Notice of Proposed Amendment and Adoption 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 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.

9. 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.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Mary Sexton
Mary Sexton
Director

By: /s/ Tim Hall
Tim Hall
Rule Reviewer

Certified to the Secretary of State January 31, 2005.

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

In the matter of the proposed amendment of ARM 36.23.102, and the proposed adoption of New Rule I relating to tax increment revenue bonds under the Drinking Water State Revolving Fund Act	))))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

To: All Concerned Persons

1. On March 17, 2005, the Montana Department of Natural Resources and Conservation proposes to amend ARM 36.23.102 and to adopt New Rule I pertaining to tax increment revenue bonds under 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 February 28, 2005, 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-mailed to annam@state.mt.us.

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

<u>36.23.102 DEFINITIONS</u> In this 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, 32 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), (23), (28), (29), (30), (33), (35), (36), (40), (41), (42) (43) and (52) are statutory definitions.)

(1) through (54) remain the same.

<u>(55) "Tax increment revenue bond" means a tax increment urban renewal revenue bond issued by a municipality pursuant to Title 7, chapter 15, parts 42 and 43, MCA, or other applicable law.</u>

AUTH: 75-6-205, MCA
IMP: 75-6-202 <u>and 75-6-224</u>, MCA

REASON: There is reasonable necessity for amendment of this rule in order to define the term "tax increment revenue bond" as a type of bond approved by the Department of Natural Resources and Conservation as evidence of indebtedness for a loan made under the Drinking Water State Revolving Fund Act.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I TAX INCREMENT REVENUE BONDS (1) The department may accept as evidence for a loan tax increment revenue bonds subject to the following terms and conditions:

(a) The urban renewal plan or industrial district ordinance shall contain a tax increment financing provision as authorized in 7-15-4282 to 7-15-4293, MCA.

(b) All tax increments shall be irrevocably pledged and appropriated and shall be credited as received to the debt service fund for the bonds and shall be applied, to the extent required, to pay debt service on the bonds and maintain the reserve account required in (1)(c). The bonds shall be secured by a first lien on the tax increment, which lien may be granted on a parity with the lien securing other outstanding or additional revenue bonds of the municipality payable from the tax increment, which collectively are referred to as parity bonds.

(c) The payment of principal of and interest on the bonds and any parity bonds shall be secured by a reserve account, to be established and thereafter maintained from the available tax increment in an amount deemed sufficient by the department to provide adequate security for the bonds.

(d) The estimated tax increment to be received by the municipality and any other revenues pledged to the payment of the bonds, which collectively are referred to as pledged revenues, are determined by the governing body of the municipality to be sufficient to pay the principal of and interest on the bonds and other outstanding parity bonds when due.

(e) The municipality shall agree not to issue additional parity bonds payable from or secured by the tax increment and other pledged revenues, if any, without the prior written consent of the department, which consent shall not be granted unless either:

(i) the pledged revenues collected in the last completed fiscal year were equal to at least 130% of the maximum annual debt service, during the term of the outstanding parity bonds, on all outstanding parity bonds and the additional parity bonds proposed to be issued; and

(ii) the pledged revenues collected in the last completed fiscal year adjusted and provided in (2) were, and the pledged revenues estimated to be received in the next succeeding three fiscal years, adjusted as provided in (2), are estimated to be, equal to at least 140% of the maximum annual debt service, during the term of the outstanding parity

bonds, on all outstanding parity bonds and the additional parity bonds proposed to be issued.

(A) For this purpose, the tax increment received by the municipality in the last completed fiscal year may be adjusted by adding any increase in tax increment which would have resulted from applying the tax rates effective for the last completed fiscal year to the value, as determined by certification of the county assessor, of any projects which have been completed in the urban renewal area or industrial district before the date of issuance of the additional parity bonds and the taxable values of which as so completed are not included in the "actual taxable value" of the urban renewal area or industrial district.

(2) For purposes of (1)(e)(ii), in estimating the tax increment to be received in any future fiscal year, the municipality shall assume that:

(a) 90% of the taxes levied in the urban renewal area or industrial district will be collected in any fiscal year;

(b) no taxes delinquent in a prior fiscal year will be collected in any subsequent fiscal year; and

(c) there will be no increase in the tax increment to be received in any future fiscal year resulting from:

(i) the projected inflation in property values or projected increases in tax levies;

(ii) the completion of improvements to real property which are under construction at the time of the issuance of the additional parity bonds unless the improvements are substantially completed at the time of the issuance of the additional parity bonds and officers of the municipality certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made;

(iii) the completion of an improvement to real estate for which construction has not commenced or is not substantially completed at the time of the issuance of the additional parity bonds unless:

(A) the municipality has entered into an agreement with the person or entity undertaking the improvement wherein the person or entity agrees to complete the improvement in accordance with a described plan and within the period for which the estimate is to be made and to pay and satisfactorily secure to the municipality, in the event the improvement is not completed in accordance with the described plan, the difference between the estimated tax increment to be derived from such improvement and the actual tax increment derived therefrom, adjusted upwards to reflect reductions in the mill rates from those assumed in the estimate; and

(B) the officers of the municipality certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made;

(iv) improvements to be completed later than the end of the second full fiscal year following the issuance of the additional parity bonds, provided, however, that in estimating the tax increment to be derived from future development in

cases under (2)(c)(ii) or (iii), the municipality shall assume the taxable value of the development upon completion to be 66 2/3% of the estimated taxable valuation; or

(v) if the conditions in (1)(a) are not met, the department determines that there is adequate security for the payment of the bonds based on other terms, conditions, and limitations it imposes in its discretion.

(3) The municipality shall agree not to adjust the tax incremental base of the urban renewal area or industrial district pursuant to 7-15-4287, MCA, so long as the bonds are outstanding.

(4) The municipality shall agree that it will remit the annual surplus tax increment to other taxing jurisdictions pursuant to an agreement with such jurisdictions only if:

(a) the balance in the reserve account is equal to the required amount; and

(b) officers of the municipality certify that no default exists under the bond resolution or any collateral document securing payment of the parity bonds.

(5) The municipality shall agree that, in the event the Montana Constitution or laws of Montana are amended to abolish or substantially reduce or eliminate real or personal property taxation and Montana law then or thereafter provides to the municipality an alternate or supplemental source or sources of revenue specifically to replace or supplement reduced or eliminated tax increment, then the municipality pledges, and covenants that it shall appropriate annually, subject to the limitations of then applicable law, to the debt service fund for the parity bonds from such alternate or supplemental revenues an amount that will, with money on hand in the debt service fund or available and to be transferred to the debt service fund during such fiscal year, be sufficient to pay the principal of, premium, if any, and interest on the outstanding parity bonds payable in that fiscal year.

(6) Notwithstanding anything to the contrary contained in this subchapter, the opinion of bond counsel to be delivered by the borrower need not conclude that interest on the bonds is not includable in gross income for purposes of federal income taxation.

(7) The department may waive, to the extent it finds such requirements inapplicable, any or all of the provisions contained in ARM 36.23.116.

(8) The department may impose upon the municipality such additional terms, conditions, and covenants consistent with the provisions of the law authorizing issuance of the bonds, which may include terms, conditions, and covenants to be imposed upon any owner or user of facilities located in the urban renewal area or industrial district or any guarantor of the obligations thereof, that it deems necessary to make the bonds creditworthy and to protect the viability of the program.

(9) In addition to other items required by statute or other provisions of these rules, an application for a loan to

be evidenced and secured by tax increment revenue bonds shall be accompanied by:

(a) a map depicting the boundaries of the urban renewal area or the industrial district and showing the authorized land uses therein;

(b) audited financial statements of the urban renewal area or the industrial district for the last two completed fiscal years, if available;

(c) one or more certificates as to:

(i) the ownership of property in the urban renewal area or the industrial district;

(ii) its base taxable value;

(iii) its current incremental taxable value;

(iv) the estimated market value and taxable value of taxable property in the urban renewal area or the industrial district allocated among the various property tax classifications;

(v) the 10 largest taxpayers in the urban renewal area or the industrial district;

(vi) the mill rates of jurisdictions levying property taxes in the urban renewal area or industrial district for the last five years; and

(vii) the delinquency rate in property tax collections in the urban renewal area or the industrial district for the last five years;

(d) a certified copy of the ordinance establishing the urban renewal area or the industrial district, as amended, including the tax increment financing provision;

(e) if a private person or entity is providing security for the bonds, audited financial statements of the person or entity for the last three fiscal years, together with copies of the principal loan documents, if any, to which such person or entity is a party;

(f) a pro forma financial statement (which need not be prepared by an accountant) showing pledged revenues sufficient to pay maximum annual debt service on the bonds and outstanding parity bonds, if any, and otherwise comply with applicable requirements of these rules, including a statement of all significant assumptions; and

(g) such other information as the department deems necessary to assess the feasibility of the project to be financed and the financial security of the bonds.

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

REASON: There is reasonable necessity for adoption of this rule in order to establish tax increment revenue bonds as a type of bond approved by the Department of Natural Resources and Conservation as an evidence of indebtedness for a loan made under the Drinking Water State Revolving Fund Act.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment and adoption, 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-mailed to annam@state.mt.us and must be received no later than 5:00 p.m. on March 10, 2005.

6. If persons who are directly affected by the proposed amendment and adoption wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to 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-mailed to annam@state.mt.us and must be received no later than 5:00 p.m. on March 10, 2005.

7. 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 six municipal loans in 2003 impacting in excess of 10,000 municipal residents.

8. 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 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.

9. 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.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Mary Sexton
Mary Sexton
Director

By: /s/ Tim Hall
Tim Hall
Rule Reviewer

Certified to the Secretary of State January 31, 2005.

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

In the matter of the adoption of Rule I and the amendment of ARM 37.80.101, 37.80.102, 37.80.201, 37.80,202, 37.80.205, 37.80.301, 37.80.306, 37.80.316, 37.80.502 and 37.80.602 pertaining to the child care subsidy, legally unregistered provider, and child care provider merit pay and star quality tiered reimbursement programs	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On March 4, 2005 at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 18, 2005, 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 adopted provides as follows:

RULE I REQUIREMENTS FOR CHILD CARE FACILITY PARTICIPATION IN THE BEST BEGINNINGS STAR QUALITY TIERED REIMBURSEMENT PROGRAM (1) All primary child care providers must comply with licensing and registration requirements as specified in ARM 37.95.620(2)(a), (b), (c) and (3)(d).

(2) In addition to the requirements set out in section 7-1 of the Child Care Manual, to participate in the best beginnings star quality tiered reimbursement program a primary child care provider must do the following to ensure quality:

(a) provide direct care and education services for the same group of children during the day for a minimum of five

hours per day and for the total number of hours the children are participating in the program;

(b) assess and provide care and education services for each child based on the child's strengths, interests and needs;

(c) assess and incorporate elements of each family's culture, goals and aspirations for the child into each child's individual care and education program; and

(d) work, on a regular basis, with the families and other child care program staff in planning for the child.

(3) A licensed or registered child care provider who has attained a one or two star rating, as defined in section 7-1 of the Child Care Manual, will lose eligibility to participate in the best beginnings star quality tiered reimbursement program if the provider has been disqualified from participation in the child and adult care food program (CACFP) for cause.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-721 and 53-4-212, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) remains the same.

(2) Child care assistance may be available to cover the cost of child care incurred by working parents who are income eligible and who demonstrate a need for child care assistance in support of employment~~.~~ , subject to the following restrictions:

(a) through (d) remain the same.

(3) A parent who is not making monthly payments on outstanding child care overpayments is not eligible for further child care assistance.

~~(3)~~ (4) Eligibility of parents and the amount of child care assistance provided under this chapter is based on income as set out in ARM 37.80.202. Households whose gross income exceeds 150% of the federal poverty ~~level~~ guidelines are not eligible. Each household must actively seek all income for which the household has a legal claim.

~~(4)~~ (5) Households that are not receiving temporary assistance for needy families (TANF) may receive child care assistance for 30 days while eligibility is being verified. Households may benefit from 30 days of presumptive eligibility only once during any 12 month period. To apply for presumptive eligibility, ~~households~~ a household must:

(4)(a) through (c) remain the same but are renumbered (5)(a) through (c).

(6) If the household intentionally provides false information for the purpose of receiving child care assistance from a presumptive eligibility determination, the household will be responsible for repaying the overpayment.

(5) through (7) remain the same but are renumbered (7) through (9).

~~(8)~~ (10) Provision of benefits for child care services under this chapter, or under any other department child care program, does not create an employer-employee relationship between the department and the provider and ~~shall~~ may not be deemed to obligate the department to provide employment-related benefits to child care providers.

~~(9)~~ (11) Except as provided in ~~(4)~~ (5), child care assistance payments are not available unless both the parent and the provider meet all eligibility requirements specified in this chapter.

(10) remains the same but is renumbered (12).

(13) The child care assistance program will be administered in accordance with:

(a) the requirements of federal law governing the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990 (public law 101-508 as amended and codified at 42 USC 9858 et seq.), and 45 CFR parts 98 and 99, child care and development fund, adopted July 24, 1998; and

(b) the Montana Child Care Manual in effect on January 1, 2005. The Montana Child Care Manual, dated January 1, 2005, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's child care assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952; and on the department's website at www.dphhs.state.mt.us.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611 and 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (3) remain the same.

(4) "Child Care Manual" means the Montana Child Care Manual incorporated by reference in ARM 37.80.101.

(4) through (8) remain the same but are renumbered (5) through (9).

~~(9)~~ (10) "Federal poverty ~~guideline~~ guidelines (FPG)" means the poverty guidelines published annually by the U.S. department of health and human services based on information compiled by the ~~office of management and budget~~ U.S. bureau of the census. The department adopts and incorporates by reference the federal poverty guidelines published at 69 FR 7336 on February 13, 2004. The guidelines define the income levels for families that the federal government considers to be living in poverty. A copy of the guidelines is available from the Department of Public Health and Human Services, Human

and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

~~(10)~~ (11) "Full-time child care" means care certified for 30 or more hours per week on a regular basis, as ~~established~~ regular basis is defined in ARM 37.95.102.

(12) "Full-time field experience and class time" means 30 hours per week combined of field experience and class time accrued by a post-secondary education student, not including home study time.

(11) through (20) remain the same but are renumbered (13) through (22).

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611 and 53-4-612, MCA

37.80.201 NON-FINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, the following non-financial requirements must be met in order for payments under this chapter to be made:

(a) With the exceptions in (1)(b), parents must work the following minimum number of hours each month:

(i) through (i)(B) remain the same.

(b) ~~the~~ The monthly minimum hourly work requirement does not apply to:

(i) through (iii) remain the same.

(iv) households containing parents who lost a job either in the current month or in the month just preceding the current month, provided the parents:

(A) are actively seeking work ~~that~~;

(B) have reported the change in circumstance in a timely manner in accordance with ARM 37.80.203; and ~~who~~

(C) have applied for a grace period and have been approved;

(v) remains the same.

(vi) ~~the minimum hourly work requirement may be waived for~~ a parent, in a two-parent household, who is severely disabled and unable to care for their child.

(2) Households which are not receiving cash assistance funded by TANF may be eligible for child care assistance under this chapter while a parent is participating in education or training reasonably expected to lead to gainful employment if:

(a) remains the same.

(b) the minimum hourly work requirement is waived while a parent participates in a full-time field experience, or a full-time combination of field experience and course work, required for graduation in the parent's curriculum.

(3) Child care assistance under this chapter for parents who are pursuing training or education is subject to the following limitations:

(a) remains the same.

(b) assistance is not available to a parent who has earned an educational certificate or degree within the past five years;

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

(4) and (5) remain the same.

(6) Due to limited funding for child care assistance, some households which meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) ~~a~~ A household receiving assistance funded by the TANF program is guaranteed needed child care when participating in family investment agreement activities which require child care, subject to the following:

(i) Assistance for care provided by a provider certified by the department will begin the date that the TANF participant parent is referred to a child care resource and referral agency to obtain child care assistance, so long as the participant ~~makes the contact~~ contacts the resource and referral agency within 10 days after the date the referral is made.

(ii) remains the same.

(b) ~~households~~ Households containing a child with special needs are guaranteed child care when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502~~;~~.

(c) Households headed by a teen parent are guaranteed child care when otherwise eligible for child care assistance under subchapters 2, 3 and 5.

~~(c)~~ (d) ~~all~~ All other eligible non-TANF households shall be prioritized by ranking household income as a percentage of the federal poverty guidelines (FPG). The household with the lowest percentage of income, relative to FPG, has the highest priority when funding becomes available~~;~~.

~~(d)~~ (e) ~~if~~ If there are two or more non-TANF households at the same level of priority as set forth in (6)~~(c)~~(d), the household whose application was received first has a higher priority.

(7) remains the same.

(8) Payment may only be made for care provided during the time both parents or, in single parent households, the parent, and any other adult included in calculating household size under this chapter, are required to be out of the home to attend work or training. Brief care or eligibility interruptions may be accommodated under continuity of care policies, as established in the department's Child Care Manual, section 6-6~~, dated July 1, 2003~~. ~~The Child Care Manual, section 6-6, is hereby adopted and incorporated by this reference.~~ A copy of section 6-6 of the manual may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(9) ~~Households~~ A household experiencing unemployment~~,~~ due to good cause as defined in ARM 37.78.508 may ~~elect to extend~~ have child care benefits ~~until the end of the month~~ extended and the usual child care schedule continued for 30 days following the job loss, if the following conditions are met:

(a) the department has sufficient funds to provide extended child care benefits~~.~~;

~~(a)~~ (b) ~~households must request~~ the household requests the extension within 10 days after the parent's last day of employment; and

~~(b) the usual child care schedule may continue during the extension; and~~

(c) through (10)(b) remain the same.

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601 and 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT

(1) Financial eligibility for child care assistance is based on the household's monthly income as defined in ARM 37.80.102. Households whose income exceeds 150% of the ~~federal poverty guidelines (FPG) as published by U.S. health and human services~~ for a household of their size are not eligible for child care assistance.

(2) through (13) remain the same.

(14) For the period beginning ~~November 1, 2002~~ September 1, 2004, the household's monthly copayment shall be the amount specified in the department's child care assistance sliding fee scale as amended ~~November 1, 2002~~ September 1, 2004. The sliding fee scale is ~~hereby~~ adopted and incorporated by reference and shall be in effect beginning ~~November 1, 2002~~ September 1, 2004. A copy of the sliding fee scale is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The household's size and income are taken into consideration in determining the copayment amount each household must pay.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601 and 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) and (2) remain the same.

(3) Child care certification plans may authorize payment for extended care of more than 10 hours during a calendar day. When care is provided for 10 to 16 hours per day, the daily rate applies to the first 10 hours of service. The hourly

rate applies up to six hours of additional service. If the certification plan specifies service exceeding 16 hours of care during a calendar day, the state ~~may~~ will pay ~~up to~~ twice the daily rate for each day in which care exceeds 16 hours.

(4) Child care providers are entitled to payment only when care is actually provided to the child, with the following ~~two~~ three exceptions:

(a) a licensed or registered child care ~~facilities~~ facility may be paid for care for ~~any of~~ the holidays ~~specified in (4)(a)(iii)~~ of New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, even though the facility is closed for business if:

(i) and (ii) remain the same.

~~(iii) The holidays for which facilities may be paid if the above conditions are met are New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.~~

(b) and (c) remain the same.

(5) The rates set forth in the Child Care Manual, ~~Section~~ section 1-4, ~~dated July 1, 2003,~~ are the maximum rates payable. ~~The Child Care Manual Section 1-4 is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address. Additionally, the rate charged by the child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service. The following exceptions apply for quality child care providers:~~

(6) The rate charged by a child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service, with the following exceptions for quality child care providers:

(a) Providers who qualify for a one star quality child care rating will receive 110% of the respective rate and providers who qualify for a two star rating will receive 115% of the respective rate. The criteria to qualify for quality incentive adjustments are set forth in ~~Section~~ section 7-1 of the Child Care Manual., ~~dated March 1, 2002. The Child Care Manual Section 7-1, dated March 1, 2002, is adopted and incorporated by reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.~~

~~(6)~~ (7) Rates for children with special needs may be adjusted for special accommodations which increase the cost of care. A special needs subsidy rating scale and/or an individual child care plan must be completed to determine the appropriate rate adjustment. The criteria used to determine special needs adjustments are set forth in ~~Section~~ section 1-4a of the Child Care Manual~~, dated March 1, 2002. The Child Care Manual Section 1-4a is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.~~

(7) remains the same but is renumbered (8).

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) Child care facilities must be in compliance with applicable licensing and registration requirements as specified in ARM 23.7.109 and 37.95.101 ~~through 37.95.1021~~ and 37.95.102 to receive payment under this chapter. Loss of eligibility for funds under this chapter for failing to comply with child care facility licensing and registration requirements is in addition to other remedies available for such violations.

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

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

37.80.306 LEGALLY UNREGISTERED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) remains the same.

(2) An application for certification or recertification will be denied under any of the following circumstances:

(a) and (b) remain the same.

(c) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color~~,~~ or ~~natural~~ national origin of the parent or the child;

(d) through (5)(e) remain the same.

(6) Legally unregistered providers must also meet the following requirements to be registered under this chapter:

(a) remains the same.

(b) within ~~six months~~ 60 days of ~~application~~ approval, attend a training or orientation session provided or approved by the department which includes health and safety issues;

(c) limit the care they provide to a period less than 24 hours in any day; ~~and~~

(d) and (e) remain the same.

(7) Legally unregistered providers are not eligible to be reimbursed for child care services provided while home schooling.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) Except as provided in (2) and (3), the provider will receive payment for child care services when the care is provided outside the child's home or when the care is provided by a great grandparent, grandparent, aunt or uncle who resides in the parent or child's home. If the parent and the provider both agree payment should be made to the parent, payment may be made to the parent.

(2) remains the same.

(3) Payment will be made to the provider when the provider participates in the tiered reimbursement program, as referenced in ARM 37.80.205(6)(a). The tiered reimbursement program is intended to benefit the higher quality child care provider.

(3) through (3)(b) remain the same but are renumbered (4) through (4)(b).

~~(4)~~ (5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in ~~(3)~~(4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(4)(a) through (e) remain the same but are renumbered (5)(a) through (e).

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

AUTH: Sec. 52-2-704 and 52-2-711, MCA
IMP: Sec. 52-2-704, 52-2-711 and 52-2-713, MCA

37.80.502 CHILD CARE UNDERPAYMENT, ~~AND~~ OVERPAYMENT AND OVERCLAIM: CRIMINAL PROSECUTION (1) through (6)(a) remain the same.

(7) If a willful action ~~results in~~ is an ~~overpayment~~ overclaim, the following will occur:

(a) The first willful ~~action~~ overclaim will result in: ~~a 10% assessment being added to the amount of repayment due and, if the provider is responsible, web invoicing privileges will be lost and copies of sign-in/sign-out sheets must be submitted with invoices for the following three months.~~

(i) an assessment of 10% of the amount actually due being added to the amount of repayment due if an overpayment has already been made to the claimant;

(ii) if an overclaim is discovered before payment is made, deduction of 10% of the amount due from the amount paid to the claimant; and

(iii) if the provider is responsible, the loss of web invoicing privileges for six months and the imposition of the requirement that copies of sign-in/sign-out sheets must be submitted with invoices for the following three months.

(b) The second willful ~~action~~ overclaim will result in: ~~a 25% assessment being added to the amount of repayment due and, if the provider is responsible, copies of sign-in/sign-out sheets must be submitted with invoices for the following six months.~~

(i) an assessment of 25% of the amount actually due being either added to the amount of repayment due to the department or deducted from the amount of payment due to the claimant, depending upon whether payment to the claimant has already been made; and

(ii) if the provider is responsible for the overclaim, the loss of web invoicing privileges permanently and imposition of the requirements that the provider must submit copies of sign-in/sign-out sheets with invoices for the following six months.

(c) The third willful ~~action~~ overclaim will result in the household or provider responsible being ineligible to participate in the child care development fund child care assistance, grant, and quality child care programs for seven years.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

37.80.602 BEST BEGINNINGS QUALITY CHILD CARE MERIT PAY

(1) remains the same.

(2) To qualify for a Montana child care merit pay I and infant toddler merit pay award, an individual must work a minimum of 15 hours a week in a child care facility that is either registered or licensed by the department and be a member of the Montana early care and education practitioner's registry.

(3) To qualify for Montana child care higher education merit pay, an individual must be a member of the Montana early care and education practitioner's registry and work a minimum of 15 hours a week in a child care facility that is either:

(a) registered or licensed by the department;

(b) a head start, tribal head start or early head start program; or

(c) a child care resource and referral agency located in Montana.

~~(3)~~ (4) To receive a merit pay award, applicants may apply for ~~either a 68 hour track or a 38 hour track~~ one of

three programs - merit pay I, infant toddler merit pay or higher education merit pay.

(a) Those participants completing and verifying ~~68~~ 50 hours of pre-approved early childhood training will receive ~~an~~ a merit pay I award of ~~$400~~ $300.

(b) Those participants verifying ~~38~~ completion of six semester college credit hours of ~~pre-approved early childhood training~~ course work pre-approved by the early childhood services bureau that leads to a credential or degree in early childhood/child development or participating in six credit hours of a college course work program that emphasizes early childhood that will lead to a level IV or higher on the Montana early care and education practitioner's registry, will receive ~~an~~ a higher education merit pay award of ~~$200~~ $750.

(c) Those participants verifying completion of 60 hours of Montana infant toddler training pre-approved by the early childhood services bureau will receive an infant toddler merit pay award of $400, except that applicants who have previously received the $400 infant toddler merit pay award or have completed the Montana infant toddler certification are not eligible for infant toddler merit pay.

~~(4)~~ (5) Participants must complete an application form and a ~~training~~ plan indicating:

(a) which ~~track~~ merit pay program they wish to complete;

(b) the training or course work they plan to complete;

(c) their place of employment including the day care license or registration number;

(d) an attestation regarding whether they have previously received a merit pay award; and

(e) either an attestation regarding whether they have previously completed a degree in early childhood or child development; or

(f) an indication of early childhood or child development educational program enrollment.

~~(5)~~ (6) The application and ~~training~~ plan of study ~~is~~ are submitted to the department of public health and human services (DPHHS), human and community services division, early childhood services bureau for approval. Participants are accepted into the program based upon priority ranking and availability of funds.

(6) through (9)(b) remain the same but are renumbered (7) through (10)(b).

(11) The 60 hour pre-approved Montana infant toddler training is not allowable training for the merit pay I program.

(12) All college course work for undergraduate credit must be completed through an accredited Montana college or university that is recognized by the Montana board of regents.

~~(10)~~ (13) Priority for each of the three merit pay programs is given as follows in ~~the following~~ order to allocate limited financial resources to those most in need:

(a) ~~Providers who have not previously received a merit pay award and are completing training that leads to completion of an early childhood credential or accreditation through the~~

~~national association of family child care, the national association for the education of young children or the national school age care association have first priority.~~ Priority for merit pay I is given in the following order to the provider described:

(i) providers who have not previously received merit pay I and are participating in training that leads to completion of a credential such as a child development associate (CDA), accreditation through the national association of family child care, or accreditation through the national association of the education of young children;

(ii) providers who have not previously received merit pay I, who have not completed a credential in early childhood education or a related field, and who are participating in training in one or more of the Montana early care and education knowledge base content areas of child growth and development, child guidance, health safety and nutrition, environmental design, family and community partnerships, program management, curriculum, observation and assessment, professionalism, cultural and developmental diversity, and personal dispositions;

(iii) providers who have previously received merit pay I and are participating in training that leads to the completion of a credential as defined in (13)(d);

(iv) providers who have previously received merit pay I, who have not completed a credential in early childhood education or a related field, and who are participating in the training listed in (13)(a)(ii) that will enhance a direct care provider's ability to work with young children; and

(v) providers who have previously received merit pay I, have completed a credential in early childhood education or a related field, and who are participating in the training that will enhance a direct care provider’s ability to work with young children.

(b) ~~Providers who have not previously received a merit pay award and who have not completed a credential in early childhood education, who are completing training that will enhance their ability to work with young children have second priority.~~ Priority for higher education merit pay is first ranked according to how much financial assistance the individual has access to and then given in the following order to:

(i) college students who have previously received higher education merit pay award and are in either college course work that leads to completion of a CDA credential, a child care development specialist (CCDS) apprenticeship certificate, a degree in early childhood/child development, or participating in a higher education program that emphasizes early childhood and will lead to a level IV or higher on the Montana early care and education practitioner's registry;

(ii) college students who have not previously received higher education merit pay and are participating in a program that leads to completion of an early childhood credential as defined in (13)(b)(i). When all factors for priority two are

equal, then child care development specialist apprentices who are registered with the Montana department of labor and industry apprenticeship and training program will receive first consideration;

(iii) early childhood practitioners who have not previously received higher education merit pay, have completed a credential or degree in early childhood education as defined in (13)(b)(i), and are going on to a higher degree or attainment of the early childhood permissive special competency;

(iv) early childhood practitioners who have previously received higher education merit pay, have completed a credential or degree in early childhood education as defined in (13)(b)(i), and are going on to a higher degree or attainment of the early childhood special competency; and

(v) early childhood practitioners who are participating in college course work that is not part of an early childhood program as defined in (13)(b)(i) but that will directly enhance a care provider's ability to work with young children as defined in (13)(a)(ii).

(c) ~~Providers who have previously received a merit pay award and are completing training that leads to completion of an early childhood credential or accreditation through the national association of family child care, the national association for the education of young children or the national school age care association have third priority.~~ Priority for infant/toddler merit pay is given in the following order to the providers described:

(i) providers who have not previously received infant/toddler merit pay, are participating in training that leads to completion of the Montana infant/toddler caregiver certification, are currently working with infants and toddlers, and have not completed the infant/toddler training;

(ii) providers who have not previously received infant/toddler merit pay, are participating in training that leads to completion of the Montana infant/toddler caregiver certification, are not currently working with infants and toddlers, and have not completed the infant/toddler training.

~~(d) Providers who have received merit pay in the past, and have not completed a credential in early childhood education, which are completing training that will enhance their ability to work with young children have last priority.~~

~~(e)~~ (d) For purposes of this rule, a credential means completion of a child development associate (CDA), an associates degree (AA), a bachelors degree (BA), or higher in early childhood education, child development or an early childhood minor or early childhood permissive special competency (ECPSC) or a child care development specialist apprenticeship.

(11) remains the same but is renumbered (14).

AUTH: Sec. 52-2-704 and 53-2-111, MCA
IMP: Sec. 52-2-704, 52-2-111, 52-2-112 and 52-2-711, MCA

4. The Department is proposing to adopt a new rule and amend several existing ones affecting and strengthening the Child Care Scholarship (Subsidy) Program and the Best Beginnings Star Quality Tiered Reimbursement Program that rewards and facilitates improvement in the quality of child care. The reasons why the new rule and the proposed amendments are necessary are stated below:

RULE I

The proposed new rule is necessary in order to make legally enforceable the standards the Department has included in its Child Care Manual to govern the incentive program for high-quality child care, the Best Beginnings Star Quality Tiered Reimbursement Program, as well as other minimum requirements for participation in that program. The child care industry, as well as the Department, has been promoting quality care for all children. In order to encourage and reward child care providers striving to provide higher quality of care, the Department has established the program in order to recognize those providers through a higher rate of compensation for serving "Best Beginnings" Scholarship children. Standards for that program must be adopted as rules for them to be enforceable. Failing to do so will perpetuate the problems, e.g., misrepresentation of qualifications, that have surfaced over the past two years the Best Beginnings Star Quality Tiered Reimbursement Program has been administered, allowing unlawful spending of state child care funds.

The proposed rule defines the quality indicators that a primary caregiver must meet for the facility to participate in the Tiered Reimbursement for Quality Care System. The requirements a primary caregiver must meet for licensing/registration purposes, as stated in ARM 37.95.620, must continue to be met, in addition to all the quality indicators stated in (2). Restating licensure and registration requirements in (1) is done to remind caregivers that those standards always apply, whether the provider is participating in the Best Beginnings program or not.

The quality indicators listed in ARM 37.95.620(2) have been found necessary to high quality child care and are therefore required for participation in Best Beginnings. The addition of that section will help to ensure that high quality child care services for all children and families are being offered by providers participating in the Best Beginnings Star Quality Tiered Reimbursement Program. For the past two years that the program has been operating, monitoring the primary caregiver annual turnover rate has been challenging. Using ARM 37.95.620 alone to define a primary caregiver has not allowed consideration of other quality indicators, and child care facilities can easily manipulate this definition to meet their desire for increased compensation. These quality indicators

support and embrace the results of the overall research related to child care quality. These indicators have been identified as key factors in child care quality that have an impact on young children and as being a reliable tool for identifying high quality versus low quality programs. The research over the past 20 years has demonstrated that these indicators in part accomplish two things. First, they statistically predict overall compliance with state regulations. Second, a significant relationship exists between compliance with these indicators and positive outcomes for young children.

Section (3) of the proposed new rule, disqualifying a provider from participating in the Star Quality tiered reimbursement program if the provider has been disqualified for cause from participation in the Child and Adult Care Food Program (CACFP), is needed because a CACFP disqualification is so serious that it would not make sense to reward such a provider with a Star rating. Disqualification for cause from CACFP usually occurs for fraud. It was previously brought to the department's attention that a star rating was awarded to a provider who had been terminated for cause from the Child and Adult Care Food Program. This does not make for good public relations with the child care community when providers see that it is possible to commit fraud in a federally funded program but still be eligible to participate in another federally funded program. This rule addition will assure that the integrity of the program is upheld.

ARM 37.80.101

The phrase added to ARM 37.80.101(2) is strictly to enhance clarity of meaning and is not a substantive change.

The proposed new ARM 37.80.101(3) requires a parent who has an overpayment balance to make regular payments on the overpayment before the parent is eligible for a child care scholarship. Currently, a parent may ignore an overpayment while reapplying for and receiving child care benefits. The rule change is necessary to reduce the incentive for a parent to gain child care assistance through misrepresentation of eligibility related information, by increasing the accountability of a parent who owes a debt to the State of Montana that results from overpaid child care assistance. The alternative, to maintain the current policy that allows an overpaid parent to seek further child care subsidies without first engaging in the repayment process, was rejected by the Department because it believes that parents benefiting from the child care program subsidies should also be responsible for meeting their program obligations while benefiting from the program, in fairness to other beneficiaries. The amendment may result in a nominal savings in program costs.

The last sentence proposed to be added to ARM 37.80.101(4) is necessary to ensure that household income is maximized before public funding is used to subsidize child care, by enforcing, through rule, policy that has already been followed for some time by the department. The alternative of failing to adopt an enforceable provision was rejected because it would leave the Department weakened in its ability to ensure parents assume personal responsibility to claim any other resources available to them before requesting scarce public assistance. Since this policy has been included in the Department's Child Care Manual for some time, there is no fiscal impact associated with this rule change.

The amendment of "federal poverty level" to read "federal poverty guidelines" is needed to be consistent with the term defined in ARM 37.80.102.

If a parent misrepresents information to gain 30 days of child care benefits by presumptive eligibility, the proposed new ARM 37.80.101(6) requires that parent to repay any child care benefits issued due to the misrepresentation. The amendment is necessary to ensure that a misrepresentation does not result in receipt of 30 days of undeserved child care benefits without an obligation for repayment. The alternative is to continue with the current policy, which does not explicitly require repayment if subsidies are obtained through misrepresentation. That alternative was rejected as unfairly wasting scarce child care funds. There may be a nominal savings with respect to program costs.

New ARM 37.80.101(13) is proposed to incorporate by reference the updated Child Care Manual and give notice of the federal law governing the Child Care Development Fund utilized for child care subsidies. This change is necessary in order to adopt and incorporate into the Administrative Rules of Montana the child care policies used by the Department so that all the policies contained in the Child Care Manual that are too extensive to be set out by rule can legally be enforced and to make clear that federal law governs the Child Care Development Fund. These proposed amendments incorporate the Department's child care policy manual and proposed manual changes effective January 1, 2005 and permit all interested parties as well as the public to comment on the Department's policies and to offer suggested changes. Manuals and draft manual material are available for review in each local Child Care Resource and Referral Office. Following is a brief overview of the information contained in each manual section for the Child Care Manual and an explanation for the need to adopt and incorporate each individual manual section.

The Child Care Manual is intended as a tool for contracted child care resource and referral workers. Their primary duties are determining eligibility for the state's child care scholarship program and ensuring accurate payment of invoices

submitted by child care providers for services rendered to families utilizing the child care scholarship program, thereby assisting them in paying for child care while they work or are engaged in approved activities.

The first section of the manual contains an overview of the child care scholarship program, basic eligibility requirements, and standard operating procedures for administering the program. Sections 1-1, 1-2, and 1-3 include the table of contents, the organizational chart for the Human and Community Services Division of the Department of Public Health and Human Services, and definitions of terms commonly used in the Child Care Manual. It is necessary to adopt and incorporate these sections in order to create a common language and to foster a better understanding of the administration of the program and the remaining manual provisions. For any term that is not defined, the common usage, as defined in an English language dictionary, is used.

Section 1-4 provides an overview of the child care scholarship reimbursement rate; the market rate survey process used to establish that rate; and the regional tables showing the current reimbursement rates by facility type and age of child. Every two years, the Early Childhood Services Bureau (ECSB) conducts a market rate survey of child care providers as a basis for recommending district child care scholarship rates. The survey is derived from data in the child care under the big sky (CCUBS) computer system. It is necessary to adopt and incorporate this section of the manual in order to keep workers apprised of the current reimbursement rate for families. Additional justification regarding rates and the rate setting process is contained in ARM 37.80.205.

Section 1-4a provides an overview of policies used for providing a child care scholarship to a child with special needs. Families of children with special needs are not placed on a waiting list, thereby guaranteeing a priority status for a child care scholarship. Child care providers are required to make a reasonable accommodation for children with special needs. If care requirements increase the cost of care, one-time or ongoing costs may be paid from the Best Beginnings Child Care Scholarship. It is necessary to adopt and incorporate this section of the manual in order to comply with the Americans with Disabilities Act and to provide workers with the tools to determine the appropriate special need rate based on the individual needs of the child.

Section 1-5 contains the current sliding fee scale. The Child Care Sliding Fee Scale is a guide to determine the family's monthly copayment obligation to the child care provider. Families participating in the Temporary Assistance to Needy Families (TANF) program or families whose income falls below the TANF benefit level pay a $10 monthly copayment. Higher copayments are a product of the family's non-TANF gross

monthly income (GMI) multiplied by the respective copayment factor: Monthly copayment = GMI x percentage assigned to the income range. It is necessary to adopt and incorporate this section of the manual in order to achieve the goal of affordable child care for families participating in the program and to assist eligibility workers to understand the family's contribution to paying for the actual cost of care.

Section 1-6 contains guidance on the fair hearing process for child care. If the State Child Care Resource and Referral agency takes an adverse action by terminating or reducing a child care scholarship, or by imposing an overpayment of reduction of payment to a provider, the parent or provider has the right to a fair hearing. It is necessary to adopt and incorporate this section of the manual to assure that workers are aware of the rights of the participants in the programs and to assure an avenue for due process is provided.

Section 1-7 deals with policy regarding confidentiality. The Department and its contractors may share client information for purposes directly connected with the administration of the child care program with other federal programs and certain entitled entities. Information concerning the applicant or participant may be provided and used for the following purposes:

- Reporting child abuse and neglect to the appropriate authority
- Conducting child support activities
- Conducting child care licensing activities
- Establishing eligibility and administering the child care scholarship program

It is necessary to adopt and incorporate this section of the manual to assure that workers comply with state and federal confidentiality guidelines and are aware of the circumstances under which release of confidential information is allowed.

Sections 1-8, 1-9 and 1-10 outline the basic eligibility requirements for children, parents and providers who participate in the child care scholarship program. Included is information regarding the age limits, citizenship, income levels, work and training requirements, income level, child support cooperation, child care licensure, registration and legal operation of a child care business in order to receive a child care scholarship payment. It is necessary to adopt and incorporate these sections in the manual in order to ensure consistent application of the eligibility requirements of the child care scholarship program and to ensure that eligibility workers understand the basic requirements of the program, thus reducing worker errors.

The second section of the manual deals in detail with the policies and procedures in determining eligibility for the non-TANF child care program. Section 2-1 outlines the application process. A family may apply for a non-TANF child care scholarship in person, by mail, or by fax through one of the Child Care Resource and Referral (CCR&R) agencies within the state. If the applicant is eligible and there is no waiting list, the eligibility begin-date is established when the CCR&R receives a completed application. This section goes on to describe the information and verification that needs to be provided to the CCR&R by the applicant in order to determine if a family is eligible. Workers must complete the process within 30 days and either approve, deny or extend the application within that time period. This assures timely issuance of benefits and supports working families. It is necessary to adopt and incorporate these sections of the manual in order to ensure that there is a consistent, reliable and timely process for issuing child care scholarship assistance on a statewide basis.

Section 2-2 describes the household requirements for families participating in the non-TANF child care scholarship program. Non-TANF child care scholarships are available to families who work and to teen parents whose gross income does not exceed 150% of poverty. Parents must have a need for child care and must receive court-ordered child support or maintain cooperation with child support for each child who has an absent parent. This section goes on to identify the required and optional members of a child care case. It is necessary to adopt and incorporate this section of the manual to assure consistent evaluation of household membership and income of the respective members of the child care case, on a statewide basis.

Section 2-3 describes in detail the required work and training activities in order for a parent to qualify for a child care scholarship. Parents qualifying for child care scholarships participate in one of these general activities:

- employed and meeting a minimum hourly requirement; or
- employed and attending school or a training program, or a teen parent attending high school, GED or equivalency program.

Child care scholarships are authorized for the time a parent needs care while they are away from their children to work or work and attend training. It is necessary to adopt and incorporate this section of the manual to assure consistent evaluation of work and training activities so that workers correctly authorize the amount of child care scholarship needed by a family.

Sections 2-4 and 2-6 describe the process for evaluating household income. The gross income of all adult and minor household members is evaluated in determining household eligibility. The gross amount of income expected to be available for current use, including unearned and earned income unless specifically excluded, is counted. The section goes on to identify the specific types of earned and unearned income that families may have, and instructs workers on how to evaluate and verify it. Section 2-6 is simply an income table that identifies income, describes the income type for data entry purposes and indicates whether it is counted for child care scholarship purposes. It is necessary to adopt and incorporate this section of the manual to assure consistent evaluation of income so that workers correctly determine eligibility for the child care scholarship program and the incidence of errors is minimized.

Section 2-5 describes the budgeting process used to determine eligibility for the child care scholarship program. Eligibility is based on the income anticipated in future months. Prospective income is applied to future scholarship months. Prospective income is applied to the current month only when it applies to a new application. There are several procedures that workers are to use when evaluating income based on the schedule income is received by the family. These include actual income, anticipated income, 13-week calculation, and factoring. This section of the manual provides guidance to workers on the varying situations encountered while determining eligibility for the child care scholarship program and guidance on when a particular method is appropriate. It is necessary to adopt and incorporate this section of the manual to assure consistent evaluation of income so that workers correctly determine eligibility for the child care scholarship program and the incidence of errors is minimized.

Section 3 deals with the specific and unique requirements for providing a child care scholarship to parents participating in the TANF cash program. TANF families are eligible for child care scholarships while they are participating in family investment activities that require child care. Eligibility for TANF is determined by the Office of Public Assistance. A referral is given to the CCR&R agency so that a certification plan for child care may be established based on the family's need and so that the family may be matched with an eligible provider. This section goes on to describe the responsibilities of the coordinating agencies involved in managing the TANF case (WoRC operators, OPAs and CCR&Rs) so that a child care scholarship may be established. It is necessary to adopt and incorporate this section of the manual to assure consistent treatment of TANF families on a statewide basis and to assure that seamless service occurs when cooperation is necessary between two or three different

agencies in support of a TANF family's self sufficiency efforts.

Section 4 deals with the specific and unique requirements for providing a child care scholarship to parents involved with Child Protective Services. To qualify for Child Protective Services (CPS) child care, the child must need care because of the danger of neglect or abuse. The physical or emotional risk to the child needs to be documented in the case record. Some families may be required to pay for child care services, as determined on a case-by-case basis. Social workers with the DPHHS Child and Family Services Division determine a family's need for CPS child care. A referral is given to the CCR&R agency so that a certification plan for child care may be established. It is necessary to adopt and incorporate this section of the manual to assure a reliable process for establishing child care services for CPS families exists on a statewide basis, to assure that limited funding for this service is maximized, and to provide a consistent method of payment to providers who serve children needing CPS child care.

Section 5 is reserved for future policies.

Section 6 deals with the services that support families in establishing child care for their children. Section 6-1 deals with the referral process to child care. CCR&R agencies assist families in locating child care. A computerized matching of the family's need with the profiles of child care providers in the area provides an objective referral. The referral service is available to all families in the community and is separate from the child care scholarship program. Parents are responsible for choosing child care that meets their own family's needs. Referrals are designed to assist parents in locating and selecting an appropriate provider and provide information on how to assess whether a situation is a safe and healthy environment for their children and whether a facility is licensed, registered or otherwise eligible to provide care for children receiving a child care scholarship. It is necessary to adopt and incorporate this section of the manual to assure that a fair and reliable process for making referrals to child care exists for parents using this service.

Section 6-2 deals with legally unregistered providers (LUP) and legally unregistered in-home providers (LUI). LUP is a special provider certification category that is used for state payment purposes only. A LUP may care for no more than two unrelated children or any member in a sibling group. LUP care allows parents to choose friends, family members and neighbors as their child care provider and still participate in the child care scholarship program. The section goes on to describe the qualifications of an LUP, including a background check requirement. It is necessary to adopt and incorporate this section of the manual to assure a consistent statewide

process for approving LUP care; reasonably assure that the child care placement is safe; and optimize the care choice for parents.

Section 6-3 deals with the process for setting up a child care certification plan. Child care scholarships are issued through a child care certification plan, authorizing care for up to six months. The child care hours approved must mirror the approved parent and child's activities:

- Parent's work, school and Family Investment Agreement activities requiring child care and allowing for travel time.
- The child's schedule, e.g., school or alternative care arrangement.

The certification plan is mailed to the parent and the provider with the following information:

- The names of the children authorized for care.
- The name of the child care provider authorized to provide care.
- The number of hours per week for which the child care scholarship is authorized.
- The start and end dates for the authorized care.
- The monthly copayment, which the parent must pay to the provider.

The section goes on to describe the process and required verifications needed to establish an appropriate certification plan. It is necessary to adopt and incorporate this section of the manual to assure a consistent statewide process for establishing child care certification plans and assuring appropriate notice is given to the parent and provider regarding the approved child care scholarship.

Section 6-4 deals with the family copayment. Each family receiving a child care scholarship pays part of the cost of child care. Each family is obligated to pay a copayment to their child care provider by the end of the service month. The copayment is based on their family size and gross income, as illustrated on the Montana child care sliding fee scale. The required copayment is considered the initial down payment for the child care scholarship each month. A family loses eligibility for further child care scholarships if they do not pay the copayment, or make satisfactory arrangements with their child care provider. (NOTE: There is no copayment obligation when the reason for care is child protective services (CPS).) The section goes on to describe required notices if a copayment is unpaid. It is necessary to adopt and incorporate this section of the manual to assure a

consistent statewide process for establishing child care copayment is established and adhered to.

Section 6-5 deals with family change reporting. Income eligible families receiving a child care scholarship based on work, school and family investment activities (FIA) shall report any change in circumstance which may affect their eligibility or their need for child care to the child care resource and referral (CCR&R) agency within 10 days of knowing the change. This affords the CCR&R agency an opportunity to evaluate the change; make appropriate changes in the family's certification plan; counsel the family on impending loss of eligibility; establish a grace period or take other action. It is necessary to adopt and incorporate this section of the manual to assure consistent treatment of families whose circumstances change; reduce the incidence of overpayment if a family loses eligibility; and ensure that an appropriate child care scholarship remains available.

Section 6-6 deals with policy designed to assure continuity of care for a child to the greatest degree possible. After the child care certification plan is issued, a family's schedule may vary. While a family's child care certification plan may be modified or terminated at any time, the following policies are useful in avoiding temporary gaps in eligibility and services to children. The policies are meant to facilitate the following:

- Maintain the parent's eligibility.
- Meet the parent's need for additional child care.
- Stabilize child care arrangements.

The section goes on to describe policies that support continuity of care and include certified enrollment, extending child care hours, fill the gap, grace period, hold-the-slot, holidays, medical appointment, medical emergency and suspending a case policies. It is necessary to adopt and incorporate this section of the manual to assure consistent treatment of families whose circumstances change; stabilize care situations for children even when family circumstances are in flux; and ensure that appropriate child care remains available.

Section 6-7 reserved for future policies.

Section 6-8 deals with invoice and payment processes. The child care certification plan indicates the maximum benefit available for approved activities. Child care providers are sent a monthly invoice by the state to facilitate billing for services to children receiving a state child care scholarship. Child care scholarship payments are limited to actual daily attendance and must be for approved activities within the

limits of the child care certification plan. Sign-in/sign-out sheets must support claims, including corrections and adjustments. Invoices expire 60 days after the last day of the calendar month in which the service was provided. Invoices must be received by the CCR&R within this period in order to be paid. The section goes on to explain the process for payment including paperwork such as W-9, AWACS and IRS form 1099, attendance record-keeping, CCUBS system processing, checks, warrants and direct deposit. It is necessary to adopt and incorporate this section of the manual to assure accurate and timely processing of child care invoices; to reduce the incidence of error; and to maintain an adequate supply of child care providers who are willing to provide services to children on the child care scholarship program.

Section 6-9 deals with corrections and overpayments. If an error is made when determining eligibility for paying child care for authorized activities, corrections to the case must be made by the worker. The correction usually results in an underpayment or an overpayment. Once an error is identified, the CCR&R worker shall research and pursue the entire correction. Overpayments are evaluated to determine if a willful action resulted in the overpayment. Overpayments are generally pursued regardless of whether the overpayment was caused by provider, parent or worker error. The section goes on to describe the process workers are to follow when pursuing an overpayment and the steps that are to be taken to correct the situation including notifications, CCUBS system processes, and accounts receivable processes. It is necessary to adopt and incorporate this section of the manual to maintain program integrity, reduce the incidence of fraud and assure a low incidence of worker error.

Sections 6-10 and 6-13 provide resource information to workers with regard to the forms needed to administer the child care scholarship program and a variety of state resources to support their work. It is necessary to adopt and incorporate these sections of the manual to maintain consistency of program administration across the state and to ensure that workers have access to all of the tools and resources they need in order to do their jobs accurately.

Sections 6-11 and 6-12 are reserved for any needed future policies.

Section 7 deals with several programs collectively known as the Best Beginnings Child Care Quality Improvement initiatives. These programs focus dollars on child care facilities and staff to assure children are receiving care in safe, healthy care situations that optimize each child’s cognitive, emotional and physical development.

Section 7-1 deals with tiered reimbursement for quality care. In November of 1999, the Montana Early Childhood Advisory

Council requested that the state of Montana investigate the feasibility of creating and implementing a tiered system of reimbursement in order to pay a higher rate of child care scholarship for child care providers who offer higher quality care. Star Quality tiered reimbursement provides a "quality bonus" for licensed centers and registered group and family child care homes earning either a one or two star rating through the child care scholarship program. One star facilities earn a quality bonus of 10% above the established reimbursement rate and two star facilities earn a quality bonus of 15% above the established reimbursement rate. This section goes on to describe the criteria for earning a star and the process for enrolling in the program. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the Star Quality program and to ensure consistent information is provided to parents and providers about the importance of quality care.

Section 7-2 describes the state of Montana's Early Care and Education Career Development initiative. This program is operated through a contract with the Early Childhood Project at Montana State University. This section is included to provide information to CCR&R agencies and other users of the Child Care Manual on the key elements surrounding the Career Development initiative. Those elements include the Early Care and Education Knowledge Base, the trainer directory, the training approval system, the statewide training calendar, the Career Path, and the Practitioner Registry. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the Career Development system and to ensure consistent information is provided to parents and providers about the importance of a quality workforce.

Section 7-3 deals with the infant toddler program. In 1998, Congress earmarked a portion of the Child Care and Development Fund (CCDF) for infant/toddler care. States were mandated to implement activities that are designed to increase the supply of quality child care for infants and toddlers. In light of recent research on infant brain development, Montana's Early Childhood Advisory Council recommended that these activities be focused on developing a high quality training system for infant/toddler caregivers. The section goes on to describe Montana's certification for infant/toddler caregivers, as well as two grant programs associated with this earmark. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the importance of a high quality infant/toddler caregiver workforce and are able to disseminate and promote participation in the program.

Section 7-4 describes the annual Child Care Provider Grants program. This program is subject to an annual "requests for proposal" (RFP) process and is governed by the terms of that RFP. The section provides a sample of the current RFP so that CCR&R trainers may assist eligible providers in preparing grant applications. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the importance of high quality child care and are able to disseminate and promote participation in the program.

Section 7-4a describes the child care Mini Grants Program. The Department's Early Childhood Services Bureau is dedicated to supporting child care providers who demonstrate a strong link to professionalism in the field of early childhood and a commitment to providing high quality care in safe and healthy environments. Best Beginnings mini grants will be awarded from the CCDF, which allows states to award grants and contracts for the purposes of planning, developing, improving or expanding child care services. These mini grants are designed to cover the cost of training (CPR, business training, etc.), equipment supplies and/or meeting regulatory requirements. The section goes on to describe eligible applicants, the application process, maximum award amounts and the reimbursement process. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the importance of high quality child care and are able to disseminate and promote participation in the program.

Section 7-5 describes the Best Beginnings Merit Pay program. The Montana CCDF Merit Pay program was developed with the goal of improving the quality of services provided to young children by encouraging child care providers and caregivers to participate in additional training. Child care employees who work in registered group or family child care homes or a licensed child care center may apply to participate in pre-approved early childhood continuing education course work as part of the Merit Pay program each year. Applicants must be working directly with children in a home or classroom setting. There are three separate Merit Pay tracks. Merit Pay I focuses on basic training, Infant/Toddler Merit Pay is for specialized training in infant/toddler caregiving, and Higher Education Merit Pay is for individuals enrolled in an early childhood program at the college level. The section goes on to describe the criteria for participation in each track. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the importance of high quality child care and are able to disseminate and promote participation in the program.

Section 7-6 describes several training initiatives designed to improve child care quality. These include:

- Basic child care orientation
- Specialized training in early care and education
- Mentoring programs

The section goes on to describe the core elements of each program. Specialized Training and Mentoring Programs are established through a RFP and are governed by that document. It is necessary to adopt and incorporate this section of the manual so that eligibility workers, CCR&R trainers and child care licensors have accurate and up to date information regarding the importance of high quality child care and are able to refer child care providers to these programs as needed.

The proposed manual changes are clarifications of policies previously set forth in the manual. They address the same general areas of administration as listed above. The proposed manual changes are available for public viewing at the same locations where the policy manuals can be viewed. The policies or pages in the manual to be replaced are clearly marked on the proposed manual replacement materials.

The Department considered the option of adopting each policy in the child care manual individually, rather than incorporating the manual as a whole. However, the time and expense involved in the former approach rendered it prohibitive. The incorporation and adoption of the manual, including the proposed changes to the manuals, will not increase, decrease or change the nature of any fees, costs, or benefits.

ARM 37.80.102

The addition of the definition of "child care manual" is necessary to make clear that each reference in the rules to that manual means the version of the Montana Child Care Manual incorporated by reference in ARM 37.80.101.

The amendment to the definition of "federal poverty guidelines" is necessary to incorporate the guidelines in existence on a specific date, because the current definition in effect incorporates all present and future guidelines published at the federal level. To leave the definition as it now stands unlawfully precludes public comment on each new publication.

The addition of new ARM 37.80.102(12) defines "full-time field experience and class-time" for a post-secondary education

student who attends class and participates in a field experience concurrently throughout the week. The definition is intended to address barriers to graduation by allowing the provision of child care benefits to post-secondary education students who are temporarily displaced from work while meeting a graduation requirement. The alternative is to maintain current policy, which often does not accommodate current academic program requirements. There may be a slight increase in program costs; however, less than 16% of families participate in a combination of training and employment.

ARM 37.80.201

ARM 37.80.201(2)(b) needs to be amended to incorporate the phrase referred to in ARM 37.80.102(3)(b) above in order to facilitate the graduation of non-TANF students that need child care assistance.

ARM 37.80.201(3)(b) requires a parent who has completed a certificate or degree to wait five years before using child care assistance to further their education, an addition that is necessary to discourage a parent from using public child care assistance to obtain multiple certificates or degrees. The alternative would be a disincentive for a parent to apply educational accomplishments to gain self-sufficiency. Since this policy has been included in the Child Care Manual for some time, there is no fiscal impact associated with this rule change.

The addition of ARM 37.80.201(6)(c) is needed give priority for child care assistance to a teen parent who is attending high school or a GED program, thereby ensuring that teen parents have the resources to earn their high school diploma and move toward self-sufficiency. The alternative is to maintain current policy, which creates a barrier to teen parents when child care funding falls short and children are placed on a waiting list. There is no fiscal impact associated with this rule change.

The proposed amendment to ARM 37.80.201(8) is needed to delete an incorporation by reference that is no longer necessary, given the incorporation of the entire child care manual in ARM 37.80.101. In turn, the manual includes, in section 6-6, the most up-to-date standards which allow continued child care assistance during limited and specific interruptions of child care or eligibility.

The amendment to ARM 37.80.201(9) is necessary to limit the grace period for continuation of child care benefits to 30 days after a parent loses employment, thereby making application of the policy consistent among participants and stabilizing the child care arrangement while conserving resources. There may be a nominal savings with respect to program costs.

All other proposed changes to the rule are strictly for clarification and are not substantive.

ARM 37.80.202

ARM 37.80.202(14) needs to be amended to incorporate the parental copayment amounts in the most current sliding fee schedule, which is based upon the upgraded 2004 federal poverty guidelines. The copayment amounts on the sliding fee schedule are based upon a percentage of gross family income up to 150% of the federal poverty guidelines. The proposed change is necessary to allow families who may not be otherwise eligible for child care assistance under the old fee schedule to participate in the program. The change also supports low-income working families by reducing the copayments of those who may not have seen a change in their income but have in fact fallen into a lower poverty category when the federal poverty guidelines were adjusted upward. The department rejected the alternative of not adjusting copayments, because to do so would undermine the self-sufficiency endeavors of low-income working families. The new fee schedule is legitimately retroactive because the change is to the advantage of everyone affected.

ARM 37.80.205

The amendment of ARM 37.80.205(3) is needed to clarify that the doubled daily rate will apply only to certified extended care hours exceeding 16. The present language does not make that clear.

The changes to ARM 37.80.205(4)(a) are for clarification and ease of reading, and are not substantive.

The incorporation by reference in ARM 37.80.205(5) of the updated and increased maximum child care rates is deleted because it duplicates the incorporation in ARM 37.80.101 of the entire child care manual. The update of the Child Care Manual rates cited in (5) are necessary to support low-income working families with a wide array of child care choices within the local market. The Montana Early Childhood Advisory Council recommended to the department that the state maintain a reimbursement rate for families set at the 75th percentile of the local market. The mission of the Early Childhood Services Bureau and the Child Care and Development fund is to support accessible, affordable high quality child care for Montana's families. When the reimbursement rate is too low, families may not be able to choose care from the majority of facilities within a given market, especially since some child care providers refuse to accept state assisted families or may charge over and above the state maximum fees available. If the fees are not increased, the result is that low-income

families may be unable to afford child care at all, or be unable to access quality care.

The update of the criteria for quality incentive adjustments in section 7-1 of the Child Care Manual is needed to incorporate the most appropriate research-based quality indicators for rewarding high quality facilities participating in the Star Quality Tiered reimbursement program. This manual update describes in simple language what is needed for a facility to participate in the Star Quality Program. It includes updated information regarding the accreditation process and current information on the recognized accrediting bodies. The alternative to updating this manual section is to continue to operate the program under the current rules and policies which have been subject to manipulation by some participating child care providers solely for monetary gain without a corresponding increase in quality. Finally, the language incorporating section 7-1 by reference is deleted as unnecessary, for the reason cited above concerning other similar deletions.

The update to newly renumbered ARM 37.80.205(7), citing the criteria for determining special needs rates adjustments, is needed to reflect and make enforceable policy that was implemented in July, 2003. This policy update aligned Montana's special needs subsidy with the federal Americans with Disabilities Act (ADA) and allowed a special needs subsidy rate for eligible families based on the child's needs and costs related to the accommodations needed by that child. Prior to this change, child care providers often charged a flat "special needs rate" for children with disabilities, whether or not their care requirements resulted in increased costs to the provider. This practice was in violation of the ADA.

ARM 37.80.301

The proposed amendment to this rule is needed strictly to correct a typographic error and is not substantive.

ARM 37.80.306

The amendment proposed to ARM 37.80.306(2)(c) is strictly to correct a typographic error.

The first proposed amendment to ARM 37.80.306(6)(b) shortens the allowable period for a legally unregistered provider (LUP) to attend training from six months to 60 days. Shortening the time frame is necessary because many LUP providers only provide care for a short period of time and often are out of business before attending basic orientation under the current rule. Therefore, shortening the time frame from six months to 60 days will increase child safety, reduce administrative errors on the part of the LUP, and align orientation

attendance with requirements for registered group or family day care homes.

The second proposed amendment, requiring a LUP to get training within 60 days of the date of approval rather than the date of application for approval, is needed because the application date may be four to six weeks prior to the approval date, making meeting the training requirement within 60 days of application difficult or impossible.

ARM 37.80.205(7) clarifies that LUPs may not receive child care payments for home schooled children. The legally unregistered provider program is intended to support working parents who choose family, friends, or neighbors as their primary child care providers. LUP care provides an optimal array of choices for working parents. However, it is not intended to support home school endeavors on the part of the parent. The department believes that home schooling is a parental choice external to the purpose of the child care subsidy program. Child care would not be necessary for these same children if they were enrolled in public school; hence, the proposed amendment precluding use of state child care funds for home schooled children. The alternative is to not clarify the difference between child care and home schooling. With the amendment, there may be a nominal savings to the child care subsidy program because families engaged in these activities would no longer be eligible.

ARM 37.80.316

The proposed new ARM 37.80.316(3) specifies that providers participating in the tiered reimbursement program will be paid directly, rather than indirectly through a parent. Tiered reimbursement payments are earned by a provider who provides higher quality care. The rule change is necessary to avoid direct reimbursement to the parent, which may prevent the provider from receiving the intended benefit. The alternative would be to allow tiered reimbursement payments to be paid directly to the parent, which could undermine the intent of the tiered reimbursement program. There is no fiscal impact associated with this rule change.

ARM 37.80.502

The rule defines incremental consequences for misrepresentations beyond the collection of overpayments, including monetary fines and loss of program participation rights. The rule change is needed to allow the department and its contractors the ability to deal more effectively with repeating offenders, before payments are actually made. The alternative is to continue under current policy, which provides only for loss of participation rights after repeated overpayments. The amendments to the rule allow the department to terminate its relationship with chronic and willful

offenders by applying a version of a three-strikes-you're-out policy. The fiscal savings gained from this rule can be loosely estimated as coming through staff time savings and a reduction in overpayments. One of the department's child care agencies, to date, has spent approximately 20 hours each month auditing claims. As an example of the problem, four invoices belonging to one provider required six-and-one-half hours of research, plus the time involved in the correspondence necessary to the investigation. Two large overpayments are conservatively estimated as taking 1,320 hours of investigative time. One overpayment investigation netted a repayment settlement of $28,000. Given that experience, tightening up the department's enforcement authority will logically result in fewer offenders and less time and money wasted in dealing with them.

ARM 37.80.602

The proposed merit pay amendments will change the existing program from a two-track program into three distinct program types. The current merit pay program allows child care providers to take either 38 or 68 hours of training and receive a monetary award upon completion and verification of the training. The proposed new merit pay options will allow child care providers to select from three types-merit pay I, higher education merit pay, and infant/toddler merit pay. The provider will receive a monetary award upon completion and verification of the training and education. The specific changes are listed in detail below, along with the reasons why they are needed:

The proposal for ARM 37.80.602(2) adds the infant/toddler merit pay type to the merit pay menu, plus a requirement that applicants also be members of the Montana early care and education practitioner registry. The change is necessary to increase professionalism in the field and targets dollars towards the development of a skilled infant/toddler caregiver work force. This is an area of critical need in the state, as infant care for working families is scarce and trained caregivers are relatively rare.

Proposed new ARM 37.80.602(3) introduces the higher education merit pay program and includes the requirements for participation in that program. Creation of the higher education merit pay program, previously operated through a contract with MSU as a scholarship program, was recommended by the Montana Early Care and Education Advisory Council as a way of streamlining and reducing administrative costs. The department and the council agreed the program was needed to help fulfill the purpose of developing a base of highly trained individuals in the field of early care and education.

The proposed amendments to ARM 37.80.602(3), renumbered to (4), define the allowable monetary awards for each of the

three merit pay programs. The rule change is needed in order to delineate the differences in award amount and the requirements for obtaining an award. The reward amounts reflect the amount of effort and relative costs participants have to put forth to earn them, as well as the relative value of each type of training to improving child care. Higher education and infant/toddler training is generally more demanding and expensive than the basic level courses that are generally taken through the merit pay I program, for instance. Since the point of the program is to be able to reward education and training for participants at all levels on their career path as an incentive, failing to establish such rewards was deemed unacceptable.

ARM 37.80.602(4), as proposed to be amended and renumbered to (5), defines the basic application process for each of the three merit pay programs. The wording change from "track" to "program" is needed to reflect the difference between "tracks" in the old program and the introduction of two new separate and distinct merit pay "programs" as proposed. The other changes in the section are editorial.

In ARM 37.80.602(5), as proposed to be amended and renumbered (6), the change from "training plan" to "plan of study" is needed because "plan of study" more accurately describes all three programs, which now can go beyond "training".

Proposed new ARM 37.80.602(11) adds a limitation to the merit pay I program which disallows the Montana infant/toddler training as an acceptable course for the merit pay I course of study. The change is needed to ensure that those taking infant/toddler training are participating in the infant/toddler merit pay program and working toward an infant/toddler certification. This provision will also discourage individuals from taking "empty credits", duplicate classes, or "putting in time" in order to receive an award. In addition, it closes a potential loophole that would allow an individual to be paid twice for the same class.

Proposed new ARM 37.80.602(12) requires all undergraduate credit to be completed through an accredited Montana college or university as recognized by the board of regents. This change is needed to ensure that high quality course work is offered and to support the continuation of Montana college level child development and early childhood programs. Those programs are currently available statewide but will continue only if enrollment stays up. The alternative of supporting out of state college course work was rejected because it would erode both the quality and availability of this type of training within the state.

Renumbered ARM 37.80.602(13) has to be revised to establish priorities for allocation of whatever funding is available among the three merit pay programs. Those programs are funded

through the Child Care and Development Fund (CCDF) and have capped budget allowances. Without a system of priorities, it would be impossible to draw a line when there are more applicants than there is funding. The priority system allows the department to limit expenditures and target funds to those most in need. None of the other proposed rule changes have fiscal impact unless specifically stated.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on March 10, 2005. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Robert E. Wynia, MD
Director, Public Health and Human Services

Certified to the Secretary of State January 31, 2005.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 6.6.8301 pertaining to updating references to the NCCI Basic Manual for new classifications for various industries	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 2, 2004, the Classification Review Committee (committee) published MAR Notice No. 6-158 regarding a notice of proposed amendment of the above-stated rule at page 2870 of the 2004 Montana Administrative Register, Issue No. 23.

2. The committee has amended ARM 6.6.8301 exactly as proposed.

3. No comments or testimony were received.

CLASSIFICATION REVIEW COMMITTEE

By: /s/ Tom Clarke
Tom Clarke
Review Committee Chairperson

By: /s/ Alicia Pichette
Alicia Pichette
Rule Reviewer

Certified to the Secretary of State on January 31, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.20.201, 17.20.202, 17.20.207, 17.20.301, 17.20.602, 17.20.603, 17.20.606, 17.20.607, 17.20.804, 17.20.807, 17.20,815, 17.20.818, 17.20.901, 17.20.907, 17.20.920 through 17.20.924, 17.20.928, 17.20.929, 17.20.1301, 17.20.1302, 17.20.1304, 17.20.1305, 17.20.1311, 17.20.1426, 17.20.1604, 17.20.1606, 17.20.1607, 17.20.1803, 17.20.1804, 17.20.1901 and 17.20.1902 and the repeal of 17.20.1427 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447 pertaining to the Montana Major Facility Siting Act	NOTICE OF AMENDMENT AND REPEAL (MAJOR FACILITY SITING ACT)

TO: All Concerned Persons

1. On October 21, 2004, the Board of Environmental Review published MAR Notice No. 17-218 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 2459, 2004 Montana Administrative Register, issue number 20.

2. With the exception of the change in proposed Circular MFSA-2 noted in response to comment number 9 below, the Board has amended and repealed the rules exactly as proposed.

3. The following comments were received and appear with the Board's responses:

ARM 17.20.818(4) Linear Facilities, Evaluation of Economic Costs and Benefits

COMMENT NO. 1: This rule needs to be more explicit as to what counts as a double benefit and non-monetary benefits.

RESPONSE: The Department utilizes standard economic analysis practices to determine what constitutes "double benefits" and "non-monetary benefits." The benefit to the applicant of building a linear facility is the profit the applicant expects to make over the life of the facility (this includes the case where a linear facility links the applicant's generation plant to the regional grid). The benefits of a

linear facility to society include improvements to the functioning of the regional transmission system (as a result of the facility) enjoyed by the customers of that system, jobs created, income created, tax revenue created, other direct contributions to the local community, and any environmental benefits that may occur from the new facility. The societal benefits of a linear facility may also include any societal benefits from a generation plant that could only be built and operated because the proposed line connects it to the grid. Secondary economic effects to local businesses and the wider local economy of a linear facility may also be included, but they should be separated out as indirect or secondary benefits. The use of economic multipliers is generally discouraged for both economic benefits and costs. If they are used, however, then the applicant should be careful to explain what the multipliers are and how they were derived.

Sometimes applicants will sum up both their expected total revenue from the project and the expected societal benefits from a project to come up with a total benefit of the project. Doing so is double counting. The societal benefits of jobs, income, and tax revenue come out of a company's total revenue as a cost to the company--not as a separate benefit from total revenue. Thus, expected total revenues to the applicant and total societal benefits should not be added together as a total benefit. The easiest way to avoid this is to list and discuss the expected societal benefits of the project, and then separately list any expected net benefits to the applicant such as profit (revenues minus costs) or return on investment. Expected total revenues to the applicant (or total economic output) from the facility should be left out of this rule.

Non-monetary benefits from a linear facility are those benefits for which it is very difficult or impossible to assign a monetary value. The most common examples include environmental benefits from the facility (such as improving a viewshed by tearing down an old and unattractive line), improving safety, and improving the reliability of the regional transmission system. While it may be possible to estimate monetary values for these benefits, it is often beyond the scope of a MFSA application. However, these benefits still need to be listed and discussed, even if no monetary value can be assigned to them (for example, the applicant can discuss the expected magnitude of a non-monetary benefit without estimating a monetary amount).

Because these comments outline generally accepted practices for economic analysis, we are not adding any rule language or rule changes.

COMMENT NO. 2: This section could be interpreted many different ways. Standard economic practices for cost/benefit comparative analysis can become complicated, depending on the economic model used.

RESPONSE: Generally accepted practices for economic analysis do not necessarily require the use of an economic model. Benefit-cost analysis, for example, is a tool that is

often used in economic analysis that does not require any formal modeling. The information required in ARM 17.20.818 needs to be thorough enough to compare all project alternatives on an economic basis as outlined in 75-20-301(1)(c), MCA. It also needs to be thorough enough to estimate benefits from a proposed linear facility to the applicant and state, and to estimate the economic effects of the proposed facility as outlined in 75-20-301(2)(b)(c), MCA. Oftentimes, a narrative listing the estimated costs and benefits of the facility, and giving some detail regarding their magnitude and estimated value will suffice. A table summarizing these results can help as well. In the narrative, an applicant can provide monetary cost and benefit numbers of a particular linear project, and then supply a description that supports those numbers. The information provided should also include non-monetary costs and benefits. Such efforts are often adequate to satisfy the requirements of ARM 17.20.818. Packaged economic models such as IMPLAN or REMI are not required under this rule, although they may be used if the applicant deems them appropriate. Simple benefit-cost analysis typically suffices. Because the department will accept a range of analyses more complicated than this, a rule change will not be made to address this comment.

ARM 17.20.1607(1)(a)(i) Minimum Impact Standard

COMMENT NO. 3: When alternatives include energy conservation, alternative transmission technologies, alternative levels of transmission reliability, etc., the range of research and analysis to prove that the net present value of costs is lower for the proposed facility than for other available alternatives is difficult. The number of economic models combined with reliability studies is problematic. Quantifiable environmental impacts are extremely difficult to appraise.

RESPONSE: This comment is beyond the scope of this proposed rulemaking. The Board did not propose any substantive amendment to ARM 17.20.1607(1)(a)(i).

Circular MFSA-2, Section 3.4(7) Linear Facilities, Overview Survey, Environmental Information

COMMENT NO. 4: Information requirements for socioeconomics, demographics, construction work forces and local economics are not pertinent or necessary for siting a linear facility. It is not apparent how these types of information are to be used to prioritize alternatives and to select a preferred alternative.

RESPONSE: Information required in section 3.4(7)(a) through (h) concerning socioeconomics is necessary to support the Department's findings under 75-20-301 and 75-20-303, MCA. One of these determinations and findings required by 75-20-301, MCA, for a proposed facility is the nature of the probable environmental impact of the proposed facility. A second determination and finding required is that the approved facility minimizes adverse environmental impact.

For some transmission lines, there may be little difference between siting alternatives related to socioeconomics, construction work force and local economies. Proposed rule language in section 3.7(5) notes that an application "must specify any economic, social or public or private service characteristics for which there are not significant differences in impacts among the alternative facility locations."

Information pertaining to socioeconomics, construction work force and local economies is necessary for impact disclosure and determining whether mitigation would be needed to support a finding of minimum adverse impact. An example of mitigation addressing impacts on public and private services would be the need for additional temporary housing to support a work force in a rural Montana county where existing accommodations are unavailable.

An applicant should use existing information sources to the extent possible when compiling information to assess socioeconomic impacts. Because the department finds that this information is necessary, no change to the proposed rule is being made in response to this comment.

Circular MFSA-2, Section 3.4(8) Linear Facilities, Overview Survey, Environmental Information

COMMENT NO. 5: It appears what the state is requiring is a report that describes the results of the Community Participation Plan or Scoping, including identification of alternatives, mitigation measures, and resources that would be impacted as identified by the public.

RESPONSE: The proposed section does not require a report describing the results of a "Community Participation Plan or Scoping." Instead, the proposed section requires that, if scoping or a public meeting results in comments, the applicant must summarize or characterize those comments.

The proposed section also requires the applicant to characterize the nature and magnitude of comments, if any, received from representative groups, local service providers, and public officials. Finally, the applicant must identify alternative locations, mitigation measures, and potential resource impacts raised by the public. This information helps support the Department's findings under 75-20-301 and 75-20-303, MCA. No change to the proposed rule is being made in response to this comment.

Circular MFSA-2, Section 3.7(2), (4) and (5) Linear Facilities, Baseline Data Requirements and Impact Assessment

COMMENT NO. 6: The socioeconomic data required in the application do not appear to be relevant to the siting of a linear facility. A detailed assessment needed to address this section would take much research and statistical analysis of sociological behaviors.

RESPONSE: See Response to Comment No. 4.

COMMENT NO. 7: Section 3.7 baseline data requirements and impact assessment says much of the same social and environmental requirements over again from the previous section.

RESPONSE: The alternative siting study is a tiered screening process that utilizes information collected at each level of screening to help identify alternative facility locations. Information from previous screening analyses is incorporated as appropriate into successive steps. In proposed Circular MFSA-2, information is repeated to avoid overuse of cross-references and make the Circular more readable. Previous applicants have commented that current rules were difficult to use because of excessive use of cross-references. No change to the proposed rule is being made in response to this comment.

General comments

COMMENT NO. 8: It would be helpful if language could be developed that references or encourages the use of existing corridors as preferred routing options.

RESPONSE: The Department notes that language proposed in section 3.1(1)(b) of Circular MFSA-2 specifies preferred location criteria for an electric transmission line where, among other things, the facility would utilize or parallel existing utility and/or transportation corridors. No change to the proposed rule is being made in response to this comment.

Proposed Revision to Circular MFSA-2

COMMENT NO. 9: An incorrect cross-reference was provided in proposed Circular MFSA-2. In text below as shown on page 26 of the Circular, "Section 3.4(5)" should be changed to "Section 3.4(7)" to provide the correct cross-reference.

RESPONSE: The Circular, at page 26, has been amended to reflect the correct cross-reference as shown below:

(5) An application must contain an assessment of social impacts, if any, and any important impacts of the facility on the economy and on public and private services for an impact zone that encompasses the area potentially affected by each of the alternative facility locations, based on the information required by Section 3.4(7).

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

John F. North By: *Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, January 31, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.101, 17.38.201A, 17.38.203, 17.38.205, 17.38.208, 17.38.215, 17.38.216, 17.38.225, and 17.38.234 pertaining to public water and sewage system requirements	CORRECTED NOTICE OF AMENDMENT (PUBLIC WATER SUPPLY)

TO: All Concerned Persons

1. On October 21, 2004, the Board of Environmental Review published MAR Notice No. 17-216 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2444, 2004 Montana Administrative Register, issue number 20. On December 16, 2004, the Board published the notice of amendment of the rules at page 3016, 2004 Montana Administrative Register, issue number 24.

2. This corrected notice of amendment is being published to add the closing quotation marks that were inadvertently omitted in the original proposal, at the end of ARM 17.38.205(1)(b) as shown below:

17.38.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS (1) and (1)(a) remain as adopted.

(b) The following replaces 40 CFR 141.73(a)(1): "For systems using conventional filtration or direct filtration, the turbidity level of representative samples of the system's combined filtered water must be less than or equal to 0.5 NTU in at least 95% of the measurements taken each month, and may not at any time exceed 1.0 NTU."

(c) through (2) remain as adopted.

3. The replacement pages for this corrected notice of amendment were filed with the Secretary of State's office on December 31, 2004.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

James M. Madden By: *Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, January 31, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.3.102 regarding guidelines governing public participation at public meetings	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 16, 2004, the Department published MAR Notice No. 23-6-160 regarding the proposed amendment of the above-stated rule at page 2987, 2004 Montana Administrative Register, issue number 24.

2. The Department has amended ARM 1.3.102 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

1.3.102 MODEL RULE 1 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) and (2) remain as proposed.

(3) Public comment on any public matter, as limited in 2-3-103(1)(b), MCA, that is within the jurisdiction of an agency must be allowed at any public meeting as defined by 2-3-202, MCA, and in accordance with 2-3-203, MCA. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA. ~~Public matter does not include any matter involving an interest in individual privacy protected by Article II, Section 10 of the Montana Constitution, if the presiding officer determines that the demand of individual privacy clearly exceeds the merits of public disclosure.~~

AUTH: 2-4-202, 2-4-302, MCA
IMP: 2-3-103, 2-4-202, MCA

3. The department has thoroughly considered all comments received. The following comments were received and appear with the department's responses:

COMMENT #1: John Kuglin submitted written comments on behalf of the Associated Press opposing adoption of the proposed amendment. Mr. Kuglin objected because he believes 2-3-103(2), MCA, is clear on its face and does not require an implementing rule; and because he believes the proposed amendment included privacy protections that were beyond the scope of the rule.

RESPONSE: The department disagrees with Mr. Kuglin's first objection. Section 2-3-103(2), MCA specifically requires that the governor ensure that coordinated rules are adopted to implement guidelines for public participation in public meetings. Pursuant to 2-4-202, MCA the Attorney General is required to adopt model rules to provide guidance to state agencies concerning the adopting of rules describing agency organization and procedures. The models rules are a logical place to adopt a coordinated rule as required under 2-3-103(2), MCA. The department agrees with Mr. Kuglin's second objection and has amended the rule accordingly.

COMMENT #2: Cleo Anderson, Rules and Policy Officer for the department of revenue, submitted comments inquiring whether the requirements of 2-3-103, MCA that require public meetings to include an agenda item allowing for public comment on any pubic matter that is within the jurisdiction of an agency, extends to administrative rule hearings.

RESPONSE: The requirements of 2-3-103, MCA, apply to public meetings as defined by 2-3-202, MCA. Meeting is defined by that section as follows: "'meeting' means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power." An administrative rule hearing is a distinct proceeding that is not encompassed within the definition of a public meeting. Administrative rules hearings do not involve the convening of a quorum or constituent membership of a public agency or association. The requirements of 2-3-103, MCA do not apply to such hearings. When adopting, amending, or repealing administrative rules agencies must comply with the requirements of the Montana Administrative Procedure Act and public comment must be allowed in accordance with the Act.

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General

/s/ Ali Bovingdon
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State January 31, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.7.101A, 23.7.108, 23.7.109, 23.7.143, 23.7.301 and 23.7.302 to conform with the NFPA 1 Uniform Fire Code, and repeal of ARM 23.7.107, which was superseded by adoption of the NFPA 1 Uniform Fire Code	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 16, 2004, the Department of Justice published MAR Notice No. 23-7-161 regarding the proposed amendment and repeal of the above-stated rules at page 2990, 2004 Montana Administrative Register, issue number 24.

2. The Department has amended and repealed the rules exactly as proposed.

3. No comments or testimony were received.

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

/s/ Ali Bovingdon
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State January 31, 2005.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.19.101 through 8.19.302, pertaining to fire prevention and investigation and fireworks wholesalers	)))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the fire prevention and investigation and fireworks wholesalers program was transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 144.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.19.103	24.144.404	Duplicate License Or Endorsement
8.19.107	24.144.403	Proof Of Insurance
8.19.108	24.144.2101	Continuing Education
8.19.110	24.144.501	Who Must Obtain An Endorsement
8.19.111	24.144.411	Processing Fee And Prorated Fees
8.19.112	24.144.502	Examination For Endorsement
8.19.114	24.144.402	Duty To Report Name Or Address Change
8.19.116	24.144.2102	Renewal Of License Or Endorsement
8.19.117	24.144.301	Definitions
8.19.118	24.144.503	Application Procedure
8.19.119	24.144.415	Apprentices-Approved Programs
8.19.301	24.144.701	Application For Fireworks Wholesaler Permit
8.19.302	24.144.702	Contents Of Fireworks Wholesale Permit

3. The transfer of rules is necessary because this program was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 31, 2005.

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

In the matter of the adoption of NEW RULE XVI, relating to school operating standards, and NEW RULE XXVIII, relating to implements and tools) CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 5, 2004, the Department of Labor and Industry published MAR Notice No. 24-121-2 regarding the proposed adoption of the above-stated rules relating to school operating standards and implements and tools at page 1666 of the 2004 Montana Administrative Register, issue no. 15. On November 18, 2004, the Department published the notice of adoption regarding the above-stated rules at page 2813 of the 2004 Montana Administrative Register, issue no. 22.

2. While reviewing replacement pages for the fourth quarter, it was discovered that NEW RULES XVI and XXVIII contained minor typographical errors. The corrected rules read as follows, deleted matter stricken, new matter underlined:

NEW RULE XVI (24.121.805) SCHOOL OPERATING STANDARDS

(1) through (7) remain as adopted.

(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~~ conversion rate of 30 clock hours equaling one credit hour.

(9) through (18) remain as adopted.

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

NEW RULE XXVIII (24.121.1509) IMPLEMENTS, TOOLS, INSTRUMENTS, SUPPLIES AND EQUIPMENT (1) and (2) remain as adopted.

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

(3)(a) through (8) remain as adopted.

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

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on December 31, 2004.

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 31, 2005

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

In the matter of the adoption of new rule XVI (ARM 36.12.1702), permit application criteria – physical surface water availability	)))))	CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 23, 2004, the Department of Natural Resources and Conservation published MAR Notice No. 36-12-101 regarding a public hearing on the proposed amendment of ARM 36.12.101 concerning definitions and adoption of new rules I through XXIX concerning a complete and correct application, department action, and standards regarding water rights at page 2163 of the 2004 Montana Administrative Register, Issue Number 18. On December 16, 2004, the department published a notice at page 3036 of the 2004 Montana Administrative Register, Issue Number 24, of the adoption of the above-stated rule which clarifies criteria for applicants on physical surface water availability.

2. The reason for the correction to ARM 36.12.1702(6)(i) is the notice of adoption incorrectly listed the wrong USGS Water Resources Investigation Report. The corrected rule reads as follows:

NEW RULE XVI (36.12.1702) PERMIT APPLICATION CRITERIA – PHYSICAL SURFACE WATER AVAILABILITY (1) through (6)(h) remain as adopted.

(i) "Estimates of Mean Monthly Stream Flow for Selected Sites in the Mussleshell River Basin, Montana," USGS Water Resources Investigation Report 89-4164~~4~~5.

(7) and (7)(a) remain as adopted.

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on December 31, 2004.

By: /s/ Mary Sexton	/s/ Tim D. Hall
MARY SEXTON	TIM D. HALL
Director	Rule Reviewer

Certified to the Secretary of State January 31, 2005.

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

In the matter of the amendment of ARM 37.86.2105, 37.86.2801, 37.86.2901, 37.86.2905, 37.86.2907, 37.86.2918, 37.86.3001, 37.86.3007, 37.86.3009, 37.86.3020, and 37.86.3025 pertaining to medicaid eyeglass reimbursement and medicaid hospital reimbursement	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 2, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-337 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to medicaid eyeglass reimbursement and medicaid hospital reimbursement, at page 2883 of the 2004 Montana Administrative Register, issue number 23.

2. The Department has amended ARM 37.86.2105, 37.86.2801, 37.86.2901, 37.86.2905, 37.86.2907, 37.86.2918, 37.86.3001, 37.86.3007, 37.86.3020 and 37.86.3025 as proposed.

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

37.86.3009 OUTPATIENT HOSPITAL SERVICES, PAYMENT METHODOLOGY, EMERGENCY VISIT SERVICES (1) Emergency visits are emergency room services for which the ICD-9-CM presenting diagnosis code (admitting diagnosis code) or the diagnosis code (primary or secondary diagnosis code) chiefly responsible for the services provided is a diagnosis designated by the department as an emergency diagnosis in the medicaid emergency diagnosis list or the claim includes a CPT code designated by the department as an emergency procedure code ~~an initial psychiatric evaluation CPT code or a level 4 or level 5 emergency CPT code~~. PASSPORT provider authorization is not required for these visits. For purposes of this rule, the department adopts and incorporates by reference the emergency diagnosis and procedure code list effective January 1, 2005 ~~August 1, 2003~~. The emergency diagnosis and procedure code list is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) For emergency visits that are not provided by exempt hospitals or CAHs as defined in ARM 37.86.2901 and meet (1), reimbursement will be based on the ambulatory payment

classifications (APC) methodology in ARM 37.86.3020, except for emergency room visits on evenings and weekends for medicaid clients from birth ~~through two years~~ to 24 months of age ~~on evenings and weekends~~.

(a) through (6) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

4. In order to avoid interpretation problems, the Department amended ARM 37.86.3009(2) to clarify that the exception applies only to medicaid clients during the first two years of their life (24 months).

5. The Department has thoroughly considered all comments received. The comments received and the Department's response to each follow:

COMMENT 1: Representatives of Montana hospitals and emergency department physicians suggested revising ARM 37.86.3009 to add specific CPT/HCPCS codes to the "always emergent diagnosis" list. It was suggested that adding procedure codes for services such as spinal taps and initial psychiatric exams would eliminate some of the paperwork involved in determining if a service was emergent. In addition, a written comment was received affirming the Department's decision to consider procedure codes in addition to diagnosis codes.

RESPONSE: The Department agrees with the comments and has amended ARM 37.86.3009 accordingly. In addition, because the Department is adding procedure codes, the list will be the up-to-date list effective January 1, 2005 not the old one from August 1, 2003. The Department thanks the hospitals and physicians for this suggestion.

COMMENT 2: One commentor supported the Department's decision to allow an interim bill for neonate facilities when charges reach $100,000. The commentor suggested that the Department look at lowering that threshold. They also suggested that this policy of interim billing be extended for any DRG, not just neonate.

RESPONSE: The Department will analyze the charges for neonate claims and will review the $100,000 threshold. The suggestion of extending this policy to all DRG cases was unclear. Interim billing for DRG cases is not appropriate as the point of a DRG payment is one bundled payment for the entire service regardless of length of stay or charges. The Department is considering allowing an interim payment when the case reaches the outlier threshold.

Eleanor A. Parker
Rule Reviewer

Robert E. Wynia, MD
Director, Public Health and Human Services

Certified to the Secretary of State January 31, 2005.

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

In the matter of the repeal of ARM 37.106.312 pertaining to minimum standards for all health care facilities: blood bank and transfusion services	)))))	NOTICE OF REPEAL

TO: All Interested Persons

1. On December 2, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-339 pertaining to the proposed repeal of the above-stated rule relating to minimum standards for all health care facilities: blood bank and transfusion services, at page 2905 of the 2004 Montana Administrative Register, issue number 23.

2. The Department has repealed ARM 37.106.312 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

Hank Hudson for
Director, Public Health and Human Services

Certified to the Secretary of State January 31, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.12.110) and amendment of ARM 42.12.122 relating to liquor licensing	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 16, 2004, the department published MAR Notice No. 42-2-747 regarding the proposed adoption and amendment of the above-stated rules relating to liquor licensing at page 3010 of the 2004 Montana Administrative Register, issue no. 24.

2. A public hearing was held on January 5, 2005, to consider the proposed adoption and amendment. No one appeared at the hearing to testify and no written comments were received. Therefore, the department adopts New Rule I (42.12.110) and amends ARM 42.12.122 as proposed.

3. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 31, 2005

VOLUME NO. 51 OPINION NO. 1

PUBLIC EMPLOYEES - Right to exercise political speech;
PUBLIC OFFICERS - Right to exercise political speech;
STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;
MONTANA CODE ANNOTATED - Section 2-2-121, (3), (a), (b), (c).

HELD: A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

January 31, 2005

Mr. Mathew J. Johnson
Jefferson County Attorney
P.O. Box H
Boulder, MT 59632

Dear Mr. Johnson:

You have requested my opinion on a number of questions concerning public officers and political speech. I have rephrased your questions as follows:

> Does Mont. Code Ann. § 2-2-121 limit a public officer's or employee's right to support or oppose a political candidate or passage of a ballot issue?

Mont. Code Ann. § 2-2-121 sets forth the rules of conduct for public officers and employees. Subsection (3) includes a prohibition against the use of public time and resources for political speech, as well as a provision protecting a public officer or employee's freedom to express personal political beliefs. It provides:

> (3)(a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
>
> (i) authorized by law; or
>
> (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.
>
> (b) As used in subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities

> related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.
>
> (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political beliefs.

(Emphasis added.)

It is not personal political speech that is prohibited by subsection (3)(a); rather, it is the use of public time or resources in the presentation or furtherance of political speech. While a public officer or employee is not required to shed his public persona in order to exercise his right to free speech, he may not use public resources when expressing personal political beliefs.

Your questions pose scenarios involving elected officers, like county commissioners and sheriffs, whose unique positions require them to work a schedule outside of the typical 8 to 5 schedule of most public employees. You ask, for instance, what of the county commissioner who receives phone calls at home in the evenings, or the sheriff who is on call 24 hours a day?

In Keyishian v. Board of Regents of Univ. of State of N.Y., 385 U.S. 589, 605-606 (1967), the Supreme Court stated, "a government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his or her employment." Likewise, a county commissioner or sheriff (or any other public employees or officers) does not relinquish her First Amendment rights by the mere fact that she may be a public official. Pursuant to the plain language of Mont. Code Ann. § 2-2-121(3)(a), so long as a public officer or employee is not using "public time, facilities, equipment, supplies, personnel, or funds" she may engage in political speech. See Dahl v. Uninsured Employers' Fund, 1999 MT 168, ¶ 16, 295 Mont. 173, 983 P.2d 363.

Although "public time" is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer. Elected officials, of course, do not have specific hours of employment nor do they receive vacation leave or other time off duty. They receive annual salaries rather than hourly wages. Thus, they could be considered to be on "public time" at all times. However, as long as public facilities, equipment, supplies, or

funds are not involved, elected officials are not restricted in the exercise of political speech by the provisions of Montana law.

You also ask if subsection (3) prohibits a public employee or officer from signing a letter to the editor with his official title or prevents a law enforcement officer from wearing a uniform to campaign for a political issue or candidate. I conclude that, for the reasons stated above, subsection (3)(c) allows a public official to sign a letter to the editor, expressing personal political beliefs, with his official title, so long as public resources were not used to create the letter. Moreover, a sheriff would not be prohibited from wearing a uniform while campaigning for a political issue or candidate. In my opinion, neither activity would be prohibited by subsection (3).

Again, subsection (3)(a) only prevents use of "public time, facilities, equipment, supplies, personnel, or funds" in the furtherance of personal political speech. A title or a uniform is simply an accouterment of a public employee's or officer's position. A sheriff is not required to shed all associations, including his uniform, with his official position in order to exercise his protected right to express personal political beliefs.

The presumption is that free speech rights are protected and only the very specific restrictions in Mont. Code Ann. § 2-2-121 can be invoked to limit a public officer's or public employee's right to political speech.

THEREFORE, IT IS MY OPINION:

> A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/anb/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 September 30, 2004. This table includes those rules adopted during the period September 1, 2004 through December 31, 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 September 30, 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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