

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.5.301, 24.5.302, 24.5.303,	)	PROPOSED AMENDMENT AND
24.5.306, 24.5.307, 24.5.309,	)	ADOPTION
24.5.310, 24.5.311, 24.5.316,)	
24.5.318, 24.5.319, 24.5.320,)	
24.5.322, 24.5.325, 24.5.327,)	
24.5.329, 24.5.330, 24.5.334,)	
24.5.336, 24.5.337, and 24.5.348)	
pertaining to annual review; and the)	
adoption of NEW RULE I, pertaining)	
to pretrial identification of witnesses)	
and exhibits, and NEW RULE II,)	
pertaining to withdrawal of attorney)	

TO: All Concerned Persons

1. On January 8, 2018, at 2:00 p.m., the Workers' Compensation Court is holding a public hearing in the courtroom, Workers' Compensation Court, 1625 11th Avenue, Helena, MT, to consider the proposed amendment and adoption of the above-stated rules.

2. The Workers' Compensation Court makes 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 Workers' Compensation Court no later than 5:00 p.m. on January 3, 2018, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Court: in person at 1625 11th Avenue, Helena, MT; by mail at P.O. Box 537, Helena, MT 59620-0537; by phone at (406) 444-7794; by TTY at (406) 444-0532; by Montana Relay at 711; by fax at (406) 444-7798; or by e-mail at dliwccfilings@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY FOR ALL AMENDED AND ADOPTED RULES: The Workers' Compensation Court proposes these changes and additions as part of its regular internal rules review, with the input of the court's rules committee — a diverse group of stakeholders from the bar — which advises the court on rules of practice. The court proposes amending and adopting the following rules to eliminate redundancy; clarify procedures; improve organization; increase internal consistency, as well as consistency with the Montana Rules of Civil Procedure; address problems that have arisen; and conform to the guidelines of the Gregg Reference Manual, tenth edition, pursuant to ARM 1.2.519, and the court's practices. In so doing, the court is guided, where appropriate, by the Legislative Services Division's Bill Drafting Manual. The court provides further statements of reasonable necessity immediately following the specific rule whenever

additional bases for a proposed amendment or adoption exist, or additional comments about these general statements may be helpful.

4. The rules as the court proposes to amend them provide as follows, new matter underlined, deleted matter interlined:

24.5.301 PETITION FOR TRIAL (1) The petitioner shall make any All requests for trial before the Workers' Compensation Court ~~must be in petition form, and signed by the petitioner or the petitioner's attorney. The petition must comply with ARM 24.5.303(5).~~ Upon request, the court provides a form which that the petitioner may ~~can be used as a petition.~~ The petitioner shall ensure that the petition complies with ARM 24.5.306 and ~~The petition must include~~ the following information:

(a) through (d) remain the same.

(e) for accidents occurring on or after July 1, 1987, and for occupational disease claims, a statement that the parties have complied with the mediation provisions set forth in 39-71-2411, MCA; ~~have been complied with;~~

(f) a statement that the petitioner has freely exchanged all available pertinent medical records with the respondent pursuant to ARM 24.5.317 and ~~will~~ shall continue to do so;

(g) a list of the petitioner's potential witnesses and a summary of the subject matter of on which the petitioner expects each witness to testify; and witnesses' anticipated testimony; and

(h) remains the same.

(2) The petitioner may ~~Alternative pleading is permissible. in the alternative.~~

(3) The petitioner shall join and plead any ~~Any~~ claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief the petitioner seeks sought ~~by the petitioner must be joined and pleaded in the petition or amended petition. If the petitioner fails~~ ~~Failure to join and plead a claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief~~ the petitioner seeks sought in the petition or amended petition, the petitioner constitutes a waiver waives this claim and bars may not pursue any future claim with respect to ~~such~~ these attorney fees, costs, and/or penalty.

(4) ~~Except in cases involving a request for relief against~~ The petitioner may only name an employer; in the caption of the petition, as well as subsequent pleadings, motions, briefs, and other documents, ~~must not name if the petitioner seeks relief against~~ the employer. ~~This rule does not relieve~~ However, whether named or not, any employer ~~from~~ shall fulfill its duty to cooperate and assist its insurer, including any duty to assist in responding to discovery.

(5) The petitioner shall file the petition in accordance with ARM 24.5.303 and ARM 24.5.320. However, if the court receives the hard copy original of the petition after the petition deadline, it schedules the matter on the next trial docket. There is no filing fee. Petitions and all other materials must be filed with the Clerk of Court at 1625 11th Avenue, P.O. Box 537, Helena, MT 59624-0537. The party shall file an original and two copies of the petition. The petitioner shall provide the names and addresses of all adverse parties to be served. The court may return documents which fail to comply with (1) and (4) of this rule to the petitioner.

(6) The petitioner shall serve the petition in accordance with ARM 24.5.303.

(7) The court may return the petition unfiled if the petitioner fails to comply with (1) and (4) of this rule.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2905, MCA

REASON: The court proposes amending ARM 24.5.301(3), to allow the joinder and pleading of a claim for attorney fees, costs, and/or penalty in an amended petition, in keeping with the court's practice of allowing the liberal amendment of pleadings. The court proposes moving the service- and filing-related information in ARM 24.5.301(5) to proposed ARM 24.5.303(1)(a)(i), (2)(a), and (2)(b), because grouping like items together minimizes reliance upon lawyers and the courts. The court proposes adding the implementing reference to 39-71-2905, MCA, to correct its previous omission.

24.5.302 RESPONSE TO PETITION (1) Within the time set forth in ARM 24.5.320, the respondent shall serve upon the petitioner and all other parties, and file with the court, a response to the petition. The respondent shall ensure that the response complies with ARM 24.5.306 and ~~which~~ includes the following information:

(a) and (b) remain the same.

(c) a statement that the respondent has freely exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and shall continue to do so;

(d) a list of the respondent's potential witnesses and a summary of the subject matter on which the respondent expects each witness to testify; and of the witnesses' anticipated testimony;

~~(d)~~ (e) a list of written documents relating to the claim which that the respondent may be introduced as evidence, by the respondent; and

~~(e) a statement that the respondent has exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and will continue to do so.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.303 SERVICE AND FILING (1) The court adheres to the following service rules:

(a) The court requires a party to make service in certain circumstances.

(i) Generally, the court makes service ~~Except as provided below, the court serves the furnished copies of the petition, amended petition, or third-party petition upon adverse~~ opposing parties and others, as designated in the petitioner's or third-party petitioner's instructions, by mailing them from Helena, Montana, with first-class postage prepaid. The petitioner or third-party petitioner shall provide the following for each party the petitioner or third-party petitioner wishes the court to serve, including the petitioner or third-party petitioner:

(A) a copy of the petition or third-party petition; and

(B) a correct name and address.

~~(a)~~ (ii) However, the ~~The party filing the petition or third-party petition shall cause make personal service of a summons and the petition or third-party petition upon the respondent or third-party respondent in accordance with the provisions of the Montana Rules of Civil Procedure regarding service of summons and complaint if the respondent or third-party respondent is an entity other than a Montana state agency, insurer doing business in Montana, self-insurer, insurance guarantee fund, or insurer qualified to do business in Montana at the time of an alleged injury or occupational disease and its successors and predecessors.~~

~~(b) If the matter involves a third-party respondent, service must include all pleadings and orders filed in the case to date. The court requires that different materials be served depending on the identity of the server and whether the matter involves a third-party respondent.~~

~~(i) When the Workers' Compensation Court makes service, it serves copies of the petition, amended petition, or third-party petition.~~

~~(ii) When the party filing the petition or third-party petition makes service, the party shall serve a summons and the petition or third-party petition.~~

~~(iii) If the matter involves a third-party respondent, the court or third-party petitioner shall include all pleadings the parties have filed and orders the court has issued in the case to date with service.~~

~~(c) Time lines for service, return of service, and response must be in accordance with the rules of the Workers' Compensation Court or as ordered by the Workers' Compensation Court. The court requires a certificate of service as follows:~~

~~(d) The petitioner or third-party petitioner is responsible for providing correct names and addresses of all parties to be served by the court.~~

~~(2) (i) Each party shall provide the court with a certificate of service as described in M. R. Civ. P. 5 when filing a All pleadings subsequent to after the original petition, every a written motion, and or any other document described in M. R. Civ. P. 5. must be accompanied by proof of service as provided in M. R. Civ. P. 5 when submitted to the court.~~

~~(ii) The court deems service Service by mail is complete on mailing; a document is deemed served on the date as shown on the proof certificate of service.~~

~~(2) The court adheres to the following filing rules:~~

~~(3) (a) The court does not charge a filing fee.~~

~~(b) Unless the court specifically orders otherwise, A party may accomplish filing with the court may be accomplished by as follows:~~

~~(i) by mail addressed to the clerk, with such to P.O. Box 537, Helena, MT 59624-0537;~~

~~(ii) by hand delivery to 1625 11th Avenue, Helena, MT;~~

~~(iii) by fax to (406) 444-7798; or~~

~~(iv) by e-mail attachment to dliwccfilings@mt.gov.~~

~~(c) The court deems filing deemed complete upon receipt by the court. However, a party filing~~

~~(4) The court accepts fax and electronic filings, but an original signature page of any document filed by fax or e-mail attachment shall ensure that electronic means must be filed with the court receives a hard copy original within the time set forth in ARM 24.5.320; otherwise the filing is void. The signature of an attorney or party on any fax or electronic filing carries the same representations and consequences, as a~~

signature on an original filing. Electronic filings must be in Portable Document Format (PDF).

~~(5) Every pleading, motion, or other paper of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, and must state the attorney's address, phone number, fax number, and e-mail address. A party who is not represented by an attorney shall sign the pleading, motion, or other paper and state the party's address, phone number, fax number, and e-mail address, if available. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certification that the party has read the pleading, motion, or other paper; that to the best of the party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, the court strikes it unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, imposes upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee.~~

AUTH: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

REASON: The court proposes amending ARM 24.5.303(4), proposed ARM 24.5.303(2)(c), to eliminate a formatting requirement that may soon be rendered obsolete by the rapid pace of technological change. The court proposes moving the service- and filing-related information in ARM 24.5.301(5) to proposed ARM 24.5.303(1)(a)(i), (2)(a), and (2)(b), because grouping like items together minimizes reliance upon lawyers and the courts; accordingly, the court proposes adding the associated implementing reference to 39-71-2905, MCA. The court proposes relocating ARM 24.5.303(5) to proposed ARM 24.5.306(2)(i) for a better subject-matter fit. The court proposes adding the implementing reference to 39-71-2903, MCA, to correct its previous omission.

24.5.306 BREVITY IN PLEADINGS AND FORM OF PAPER PRESENTED FOR FILING (1) The court encourages brevity in all pleadings and other documents. ~~Documents which, The court may return documents that~~ in the court's opinion, are rambling or verbose ~~may be returned to the party who submitted the document with instructions to correct any deficiencies, and make the document more concise.~~

~~(2) All documents filed with the court must be typewritten or legibly printed on 8 1/2 x 11-inch unnumbered, unlined paper.~~

~~(a) Typewritten or machine-printed documents must use a font size of no smaller than 12 points.~~

~~(b) The court requests that parties produce all documents using a sans-serif font, preferably the font commonly known as Arial. Documents produced with a legible typeface are not rejected as nonconforming.~~

~~(3) The name of the attorney, if any, representing a petitioner or a respondent, or the name of the party appearing without an attorney, together with an address, phone number, fax number, and e-mail address, if available, must appear in the upper left hand corner of the first page of any pleading filed with the court.~~

~~(4) (2) The parties shall file all documents in the form set forth below.~~

~~(a) The parties shall use All documents must be on standard quality opaque, white or unbleached, unglazed, acid-free recycled, unnumbered, unlined, 8 1/2 x 11-inch paper, and be a minimum of 25% cotton fiber content and a minimum of 50% recycled content, of which 10% must be post-consumer waste.~~

~~(b) The parties shall legibly handwrite or typewrite all text.~~

~~(i) For typewritten or machine-printed text, the parties shall use a font size of no smaller than 12 points.~~

~~(ii) The court requests that the parties use a sans-serif font, preferably the Arial font. The court does not reject documents produced with a legible typeface as nonconforming.~~

~~(5) (c) The parties shall single-space text. All documents filed with the court must be single-spaced with double spacing double-space between paragraphs, print printed on one side of the paper, and with use a top margin of 1 1/2 inches and margins of 1 inch on all remaining sides, except the top margin which must be 1 1/2 inches.~~

~~(6) (d) The parties shall place the title of the document and the page number as a footer at At the bottom of the second and all subsequent pages, the title of the document and the page number must appear as a footer.~~

~~(7) (e) The parties shall leave lines Lines 1 through 7 of the right one-half of page 1 must be left blank for the use of the clerk.~~

~~(f) The parties shall two-hole punch the top of any document over 5 pages in length.~~

~~(g) The parties shall include the number the court has assigned to the file, if any.~~

~~(h) An attorney representing a party, or a party appearing without an attorney, shall place the name of the attorney or party appearing without an attorney, together with an address, phone number, fax number, and e-mail address, if available, in the upper left-hand corner of the first page.~~

~~(i) At least one attorney of record shall sign every pleading, motion, or other paper of a represented party in the attorney's individual name. A party who is not represented by an attorney shall sign the pleading, motion, or other paper. Except when a rule or statute specifically provides otherwise, a party need not verify the party's pleadings or include an affidavit with them. The court deems an attorney or party to have made the same representations by signing a document whether the attorney or party files by mail, hand delivery, fax, or e-mail attachment. The court deems an attorney's or party's signature on a pleading, motion, or other paper a certification that the party has read the pleading, motion, or other paper; that to the~~

best of the party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and that the party has not interposed it for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If an attorney or party signs a pleading, motion, or other paper in violation of this rule, the court, upon motion or upon its own initiative, imposes upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee. The court strikes unsigned pleadings, motions, or other papers unless, upon notification, the attorney or party promptly rectifies the omission.

~~(8) Nonconforming papers may not be filed without leave of the court except in the case of an unrepresented party.~~

AUTH: 2-4-201, 39-71-2901, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2905, 39-71-2914, MCA

REASON: The court proposes amending ARM 24.5.306(4), proposed ARM 24.5.306(2)(a), because of the difficulty of locating paper that meets all of the current criteria. The court proposes relocating ARM 24.5.303(5) to proposed ARM 24.5.306(2)(i) for a better subject-matter fit; accordingly, the court proposes adding the associated implementing reference to 39-71-2905, MCA, and adding the associated implementing reference to 39-71-2914, MCA, to correct its previous omission. The court proposes striking ARM 24.5.306(8) because the court's discretion to waive noncompliance with the rules is already set forth in ARM 24.5.349(1). The court proposes adding the authorizing reference to 39-71-2901, MCA, to correct its previous omission.

24.5.307 THIRD-PARTY PRACTICE (1) ~~Prior to or simultaneously with the filing of the response to a petition, the~~ The respondent may file a third-party petition with the court naming anyone not already a party to the action who may be liable to any named party for any or all of the claims asserted in the petition.

(a) ~~The third-party petitioner shall ensure that the third-party petition must contain~~ includes a short, plain statement of the third-party's petitioner's contentions with regard to the third-party's respondent's liability and may incorporate allegations of the petition and/or the response to the petition.

(b) ~~The third-party petitioner shall~~ must be filed the third-party petition in accordance with ARM 24.5.303 and ARM 24.5.320.

(c) ~~The third-party petitioner shall serve the third-party petition must be served~~ in accordance with ARM 24.5.303.

(2) ~~After filing the a response to a petition, has been filed, any the respondent may only attempt to join a third party into a pending case must be through noticed motion in accordance with ARM 24.5.308 and ARM 24.5.320.~~

(3) Within the time set forth in ARM 24.5.320, the third-party respondent shall serve upon all parties, and file with the court, a response ~~which~~ that complies with ARM 24.5.302.

AUTH: 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: As it has done with all deadlines, and to make accurate the reference to ARM 24.5.320 already in ARM 24.5.307(1)(b), the court proposes moving the deadline set forth in ARM 24.5.307(1) to ARM 24.5.320.

24.5.309 INTERVENTION (1) A party may intervene ~~Intervention~~ in a pending proceeding ~~is governed by the considerations as~~ set forth in M. R. Civ. P. 24(a) and (b).

~~(2) Unless otherwise permitted by order of the court, a motion to intervene must be served within the time set forth in ARM 24.5.320. The motion must state the grounds upon which intervention is sought. A copy of the motion, supporting brief, and any affidavits must be served upon all parties. Any party to the dispute shall have the time set forth in ARM 24.5.320 to serve an answer brief. The court, in its discretion, determines whether or not to allow intervention.~~

~~(3) (2) If the court vacates the trial because of a party's intervention results in the trial being vacated and the petitioner demonstrates good cause, is shown, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such This insurer may seek indemnity from the responsible insurer if the court it is later determined determines that it is not liable.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes removing ARM 24.5.309(2) as superfluous.

24.5.310 TIME AND PLACE OF TRIAL GENERALLY (1) The court has divided the state into six geographic areas. Generally, the court holds trials in the places designated in (3) except for ~~cases trials~~ in the Butte venue, which ~~are tried~~ the court holds in Helena unless the parties ~~specifically~~ request otherwise. Upon agreement of the parties and consent of the court, or upon order of the court, the court may hold a trial ~~may be held~~ at any time and any place. The court attempts to accommodate parties' requests for special trial settings; however, the court reserves the discretion to determine the time and place of all trials.

~~(2) Unless otherwise ordered, The court commences trials will commence on Monday of the week set for trial. The court will convenes in each area four times per year unless the court finds good cause to cancel a trial term, exists. Court will be is in session or recess at the convenience of the court. The court will regularly prepares a schedule which that sets deadlines, the dates for pretrials conferences and trials, and the location of the pretrials conferences or trials in each area.~~

~~(3) The court has named each~~ Each of the six areas designated for trial schedule purposes ~~is named~~ for the principal city in the counties making up the area as follows:

(a) through (4) remain the same.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

24.5.311 EMERGENCY TRIALS (1) The petitioner shall indicate any A request for emergency trial must be indicated in the title of the petition, and explain the facts constituting the emergency explained in the petition. The court may hold a trials upon less than 75 days' notice when if the petitioner demonstrates good cause, is shown. The court designates these Such trials are termed "emergency trials." The petitioner must shall set forth facts constituting the emergency in sufficient detail for the court to determine whether an actual emergency exists. The petitioner shall also set forth a statement indicating the petitioner is ready to proceed to trial. If the petitioner does not demonstrate good cause for the emergency setting is not shown in the petition, the court sets the trial on its regular trial calendar. The court may find that an emergency exists if the petitioner demonstrates:

(a) the potential for irreversible or serious harm resulting from inability to obtain medical care or medications;

(b) undue financial hardship constituting an inability to obtain the necessities of life such as food, shelter, clothing, or transportation; or

(c) other facts establishing an emergency.

(2) The court, on its own motion, may set a trial as an emergency trial. When the court orders an emergency trial, the court provides reasonable notice of the time and place for a pretrial conference and for the trial.

(2) (3) If the court determines makes a preliminary determination that good cause exists for an emergency trial setting, the court issues a notice to the opposing party-, indicating that:

(a) the petitioner filed a request for emergency trial;

(b) the court made a preliminary determination that the petitioner set forth good cause; and If

(c) the opposing party objects to the emergency trial setting, the party shall may file a written objection, within the time set forth in ARM 24.5.320. The written objection must containing a short, concise statement setting forth the basis for the objection, -If no objection is filed within the time set forth in ARM 24.5.320, the court deems the emergency request valid and grants an emergency trial setting. If the opposing party files a written objection, the court may hold a hearing to determine whether to allow the emergency setting-

(4) The court schedules a hearing as soon as practicable after either the opposing party files a written objection or the time set forth in ARM 24.5.320 for objection to the request for emergency trial setting runs, whichever occurs first. The court may hold the hearing in person or by phone. The court conducts the hearing to determine the validity of any objections to the emergency trial setting and to confirm the parties are prepared to proceed to trial. The court issues an order granting or denying the request for an emergency trial setting within 5 business days, or as soon as practicable, after following the filing of the objection or at the conclusion of the hearing. The court includes a scheduling order fixing the deadlines referenced in ARM 24.5.310(4) within either the emergency or regular trial setting.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.311(1) to increase the likelihood that cases for which petitioners request emergency settings proceed to trial on an expedited basis, and adding subparts (a) through (c) to assist counsel in identifying the grounds upon which the court may grant an emergency trial setting. The court proposes adding (a) through (c) to ARM 24.5.311(2), proposed ARM 24.5.311(3), to specify the contents of the notice the court issues to opposing counsel upon receipt of a request for emergency trial setting potentially demonstrating good cause. The court proposes amending ARM 24.5.311(2), proposed ARM 24.5.311(4), to make scheduling a hearing standard procedure when the court receives a request for emergency trial setting potentially demonstrating good cause. This will enable the court to inquire about the parties' readiness to proceed to trial and set deadlines accordingly. The court further proposes setting forth the purpose of the hearing to assist counsel in preparing for it.

24.5.316 MOTIONS (1) Unless a different time is specified in these rules, the court fixes the deadline for filing any a motion to amend a pleading, to dismiss, to quash, for summary judgment, to compel, for a protective order, in limine, or for other relief is fixed by the court in a scheduling or other order, unless the court specifies a different time in these rules.

(2) When an appeal is taken from a final order of the Department of Labor and Industry, unless a different time is fixed by order of the court, any motion related to the appeal must be filed and served prior to the date for submission of briefs.

(3) (2) The moving party shall make every Every motion must be in writing or on the record.

(a) The moving party shall state within the motion whether any other party opposes it. If the moving party is unable to contact any other party, the moving party shall certify that the moving party attempted to do so.

(b) If the moving party contacts all other parties and none oppose the motion, the moving party need not file any other documents beyond the motion. The court deems the motion ripe for decision and rules.

(c) If a party opposes the motion, or if the moving party is unable to contact any other party, the moving party shall file the motion with and accompanied by a supporting brief. The moving party may include supporting Supporting documents and affidavits may accompany with the briefs. An party opposing adverse party a motion shall file a response brief within the time set forth in ARM 24.5.320, accompanied The party may include by appropriate documents and affidavits, within the time set forth in ARM 24.5.320. Within the time set forth in ARM 24.5.320, thereafter, the moving party may file a reply brief. The court may change these filing deadlines may be changed by order, of the court. In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under ARM 24.5.329, as well as a party opposing that motion, shall comply with the requirements of that rule.

(a) (3) In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under ARM 24.5.329, as well as a party opposing that

motion, shall comply with the requirements of that rule. A party shall not be required to file a response to a summary judgment motion earlier than the deadline for filing a response to a petition.

(4) The parties may present motions regarding discovery, procedure, and similar pretrial issues informally by phone conference. The court arranges the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral decision or direct the moving party to file the motion in writing and all parties to file briefs. The court confirms any oral decision thereafter by written decision.

(5) Notwithstanding anything in this rule, the parties may file or present motions or objections related to evidentiary and other matters arising at trial.

(6) A party seeking the court's leave for an extension of time shall make this request in writing. The requesting party shall state whether any other party opposes it. If the requesting party is unable to contact any other party, the requesting party shall certify that the requesting party attempted to do so. If the requesting party contacts all other parties and none oppose the request, the requesting party may make the request informally by e-mail message. If a party opposes the request, or if the requesting party is unable to contact any other party, the requesting party shall make the request by formal motion. If the court grants an ex parte extension, the requesting party shall immediately advise the party it was initially unable to contact of the new due date. The court does not grant extensions of more than 10 days from the original due date except under extraordinary circumstances. If the filing deadline has passed, the court grants extensions of time only if the requesting party demonstrates good cause.

(7) Unless the court either orders oral argument or enlarges the time, the court deems the motion submitted at the expiration of any of the applicable time limits. If the court orders oral argument, the court deems the motion submitted at the close of argument unless the court orders additional briefs, in which case the court deems the motion submitted at the deadline for filing the final brief.

(4) (8) The court may summarily rule on the motion if any party is required, but fails, Failure to file a briefs, may subject the motion to summary ruling. The court may deem Failure of the moving party's failure to file a brief with the motion may be deemed an admission that the motion is without merit. The court may deem Failure of the adverse opposing party's failure to timely file a response brief may be deemed an admission that the motion is well-taken. The moving party may file a reply brief. Reply briefs are optional; The court does not summarily rule on the motion if the moving party fails failure to file a reply brief, does not subject the motion to summary ruling.

(5) Unless otherwise ordered, the court does not permit oral argument. Unless the court orders oral argument, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits. If the court orders oral argument, the motion is deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion is deemed submitted at the time set for filing of the final brief.

(6) An application for an extension of time for filing briefs or affidavits must be made in writing but may be filed electronically or by fax. The application must state whether any party agrees to or opposes the extension of time requested. The court

~~may grant an application for an extension of time without notice to the adverse party only upon the applicant's written certification that an attempt was made to contact the adverse party. Whenever the court grants an ex parte extension, the moving party shall immediately advise the adverse party of the new due date. Except under extraordinary circumstances, the court does not grant extensions of more than 10 days from the original due date. If the filing deadline has passed, the court grants extensions of time only for good cause shown.~~

~~(7) Nothing in this rule precludes the filing or presentation of motions or objections related to evidentiary and other matters arising at trial.~~

~~(8) Motions regarding discovery, procedure, and similar pretrial issues may be presented informally by telephone conference. The moving party shall arrange the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral ruling or direct that the motion be presented in writing and briefed. Any oral order must thereafter be confirmed by written order.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.318 PRETRIAL CONFERENCE, AND PRETRIAL ORDER, AND EXHIBITS (1) The court holds a pretrial conference in every case it expects to proceed to trial.

(a) Generally, the A final pretrial conference precedes takes place 2 weeks before every trial unless otherwise ordered by the court.

(2) (b) The parties shall present any disputes regarding the content of the pretrial order at the pretrial conference.

(c) The court may appoints a hearing examiner to conduct the pretrial conference and may delegates authority to such the hearing examiner to make rulings rule on all matters discussed at the pretrial conference, including pretrial motions of the parties.

(3) (d) In the discretion of the The court in appropriate circumstances, may conduct a pretrial conference may be conducted by a telephone, conference call.

(4) (2) The court requires a pretrial order as follows:

(a) At least one week prior to the pretrial conference, the parties shall confer to determine the contents of the pretrial order. The petitioner, or, in cases involving a pro sé petitioner, the respondent, shall include the following in the pretrial order: At the time of the pretrial conference, or as otherwise ordered by the court, the parties shall present a proposed pretrial order in the form provided in (5). Disputes as to the content of the final pretrial order must be presented and resolved at the pretrial conference. The final, signed pretrial order must be filed and received at the court on the date as set forth in the scheduling order.

(5) The pretrial order must be signed by all parties and set forth the following:

(a) through (d) remain the same, but are renumbered (i) through (iv).

(e) (v) a joint statement of the issues to be determined by the court;

(f) (vi) the parties' contentions, including in the case of the claimant all contentions which that the claimant argues provide the a basis for any claim of unreasonableness on the part of the insurer;

~~(g) (vii) a list of all exhibits to be offered by each party on an attached exhibit grid list; including any objections an adverse party may have to the admission of particular exhibits and the grounds upon which those objections are made;~~

~~(h) (viii) the identity a list of all witnesses, who may be called, including the name, address, and occupation of each witness, and a summary of the subject matter of the testimony on which the parties expect each witness to testify; will give;~~

~~(i) remains the same, but is renumbered (ix).~~

~~(j) (x) the estimated length of trial; and~~

~~(k) (xi) a statement as to whether or not the parties will be filing intend to file trial briefs and/or proposed findings of fact and conclusions of law; -~~

~~(xii) a statement as to whether the parties have taken or scheduled depositions; and~~

~~(xiii) the trial date, if known.~~

~~(6) (b) By the dates specified by the court, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall submit the proposed and final pretrial orders in the form set forth in ARM 24.5.318(2)(a)(i) through (xiii). The court considers pretrial orders submitted by fax or e-mail attachment compliant with the submission deadlines. Upon approval by the court, the pretrial order supersedes all other pleadings and governs the trial proceedings. Amendments to the pretrial order are allowed by either stipulation of the parties or leave of court for good cause shown.~~

~~(c) The parties shall sign the final pretrial order at trial. Upon the judge's signature, the court files the final pretrial order, which supersedes all other pleadings and governs the trial proceedings. The court allows amendments to the final pretrial order either by stipulation of the parties or for good cause.~~

~~(7) (3) The court adheres to the following exhibit rules:~~

~~(a) The parties shall prepare any exhibits as follows:~~

~~(i) Prior to the pretrial conference, the respondent shall provide to the petitioner sufficient copies for all parties of every exhibit that the respondent intends to offer for admission, including deposition exhibits. The respondent shall separate and number each exhibit, and number the pages within each exhibit (for example, Ex. 1-1). In the case of a pro sé petitioner, the pro sé petitioner shall provide the respondent with sufficient copies for all parties of every exhibit that the petitioner intends to offer for admission, including deposition exhibits. The pro sé petitioner shall separate and number each exhibit, and number the pages within each exhibit (for example, Ex. 1-1).~~

~~(ii) The parties may not submit duplicate exhibits unless the duplicate exhibit is imperative to the understanding of the subject records or, in the case of medical records, one provider is relying on the records of another provider.~~

~~(b) The parties shall prepare an exhibit list as follows:~~

~~(i) For each exhibit, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall set forth the following in the exhibit list:~~

~~(A) the exhibit number;~~

~~(B) a description of the exhibit;~~

~~(C) the number of pages in the exhibit;~~

~~(D) the offering party;~~

~~(E) whether any other party objects to the exhibit;~~

(F) the grounds upon which any objecting party bases the objection(s); and
(G) a blank column reserved for the court's decision on the admissibility of the exhibit.

(ii) The petitioner, or in cases involving a pro sé petitioner, the respondent, shall revise all copies of the exhibit list as necessary to reflect changes or additions requested by the court or agreed to by the parties at the pretrial conference.

(c) The parties shall prepare an exhibit book as follows:

(i) The petitioner, or, in cases involving a pro sé petitioner, the respondent, shall prepare the exhibit book, including:

(A) verifying that all parties' exhibits and their pages are numbered;

(B) combining and tabbing the exhibits;

(C) either binding the exhibits or placing them ~~The parties must provide all exhibits which either party intends to offer at trial to the court on the date set forth in the scheduling order. The exhibits must be bound or in a three-ring notebook; and~~

(D) including the exhibit list in the front of each exhibit book. All parties' ~~exhibits must be combined in the same exhibit notebook and must be tabbed and numbered sequentially beginning with 1. The pages within each exhibit must be numbered sequentially beginning with 1. Exhibits attached to depositions must also be numbered sequentially.~~

(ii) By a date specified by the court, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall:

(A) file the exhibit book by mail or hand delivery;

(B) provide conformed copies of the exhibit book to all parties at the time of filing;

(C) bring to trial a conformed exhibit book for any witness testifying live; and

(D) provide a conformed exhibit book to any witness testifying via videoconference.

(iii) The court may refuse to accept exhibits which ~~that~~ do not meet these criteria and/or may order the parties to resubmit ~~resubmission of the exhibits in the correct format. The petitioner shall provide an additional exhibit book for trial witnesses.~~

~~(8) Upon request, the court may schedule and hold an earlier preliminary pretrial conference to address any discovery or other issues encountered by the parties.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes adding: proposed ARM 24.5.318(2)(a) and (b); and (3)(a)(i) and (c)(ii); and amending: ARM 24.5.318(7), proposed ARM 24.5.318(3)(c)(i), as part of a comprehensive effort to shift procedures from the scheduling order to the rules so that the scheduling order can simply set forth deadlines while incorporating the rules by reference.

24.5.319 AMENDED PETITION PLEADINGS (1) A petitioner party may ~~only must~~ file an amended ~~petition~~ pleading within the time period set forth in the

scheduling order or by leave of court. ~~The~~ A party shall file any required response to the an amended pleading petition is due within the time set forth in ARM 24.5.320.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.320 COMPUTATION OF TIME (1) The court applies the following provisions apply with respect to the computation of time ~~for all filings~~:

(a) In computing the time for any response as provided for in these rules, the court includes weekends and holidays. If a party's deadline falls on a weekend or holiday, the party shall file by ~~deadline is~~ the next workday.

(b) Whenever a party has the right or is required to do some act within a prescribed period of time after the service by mail, or by electronic means if consented to in writing, of a notice or other paper upon the party, ~~and the notice or paper is served by mail~~, the court adds 3 days to the prescribed period.

(c) ~~The court accepts fax and electronic filings, but an original signature page of any document filed~~ A party filing by fax or electronic means must be filed with the court e-mail attachment shall ensure that the court receives a hard copy original within 5 days.

(2) ~~Except as provided elsewhere within these rules, the following time limits apply. This rule provides for the time limits only. The court sets forth specific~~ Specific information as to regarding format and content requirements is located within the rule relating to each specific filing. : Except as provided elsewhere within these rules, the court applies the following time limits:

COMPUTATION OF TIME

Document Type	Reference Rule	<u>Days to File</u> <u>Time Limit</u>
response to petition	24.5.302(1)	20 <u>21</u> days after service of petition
response to amended petition	24.5.319	10 days after service of amended petition
<u>third-party petition</u>	<u>24.5.307(1)(b)</u>	<u>21 days after service of petition</u>
response to third-party petition	24.5.307(3)	10 days after service of third-party petition
motion to join third party	24.5.308(2)	30 days after service of petition
objection to joining third party	24.5.308(2)	10 days after service of motion to join third party
response to petition by third party	24.5.308(4)	10 days after service of order

Document Type	Reference Rule	Days to File <u>Time Limit</u>
		joining third party
motion to intervene	24.5.309(2)	30 days after service of the petition
answer to motion to intervene	24.5.309(2)	10 days after service of motion to intervene
objection to court's notice of <u>request</u> for emergency trial setting	24.5.311(2) <u>24.5.311(3)(c)</u>	5 days after service of notice of <u>request</u> for emergency trial setting
response to motion	24.5.316(3) <u>24.5.316(2)(c)</u>	10 days after service of motion
response to motion for summary judgment	24.5.316(3)(a) <u>24.5.316(2)(c)</u> , <u>(3)</u>	10 days after service of motion, but no earlier than the deadline for filing a response to a petition
reply to adverse <u>opposing</u> party	24.5.316(3) <u>24.5.316(2)(c)</u>	5 days after service of response brief to motion
<u>response to amended pleading</u>	<u>24.5.319(1)</u>	<u>10 days after service of amended pleading</u>
<u>witness to sign deposition officer to sign and state that deposition was not signed by deponent</u>	24.5.322(7)	40 <u>30</u> days after submission to witness
cross-questions to deposition upon written questions	24.5.322(11) <u>24.5.322(12)</u>	10 days after service of notice and written questions
redirect questions to deposition upon written questions	24.5.322(11) <u>24.5.322(12)</u>	10 days after service of cross-questions
recross-questions to deposition upon written questions	24.5.322(11) <u>24.5.322(12)</u>	5 days after service of redirect questions
response <u>answers</u> to interrogatories	24.5.323(2)	20 days after service of interrogatories
verification to interrogatories by unnatural person	24.5.323(4)	10 days after service of request
response to request for production	24.5.324(3)	20 days after service of request
<u>request for</u> relief from default	24.5.327(5)	60 days after entry

Document Type	Reference Rule	Days to File <u>Time</u> <u>Limit</u>
judgment		of judgment
<u>request for hearing on motion for summary judgment</u>	<u>24.5.329(5)</u>	<u>5 days after deadline for reply to opposing party</u>
objections to court's written findings of fact, conclusions of law, and judgment, and request for rehearing	24.5.335(1)(c)	20 days after entry of judgment
motion for reconsideration	24.5.337(1) <u>24.5.337(2)</u>	20 days after order or decision
opposition to motion for reconsideration	24.5.337(1)	10 days after service of motion for reconsideration
application for taxation of costs	24.5.342(1)	10 days after entry of judgment allowing costs
objection to application for taxation of costs	24.5.342(7)(a)	10 days after service of application for taxation of costs
<u>response to objection to application for taxation of costs</u>	<u>24.5.342(7)(b)</u>	<u>5 days after service of objection to application for taxation of costs</u>
claim for attorney fees	24.5.343(2)(a)	20 days after expiration of appeal period or remittitur on appeal of court's final decision or 20 days after filing of court's decision
objection to claim for attorney fees	24.5.343(2)(b)	20 days after service of claim for attorney fees
request for attorney fee hearing	24.5.343(2)(c)	10 days after service <u>filing</u> of objection (if hearing requested by claimant's attorney) or at same time as <u>as filing of</u> objection is filed (if hearing requested by objecting party)

Document Type	Reference Rule	Days to File Time Limit
petition for new trial and/or request for amendment to findings of fact and conclusions of law (refer to 24.5.344(1))	24.5.344(1)	20 days after service of order or judgment
opposition to petition for new trial and/or request for amendment to findings of fact and conclusions of law	24.5.344(2)	10 days after service of petition for new trial or request for amendment

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: As it has done with all deadlines, and to make accurate the reference to ARM 24.5.320 already in ARM 24.5.307(1)(b), the court proposes moving the deadline set forth in ARM 24.5.307(1) to ARM 24.5.320. The court proposes removing the times for motion to intervene and answer to motion to intervene to correspond with the proposed removal of ARM 24.5.309(2). As it has done with all deadlines, the court proposes moving the deadline previously set forth in ARM 24.5.329(5) to ARM 24.5.320. The court proposes removing the deadline for opposition to motion for reconsideration because it contemplates including a deadline in any order to respond it issues. The court proposes adding a deadline for response to objection to application for taxation of costs to be consistent with ARM 24.5.342(7)(b), which was new in 2015. The court proposes removing language in the Document Type column for petition for new trial and/or request for amendment to findings of fact and conclusions of law that is redundant to language in the Reference Rule column.

24.5.322 DEPOSITIONS (1) ~~Any~~ party may take the testimony of any person, including a party, by deposition upon oral examination after the court or appropriate party has served the petition. ~~has been served. The petitioner shall obtain leave~~ Leave of court, ~~granted with or without notice, must be obtained only if the petitioner seeks to take a deposition prior to the expiration of 20 days from the date of service of the petition. If a party seeks to take~~ The taking of a post-trial deposition, the party shall obtain requires leave of court. ~~The attendance of witnesses~~ A party may be compelled the attendance of witnesses by subpoena as provided by ARM 24.5.331.

(2) A party ~~desiring~~ seeking to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding; and:

(a) include in the ~~The notice must state~~ the time and place for taking the deposition and the name and address of each person to be examined; and

(b) If if intending to serve a subpoena duces tecum is to be served on the person to be examined, attach to or include in the notice the designation of the

materials to be produced as set forth in the subpoena, ~~must be attached to or included in the notice.~~

(3) The court may, ~~for good cause shown,~~ lengthen or shorten the time for taking the deposition if a party demonstrates good cause.

(4) ~~The parties may examine Examination and cross-examine cross-examination of witnesses may proceed in the same manner as permitted that the court permits at the trial.~~ The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in that person's presence, stenographically record the testimony of the witness. The testimony must be stenographically recorded unless otherwise ordered by the court. If requested by ~~one of the parties~~ a party, the person who recorded the testimony must be shall transcribed it.

(5) ~~Unless they otherwise agreed otherwise, by the parties, shall make all objections must be made at the time of taking the deposition and on the record. be included within the transcript of the deposition. Evidence objected to must be The parties shall taken evidence to which a party objects subject to the objections. The parties shall brief deposition Deposition objections, must be briefed.~~ The court may deem the parties' failure to do so a withdrawal of the objections.

(6) At any time during ~~the taking of the deposition,~~ on motion of a party or of the deponent, and upon a showing that the officer is conducting the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress a party or the deponent, or party, the parties shall suspend the taking of the deposition must be suspended for the time necessary for the objecting party or deponent to move the court for an order. The court may order the officer conducting the examination to cease ~~forthwith from~~ taking the deposition, or may limit the scope and manner of the taking of the deposition. If the court's ~~order terminates ends~~ the examination by order, the parties may resume the deposition may be resumed thereafter only upon further order of the court. The provisions of ARM 24.5.326 apply to the award of expenses incurred in relation to the motion. The court may order the offending party to pay to the other party the amount of the reasonable expenses that the adjournment and resumption of the deposition caused that party to incur, including reasonable attorney fees, and the court may adjudge the offending party or attorney guilty of contempt.

(7) ~~When the testimony is fully transcribed, the The witness shall examine any transcribed deposition must be submitted to the witness for examination and be either by reading to it or having it read aloud. by the witness. The witness shall enter any Any changes in form or substance which that the witness desires to make must be entered upon the deposition, , which must then be signed by the The witness shall then sign under oath, unless the parties and the witness waive the signing or the witness is ill, cannot be found, or refuses to sign. If the witness does not sign the deposition within the time set forth in ARM 24.5.320, the officer shall sign it and state on the record the reason, if any, that the deposition witness has not been signed the deposition. A party may then use the The deposition may then be used as fully as though the witness had signed it.~~

(8) ~~Unless the court orders otherwise, the The parties, by written stipulation, or by stipulation entered upon the record of a deposition, may provide that they may take depositions may be taken before any person, at any time or place, upon any~~

notice, and in any manner, ~~and when~~ The parties may use these depositions so taken may be used like other depositions.

~~(9) Regardless of the availability of a witness or party to testify at trial, the circumstances of workers' compensation cases make it desirable, in the interest of justice, that a deposition of a witness or a party may be used by any party for any purpose unless the court restricts such usage upon a finding that the interests of justice would be served thereby. Any party may use the deposition of a witness or a party for any purpose, regardless of the availability of the witness or party to testify at trial, unless the court restricts the deposition's usage because it would serve the interests of justice.~~

(10) If a party proposes to offer a transcribed deposition for the court's consideration, that party shall:

(a) submit it by e-mail attachment by the date specified by the court; and

(b) file the hard copy original at or before trial.

~~(11) Any party participating in a deposition may make a simultaneous videotape or digital recording of the deposition. A party who intends to videotape or digitally record a deposition shall, notify all parties in the notice of deposition, notify all parties. If any party proposes to offer the videotaped or digitally recorded deposition for the court's consideration, that party shall provide a copy to the court. Any videotaped or digitally recorded deposition provided to the court must be in VHS or DVD format, and be labeled with the name of the case and the name or names of all witnesses whose depositions are contained on the videotaped or digitally recorded deposition. A party filing a~~ Each videotaped or digitally recorded deposition filed with the court must be accompanied by shall also provide a transcript prepared by the court reporter who attended the deposition.

~~(11) (12) A party may take a deposition upon written questions. The party taking the deposition shall give reasonable~~ Reasonable notice to all other parties of the name and address of the person who is to answer the questions and the name or descriptive title and address of the officer before whom the deposition is to be taken, ~~must be given to opposing parties.~~ Within the time set forth in ARM 24.5.320 after service of the notice and written questions, ~~are served,~~ a party may serve cross-questions upon all other parties. Thereafter, within the time set forth in ARM 24.5.320, a party may serve redirect questions upon all other parties. ~~Recross-questions may be served upon all other parties within~~ Within the time set forth in ARM 24.5.320 after the service of the redirect questions, ~~a party may serve~~ recross-questions upon all other parties.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes adding proposed ARM 24.5.322(10) as part of a comprehensive effort to shift procedures from the scheduling order to the rules so that the scheduling order can simply set forth deadlines while incorporating the rules by reference. The court proposes amending ARM 24.5.322(11) to eliminate references to "videotape" and "VHS" since that technology is essentially obsolete.

24.5.325 LIMITING DISCOVERY (1) Upon motion by a party or by the person from whom discovery is sought, and for good cause, ~~shown~~, the court may make any order ~~which~~ that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the party seeking discovery may not be had have it;
- (b) that the party seeking discovery may be had only have it on specified terms and conditions, including a designation of the time or place;
- (c) that the party seeking discovery may be had only have it by a method of discovery other than that selected by the party seeking discovery;
- (d) that the party seeking discovery may not inquire into certain matters, ~~not be inquired into~~, or that the party seeking ~~scope of the~~ discovery be may have it limited to certain matters;
- (e) that the party seeking discovery be shall conducted it with no one present except persons designated by the court;
- (f) that a party may only open a deposition, ~~after being~~ the court has sealed by order, ~~be opened only~~ by further order of the court;
- (g) that a person from whom discovery is sought need not disclose a trade secret or other confidential research, development, or commercial information, or that the person need only disclose it ~~not be disclosed or be disclosed only~~ in a designated way;
- (h) that the parties ~~simultaneously~~ shall file specified documents simultaneously or shall enclose information ~~enclosed~~ in sealed envelopes to be opened as directed by the court.

(2) If the court denies the motion for a protective order ~~is denied~~ in whole or in part, the court may, on ~~such~~ terms and conditions as are just, order that any party or person provide or permit discovery.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.325(1)(f) to clarify that if the court receives a sealed deposition from a court reporter, no court order is necessary to open it.

24.5.327 DEFAULT (1) If a party required to file a responsive pleading under these rules fails to file a responsive pleading within the time specified, or otherwise fails to defend, the court at the request of the petitioner or upon its own motion ~~may issues~~ an order providing that the party shall file a responsive pleading within ~~40 days, or in the alternative, shall~~ the time ordered by the court. If the party fails to respond to the court's order within the time specified, the court orders the party to appear before the court at a specified date, time, and place to show cause why the party court should not ~~be found~~ find the party in default and grant relief ~~granted~~ in accordance with the petition. The court serves the order ~~is served~~ by mail if upon an insurer, otherwise by certified mail or through personal service as directed by and at the discretion of the court.

(2) If the party fails to file a responsive pleading within the time provided ~~or~~ and fails to appear at the show cause hearing, the court ~~may~~ enters a default judgment against the party. ~~by default.~~

(3) remains the same.

(4) If, ~~in order~~ to enable the court to enter judgment or to carry it into effect, the court deems it is necessary to inquire into amounts of benefits or other matters, the court ~~shall~~ conducts a hearing into those matters.

(5) A party shall base any request Applications for relief from default judgment ~~must be based~~ upon good cause, ~~shown,~~ such as mistake, inadvertence, surprise, or excusable neglect, and ~~must be made~~ file it within the time set forth in ARM 24.5.320.

AUTH: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.329 SUMMARY JUDGMENT (1) ~~A party may, at any time after the filing of a petition for hearing Pursuant to any deadlines set by the court under ARM 24.5.316(1), a party may~~ move for a summary judgment in the party's favor upon all or any part of a claim or defense.

~~(a) The court fixes the time for filing as provided by ARM 24.5.316(1).~~

~~(b) (a) Because the court hears cases in the Workers' Compensation Court on an expedited basis, a motion for summary judgment may delay the trial without any corresponding economies. The time and effort involved in preparing briefs and resolving the motion may be as great or greater than that expended in resolving the disputed issues by trial. For these reasons, the court typically disfavors summary judgment motions. The court may decline to consider individual summary judgment motions where if it concludes that it may resolve the issues may be resolved as expeditiously by trial as by motion. The court may decline to consider a summary judgment motion that does not comply with ARM 24.5.329 or other applicable rules.~~

~~(c) (b)~~ If upon the filing of a motion for summary judgment, the party against whom the motion is directed believes that summary judgment is inappropriate for the reasons set forth in (1)~~(b) (a)~~ above, that party shall immediately notify the court and arrange for a telephone conference between the court and counsel. The court ~~will~~ determines after the conference whether further briefing and proceedings are appropriate.

(2) remains the same.

(3) Any party filing a motion under this rule shall ~~include~~ set forth in its brief a statement of uncontroverted facts, ~~setting forth in full the specific facts on which the party relies in support of the motion. The party shall set forth the specific facts upon which it relies in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The party shall authenticate all attached exhibits. If the movant and the party opposing the motion agree that no genuine issue of any material fact exists, they may jointly file a statement of stipulated facts with the court.~~

(4) Any party opposing a motion filed under this rule shall ~~include~~ set forth in the party's opposition a its brief statement of genuine issues ~~setting forth the specific facts which the opposing party asserts establish a genuine~~ any specific issues of

material fact ~~that it believes preclude~~ precluding summary judgment in favor of the moving party. ~~Each The party's brief must shall~~ set forth the specific facts upon which it relies in serial fashion and not in narrative form. ~~As to each fact, the statement must and~~ refer to a specific pleading, affidavit, or other document where ~~the it found each fact, may be found.~~ The court deems all properly supported facts asserted by the movant to be uncontroverted for the purposes of the summary judgment motion unless specifically and properly controverted by the opposing party. If the party opposing the motion includes additional facts in its brief, it shall set forth those facts in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The party shall authenticate all attached exhibits.

~~(4) If the movant and the party opposing the motion agree that no genuine issue of any material fact exists, they shall jointly file a stipulation with the court setting forth a statement of stipulated facts. This stipulation must be prepared and filed in lieu of the statements required by (3) of this rule.~~

(5) If either party desires a hearing on the motion, the party shall make the request in writing ~~no later than~~ within the time ~~specified for the filing of the last brief set forth in ARM 24.5.320.~~ The court may thereupon set a time and place for hearing. If no party requests ~~for a hearing, is made,~~ the parties waive any right to a hearing ~~afforded given by these rules, is deemed waived.~~ The court may order a hearing on its own motion.

(6) If on motion under this rule the court does not render judgment upon the whole case or for all the relief requested and deems a trial ~~is necessary,~~ the court may on its own motion ascertain what material facts exist without substantial controversy and what material facts are in good faith controverted. The court ~~thereupon then~~ makes an order specifying the facts that appear without substantial controversy and directs ~~such~~ further proceedings in the action as are just. Upon the trial of the action, the court deems the facts so specified established and conducts the trial accordingly.

(7) A party shall make any supporting ~~Supporting and or~~ opposing affidavits ~~must be made~~ on personal knowledge, ~~;~~ set forth ~~such~~ facts as would be admissible in evidence, ~~;~~ and show affirmatively that the affiant is competent to testify to ~~these matters, stated therein.~~ The party shall attach to or serve with an affidavit Sworn ~~sworn~~ or certified copies of all papers or parts thereof ~~referred to in an affidavit must be attached thereto or served therewith, of papers to which the affidavit refers.~~ The court may permit a party to supplement or oppose affidavits ~~to be supplemented or opposed~~ by depositions, answers to discovery, or further affidavits. ~~When~~ If a party makes a motion for summary judgment ~~is made and supported supports it~~ as provided in this rule, an ~~adverse~~ opposing party may not rest upon the mere allegations or denials of the ~~adverse~~ opposing party's pleading, but ~~the adverse party's response shall,~~ by affidavits or as otherwise provided in this rule, ~~must~~ set forth specific facts showing that a genuine issue exists for trial. If the ~~adverse~~ opposing party does not so respond, the court may enter summary judgment against the ~~adverse~~ opposing party.

(8) ~~Should~~ If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a

continuance to permit the party to obtain affidavits, to be obtained or take depositions, to be taken or have discovery, to be had or the court may make such another order as is just.

(9) If it appears to the satisfaction of the court ~~at any time~~ that a party has presented any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court orders the party employing them to pay to the other party the amount of the reasonable expenses which that the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and the court may adjudge the any offending party or attorney may be adjudged guilty of contempt.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.329(3), proposed ARM 24.5.329(3) and (4), to create separate sections for opening and response briefs, because this arrangement will make it easier for the parties to find the requirements associated with filing each type of document. As it has done with all deadlines, the court proposes moving the deadline set forth in ARM 24.5.329(5) to ARM 24.5.320.

24.5.330 VACATING AND RESETTING TRIAL REQUESTS TO VACATE, PUT IN ABEYANCE, OR RESET TRIAL (1) A party ~~shall request seeking the court's leave to vacate, put in abeyance, or and reset a trial shall make the request in writing and for good cause shown. The application must requesting party shall state whether any other party agrees to or opposes the request it. If the requesting party is unable to contact any other party, the requesting party shall certify that the requesting party attempted to do so. If the requesting party contacts all other parties and none oppose the request, the requesting party may make the request informally by e-mail message. If a party opposes the request, or if the requesting party is unable to contact any other party, the requesting party shall make the request by formal motion and demonstrate good cause.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.334 SETTLEMENT CONFERENCE OR MEDIATION (1) In its discretion, the court may, either on its own motion or upon request of any party, order a settlement conference or mediation at any time before it issues a decision in any case pending before the court. ~~A hearing examiner appointed by the court normally conducts the settlement conference. The court may appoint a settlement master or mediator. If the parties use an outside settlement master or However, if the parties agree, an outside mediator may conduct the conference. If the parties use an outside mediator, the parties shall equally share and pay the expense of hiring the mediator this person unless they agree otherwise. The conference may be in person or by telephone conference at a time and place as the court may direct.~~

(2) ~~The court may direct that the person with ultimate settlement authority for each party shall attend the settlement conference or mediation in person. Upon~~

order of the court or agreement of the parties, the person with ultimate settlement authority may participate by phone.

(3) No party may disclose any statements or communications any participant or attendee, including the settlement master or mediator, made in connection with the settlement conference or mediation to anyone. No party may use any statements or communications any participant or attendee, including the settlement master or mediator, made during the settlement conference or mediation with regard to any aspect of the litigation. No party may subpoena or otherwise require the settlement master or mediator to testify in any future proceedings. No party may examine any participant or attendee concerning any statements or communications that person or any other participant or attendee, including the settlement master or mediator, made or allegedly made in connection with the settlement conference or mediation. However, the settlement master or mediator may disclose whether settlement was reached and the terms of the settlement.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.334(1), proposed ARM 24.5.334(2), to more closely follow the federal rule because requiring the person with ultimate settlement authority for each party to participate will make the settlement conference or mediation a more effective and efficient tool. The court proposes adding proposed ARM 24.5.334(3) to clarify which aspects of the settlement conference or mediation are confidential.

24.5.336 TRIAL BRIEFS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS (1) The court may require any or all parties to file trial briefs or ~~other documents~~ proposed findings of fact and conclusions of law.

~~(2) The court may require any or all parties to file proposed findings of fact and conclusions of law. Requests that a decision not be certified as final pursuant to ARM 24.5.348(4) should ordinarily be included in the proposed findings of fact and conclusions of law, with the basis for the request set forth.~~

~~(3) Briefs and~~ Any party may file either a trial brief or proposed findings of fact and conclusions of law, or both, must be filed by the date set by the judge or hearing examiner.

~~(4) Briefs and proposed findings of fact and conclusions of law cannot be filed after the due date except by leave of court.~~

~~(5) (3) The court encourages any party filing a trial brief or~~ The court considers a trial brief or proposed findings of fact and conclusions of law filed by fax or e-mail attachment compliant with the filing deadline as long as a party ensures that the court receives the hard copy original at or before trial, to submit the document in electronic form by attaching it to an e-mail addressed to the court. Any party e-mailing filing such a brief or proposed findings and conclusions by fax or e-mail attachment shall further also file the original of the document with the court and serve ensure that the other parties as required by ARM 24.5.303 receive it the same day the party files it with the court.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

24.5.337 MOTION FOR RECONSIDERATION (1) Any party may move for reconsideration of any ~~order or~~ decision of the Workers' Compensation Court- only upon the following three grounds:

- (a) that the court overlooked some fact material to the decision;
- (b) that the court overlooked some issue presented by the party that would have proven decisive to the case; or
- (c) that the court's decision conflicts with a statute or controlling decision not addressed by the court.

(2) A party shall file any ~~The motion for reconsideration of a decision must be filed within the time set forth in ARM 24.5.320, after the court issues its order or decision. The court reviews the motion before any other party responds. The court denies those motions it determines have no merit and orders the other party or parties to respond to those motions it determines may have merit. The opposing party shall have the time set forth in ARM 24.5.320 thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such~~ If the court orders a response, the court it deems the motion submitted for decision upon receipt of the response or the expiration of the time for the response unless the court requests oral argument. The court does not consider reply briefs from moving parties.

~~(2) (3)~~ Within 20 days of the its issuance of any order or final decision, the court may, on its own motion, and for good cause, reconsider the order or decision.

~~(3) (4)~~ If the motion requests a party seeks reconsideration of an appealable order or judgment decision, the court does not deem the original order or judgment decision final until and unless the court denies the motion.

(5) No party may file a brief in support of or opposition to a motion for reconsideration that exceeds 5 pages.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.337(1), and adding (a) through (c), to more closely mirror M. R. App. P. 20, because limiting the circumstances under which a party may seek reconsideration will reduce the likelihood that a losing party will simply make this motion as a matter of course. The court proposes adding ARM 24.5.337(2), to allow the court to deny meritless motions at the earliest moment, and ARM 24.5.337(5), to limit the length of briefs. Both additions will promote efficiency, both for the court and the parties.

24.5.348 CERTIFICATION OF DECISIONS, APPEALS TO SUPREME COURT (1) A party shall make any appeal ~~Appeals from the Workers' Compensation Court must be made as in the case of an appeal from a district court as provided in M. R. Civ. P. 72.~~

(2) ~~The court's final certification for~~ For the purposes of appeal, the court's final certification is considered a notice of entry of judgment.

(3) A party appealing from the Workers' Compensation Court shall comply ~~Appeals must be in compliance with the Montana Rules of Appellate Procedure.~~

(4) The court certifies its decisions as final without ~~a determination of determining~~ the amount of reasonable costs and attorney fees, except that:

(a) ~~At any time prior~~ Prior to the court's issuance of the decision and certification, a party to the dispute may submit file a motion requesting that the court not certify the decision as final. A party filing this ~~Such a request must motion shall demonstrate include a showing of good cause, upon which the request is based.~~

(b) The court in its discretion may grant the ~~request motion~~, in which case the ~~decision of the court must does~~ not certify the judgment for purposes of appeal until it ~~determines~~ the amount of the attorney fees and costs, ~~is determined.~~

(c) A party may petition for new trial or request amendment to the court's findings of fact and conclusions of law in accordance with ARM 24.5.344, regardless ~~Regardless of whether or not the court has certified the decision is certified as final for purposes of appeal, purposes, ARM 24.5.344 determines and limits the time within which a party may petition for new trial or request amendment to the court's findings of fact and conclusions of law.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2904, MCA

REASON: The court proposes adding the implementing reference to 39-71-2904, MCA, to correct its previous omission.

5. The rules the court proposes to adopt provide as follows:

NEW RULE I PRETRIAL IDENTIFICATION OF WITNESSES AND EXHIBITS (1) At the time set by the court, the parties shall exchange and file with the court:

(a) a list of all lay witnesses, including those the parties identified in the petition for hearing or response to petition for hearing, along with a summary of the subject matter on which the parties expect each lay witness to testify;

(b) a list of all expert witnesses, including those the parties identified in the petition for hearing or response to petition for hearing, along with a summary of the subject matter on, and the nature of the facts and opinions to, which the parties expect each expert witness to testify; and

(c) a list of all proposed exhibits, identifying the exhibit by date, author, and number of pages.

(2) If a party considers another party's disclosures inadequate, the party shall contact the other party within the time set by the court to request additional information. If the party remains dissatisfied with the information provided by the other party, the dissatisfied party may move to compel further disclosure in accordance with ARM 24.5.316 and any deadline on these motions set by the court.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes NEW RULE I as part of a comprehensive effort to shift procedures from the scheduling order to the rules so that the scheduling order can simply set forth deadlines while incorporating the rules by reference.

NEW RULE II WITHDRAWAL OF ATTORNEY (1) If an attorney representing a party is removed, withdraws, or ceases to act as such, the parties shall follow the procedures set forth in M. U. Dist. Ct. R. 10 and 37-61-405, MCA.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes NEW RULE II to formalize a practice already in effect and provide procedural guidance to those parties for whom the withdrawal of their attorneys was abrupt or unexpected.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Concerned persons also may submit written data, views, or arguments to Wendy Cash, Workers' Compensation Court, to be received no later than 5:00 p.m., January 8, 2018: in person at 1625 11th Avenue, Helena, MT; by mail at P.O. Box 537, Helena, MT 59620-0537; by fax at (406) 444-7798; or by e-mail at dliwccfilings@mt.gov.

7. An electronic copy of this proposal notice is available through the court's web site at <http://wcc.dli.mt.gov/proposedrules/proposalnotice112417.pdf>. The court strives to make the electronic copy of the notice conform to the official version of the notice, as published in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, the court considers only the official printed text. In addition, although the court works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The Workers' Compensation Court maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this court. Persons who wish to have their names added to the list shall make a written request that includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Workers' Compensation Court rulemaking actions. Persons may make these written requests to the Workers' Compensation Court: in person at 1625 11th Avenue, Helena, MT; by mail at P.O. Box 537, Helena, MT 59620-0537; by fax at (406) 444-7798; by e-mail at dliwccfilings@mt.gov; or by completing a request form at any rules hearing

held by the court. The court sends notices by e-mail unless a person notes a preference to receive notices by mail in the request.

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

10. With regard to the requirements of 2-4-111, MCA, the Workers' Compensation Court has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

11. The Workers' Compensation Court has designated Wendy Cash to preside over and conduct the hearing.

/s/ Wendy S. Cash
Wendy S. Cash, Rule Reviewer
Workers' Compensation Court

/s/ David M. Sandler
David M. Sandler, Judge
Workers' Compensation Court

Certified to the Secretary of State November 8, 2017.

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

In the matter of the amendment of	)	NOTICE OF EXTENSION OF
ARM 37.86.1806 pertaining to	)	COMMENT PERIOD ON
updating durable medical equipment	)	PROPOSED AMENDMENT
rules to reflect a sole-source provider)	
for the purchase of breast pumps)	

TO: All Concerned Persons

1. On June 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-797 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 773 of the 2017 Montana Administrative Register, Issue Number 11.

2. On June 29, 2017, at 1:30 p.m., the Department of Public Health and Human Services held a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

The comment period will be extended until the department receives approval from the Centers for Medicare and Medicaid Services in accordance with 42 CFR§431.51(d)(2). The deadline for written comments is December 1, 2017.

3. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 28, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 13, 2017.

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

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I through IV, the amendment	)	PROPOSED ADOPTION,
of ARM 37.95.102, 37.95.103,	)	AMENDMENT, AND REPEAL
37.95.106, 37.95.108, 37.95.117,)	
37.95.121, 37.95.127, 37.95.139,)	
37.95.141, 37.95.160, 37.95.161,)	
37.95.162, 37.95.172, 37.95.173,)	
37.95.183, 37.95.184, 37.95.602,)	
37.95.606, 37.95.622, 37.95.623,)	
37.95.703, 37.95.705, 37.95.706,)	
37.95.730, 37.95.1005, and the)	
repeal of ARM 37.95.145, 37.95.150,)	
37.95.166, and 37.95.174, pertaining)	
to the federal Child Care and)	
Development Block Grant)	
Reauthorization Act, disaster and)	
emergency planning, and health and)	
safety requirements for child care)	
facilities)	

TO: All Concerned Persons

1. On December 15, 2017, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 1, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I CHILD CARE FACILITIES: EMERGENCY DISASTER AND ACTION PLANS (1) All child care facilities must have a written emergency disaster plan. The plan for each structure used for child care must be developed in such a

way that the plan can be followed in the event of a natural or human-caused disaster, such as flood, fire, tornado, or responding to an intruder.

- (2) Emergency disaster plans must include:
 - (a) an emergency supply of blankets, water, food, and supplies;
 - (b) plans for evacuation, including identification of at least one off-site gathering point;
 - (c) plans for evacuation of nonmobile children and children with special health care needs;
 - (d) contingencies that address:
 - (i) children's individual needs; and
 - (ii) staff responsibilities;
 - (e) plans for reunification of children with their parents;
 - (f) plans for shelter in place and lock down; and
 - (g) plans for continuity of operation.
- (3) The facility must conduct eight emergency drills per year to include:
 - (a) six fire drills; and
 - (b) two other disaster drills that are likely to occur in the facility.
- (4) All emergency drills must be documented and include the following minimum information:
 - (a) who conducted the drill;
 - (b) date and time of drill;
 - (c) the number of adults and children present during the drill;
 - (d) the length of time to evacuate; and
 - (e) problems identified during the drill and corrective actions.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE II CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING (1) Each director, early childhood teacher, assistant teacher, and substitute must complete the department-approved early childhood teacher orientation training.

(2) Within 30 days of hire, teacher orientation which includes the following training must be completed:

- (a) current certification for infant, child, and adult CPR, infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting;
- (b) prevention of sudden infant death syndrome and use of safe sleep practices;
- (c) prevention of shaken baby syndrome and abusive head trauma;
- (d) trainings listed in (a) through (c) must be completed before providing unsupervised care; and
- (e) facilities that provide care exclusively to school age children are not required to take (b) and (c);

(3) Within 90 days of hire, teacher orientation which includes the following training must be completed:

- (a) prevention and control of infectious diseases, including immunization;

- (b) child development;
 - (c) administration of medication, consistent with standards for parental consent;
 - (d) prevention and response to emergencies due to food and allergic reactions;
 - (e) building and physical premises safety;
 - (f) emergency preparedness and response;
 - (g) proper handling, storage, and disposal of hazardous materials;
 - (h) appropriate disposal of toxic (biocontaminants) materials including effects such as blood, bodily fluids, and other infectious materials;
 - (i) transportation; and
 - (j) prevention and reporting of child abuse and neglect to proper state authorities.
- (4) Teacher orientation training shall be counted towards annual training described in ARM 37.95.162.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE III CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES

- (1) Each child care center shall have a director. The director is responsible for operation of the child care center at all times and shall ensure appropriate safety, supervision, protection, and guidance of the children.
- (2) The director must meet the following minimum requirements:
- (a) be at least 18 years of age;
 - (b) be current on the ECP Practitioner Registry;
 - (c) successfully completed teacher orientation as indicated in [NEW RULE II];
 - (d) have one of the following:
 - (i) current ECP Practitioner Registry level 4 or higher;
 - (ii) current ECP Practitioner Registry level 3, plus two years of experience in a licensed child care facility or Head Start;
 - (iii) current ECP Practitioner Registry level 2, plus three years of experience in a licensed child care facility or Head Start; or
 - (iv) a bachelor degree or higher in a non-child care field according to ECP criteria, plus completion of the 60-hour infant-toddler training and the 60 hour preschool course, or 120 hours of alternate training approved by the department.
- (3) The director is responsible for ensuring compliance with all applicable administrative rules within this chapter.
- (4) The director shall review every incident or accident causing injury to a child and document the appropriate corrective action taken to avoid a reoccurrence.
- (5) In the absence of the director, a staff member must be designated to oversee the operation of the center during the director's absence. The director or designee shall be in charge and physically available while children are in care, and shall ensure there is sufficient, qualified staff so that the care, wellbeing, health, and safety needs of children are met at all times.

(6) If the director will be absent from the center for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The designee must meet all the requirements of this rule.

(7) The owner of a child care center may serve as director if the owner meets the qualifications specified in this rule.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE IV GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES (1) All staff members and adult household members must:

- (a) meet immunization requirements pursuant to ARM 37.95.160;
 - (b) meet background check requirements pursuant to ARM 37.95.161; and
 - (c) sign a health attestation.
- (2) Directors and early childhood teachers must:
- (a) be at least 18 years old;
 - (b) complete facility overview training;
 - (c) be current on the ECP Practitioner Registry;
 - (d) have current certification for infant, child, and adult CPR, infant choking response, and standard first aid; CPR certification must be completed in a hands-on setting; and
 - (e) successfully complete required early childhood teacher orientation as outlined in [NEW RULE II].
- (3) Trainees must meet the requirements of (1), (2)(a), and (b) and:
- (a) shall not be left alone with children as outlined in [NEW RULE II](2); and
 - (b) shall not remain in this role for longer than 30 days.
- (4) Substitute teachers must meet all the requirements of this rule except for (2)(c).
- (5) Only directors, early childhood teachers, lead teachers, assistant teachers, trainees, and substitute teachers may provide direct care and count in ratios.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

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

37.95.102 DEFINITIONS (1) ~~"Aide" means a facility staff person who carries out assigned care-giving tasks under the direct supervision of a primary care-giver or director.~~

~~(2) "Care-giver" means a licensee, registrant, employee, aide, or volunteer who is responsible for the direct care and supervision of children in a day care facility.~~

(3) remains the same, but is renumbered (1).

(2) "Child care center" is the same as "Day-care center" as defined in 52-2-703, MCA.

(3) "Child care facility" is the same as "Day-care facility" as defined in 52-2-703, MCA. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.

~~(4) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours~~ is defined in 52-2-703, MCA. In addition to the definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.

~~(5) through (7) remain the same.~~

~~(8) "Department" means the Department of Public Health and Human Services provided for in 2-15-2201, MCA.~~

~~(9) through (11) remain the same, but are renumbered (8) through (10).~~

(11) "Early childhood assistant teacher (ECAT)" or "assistant teacher" means a facility staff member who carries out assigned care-giving and teaching tasks under the direct supervision of an early childhood lead teacher or center director.

(12) "Early childhood lead teacher (ECLT)" or "lead teacher" means a facility staff member who meets the requirements as outlined in ARM 37.95.622 and who regularly provides direct care and teaching to the children who attend the day care or child care facility.

(13) "Early childhood teacher (ECT)" or "teacher" means a facility staff member who is responsible for the direct care, teaching, and supervision of children in a day care or child care facility. This term includes ECAT and ECLT.

(14) "Facility overview training" is a training provided by the facility director or designee to orient a new staff member to facility-specific policies, procedures, and department requirements pertaining to their role.

~~(12) "Family day care home" means a private residence in which day care is provided to three to six children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under age two, family day care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.~~

(15) "Family child care facility" is the same as a "Family child care home" as defined in 52-2-703, MCA. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under

age two, a family child care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.

(16) "Family, Friend, and Neighbor care (FFN)" is a child care provider type that provides care to no more than two children from separate families or all children from a "sibling group." Care may be in the child's home or the provider's home and registration is for payment purposes as provided in 52-2-713, MCA.

~~(13) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided exclusively for children under age two. For facilities providing care exclusively for children under age two, group day care home means a place in which supplemental parental care is provided for up to eight children under age two. No other children shall be in attendance.~~

~~(a) Facilities caring exclusively for children under age two shall maintain a staff/infant ratio of one caregiver for each four infants in attendance.~~

~~(b) Facilities may not provide care to more than three children under the age of two years while also caring for children over two years of age when only one caregiver is present.~~

(17) "Group child care facility" is the same as "Group day-care home" as defined in 52-2-703, MCA.

(18) "Group size" means the number of children in a defined space.

~~(14) through (18) remain the same, but are renumbered (19) through (23).~~

~~(19) "License" means a written document issued by the department that the license holder has complied with the applicable standards and rules for day care centers.~~

~~(20) and (21) remain the same, but are renumbered (24) and (25).~~

(26) "Montana Early Childhood Project (ECP)" is an integrated professional development system created to build a knowledgeable, competent, and stable early childhood workforce.

(27) "Montana ECP Practitioner Registry" is an early childhood professional recognition system and career path in Montana.

~~(22) (28) "Night care" means care provided for a child between the hours of 7 8 p.m. and 7 5 a.m. during which the parents desire a child to sleep.~~

~~(23) remains the same, but is renumbered (30).~~

~~(24) "Nonprovider staff" means a staff person of a day care facility who does not participate in a care-giving role.~~

~~(25) remains the same, but is renumbered (29).~~

~~(26) through (35) remain the same, but are renumbered (31) through (40).~~

~~(36) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of Title 52, chapter 2, part 7, MCA.~~

~~(37) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify compliance with the prescribed standards and promulgated rules.~~

~~(38) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this rule and the applicable standards for family day care home and group day care homes.~~

~~(39) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week for six hours a day or more.~~

~~(40) remains the same, but is renumbered (41).~~

~~(41) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.~~

~~(a) The term includes the status of a child described above in a step or adoptive relationship.~~

(42) "Relative care" means the child is the brother, sister, first cousin, nephew, niece, grandchild, or great grandchild of the person providing child care and includes a child in a step, foster, or adoptive relationship.

~~(42) through (45) remain the same, but are renumbered (43) through (46).~~

~~(46) "School age child" means a person who is at least five years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.~~

(47) "Sibling group" means all children are from the same household. For the purposes of FFN, this can also include first cousins and foster children who are not blood related.

(48) "Staff member" is a director, trainee, support staff, substitute, ECAT, ECLT, or ECT.

~~(47) through (49) remain the same, but are renumbered (49) through (51).~~

(52) "Support staff" means a staff member of a child care facility who does not participate in a direct care-giving role and is not counted in ratios. Examples of support staff would be cooks, administrative staff, foster grandparents, or cleaning staff.

~~(50) remains the same, but is renumbered (53).~~

(54) "Trainee" means a staff member who has been approved to work in a child care facility based on initial criteria but has not yet completed required training.

~~(51) and (52) remain the same, but are renumbered (55) and (56).~~

~~(53) "Volunteer" means any person who enters into service voluntarily, but who when in service is subject to discipline and regulations like any other employee.~~

(57) "Waiver" means the department has approved an exception to a rule within this chapter.

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.103 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION FAMILY, FRIEND, AND NEIGHBOR (FFN) AND RELATIVE CARE PROVIDER (RCP): REQUIREMENTS AND PROCEDURES (1) The applicant and all adults who reside in the applicant's home must provide authorization for ~~criminal, FBI, state and national sexual/violent offender registry, and child protective services background checks for the period of time from the present date back to the date of the individual's 18th birthday pursuant to ARM 37.95.161(1).~~

(2) If the background checks reveal any of the following, the application will be denied:

- ~~(a) Child Protective Services (CPS) substantiation against the applicant or other adult in the household, or an open CPS case against the applicant or adult in the household;~~
- ~~(b) conviction of a crime involving sex;~~
- ~~(c) conviction of a crime involving violence;~~
- ~~(d) conviction of a crime involving drugs;~~
- ~~(e) conviction of driving under the influence (DUI) within three years of the application date (applies only to the applicant, not the other adults in the household);~~
- ~~(f) conviction of child endangerment;~~
- ~~(g) conviction of a crime involving a weapon, including firearms or knives;~~
- ~~(h) conviction of any crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children; and~~
- ~~(i) pending charges by a law enforcement agency for a crime that would otherwise be a disqualifying record, if convicted.~~

An application must be denied for reasons identified in ARM 37.95.176.

(3) An application will also be denied for the following reasons:

- ~~(a) applicant fails to provide all necessary documentation needed to determine eligibility within the 30-day time limit;~~
- ~~(b) remains the same, but is renumbered (a).~~
- ~~(c) applicant's statement of health form reveals the applicant or other adult in the household has an ongoing illness that bears upon the applicant's ability to have responsibility for the safety and well-being of children;~~
- ~~(d) and (e) remain the same, but are renumbered (b) and (c).~~

(4) Legally certified FFN providers must also meet the following requirements to be certified registered under this chapter:

- ~~(a) remains the same.~~
- ~~(b) within 60 calendar days of approval, attend a training or orientation session provided or approved by the department that includes health and safety issues;~~
- ~~(c) (b) limit the care they provide to a period of less than 24 consecutive hours in any day;~~
- ~~(d) (c) care for no more than two children at a time, unless the children are from the same household. If the children are from separate households, then a legally certified provider may care for no more than two children may care for either a sibling group of any size or no more than two unrelated children;~~
- (d) attend orientation approved by the department that includes health and safety training;

(e) ~~must provide appropriate verification of the attestations and other requirements in this rule upon request from the department. The department may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to and during certification, the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to safely care for children~~ hold current certification for infant, child and adult CPR, infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting; and

(f) ~~only legally certified providers may transport children while in their care~~ complete at least eight hours of approved annual training per year. This training must include health and safety training.

(5) ~~Legally certified providers are not eligible to be reimbursed for child care services provided while home schooling~~ The department may investigate and inspect the conditions and qualifications of any FFN provider and the home that care is provided in.

(6) FFN providers must meet the applicable requirements of ARM 37.95.115, 37.95.121, 37.95.126, 37.95.127, 37.95.171, 37.95.172, 37.95.182, 37.95.184, 37.95.706, 37.95.708, 37.95.1001, 37.95.1003, 37.95.1005, 37.95.1011, 37.95.1015, 37.95.1016, and [NEW RULE I].

(7) Relative care providers are exempt from (4)(e) and (f), (5), and (6).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731 MCA

37.95.106 DAY CHILD CARE FACILITIES, REGISTRATION, OR LICENSING (1) and (2) remain the same.

(3) ~~Before a regular one-year child care center license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter~~ the applicant must have the following:

(a) through (e) remain the same.

(f) ~~a signed DPHHS personal statement of health~~ statement for licensure form for each ~~caregiver, aide, or volunteer~~ staff member who has direct contact with the children in care;

(g) ~~a criminal background and child and adult protective services check~~ meet background check requirements pursuant to ARM 37.95.161 on the provider or and staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(h) remains the same.

(i) ~~a written fire and emergency evacuation~~ disaster plan for all buildings used for child care services in accordance with [NEW RULE I]. ~~For license renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and~~

(j) remains the same.

(4) Before a regular ~~one-year~~ group or family child care facility registration certificate may be granted, ~~the following shall be submitted by the applicant at the time of application and annually thereafter~~ the applicant must have the following:

(a) a ~~DPHHS personal statement of health form~~ attestation for each ~~care-giver, aide, or volunteer~~ staff member who has direct contact with the children in care;

(b) remains the same.

(c) a criminal background and child and adult protective services check on the provider or staff member over age 18, ~~including care-givers-aides, volunteers, kitchen and custodial staff,~~ and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(d) a ~~written fire and emergency evacuation~~ disaster plan in accordance with [NEW RULE I]. ~~For registration certificate renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and~~

(e) remains the same.

(5) through (7) remain the same.

(8) After receiving a written request from a director, any provision of a rule within this chapter may be waived at the discretion of the department where the department has the authority to do so and if the department determines that the health and safety to the children in care is not diminished. The written request must:

(a) include the basis for request such as significant hardship to facility;

(b) propose an alternative that is consistent with best practices in early childhood standards; and

(c) demonstrate that the alternative will meet the intent of the rule.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 53-4-504, 53-4-507, MCA

37.95.108 DAY CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES (1) The department may investigate and inspect the conditions and qualifications of any day child care facility or any person seeking or holding a license or registration.

(2) A family day or group child care ~~home or group day care home~~ facility must be registered. A day child care center must be licensed.

(3) Licensing, registration, and inspection of ~~family day care homes, group day care homes, and centers~~ child care facilities are the responsibility of the department with the exception of the required local health authority and state fire marshal inspections. ~~Licensing and issuing certificates of registration are delegated to the supervisor of the day care licensing program.~~

(4) remains the same.

(5) ~~Within 30 days of receipt of the signed and completed application forms, the department will evaluate the application for registration or licensure based upon the requirements found in these rules.~~

~~(a) A prospective family day care home or group day care home that meets all requirements as evidenced by the application shall be issued a registration certificate. The registration certificate may be provisional, restricted, or regular.~~

~~(b) A prospective day child care center facility will be visited and the program and facility inspected by a licensing worker within 30 days of receipt of the completed application prior to approval. If the applicant meets the requirements for licensure the department will issue a license or registration to the applicant. The license may be either provisional or regular.~~

~~(6) A provisional registration certificate or license may be issued for a period of up to three months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second three month provisional certificate or license may be issued in special circumstances, at the discretion of the program supervisor, the total length of time of issuance not to exceed six months.~~

~~(a) A plan for full compliance with requirements for registration or licensure must be submitted by the day care facility to the department before issuance of a provisional certificate or license.~~

~~(b) Written notification of the granting of a provisional certificate or license by the department must be made to the licensee, or registrant specifying the reason, duration, and conditions for continuing or terminating the provisional certificate or license.~~

~~(c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the public health authorities.~~

~~(d) The department may not issue a provisional certificate registration or license to any day child care facility which does not have current public liability insurance and fire insurance.~~

~~(7) Regular registration certificates and licenses are issued from the department's Quality Assurance Division licensure bureau for periods up to three years.~~

~~(a) A three year license or registration may be offered to any provider who has not received a notice of deficiency during a current on site inspection.~~

~~(b) A two year license/registration may be offered to a provider who has five or fewer deficiencies in areas of the rules that the department determines do not significantly affect or threaten the health and safety of any child attending the facility.~~

~~(c) A provider who has been in operation less than one year is not eligible for an extended license/registration.~~

~~(8) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke, or reduce to a provisional status a registration certificate or license upon finding that the applicant has not met the requirements for licensure or registration set forth in these rules.~~

~~(9) Suspension or revocation may be immediate if:~~

~~(a) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm;~~

~~(b) the department requests and is denied access to the licensed or registered facility;~~

~~(c) the provider has made any misrepresentations to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes;~~

~~(d) the provider, a member of the provider's household or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 37.95.1016.~~

~~(e) through a child care licensing investigation, it is determined that the provider, provider staff or member of the provider's household has violated a licensing regulation which results in the harm to a child as defined in 41-3-102, MCA; or~~

~~(f) information received from law enforcement and tribal law enforcement indicating the provider has caused physical, sexual, or emotional harm to a child.~~

~~(10) The provider shall maintain all policies, records, and reports that are required by the department. These policies, records, and reports must be reviewed and updated annually.~~

~~(11) The registration certificate or license is not transferable to another operator or site.~~

~~(12) The department must be notified of any changes that would affect the terms of the registration or licensure.~~

~~(13) Separate registration certificates and licenses shall be required for programs maintained on separate premises even when operated by the same provider.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

37.95.117 DAY CHILD CARE FACILITIES, JOINT PROGRAMS (1) through (3) remain the same.

~~(a) multiple day care group homes which are currently operating under a "double group" registration within a single structure will have three years or until September 30, 2003, to either upgrade to center status and meet all center requirements, or relinquish one group registration and limit the number of children accordingly.~~

(4) remains the same.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-731, 53-4-504, MCA

37.95.121 CHILD CARE FACILITIES: SAFETY REQUIREMENTS

(1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children. Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

(2) through (13) remain the same.

(14) Bathtubs, buckets, and other water receptacles must be emptied immediately after use.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 52-2-735, MCA

37.95.127 DAY CHILD CARE FACILITIES: SWIMMING (1) through (3) remain the same.

~~(4) Bathtubs, buckets, and other water receptacles shall be emptied immediately after use.~~

(5) through (8) remain the same, but are renumbered (4) through (7).

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-735, MCA

37.95.139 DAY CHILD CARE FACILITIES: HEALTH CARE REQUIREMENTS (1) through (7) remain the same.

(8) The facility must have a plan for preventing and responding to emergencies due to food and allergic reactions.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

37.95.141 CHILD CARE FACILITIES: RECORDS (1) The facility ~~shall~~ must keep a daily attendance record of the children for whom care is provided.

(2) The facility ~~shall~~ must have a master list of the name, address, and phone number of all children in their care and their parents.

(3) If medications are administered at the facility, the facility ~~shall~~ must maintain a medication administration log.

~~(4) All records of the facility shall be made available to the department upon request.~~

~~(5)~~ (4) Prior to a child being enrolled or entered into a day child care facility, the following information, signed by the parent or guardian, must be on file:

(a) and (b) remain the same.

(c) necessary medical forms, including all medication authorization and administration logs, signed and updated immunization records, and the names of emergency contact persons; and

(d) an emergency consent form. This form must accompany staff when children are away from the day child care site for activities; and

~~(e) (5) a record of each fire emergency drill conducted pursuant to ARM 37.95.706 [NEW RULE I], including who conducted the drill, when the drill took place, how many adults and children were present, the time of day the drill occurred and how long it took to evacuate must be on file.~~

(6) The facility must maintain incident and injury reports which include the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parent was notified for any injury or incident that occurs in the facility. If an injury requires the use of first aid or medical attention, the facility must provide a copy to the parent and keep a copy signed by the parent in the child's file.

~~(6) (7)~~ The information supplied in ~~(4) (5)(a) through (d) and (5)~~ must be maintained on forms provided by the department and must be signed by the parent or guardian.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-731, 52-2-732, 52-2-736, MCA

37.95.160 DAY CHILD CARE FACILITIES: STAFF RECORDS (1)

The ~~provider~~ director shall must maintain records regarding each ~~care-giver~~ staff member, according to their role type, which include:

(a) ~~a record of training and verifiable experience~~ verification of CPR and first aid training;

(b) ~~results of a criminal and protective services background check~~ a copy of the release of information for background checks;

(c) ~~personal statement of health~~ statement and contact information and ~~verification of CPR and first aid~~; and

(d) immunization records that establish compliance with

ARM 37.95.140 ~~37.95.184~~.

(2) ~~The facility shall maintain a current list of staff that specifies each staff person's legal name, position, age, residential and mailing addresses, and phone numbers.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-732, MCA

37.95.161 DAY CHILD CARE FACILITIES: CRIMINAL BACKGROUND

CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each day child care provider, on all staff ~~members over the age of 18, including care-giver, administrative staff, aides, volunteers, kitchen and custodial staff,~~ and all persons over the age of 18 residing in the day child care facility or who stays in the day child care facility regularly or frequently.

(2) through (6) remain the same.

(7) ~~An annual name based criminal records check for all providers, all staff, including caregivers, administrative staff, aides, volunteers, kitchen and custodial staff, and persons residing in the day care facility, is required for relicensure.~~

(8) and (9) remain the same, but are renumbered (7) and (8).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.162 DAY CHILD CARE FACILITIES: REQUIRED ANNUAL

TRAINING (1) ~~The provider and all care-givers~~ All directors, early childhood teachers, and assistant teachers, at any day child care facility must each verify that ~~they have successfully completed~~ complete a minimum of at least eight hours of continuing education annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date annual training required to be current on the ECP Practitioner Registry.

(2) The training may be obtained from through the department or other department approved professional child care education and development programs offered:

(a) by national, state, or local child care organizations sponsors approved through the Montana professional development approval system;

(b) by institutions of higher education that are regionally accredited; or

(c) through the successful completion of college-level course work in early childhood areas, education, or child development.

(3) Approved Education and training must relate to the Montana Early Care and Education Knowledge Base and must fall within the following categories:

(a) through (k) remain the same.

(4) With the exception of volunteers, any Any person who provides care to children in a day child care facility for at least less than 460 500 hours a year is not required to successfully complete eight hours of approved education or training annually annual training or be current on the ECP Practitioner Registry.

(5) Teachers and assistant teachers at facilities that provide care exclusively to school-age children must complete at least eight hours of continuing education annually and are not required to be on the Practitioner Registry.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.172 DAY CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES

(1) Care-givers Children must be supervised children at all times.

(2) The provider, director, and all care-givers teachers and assistant teachers shall must be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.173 DAY CHILD CARE FACILITIES FACILITY: PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING

CHILDREN, VIOLENCE, OR DRUGS (1) A Any care-giver, volunteer, support staff person member; or other adult residing in the day child care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense, or awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.183 DAY CHILD CARE FACILITIES: FIRST AID REQUIREMENTS

(1) remains the same.

(2) A first aid kit must be kept on site at all times and must at a minimum contain:

~~(a) unexpired syrup of ipecac (one ounce bottle) which may be administered only upon directive from the Emergency Montana Poison Control Center or upon directive of the local emergency service program (i.e., 911 operator, local hospital, or physician);~~

~~(b) through (e) remain the same, but are renumbered (a) through (d).~~

~~(f) the toll free number for the Emergency Montana Poison Control Center, 1 (800) 222-1222;~~

~~(g) (e) disposable single use gloves;~~

~~(h) (3) the The director or designee, owner, or manager, or person in charge of the day child care facility shall must take appropriate precautions to minimize the risk of any child suffering sunburn and to minimize the risk of any child contracting West Nile virus; and .~~

~~(3) (4) Each day care provider facility is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care.~~

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

~~(5) (6) The provider shall facility must submit a report to the appropriate local office of the department Child Care Licensing Program (CCLP) within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the day care facility. following types of occurrences:~~

~~(a) lost or missing child or an incident involving a child being left alone;~~

~~(b) suspected maltreatment of a child;~~

~~(c) suspected sexual, physical, or emotional abuse by staff, other children, family members, or other adults while they are on the premises;~~

~~(d) injuries to children requiring medical or dental care;~~

~~(e) illness or injuries requiring hospitalization or emergency treatment;~~

~~(f) mental health emergencies;~~

~~(g) health and safety emergencies involving parents, guardians, and visitors to the program;~~

~~(h) death of a child or staff member, including a death that was the result of a serious illness or injury that occurred on the premises of the child care facility, even if the death occurred outside of the child care facility;~~

~~(i) the presence of a threatening individual who attempts or succeeds in gaining entrance to the child care facility; or~~

~~(j) fire involving the child care facility or on the premises.~~

~~(6) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.~~

~~(7) A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the child care facility.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.184 DAY CHILD CARE FACILITIES: HEALTH HABITS (1) Good health habits, such as washing hands, must be taught during everyday activities. The ~~caregivers~~ staff members must ensure that each child washes his their hands:
(a) through (3) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.602 DAY CHILD CARE CENTERS, PROGRAM REQUIREMENTS

(1) The program conducted in a day child care center ~~must~~ shall be written and must provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth, and well being. Both active and passive learning experiences must ~~shall~~ be provided under direct adult supervision.

~~(2) Each Center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualification of a primary caregiver.~~

~~(3)~~ (2) The requirement in (1) must ~~shall~~ be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program, and confirms the program is based upon the criteria below:

(a) through (c) remain the same.

(d) the center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. ~~Care-givers~~ Early childhood teachers are required to secure a release from parents before children are taken on field trips;

(e) and (f) remain the same.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.606 DAY CHILD CARE CENTERS, DISCIPLINE (1) ~~Care-givers~~ Early childhood teachers ~~shall~~ must use appropriate forms of discipline. Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in day child care facilities. Discipline ~~shall~~ must include positive guidance, redirection, and the setting of clear limits that foster the child's ability to become self-disciplined.

(2) through (4) remain the same.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.622 DAY CHILD CARE CENTERS: STAFFING QUALIFICATIONS

(1) All providers, staff members, and volunteers at a day care center must be:

(a) ~~able to demonstrate they are physically, emotionally, and mentally capable of performing the essential functions of the position with or without reasonable accommodations~~ meet immunization requirements pursuant to ARM 37.95.184;

(b) ~~free of communicable disease~~ have appropriate background checks pursuant to ARM 37.95.161; and

(c) ~~immunized in compliance with ARM 37.95.140; and~~ sign a health attestation.

(d) ~~able to demonstrate they are of good moral character.~~

(2) ~~Each Center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualification of a primary caregiver.~~

(3) ~~A center director must obtain 15 hours of approved education or training on an annual basis.~~

(4) (2) ~~A primary care-giver~~ An early childhood lead teacher must meet the following requirements:

(a) ~~remains the same.~~

(b) ~~have sufficient language skills to communicate with children and adults~~ complete facility overview training;

(c) ~~have at least one day of on the job orientation~~ be current on the ECP Practitioner Registry; and

(d) ~~receive a minimum of at least eight hours of documented continuing education annually as provided in ARM 37.95.162; and~~ have current certification for infant, child, and adult CPR and infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting;

(e) ~~have the following training and experience: successfully complete required early childhood teacher orientation as indicated in [NEW RULE II]; and~~

(f) ~~have the following training and experience:~~

(i) ~~two years of experience in an early childhood program such as a day-care center, a family or group day care home~~ licensed or registered child care facility, or Head Start, plus 32 hours of ECP training ~~early headstart, or another recognized preschool program; or~~

(ii) ~~child development associate credential; or~~ level 2 or higher on the ECP Practitioner Registry.

(iii) ~~a bachelor of arts or an associate degree in education or a related field;~~

(f) ~~hold a current course completion card in infant, child and adult CPR and infant choking response; and~~

(g) ~~be currently certified in standard first aid.~~

(5) ~~Course completion as indicated in (4)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

- ~~(6) (3) An aide early childhood assistant teacher must be directly supervised by a primary care-giver and shall be at least 16 years of age and must:~~
- ~~(a) have sufficient language skills to communicate with children and adults be supervised by an early childhood lead teacher or director; and~~
 - ~~(b) have at least one day of on-the-job orientation be at least 16 years old; and~~
 - ~~(c) successfully complete a minimum of at least eight hours of verified education or training annually as required in ARM 37.95.162 meet the requirements of (2)(b) through (e).~~
 - ~~(4) Substitute teachers must meet the requirements in (1) through (3) with the exception of (2)(c).~~
 - ~~(5) A trainee must meet the requirements in (1) and (3)(a) and (b) and may not remain in this role for longer than 30 days.~~
 - ~~(6) Only directors, early childhood teachers, assistant teachers, trainees, and substitute teachers may provide direct care.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.623 DAY CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS

- (1) The child-to-staff ratio and maximum group size for a day child care center are is:
- (a) 4:1 for children zero months through 23 months with a maximum group size of 12;
 - (b) 8:1 for children two years through three years with a maximum group size of 16;
 - (c) 10:1 for children four years through five years with a maximum group size of 24; and
 - (d) 14:1 for six years and over with a maximum group size of 32.
- (2) remains the same.
- (3) Only the day-care center director, primary caregivers early childhood lead teachers, assistant teachers, trainees, and aides substitute teachers may be counted as staff when determining the staff ratio.
- (4) Group sizes must be maintained except for mealtimes, or periods when children are using their rest equipment, or when large group activities, such as educational assemblies, occur.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY DAY CHILD CARE HOMES FACILITIES: PROVIDER DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

- (1) ~~The provider and all persons responsible for children in the day care home must:~~
- ~~(a) be at least 18 years of age;~~
 - ~~(b) demonstrate they are physically, emotionally, and mentally capable of performing the essential function of their position with or without reasonable accommodations;~~

~~(c) be free of communicable disease;~~
~~(d) have met the immunization requirements of ARM 37.95.140; and~~
~~(e) demonstrate they are of good moral character~~ Each facility must have a director. The director is responsible for operation of the child care facility at all times and must ensure appropriate safety, supervision, protection, and guidance of the children.

~~(2) The provider and all staff, including care-givers, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. The director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the care-giver providing care~~ The director must meet the following requirements:

(a) be at least 18 years of age;
(b) be immunized pursuant to ARM 37.95.160;
(c) sign a health attestation;
(d) meet background check requirements of ARM 37.95.161;
(e) successfully complete an approved new director orientation such as program essentials;
(f) be current on the Montana ECP Practitioner Registry;
(g) have current certification for infant, child, and adult CPR, infant choking response, and standard first aid. CPR must be completed in a hands-on setting; and
(h) successfully complete required early childhood teacher orientation as indicated in [NEW RULE II].

~~(3) The provider, or an approved care-giver designated by the provider, shall be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities~~ In the absence of the director, a staff member must be designated to oversee the operation of the facility. The director or designee must be in charge and physically available while children are present, and must ensure there are sufficient, qualified, and approved staff so that the care, wellbeing, health and safety needs of children are met at all times.

~~(4) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first 60 days of certification. This orientation must include the following areas:~~

~~(a) health;~~
~~(b) safety;~~
~~(c) child development/well being;~~
~~(d) discipline/guidance;~~
~~(e) nutrition/food safety; or~~
~~(f) business aspects of a child care business~~ If the director will be absent from the facility for more than 30 continuous days, the department must be given written notice of the individual who has been appointed the designee. The appointed designee must meet all the requirements of this rule.

(5) Orientation training does not count toward the required eight hours of approved education or training education as specified in (6) The director must ensure compliance with all applicable administrative rules.

(6) ~~The provider and all care-givers must annually verify that they have met the training requirements set out in ARM 37.95.162~~ The director must review every incident or accident causing injury to a child and document the appropriate corrective action taken to avoid a reoccurrence.

(7) ~~The provider must hold current course completion cards in CPR for infant, child, and adult CPR; infant choking response; and standard first aid. Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.705 GROUP AND FAMILY DAY CHILD CARE HOMES FACILITIES:
BUILDING REQUIREMENTS (1) ~~The day care home~~ Each facility must have a minimum of 35 square feet per child of indoor play and learning space per child, not including food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, and storage shelving spaces, as well as 75 square feet per child of outdoor play space per child.

(2) ~~Every story of the day care facility that is used for day care purposes must have at least two remotely located means of egress as defined in ARM 37.95.102(42). All areas used for day care purposes must have at least one door for egress that is at least 34 inches wide and must also have at least one other means of egress that provides a clear opening of at least 20 inches in width, 24 inches in height and 5.7 sq. feet in area. The bottom of the opening shall not be more than 44 inches above the floor. If windows are used for rescue or exiting purposes, the provider shall have a written and feasible evacuation plan. All exits must be unobstructed at all times~~ Each level of the facility used for child care purposes must have at least two means of emergency egress.

(a) One egress must be a door that is at least 32 inches wide and 80 inches tall.

(b) The second egress may be a window that provides a clear opening of at least 20 inches in width and 5.7 sq. feet in area. The bottom of the exit must not be more than 44 inches above the floor.

(c) All identified means of egress must be unobstructed at all times.

(3) ~~Remotely located means of egress from each room as required in (2) are not required in buildings protected throughout by an approved, automatic residential sprinkling system, or where the room or space has a door leading directly to the outside of the building~~ All nap rooms must have at least two egresses, which meet the requirements of (2).

(4) ~~If basements are used for day care purposes:~~

~~(a) in facilities newly licensed on or after the effective date of these rules or for which there is a change in ownership on or after the effective date of these rules~~

~~each designated area for children's activities must have two means of egress that are remote from each other unless:~~

~~(i) the basement areas are protected by an approved, automatic residential sprinkler system; or~~

~~(ii) if the basement area contains an approved sprinkling system, then the area is only required to have direct egress from the basement. If children are sleeping in the basement area, then the requirements of (5) apply.~~

~~(b) the basement must be dry, well ventilated, warm and well lighted All rooms must be dry, well ventilated, and well lit.~~

~~(5) All rooms used for napping by children must have at least two means of escape, at least one of which shall be a door or a stairway providing a means of unobstructed travel to the outside of the building at street or ground level to the public way. The second means of escape may be a window which meets the egress requirements of (2).~~

~~(6) (5) Third stories in dwellings must not be used for day child care purposes and must be barricaded or locked to prevent entry by children.~~

~~(7) through (9) remain the same, but are renumbered (6) through (8).~~

~~(10) (9) Protective receptacle covers must be installed on e Electrical outlets must be tamper resistant or covered in all areas occupied by children under five years of age.~~

~~(11) The home building and grounds used by children must be maintained to ensure the following:~~

~~(a) through (d) remain the same.~~

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.706 GROUP AND FAMILY DAY CHILD CARE HOMES, FACILITIES:
FIRE SAFETY REQUIREMENTS (1) In an emergency, all occupants of the day child care facility must be able to escape from the home or building in a safe and timely manner.

(2) A fire extinguisher must be easily accessible on each floor level. ~~The have~~ a minimum level of extinguisher classification is of 2A10BC. ~~Fire extinguishers shall and~~ be mounted near outside exit doors.

(3) All day child care facilities must have operating UL smoke detecting ~~devices~~ alarms on each floor of the facility, installed in accordance with the manufacturer's specifications. Smoke ~~detectors~~ alarms must be installed in front of the doors to stairways, and in corridors of all floors, ~~occupied by the day care.~~ ~~Smoke detectors must be installed and in any all rooms in which where~~ children sleep. If individual battery-operated smoke detectors are used, the following maintenance is required:

~~(a) (4) s~~Smoke detectors alarms must be tested at least once a month to ensure that they are operating correctly ~~and have new operating batteries installed at least once each calendar year; and must be replaced every 10 years.~~

~~(b) the placement and number of detectors in a home or building must be adequate to awaken all sleeping occupants.~~

~~(4)~~ (5) All wood burning stoves must meet building codes for the installation and use of such stoves. If used during the hours of care, the stove must be provided with have a protective enclosure.

~~(5)~~ (6) No portable electric or unvented fuel-fired heating devices are allowed. All radiators, if too hot to touch, must be provided with have a protective enclosure.

~~(6)~~ (7) A minimum of eight fire drills must be conducted annually, at least one month apart as weather permits. Records, including who conducted the drill, when the drill took place, how many adults and children were present during the drill, the time of day the drill occurred, and how long it took to evacuate everyone must be maintained at the facility and made available for review The facility must post an evacuation plan and maintain the fire safety record as defined in [NEW RULE I].

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.730 GROUP DAY CHILD CARE AND FAMILY DAY CHILD CARE HOMES FACILITIES; REGISTRATION SERVICES PROVIDED (1) and (2) remain the same.

(3) The department will visit and inspect ~~at least 20% of all registered family and group day child care homes facilities and group day care homes annually.~~

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-733, MCA

37.95.1005 INFANT'S AND TODDLER'S, SLEEPING (1) There ~~shall~~ must be adequate opportunities for sleep periods during the day suited to the infant's and toddler's individual needs.

(2) Unless the parent has provided medical documentation from a health care provider ordering otherwise, infants ~~shall~~ must be placed on their back and on a firm surface to reduce the risk of Sudden Infant Death Syndrome (SIDS).

(3) Each infant ~~shall~~ must be provided with a crib or play pen for sleeping. At the discretion of the parent and provider, a cot or mat may be used once a child turns one year of age as long as a safe sleep environment is provided. Children one year of age through 18 months who are placed on a mat must have a signed permission statement in the file indicating that the parent has given permission for their child to be placed on a mat. In addition, ~~a caregiver~~ an early childhood teacher must remain with the child while they are sleeping.

(a) Infants and toddlers ~~shall~~ must not be routinely allowed to sleep in a car seat, infant swing, or other infant apparatus.

(b) remains the same.

(4) Cribs ~~shall~~ must be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs ~~shall~~ must have no more than 2 and 3/8 inches of space between the vertical slats. No later than December 28, 2012, all cribs must meet the requirements for full-size baby cribs and non-full-size baby cribs as specified by the Consumer Product Safety Commission at 16 CFR Part 1219 (2011)

and 16 CFR Part 1220 (2011), incorporated by these references. A copy of the requirements for full-size baby cribs and non-full-size baby cribs is available at <http://www.dphhs.mt.gov/earlychildhood/cribrequirements.shtml>, or by contacting the Montana Child Care Licensing Program at P.O. Box 202953, Helena, Montana 59620; Phone: (406) 444-2012.

(5) remains the same.

(6) Cribs, cots, or mats ~~shall~~ must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit. Aisles between cribs or cots ~~shall~~ must be kept free of obstructions while cribs or cots are occupied. The use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first.

(7) All pillows, quilts, comforters, heavy blankets, sheepskins, bumper pads, stuffed toys, and other soft products ~~shall~~ must be removed from the crib and play pen.

(a) remains the same.

(8) Each infant and toddler ~~shall~~ must have been provided by the parent with a clean washable blanket or other suitable covering for ~~his~~ their use while sleeping. Each infant's and toddler's bedding ~~shall~~ must be stored separate from bedding used by other children.

(9) All cries of infants and toddlers ~~shall~~ must be investigated.

~~(10) The licensee or registrant of facilities licensed/registered after the enactment of these rules must receive training in an approved safe sleep curriculum before being granted approval for children under age two. Any caregiver who provides care to children under age two must receive training in an approved safe sleep curriculum within 60 days of hire. Caregivers who have not received the safe sleep training shall be supervised by an individual who has successfully completed the approved safe sleep curriculum in order for the caregiver to provide care to children under age two. Facilities licensed or registered before the effective date of these rules will have until July 31, 2013 to complete this training.~~

~~(11) Providers~~ The facility must develop a written policy that describes the practices to be used to promote a safe sleep environment when children under age two are napping or sleeping.

~~(12) (11) All caregivers shall~~ early childhood teachers must sign an acknowledgement indicating that they have read and understood the ~~provider's~~ facility's policy outlined in ~~(11) (10)~~.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

5. The department proposes to repeal the following rules:

37.95.145 DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES is found on page 37-23317 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-722, 52-2-725, MCA

37.95.150 DAY CARE FACILITIES: LICENSE OR REGISTRATION CERTIFICATE TO BE POSTED is found on page 37-23321 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-721, MCA

37.95.166 DAY CARE FACILITIES: STAFF APPROVAL is found on page 37-23329 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.174 DAY CARE FACILITIES: NO THREAT FROM PERSONS IN CONTACT WITH CHILDREN is found on page 37-23334 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to adopt NEW RULES I, II, III, and IV, amend ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.117, 37.95.121, 37.95.127, 37.95.139, 37.95.141, 37.95.160, 37.95.161, 37.95.162, 37.95.172, 37.95.173, 37.95.183, 37.95.184, 37.95.602, 37.95.606, 37.95.622, 37.95.623, 37.95.703, 37.95.705, 37.95.706, 37.95.730, and 37.95.1005; and repeal ARM 37.95.145, 37.95.150, 37.95.166, and 37.95.174, pertaining to licensing requirements for child care facilities.

As a result of the Child Care and Development Block Grant Reauthorization Act (Act), the U.S. Office of Child Care has directed states to implement new requirements for purposes of continued funding. These requirements focus on child care health and safety in addition to improving the quality of care that children receive. There are 10 required health and safety areas that must be met. Currently, requirements are in place for the majority of these areas. However, there are some requirements that need to be implemented in order to meet the areas identified within the Act. States are required to have the areas identified within the Act by September 2016. Montana was issued a waiver extending the implementation date to February 28, 2018.

The department is also proposing regulations surrounding preparation for disasters and emergencies. Currently, the regulations do not require child care facilities to plan for a natural disaster or other emergency. As such, many facilities in Montana most likely would not be prepared if a natural disaster or other emergency occurred.

According to the "Save Our Children 2012" report, 94 percent of American children live in communities at risk of natural disasters. In the first half of 2012, the federal government declared 17 major disasters in as many states.

Department staff conducted significant research concerning emergency preparedness. The department reviewed recommendations and guidelines established through the American Academy of Pediatrics (AAP), the National Resource Center for Health and Safety in Child Care (NRCHSCC), and Save the Children, a national organization that advocates for protection of children from harm. The department's Child Care Licensing Program (CCLP) reviewed a tool developed by the department's Early Childhood Services Bureau (ECSB) entitled "Your Inventory for Keeping Everyone Safe (YIKES)" which has been implemented through the department's Quality Rating System. As a result, approximately 78 Montana child care providers now have an emergency and evacuation plan in place. The proposed requirements are modeled after the NRCHSCC and YIKES. The department also consulted with the State Fire Marshal's office regarding fire drills.

The department also is proposing changes to several regulations related to first aid and injuries or incidents. Although these requirements are not directly related to emergency planning and evacuation, they do pertain to the health and safety of the children and they are consistent with the requirements identified in the research the department conducted.

In addition to the proposed changes pertaining to emergency procedures and disaster preparedness, the department is also implementing additional revisions in the areas of rule numbering, grammar and spelling, and consistent terminology. Punctuation is being amended to comply with administrative rule formatting requirements.

Regarding Adoption of NEW RULES I through IV:

NEW RULE I

Proposed NEW RULE I requires all facilities to have emergency procedures and evacuation plans in place in the event of a natural disaster or emergency. This rule requires licensees or registrants to participate in training to assist them in developing the required plan. Also, the rule requires all employees to be trained on the facility's emergency procedures and evacuation plan. To ensure that the employees and children are prepared for executing the plan, eight emergency drills will be required. Consistent with current licensing requirements, the proposed rule requires six fire drills. The other two emergency drills must simulate disasters identified in the facility's emergency procedures and evacuation plan. As well, the rule will require all employees to be trained on the facility's emergency procedures and evacuation plan.

NEW RULE II

Proposed NEW RULE II requires all early childhood teachers to complete early childhood teacher orientation. Safe sleep training, shaken baby syndrome and abusive head trauma training, infant, child, and adult CPR and first aid training will

be required for new teachers within 30 days of hire and before providing unsupervised care. Other training as identified by the Act will be required within 90 days of hire. Except for CPR and first aid, this training is offered online currently at no cost. The training will count towards annual training.

NEW RULE III

Proposed NEW RULE III outlines center director qualifications and responsibilities. Director qualifications were previously combined with ARM 37.95.622 regarding staffing qualifications and responsibilities. A separate rule is needed to provide clarity and further understanding of the director's responsibilities. In addition, center director qualifications have changed to line up with ECP Practitioner Registry levels.

NEW RULE IV

Proposed NEW RULE IV outlines group and family child care staffing qualifications and responsibilities. These qualifications were previously combined with ARM 37.95.703 which has been changed to group and family child care director responsibilities and qualifications. A separate rule was needed to provide clarity and further understanding of staff qualifications and line up with ECP Practitioner Registry levels.

Regarding the amendment of ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.117, 37.95.121, 37.95.127, 37.95.139, 37.95.141, 37.95.160, 37.95.161, 37.95.162, 37.95.172, 37.95.173, 37.95.183, 37.95.184, 37.95.602, 37.95.606, 37.95.622, 37.95.623, 37.95.703, 37.95.705, 37.95.706, 37.95.730, 37.95.1005:

ARM 37.95.102

The department proposes to change and define new role types. The terms "aide," "caregiver," "primary caregiver," "non-provider staff," and "volunteer" are being removed and replaced with early childhood teacher-based terms and to add value and professionalism to the early childhood career path.

The department proposes to add the term "child care" as an alternative to "day care" as the prior term is more relevant. To align with other rules that are not changing now, "day care" will remain in the definitions until which time "child care" can replace "day care" in all rules.

New terms used in these rules have been proposed and defined. It is proposed that definitions be revised or added to promote continuity.

ARM 37.95.103

The department proposes that Legally Certified Providers be changed to Family, Friend, and Neighbor (FFN). The new provisions within the Act require states to conduct annual inspection on child care facilities. Language has been added to give the department authority to conduct annual inspections. Since the department will be conducting annual visits, it is proposed that background check requirements and denial conditions are in accordance with background check requirements for other facility types.

ARM 37.95.106

Proposed amendments to this rule specify that the emergency procedures and evacuation plan is required only upon initial application. This is necessary because this plan will not change annually, so it is not necessary to submit a plan every renewal year. The department is proposing to update the number of emergency drills to be consistent with the requirements in NEW RULE I.

ARM 37.95.108

The new provisions within the Act require states to conduct pre-inspections inspections on child care facilities. Language has been added to give the department authority to conduct annual inspections.

Sections (8) through (13) have been removed as the same language also exists in other sections within this same chapter.

ARM 37.95.117

The department proposes to remove (3)(a) as the reference to the date within this rule is no longer applicable.

ARM 37.95.121

The new provisions within the Act require states to have requirements for handling and storage of hazardous materials and the appropriate disposal of bio-contaminants. The current regulations address handling and storage but do not provide guidelines for disposal. The department proposes to add language that addresses the disposal of bio-contaminants under (1).

The department proposes to move language about emptying bathtubs, buckets, and other water receptacles from ARM 37.95.127 to (14) in this rule. This rule is currently listed under the "Day Care Facilities Swimming" rule and it would be more appropriate under "Safety Requirements."

ARM 37.95.127

The department is proposing to move (4) to ARM 37.95.121. Sections (5) through (8) have been renumbered.

ARM 37.95.139

The new provisions within the Act require states to have requirements for the prevention of and response to emergencies due to food and allergic reactions. The department proposes to add language under (8) in order to meet this requirement.

ARM 37.95.141

The department proposes to strike language from this rule and add a reference to NEW RULE I. This is necessary because of the department's other proposed changes. The department is proposing to renumber (5)(e) because the provision in this subsection does not pertain to the section where it is located.

The department has added the requirement for maintaining an injury report. Rule language specifying injury report content is addressed under ARM 37.95.183. The department must include a reference in this rule to notify licensed and regulated child care facilities that injury reports are considered a required record.

The department proposes to remove (4) as the language in this rule is repetitive of other rules in this same chapter.

The department is requiring child care facilities to use department forms under (5)(a) through (d). Use and maintenance of these forms help ensure compliance with health and safety requirements.

ARM 37.95.160

The department is proposing to reword (1) for clarity and remove (2) as the department has access to this information through the employee paperwork. The department is also updating other ARM references.

ARM 37.95.161

The department is proposing to reword (1) for clarity and remove (7) as the language in this rule is repetitive of other rules in this same chapter.

ARM 37.95.162

The department is proposing to revise language to provide clarity and align with ECP Practitioner Registry levels.

ARM 37.95.172

The department proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.173

The department proposes to align terminology with changes as listed in definitions.

ARM 37.95.183

The department proposes to remove (2)(a) because syrup of ipecac is no longer recommended or available for purchase.

The department proposes to renumber (2)(h) because the provision in this subsection did not pertain to the current section.

The current language for (5) does not clearly state who must be notified in the event of a serious incident. The department proposes language to clarify that a report must be made to the Child Care Licensing Program. Also added to (5), is additional clarification on incidents that must be reported, who should receive the report, and how it should be maintained.

The department proposes to add updated language to (6) to meet current best practices according to the National Resource Center for Health and Safety in Child

Care. The updated language also provides additional specifications on what is required.

Sections (3) through (5) have been renumbered as (4) through (8).

ARM 37.95.184

The department proposes to change the term "caregivers" to "staff members" in (1) as it is more appropriate for the intent of this rule.

ARM 37.95.602

The department proposes to remove (2) as the proposed revision to the language exists in another section within this same chapter.

Section (3) has been renumbered as (2). (3)(d) has been changed to align terminology with changes in role types as listed in definitions.

ARM 37.95.606

The department proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.622

The department proposes that center staff responsibilities and qualifications are identified separately from center director qualifications and responsibilities which have been moved to [NEW RULE III]. A separate rule was created to provide clarity and further understanding of director qualifications and responsibilities and line up with ECP Practitioner Registry levels.

The department also proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.623

The new provisions within the Act require states to have requirements for group sizes. The department met with a work group to discuss options for group sizes. Through consensus, it was determined the best option was to align group sizes with age groups used to determine ratios. The proposed changes are necessary in order to meet the Act requirements.

The department also proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.703

The department proposes that group and family child care director responsibilities and qualifications are identified separately from other staff qualifications and responsibilities which have been moved to NEW RULE IV. A separate rule was needed to provide clarity and further understanding of director qualifications and responsibilities and line up with ECP Practitioner Registry levels.

ARM 37.95.705

The new provisions within the Act require states to have requirements about electrical hazards. There is currently language about electrical outlets under this rule. This language does not reflect current trends which allow for use of tamper resistant (TR) outlets to be used instead of outlet covers. The department proposes to remove the language under that section and add revised language that includes additional acceptable practices. The department is also proposing to revise language to provide clarity.

ARM 37.95.706

The department is proposing to revise language to provide clarity and to update the number of emergency drills to be consistent with the requirements in NEW RULE I.

ARM 37.95.730

The new provisions within the Act require states to conduct annual inspections for all child care facilities. Language has been added to give the department authority to conduct annual inspections.

ARM 37.95.1005

The language in (10) is being struck as training on safe sleep will be addressed under ARM 37.95.162.

The department proposes to align terminology with changes in role types as listed in definitions.

Sections (11) and (12) have been renumbered as (10) and (11) for numerical ordering.

Regarding the repeal of ARM 37.95.145, 37.95.150, 37.95.166, and 37.95.174:

ARM 37.95.145

The department proposes to repeal as the language in this rule is repetitive of other rules in this same chapter.

ARM 37.95.150

The department is proposing to remove this rule as there is another rule with the same language within this same chapter.

ARM 37.95.166

The department proposes to repeal as the language in this rule is repetitive of other rules in this same chapter.

ARM 37.95.174

The department proposes to repeal as the language in this rule has been incorporated in NEW RULE III.

FISCAL IMPACT

The department believes that there is no fiscal impact related to the proposed rulemaking as described and contemplated by 2-4-302(1)(c), MCA, because the department is not adopting or increasing or decreasing monetary amounts.

Proposed changes will require additional resources in the form of increased travel time. There will be an increase in the number of inspections, more training development - managed through ECSB, additional information tracking, and data base enhancements. Currently, CCLP is not approved to receive additional staffing; however, the Act requires that these rules be implemented. Therefore, the CCLP work duties will be shifted to accommodate the Act.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 22, 2017.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 13, 2017.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.70.305, 37.70.401,	)	PROPOSED AMENDMENT
37.70.402, 37.70.406, 37.70.408,)
37.70.601, and 37.70.607 pertaining)
to Low Income Energy Assistance)
Program (LIEAP))

TO: All Concerned Persons

1. On December 14, 2017, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 1, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.305 APPLICATION (1) through (3) remain the same.

(4) Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or households who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(5) through (7) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) through (23) remain the same.

(24) "Modified LIEAP benefit" means the amount paid to eligible households who reside in publicly subsidized housing and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. The modified LIEAP benefit is equal to 5 percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season or a minimum payment of \$25, whichever is greater paid to the household annually. Households determined eligible for the publicly subsidized housing modified LIEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(25) through (39) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) through (6) remain the same.

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit, or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) through (10) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with one through seven members with annual gross income at or below 60 percent of the estimated state median are eligible for LIEAP benefits on the basis of income. Households with eight or more members are eligible for LIEAP benefits on the basis of income only if the household's annual gross income is at or below 150 percent of the ~~2015~~ 2017 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for LIEAP benefits, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all

members of the household are receiving SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) remains the same.

(3) The department adopts and incorporates by reference the department's Low Income Energy Assistance Program (LIEAP) Table of Income Standards, ~~2015-2016~~ 2017-2018 heating season. The LIEAP table of income standards, ~~2015-2016~~ 2017-2018 heating season, is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(4) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the department's LIEAP Table of Resource Standards, for the ~~2015-2016~~ 2017-2018 heating season. The LIEAP table of resource standards is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(5) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The department adopts and incorporates by reference the department's LIEAP Benefit Award Matrix and Table of Multipliers, for the ~~2015-2016~~ 2017-2018 heating season. The LIEAP Benefit Award Matrix is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by:

(a) through (g) remain the same.

(2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in the LIEAP Benefit Award Matrix for the ~~2015-2016~~ 2017-2018 heating season by the applicable matrix amount in the table of income/climatic adjustment multipliers found in the LIEAP Benefit Award Matrix for the ~~2015-2016~~ 2017-2018 heating season.

(3) remains the same.

(4) Publicly subsidized households whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an

out-of-pocket obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season. However, these households may be eligible for a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season or a minimum payment of \$25, whichever is greater, would be paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change would be determined eligible for a period of five years.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor will be paid a benefit in the amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season and will be paid as follows:

(a) through (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household will be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season does not exceed the benefit amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2015-2016~~ 2017-2018 heating season. Reimbursement will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 20.

(3) and (4) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.70.305, 37.70.401, 37.70.402, 37.70.406, 37.70.408, 37.70.601, and 37.70.607 pertaining to the Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low income households pay their home heating costs. The department proposes to make the following changes to its administrative rules governing LIEAP.

ARM 37.70.305, 37.70.401, 37.70.402, 37.70.601 and 37.70.607

The department is proposing to amend these rules by providing that an updated LIEAP Benefit Award Matrix will be used for the 2017-2018 heating season. ARM 37.70.601 provides that, in most cases, an eligible household's benefit is computed by multiplying the applicable amount in the table of base benefits found in the LIEAP Benefit Award Matrix by the applicable multiplier from the table of income/climatic adjustment multipliers also found in the LIEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIEAP Benefit Award Matrix for 2017-2018 are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2017-2018 heating season, the estimated number of households that will apply and be found eligible for LIEAP for the 2017-2018 season, and fuel cost projections for the 2017-2018 heating season. If the amounts in the benefit tables were not updated for the 2017-2018 heating season, the amount of benefits paid out for the season might exceed available funding or a large amount of funds that could have helped low income households heat their homes might go unspent.

In addition to the table of base benefits, the LIEAP Benefit Award Matrix also contains a table of income/climatic adjustment multipliers. These multipliers are based on a household's income as a percentage of the federal poverty guidelines and also on what part of the state the household lives in. The state is divided into ten regions with different multipliers to take into account the climatic differences from one part of the state to another, which have an impact on residential heating costs. It is not necessary to revise the multipliers annually because the factors on which they are based do not vary significantly from year to year. The department is not proposing any changes to the table of income/climatic adjustment multipliers in the LIEAP Benefit Award Matrix for 2017-2018 for this reason.

ARM 37.70.406

The department proposes to amend this rule to provide that it will use the U.S. Department of Health and Human Services' poverty guidelines for 2017, rather than the federal poverty guidelines for 2015, in the table of income standards used to determine eligibility for LIEAP for the 2017-2018 heating season. This change is necessary to take into account increases in the cost of living. The department uses the poverty guidelines for the current year because they are usually higher than the guidelines for the previous year, resulting in higher standards for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for LIEAP due to inflationary increases in the household's income that do not reflect an increase in buying power.

ARM 37.70.408

The department is proposing to amend this rule by updating the LIEAP Table of Nonbusiness Resource Limits used to determine LIEAP eligibility on the basis of resources. This is necessary because (5) provides that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation by multiplying the current dollar limits by either the percentage increase in the consumer price index (CPI) for the previous calendar year or 3 percent, whichever is less. The increase in the CPI for 2016 was 2.1 percent, so the dollar amounts in the LIEAP Table of Nonbusiness Resource Limits for the 2017-2018 heating season will increase by 2.1 percent. If the resource limits were not revised annually to adjust for inflation, some households might be ineligible for LIEAP because their resources exceed the resource limit although the buying power of their resources was less than in previous years due to inflation.

ARM 37.70.601

The amount of an eligible household's benefit is calculated by multiplying the applicable dollar amount from the LIEAP Benefit Award Matrix by the applicable figure from the Table of Multipliers. The amounts in the Benefit Award Matrix are revised every year to take into consideration variable factors such as the amount of funds available to pay LIEAP benefits for the current heating season, projected changes in fuel costs, and estimates of the number of households that will apply and be found eligible for the heating season. It is therefore necessary to adopt by reference the revised LIEAP Benefit Award Matrix for the 2017-2018 heating season so benefits will be based on updated information rather than information from the previous heating season. The Table of Multipliers contains different multipliers which take into consideration what percentage of the Federal Poverty Level a household's income is and what part of the state the household lives in, because there are climatic differences across the state that affect the amount of fuel needed to heat and cool a home. There is no need to revise the Table of Multipliers every year because climatic differences and the relative need of households with varying incomes do not change from year to year, so the figures in the 2017-2018 Table of Multipliers being incorporated by reference are the same as those in the Table of Multipliers for 2015-2016.

5. The department intends to apply this rule amendment retroactively to October 1, 2017. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 22, 2017.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Barbara Banchemo
Barbara Banchemo, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 13, 2017.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.12.3103 pertaining to Seed)
Labeling Rules and Viability)
Information)

TO: All Concerned Persons

1. On September 8, 2017, the Department of Agriculture published MAR Notice No. 4-17-241 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1445 of the 2017 Montana Administrative Register, Issue Number 17.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

4.12.3103 VIABILITY INFORMATION (1) remains as proposed.

(2) Seed sold or offered for sale must have current viability information as required by 80-5-134(1)(d), MCA. Seed shall not be sold more than ~~45~~ 12 months after the calendar month and year in which the test for the viability information for that seed was completed except grass seed sold for lawn, landscaping, or ornamental purposes may be up to 15 months.

(3) remains as proposed.

(4) A seed dealer may use the label of the seed labeler without changing the name for a period of ~~45~~ 12 months (15 months for grass seed) following the month in which the viability test was completed, provided that label complies with the Montana labeling requirements and that it is attached to the original container. After this period, viability information must be updated.

(5) remains as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The request to change the viability information and time frame should only be for a "lawn" grass seed and not field crops. The financial risk for field crops does not justify the longer viability window.

RESPONSE #1: The department agrees and corrected ARM 4.12.3103 to reflect that the new 15-month viability time frame is only for lawn, landscaping, or ornamental grass. The change does not represent a significant change to those affected by the rule.

/s/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Ben Thomas

Ben Thomas
Director
Agriculture

Certified to the Secretary of State November 13, 2017.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.8301 and 6.6.8401)
pertaining to establishment or)
revision of classifications for various)
industries for supplementing the)
NCCI Basic Manual and updates to)
the public participation guidelines)

TO: All Concerned Persons

1. On August 18, 2017, the Classification Review Committee published MAR Notice No. 6-235 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1324 of the 2017 Montana Administrative Register, Issue Number 16.

2. The committee has amended the above-stated rules as proposed.

3. No comments or testimony were received.

4. Publication of MAR Notice No. 6-235 as referenced above, included supplementation of the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 2001 ed. as follows:

a) to include the establishment and revision of the 19 classifications approved by the Committee since the 2008 rulemaking, and ratify the classification filings effective July 1, 2010 through July 1, 2016, at: http://csimt.gov/wp-content/uploads/Classification-Review-Committee_Document1_2.pdf, and

b) to include NCCI Item Filing B 1431- Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group and NCCI Item Filing B-1435—Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group, Including Trucking and Towing, with a proposed effective date of July 1, 2018, in accordance with ARM 6.6.8301(2) and 33-16-1023(3), MCA. See at: http://csimt.gov/wp-content/uploads/Classification-Review-Committee_Document1_2.pdf.

/s/ Brett W. Olin
Brett W. Olin
Rule Reviewer

/s/ Greg Roadifer
Greg Roadifer
Committee Chair

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through V relating to)
corporate governance annual)
disclosures)

TO: All Concerned Persons

1. On September 22, 2017, the Commissioner of Securities and Insurance, Montana State Auditor, published MAR Notice No. 6-236 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1536 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department has adopted the above-stated rules as proposed: New Rules I (6.6.8701), II (6.6.8702), III (6.6.8703), IV (6.6.8704), and V (6.6.8705).

3. These rules shall become effective on January 1, 2018.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT No. 1: One commenter requested clarification on the first due date of the corporate governance annual disclosure.

RESPONSE No. 1: The Corporate Annual Disclosure Act has an effective date of January 1, 2018. Likewise, these rules implementing the Corporate Annual Disclosure Act will not come into effect until January 1, 2018. New Rule III(1) states that insurers "shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in [New Rule IV] for the prior calendar year." Since the Act and the rules are not effective until 2018, the first CGAD will be due to the CSI on or before June 1, 2019, for the 2018 calendar year.

COMMENT No. 2: One commenter requested the addition of language to New Rule III(5), to provide that for insurance groups, the CGAD may only be requested by the CSI once it has been "adopted by and filed with the lead state of the group."

RESPONSE No. 2: The CSI disagrees with this request. As set forth in New Rule III, if the lead state of an insurance group has not adopted laws substantially similar to the Corporate Governance Disclosure Act, then the insurance group is not required to create and file a CGAD. However, 33-2-2105(3), MCA, provides that any insurer not required to file a CGAD "shall do so upon the commissioner's request." While the department currently does not intend to exercise that authority, the department declines to limit its authority granted by the Montana legislature.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kristen Hansen
Kristen Hansen
Chief Counsel

Certified to the Secretary of State November 13, 2017.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.29.1591 related to utilization)
and treatment guidelines for workers')
compensation injuries)

TO: All Concerned Persons

1. On August 18, 2017, the Department of Labor and Industry published MAR Notice No. 24-29-323 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1362 of the 2017 Montana Administrative Register, Issue Number 16.

2. On September 8, 2017, the Department of Labor and Industry published MAR Notice No. 24-29-323 pertaining to the additional public hearing on the proposed amendment of the above-stated rule at page 1458 of the 2017 Montana Administrative Register, Issue Number 17.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: The department noticed two minor errors. In section (2) of the rule, there are ten chapters and not nine in the Utilization Guidelines. The department further noticed subsection (2)(g) should read Complex Regional Pain Syndrome.

RESPONSE 1: The department has made the suggested corrections.

4. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.1591 UTILIZATION AND TREATMENT GUIDELINES (1) remains as proposed.

(2) The Montana Guidelines consist of the following ~~nine~~ ten chapters and General Guideline Principles which are included at the beginning of each chapter:

(a) through (f) remain as proposed.

(g) Complex Regional Pain Syndrome ~~Disorder~~;

(h) through (5) remain as proposed.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

/s/ Mark Cadwallader
Mark Cadwallader
Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh
Commissioner
Labor and Industry

Certified to the Secretary of State November 13, 2017.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.147.1301 applications for	)	ADOPTION, AND REPEAL
cemetery licenses, 24.147.1313)	
transfer of cemetery ownership,)	
24.147.1502 prearranged,)	
prefinanced, or prepaid funerals, and)	
24.147.1503 requirements for sale of)	
at-need, preneed, and prepaid funeral)	
arrangements; the adoption of NEW)	
RULE I trust funds – general, NEW)	
RULES II through V cemetery)	
perpetual care and maintenance trust)	
accounts – financial records – annual)	
reporting requirements – audits, and)	
NEW RULES VI through IX mortuary)	
and crematory preneed trust accounts)	
– financial records – annual reporting)	
requirements – audits; and the repeal)	
of ARM 24.147.1304 perpetual care)	
and maintenance fund reports,)	
24.147.1305 audit fees, 24.147.1312)	
restrictions on use of cemetery funds,)	
24.147.1314 perpetual care and)	
maintenance funds, and 24.147.1505)	
trust funds)	

TO: All Concerned Persons

1. On September 8, 2017, the Board of Funeral Service (board) published MAR Notice No. 24-147-38 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1461 of the 2017 Montana Administrative Register, Issue No. 17.

2. On October 3, 2017, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the October 6, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Multiple commenters generally supported the overall concept of what the board is attempting to accomplish with the proposed rules.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: One commenter asserted that the provisions of New Rule II(7) exceed the board's authority because the board has the authority to discipline licensees who do not comply with board laws or rules, but must do so through the disciplinary process. The commenter recommended striking (7) in its entirety.

RESPONSE 2: The board agrees and is amending the rule accordingly.

COMMENT 3: Multiple commenters expressed concern that if the recordkeeping and reporting requirements for cemeteries in New Rules II through V become costlier, there could be fewer for-profit cemeteries licensed under the board. Commenters also believed annual reporting would become a burden to licensees if they are required to report separately from the financial institutions' reports.

RESPONSE 3: Cemeteries are already required to report annually to the board regarding perpetual care and maintenance trust funds. New Rules II through V will utilize reporting forms that require slightly different data than the current rules and reporting form. However, the information requested is the same information licensees should be maintaining per 37-19-822 and 37-19-823, MCA. The adoption of the new rules will not substantially change the current annual reporting process.

COMMENT 4: Multiple commenters believed the February 1 reporting deadline for cemeteries in New Rule IV will make it difficult to obtain the necessary financial records from banking institutions to complete the trust reports under the rules. One commenter stated that many banks do not send licensees the year-end trust reports until late January or mid-February. The commenters understood that the board intended to tie the reporting date to the February 1 reporting deadline for financial institutions in 37-19-829, MCA. Commenters suggested shifting the reporting deadline one month later to give the licensees more time to collect year-end trust information from the financial institutions.

RESPONSE 4: The board had originally selected February 1 to coincide with the financial institution reporting deadline, but agrees that moving the deadline to March 1 will not affect the board's ability to review the information during the board's typical quarterly meeting schedule dates. The board agrees that a March 1 date is more reasonable and is amending New Rule IV(2) accordingly.

COMMENT 5: One commenter suggested that the board go back to requiring that independent accountants compile cemeteries' annual perpetual care and maintenance fund reports, using the current reporting forms and including the financial institution's annual report. The commenter believed this would provide the board the same information without the expense of an audit under New Rule IV.

RESPONSE 5: Because the board does not require that accountants submit cemetery perpetual care and maintenance annual reports, cemetery owners can

prepare the annual reports. If the board selects a licensee for an audit, then an auditor or an independent accountant can be designated to perform the audit. Additionally, it is not the board's initial intent with these rules to randomly audit licensees, but to require and conduct audits under New Rules IV and V only when deemed necessary based on information reviewed during the annual reporting process.

COMMENT 6: One commenter questioned the requirement in New Rules IV and VIII that financial institutions report annually to the board on a state-provided form, believing it will create additional administrative costs which are passed on to the trust. The commenter suggested that if licensees submitted annual reports from the trust institutions, it would provide the same result without the additional costs.

RESPONSE 6: Financial institutions are already required to annually report to the department per 37-19-829, MCA, which was enacted in 1999. The method for collecting that information is set forth in department procedures and includes a designated form. The board points out that the references in New Rules IV and VIII do not reflect any changes from current reporting practices.

COMMENT 7: Multiple commenters were concerned that licensees are responsible for audit costs under New Rule V(4) and did not believe they should have to pay for audits the board orders.

RESPONSE 7: Per 37-19-808, MCA, the cost of a cemetery audit must be paid by a licensee. The board has no authority to change the statutory requirement through rule. Additionally, the board's current position is that an audit will only be initiated if the board suspects a licensee of violating the statutes or rules.

COMMENT 8: Multiple commenters expressed confusion regarding whether the trust requirements in ARM 24.147.1503 and New Rules VI through IX refer to preneed arrangements financed with monies and preneed agreements funded through insurance.

RESPONSE 8: The board has no jurisdiction over insurance and ARM 24.147.1503 refers only to preneed funeral arrangements funded with monies. The board concluded that it is not necessary to amend these rules to clarify that insurance is not included as that distinction is already made in statute. The board acknowledges this could be confusing and will address any confusion through communication with licensees.

COMMENT 9: Multiple commenters believed the February 1 reporting deadline for mortuaries and crematories in New Rule VIII will make it difficult to obtain the necessary financial records from banking institutions to complete the trust reports under these rules. One commenter stated that many banks do not send licensees the year-end trust reports until late January or mid-February. The commenters understood that the board intended to tie the reporting date to the statutory February 1 reporting deadline for financial institutions in 37-19-829, MCA. Commenters

suggested shifting the reporting deadline one month later to give the licensees more time to collect year-end trust information from the financial institutions.

RESPONSE 9: The board had originally selected February 1 to coincide with the financial institution reporting deadline, but agrees that moving the licensees' deadline to March 1 will not affect the board's ability to review the information per the board's typical quarterly meeting schedule dates. The board agrees that a March 1 date is more reasonable and is amending New Rule VIII(2) accordingly.

COMMENT 10: Several commenters believed the board is requiring over-reporting regarding preneed trusts and cemetery perpetual care and maintenance trusts. Commenters said the documents and information the board already obtains from financial institutions should be sufficient to meet trust reporting requirements without requiring additional reporting costs to the licensees.

RESPONSE 10: The board does not intend to overburden licensees. The board has a responsibility to protect the public, which includes the public's money held in trusts. Further, the board has jurisdiction over funeral trusts because of the possibility of theft from these trusts. The financial institutions' reports only show the financial institutions' information and do not reflect the information licensees are required to keep regarding the preneed agreements and deposit information. The board determined that information from both sources is necessary for the board to determine whether licensee audits are necessary.

COMMENT 11: One commenter opposed New Rules VI through IX because while Title 37, chapter 19, part 8, MCA, allows the board to regulate privately owned for-profit cemeteries, it does not provide the board authority to regulate funeral preneed trusts. The commenter suggested the board must obtain statutory authority from the legislature to make the changes proposed in New Rules VI through IX. The commenter opined that sufficient oversight procedures for mortuary and crematory preneed trusts already exist and recommended the board instead address other areas not included in this rulemaking.

RESPONSE 11: The board has the statutory authority to regulate funeral trusts and specifically 37-19-131, 37-19-202, 37-19-708, 37-19-807, 37-19-827, 37-19-828, and 37-19-829, MCA, provide the board the authority for the proposed new rules. Additionally, the board has the authority to regulate preneed contracts and no change in legislation is required. The board is unable to address suggestions to other areas of the board's rules which are outside the scope of this rulemaking.

COMMENT 12: Regarding New Rules VI through IX, one commenter stated the board is not qualified to interpret trust reports to determine whether an audit of preneed funeral trusts is necessary, and believed that requiring an audit would then result in audit costs to the mortuary or crematory.

RESPONSE 12: The board's current position is that an audit would only be initiated if the board suspected a licensee of wrongdoing under the statutes and rules based

on annual reporting information submitted by licensees. Reviewing annual trust reports to determine if an audit is necessary is within the board's authority and ability and does not require an auditor or accountant.

COMMENT 13: Multiple commenters were concerned about the costs of audits per New Rule IX(4) and did not believe the licensee should have to pay for an audit ordered by the board. One commenter compared New Rule IX and potential audits to the annual inspections performed by the board's inspector at no charge to licensees.

RESPONSE 13: There is no specific statute that requires mortuaries or crematories to pay the costs of audits, which is different from cemetery audits (see RESPONSE 7). However, the board only intends to conduct audits of mortuaries and crematories as necessary if it suspects a licensee has violated statutes or rules. If the board paid the cost of the audits, then those costs would be allocated among all licensees, not just the licensee(s) suspected of wrongdoing. These audits are also not comparable to facility inspections because inspections are conducted annually on all mortuaries, crematories, and branch establishments, thus spreading the cost among all licensees is equitable. Further, it is not the board's intent to conduct annual licensee audits at this time.

COMMENT 14: One commenter noted that if these rules do not apply to preneed arrangements funded through insurance, then a mortuary would not need to report to the board under these rules if it only sold preneed arrangements funded by insurance and did not have money in trust.

RESPONSE 14: The board agrees with the commenter.

4. The board amends ARM 24.147.1301, 24.147.1313, 24.147.1502, and 24.147.1503 exactly as proposed.

5. The board adopts NEW RULES I (24.147.1601), III (24.147.1603), V (24.147.1605), VI (24.147.1606), VII (24.147.1607), and IX (24.147.1609) exactly as proposed.

6. The board repeals ARM 24.147.1304, 24.147.1305, 24.147.1312, 24.147.1314, and 24.147.1505 exactly as proposed.

7. The board adopts NEW RULES II (24.147.1602), IV (24.147.1604), and VIII (24.147.1608) as proposed, but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

NEW RULE II CEMETERY PERPETUAL CARE AND MAINTENANCE
TRUST ACCOUNTS – GENERAL (1) through (6) remain as proposed.

~~(7) Failure to provide the annual report shall void the operating license of the cemetery.~~

NEW RULE IV CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – ANNUAL REPORTING REQUIREMENTS (1) remains as proposed.

(2) Annual perpetual care and maintenance fund reports must be submitted to the board by ~~February~~ March 1.

(a) through (3) remain as proposed.

NEW RULE VIII MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – ANNUAL REPORTING REQUIREMENTS (1) remains as proposed.

(2) Annual funeral preneed trust reports must be submitted to the board by ~~February~~ March 1.

(a) through (4) remain as proposed.

BOARD OF FUNERAL SERVICE
JOHN TARR, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 13, 2017.

BEFORE THE BOARD OF MASSAGE THERAPY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.155.604 licensure by)
examination, 24.155.608 licensure of)
out-of-state applicants, and)
24.155.613 nonroutine applications)

TO: All Concerned Persons

1. On July 21, 2017, the Board of Massage Therapy (board) published MAR Notice No. 24-155-6 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1085 of the 2017 Montana Administrative Register, Issue No. 14.

2. On August 16, 2017, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the August 18, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters supported the proposed changes to ARM 24.155.604 and 24.155.608 that remove the requirement that applicants provide a copy of a certified high school transcript directly from the custodian of record.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Some commenters did not agree with the board changing the title of ARM 24.155.608 from "Licensure by Credential" to "Licensure of Out-of-State Applicants."

RESPONSE 2: The board is amending the rule title to reflect the language of 37-1-304, MCA, which provides boards with authority to license out-of-state applicants without requiring examination. The board is changing the title to clarify that the rule implements the legislature's directive that boards may issue Montana licenses based on an applicant's licensure in another state.

COMMENT 3: Several commenters supported changing the term "endorsement" to "credential" in ARM 24.155.608(1).

RESPONSE 3: In reviewing this comment, the board noticed an inadvertent housekeeping error by not amending (1) to reflect the change in the title from

"credential" to "out-of-state applicants." Therefore, the board is now correcting (1) to align with the terminology used in 37-1-304, MCA, and this rule's amended title.

COMMENT 4: Some commenters opposed the amendments to ARM 24.155.613(1)(a) that classify as nonroutine any application with three or more pending misdemeanors or convictions. The commenters stated that requiring board review of misdemeanors having no impact on the massage therapy profession is unnecessary and would delay licensure of applicants.

RESPONSE 4: The board agrees the language is overbroad and is amending the rule to align with 37-1-316(1), MCA, and clarify that to be considered nonroutine, misdemeanor charges or convictions must relate to the practice of massage therapy or involve violence, use or sale of drugs, fraud, deceit, or theft.

COMMENT 5: Several commenters objected to the language of "no earlier than" in the proposed amendments to ARM 24.155.613(1)(a) and (b), stating that the language is confusing to applicants.

RESPONSE 5: The board agrees with the commenters and is amending the rule accordingly.

COMMENT 6: Numerous commenters stated the changes to ARM 24.155.613 do not adequately address convictions of violent crimes, and suggested the board require anyone with a conviction of a violent crime to have completed anger management training.

RESPONSE 6: Per 37-1-203, MCA, the board may not deny licensure to an applicant based solely on a conviction. However, if the conviction relates to the public health, safety, or welfare as it applies to the occupation for which the license is sought, the applicant must be given an opportunity to show rehabilitation. Completion of probation or parole supervision, including any treatment recommendations by a court, without any subsequent criminal conviction is evidence of rehabilitation. Given the Montana Legislature's interest in encouraging the licensure of rehabilitated criminal offenders, the board concluded the proposed language of ARM 24.155.613 is adequate to protect the public by requiring criminal offenders with a recent pattern of behavior or felony conviction to appear before the board while still allowing criminal offenders to become licensed. Additionally, staff may forward any application having substantive irregularities to the board for review prior to licensure under ARM 24.155.613(1)(g). The board has directed staff to monitor applications for convictions involving violence and report to the board on any further issues or concerns.

COMMENT 7: Several commenters objected to the rule notice because the board did not pass a "motion to notice" the rules.

RESPONSE 7: Boards are not required to pass a formal motion to notice the rules, but rather must have appropriate motions to approve the language of the rules and

determine whether the proposed changes will have a direct and significant impact on Montana small businesses. The board approved the proposed language and, after discussion, determined there to be no significant and direct impact on Montana small businesses.

COMMENT 8: Some commenters opposed dribbling out a few rules at a time as a waste of licensees' money and stated the changes should be combined into a larger rules project.

RESPONSE 8: The board concluded that smaller rule packages allow the board to better discuss proposed changes and allow for a better overall rulemaking process.

COMMENT 9: Several commenters asserted that public input should have been allowed at the meeting when the rules were discussed and believed these rules were developed without sufficient public input.

RESPONSE 9: The board complied with its statutory duties to allow public participation on this rule project, including board discussion of the proposed rules at multiple open board meetings. The board appreciates all public comment on these changes and recognizes that more public input may be beneficial on occasion. The board will take this into consideration when undertaking future rule projects.

4. The board has amended ARM 24.155.604 exactly as proposed.

5. The board has amended ARM 24.155.608 and 24.155.613 as proposed, but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

24.155.608 LICENSURE OF OUT-OF-STATE APPLICANTS (1) All applicants for licensure ~~by credential~~ with an out-of-state license shall submit a completed application on a form prescribed by the department.
(2) remains as proposed.

24.155.613 NONROUTINE APPLICATIONS (1) remains as proposed.
(a) a total of three or more currently pending charges or past convictions of misdemeanor crimes related to the practice of massage therapy or involving violence, use or sale of drugs, fraud, deceit, or theft if the applicant was sentenced for the past convictions ~~no earlier than~~ within the five years before the board received the application;

(b) a pending charge of any felony crime or a past conviction of any felony crime for which the applicant was either sentenced ~~no earlier than~~ within the ten years before the date the board received the application or for which the sentence has not been fully satisfied and discharged;

(c) through (2) remain as proposed.

BOARD OF MASSAGE THERAPY
ANNE GERGEN, CHAIRPERSON

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH

Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 13, 2017.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.71.107, 37.71.110,)
37.71.601, and 37.71.602 pertaining)
to Low-Income Weatherization)
Assistance Program (LIWAP))

TO: All Concerned Persons

1. On July 21, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-804 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1126 of the 2017 Montana Administrative Register, Issue Number 14.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The department intends to apply ARM 37.71.601 and 37.71.602 retroactively to July 1, 2017. A retroactive application of the proposed rules does not result in a negative impact to any affected party. Rule amendments to ARM 37.71.107 and 37.71.110 are effective the day after publication of the final notice of adoption.

/s/ Barbara Banchemo
Barbara Banchemo, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 13, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.20.171, 42.20.620,)
42.20.701, 42.20.735, 42.20.740, and)
42.20.750 pertaining to land)
classification, natural disaster)
reduction, and forest land eligibility)
and valuation)

TO: All Concerned Persons

1. On August 18, 2017, the Department of Revenue published MAR Notice No. 42-2-977 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1390 of the 2017 Montana Administrative Register, Issue Number 16.

2. On September 11, 2017, a public hearing was held to consider the proposed amendment. Peter Pocius, Montana Forest Owners Association, and Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. Written comments were received from Mike Christianson, Montana Forest Owners Association.

3. The department amends ARM 42.20.171, 42.20.620, 42.20.735, 42.20.740, and 42.20.750 as proposed.

4. Based upon further review and the comments received, the department amends ARM 42.20.701 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.20.701 DEFINITIONS The following definitions apply to this subchapter:

(1) "Associated forest land management use" means the ~~intended~~ primary use of a structure is to support the health, maintenance, growth, and or harvest of ~~timber~~ the forest on the subject property.

(2) through (4)(b) remain as proposed.

~~(c) navigable rivers and streams;~~

(d) and (e) remain as proposed, but are renumbered (c) and (d).

(5) through (13) remain as proposed.

~~(14) "Navigable rivers and streams" means meandering rivers and streams determined navigable by the United States government surveyors and as determined by common law.~~

~~(15)~~(14) "Noncontiguous parcels of land" means parcels of land under one ownership that are physically separated from one another by land in a different ownership other than:

(a) and (b) remain as proposed.

~~(c) navigable rivers and streams;~~

(d) and (e) remain as proposed, but are renumbered (c) and (d).
(16) through (29) remain as proposed, but are renumbered (15) through (28).

AUTH: 15-44-105, MCA

IMP: 15-1-101, 15-44-101, 15-44-102, 15-44-103, 15-44-106, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Pocius testified that because not all forest land owners manage their forest to harvest timber, the department should consider adding the terms "growth and harvest" in its proposed definition in ARM 42.20.701(1), and referred the department to the written comments submitted by Mr. Christianson on behalf of the Montana Forest Land Owners Association. In his written comments, Mr. Christianson explained that because managing forest land encompasses more than just harvesting the timber produced on the land, such as health and maintenance, they recommend the department revise the definition to read as follows: "Associated forest land management use means the primary intended use of a structure is to support the health, maintenance, growth, or harvest of the forest on the subject property."

RESPONSE 1: The department appreciates the Montana Forest Land Owners Association's comments and understands that forest land management involves many aspects in addition to harvesting timber. Therefore, the department has further amended the definition to specify the health, maintenance, growth, or harvest of the forest on the subject property. The department also acknowledges that the primary use of the structure is to support the forestry and other vegetative growth of the land and agrees that adding the term "primary" will better align with the use designations in statute. The department appreciates this concept and agrees that the term "intended use" is confusing, as statute requires the department to classify lands according to their use or uses, not to the intended use. However, due to uncertainty about how the combined term "primary intended" use of a structure might be interpreted, the department is inserting the word "primary" in place of the word "intended," rather than in addition to it. As amended, this change better aligns the definition with the language in the classification and appraisal statute.

COMMENT 2: Mr. Story expressed concern with some of the proposed changes to ARM 42.20.701. The definition of contiguous parcels of land in (4), and noncontiguous parcels of land in (15), previously stated that a parcel of land would be contiguous if separated by a river or stream that had "been adjudicated as being navigable." The proposed changes create a list that says "separated by rivers and streams" and then "separated by navigable rivers and streams," with that term separately defined in (14). These proposed changes are confusing relative to how property boundaries work in reality. If a stream was navigable when Montana became a state, those beds were excluded when surveyed. Tracts that run up to the low water mark and the bed of that stream are public land and the tracts on either

side would be considered contiguous under the current law. If the stream is not navigable, the bed of that stream is owned by someone. It is not vacant property. You don't really have property divided by streams that aren't navigable.

He further commented that the proposed definition of navigable streams in (14) may be problematic, legally. Section 15-24-1209, MCA, provides that a navigable stream in Montana is a stream that has been adjudicated by a court to be navigable. If, by definition, you allow this determination by "common law," then the department is determining what is or isn't a navigable stream. The department should look into whether or not the use of "common law" can be supported.

If the department's goal is to say that if there is a stream running through a parcel it doesn't affect the contiguous status of the parcel, then the original rule language worked. How the stream is classified makes no difference. If there is a highway or railroad running between two parcels in the same ownership, they are still considered contiguous. You can look at a stream the same way. It wouldn't make any difference if it was navigable or not. Revising the definition of navigable streams potentially creates other problems. He suggested the department consider leaving the language as rivers and streams and not get into the navigability issue.

RESPONSE 2: The department appreciates Mr. Story's comments and agrees with his concerns. Therefore, the department has further amended ARM 42.20.701 to remove the term "navigable rivers and streams" from the definitions of contiguous and noncontiguous parcels of land, and to remove the separate definition of navigable rivers and streams, altogether. As revised, the rule still provides the intended meaning that rivers and streams do not break parcel contiguity, regardless of navigable status.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State November 13, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I and the amendment of ARM) AMENDMENT
42.19.401, 42.19.403, and 42.19.405)
pertaining to property tax assistance)
programs)

TO: All Concerned Persons

1. On September 22, 2017, the Department of Revenue published MAR Notice No. 42-2-980 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1612 of the 2017 Montana Administrative Register, Issue Number 18.

2. On October 12, 2017, a public hearing was held to consider the proposed adoption and amendment. Dan Flynn, a property owner, appeared and testified at the hearing. Written comments were received from Senator Keith Regier.

3. The department amends ARM 42.2.405 as proposed.

4. Based upon the comments received, the department adopts New Rule I (42.19.407) as proposed, but with the following change from the original proposal, new matter underlined:

NEW RULE I (42.19.407) INTANGIBLE LAND VALUE PROPERTY TAX ASSISTANCE PROGRAM FOR RESIDENTIAL PROPERTY (1) through (7) remain as proposed.

(8) Qualifying applicants are required to reapply for the intangible land value property tax assistance program each property valuation cycle. The supporting documentation outlined in (4) may be required with reapplications.

5. The department amends ARM 42.19.401 and 42.19.403 as proposed, but with 15-6-312, MCA, (House Bill 554, L. 2017), added to the implementing section for each rule, as follows, new matter underlined:

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (PTAP) (1) through (16) remain as proposed.

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-301, 15-6-302, 15-6-305, 15-6-312, MCA

42.19.403 MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM (1) through (16) remain as proposed.

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-301, 15-6-302, 15-6-311, 15-6-312, MCA

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Senator Keith Regier asked why the definition of "qualifying applicant," as proposed for ARM 42.19.405(3), doesn't mention the third degree of consanguinity for the disproportionately high land value applicants. Senate Bill 94 allows a relative of the owner(s) to be the primary resident of the property and still qualify for the exemption.

RESPONSE 1: When adopted, New Rule I, which implements Senate Bill 94, will be located together with the department's other property tax assistance program rules in ARM Title 42, chapter 19, subchapter 4. The department proposed defining the term "qualifying applicant," in ARM 42.19.405, which applies to terms used throughout the subchapter, as general guidance on the limited types of property ownership that may meet the requirements of the statutes and rules covering all property tax assistance programs. The definition is not specific to one program. Specific language pertaining to the qualifications of a family member within three degrees of consanguinity for the new intangible land value property tax assistance program is located in New Rule I(4) and (5).

COMMENT 2: In reference to the proposed language in New Rule I(8), which requires a qualifying applicant to reapply for the assistance program each property valuation cycle, Dan Flynn commented that if an applicant has supplied all of the required paperwork and qualifies in the first year, being required to supply the paperwork again in subsequent years would be somewhat burdensome. He commented that there should be an easier way to requalify and asked that the department not require property owners to resubmit the supporting documentation once approved.

RESPONSE 2: The department appreciates Mr. Flynn's comments on the proposed language in New Rule I, and has added a sentence in (8) to specify that the supporting documents "may" be required with reapplications. While the statute requires property owners to apply for each valuation cycle they are seeking assistance, the supporting documents initially provided to the department proving the three degrees of consanguinity will not necessarily need to be resubmitted with each subsequent application, depending on the circumstances.

COMMENT 3: Mr. Flynn asked when the department will begin taking the applications for the program.

RESPONSE 3: The department's goal is to make the application form available online at revenue.mt.gov, by late December, 2017. Property owners will have until March 1 to submit their completed application form and all supporting documentation to their local Department of Revenue office.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 13, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION,
Rule I, amendment of ARM) AMENDMENT, AND
42.25.501, 42.25.502, 42.25.511,) REPEAL
42.25.512, 42.25.514, 42.25.1701,)
42.25.1707, and 42.25.1708, and)
repeal of ARM 42.25.515 and)
42.25.1706 pertaining to coal)
valuation for coal gross proceeds and)
coal severance tax on coal production)

TO: All Concerned Persons

1. On September 22, 2017, the Department of Revenue published MAR Notice No. 42-2-982 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1637 of the 2017 Montana Administrative Register, Issue Number 18.

2. On October 12, 2017, a public hearing was held to consider the proposed adoption, amendment, and repeal. Tim Brown, Decker Coal Company, and Jason St. John, Cloud Peak Energy, appeared and testified at the hearing. Other members of the public attended the hearing, but did not testify. Written comments were received from Matthew Adams, Cloud Peak Energy, and Joe Evers and Emma Kucharski, Westmoreland Coal Company.

3. The department adopts New Rule I (42.25.1709), amends ARM 42.25.502, 42.25.511, 42.25.514, and 42.25.1707, and repeals ARM 42.25.515 and 42.25.1706, as proposed.

4. Based upon the comments received, the department amends the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.25.501 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain as proposed.

(5) "Market value" means the value at which coal would change hands between a willing buyer and a willing seller under market and economic conditions at the time of sale, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Agreements that are not arm's-length transactions ~~do not reflect the~~ will not be considered market value ~~of for~~ purposes of filing the Montana coal production taxes.

(6) and (7) remain as proposed.

42.25.512 IMPUTED VALUATION (1) When imputing value pursuant to 15-35-107, MCA, the department may use valuation methods which approximate the

value of the coal at its ~~intended market use~~, including but not limited to comparable actual arm's-length sales, comparable actual arm's-length sales adjusted to FOB mine price, or published coal sales indexes. Contract term, tonnage, quality, Btu rating, and any other appropriate comparability criteria will be considered.

(2) remains as proposed.

42.25.1701 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain as proposed.

(5) "Market value" means the value at which coal would change hands between a willing buyer and a willing seller under market and economic conditions at the time of sale, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Agreements that are not arm's-length transactions ~~do not reflect the~~ will not be considered market value ~~of~~ for purposes of filing the Montana coal production taxes.

(6) and (7) remain as proposed.

42.25.1708 IMPUTED VALUATION (1) When imputing value pursuant to 15-35-107, MCA, the department may use valuation methods which approximate the value of coal at its ~~intended market use~~, including but not limited to comparable actual arm's-length sales, comparable actual arm's-length sales adjusted for FOB mine price, or published coal sales indexes. Contract term, tonnage, quality, Btu rating, and any of the appropriate comparability criteria will be considered.

(2) remains as proposed.

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Cloud Peak Energy commented that they are generally in favor of new regulations to provide consistency and clarity, but they would like to see some changes in the rules as proposed. The rules contemplate two methodologies for imputing value to govern non-arm's-length sales, including a comparable sales approach, and a netback methodology. Both methods are reasonable, but the rules lack guidance on which should be used. The method used should be applied consistently. It should not be the greater or lesser of the two taxes for the producer.

They further commented that following the public hearing their understanding is that the department's preferred method is the netback approach, at least for coal exported abroad. However, they believe a comparable sales approach should be used, because it is the well-accepted and preferred methodology for determining value. They asked the department to clarify in the language when it is appropriate to use each method and also indicate that the method is to be used consistently for groups.

The Decker Coal Company expressed similar concerns with calculating the imputed rate. The department has the information to compute this, but the companies do not. The rules will be very difficult to follow.

Westmoreland Coal Company also commented on the department's preferred methodology of employing a netback approach. Under this approach, the department would start with the price received under the first arm's-length sale, less transportation, to reach a value at the mine. Such an approach fails to account for the value-added to the coal for logistic services or risk involved in transporting to distant sales points. The netback approach has been recognized by the federal government as a methodology to be used "only when other methods of determining value . . . are inapplicable," and provided the department with court case examples. They further commented that a comparable sales approach is the best method for determining value of coal at the mine and stated that the department should adopt it as its preferred method.

They further commented that the department's proposed revisions to the imputed value regulation rules are vague and unclear. First, the rules do not provide any guidance as to which valuation method the department prefers, or in what circumstances the department will use each valuation method. This leaves open the opportunity for the department to select the method that produces the highest value on each contract. The rules should specify the preferred method of valuation, and the preferred method should be the comparable sales approach.

RESPONSE 1: The department understands the industry's recommendation to first use the comparable sales approach; however, the department's preference is to go to the first arm's-length agreement, on a contract-by-contract basis, and adjust the value to a FOB mine price. Then, if a net back approach to determine contract sales price is not feasible, the department will consider other available methods to reach an FOB mine price. The other available methods, however, are determined on a case-by-case basis related to the unique facts of each coal producer and each contract or transaction.

The department has further amended ARM 42.25.512(1) and 42.25.1707(1) to add the phrase "actual arm's-length" in the references to comparable sales in those sections.

COMMENT 2: Cloud Peak Energy commented that the rules should allow a process for the department and the producer to enter into a prospective valuation agreement to provide certainty to both parties, similar to the process used by the federal government for royalty valuation. Owners have that ability through their regulations. Coming to the table early can head off disputes before they happen and give all parties some certainty going forward. Agreements can be canceled at any time by either party, so nobody would be locked into a long-term agreement, but this approach would provide clarity for sales up to a point.

RESPONSE 2: The department always welcomes and encourages taxpayers to come in and discuss valuation issues, at any time, as has always been the case. Adding language to that effect is unnecessary.

COMMENT 3: Cloud Peak Energy stated concern that the draft rules add terms that aren't clearly defined, such as "transportation costs." The department should consider providing detailed guidance, whether in the rules or a policy

document, as to what is or is not an allowable transportation cost. Producers could help by providing the department with a list of the kinds of costs they encounter. They further commented that instead of determining value on a contract-by-contract basis, the department should allow calculation of a weighted-average sales price for all of a mine's comparable contracts in a given month. If using a netback approach, there should be no limit on the amount of transportation costs that can be deducted.

Westmoreland Coal Company also commented that the department's use of the term "transportation costs" is vague and unclear. The proposed rules amend "FOB mine price" to provide the point at which reasonable transportation costs can be reduced from the purchase price of the coal, and reduces the contract sales price by transportation costs to determine the contract sales price. However, the proposed rules fail to clearly define transportation costs. To provide clarity to the taxpayer and avoid future disputes, the department should offer guidance as to what costs make up "transportation costs."

RESPONSE 3: The department did not define "transportation costs" or include an itemized list of allowed or disallowed expenses, because expenses that may be allowed for one contract may not be allowed for another, depending on the contract and the location of the first third-party sales point. However, the department is always available to answer questions and offer guidance and welcomes taxpayers to call or come into the office to discuss any expenses they wish to deduct. Reasonable and actual costs will be determined on a case-by-case basis.

COMMENT 4: Cloud Peak Energy commented that the department's consideration of the value of the coal at its intended "market use" is undefined, vague, and confusing. Defining the term would be helpful. The industry tends to consider their three biggest markets to be steam or electrical, metallurgical, and industrial. Is that what "market use" is referring to, or is it referring to geographies? And, if so, what kind of a geography would constitute a market? Is it Powder River Basin or coal sold to Michigan versus Texas? Are those the same or different markets?

Westmoreland Coal Company commented that the term "intended market use" offers no guidance as to how the coal's intended market use relates to its value. It is unclear whether the department intends the phrase to refer to the type of end-use consumption, the geographic location of end-use of the coal, or something else. Furthermore, the term "intended" implies that the intended market use may differ from the actual market use. It is unclear why the intended market use of the coal is relevant to its value. If the phrase refers to the ultimate destination of the coal, or the intended destination of the coal, such an approach has no bearing on the value of the coal and should not be utilized by the department. Applying that meaning to the phrase further muddies the proposed rule, because one of the acceptable valuation methods is "comparable sales adjusted to FOB mine price." The department should replace the phrase "at its intended market use" with "FOB mine."

RESPONSE 4: The department agrees that "intended market use" is vague and has further amended ARM 42.25.512 and 42.25.1708, the imputed valuation rules, to eliminate the phrase "at its intended market use" from both rules.

COMMENT 5: Westmoreland Coal Company commented that non-arm's-length transactions can reflect the market value of coal. The proposed revision of the "market value" definition provides that "agreements that are not arm's-length transactions do not reflect the market value of coal." That provision is not true and is inconsistent with the Montana Supreme Court's interpretation and application of 15-35-107(1)(c), MCA, which provides the department the power to impute a value to the coal which approximates market value FOB mine where the coal was sold under a non-arm's-length contract. Before imputing a value to the coal, the department must first find that the contract price does not represent market value and the transaction was less than market value, as shown by comparable arm's-length sales. When a contract price from a non-arm's-length contract was comparable to the contract price of an arm's-length contract, and thus representative of the market value of coal, the department could not impute a value to the coal. The Montana Supreme Court has recognized that non-arm's-length transactions are capable of reflecting the market value of coal. The proposed definition disregards the non-arm's-length transactions and imputes a value for coal without requiring a threshold determination that the non-arm's-length contract price does not represent market value. Such a method ignores the fact that many non-arm's-length contracts reflect market value for a multitude of reasons. Categorically ignoring these contracts serves no legitimate purpose. The assumption that all non-arm's-length contracts do not represent market value discriminates against coal producers who sell coal to affiliates or related parties. The last sentence of the proposed definition for "market value" should be deleted. The department should still be required to determine whether a non-arm's-length contract represents market value and whether the transaction was less than market value, as shown by a comparable arm's-length transaction before imputing a value to the coal.

RESPONSE 5: The section of statute referenced as interpreted by the Montana Supreme Court, 15-35-107(1)(c), MCA, has since been amended. Section 15-35-107(1)(b), MCA, currently states that the department may impute a value when a person sells coal under a contract that is not an arm's-length agreement. When the department imputes value according to 15-35-107(1)(b), MCA, the department will determine the contract sales price which may or may not be the same contract sales price as stated in the non-arm's-length agreement.

COMMENT 6: Westmoreland Coal Company stated that the contract sales price of coal should not be determined on an individual contract basis. The proposed rules provide that contract sales price for coal is calculated by taking the first arm's-length purchaser of the coal, and subtracting the transportation costs to reduce the contract sales price of the coal. As proposed, ARM 42.25.511 applies the formula to each contract individually. Such a method ensures that the contract price of coal, on each individual contract, will not be reduced below zero. They stated they do not support the netback approach proposed by this rule. However, if a netback calculation is used, the department should consider all of the contracts together. Employing the netback method without accounting for negative values is not a representative or fair calculation. When the sales price is lower than the

transportation costs, the taxpayer coal producer receives no benefit, but is still responsible for taxes owed on the positive value when the sales price exceeds the transportation costs. To produce a fair and representative netback calculation, it must be performed in the aggregate.

RESPONSE 6: Determining the cost of coal on an individual contract basis is not a new provision in the rule. ARM 42.25.511(3) originally stated that the "contract sales price should be computed for each contract individually . . ." The language in that section of the rule was proposed to be removed as unnecessary verbiage. The provision is already in statute, in the definition of "agreement" in 15-35-102(1), MCA, which contemplates that the contract sales price be considered on a contract-by-contract or agreement-by-agreement basis.

COMMENT 7: Decker Coal Company commented that their mine has a lot of sales at arm's-length to arm's-length parties that tell them exactly what the value of coal is on any given day. They have a lot of current sales data to determine what the coal is worth. They view coal as a commodity and don't think that its ultimate destination or use changes its value. The intent is to assess value when it comes out of the ground. The best way to do this is to look at comparable sales at the same mine. It is much simpler than going to some point of delivery thousands of miles away and working backwards. Doing so makes it tough to tell if you are really valuing coal or if you are valuing some of the value-added activities such as transportation and all of the risk that goes into that. This really starts pulling into the tax base things that aren't related to the value of the coal as it comes out of the ground. They prefer the first method of evaluation be a look at comparable arm's-length sales from the mine, if available, and use of the first arm's-length sale only in instances where that is not available.

RESPONSE 7: The department appreciates these comments and recognizes that while there may be situations where an FOB mine price comparison is used, there may also be a sale that occurs away from the mine which requires the department to netback to reach an FOB mine price. Section 15-35-107, MCA, provides that if the agreement is non-arms-length, the department will impute value. Therefore, in the instance that a contract is a non-arm's-length transaction, the department will follow the provisions provided for in this statute and administrative rules to determine the contract sales price.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 13, 2017.

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- 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 P.O. 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 or Register) is an online 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

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department 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, 2017. This table includes those rules adopted during the period June 30, 2017, through September 30, 2017, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2017, this table, and the table of contents of this issue of the Register.

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 2017 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in October 2017 appear. Potential vacancies from December 1, 2017 through February 28, 2018, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2017.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board			
Mr. Sean Higginbotham Great Falls	Governor	Reno	10/27/2017 1/1/2021
Qualifications (if required): Member representing local government			
Director Sheila Hogan Helena	Governor	Oppen	10/27/2017 1/1/2021
Qualifications (if required): Director of a state agency			
Board of Crime Control			
Director Reginald D. Michael Helena	Governor	Cotton	10/27/2017 1/1/2019
Qualifications (if required): Law Enforcement Representative			
Mr . Peter Ohman Butte	Governor	Hooks	10/27/2017 1/1/2019
Qualifications (if required): Criminal Justice Agency			
Board of Pardons and Parole			
Mr. Darrell Bell Billings	Governor	Batista	10/1/2017 1/1/2019
Qualifications (if required): Extensive experience in the criminal justice system			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Professional Engineers and Professional Land Surveyors			
Mr. Wallace J. Gladstone III	Governor	Reappointed	10/27/2017
Billings			7/1/2021
Qualifications (if required): Professional Engineer (Civil)			
Mr. Byron David Stahly	Governor	Reappointed	10/27/2017
Helena			7/1/2021
Qualifications (if required): Professional Engineer (Civil)			
Board of Psychologists			
Ms. Sara P. Boilen	Governor	English	10/27/2017
Whitefish			9/1/2018
Qualifications (if required): Licensed Psychologist in Private Practice			
Board of Review			
Commissioner Galen Hollenbaugh	Governor	Bucy	10/27/2017
Helena			7/27/2019
Qualifications (if required): Commissioner of the Department of Labor and Industry			
Board of Veterans' Affairs			
Mr. Mike Waters	Governor	Gambill	10/27/2017
Billings			8/1/2021
Qualifications (if required): Representative of Congressman Greg Gianforte			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Commissioner of the Montana Department of Labor and Industry			
Mr. Galen John Hollenbaugh	Governor	Bucy	10/25/2017
Helena			1/4/2021
Qualifications (if required): Director of the Montana Department of Labor and Industry			
Education Commission of the States			
Superintendent Elsie Arntzen	Governor	Juneau	10/27/2017
Helena			1/1/2021
Qualifications (if required): Superintendent of Public Instruction			
Future Fisheries Review Panel			
Mr. Terry Chute	Governor	New	10/27/2017
Helena			7/1/2019
Qualifications (if required):			
Mr. Charles E. Dalby	Governor	Reappointed	10/27/2017
Helena			7/1/2019
Qualifications (if required): Public member			
Ms. Karin Fischer Boyd	Governor	Reappointed	10/27/2017
Bozeman			7/1/2019
Qualifications (if required): Private sector member who is a fisheries restoration professional			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Future Fisheries Review Panel Cont.			
Mr. Michael Paul Johns Bozeman Qualifications (if required): Public member	Governor	Reappointed	10/27/2017 7/1/2019
Mr. Clinton Frederick Peck Billings Qualifications (if required): Representative of conservation districts	Governor	Reappointed	10/27/2017 7/1/2019
Ms. Meriwether Schroeer-Smith Helena Qualifications (if required): Montana High School Student	Governor	Reappointed	10/27/2017 7/11/2019
Mr. Bill Semmens Helena Qualifications (if required): Ex-officio member MDT with experience in highway impacts mitigation	Governor	Reappointed	10/27/2017 7/1/2019
Mr. William Frank Wichers Hamilton Qualifications (if required): Member with expertise in fisheries	Governor	Reappointed	10/27/2017 7/1/2019
Mr. Joseph Willauer Butte Qualifications (if required): Member who is a licensed Montana angler	Governor	New	10/27/2017 7/1/2019

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board			
Mr. Ron Baldwin Helena Qualifications (if required): Chief Information Officer	Governor	Not listed	10/27/2017 1/1/2021
Ms. Cece Harris Belgrade Qualifications (if required): Member representing the private sector	Governor	Weiner	10/27/2017 1/1/2021
Commissioner Galen Hollenbaugh Helena Qualifications (if required): Director of a State Agency	Governor	Bucy	10/27/2017 1/1/2019
Director John Lewis Helena Qualifications (if required): Director of the Department of Administration	Governor	Not listed	10/27/2017 1/1/2021
Commissioner Chris Mehl Bozeman Qualifications (if required): Member representing local government	Governor	Reappointed	10/27/2017 1/1/2019
Representative Mike Milburn Helena Qualifications (if required): Director of a State Agency	Governor	Reappointed	10/27/2017 1/1/2021

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board Cont.			
Ms. Amy Sassano Helena Qualifications (if required): Office of Budget and Program Planning	Governor	Not listed	10/27/2017 1/1/2021
Ms. Jennie Stapp Helena Qualifications (if required): Director of a State Agency	Governor	Reappointed	10/27/2017 1/1/2021
Director John Tubbs Helena Qualifications (if required): Director of a State Agency	Governor	Reappointed	10/27/2017 1/1/2021
Information Technology Managers Advisory Council			
Mr. Sean Higginbotham Great Falls Qualifications (if required): Local government representative	Director	New	10/27/2017 8/1/2018
Mr. Rennan Rieke Helena Qualifications (if required): Information Technology Manager	Director	Van Alstyne	10/27/2017 8/1/2018

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Interstate Commission on Educational Opportunity for Military Children			
Superintendent Elsie Arntzen	Governor	Juneau	10/27/2017
Helena			1/1/2021
Qualifications (if required): Superintendent of Public Instruction			
Invasive Species Council			
Mr. Dennis Charles Longknife	Governor	New	10/27/2017
Harlem			5/9/2021
Qualifications (if required): Representative of the Fort Belknap Indian Community			
Ms. Laurie Schafer	Governor	New	10/27/2017
Poplar			5/9/2021
Qualifications (if required): Representative of the Assiniboine and Sioux Tribes			
Ms. Jan Stoddard	Governor	New	10/27/2017
Helena			5/9/2021
Qualifications (if required): Designee of the Department of Commerce			
Mr. Alec Underwood	Governor	New	10/27/2017
Missoula			5/9/2021
Qualifications (if required): Representative of a Wildlife Organization			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Invasive Species Council Cont.			
Mr. Daryl Wright II	Governor	New	10/27/2017
Box Elder			5/9/2021
Qualifications (if required): Representative of the Chippewa Cree Tribe			
Land Information Advisory Council			
Mrs. Lee Macholz	Governor	Bauer	10/27/2017
Missoula			6/30/2019
Qualifications (if required): County or municipal government active in land information systems			
Mr. Shawn Walks Over Ice	Governor	Shield	10/27/2017
Crow Agency			6/30/2019
Qualifications (if required): Indian Tribal Interests			
Libby Asbestos Superfund Advisory Team			
Mr. George Frank Jamison	Governor	New	10/27/2017
Libby			7/1/2019
Qualifications (if required): Citizen of Lincoln County nominated by the Lincoln County Commission			
Montana Agriculture Development Council			
Mr. Lars Wesley Hanson	Governor	Reappointed	10/27/2017
Edgar			7/1/2020
Qualifications (if required): Actively engaged in agriculture			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Agriculture Development Council Cont.			
Director Pam Haxby-Cote Helena Qualifications (if required):	Governor	O'Leary	10/27/2017 1/1/2021
Ms. Tara Mastel Whitehall Qualifications (if required):	Governor	Reappointed	10/27/2017 7/1/2020
Actively engaged in agriculture			
Ms. Patricia Quisno Harlem Qualifications (if required):	Governor	Reappointed	10/27/2017 9/1/2020
Actively engaged in agriculture			
Director Ben Thomas Helena Qualifications (if required):	Governor	de Yong	10/27/2017 1/1/2021
Director of the Department of Agriculture			
Montana State Workforce Innovation Board			
Ms. Karen Baumgart Billings Qualifications (if required):	Governor	Harrington	10/27/2017 7/27/2019
Community Organization			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Workforce Innovation Board Cont.			
Ms. Vicky Rae Byrd Clancy Qualifications (if required): Workforce Representative	Governor	Reappointed	10/27/2017 7/27/2019
Mr. Alan Daniel Ekblad Great Falls Qualifications (if required): Workforce Representative	Governor	Reappointed	10/27/2017 7/27/2019
Ms. Jacquie Helt Helena Qualifications (if required): Workforce Representative	Governor	Reappointed	10/27/2017 7/27/2019
Director Sheila Hogan Helena Qualifications (if required): Director of the Department of Public Health and Human Services	Governor	Opper	10/27/2017 7/27/2019
Commissioner Galen Hollenbaugh Helena Qualifications (if required): Commissioner of the Department of Labor and Industry	Governor	Bucy	10/27/2017 7/27/2019
Mr. Paul Hopfauf Glendive Qualifications (if required): Business Representative	Governor	Reappointed	10/27/2017 7/27/2019

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Workforce Innovation Board Cont.			
Mr. Miles McCarvel	Governor	Reappointed	10/27/2017
Missoula			7/27/2019
Qualifications (if required): Workforce Representative			
Mr. Barry Reddick	Governor	Bundtrock	10/27/2017
Helena			7/27/2019
Qualifications (if required): Business Representative			
Noxious Weed Management Advisory Council			
Mr. Jack Eddie	Governor	Reappointed	10/27/2017
Dillon			7/1/2019
Qualifications (if required): Representative of the Montana Weed Control Association			
Ms. Margie Edsall	Governor	Reappointed	10/27/2017
Alder			7/1/2019
Qualifications (if required): At-Large Member from the Agriculture Community			
Ms. Linda Eklund	Governor	Reappointed	10/27/2017
Shawmut			7/1/2019
Qualifications (if required): Livestock Production			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Management Advisory Council Cont.			
Mr. Joel Farkell Brady Qualifications (if required): Consumer Group	Governor	Reappointed	10/27/2017 7/1/2019
Mr. Jim Gordon Huntley Qualifications (if required): Herbicide Dealer or Applicator	Governor	Reappointed	10/27/2017 7/1/2019
Mr. Kenny Keever Havre Qualifications (if required): Biological Research and Control Interests	Governor	Reappointed	10/27/2017 7/1/2019
Ms. Kellieann Morris Stevensville Qualifications (if required): Western County Representative	Governor	Reappointed	10/27/2017 7/1/2019
Ms. Jeannette Nordahl Lincoln Qualifications (if required): Recreationist/Wildlife Group	Governor	Reappointed	10/27/2017 7/1/2019
Mr. Brian Ostwald Joliet Qualifications (if required): Eastern County Representative	Governor	Reappointed	10/27/2017 7/1/2019

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Management Advisory Council Cont.			
Director Ben Thomas Helena	Governor	Reappointed	10/27/2017 7/1/2019
Qualifications (if required): Director of the Department of Agriculture and Presiding Officer			
Mr. Todd Wagner Glasgow	Governor	Reappointed	10/27/2017 7/1/2019
Qualifications (if required): Agriculture Crop Production			
Noxious Weed Seed Free Forage Advisory Council			
Mr. Carter Butori Dillon	Governor	Reappointed	10/27/2017 9/1/2019
Qualifications (if required): Forage Producer			
Mr. Larry Dorn Hardin	Governor	Reappointed	10/27/2017 9/1/2019
Qualifications (if required): Forage Producer Representative			
Mr. Wade Durham Cameron	Governor	Reappointed	10/27/2017 9/1/2019
Qualifications (if required): Outfitter/Guide			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Seed Free Forage Advisory Council Cont.			
Ms. Margie Edsall	Governor	Reappointed	10/27/2017
Virginia City			9/1/2019
Qualifications (if required): Rep. cty weed dist forage cert., MT Weed Control Assn and from diff. areas of state			
Mr. Joe Lockwood	Governor	New	10/27/2017
Billings			9/1/2019
Qualifications (if required): Rep. cty weed dist forage cert., MT Weed Control Assn and from diff. areas of state			
Ms. Jane Mangold	Governor	Reappointed	10/27/2017
Bozeman			9/1/2019
Qualifications (if required): Montana State University-Bozeman Extension Service			
Mr. James Melin	Governor	Reappointed	10/27/2017
Livingston			9/1/2019
Qualifications (if required): Forage Producer Representative			
Mr. Vince Muggli	Governor	New	10/27/2017
Miles City			9/1/2019
Qualifications (if required): Feed/Pellet/Cube Representative			
Mr. Bob Rangitsch	Governor	Reappointed	10/27/2017
Ovando			9/1/2019
Qualifications (if required): Livestock/ Agriculture			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Seed Free Forage Advisory Council Cont.			
Director Ben Thomas Helena	Governor	New	10/27/2017 9/1/2019
Qualifications (if required): Director of the Department of Agriculture			
Mr. David Wichman Moccasin	Governor	Reappointed	10/27/2017 9/1/2019
Qualifications (if required): MSU Agriculture Research Center			
Mr. Chuck Miller Hamilton	Governor	Reappointed	10/27/2017 9/1/2019
Qualifications (if required):			
Petroleum Tank Release Compensation Board			
Mr. James B. Corson Billings	Governor	McDermott	10/28/2017 7/1/2018
Qualifications (if required): General public			
Ms. Heather Marie Smith Helena	Governor	Fenner	10/27/2017 7/1/2020
Qualifications (if required): Rep financial or banking industry; experience in small business or property loans			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Petroleum Tank Release Compensation Board Cont.			
Mr. Edward A. Thamke Helena	Governor	Cassidy	10/27/2017 7/1/2020
Qualifications (if required): Background in environmental regulation			
Potato Commodity Advisory Committee			
Mr. William Buyan Jr. Sheridan	Governor	Reappointed	10/27/2017 3/1/2020
Qualifications (if required): Potato Producer			
Mr. Dave Cottom Dillon	Governor	Reappointed	10/27/2017 3/1/2020
Qualifications (if required): Potato Producer			
Mr. Pat Fleming Pablo	Governor	Reappointed	10/27/2017 3/1/2019
Qualifications (if required): Potato producer			
Mr. Brad Haidle Fallon	Governor	Reappointed	10/27/2017 3/1/2019
Qualifications (if required): Potato Producer			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Potato Commodity Advisory Committee Cont.			
Mr. Tim Lake	Governor	Reappointed	10/27/2017
Polson			3/1/2018
Qualifications (if required): Potato Producer			
Mr. Jack Meyer	Governor	Reappointed	10/27/2017
Manhattan			3/1/2018
Qualifications (if required): Potato Producer			
Tourism Advisory Council			
Mr. Jeffery Ewelt	Governor	Ellis	10/27/2017
Billings			7/1/2020
Qualifications (if required): Southeast Montana Country Region Representative			
Ms. Jacquie Helt	Governor	New	10/27/2017
Helena			7/1/2020
Qualifications (if required): Southwest Montana Region Representative			
Ms. Glennis Indreland	Governor	Reappointed	10/27/2017
Big Sky			7/1/2020
Qualifications (if required): Yellowstone Country Region Representative			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council Cont.			
Ms. Sandra Johnson Thares Great Falls	Governor	Tyler	10/27/2017 7/1/2020
Qualifications (if required): Central Montana Region Representative			
Dr. Kenneth Ryan Poplar	Governor	New	10/27/2017 7/1/2020
Qualifications (if required): Member from Indian tribal governments			
Mr. Stephen Wahrlich Billings	Governor	Reappointed	10/27/2017 7/1/2020
Qualifications (if required): Southeast Montana Country Region Representative			
Underground Facility Protection Advisory Council			
Mr. Aaron Arthur Miles City	Governor	New	10/27/2017 7/1/2020
Qualifications (if required): Member rep MT telecommunications provider with less than 50,000 subscriber lines			
Mr. Douglas Hansen Billings	Governor	New	10/27/2017 7/1/2019
Qualifications (if required): Owns a MT underground facility that is an electric distribution or transmission line			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Underground Facility Protection Advisory Council Cont.			
Mr. Douglas Hardy Great Falls	Governor	New	10/27/2017 7/1/2020
Qualifications (if required): Member representing a rural electric cooperative operating in Montana			
Mr. Jason Moothart Billings	Governor	New	10/27/2017 7/1/2020
Qualifications (if required): Member rep telecommunications provider with more than 50,000 subscriber lines in MT			
Ms. Mandy Nay Circle	Governor	New	10/27/2017 7/1/2019
Qualifications (if required): Member representing a regional water, wastewater or both authority			
Mr. Theron C. Pavlik Bozeman	Governor	New	10/27/2017 7/1/2020
Qualifications (if required): Member representing excavators			
Mr. Nicholas Pericich Bozeman	Governor	New	10/27/2017 7/1/2019
Qualifications (if required): Member representing a municipal sewer or water system or a municipal water supply system			
Mr. Dale Schultz Butte	Governor	New	10/27/2017 7/1/2019
Qualifications (if required): Member rep public utility that owns a MT underground facility that is a juris. pipeline			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Underground Facility Protection Advisory Council Cont.			
Ms. Michelle Slyder	Governor	New	10/27/2017
Laurel			7/1/2020
Qualifications (if required): Member rep owners or operators of a MT non-public undergrd facility that is a juris pipln			
Upper Columbia Conservation Commission			
Mr. Thomas L. Finch Jr.	Governor	Bernhardt	10/27/2017
Helena			8/1/2021
Qualifications (if required): Rep veterans' emplymt and training service ofc in the US Department of Labor			
Mr. Phillip Matson	Governor	New	10/27/2017
Columbia Falls			5/9/2021
Qualifications (if required): Representative of private landowners			
Mr. Christian Michael Parrott	Governor	New	10/27/2017
Kalispell			5/9/2021
Qualifications (if required): Representative of private industry			
Mrs. Stacey Lynn Schnebel	Governor	New	10/27/2017
Coram			5/9/2021
Qualifications (if required): Representative of Electric Cooperatives in the area			

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2017 THROUGH FEBRUARY 28, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Chiropractors		
Dr. Lee Hudson, Great Falls Qualifications (if required): Practicing chiropractor	Governor	1/1/2018
Dr. Vincent Maddio, Helena Qualifications (if required): Practicing chiropractor	Governor	1/1/2018
Board of Horse Racing		
Mr. John Hayes, Great Falls Qualifications (if required): Third district representative	Governor	1/1/2018
Board of Pardons and Parole		
Mr. Darryl Dupuis, Polson Qualifications (if required): Enrolled Tribal Member	Governor	1/1/2018
Ms. Patricia Edith Iron Cloud, Poplar Qualifications (if required): Enrolled member of a state-recognized Indian Tribe located in Montana	Governor	1/1/2018
Ms. Sandy Heaton, Deer Lodge Qualifications (if required): Mental health professional	Governor	1/1/2018
Board of Public Education		
Representative Lila V. Taylor-Evans, Busby Qualifications (if required): resident of District 2 and a Republican	Governor	2/1/2018

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2017 THROUGH FEBRUARY 28, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Public Education Cont. Mr. Jesse Miles Barnhart, Broadus Qualifications (if required): District 2 Republican	Governor	2/1/2018
Board of Regents Mr. Major Robinson, Billings Qualifications (if required): District 2 Representative	Governor	2/1/2018
Board of Regents of Higher Education Mr. Stephen W. Lozar, Polson Qualifications (if required): District 2 Democrat	Governor	2/1/2018
Mr. Casey Lozar, Helena Qualifications (if required): District 2 Democrat	Governor	2/1/2018
Board of Speech-Language Pathologists and Audiologists Ms. Tina Marie Berg, Lewistown Qualifications (if required): Policyholder	Governor	12/31/2017
Ms. Leah Jacobsen, Great Falls Qualifications (if required): Audiologist	Governor	12/31/2017
Children's Trust Fund Board Mr. Joseph Mathieu Raffiani, Billings Qualifications (if required): Public Member	Governor	1/1/2018

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2017 THROUGH FEBRUARY 28, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
High School Association Executive Board		
Mr. Drew Blewett, Great Falls	Governor	1/1/2018
Qualifications (if required): Public Representative		
Judicial Nomination Commission		
Mrs. Nancy Zadick, Great Falls	Governor	1/1/2018
Qualifications (if required): Public representative		
Montana Arts Council		
Ms. Arlene Parisot, Helena	Governor	2/2/2018
Qualifications (if required): Public representative		
Mr. Corwin Clairmont, Ronan	Governor	2/2/2018
Qualifications (if required): Public Representative		
Ms. Karen Bohlinger, Helena	Governor	2/2/2018
Qualifications (if required): Public Representative		
Mr. Thomas Cordingley, Helena	Governor	2/2/2018
Qualifications (if required): Public representative		
Mr. Jason Pyette, Havre	Governor	2/2/2018
Qualifications (if required): Public representative		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2017 THROUGH FEBRUARY 28, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Children's Trust Fund Board		
Mrs. Clementine Lindley, Billings Qualifications (if required): Public Member	Governor	1/1/2018
Ms. Leslie Caye, Pablo Qualifications (if required): Public member	Governor	1/1/2018
Montana Election and Technology Advisory Council		
Ms. Bonnie Ramey, Boulder Qualifications (if required): None Specified	Secretary of State	1/19/2018
Ms. Vickie Zeier, Missoula Qualifications (if required): None Specified	Secretary of State	1/19/2018
Ms. Sandra Boardman, Chinook Qualifications (if required): None Specified	Secretary of State	1/19/2018
Ms. Kathie Newgard, Polson Qualifications (if required): None stated	Secretary of State	1/19/2018
Ms. Charlotte Mills, Bozeman Qualifications (if required): None stated	Secretary of State	1/19/2018
Ms. Shelly Fyant, Pablo Qualifications (if required): None stated	Secretary of State	1/19/2018

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2017 THROUGH FEBRUARY 28, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Election and Technology Advisory Council Cont.		
Ms. Jody Walker, Deer Lodge	Secretary of State	1/19/2018
Qualifications (if required): None Specified		
Montana Grass Conservation Commission		
Mr. William F. Kennedy, Ekalaka	Governor	1/1/2018
Qualifications (if required): Officer of or serves on the board of directors of a state district		
Ms. Vicki Dunaway, Billings	Governor	1/1/2018
Qualifications (if required): member of the public who possesses a general understanding of the livestock industry		
State Lottery Commission		
Mr. Tom Keegan, Helena	Governor	1/1/2018
Qualifications (if required): Attorney		
Representative Cynthia Hiner, Deer Lodge	Governor	1/1/2018
Qualifications (if required): Public representative		
State-Tribal Economic Development Commission		
Ms. Theresa Hould McKeon, Malta	Governor	1/1/2018
Qualifications (if required): Survivor or family member of survivor of traumatic brain injury		
Ms. Angela Wathan, Whitefish	Governor	1/1/2018
Qualifications (if required): Injury Control or Prevention Programs		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2017 THROUGH FEBRUARY 28, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Statewide Independent Living Council		
Ms. Mary Olson, Missoula	Governor	12/1/2017
Qualifications (if required): Person with disability not employed by state agency		

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COREY STAPLETON
SECRETARY OF STATE

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