

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.21.3704,)	ON PROPOSED AMENDMENT
2.21.3708, 2.21.3712,)	
2.21.3715, 2.21.3719,)	
2.21.3724, 2.21.3727, and)	
2.21.3728 regarding)	
Recruitment and Selection,)	
and the amendment of ARM)	
2.21.5007 regarding Reduction)	
in Work Force)	

TO: All Concerned Persons

1. On June 5, 2003, at 9:00 a.m., a public hearing will be held in Room 136, Mitchell Building, 125 N. Roberts Street, Helena, Montana to consider the proposed amendment of ARM 2.21.3704, 2.21.3708, 2.21.3712, 2.21.3715, 2.21.3719, 2.21.3724, 2.21.3727, and 2.21.3728 regarding Recruitment and Selection, and the amendment of ARM 2.21.5007 regarding Reduction in Work Force.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 20, 2003, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; Montana Relay Services 711; FAX (406) 444-0544; or e-mail hpeck@state.mt.us.

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

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAY-OFF (1) This rule implements the ~~recruitment and selection job registry~~ components of the State Employee Protection Act, 2-18-1201, et seq., MCA.

(2) For purposes of administering this rule, the following definitions apply:

(a) remains the same.

(b) "Employee" means, as provided in 2-18-1202, MCA, "a person employed by the state who has achieved permanent status, as defined in 2-18-101, MCA, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months." ~~and who have waived benefits under the provisions of 19-2-706, MCA".~~ This term does not include employees who choose the

retirement benefits provided for in 19-2-706, MCA, in lieu of the benefits of the State Employee Protection Act.

(c) and (d) remain the same.

(e) "Job registry coordinator" means the state personnel division, department of administration.

~~(3) The Helena job service job registry coordinator shall administer the job registry provided for under the State Employee Protection Act. Agencies shall provide the with a copy of all vacancy announcements for which the agency will conduct job registry recruitment or simultaneous internal and job registry recruitment and shall provide a copy of external vacancy announcements for all positions, permanent and Helena job service temporary, except for positions exempt under 2-18-103 or 2-18-104, MCA. Prior to seeking applications from the general public, all agencies shall attempt to hire employees from the job registry. The job registry coordinator shall maintain placement files on all registry participants. These files must be made available to personnel officers seeking to fill vacant positions.~~

(a) Agencies must inform the job registry coordinator about employees who have been notified of a reduction in force and their anticipated termination date(s).

(b) Employees who have been notified of, or terminated due to a reduction in force, may elect to participate in the job registry. To participate, employees must complete the application materials developed by the job registry coordinator and submit them to the coordinator.

(c) An employee, who does not elect to participate in the job registry or whose eligibility to participate has expired, and who subsequently applies as an external applicant for a vacancy, is not entitled to the benefits of the job registry.

~~(4) Agencies shall follow this procedure when posting positions for recruitment. An agency may implement each step described in this rule sequentially or an agency may combine the internal to agency and job registry recruitment steps. In either case, the job registry recruitment step shall be completed before the agency recruits to the general public.~~

~~(a) This step is called internal to agency recruitment, which is limited to current agency employees and employees laid off from the agency. An agency may post a vacancy internally in compliance with agency policy or provision of a collective bargaining agreement. The agency shall notify employees laid off from the agency of internal vacancies for 1 calendar year from the effective date of lay-off. Reemployment of a person who was terminated at the end of seasonal employment is internal recruitment. If a selection is not made internally, the agency shall post the vacancy externally to the job registry program.~~

~~(b) This step is called job registry recruitment and it is limited to participants on the job registry. An agency shall post all permanent and temporary vacancies, except positions exempt under 2-18-103 and 2-18-104, MCA, to the job registry before posting to the general public. Seasonal employment is included at this step if the agency is hiring persons who were not employees terminated at the end of the previous season.~~

~~(c) This step is called simultaneous internal to agency and~~

~~job registry recruitment. An agency may recruit internally to the agency and to the job registry at the same time, unless this conflicts with agency policy or provision of a collective bargaining agreement. Internal applicants and job registry participants shall be treated as one applicant pool. Both groups shall be given equal consideration. Job registry participants do not receive additional preference. In order to break a tie between two candidates with substantially equal qualifications, the candidate with longer state government service shall be selected. If no one is selected at this step, an agency may post a vacancy externally to the general public.~~

~~(d) This step is called general public recruitment. An agency may post a vacancy externally to the general public if there are no qualified participants on the job registry or the agency does not hire a referred job registry participant for documented, job-related reasons. An employee who does not elect to participate on the job registry or whose eligibility to participate on the job registry has expired and who subsequently applies as an external applicant for a vacancy is not entitled to any additional consideration or preference.~~

(4) The department encourages agencies to check the job registry before posting vacancies externally to the general public.

(a) An agency may limit an internal applicant pool to current agency employees and employees who have been laid off from the agency. Reemployment of a person who was terminated at the end of seasonal employment is internal recruitment.

(b) An agency may limit its applicant pool to job registry participants. An agency may fill any vacancy from the job registry before posting it to the general public.

(c) An agency may recruit internally to the agency and to the job registry simultaneously unless this practice conflicts with agency policy or the provisions of a collective bargaining agreement. Internal applicants and job registry participants may be treated as one applicant pool. In order to break a tie between two applicants with substantially equal qualifications, an agency may select the applicant with the longest state government service.

(d) Recruitment from the job registry is not a solicitation of applications from the general public. Therefore, pursuant to 39-30-103, MCA, veterans', persons with disabilities', and Indian employment preferences do not apply.

~~(5) Within 3 working days of receiving notice of a vacancy, the job registry coordinator shall apprise the agency personnel officer of one of the following possible outcomes:~~

~~(a) No qualified participants are listed on the job registry and the agency is authorized to post externally to the general public.~~

~~(b) Participants who may be qualified are available on the job registry and their placement materials are being sent.~~

~~(c) The coordinator will need additional time, up to 7 working days, to review placement files for possible qualified participants. When an agency hires a job registry participant, the agency must notify the job registry coordinator.~~

~~(6) An agency shall determine if the referred job registry participants are qualified. An agency may hire with or without a~~

~~competitive selection process for participants who are referred from the job registry. An agency may use its usual selection procedures, such as supplemental questions, structured interview, performance test, or reference checks. Because recruitment from the job registry program is not a solicitation for applications from the general public, veterans', persons with disabilities and Indian employment preferences do not apply.~~

~~(7) The agency shall hire one of the participants unless no participant is qualified.~~

~~(8) If two or more participants listed on the job registry are equally qualified for a vacant position, the agency shall select the participant with the longest continuous state government service.~~

~~(9) An agency is encouraged to establish a training assignment, according to state policy, whenever possible to assist in hiring employees who have been laid off.~~

~~(10) An agency should notify all participants determined qualified by the agency if a job registry participant is selected or if the agency is going to recruit externally.~~

~~(11) An agency should notify the job registry coordinator when an offer to hire is made or when a referred job registry participant is hired. An agency should also contact the job registry coordinator when the agency reinstates or rehires a participant who was laid off from the agency.~~

~~(12)(6) The job registry coordinator will ask participants to update materials annually as needed.~~

~~(13)(7) An employee's participation eligibility to participate in on the job registry ends when:~~

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

~~(14) through (19) remain the same, but are renumbered (8) through (13).~~

AUTH: 2-18-102, MCA

IMP: 2-18-102 and 2-18-1201, MCA

2.21.5007 POLICY (1) through (9) remain the same.

(10) As provided in 2-18-1201, et seq., MCA, an employee who is terminated due to reduction in force within an agency and who has not chosen the additional retirement service purchase option described in 19-2-706, MCA, is entitled to:

~~(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation. Each state agency shall provide a copy of all vacancy announcements for which the agency will conduct simultaneous internal and job registry recruitment and shall provide a copy of all external vacancy announcements, except for positions exempt under 2-18-103 and 2-18-104, MCA, to the Helena job service office which shall compile and distribute the notice to laid-off employees on a weekly basis;~~

~~(b)(a) access to any job retraining and career development programs provided by the state, such as those provided through the Job Training Partnership Act service delivery areas dislocated worker programs under the Workforce Investment Act of 1998,~~

provided that the employee begins participating in a program within ~~±~~ one year after the elimination of the employee's position;

~~(e)~~(b) inclusion in a special job registry from which all agencies shall may attempt to hire employees prior to seeking applications from the general public. The employee ~~must~~ will be listed in the job registry according to the occupational categories ~~in which the employee is qualified for employment~~. Participation in the job registry is voluntary. The ~~Helena job service~~ department of administration shall administer the job registry provided for in 2-18-1203, MCA;

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

~~(f)~~(e) relocation expenses as provided in state agency policy.

An agency should consult with the ~~Job Training Partnership Act~~ service delivery areas dislocated worker programs under the Workforce Investment Act of 1998 prior to approving relocation expenses.

(11) remains the same.

(12) Implementation of the ~~recruitment and selection job registry~~ components of the State Employee Protection Act, 2-18-1201, et seq., MCA, and other rights and benefits of employees who are reemployed following layoff are found in the recruitment and selection ~~policy rules~~, ARM 2.21.3701, et seq. and specifically in ARM 2.21.3704, job registry and reemployment following lay-off.

AUTH: 2-18-102, MCA

IMP: 2-18-102 and 2-18-1201, MCA

REASON: The proposed amendments to ARM 2.21.3704 and 2.21.5007 are necessary to implement House Bill 735, which altered the State Employee Protection Act. Effective July 1, 2003, the Legislature eliminated the requirement that agencies recruit from the job registry prior to recruiting from the general public. As of July 1, 2003, agency recruitment from the registry will be voluntary. The administration of the job registry transfers from the Department of Labor and Industry to the Department of Administration, State Personnel Division, effective July 1, 2003. Under the new job registry program, participants will be responsible for enrolling with the job registry coordinator. The new coordinator intends to convert the registry from a paper system to an Intranet-based system. This should make information about job registry participants much more accessible to agency hiring authorities.

2.21.3708 EXTERNAL RECRUITMENT (1) remains the same.

(2) Each agency must send vacancy ~~Vacancy~~ announcements for temporary employment, as defined in 2-18-101, MCA, or for permanent positions ~~a department an agency is filling on a temporary basis must be sent to the job service unless the department agency decides, on a case-by-case basis, that the position must be filled immediately or other conditions exist that make it impractical to do so.~~

(3) remains the same.

(4) Vacancy announcements may be distributed to other

recruitment sources, such as newspapers, the internet, Indian community colleges, placement organizations for women and/or persons with disabilities, in addition to the job service and other agencies in a manner consistent with ~~department~~ agency policy.

(5) ~~A department~~ An agency may limit external recruitment advertising, including posting at the job service, to a geographic area; however, all properly completed applications received by the closing date must be considered, regardless of whether the applicant resides within that geographic area.

(6) ~~A department~~ Each agency shall post all external vacancy announcements with the job service for at least 5 five working days.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3712 INTERNAL RECRUITMENT (1) ~~A department may use internal recruitment. During internal recruitment, job registry and external applications may not be accepted. When an agency recruits internally, it may exclude applications from job registry participants and the general public.~~

(2) Internal vacancy announcements must be posted according to ~~department~~ agency policy. It is recommended that internal vacancy announcements contain information similar to that required in ARM 2.21.3709 for external recruitment.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3715 EQUAL EMPLOYMENT OPPORTUNITIES (1) As provided in 49-3-201, MCA, each ~~department~~ agency shall promulgate written directives to provide equal employment opportunity in recruitment and selection.

(2) As provided in ~~49-2-201~~ 49-2-102, MCA, each ~~department~~ agency "shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race must be made available to the general public." Records must be maintained for a period of time consistent with the employee record keeping policy, ARM 2.21.6605, et seq.

(3) At any step in the recruitment and selection process and in accordance with the Americans with Disabilities Act of 1990, a ~~department~~ each agency is required to make a reasonable accommodation to a known physical or mental limitation of an otherwise qualified individual unless to do so would impose an undue hardship. Steps in the recruitment and selection process may include submitting an application, interviewing, testing, etc. Reasonable accommodation requests may be evaluated on a case-by-case basis.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3719 DEVELOPMENT OF SELECTION PROCEDURES (1) A department ~~An agency~~ may use any selection procedure or combination of procedures that ~~is~~ are based on information obtained from the a job analysis. It is recommended that ~~departments use the state's "guidelines for developing a selection plan" and "guidelines for developing specific selection procedures"~~ (available from state personnel, department of administration). agencies follow the procedures in the "Recruitment and Selection Manual" published by state personnel division, department of administration.

(2) through (4) remain the same.

(5) Each agency makes the determination whether an applicant meets the qualifications for a position. Agencies may use various selection procedures such as supplemental questions, structured interviews, performance tests, or reference checks, etc., to determine whether an applicant meets the qualifications for a position.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3724 NOTIFICATION OF APPLICANTS (1) As provided in ARM 2.21.1428 and 2.21.3617, an applicant claiming an employment preference must be given a written notice of the hiring decision. ~~The department~~ Each agency shall maintain a record of which applicants were notified and the date the notification was sent in accordance with ARM 2.21.1428 and 2.21.3617.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3727 ACCESS TO SELECTION MATERIAL (1) The amount of detail ~~a department~~ an agency chooses to release regarding rating questions and criteria depends on ~~department~~ agency policy, anticipated need to reuse the materials, and resources available to develop new materials.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3728 CONFIDENTIALITY (1) remains the same.

(2) ~~A department may not release~~ An agency may withhold personal information relating to any applicant ~~to~~ from any person not involved in administering the hiring process. An agency shall release materials ~~Materials~~ relating to selection decisions ~~may be released by the department or to~~ other parties upon the receipt of a properly executed administrative or judicial order.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

REASON: The proposed amendments to rules 2.21.3708, 2.21.3712, 2.21.3715, 2.21.3719, 2.21.3724, 2.21.3727, and 2.21.3728 are

necessary to clarify agency responsibilities as the term agency is defined in the Recruitment and Selection policy. They also have been edited for style and to conform with 49-2-201, MCA, which has been repealed.

4. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments also may be submitted to the Department of Administration, State Personnel Division, attention Hal Peck, P.O. Box 200127, Helena, MT 59620-0127, e-mail hpeck@state.mt.us, no later than June 5, 2003.

5. The State Personnel Division, Department of Administration has been designated to preside over and conduct the hearing.

6. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing list must make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding personnel rules. Such written request may be mailed or delivered to Department of Administration, State Personnel Division, Attention Hal Peck, P.O. Box 200127, Helena, MT 59620-0127, faxed to the office at (406) 444-0544, e-mailed to hpeck@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department of Administration.

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

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

/s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State April 28, 2003

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.5.202,)	AMENDMENT
4.5.203, and 4.5.204 relating)	
to the designation of noxious)	NO PUBLIC HEARING
weeds)	CONTEMPLATED

TO: All Concerned Persons

1. On June 7, 2003, the Montana Department of Agriculture proposes to amend the above stated rules relating to the designation of noxious weeds.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on May 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.5.202 CATEGORY 1 (1) through (2)(k) remain the same.
 (l) Ox-eye daisy (Chrysanthemum leucanthemum L.); and
 (m) Houndstongue (Cynoglossum officinale L.); and
 (n) Yellow toadflax (Linaria vularis).

AUTH: 7-22-2101 and 80-7-802, MCA
 IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a petition from the Lolo National Forest to list Yellow toadflax as a noxious weed. The department-sponsored Montana Noxious Weed List Advisory Committee, including representation from weed districts, Montana Weed Control Association, Montana Farmers Union, The Nature Conservancy, Montana Stockgrowers, Montana State University Extension Service, Montana Seed Growers Association, the Bureau of Land Management, Montana Native Plant Society, U. S. Forest Service, University of Montana and the Montana Department of Agriculture has reviewed the biology of this plant and has determined it has the potential for rapid spread and invasion of non-infested land. This weed is capable of economically and biologically adversely affecting range, forest, crop, and other lands. This determination, resulting in the designation as a Category 1 noxious weed, will increase public awareness and recognition

of this weed, encourage education and identification and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations. Category 1 weeds are generally widespread in many counties of the state.

4.5.203 CATEGORY 2 (1) through (2)(e) remain the same.
(f) Tall buttercup (*Ranunculus acris* L.); and
(g) Tamarisk (saltcedar) (*Tamarix* spp.); and
(h) Perennial pepperweed (*Lepidium latifolium*).

AUTH: 7-22-2101 and 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a petition from the Bureau of Land Management to list Perennial pepperweed as a noxious weed. The department-sponsored Montana Noxious Weed List Advisory Committee, including representation from weed districts, Montana Weed Control Association, Montana Farmers Union, The Nature Conservancy, Montana Stockgrowers, Montana State University Extension Service, Montana Seed Growers Association, the Bureau of Land Management, Montana Native Plant Society, U. S. Forest Service, University of Montana and the Montana Department of Agriculture has reviewed the biology of this plant and has determined it has the potential for rapid spread and invasion of non-infested land. This weed is capable of economically and biologically adversely affecting range, forest, crop, and other lands. This determination, resulting in the designation as a Category 2 noxious weed, will increase public awareness and recognition of this weed, encourage education and identification and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations. Category 2 weeds have recently been introduced into the state or are rapidly spreading from their current infestation sites.

4.5.204 CATEGORY 3 (1) through (2)(a) remain the same.
(b) Common crupina (*Crupina vulgaris*); and
(c) Rush skeletonweed (*Chondrilla juncea*);
(d) Eurasian watermilfoil (*Myriophyllum spicatum*); and
(e) Yellow flag iris (*Iris psuedacorus*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received petitions from Lake County Weed District to list Yellow flag iris and Eurasian watermilfoil as noxious weeds. The department-sponsored Montana Noxious Weed List Advisory Committee, including representation from weed districts, Montana Weed Control Association, Montana Farmers Union, The Nature Conservancy, Montana Stockgrowers, Montana State

University Extension Service, Montana Seed Growers Association, the Bureau of Land Management, Montana Native Plant Society, U. S. Forest Service, University of Montana and the Montana Department of Agriculture has reviewed the biology of these plants and has determined they have the potential for rapid spread and invasion of non-infested land. These weeds are capable of economically and biologically adversely affecting Montana's waterways, riparian areas, and other lands. This determination, resulting in the designation as a Category 3 noxious weed, will increase public awareness and recognition of these weeds, encourage education and identification and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations. Specifically in regard to Eurasian watermilfoil, listing will increase the ability to prevent establishment of this weed, as it has yet to be detected in Montana and is an extremely aggressive, invasive, aquatic plant that hinders use of waters for recreation, agriculture and wildlife in 96 percent of the lower 48 states. Category 3 weeds have either not been detected in the state or may be found only in small, scattered, localized infestations.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than June 5, 2003.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than June 5, 2003.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 46 based on a 458-person membership of the Montana Weed Control Association.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; Fax (406) 444-5409; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the Department's website at www.agr.state.mt.us, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State April 28, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 4.9.401) HEARING ON
relating to wheat and barley) PROPOSED AMENDMENT
assessment and refunds)

TO: All Concerned Persons

1. On May 29, 2003, at 11:00 a.m., a public hearing will be held in the basement conference room of the Wheat Building at 750 6th Street SW, Great Falls, Montana, to consider the amendment of ARM 4.9.401 relating to wheat and barley assessment and refunds.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on May 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Will Kissinger at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.9.401 WHEAT AND BARLEY ASSESSMENT AND REFUNDS

(1) There shall be levied an assessment of:

(a) 12 1/2 ~~10~~ mills per bushel upon all wheat sold in the state of Montana; and

(b) 20 ~~15~~ mills per hundredweight on all barley sold in the state of Montana.

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

AUTH: 80-11-204 and 80-11-205, MCA

IMP: 80-11-205 and 80-11-206, MCA

REASON: Approximately twenty percent of the increase will be directed toward offsetting the effects of drought and inflation on existing market development activities. The remainder will be for wheat and barley related research, primarily at Montana State University, and, to a great extent, backfilling Federal and State research funding cuts.

Based on long-term annual production figures, and with "average" crops in the future, each mill on wheat should collect approximately \$159,387 and one mill for barley, \$19,354. Therefore, the additional two and one half mills per bushel on wheat and five mills per hundred weight on barley,

under the new rule, should collect, together, an additional \$495,237. This will be collected from the approximately 14,500 wheat and barley producers across Montana who are subject to the assessment.

4. Concerned persons may present their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Will Kissinger at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201 and must be received no later than June 5, 2003.

5. Timothy J. Meloy, Attorney, Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 has been designated to preside over and conduct the hearing.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice is available through the Department's website at www.agr.state.mt.us, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Dan Kidd
Dan Kidd
Chairman
Montana Wheat and Barley Committee

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State, April 28, 2003.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of New Rule I concerning)	ON PROPOSED ADOPTION,
determination of annual permit)	AMENDMENT AND REPEAL
surcharge, New Rule II)	
concerning a change in)	
designation of number of)	
machines for annual permit)	
surcharge, amendment of ARM)	
23.16.120, 23.16.125,)	
23.16.1803, 23.16.1805,)	
23.16.1823, 23.16.1901, and)	
23.16.3501 concerning the)	
implementation of the video)	
gambling machine permit fee)	
surcharge and the repeal of)	
ARM 23.16.1806 concerning)	
regulation of gambling)	

TO: All Concerned Persons

1. On June 4, 2003, at 9:00 a.m. a public hearing will be held in the auditorium of the Scott Hart Building, 1st Floor, 202 North Roberts, Helena, Montana, to consider the adoption of new rules concerning the annual permit surcharge, amendment of ARM 23.16.120, 23.16.125, 23.16.1803, 23.16.1805, 23.16.1823, 23.16.1901, and 23.16.3501 concerning the implementation of the video gambling machine permit fee surcharge and the repeal of ARM 23.16.1806 concerning regulation of gambling.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 30, 2003, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; FAX (406) 444-9157; or email rask@state.mt.us.

3. The proposed new rules provide as follows:

RULE I DETERMINATION OF ANNUAL PERMIT SURCHARGE

(1) The licensee shall indicate at the time of renewal, on a form provided by the department, if the licensee wants the premises to be designated as having 20 machines, or fewer than 20 machines.

(2) Licensees applying for new permits will be required to designate on the application form if the applicant wants the premises to be designated as having 20 machines, or fewer than 20 machines.

(3) No premises shall be permitted for 20 machines unless the licensee for that premises has designated the premises as having 20 machines.

AUTH: 23-5-115, MCA
IMP: 23-5-612, MCA

RULE II CHANGE IN DESIGNATION OF NUMBER OF MACHINES FOR ANNUAL PERMIT SURCHARGE (1) Licensees may request a change in designation from a premises having 20 machines, or fewer than 20 machines.

(2) A change in designation must be requested on a form provided by the department and the department must approve any change in designation.

(3) A licensee may not request more than one change in designation during a fiscal year.

(4) A licensee changing designation from having fewer than 20 machines must pay the additional permit surcharge or prorated permit surcharge only for the machines being added.

(5) No refund will be provided to a licensee changing designation from 20 machines to less than 20 machines.

AUTH: 23-5-115, MCA
IMP: 23-5-612, MCA

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

23.16.120 LOANS AND OTHER FORMS OF FINANCING (1) Except as provided in (4), (5), (6), and (7) ~~of this rule~~, if a gambling licensee or license applicant proposes to acquire a loan or other forms of financing from a noninstitutional source for use in his licensed gambling operation or grant a security interest to a noninstitutional source, the department must approve the contract or security interest transfer before any funds from the loan or financing may be received or expended by the licensee or license applicant and before the security interest may be transferred.

(2) through (7)(c) remain the same.

(d) the borrower and lender's financial records must accurately reflect the transaction; ~~and~~

(7)(e) through (9) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, MCA

23.16.125 CHANGE OF LIQUOR LICENSE TYPE (1) remains the same.

(2)(a) remains the same, but is renumbered (2).

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

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.1803 APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS (1) through (3) remain the same.

(4) The annual permit surcharge required by 23-5-612, MCA, must accompany each permit application.

AUTH: 23-5-115, 23-5-605, MCA
IMP: 23-5-605, 23-5-612, MCA

23.16.1805 REFUND OF PERMIT FEE (1) Refund of a permit fee or an annual permit surcharge will be allowed only if the application for a permit is denied or withdrawn before issuance of the permit. No permit fee or annual permit surcharge, in part or whole, will be refunded after a permit is issued, regardless of whether the permit is used after issuance.

AUTH: 23-5-115, 23-5-605, MCA
IMP: 23-5-605, 23-5-612, MCA

23.16.1823 PRORATION OF PERMIT FEE AND ANNUAL PERMIT SURCHARGE - RENEWAL (1) The department shall prorate the permit fee and the annual permit surcharge for a video gambling machine on a quarterly basis according to the following schedule:

For premises with a 20-machine designation

<u>Effective Dates For Permit</u>	<u>Permit Fee</u>	<u>Surcharge</u>	<u>Total</u>
July 1 through June 30	\$200 220	\$20	\$240
October 1 through June 30	\$150 165	\$15	\$180
January 1 through June 30	\$100 110	\$10	\$120
April 1 through June 30	\$50 55	\$5	\$60

For premises with a less-than-20-machines designation

<u>Effective Dates For Permit</u>	<u>Permit Fee</u>	<u>Surcharge</u>	<u>Total</u>
July 1 through June 30	\$220	\$10	\$230
October 1 through June 30	\$165	\$7.50	\$172.50
January 1 through June 30	\$110	\$5	\$115
April 1 through June 30	\$55	\$2.50	\$57.50

AUTH: 23-5-115, 23-5-605, MCA
IMP: 23-5-605, 23-5-612, MCA

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (1)(d)(iv) remain the same.

- (v)(A) remains the same but is renumbered (v).
- (B) remains the same but is renumbered (A).
- (d)(vi) through (3) remain the same.

AUTH: 23-5-621, MCA
IMP: 23-5-115, 23-5-136, 23-5-602, 23-5-606, 23-5-609, 23-5-610, 23-5-621, 23-5-637, MCA

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) through (3)(b) remain the same.

(c) sports betting other than horse racing, sports pools as authorized by law, or as provided in (9) ~~of this rule~~; or

(d) through (4) remain the same.

(5) All schemes, activities or enterprises shall be conducted in a manner that ~~do~~ does not allow the winner to be unfairly predetermined or the game to be manipulated or rigged. The person or business conducting the promotion shall not arbitrarily remove, disqualify, disallow or reject any entry or fail to award prizes offered or print, publish or circulate literature or advertising material used in connection with such promotional game of chance that is false, deceptive or misleading.

(6) through (12) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-112, 23-5-115, 23-5-152, MCA

5. ARM 23.16.1806, DISTRIBUTION OF NET MACHINE INCOME TAX TO LOCAL GOVERNING BODY, proposed to be repealed, is on page 23-773 of the Administrative Rules of Montana.

AUTH: 23-5-115, 23-5-605, MCA
IMP: 23-5-605, 23-5-612, MCA

6. RATIONALE (a) New Rule I and New Rule II and amendments to ARM 23.16.1803, 23.16.1805 and 23.16.1823 are necessary to implement the video gambling machine permit fee surcharge provisions of HB758. The provisions of the bill require that the department charge an additional \$20 per machine in locations that operate the maximum number of machines allowable, 20, and \$10 per machine in locations that operate less than 20, prorated on a quarterly basis. The provisions of HB758 will affect every gaming establishment in the state, of which there are approximately 1600. It is estimated that the fee increase will generate revenue of \$256,710. Any revenue generated will be deposited in the state general fund. An operator can move machines in and out of a location, and increase or decrease the number up to or below the 20 machine maximum on a daily basis if desired, using the department's license and permitting process. Because of that ability, the department will provide an election at the beginning of the year for an operator to choose whether to become a 20 machine location or not, and pay a surcharge according to that election. The department will also provide an opportunity for the operator to change his designation.

(b) The Department of Justice has amended the following rules to correct grammatical and punctuation errors, and to improve clarity and internal consistency: ARM 23.16.120(1), ARM 23.16.120(7), ARM 23.16.125, ARM 23.16.1901, and ARM 23.16.3501.

(c) The Department of Justice is repealing ARM 23.16.1806 because of legislation HB124 in the 2001 Legislature which

overhauled the collection and distribution of revenue between state and local governments. All video gambling tax is deposited in the general fund and distributed by a formula back to local governments.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424, and must be received no later than June 5, 2003.

8. Ali Bovington, Assistant Attorney General, Department of Justice, Legal Services Division, has been designated to preside over and conduct the hearing.

9. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Ali Bovington, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Ali Bovington, e-mailed to abovington@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

/s/ Ali Bovington
ALI BOVINGTON, Rule Reviewer

Certified to the Secretary of State April 28, 2003.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
proposed amendment of ARM)	AMENDMENT
32.2.401, 32.2.403, 32.15.601)	
and 32.23.301 pertaining to)	NO PUBLIC HEARING
fees charged by the department)	CONTEMPLATED
for various licenses, permits)	
and services performed by the)	
department)	

TO: All Concerned Persons

1. On June 8, 2003, the department proposes to amend ARM 32.2.401, 32.2.403, 32.15.601 and 32.23.301 pertaining to fees charged by the department for various licenses, permits and services performed by the department.

2. The department of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on May 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St. - Rm. 308, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-7323; TTD number: 1-800-253-4091; fax:(406)444-1929; e-mail: mbridges@state.mt.us.

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

32.2.401 DEPARTMENT OF LIVESTOCK LICENSING FEES, PERMIT FEES, AND MISCELLANEOUS FEES

(1) through (1)(e) remain the same.

(f) for issuance of a permanent horse transportation permit as required by 81-3-205, MCA, a fee of ~~\$10~~ \$15 per head;

(g) remains the same.

(h) for releasing an animal, except horses, mules or asses, for purposes of removal from a licensed livestock market as required by 81-3-205, MCA, a fee of 50 cents per head;

(i) for inspection of horses, mules or asses before removal from a county or before change of ownership as required by 81-3-205, MCA, a fee of ~~\$3~~ \$6 per head; if more than 10 animals of the same type are offered for inspection on the same day by the same owner, a fee of \$1 per head starting with the eleventh animal;

(j) for inspection of horses, mules or asses before sold or offered for sale at a licensed livestock market as required by 81-3-205, MCA, a fee of ~~\$3~~ \$6 per head;

(k) for releasing horses, mules or asses as required by

81-3-205, MCA, a fee of \$6 per head for purposes of removal from a licensed livestock market;

(k) remains the same, but is renumbered (l).

~~(l)~~ (m) for a permanent horse transportation permit as required by 81-3-211, MCA, a fee of ~~\$10~~ \$15; also for rodeo roping steers if single brand and single ownership;

(m) through (q) remain the same, but are renumbered (n) through (r).

~~(r)~~ (s) for a livestock broker or dealer permit as required by 81-8-276, MCA, a fee of ~~\$50~~ \$100;

~~(s)~~ (t) for filing of livestock security interests as required by 81-8-304, MCA, a fee of ~~\$15~~ \$25;

(t) through (al) remain the same, but are renumbered (u) through (am).

AUTH: Sec. 81-1-102, 81-22-102, MCA

IMP: Sec. 81-1-102, 81-2-502, 81-3-107, 81-3-205, 81-3-211, 81-3-214, 81-5-112, 81-7-504, 81-8-256, 81-8-276, 81-8-304, 81-9-112, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, 81-22-208, 81-23-202, MCA

32.2.403 DIAGNOSTIC LABORATORY FEES

(1) and (1)(a) remain the same.

(i) includes histopathology and bacteriology (uses SV43 form) \$15.00 25.00

(b) remains the same.

(i) aerobic culture (first isolate) 6.00 9.00

(ii) aerobic culture (additional isolates each) 3.00

(iii) anaerobic culture (facultative) 12.00

~~(ii)~~ (iv) antibiotic sensitivity per isolate 3.00 6.00

~~(iii)~~ (v) culture for Trichomonas culture and/or Campylobacter 4.00

(iv) remains the same, but is renumbered (vi).
~~(v)~~ enterotoxemia (referral) 40.00

~~(vi)~~ (vii) Clostridium FA 8.50 12.00

~~(vii)~~ (viii) dermatophyte culture and PAS stain 15.00 20.00

(viii) and (ix) remain the same, but are renumbered (ix) and (x).

(xi) Campylobacter (livestock reproductive disease) 8.00

(xii) Campylobacter (intestinal contents) 8.00

(xiii) Clostridium genotyping referral fees: cost of referral fee

(xiv) E. coli K99 latex agglutination 10.00

(xv) Mycoplasma culture 8.00

(xvi) special requests: contact laboratory

(c) cytology 20.00

(c) remains the same, but is renumbered (d).

(i) ~~single biopsy and/or cytology~~

<u>1 - 2 slides (one biopsy)</u>	15.00	20.00
(ii) <u>2-10 tissues 3 - 6 slides</u>	20.00	25.00
(iii) <u>>10 tissues 7 - 10 slides</u>	25.00	30.00
(iv) <u>11 or greater slides</u>		35.00
(iv) remains the same, but is renumbered (v).		
(v) <u>(vi) special stains</u>	5.00	6.00
(vi) <u>(vii) immunohistochemistry</u>	15.00	20.00
(d) remains the same, but is renumbered (e).		
(i) remains the same.		
(ii) antibiotic (depending on class of suspected antibiotic) 8.00 to 16.00	<u>11.00 to 22.00</u>	
(iii) Brucella ring test	1.00	1.80
(iv) coliform (milk and water)	2.00	4.50
(v) remains the same.		
(vi) Gerber	2.00	2.30
<u>(vii) Listeria culture</u>		30.00
(vii) <u>(viii) Majonnier</u>	3.00	12.00
(viii) <u>(ix) pesticide (organophosphate and carbamate)</u>	(minimum) 10.00	23.00
<u>(x) pesticide (chlorinated hydrocarbon)</u>		200.00
(ix) <u>(xi) phosphatase</u>	3.00	5.80
(x) <u>(xii) somatic cell count (direct microscopy)</u>	.50	4.30
<u>(xiii) somatic cell count (electronic)</u>		.50
(xi) <u>(xiv) standard plate count</u>	2.00	5.00
(xii) <u>(xv) yeast or mold</u>	2.00	4.80
<u>(xvi) laboratory certification review: contact laboratory</u>		
(e) remains the same, but is renumbered (f).		
(i) bovine IgG	5.00	10.00
(ii) equine IgG	15.00	12.00
(iii) ocular nitrate	5.00	7.50
(iv) incineration (only for diagnostic cases, ashes not recovered)(included in necropsy fees in (l)(f))		
(v) insurance and legal cases: contact laboratory		
(vi) tests not listed: contact laboratory		
<u>(iv) special testing/referral: contact laboratory</u>		
<u>(v) duplicate test reporting</u>		2.00
<u>(vi) after hour fee (pathologist)</u>		50.00
<u>(vii) stat results (clinical pathology only): contact laboratory</u>		15.00
<u>(viii) minimum laboratory fee</u>		6.00
<u>(ix) biohazard disposal (all cases but necropsies)</u>		1.00
<u>(x) referral testing: fee of referral laboratory testing costs, mailing costs and \$4.00 handling fee</u>		
<u>(xi) out-of-state fee: fee of 50% surcharge of total laboratory costs</u>		
(f) (g) necropsy includes gross examination, histopathology and routine bacterial isolation, as deemed necessary by the pathologist and carcass disposal (use SV43		

form). Contact the laboratory for procedural instructions. Euthanasia must be performed at departure point unless recommended otherwise by pathologist.

(i) remains the same.		
(A) fetus	25.00	<u>30.00</u>
(B) < 150 lbs.	40.00	<u>50.00</u>
(C) 150 - 500 lbs.	50.00	<u>65.00</u>
(D) > 500 lbs.	70.00	<u>80.00</u>
(ii) remains the same.		
(A) fetus	25.00	<u>30.00</u>
(B) < 20 lbs.	25.00	<u>30.00</u>
(C) remains the same.		
(iii) pigs:		
(A) fetus	20.00	<u>30.00</u>
(B) < 25 lbs.	25.00	<u>30.00</u>
(C) 25-250 lbs.	40.00	<u>45.00</u>
(D) > 250 lbs. <u>250-500 lbs.</u>	50.00	<u>65.00</u>
(E) > 500 lbs.		<u>80.00</u>
(iv) dogs and cats	40.00	<u>60.00</u>
(v) other species (minimum)	20.00	<u>30.00</u>
(vi) spinal cord removal (in addition to necropsy fees)	50.00	<u>75.00</u>
<u>(vii) carcass disposal rates</u>		
(A) <u>small animals</u>		<u>25.00 to 85.00</u>
(B) <u>large animals</u>		<u>25.00 to 200.00</u>
<u>(viii) insurance and legal cases: contact laboratory</u>		
<u>(ix) research cases: contact laboratory</u>		
<u>(x) transmissible encephalopathies</u>		
(A) <u>necropsy (minimum)</u>		<u>100.00</u>
(B) <u>brain removal (minimum)</u>		<u>25.00</u>
(C) <u>IHC and ELISA testing: referral fee</u>		
(D) <u>administrative costs</u>		<u>10.00</u>
(g) remains the same, but is renumbered (h).		
(i) includes histopathology and routine bacteriology with additional tests for K-99 E. coli LA, coronavirus, rotavirus , Cryptosporidium, <u>endoparasitism</u> and serum immunoglobulin as history and age of calf dictates, (use SV43 form)	35.00	<u>50.00</u>
(h) individual tests (use SV43 form):		
(i) bovine IgG	5.00	
(ii) coronavirus FA	5.00	
(iii) Cryptosporidium	3.50	
(iv) electron microscopy	17.00	
(v) K-99 E. coli ELISA	5.00	
(vi) rotavirus ELISA	12.00	
(i) parasitology (use SV43 form):		
(i) adult parasite or arthropod identification (referral):	15.00	<u>17.50</u>
(ii) ectoparasite (maceration flotation)	7.50	
<u>(ii) cryptosporidia exam</u>		<u>3.50</u>
(iii) and (iv) remain the same.		
(v) <u>Dirofilaria immitis (heartworm) ELISA</u>		
<u>screening</u>	<u>12.00</u>	<u>5.00</u>

(vi) <u>Dirofilaria immitis ELISA</u>		
<u>confirmation</u>		<u>9.00</u>
(j) <u>rabies (use SV43 form): submit entire brain or head in a refrigerated, fresh state. Do not submit live animals. Coincide specimen arrival with laboratory working schedule:</u>		
(i) FA examination (small animal) no charge		<u>25.00</u>
(ii) mouse inoculation (if deemed necessary by the pathologist)	no charge	
(ii) FA examination (large animal)		<u>50.00</u>
(iii) carcass disposal (when the entire carcass is submitted rather than the head or removed brain; does not apply to bats)	(minimum) 10.00	<u>25.00 to 200.00</u>
(k) <u>serology (large animal) (use SV2A or VS10 -- 11 form):</u>		
(i) anaplasmosis <u>CELISA</u> card, CF	2.00	<u>4.00</u>
(ii) through (iv) remain the same.		
(v) Bovine Leukemia Virus AGID, ELISA		<u>5.00</u>
(vi) Bovine Respiratory Syncytial Virus SN	<u>4.00</u>	<u>5.00</u>
(vii) Bovine Virus Diarrhea <u>Type I and II</u> SN	<u>4.00</u>	<u>10.00</u>
(viii) remains the same.		
(ix) Brucella abortus STT, SPT, CF, card, RIV, BAPA or FP (each)	no charge	<u>1.00</u>
(x) Brucella abortus <u>CF, Rivanol, SPT, or STT</u> (each)		<u>2.00</u>
(x) (xi) Brucella ovis ELISA, CF	2.00	<u>3.00</u>
(xi) (xii) Equine Infectious Anemia AGID (Coggins)	6.00	<u>6.50</u>
(xii) (xiii) Equine Infectious Anemia ELISA	12.00	<u>12.50</u>
(xiii) remains the same, but is renumbered (xiv).		
(xiv) (xv) Infectious Bovine Rhinotracheitis SN	4.00	<u>5.00</u>
(xv) and (xvi) remain the same, but are renumbered (xvi) and (xvii).		
(xvii) (xviii) Leptospirosis (8 routine serovars) MAT	5.00	<u>6.50</u>
(xviii) remains the same, but is renumbered (xix).		
(xix) (xx) Parainfluenza - 3 HA	4.00	<u>5.00</u>
(xx) remains the same, but is renumbered (xxi).		
(xxi) (xxii) Salmonella pullorum MAT	2.00	<u>4.00</u>
(xxii) remains the same, but is renumbered (xxiii).		
(xxiii) (xxiv) Vesicular stomatitis SN (New Jersey or Indiana)	8.00	<u>10.00</u>
(l) remains the same.		
(i) Brucella canis Tube	10.00	<u>15.00</u>
(ii) remains the same.		
(iii) Feline Leukemia ELISA	5.00	<u>7.00</u>
(iv) remains the same.		
(m) and (n) remain the same.		

(i) BVD, IBR, Leptospira, Equine Herpes FA EHV-1, and BRSV FA	5.00	<u>6.00</u>
(ii) BRSV-ELISA <u>Bovine Viral Diarrhea ELISA</u>	25.00	<u>5.00</u>
(iii) Canine Parvovirus (fecal only) ELISA	15.00	<u>17.00</u>
(iv) electron microscopy (where applicable)	17.00	<u>24.00</u>
(v) virus isolation (IBR, BVD, PI-3, PRV, Equine Herpes) (<u>livestock only</u>) per virus		<u>15.00</u>
(o) clinical pathology (use Form SV43R) clinical profiles:		
(i) small animal health screen (SA Chem Panel, CBC/Differential, UA)	22.00	<u>30.00</u>
(ii) small animal clinical profile (SA Chem Panel, CBC/Differential)	18.00	<u>22.00</u>
(iii) SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, Glu, TP, CBC/Differential)	12.00	<u>15.00</u>
(iv) Feline ADR Profile (SA Chem Panel, T4, CBC/Differential, FeLV, FIV, FIA)	32.00	<u>37.00</u>
(v) large animal health screen (LA Chem Panel, CBC/Differential, Fibrinogen, UA)	22.00	<u>30.00</u>
(vi) large animal clinical profile (LA Chem Panel, CBC/Differential, Fibrinogen)	18.00	<u>22.00</u>
(vii) LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, CBC/Differential, Fibrinogen)	10.00	<u>15.00</u>
(viii) Equine Fitness Profile (AST, GGT, Tbili, CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, CBC/Differential, Fibrinogen)	15.00	<u>20.00</u>
(p) remains the same.		
(i) small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLU)	8.00	<u>10.00</u>
(ii) small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)	8.00	<u>10.00</u>
(iii) Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)	8.00	<u>10.00</u>
(iv) canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)	12.00	<u>14.00</u>
(v) remains the same.		
(vi) large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)	5.00	<u>7.00</u>
(vii) through (x) remain the same.		
(q) remains the same.		

(i) small animal Chem Panel	13.00	<u>15.00</u>
(ii) large animal Chem Panel	13.00	<u>15.00</u>
(iii) remains the same.		
(r) remains the same.		
(i) urinalysis (chemical, specific gravity, sediment evaluation)	5.00	<u>9.00</u>
(ii) urinalysis with culture/sensitivity	15.00	<u>17.50</u>
(s) and (t) remain the same.		
(i) solid tissue (FNA, imprint, or smear)	15.00	<u>18.00</u>
(ii) bone marrow analysis	15.00	<u>20.00</u>
(iii) fluid analysis (total cell count, TP, SG, Cytology)	17.00	<u>23.00</u>
(iv) fluid smear (cytology only)	15.00	<u>18.00</u>
(v) CSF analysis (SG, microprotein, cytospin cytology)	25.00	<u>38.00</u>
(vi) Cytology with Histology	15.00	
(vii) Cytology with culture/sensitivity	20.00	
(u) remains the same.		
(i) cross match	5.00	<u>10.00</u>
(ii) Bovine Immunoglobulin (IgG)	5.00	
(iii) Equine Immunoglobulin (IgG)	15.00	
(iv) (ii) Coagulation per test (PT, APTT, FBR, FDP)	30.00	<u>17.00</u>
(v) Coagulation tests each individual	10.00	
(vi) (iii) others: call ahead for prices		
(iv) <u>Buffy coat count</u>		<u>10.00</u>
(v) remains the same.		
(i) small animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocytes, WBC/Differential, TP, RDW, MPV, Hemotrophic parasite screen)	8.00	<u>10.00</u>
(ii) remains the same.		
(iii) Reticulocyte count	2.00	<u>5.00</u>
(iv) Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA)	18.00	<u>23.00</u>
(v) large animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocyte count, RDW, MPV, WBC/Differential, TP, Fibrinogen)±	8.00	<u>10.00</u>
(vi) through (viii) remain the same.		
(w) remains the same.		
(x) minimum fee	5.00	

AUTH: Sec. 81-1-102, 81-3-107, 81-2-102, and 37-1-134
MCA

IMP: Sec. 81-3-107, 81-1-301, 81-1-302, 81-2-102, MCA

32.15.601 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS (1) Every person filing notice of a security agreement, assignment, renewal or satisfaction pursuant to section 81-8-301, MCA, must pay a fee of ~~\$15.00~~ \$25.00 for each brand listed. The fee shall be paid by a check or money

order made payable to the department of livestock. No filing with the department may be processed without the fee first being paid.

AUTH: Sec. 81-8-304, MCA
IMP: Sec. 81-8-304, MCA

32.23.301 LICENSEE ASSESSMENTS

(1) through (1)(d) remain the same.

(e) A fee of \$0.125 per hundredweight per month, with a minimum of \$50.00 per month, whichever is greater, on the volume of all classes of milk produced and sold by a person licensed by the department, to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department.

(i) This fee, pursuant to 81-23-202(4)(a), MCA, must be paid quarterly before January 15, April 15, July 15, and October 15 of each year.

AUTH: Sec. 81-23-104, 81-23-202, MCA
IMP: Sec. 81-23-103, 81-23-202, MCA

4. STATEMENT OF REASONABLE NECESSITY The rules are being amended to change fees that are currently charged by the department of livestock for a variety of services it provides.

ARM 32.2.401 is being amended to increase fees for certain permits, filing fees and inspection fees charged by the department. ARM 32.2.401(1)(f) is being amended to increase the permanent (lifetime) horse transportation permit fee from \$10.00 to \$15.00, as this figure more accurately reflects the time and salary costs expended on issuance of a permanent (lifetime) horse transportation permit. Approximately 6,838 lifetime inspections will be affected, based on the number of lifetime inspections conducted in 2001, for a total projected revenue increase of \$34,190.00 from this fee.

ARM 32.2.401(1)(h) is being amended to add the phrase "except horses, mules and asses" to distinguish this subsection, which applies to all other animals, from new subsection (k) which will apply to horses, mules and asses.

ARM 32.2.401(1)(i) is being amended to increase the horse, mule or ass inspection fee from \$3.00 to \$6.00, as this figure more accurately reflects the time and salary costs expended on horse inspections before removal from county or before change of ownership. Approximately 10,000 inspections will be affected, based on the number of inspections conducted in 2001, for a total projected revenue increase of \$30,000.00 from this fee.

ARM 32.2.401(1)(j) is being amended to increase the horse, mule or ass inspection fee from \$3.00 to \$6.00, as this figure more accurately reflects the time and salary costs expended on

horse inspection before sale at a livestock market. Approximately 14,187 inspections will be affected, based on the number of inspections conducted in 2001, for a total projected revenue increase of \$85,122.00 from this fee.

ARM 32.2.401(1)(k) is being added to reflect a \$6.00 market release fee for all horses, mules or asses being removed from a licensed livestock market. This fee will more accurately reflect the time and salary costs expended on this market release inspection. Approximately 14,187 inspections will be affected for a total projected revenue increase of \$85,122.00 from this fee.

ARM 32.2.401(1)(l) is being amended to increase the permanent (lifetime) horse transportation permit fee from \$10.00 to \$15.00, as this figure more accurately reflects the time and salary costs expended on issuance of a permanent (lifetime) horse transportation permit. Approximately 6,838 lifetime inspections will be affected, based on the number of lifetime inspections conducted in 2001, for a total projected revenue increase of \$34,190.00 from this fee.

ARM 32.2.401(1)(r) is being amended to increase the livestock broker or dealer permit fee from \$50.00 to \$100.00, as this figure more accurately represents the costs to maintain, manage and audit the licensing of livestock dealers and markets. The dealer license fee has not been changed since the late 1970s. Approximately 567 persons would be affected, as there are currently 567 licensed dealers in the state of Montana. The total projected revenue increase would be \$28,350.00.

ARM 32.2.401(1)(s) is being amended to increase the fee for filing of a livestock security interest from \$15.00 to \$25.00, as this figure more accurately represents the actual department cost per filing. Approximately 2,028 security interest transactions would be affected based on the 2,028 transactions which occurred in 2002, for a total projected revenue increase of \$16,240.00.

ARM 32.2.403 lists fees charged by the department of livestock veterinary laboratory. The rule advises interested persons that the veterinary laboratory makes laboratory services available to the public for service-specific fees. The fees are being increased to reflect increased costs associated with providing these services. All increased fees will now be commensurate with the costs of performing the tests or services listed. The increased fees charged by the department's diagnostic laboratory will potentially affect approximately 25,000 people who may use services at the laboratory. The cumulative amount of the fee increase will be \$130,000.00 based on this number of lab users.

ARM 32.15.601 is being amended to be consistent with the new fee listed in ARM 32.4.401(1)(s) for filing of a livestock security interest. The number of affected filings and projected revenue are listed above.

ARM 32.23.301 is being amended to add a fee for administration of the milk inspection and milk diagnostic laboratory functions of the department. This fee was authorized by HB311, passed by the 2003 Legislature, and effective July 1, 2003. The board of livestock subsequently voted to implement the fee through administrative rule at the rate of 12.5¢ per hundredweight per month, or a minimum of \$50.00, whichever is greater, on all classes of milk. This fee will affect approximately 113 people, based on the current number of producers. The cumulative amount of the fee increase will be approximately \$370,000.00 based on the number of producers and production in 2002.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2002, by faxing to (406)444-1929 or e-mailed to mbridges@state.mt.us to be received no later than 5:00 p.m., June 5, 2003.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. A request for hearing must be received no later than 5:00 p.m., June 5, 2003.

7. If the agency receives requests for a public hearing on the proposed action from either ten percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based upon the population of the state.

8. An electronic copy of this Proposal Notice is available through the department's site at www.liv.state.mt.us.

9. The Montana department of livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the area of interest that the

person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2001, faxed to (406)444-1929, e-mailed to mbridges@state.mt.us, or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Carol Grell Morris, Rule Reviewer

Certified to the Secretary of State April 28, 2003.

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

In the matter of the proposed)
amendment of ARM 37.57.301,)
37.57.304, 37.57.305,)
37.57.306, 37.57.307,)
37.57.315, 37.57.316 and)
37.57.321 pertaining to)
newborn infant screening)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 30, 2003, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 23, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-4087; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.57.301 DEFINITIONS (1) remains the same.

(2) "Tests for inborn errors of metabolism" include laboratory tests for phenylketonuria, ~~detection of other aminoacidopathies, and thyroxine level for galactosemia,~~ congenital hypothyroidism and hemoglobinopathies.

AUTH: Sec. 50-19-202, MCA

IMP: Sec. 50-19-203, MCA

37.57.304 PREMATURE VERY LOW BIRTH WEIGHT (UNDER 1,500 GRAMS) INFANTS: IN HOSPITAL (1) If a newborn is ~~premature of very low birth weight, i.e., under 1,500 grams,~~ a sample of its blood must be taken for testing ~~no later than the fifth day of life and again when the infant reaches 5 1/2 pounds in weight~~ after 24 hours of age and no later than seven days of age, unless medically contraindicated, in which case each the sample must be taken as soon after ~~the relevant date~~ as the infant's medical condition permits.

(2) If the infant is not yet feeding when the initial screening sample is collected, a repeat specimen for

phenylalanine testing must be taken at least 48 hours following the first ingestion of milk.

(3) In the event that the infant stays in the hospital longer than 14 days, a repeat congenital hypothyroid screening must be made either at the time of the hospital discharge, if the hospital stay is a month or less, or at one month of age if the hospital stay is longer than one month.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

37.57.305 NON-PREATURE INFANTS OTHER THAN THOSE WITH VERY LOW BIRTH WEIGHT: IN HOSPITAL (1) The hospital or institution wherein newborn care was rendered to a newborn weighing 1,500 grams or more must take the required specimen on the third day of life of each newborn or 48 hours following its first ingestion of milk, but not later than the 14th seventh day of life.

(2) through (3) remain the same.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

37.57.306 TRANSFER OF NEWBORN INFANT (1) remains the same.

(2) A hospital or other institution which receives a newborn who has not been previously tested must take a specimen for testing and submit it to the department's laboratory between the fourth and 14th seventh day of the newborn's life, unless taking a specimen is medically contraindicated, in which case the specimen must be taken as soon as the medical condition of the infant permits.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

37.57.307 INFANT BORN OUTSIDE HOSPITAL OR INSTITUTION

(1) When an infant has been born outside of a hospital or other institution and has not subsequently been admitted to such a facility for initial newborn care, it ~~shall be~~ is the duty of the person required in 50-15-201, MCA, to register the birth of that child to cause the blood specimen to be taken not later than the 14th seventh day of the child's life, unless medically contraindicated, in which case it shall be taken as soon as the medical condition of the infant permits.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

37.57.315 EXCHANGE TRANSFUSION: WHEN SPECIMEN TAKEN

(1) If a newborn needs an ~~exchange~~ a transfusion, blood specimens for the tests required by this subchapter must be taken before the transfusion takes place.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

37.57.316 POSITIVE OR SUSPICIOUS TEST ABNORMAL TEST RESULT

(1) If the an initial test results result on an infant's blood specimen are positive or suspicious is outside the expected or normal range:

(a) the department will immediately report that fact within 24 hours of test completion to the attending physician or midwife, or, if there is none or the physician or midwife is unknown, to the person who registered the infant's birth;

(b) the individual to whom the above report is made must ensure that a second blood specimen is immediately taken within 24 hours of notification and submitted to the department for a second test.

(2) If the second test is positive or suspicious result is outside the expected or normal range:

(a) the department will immediately provide the test results within 24 hours of test completion to the same person to whom the initial results were reported;

(b) through (3) remain the same.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203 and 50-19-204, MCA

37.57.321 STATE LABORATORY: RESPONSIBILITY FOR TESTS

(1) Only those laboratory tests for inborn errors of metabolism which are performed by the department laboratory or, in the case described in ARM ~~37.57.315~~ 37.57.316, a laboratory approved by the department, will meet the requirements of 50-19-201 through 50-19-202, 50-19-203 and 50-19-204, MCA.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

3. The foregoing proposed rule amendments are necessary for the following reasons:

General

The proposed amendments have been discussed and developed in coordination with the Department's Health Policy and Services Division's Newborn Screening Advisory Committee (NBSAC), composed primarily of state and private medical personnel and reflect ongoing developments nationally aimed at improving newborn health screening, as well as Montana's own medical experience. The option of leaving the rules unchanged was rejected by the Department because the amendments will make the rules' mandates clearer and more reasonable in terms of medical experience and national trends and provide more effective and appropriate newborn screening.

ARM 37.57.301

The current definition of "tests for inborn errors of metabolism" includes "detection of other aminoacidopathies". Since the only other aminoacidopathy testing needed for newborn screening is for galactosemia, in order to avoid the implication that tests for other aminoacidopathies are included, the definition was amended to specifically reference galactosemia. The specification of "thyroxine levels" in relation to screening for hypothyroidism needs to be removed because it refers to a particular type of testing of this congenital condition and would unnecessarily limit the Department's public health laboratory from using another type of accepted screening test for the condition. The modifier of "congenital" was added to "hypothyroidism" as necessary to distinguish between hypothyroidism present at birth and hypothyroidism due to other medical conditions that develop later in life. Hemoglobinopathy testing was added to formalize the inclusion of these tests in the newborn screening panel of tests, which the Department's public health laboratory, since January, 2000, has been performing without additional cost to sample submitters. Such testing is also necessary because the Department's Family and Community Health Bureau is currently federally-required to report the number of infants screened for hemoglobinopathies as part of the extensive reporting requirements for the Social Security Act's Title V, concerning the Maternal and Child Health Block Grant. In addition, it is anticipated that such screening will soon become a national standard for newborn screening programs.

ARM 37.57.304

This rule is necessarily modified to reflect the fact that prematurity (gestational age at birth) does not necessarily represent a risk factor, while very low birth weight does. Therefore, birth weight is collected by the state's newborn screening program, while gestational age is not. The NBSAC advised that addressing issues related to the generally medically-accepted risk factor of very low birth weight (under 1,500 grams) is more appropriate than referring to gestational age in the rule. Therefore, the title of this rule has been modified and the related necessary timing of the testing adjusted accordingly. In addition, the NBSAC advised that the rule needed to be specific about the phenylalanine (PKU) testing requirements, hinging them upon whether or not the infant has begun feeding prior to initial screening. The NBSAC also felt that more specific requirements were needed for congenital hypothyroid testing when there is an extended hospitalization.

ARM 37.57.305

The revision to this rule and its title is necessary to correlate with the changes made to ARM 37.57.304, and reflects the appropriate emphasis on birth weight rather than gestational

age as a testing parameter. The outer limit of the timing of the required specimen of a normal birth weight baby is changed from the fourteenth day of life to the seventh day of life to ensure early identification of an infant whose screened condition requires immediate treatment to prevent irreversible damage to the child.

ARM 37.57.306

The proposed change of the outer limit of the timing of the required specimen from a newborn from the fourteenth day of life to the seventh day of life for previously untested newborns transferred into a hospital or other institution is necessary to ensure early identification of an infant whose screened condition requires immediate treatment to prevent irreversible damage to the child.

ARM 37.57.307

As noted above, the proposed revision to this rule changing the outer limit of the timing of the required specimen from a newborn from the fourteenth day of life to the seventh day of life reflects the necessity to ensure early identification of an infant whose screened condition requires immediate treatment to prevent irreversible damage to the child. The amendment of "shall be" to read "is" is simply editorial to conform to drafting rules and is not substantive.

ARM 37.57.315

This rule's proposed amendment is necessary to reflect the medically-accepted practice that specimens must be taken before any type of transfusion is conducted, not just in the case of exchange transfusions. To do otherwise would result in test results compromised by the blood of the person contributing the transfused blood.

ARM 37.57.316

ARM 37.57.316(1) has been substantively revised to more accurately define what constitutes abnormal screening results, in accord with currently accepted laboratory practice for each laboratory to establish what parameters are outside or an expected or normal range for the infants in question, based on a number of variables relevant to each lab. ARM 37.57.316(1)(a) needs to be modified to more specifically define how quickly abnormal test results have to be reported, since "immediately" is vague and subject to interpretation. This change in wording also reflects the current reporting process utilized by the Department's public health laboratory. ARM 37.57.316(1)(b) also needs to be modified to specify what constitutes "immediately", thereby ensuring that a second blood specimen is taken quickly enough to confirm an infant's condition as soon as possible. ARM 37.57.316(2), as above, is modified to refine the

description of an abnormal test result in relation to the second specimen and to specify a particular deadline for reporting in place of the vague "immediately".

ARM 37.57.321

The reference in (1) to ARM 37.57.315 is incorrect and must therefore be amended to refer to the proper rule, ARM 37.57.316.

Estimated fiscal impact of rule changes

The net fiscal impact of these changes depends upon the actions of the 2003 Montana Legislative Session, the cost of adding hemoglobinopathy testing of all Montana newborns, and the reduced cost of no longer retesting infants weighing 1,500 to 2,500 grams at birth.

Hemoglobinopathy screening has been conducted since January, 2000, by the Montana Public Health Laboratory without cost to the specimen submitters, because the screening costs were absorbed within the general fund support of state laboratory operations. Legislative action this session retains general fund support of the laboratory for the biennium, thereby providing sufficient resources for the laboratory to continue to provide this screening at no charge to specimen submitters.

As for the reduced cost of no longer retesting infants weighing 1,500 to 2,500 grams at birth, current retesting of low birth weight infants includes retesting for all infants with initial birth weight of less than 2,500 grams, regardless of the presence of other risk factors. The proposed rules limit retesting requirements to very low birth weight babies (<1,500 grams) without other risk factors (such as abnormal test results). This revision would exclude re-testing infants with only low birth weight as a risk factor whose birth weight is in the range of 1,500 to 2,500 grams. Based on extrapolation of six months of SFY 2001 testing data, the anticipated cost savings of no longer retesting newborns with birth weight of 1,500-2,500 grams is:

(198 infants/fiscal year currently retested) X (\$36.92 lab retest costs) = \$7,310.16

\$7,310.16 savings to specimen submitters for no longer having to retest infants with birth weight of 1,500 to 2,500 grams.

4. The Department intends that these proposed amendments will be effective July 1, 2003.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than

5:00 p.m. on June 5, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of new rules I through XXVII) ON PROPOSED ADOPTION
pertaining to bed and)
breakfast establishments)

TO: All Interested Persons

1. On May 30, 2003, at 2:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I PURPOSE (1) The purpose of these rules is to establish public health requirements governing the operation of bed and breakfast establishments in order to prevent or eliminate unsanitary and unhealthful conditions and practices which may endanger the health of the traveling public.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE II DEFINITIONS In addition to those definitions contained in 50-51-102, MCA, the following definitions apply to this subchapter:

(1) "Bed and breakfast establishment" as defined in 50-51-102(1), MCA, means a private, owner or manager occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) "Bedding" means mattress covers, mattress pads, sheets, pillow protectors and cases, blankets, comforters, quilts and bedspreads.

(3) "Building authority" means the building codes bureau of the Montana department of labor and industry or a local government building inspector enforcing a local building code

enforcement program certified by the Montana department of labor and industry.

(4) "Department" means the Montana department of public health and human services.

(5) "Dishwashing" means the cleaning and sanitizing of food contact surfaces of equipment, kitchenware, tableware and utensils.

(6) "Fire authority" means the state fire marshal or his or her authorized agent.

(7) "Fixtures" means a shower, bathtub, toilet, urinal, lavatory, all types of sinks and all exposed plumbing integral to them.

(8) "Food equipment" means items, other than utensils, that are used in the food service operation of the bed and breakfast establishment such as freezers, grinders, ventilation hoods, ice makers, meat blocks, mixers, ovens, refrigerators, sinks, slicers, stoves, tables, dishwashing machines, counters or water heaters.

(9) "Furnishings" means those items contained in guest rooms and guest bathrooms such as draperies, curtains, blinds, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, bookcases, dressers, bedsteads, mattresses, box springs, towels, washcloths, soap, toilet tissue, radios, television sets, coffee makers, pictures, waste containers and mirrors.

(10) "Guest" means each registered occupant of any unit of a bed and breakfast establishment.

(11) "Local health authority" means a local health officer, local sanitarian or any other person authorized by the department.

(12) "Poisonous or toxic materials" may include, but are not limited to:

- (a) insecticides and rodenticides;
- (b) detergents, sanitizers and related cleaning or drying agents;
- (c) caustics, acids, polishes and other chemicals;
- (d) substances necessary for kitchen equipment operation and maintenance such as nonfood-grade lubricants;
- (e) substances not necessary for the kitchen operation such as petroleum products and paints; and
- (f) personal care items or medications.

(13) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of *Clostridium botulinum* or in raw shell eggs the growth of *Salmonella enteritidis*.

(a) the term "potentially hazardous food" includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat treated and a food of plant origin that is heat treated or consists of raw seed sprouts; and

(b) the term "potentially hazardous food" does not include:

- (i) an air cooled, hard boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F;

(iii) a food with a water activity (Aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(14) "Regulatory authority" means the department of public health and human services or the local health authority.

(15) "Single service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials and other similar articles intended for one-time, one-person use and then discarded.

(16) "Tableware" means eating, drinking and serving utensils for table use, such as flatware which includes forks, knives and spoons, hollowware including bowls, cups, serving dishes and tumblers and plates.

(17) "Utensil" means a food contact implement or container used in the storage, preparation, transportation, dispensing, or service of food, such as:

(a) kitchenware or tableware that is multi-use or single-use;

(b) gloves used in contact with food; and

(c) food temperature measuring devices.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-102 and 50-51-103, MCA

RULE III PRELICENSURE REVIEW AND APPROVAL (1) Bed and breakfast establishments shall submit facility and operating plans to the regulatory authority for review and approval when the following conditions apply:

(a) Before construction commences for a new establishment or for an addition to or an alteration of an existing establishment.

(i) Construction may not commence until all plans required by (1) have been approved by the regulatory authority. Construction must be in accordance with the plans as approved unless permission is granted by the regulatory authority to make changes.

(ii) Approval will be granted for a period not to exceed three years, after which, if construction has not been completed, plans must again be submitted to the regulatory authority for reevaluation.

(b) During the license application process for a bed and breakfast establishment planning to operate in an existing building.

(i) An existing building must receive prior approval from the regulatory authority to be used as a bed and breakfast establishment.

(ii) When a proposal to use an existing building as an establishment involves structural modification, plans meeting the requirements of (2) must be submitted to the regulatory authority for review and approval. If no structural modification is involved, the regulatory authority may waive the requirement for submission of plans if:

(A) an inspection by the regulatory authority indicates that the proposed establishment meets the requirements of this subchapter;

(B) the fire authority approves the building; and

(C) the building authority approves the building or waives approval.

(2) Facility and operating plans must include the following:

(a) location and detail of storage rooms used for extra bedding and furnishings;

(b) specifications for the water supply to serve the establishment;

(c) evidence of the review and approval of the sewage treatment and disposal system by the local health authority or the Montana department of environmental quality;

(d) location and detail of laundry facilities including description of equipment, floor and wall finish material and a flow chart indicating the route of laundry through sorting, washing, drying, ironing, folding and storage;

(e) specifications for a swimming or spa facility to serve the establishment unless the swimming or spa facility has been previously approved by the department;

(f) identification of the process that will be used to dispose of solid waste;

(g) location of utility sink or a plan for mop water disposal;

(h) specifications for the proposed food service, including menu, equipment, facility design, location, materials and other information necessary to assure the implementation of this rule;

(i) location of hand washing sink(s);

(j) evidence of approval by the building authority;

(k) evidence of approval by the fire authority; and

(l) any other applicable information as requested by the regulatory authority.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE IV LICENSURE, RENEWAL, AND INSPECTION (1) Upon notification by the department that an application and fee have been received for a license for a previously unlicensed establishment or by request from the bed and breakfast establishment, the regulatory authority shall make a

prelicensing inspection to determine compliance with the requirements of this subchapter.

(2) The regulatory authority shall inspect each licensed establishment within the jurisdiction of the local board of health to determine compliance with this subchapter at least once every 12 months.

(3) If the establishment is in compliance with this subchapter and the department does not receive notification of noncompliance from the building authority or fire authority, a license will be issued or renewed.

(4) A bed and breakfast establishment that serves food only to its registered guests must meet the food service requirements of this rule but does not need a separate food establishment license as required by 50-50-201, MCA.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, 50-51-201, 50-51-202 and 50-51-204, MCA

RULE V FOOD SUPPLIES (1) Food must be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food must be obtained from sources that comply with the applicable requirements of the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA. The use of food in hermetically sealed containers that was not prepared in a licensed food processing establishment is prohibited except those foods which are included within the definition of preserves as defined in 50-50-102(16)(a), MCA, which are not potentially hazardous foods.

(2) Fluid milk and fluid milk products used or served must be pasteurized and shall meet grade A quality standards. Dry milk and dry milk products must be made from pasteurized milk and milk products.

(3) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products must be used, except that hard boiled, peeled eggs commercially prepared and packaged may be used. Guests must be advised if uninspected farm eggs are to be used.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE VI FOOD PROTECTION (1) At all times, including while being stored, prepared, displayed, served or transported, food must be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food must be 45°F (5°C) or below or 135°F (60°C) or above except as provided in (2).

(2) Potentially hazardous foods prepared and held refrigerated for more than 24 hours in a bed and breakfast establishment shall be clearly marked at the time of preparation

to indicate the date by which the food will be consumed which is, including the day of preparation:

(a) seven calendar days or less from the day that the food is prepared, if the food is maintained at 41°F (5°C) or less; or

(b) four calendar days or less from the day the food is prepared, if the food is maintained at 45°F (7°C) or less.

(3) Laundry facilities may be present in the residential kitchen, but may not be used during food preparation and service.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE VII FOOD STORAGE (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, must be stored in a clean, covered container except during necessary periods of preparation or service. Container covers must be impervious and nonabsorbent, except that clean linens or napkins may be used for lining or covering bread or roll containers.

(2) Containers of food must be stored above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area.

(3) Food and containers of food may not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by the fire authority. The storage of food in toilet rooms or entryways is prohibited.

(4) Food not subject to further washing or cooking before service must be stored in a way that protects it against cross contamination from food requiring washing or cooking.

(5) Packaged foods, including wrapped sandwiches, may not be stored in direct contact with water or undrained ice.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained must be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities must be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food must be provided with a numerically scaled temperature measuring device, accurate to ±3°F (±1.5°C), must be located to measure the air temperature in the warmest part of the facility and must be located to be easily readable. Recording temperature measuring devices accurate to ±3°F (±1.5°C), may be used in lieu of indicating temperature measuring devices.

(8) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period and internal food temperature total no more than two hours with food

cooled from 135°F (57.2°C) to below 70°F (21°C) or below and four hours with food cooled from 70°F (21°C) to 45°F (7°C) or less.

(9) Ice used as a medium for cooling stored food, food containers or food utensils must not be used for human consumption.

(10) The internal temperature throughout potentially hazardous foods requiring hot holding must be 135°F (57.2°C) unless maintained in accordance with (8).

(11) Guest food may be kept in the bed and breakfast establishment's refrigeration equipment, but must be segregated and labeled as not for sale or for use by the establishment.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE VIII FOOD PREPARATION (1) Food must be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross contamination. Sinks used for the preparation of foods must be cleaned and sanitized immediately before beginning the preparation of the food.

(2) Raw fruits and raw vegetables must be thoroughly washed with potable water before being cooked or served.

(3) Potentially hazardous foods being processed must be cooked to heat all parts of the food to a temperature of at least 135°F (57.2°C), except that:

(a) poultry, poultry stuffings, stuffed meats and stuffings containing meat must be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process;

(b) pork and pork products must be cooked to heat all parts of the food to at least 145°F (63°C);

(c) rare roast beef must be cooked to an internal temperature of at least 130°F (55°C) and rare beef steak must be cooked to a temperature of 130°F (55°C) unless otherwise ordered by the immediate consumer; and

(d) ground meat must be cooked to an internal temperature of at least 155°F (68.3°C) and must hold this temperature for at least 15 seconds.

(4) Uncooked, unpasteurized shell eggs may not be used for the preparation of ready-to-eat foods or foods that are not further cooked or baked.

(5) The reheating of food for hot holding must be done as follows:

(a) Potentially hazardous foods that have been cooked, cooled and reheated for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and must hold this temperature for 15 seconds.

(b) Potentially hazardous food reheated for hot holding in a microwave oven shall be:

(i) covered;

(ii) rotated or stirred throughout or midway during cooking or according to label instructions during heating;

(iii) heated to a temperature of at least 165°F (74°C);
and

(iv) allowed to stand covered two minutes after reheating.

(c) For all food, reheating for hot holding must be done rapidly so that the time the food is between the temperature of 45°F (7°C) and 165°F (74°C) does not exceed two hours.

(d) Ready-to-eat food taken from a commercially processed, hermetically sealed container or from an intact package from a food processing plant that is inspected by the regulatory authority, must be heated to a temperature of at least 140°F (60°C) for hot holding.

(e) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

(6) Digital or dial type metal stem temperature measuring devices accurate to ±2°F (±1°C), must be used to assure the attainment and maintenance of proper internal cooking or holding temperatures of all potentially hazardous foods.

(7) Potentially hazardous foods must be thawed:

(a) in refrigerated units at a temperature not to exceed 45°F (7°C);

(b) under potable running water of a temperature of 70°F (22°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of a raw animal food requiring cooking to be above 45°F (7°C) for more than four hours;

(c) in a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven;
or

(d) as part of the conventional cooking process.

(8) Except for cooking and baking uses, potentially hazardous foods, once served, may not be returned to the preparation area and reserved for later meals.

(9) Serving utensils must be used for the display and service of foods during family style meals.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE IX PERSONNEL (1) No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, diarrheal illness or acute gastrointestinal illness or an acute respiratory infection, shall work in a food service portion of the bed and breakfast in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons. Food employees experiencing persistent sneezing, coughing or runny nose that causes discharges from the eyes,

nose or mouth may not work with exposed food, clean food equipment, utensils, linens or unwrapped single-service or single-use articles.

(2) All personnel shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work, as often as is necessary to keep them clean and especially after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(3) The outer clothing of all personnel must be clean.

(4) All personnel shall consume food only in areas that will not result in contamination of other food, equipment, utensils or items needing protection.

(5) All personnel shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the bed and breakfast establishment.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE X FOOD EQUIPMENT AND UTENSILS (1) Multi-use food equipment and utensils must be:

(a) constructed and repaired with safe materials, including finishing materials;

(b) corrosion resistant and nonabsorbent; and

(c) smooth, easily cleanable, and durable under conditions of normal use.

(2) Single-service articles must be made from clean, sanitary and safe materials.

(3) Food equipment, utensils and single-service articles may not impart odors, color or taste, nor contribute to the contamination of food.

(4) Food equipment must be installed according to manufacturer's instructions.

(5) Hard maple or other nonabsorbent material that meets the general requirements set forth in (1) may be used for kitchen utensils, cutting blocks, cutting boards, salad bowls and baker's tables. Wood may be used for single-service articles, such as chop sticks, stirrers or ice cream spoons.

(6) Safe plastic, safe rubber or safe rubber-like materials are permitted for repeated use if they:

(a) are resistant under normal conditions of use to scratching, scoring and decomposition;

(b) are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods; and

(c) meet the general requirements set forth in (1).

(7) Re-use of single-service articles is prohibited.

(8) Food-contact surfaces must be easily cleanable, smooth and free of breaks, open seams, cracks, chips, pits and similar imperfections. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills, griddle tops and skillets.

(9) Surfaces not intended for contact with food debris or which otherwise require frequent cleaning must be washable,

nonabsorbent, accessible for cleaning and must be of such materials and in such repair as to be easily maintained in a clean and sanitary condition.

(10) Ventilation hoods and devices must be designed and installed to prevent grease or condensation from collecting on walls and ceilings and dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place.

(11) Food equipment that was installed in a bed and breakfast establishment prior to July 1, 2003 that does not fully meet all the design and fabrication requirements of this rule may be used if they are in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic, except that:

(a) refrigeration equipment must be capable of holding potentially hazardous foods at or below 45°F (7°C);

(b) bed and breakfast establishments serving up to 10 meals per day that have only a two compartment dishwashing sink must install a heat-boosted domestic dishwashing machine or an adequate three compartment dishwashing sink;

(c) bed and breakfast establishments serving more than 10 meals per day must have a three compartment dishwashing sink; and

(d) bed and breakfast establishments licensed on or before July 1, 2003 must meet the provisions of (11)(c) within five years from July 1, 2003, when applicable.

(12) All replacement food equipment and new food equipment acquired after July 1, 2003 must meet the requirements of this rule.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XI FOOD EQUIPMENT AND UTENSILS: CLEANING AND SANITIZATION (1) Food contact equipment, surfaces and utensils must be cleaned and sanitized prior to food preparation for the public and after each use.

(2) Sinks, basins or other receptacles used for cleaning equipment and utensils must be cleaned and sanitized before use.

(3) Food equipment and utensils must be preflushed or prescraped and when necessary, presoaked to remove food particles and soil.

(4) Manual cleaning and sanitizing must be conducted in five steps as follows:

(a) prerinsing or scraping;

(b) thoroughly washing in a warm detergent solution that is kept clean;

(c) rinsing with clean water to remove any abrasives and remove or dilute cleaning chemicals;

(d) sanitization; and

(e) air drying and draining.

(5) The food contact surfaces of all equipment and utensils must be sanitized by:

(a) immersion for at least 1/2 minute in clean, hot water at a temperature of at least 170°F (77°C) or above;

(b) immersion for at least one minute in a clean solution containing at least 50 parts per million (ppm) of available chlorine as a hypochlorite and at a temperature of at least 75°F (24°C);

(c) immersion for at least one minute in a clean solution containing at least 12.5 ppm of available iodine and having a pH of 5.0 or less and at a temperature of at least 75°F (24°C);

(d) immersion for at least one minute in a clean solution containing no more than 200 ppm of a quaternary ammonium compound solution by following manufacturer instructions;

(e) immersion in a clean solution containing any other chemical sanitizing agent approved by the U.S. environmental protection agency that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine as a hypochlorite at a temperature of at least 75°F (24°C) for one minute; or

(f) rinsing, spraying or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under (5)(a) through (e) in the case of food equipment being too large to sanitize by immersion.

(6) Chemicals used for sanitization may not have concentrations higher than the maximum permitted by (5). A test kit or other device that measures the ppm concentration of the solution must be used at least once each business day.

(7) Mechanical cleaning and sanitizing must be conducted using:

(a) commercial dishwashers, which must comply with ARM 37.110.215(17) through (27); or

(b) a domestic or home style dishwasher may be used provided the following performance criteria are met:

(i) the dishwasher must effectively remove physical soil from all surfaces of dishes;

(ii) the dishwasher must sanitize dishes by the application of sufficient accumulative heat;

(iii) the operator shall provide and use daily a maximum registering temperature measuring device or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150°F (66°C) after the final rinse and drying cycle; and

(iv) the dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing utensils and tableware. A copy of the instructions must be available on the premises at all times.

(8) Drainboards, portable dish tubs, or similar devices must be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and must be located so as to not interfere with the proper use of the dishwashing facilities.

(9) Food contact surfaces must be sanitized by one of the following methods:

(a) using moist cloths, which are kept clean and are rinsed frequently in a sanitizing solution mixed at twice the strength required for that sanitizing solution as provided in (5)(a) through (e). However, using the same cloths and sanitizing solution for both food contact and nonfood contact surfaces is prohibited;

(b) spraying with a sanitizing solution mixed at twice the strength required for that sanitizing solution as provided in (5)(a) through (e); or

(c) using an alternative method approved by the regulatory authority.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XII FOOD EQUIPMENT AND UTENSILS: STORAGE AND HANDLING

(1) Cleaned and sanitized food equipment and utensils must be handled in a way that protects them from contamination. Spoons, knives and forks must be touched only by their handles. Cups, glasses, bowls, plates and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

(2) Cleaned and sanitized food equipment and utensils must be stored above the floor in a clean, dry location in a way that protects them from being contaminated by splash, dust and contaminants. The food contact surfaces of fixed equipment must be protected from contamination. Food equipment and utensils may not be placed under exposed sewer or water lines except for automatic fire protection sprinkler heads.

(3) Utensils must be air dried before being stored or must be stored in a self draining position.

(4) Single-service articles must be stored above the floor in closed cartons or containers which protect them from contamination and must not be placed under exposed sewer or water lines except for automatic fire protection sprinkler heads.

(5) Single-service articles must be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

(6) Food equipment, utensils or single-service articles may not be stored in toilet rooms or entryways.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XIII WATER SUPPLY AND PLUMBING (1) An adequate and potable supply of water must be provided.

(2) Before a license may be issued, an establishment using a private or multiple family water supply must submit the following to the regulatory authority:

(a) satisfactory coliform bacteria and nitrate test results. Nitrate results in excess of 10 mg/L are considered unsatisfactory; and

(b) the results of an on site sanitary survey of the water supply system to detect sanitary deficiencies.

(3) A supplier of a private or multiple family water supply shall conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31 and shall conduct a nitrate test of the system at least once every three years. A supplier shall keep sampling result records for three years at the premises of the bed and breakfast establishment for review by the regulatory authority.

(4) A supplier of a public water supply shall undertake sample analyses for its system according to ARM Title 17, chapter 38, subchapter 2.

(5) Nonpotable water sources must be marked "not for human consumption".

(6) Plumbing must be installed and maintained in a manner to prevent cross connections between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated. The potable water system must be installed to preclude the possibility of backflow. A hose may not be attached to a faucet unless a backflow prevention device is installed.

(7) Handsinks and bathing facilities must be provided with water at a temperature of at least 100°F (37.8°C) and not more than 120°F (49°C).

(8) A water supply system is determined to have failed and requires treatment, replacement, repair or disinfection, when the water supply becomes unsafe (when it exceeds the maximum contaminant levels specified in ARM Title 17, chapter 38, subchapter 2) or inadequate (when it is found to be less than 20 psi measured at the extremity of the distribution line during instantaneous peak usage).

(9) Extension, alteration, repair or replacement of a water supply system or development of a new water supply system must be in accordance with all applicable state and local laws.

(10) Bottled and packaged potable water must be obtained from a licensed and approved source and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service must be dispensed from the original container.

(11) The department hereby adopts and incorporates by reference the provisions of ARM Title 17, chapter 38, subchapter 2, stating maximum allowable contaminant levels, sampling and other requirements for public water supplies. Copies of the above mentioned rules may be obtained from the Department of Public Health and Human Services, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951 or the Department of Environmental Quality, Permitting and Compliance Division, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XIV SEWAGE SYSTEM AND WASTE WATER (1) An adequate and safe sewage system must be provided for conveying, treating and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by sewage at the bed and breakfast establishment when they occur.

(2) A sewage system has failed and requires replacement or repair if any of the following conditions occur:

(a) the system fails to accept, treat or dispose of sewage as designed;

(b) effluent from the sewage system contaminates a potable water supply or state waters; or

(c) the sewage system is subjected to mechanical failure, including electrical outage, or collapse or breakage of a septic tank, lead line or drainfield line.

(3) Extension, alteration, replacement or new development of any sewage system must be done in accordance with all applicable local laws and ARM Title 17, chapter 36, subchapters 1, 3 and 6, which cover the minimum standards for single family and multiple family residential sewage systems, as regulated by the Montana department of environmental quality.

(4) Disposing of discharged liquid wastes from sinks, showers, toilets or baths on the ground surface is prohibited. Such waste must be discharged into the sewage system serving the bed and breakfast establishment or into an alternate system approved by the regulatory authority.

(5) Mop water or heavily soiled cleaning water may not be disposed of in any sink other than a mop or utility sink or a toilet.

(6) The department hereby adopts and incorporates by reference ARM Title 17, chapter 36, subchapters 1, 3 and 6 which set rules for subdivisions and on site subsurface wastewater treatment. Copies of the above rules may be obtained from the Department of Public Health and Human Services, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951, or the Department of Environmental Quality, Permitting and Compliance Division, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XV TOILET FACILITIES (1) Toilet facilities must be installed in accordance with the state plumbing code and must be conveniently located and accessible to employees at all times.

(2) Toilet rooms must be completely enclosed and the doors must be kept closed when they open into the kitchen. Additionally, if toilet facilities open onto or are located adjacent to the food preparation area, the toilet facilities must contain mechanical ventilation or a window.

(3) Toilet fixtures must be kept clean and in good repair. A supply of toilet tissue must be provided at each toilet at all times. Easily cleanable receptacles must be provided for waste materials.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XVI HAND WASHING FACILITIES (1) Bed and breakfast establishments serving up to 10 meals per day may use a compartment of a dishwashing sink for hand washing purposes in the kitchen. Bed and breakfast establishments serving more than 10 meals per day must have a dedicated hand washing sink.

(2) Hand washing facilities must be conveniently located to the kitchen food preparation area and laundry handling area and must provide hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand cleansing soap or detergent must be available from a dispensing unit at each hand washing facility. A supply of sanitary, single-use towels must be conveniently located near each hand washing facility. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles must be conveniently located near the hand washing facilities.

(4) A soap dispenser and disposable towels for use in hand washing must be provided at the kitchen sink. This sink must not be used for hand washing after toilet use. After toilet use, personnel shall wash hands first in an approved hand washing facility before they are washed in the kitchen sink.

(5) Hand washing facilities, soap or detergent dispensers, hand drying devices and all related equipment must be kept clean and in good repair.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XVII SOLID WASTE AND PEST CONTROL (1) Garbage and refuse must be kept in durable, easily cleanable, insect proof and rodent proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers and they may be used for storage inside the establishment. The containers must be kept clean and in good repair and be of sufficient number to hold the solid waste that accumulates.

(2) Outside storage of unprotected plastic bags or wet strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(3) Garbage and refuse must be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(4) Effective measures intended to minimize the presence of rodents, flies, cockroaches and other insects on the premises must be utilized.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XVIII FLOORS, WALLS, CEILINGS AND LIGHTING (1) The floors, walls and ceilings and attached equipment in food preparation and service areas and in employee bath rooms of bed and breakfast establishments must be fabricated from easily cleanable material and must be maintained in good repair and kept clean. Artificial lighting must be provided sufficient to facilitate sanitary food handling and cleaning of facilities. Light sources in food preparation areas must be adequately shielded or be made of a shatter resistant design or material.

(2) Carpeting, if used as a floor covering in food preparation areas or in toilet facilities, must be of closely woven construction. All carpeting located in guest rooms, hallways and other portions of the bed and breakfast used by guests must be properly installed, easily cleanable and maintained in good repair.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XIX LAUNDRY (1) Laundries operated or used by a bed and breakfast establishment must be provided with:

(a) a mechanical washer and hot air tumble dryer;
(b) a hot water supply system capable of supplying water at a temperature of 120°F (49°C) to the washer during all periods of use;

(c) detergents; and
(d) sanitizers approved by the U.S. environmental protection agency.

(2) Bedding, towels and washcloths must be machine washed at a minimum temperature of 120°F (49°C) for a minimum time of eight minutes and dried in a hot air tumble dryer or ironed at a minimum temperature of 150°F (65.5°C).

(3) Laundry other than bedding, towels and washcloths may be washed at a minimum temperature of 110°F (43.3°C) for at least eight minutes using a detergent and a sanitizer. Bleach, as a hypochlorite, may be used according to manufacturer's specifications during the final rinse.

(4) Manual washing and line drying of bed linen, towels and washcloths is prohibited.

(5) All bed and breakfast establishments must have a sink that can be used for hand washing within a reasonable distance of the laundry. Hands must be washed between the handling of soiled and clean laundry.

(6) To prevent cross contamination, a separate handling process must be used for the sorting and storage of soiled laundry and the folding and storage of clean laundry. Clean cloths and linens must be laundered, stored and protected from contamination between uses.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XX HOUSEKEEPING AND MAINTENANCE (1) Housekeeping, maintenance and linen services must be provided a minimum of

every three days and must be available on a daily basis when requested by a guest. Housekeeping, maintenance and linen services must be provided between guest occupancies. Shared bathrooms must be cleaned daily.

(2) Maintenance and properly labeled cleaning supplies and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment must be maintained and stored in a way that does not contaminate food, utensils, food equipment or linens or endanger the safety of guests. The storage area for cleaning supplies and cleaning tools must be kept clean.

(3) Toilets, bathtubs, hand washing sinks and showers may not be used for washing and rinsing of mops, brooms, brushes or any other cleaning devices.

(4) Cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats and floors in bathrooms must contain an approved disinfectant or sanitizing agent.

(5) Cleaning devices used for cleaning toilet bowls, urinals, sinks, showers and bathtubs may not be used for any other purpose and must be kept segregated when stored. Cleaning devices used for cleaning toilet bowls and urinals may not be used to clean sinks, showers and bathtubs.

(6) Deodorizers and odor masking agents may not be used unless the room in which it is used is clean to sight and touch.

(7) All bedding, towels and washcloths provided by management must be clean and in good repair. Clean laundered bed sheets and pillowcases must be provided on each bed and shall be replaced by clean, freshly laundered sheets and pillowcases after the departure of each guest or lodger and prior to occupancy by the next guest. At least weekly, clean bedding must be available to each guest.

(8) All furnishings, fixtures, floors, walls and ceilings must be clean and in good repair.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XXI BLOOD-BORNE PATHOGEN PROTECTION (1) To minimize exposure to potential blood-borne pathogens during housekeeping, maintenance, laundry or other provided services, employees shall:

(a) wear protective gloves and use an appropriate cleaning solution when cleaning up hazardous materials;

(b) use disposable towels to clean up spills and dispose of the towels in a special biohazard labeled bag;

(c) use a dust pan and brush, cardboard or tongs to clean up broken glass; and

(d) wear waterproof gloves when handling dirty laundry.

(2) All actions that involve contact with blood and other potentially contaminated products should be done in such a way as to minimize splashing, spraying, splattering and the creation of droplets. If workers come into contact with blood or body fluids, they must:

(a) wash their hands or any other contaminated parts of their body with soap and warm water;

(b) wash their hands and potentially exposed skin when they remove protective gloves or other personal protective equipment; and

(c) flush eyes or other mucous membranes with water if these body parts are exposed.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XXII SWIMMING AND BATHING AREAS (1) Any swimming pool, spa or public swimming place that exists in a bed and breakfast establishment for guest use must be constructed and operated in compliance with Title 50, chapter 53, MCA, and ARM Title 37, chapter 111, subchapters 10 and 11.

(2) Sauna services that exist in a bed and breakfast establishment for guest use must be operated in a clean and sanitary manner and must be maintained in good repair.

(3) Guest towels provided by the bed and breakfast establishment for use in the swimming and bathing area or in a sauna must be laundered between each guest use.

(4) Copies of ARM Title 37, chapter 111, subchapters 10 and 11 may be obtained from the Department of Public Health and Human Services, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XXIII GUEST REGISTRATION (1) The operator of each bed and breakfast establishment shall keep a register, entry book or card filing system containing the names and mailing addresses of every guest renting a guest room and the dates when occupied. This register, entry book or card filing system may be different than a guest sign-in book and may be inaccessible to other guests.

(2) The register, entry book or card filing system must be available for inspection by the regulatory authority in accordance with 50-16-603, MCA, which provides for the confidentiality of health care information obtained by the government. The register, entry book or card filing system must be maintained for every calendar year and may not be discarded or destroyed until one year after the calendar year for which it was maintained.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-16-603 and 50-51-103, MCA

RULE XXIV SAFETY (1) Containers of poisonous or toxic materials must be prominently and distinctly labeled according to law for easy content identification and must be used according to manufacturer's directions. These materials must not be stored or used in any manner which may contaminate food or food contact surfaces. This provision does not prohibit the convenient availability of detergents or sanitizers for use at

hand washing or dishwashing stations.

(2) First aid materials must be available on the premises.

(3) Guests must be provided with emergency exit information upon registration.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XXV PETS (1) Pets may be present on the premises with the following restrictions:

(a) pets shall be kept out of the kitchen food preparation and dining areas during food preparation and service to the public;

(b) pets shall be kept out of the laundry area during its use; and

(c) birds shall be kept out of the kitchen, dining and laundry areas at all times and be kept away from forced air ducts and heating system areas.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XXVI VARIANCES (1) An operator of a bed and breakfast establishment may request from the regulatory authority a variance to waive or modify construction or food equipment requirements contained in this subchapter. The request must be in writing, and must:

(a) demonstrate that the variance requested does not have the potential to cause adverse public health or safety effects and no other reasonable alternative exists; and

(b) describe any measure that will be taken to assure that public health and safety are maintained.

(2) The regulatory authority will maintain a record of the variance requests submitted along with the regulatory authority's responses.

AUTH: Sec. 50-51-103 and 50-51-108, MCA

IMP: Sec. 50-51-103, MCA

RULE XXVII MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-51-303, MCA, the local health authority must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local health authority and the department consistent with this subchapter or meet each of the following requirements:

(a) At least one sanitarian working with or for the local health authority must receive training from the department in bed and breakfast inspection techniques. The department is responsible for making training available on a periodic basis.

(b) The local health authority must ensure that the following are done by the local health officer, sanitarian or sanitarian-in-training:

(i) Upon notification by the department or the

establishment, a prelicensing inspection is made to determine compliance with the requirements of this subchapter.

(ii) Each establishment within the jurisdiction of the local health authority is inspected at least once every 12 months or on the schedule specified in a signed agreement with the department.

(iii) Quarterly inspection reports are submitted to the department within 10 days following the closing of each quarter of the fiscal year (first quarter, September 30; second quarter, December 31; third quarter, March 31; fourth quarter, June 30) on forms approved by the department.

(iv) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction and enforcement actions, must be retained for five years and copies of the documentation are submitted or otherwise made available to the department upon request.

(2) A failure by the local health authority to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: Sec. 50-51-303, MCA

IMP: Sec. 50-51-204 and 50-51-303, MCA

3. The Department of Public Health and Human Services (the Department), through its Food and Consumer Safety Section (FCSS), licenses and regulates public accommodations such as hotels, motels, and tourist homes provided in Title 50, chapter 51, MCA. In 1997, the State Legislature amended Title 50, chapter 51, MCA, by including bed and breakfast establishments to be licensed and regulated as public accommodations. Included in the legislation was the provision for the department to adopt rules for bed and breakfast establishments through negotiated rulemaking. Section 50-51-108, MCA, provides:

The Department, in adopting rules establishing rules for bed and breakfast establishments, shall consult with bed and breakfast operators. The department shall establish a negotiated rulemaking committee, as provided in Title 2, chapter 5, part 1, to consider matters proposed by the department that affect bed and breakfast establishments.

Title 2, chapter 5, part 1, MCA, as mentioned in 50-51-108, MCA, is the Montana Negotiated Rulemaking Act.

In October 1997, FCSS filed a notice in the Montana Administrative Register (MAR Notice No. 37-78) to establish the negotiated rulemaking committee. Thereafter, FCSS formed the committee composed of FCSS employees, a registered sanitarian from a local health jurisdiction, and operators of bed and breakfast establishments. The committee worked on developing

the rules from 1998 to 2002.

These proposed rules are the result of the committee's work. The rules take into consideration issues that are common to the small, home style operations of bed and breakfast establishments.

Because bed and breakfast establishments provide food services and sleeping accommodations, these rules contain many of the Department's existing rules for food service establishments found in ARM Title 37, chapter 110, subchapter 2, and rules affecting hotels, motels, tourist homes, retirement homes, rooming houses and boarding houses found in ARM Title 37, chapter 111, subchapter 1.

RULE I PURPOSE

Rule I provides the purpose of the ensuing bed and breakfast rules. It serves as an introduction, emphasizing that the rules are to protect the health and safety of guests staying at bed and breakfast establishments.

RULE II DEFINITIONS

Rule II contains applicable definitions that have been selected from ARM 37.110.203 regarding food service definitions, and ARM 37.111.101 which contains public accommodation terms. The committee chose Rule II's definitions because of their relevance to bed and breakfast operations.

In specific instances, the committee changed some of the definitions. For example, the definition of "bedding" found in Rule II(2) does not include mattresses, box springs and pillows, as specified in the public accommodation definition found in ARM 37.111.101(1). Instead, mattresses, box springs and pillows are found in the definition of "furnishings" in Rule II(9). The change was made because the cleaning requirements for bedding are different from furnishings. The committee determined that mattresses, box springs and pillows should be cleaned like furnishings.

Rule II(3) adds a definition for "building authority" to identify the state agency responsible for building code enforcement of bed and breakfast establishments.

Rule II(5) defines "dishwashing" to include sanitizing. Sanitizing is described as part of the cleaning process for food equipment and utensils, as specified in Rule XI.

Rule II(12) defines "poisonous and toxic materials" for purposes of Rule XXIV. That rule contains safety and use requirements to prevent toxic agents from contaminating food and other items used by employees and guests at bed and breakfast establishments.

Rule II(14) defines "regulatory authority" as including both the Department and the local health authority. Both may have concurrent jurisdiction over certain issues that are contained in the bed and breakfast rules.

RULE III PRELICENSURE REVIEW AND APPROVAL

Rule III combines the requirements of the food service and public accommodation prelicensure plan review, found in ARM 37.110.241, 37.111.104, and 37.111.105. Plan review and approval helps assure that bed and breakfast establishments meet the Department's requirements before operation begins.

RULE IV LICENSURE, RENEWAL AND INSPECTION

Rule IV lists the steps required before a bed and breakfast establishment may be licensed by the department. The rule lists in more detail what is mandated by 50-51-201, 50-51-202 and 50-51-204, MCA: licensure application, payment of license fees and inspection before the license is issued to assure that the establishment meets the Department's health and safety requirements.

By adding Rule IV(4), the committee sought to assure that bed and breakfast establishments do not need a separate license for their food service operations. The same exemption applies to other public accommodations that serve only their guests pursuant to 50-50-102(8)(c), MCA.

RULES V THROUGH XII

Rules V through XII cover the food service portion of the bed and breakfast operation. The committee chose to model these rules on the retail food service establishment rules and add modifications as needed to reflect the realities of operating bed and breakfast establishments. For instance, the committee wanted to allow meal preparation in the same kitchen used by the bed and breakfast owners and operators. The kitchen is usually a home style one, and the committee believed that with certain health and safety precautions, guests could be protected from food-borne illnesses without following all of the Department's food service establishment rules.

RULE V FOOD SUPPLIES

Rule V mimics the requirements found in ARM 37.110.204 of the Department's food service rules. Rule V assures that food used in the preparation of meals or snacks for guests is obtained from safe sources. Food must be obtained from commercial suppliers that are under regulatory control. Obtaining food from regulated sources is a primary line of defense in controlling food-borne illnesses. Pathogenic microorganisms may be present in the breeding stock of farm animals, in feeds, in

the farm environment, in waters used for raising and freezing aquatic foods, and in soils and fertilizers in which plant crops are grown. Also, at all stages of production, food is susceptible to contamination. It is therefore critical to ensure that the food used in the bed and breakfast establishment is not adulterated. A universal method in ensuring that food is obtained by approved sources and is not adulterated during processing is to ensure compliance with all laws relating to food and food labeling. Obtaining food from sources that are in compliance with the Montana Food, Drug and Cosmetic Act, found in Title 50, chapter 31, MCA, helps with that assurance.

Rule V(2) requires fluid milk and fluid milk products to be pasteurized and be of grade A quality standards, as established by the United States Department of Agriculture. The same is true regarding the requirement that dry milk and its products be made from pasteurized milk. Rule V(2) contains the same requirement specified in ARM 37.110.204(2) of the Department's food service rules.

Rule V(3) provides requirements for eggs and egg products. It contains the same requirements for eggs in ARM 37.110.204(4), except that bed and breakfast operations are allowed to use uninspected farm eggs. The committee determined that bed and breakfast establishments should be allowed to use farm eggs as some feel it adds to the home style atmosphere of the operations. Guests, however, must be advised that farm eggs are used because uninspected farm eggs may present a greater health hazard than inspected ones.

RULE VI FOOD PROTECTION

Rule VI contains many of the food protection requirements of ARM 37.110.206. Pathogens can contaminate and grow in food that is not properly protected. Not adhering to the provisions in Rule VI may subject the food to drips of condensation and drafts of contaminated air, both of which may be sources of microbial contamination. In developing this rule, the committee wanted to insure that food was protected from microbial growth.

Rule VI(2) was adopted by the committee in response to recent scientific evidence demonstrating that some pathogenic bacteria can continue to grow in cold temperatures. Refrigeration prevents food from becoming hazardous by slowing the growth of most microbes. However, the growth of some bacteria, such as *Listeria monocytogenes*, although significantly slowed, is not stopped by refrigeration because over a period of time *Listeria monocytogenes* and other organisms may increase to hazardous levels in ready-to-eat food. The time periods and temperatures contained in Rule VI(2) take into consideration the differences in the growth of *Listeria monocytogenes* at 41°F (5°C) and 45°F (7°C). Scientific evidence has shown that ready-to-eat, potentially hazardous food may be safely stored at 41°F (5°C) for a total of seven days, or at 45°F (7°C) for a total of four

days. Food which is prepared and held, or prepared, frozen and thawed must be controlled by date marking to ensure the food's safety. The standards in Rule VI(2) are the same as the ones listed in ARM 37.110.208(6).

Rule VI(3) allows laundry facilities to be present in residential kitchens as long as they are not in operation during times when food is prepared or served. The committee believed this allowance was needed because bed and breakfast establishments are residences. Many residences are designed with laundry facilities in the kitchens. Rule VI allows for this reality while providing health and safety precautions for food being prepared and served to guests.

RULE VII FOOD STORAGE

Rule VII requires safe food storage and contains many of the provisions found in ARM 37.110.206. In developing Rule VII, the committee recognized that pathogens can contaminate and grow in food that is not stored properly.

Rule VII(1) requires precautions whenever food is removed from its original packaging. The possibility of contamination by air, condensation, or other sources increases whenever food is removed from its original packaging.

Rule VII(2) requires food to be stored above the floor. The committee recognized that shoes may carry substances that can contaminate the floors of food preparation and storage areas. Food stored on the floors can be contaminated as well. The rule is similar to the provision found in ARM 37.110.206(1)(a) and (b).

Rule VII(3) prohibits storing food under exposed or unprotected water or sewage lines and in toilet rooms and entryways. This provision aims to further protect food from contamination. Even trace amounts of refuse or waste can contaminate food that is improperly stored under unprotected plumbing and in toilet rooms. This rule is the same as ARM 37.110.206(1)(d).

Rule VII(4) requires separation of food that does not require washing or cooking before service from the food items that require such preparation. Separating the food is needed to prevent cross contamination between the two types of food. Raw food items requiring washing or cooking may contaminate ready-to-eat food items. This rule contains similar provisions found in ARM 37.110.206(2).

Rule VII(5) prohibits storing packaged food in direct contact with water or ice, which is like the prohibition found in ARM 37.110.206(1)(g). Ice may contain pathogens after it has been in contact with unsanitized surfaces or contaminated food. As the ice melts, pathogens from one food may be carried into another. Packages that are not watertight may allow the entry

of the contaminated water.

Rule VII(6) requires bulk foods not stored in their original containers to be clearly identifiable. Being able to clearly identify the food allows for it to not be commingled with nonfood products, thereby preventing cross contamination. This rule was taken from ARM 37.110.206(1)(f).

Rule VII(7) contains the same requirements found in ARM 37.110.206(3). It requires enough refrigeration facilities to keep potentially hazardous food cooled at the appropriate temperature. The temperature specifications in the rule have been scientifically proven to prevent the growth of bacteria such as Yersinia and Listeria in the food. The requirement for temperature measuring devices further assures that the food is stored at safe temperatures. The accuracy of the devices at $\pm 3^{\circ}\text{F}$ ($\pm 1.5^{\circ}\text{C}$) also provides assurance of safe storage temperature.

Rule VII(8) deals with cooling potentially hazardous food. If food is not cooled in accordance with this rule, pathogens may grow to sufficient numbers, causing food borne illness. This rule adopts the requirements found in ARM 37.110.206(4).

Rule VII(9) prohibits serving ice to guests in edible form when the same ice has been used to cool stored food, containers or utensils. Freezing does not invariably kill microorganisms but in fact may preserve them, leading to food borne illnesses. Ice may pick up contaminants from the food, containers or utensils, therefore the same ice cannot be used for human consumption. This provision follows the requirement found in ARM 37.110.204(8).

Rule VII(10) requires potentially hazardous food to have an even internal temperature of 135°F (57.2°C) or above when the food requires hot holding. The temperature has been scientifically proven to help prevent the growth of pathogens in such food, and it is used as the hot holding temperature throughout ARM Title 37, chapter 110, subchapter 2, of the Department's food establishment rules.

Rule VII(11) allows guest food to be kept in the bed and breakfast establishment's refrigerator as long as it is segregated and labeled. The Department's food service rules do not allow for this practice, but the committee decided that the practice could be handled appropriately in a small, home style facility without causing health risks to residents and guests.

RULE VIII FOOD PREPARATION

Rule VIII deals with food preparation and service. Rule VIII(1) requires food surfaces, sinks, equipment and utensils to be cleaned and sanitized prior to preparation, as specified in ARM

37.110.207(1) and (2). Unclean surfaces, sinks, equipment and utensils may contaminate the food that is being prepared.

Rule VIII(1) also requires food preparation with the least possible manual contact, in accordance with ARM 37.110.210. Although food preparers are required to wash their hands prior to handling food, which does reduce contamination of the food, washing hands may not in itself prevent contamination. As a final barrier, Rule VIII(1) requires minimal hand contact to decrease the likelihood of infecting guests consuming the food.

Rule VIII(2), like ARM 37.110.207(3), requires raw fruits and vegetables to be washed with potable water. Pathogenic organisms and chemicals may be present on the exterior surfaces of raw fruits and vegetables. Washing them removes the majority of the contaminants. If nonpotable water is used, the fruits and vegetables may become contaminated, which in turn may lead to guests contracting illnesses and diseases.

Rule VIII(3) provides cooking temperatures for raw animal foods based on current scientific evidence for the effective destruction of pathogens. This provision takes into consideration the many factors present in the thermal destruction of microorganisms. Thermal destruction is determined by the microorganisms' ability to survive heat. Different species of microorganisms have different susceptibilities to heat. Cooking to bring all parts of the food up to the required temperature for the correct length of time kills a sufficient number of pathogens to render it safe for eating. Rule VIII(3) copies many of the provisions found in ARM 37.110.207(4).

Rule VIII(4) prohibits using eggs that are unpasteurized and uncooked when preparing ready-to-eat food that is not further cooked or baked, such as raw eggs being used in caesar salad dressing. Raw eggs are considered potentially hazardous food because they may contain the pathogen *Salmonella enteritidis*. Consuming raw eggs can lead to food borne illnesses that can potentially be deadly, especially to persons who have compromised immune systems.

Rule VIII(5) contains the requirements found in ARM 37.110.207(7). The rule specifies safe procedures for reheating food for hot holding. When food is cooked, cooled, and reheated, there is an increased risk from contamination caused by food preparers, equipment, procedures, or other factors. If food is held at improper temperatures for enough time, pathogens have the opportunity to multiply to dangerous numbers. Proper reheating, as specified in Rule VIII(5), provides a degree of assurance that the pathogens will be eliminated by thermal destruction.

Rule VIII(6) requires accurate temperature measuring devices to assure that food meets the required temperatures as specified in

this rule. The temperature measuring devices must be accurate to $\pm 2^{\circ}\text{F}$ ($\pm 1^{\circ}\text{C}$) to assure accuracy in measuring the internal food temperatures. This rule follows the requirements of ARM 37.110.213(9).

Rule VIII(7) adopts the requirements found in ARM 37.110.207(10) for thawing potentially hazardous food to prevent microbial growth. Although freezing prevents microbial growth in food, it usually does not destroy all microorganisms. Improper thawing provides an opportunity for surviving bacteria in frozen foods to grow to harmful numbers.

Rule VIII(8) is needed to assure that food that is unused or returned by guests is not reserved to another guest. Food can serve as a means of person to person transmission of diseases such as the Hepatitis A virus. Rule VIII(8) contains the requirements found in ARM 37.110.208(8)(d).

Rule VIII(9) allows the use of serving utensils for the display and service of foods during family style meals. In devising this provision, the committee wanted to allow family style meals to maintain the bed and breakfast's home style atmosphere. As long as serving utensils are used, family style meals can be served safely.

RULE IX PERSONNEL

Rule IX concerns personnel working at bed and breakfast establishments, and it adopts many of the same requirements found in ARM 37.110.210.

Rule IX(1) prohibits employees from working in the food service portion of the bed and breakfast establishment when they are infected with or carry organisms of communicable diseases that can be transmitted through foods. It also seeks to prevent food contamination from discharges from employees' eyes, noses, and mouths. These discharges can directly contaminate exposed food, equipment, and utensils. The provisions of Rule IX(1) are the same found in ARM 37.110.210(1), and 37.114.301(2) concerning the Department's rules for controlling the transmission of communicable diseases by food employees.

Rule IX(2) proposes requirements for effective hand washing. Hands may become contaminated when employees who handle food engage in the activities specified in (1) of this rule. Unsanitary personal practices such as scratching the head, placing the fingers in or about the mouth or nose, and indiscriminate and uncovered sneezing or coughing may result in food subsequently being contaminated if employees do not wash their hands afterwards. The requirement for clean fingernails is necessary because improperly maintained fingernails can contaminate food. Ragged fingernails may harbor pathogenic organisms. Dirt under the fingernails or pieces of fingernails may break off into the food. Rule XI(2) is similar to ARM

37.110.210(4) and (7)(a).

Rule IX(3) and (5) are derived from ARM 37.110.210(7)(a) and (d) and require personnel to wear clean clothing and maintain personal cleanliness. Dirty clothes may harbor disease causing organisms that can be transmitted to food. Food employees who inadvertently touch dirty clothing may contaminate their hands and thereafter the food they are handling. Food may also be contaminated through direct contact with dirty clothing. Maintaining personal cleanliness assures further prevention of contaminating food.

Rule IX(4) requires personnel to eat and drink in areas that will not result in contaminating other food being prepared for guests. An employee may contaminate their hands, food, and food contact surfaces while eating. Section (4) is needed to assure the safety of food. It is similar to the requirement found in ARM 37.110.210(7)(e).

RULE X FOOD EQUIPMENT AND UTENSILS

Rule X(1) through (9) require food equipment and utensils to be designed and constructed of durable materials and capable of retaining their original characteristics. The requirements assure that such items can continue to fulfill their intended purposes for the duration of their life expectancy and maintain their easy cleanability. If the equipment and utensils cannot maintain their original characteristics, they may become difficult to clean, allowing for the harborage of pathogenic microorganisms. Equipment and their parts must be designed and constructed so that they do not break and end up in food as foreign objects, which may cause injuries to guests eating the food. This rule mimics many of the requirements found in ARM 37.110.212.

Rule X(10) requires ventilation hoods and other devices to prevent grease or condensation from collecting on walls and ceilings. Improper ventilation may cause grease or condensation to contaminate food and food contact surfaces. The grease and condensation can contain pathogenic microorganisms. The requirement of Rule X(8) is the same found in ARM 37.110.213(12).

Rule X(11) is specific to bed and breakfast establishments. The committee did not want to require existing bed and breakfast establishments to immediately upgrade their equipment if such equipment is adequate. The committee determined that refrigeration equipment had to be capable of holding potentially hazardous food at or below 45°F (7°C) because these temperatures have been scientifically proven to provide enough coldness to prevent the proliferation of pathogenic microorganisms. The committee also decided that bed and breakfast establishments serving more than 10 meals per day must have a three compartment dishwashing sink, which is the same requirement for retail food

service establishments. The committee felt that adequate equipment and utensil cleaning and sanitizing could be achieved in smaller establishments serving up to 10 meals per day without a three compartment sink as long as the establishments also have heat-boosted domestic dishwashing machines.

RULE XI FOOD EQUIPMENT AND UTENSILS: CLEANING AND SANITIZATION

Rule XI adopts many of the provisions found in ARM 37.110.215 pertaining to the cleaning and sanitizing of food equipment and utensils. Section (1) requires cleaning and sanitizing the equipment and utensils before food preparation to prevent cross contamination of filth onto the food. Section (2) requires cleaning and sanitizing the sinks to prevent cross contamination of the food equipment and utensils being cleaned in the sinks. Both sections repeat the requirements found in ARM 37.110.215(1) through (5).

Rule XI(3) requires preflushing and scraping food and soil off equipment and utensils before cleaning and sanitizing, which is the same requirement found in ARM 37.110.215(22). Preflushing and scraping prevents contamination of the cleaning and sanitizing solutions.

Rule XI(4) covers the steps necessary for effective manual cleaning and sanitizing. The same steps are found in ARM 37.110.215(10) and (13). The process has been found to effectively clean and sanitize equipment and utensils so that they do not contaminate food when it is prepared and served.

Rule XI(5) deals with effective sanitizing by specifying the amount of concentration of sanitizing solution to be used, the amount of time needed for immersion in the solution, and the minimum temperatures needed for the solution. The designated amounts and temperatures listed have been scientifically proven to effectively kill microorganisms. The same standards are found in ARM 37.110.215(14).

Rule XI(6) prohibits the use of sanitizing solution exceeding the amounts specified in (5), which corresponds with ARM 37.110.215(16). Sanitizer strength can become too toxic if used in excessive amounts, and traces may remain on the equipment and utensils after being sanitized, which may in turn potentially contaminate food.

Rule XI(7) allows bed and breakfast establishments to either use a commercial dishwasher, which must comply with ARM 37.110.215(17) through (27), or use a domestic dishwasher which is not customarily allowed in regular food service establishments. The provision also allows a lower heat temperature used for domestic dishwashers. The committee chose to allow domestic dishwashers with lower heat temperatures because of the small amount of equipment and utensils used in bed and breakfast establishments. The committee determined that

an operator can effectively clean and sanitize equipment and utensils with the exceptions.

Rule XI(8) requires portable dish tubs and drain boards to handle soiled utensils prior to and after cleaning and sanitizing. This requirement assists in segregating dirty utensils from clean ones to prevent cross contamination. This section contains the same requirement found in ARM 37.110.215(11).

Rule XI(9) borrows the provisions of ARM 37.110.215(7), which requires cloths used to clean food contact surfaces to be clean, rinsed with sanitizing solution, and be used for no other purpose. The provision also contains the requirements found in ARM 37.110.215(14)(g) by specifying that the solution used to sanitize food contact surfaces contain twice the concentration of sanitizer than that required in Rule XI(6). Rule XI(9) helps prevent cross contamination of food contact surfaces with cleaning cloths used for other purposes, and the specified sanitizing solution strength assures that microorganisms are effectively killed.

RULE XII FOOD EQUIPMENT AND UTENSILS: STORAGE AND HANDLING

Rule XII provides methods to store and handle food equipment and utensils to protect them from contamination. Sections (1) through (3) contain the same provisions as ARM 37.110.216(1) through (3) of the Department's food establishment rule. Sections (4) through (6) are the same as ARM 37.110.216(5), (6) and (8). The committee chose these provisions of ARM 37.110.216 as being applicable to food service portions of bed and breakfast establishments. It determined that the provisions would help assure adequate protection of equipment and utensils from pathogenic organisms and chemical and physical hazards.

RULE XIII WATER SUPPLY AND PLUMBING

Rule XIII requires operators of bed and breakfast establishments to assure adequate and safe water for residents and guests. The committee realized that many bed and breakfast establishments are served by private or multifamily water supply systems. Those systems are not regulated by the Montana Department of Environmental Quality because they normally do not fit the definition of a public water system. When private or multifamily water systems exist, operators must provide proof that the water is safe by having satisfactory coliform bacteria and nitrate tests, and they must show that the water supply is adequate by having satisfactory sanitary survey results. Excessive coliform organisms and/or nitrates in the water may indicate that the water system is experiencing contamination from septic systems or animals. A satisfactory coliform test shows that coliform bacteria are absent in a 100 milliliter sample. A satisfactory nitrate test result proves that the water has 10 milligrams per liter or less of nitrate. A

sanitary survey evaluates the water system to assure that it is in compliance with the standards recognized by the U.S. Environmental Protection Agency.

Rule XIII(6) provides requirements for the installation and maintenance of plumbing. The provision borrows the requirements of ARM 37.110.219(1) and (3) of the Department's food establishment rules. Cross connections between potable and nonpotable water are prohibited to prevent the contamination of potable water. Devices must be installed to prevent the backflow of water into the potable water supply, thereby preventing contamination and assuring the purity of the potable water supply.

Rule XIII(7) requires hot water temperatures to be between 100° to 120°F for hand sinks and bathing facilities. Warm water is more effective than cold in removing soil from employees' hands when clean hands are needed to prepare food for guests. Lower temperatures than that provided in Rule XIII(7) may be uncomfortable for most people and may discourage hand washing or bathing. Temperatures over 120°F present a scalding hazard.

Rule XIII(8) lists the conditions that indicate when a water supply has failed and must be replaced. Failed water systems can pose an unacceptable risk to human health. Clearly detailing what a system failure is helps guide operators and regulatory authority inspectors to identify when a water system is in need of repair, replacement, or disinfection.

Rule XIII(9) proposes that establishments comply with state and local laws when altering or replacing their water supply systems. Public water supplies and municipal water supplies are regulated by the Montana Department of Environmental Quality and local health authorities. The department finds that water systems are adequate when they conform to the laws and regulations of the Department of Environmental Quality and local health authorities.

Rule XIII(10) describes the criteria for bottled water that is acceptable for use by bed and breakfast establishments, and adopts the requirements found in ARM 37.110.217(3) of the Department's food service regulations. The committee agreed that water, even bottled water, must be proven to be safe in order to protect the health of residents and guests.

RULE XIV SEWAGE SYSTEM AND WASTE WATER

Rule XIV requires the proper treatment and disposal of sewage. Human sewage is hazardous to humans because it contains pathogenic organisms. This rule describes the type of sewage treatment and disposal system that must be used when a bed and breakfast establishment is not served by a public or municipal sewage system. The committee determined that bed and breakfast establishments do not necessarily need to be served by a public

or municipal system to safely treat and dispose of sewage as long as the provisions of Rule XIV are met.

Rule XIV(5) allows bed and breakfast establishments to dispose waste water into toilets, and does not restrict them from disposing only in mop or utility sinks. This allowance is a deviation from the prohibition found in ARM 37.111.122(1)(d) as it pertains to public accommodations. The committee agreed that the small volume of waste water would not pose an unacceptable health or safety risk to residents or guests by allowing disposal in toilets.

RULE XV TOILET FACILITIES

Rule XV regulates the installation, location, and cleaning of toilet facilities. Section (1) requires the facilities to be installed in compliance with the state plumbing code to assure sewage does not contaminate potable water. Rule XV also borrows the provision found in ARM 37.110.220(1) of the Department's food establishment regulation by requiring toilet facilities to be convenient and accessible to employees at all times.

Rule XV(2) contains the same provisions of ARM 37.110.220(7) and (9) regarding toilet rooms being completely enclosed and ventilated if they open into or are adjacent to food preparation areas. Because bed and breakfast establishments are configured differently as residential houses rather than commercial establishments, the committee believed toilet rooms could open into or be adjacent to food preparation areas without causing unacceptable health risks if the doors are kept closed and ventilation is provided.

Rule XV(3) consists of the same requirements of ARM 37.110.220(6) and (8). Toilet fixtures must be kept clean and in good repair to prevent any potential of contamination by the user, which may lead to residents and guests being contaminated. The same reasoning exists for the requirements of having a supply of toilet tissue and easily cleanable trash receptacles.

RULE XVI HAND WASHING FACILITIES

Rule XVI covers the requirements for hand washing facilities. In devising (1), the committee determined that smaller bed and breakfast establishments serving 10 or fewer meals per day did not need to install dedicated hand washing sinks, but hands could be safely washed in dishwashing sinks without causing adverse health effects. The committee felt that larger establishments serving more than 10 meals a day had a large enough volume of dishes and utensils that would cause dishwashing sinks to be used more often and not be empty and available for hand washing. The committee therefore determined that separate hand washing sinks were needed in larger establishments.

Rule XVI(2) adopts the requirements of the Department's food establishment and public accommodation rules. Hand washing sinks are required to be conveniently located in food preparation areas in accordance with ARM 37.110.221(3) and (4). The sinks are also required to be in laundry areas pursuant to ARM 37.111.121(1)(e). Hand washing sinks are required to be close by food preparation and laundry facilities because both operations require employees to have clean hands, and convenient locations promote hand washing. Rule XVI(2) also requires hot and cold water that is tempered by means of a mixing valve or combination faucet. This requirement is the same one found in ARM 37.110.221(7). Warm water is needed to effectively remove soil from hands, and it must be of a comfortable temperature to encourage hand washing.

Rule XVI(3) requires soap and disposable towels, as specified in ARM 37.110.221(8) and (9) regarding retail food establishments, and ARM 37.111.121(1)(e) concerning laundry areas in public accommodations. Common towels are prohibited because they can recontaminate clean hands. Cleanable waste receptacles to collect disposable towels are needed so that the paper waste will be contained and will not directly or indirectly contact food or laundry.

Rule XVI(4) requires hand washing soap and disposable towels at kitchen sinks, and prohibits the use of the kitchen sinks for washing hands after toilet use. Soap and disposable towels facilitate hand washing when handling food or food contact surfaces. Prohibiting hand washing in kitchen sinks after toilet use prevents the sinks from being contaminated with fecal matter that may exist on the hands. This in turn protects food that is being prepared from contamination.

Rule XVI(5) requires all hand washing facilities and related equipment to be easily cleanable. This requirement comes from ARM 37.110.221(10) of the Department's food establishment rule concerning hand washing sinks. Easy cleanability promotes the frequency of cleaning, which in turn reduces the chance of cross contamination of food and laundry by the user.

RULE XVII SOLID WASTE AND PEST CONTROL

Rule XVII regulates the control of solid waste generated by the bed and breakfast establishment. Solid waste control and disposal are covered under ARM 37.110.222 and 37.111.117. Both rules require storage of solid waste in durable, cleanable, insect and rodent proof containers that do not leak liquid waste, and they require frequent disposal of solid waste. The committee determined that solid waste can be safely stored indoors because of the small volume of waste generated by bed and breakfast establishments. Prohibiting the storage of solid waste in an uncontrollable manner outdoors will help assure that rodents, insects, and other potential disease sources will not be attracted to the facility. Following the provisions of Rule

XVII will help lower the risk of disease transmission into the bed and breakfast facility.

RULE XVIII FLOORS, WALLS, CEILINGS AND LIGHTING

Rule XVIII contains minimum requirements for floors, walls, ceilings, and lighting. In developing this rule, the committee chose provisions from ARM 37.110.225 concerning floors in food establishments; ARM 37.110.226 regarding walls and ceilings in food establishments; ARM 37.110.228 regarding lighting requirements for food establishments; and ARM 37.111.107 regulating floors, walls, ceilings and lighting in public accommodations. Cleanable walls and ceilings that are kept in good repair assist with preventing contamination that may accumulate on such structures. Adequate lighting assures employees are able to see to safely prepare food and satisfactorily perform cleaning.

In XVIII(2), carpeting is allowed in food preparation areas and toilet facilities. When devising this section of the rule, the committee was aware that carpeting is prohibited in food preparation areas and toilet facilities in accordance with ARM 37.110.222(2). The committee decided, however, that carpeting could be allowed as long as it is kept clean. This allowance accommodates the unique home style type of operation offered by bed and breakfast establishments.

RULE XIX LAUNDRY

Rule XIX provides requirements for laundry facilities as provided for in ARM 37.111.121 of the Department's public accommodation rules, but with exceptions. Rule XIX does not require industrial washing and drying facilities, but allows the use of standard facilities commonly used in private residences. The committee also determined that washing and drying temperatures did not need to be as high as required by commercial public accommodation facilities. The committee weighed the evidence and determined that washing bedding, towels and washcloths for guests at a temperature of 120°F and drying at 150°F were sufficient to protect against the risk of disease transmission. The committee further found that a lower wash temperature of 110°F was acceptable as long as chemical sanitizers were used.

RULE XX HOUSEKEEPING AND MAINTENANCE

Rule XX adopts some of the requirements needed for housekeeping and maintenance as found in ARM 37.111.122 of the Department's public accommodation rule. However, whereas the public accommodation rule requires daily cleaning and daily changing of bedding, Rule XX(1) allows cleaning at least once every three days unless more is requested by guests, and providing clean bedding at least weekly. This practice reflects the realities of bed and breakfast operations. In all cases, cleaning and

bedding changes are required prior to the occupancy of a new guest.

RULE XXI BLOOD-BORNE PATHOGEN PROTECTION

Rule XXI(1) and (2) add precautions to protect against blood borne pathogens. Such procedures are required for public accommodations by the federal Occupational Safety and Health Administration (OSHA) regulations and other applicable regulations. The committee decided to adopt these precautions in rule because small, home style bed and breakfast establishments may not have access to these precautions in any other way other than through department rule.

RULE XXII SWIMMING AND BATHING AREAS

Rule XXII reiterates the requirements for public swimming pools and spas that must be followed by public accommodations in ARM 37.111.123. The committee chose to adopt Rule XXII(2) regarding saunas. Saunas are not regulated by the Department, but the committee determined to include them and invoke minimum standards to protect residents and guests from any health risks.

RULE XXIII GUEST REGISTRATION

Rule XXIII requires bed and breakfast establishments to keep guest registries like other public accommodations, as specified in ARM 37.111.130. Guest registries may be used by a local health authority or the Department to track guests who may have been exposed to communicable diseases at the establishments. The guest registries do not need to be made available to the public. The Department considers them health information under Title 50, chapter 16, MCA, and as such they are preserved as confidential.

RULE XXIV SAFETY

Rule XXIV provides assurances that poisonous or toxic materials will be segregated and handled appropriately so as not to contaminate food, food contact surfaces, or guests. The same requirement exists in ARM 37.110.231 of the Department's food establishment rules. The committee also wanted to assure that first aid materials would be available on the premises. The committee further chose to require bed and breakfast establishments to provide emergency exit information to guests because small, home style establishments would not necessarily have exits marked like they would be in commercial establishments.

RULE XXV PETS

Rule XXV provides specific allowances and restrictions for pets that may be at the bed and breakfast establishment. The rule adopts some of the requirements found in ARM 37.110.232(1) of

the Department's food establishment rule. In devising Rule XXV(1) and (2), the committee did not want to adopt strict prohibitions against pets, but felt that pets could be safely allowed in the kitchen and laundry areas as long as food was not being prepared and served and laundry was not being cleaned. The committee wanted to assume that bed and breakfast operators are able to control their pets so that the health and safety of guests are protected. For XXV(3), the committee decided to prohibit birds from the kitchen, dining and laundry areas because birds can provide airborne contamination.

RULE XXVI VARIANCES

Rule XXVI provides an opportunity for bed and breakfast operators to request variances from the construction and food equipment requirements. The committee wanted to provide flexibility based on each establishment's unique status. Rule XXVI allows the local health authority and the department to consider alternatives as long as health and safety measures are taken for residents and guests.

RULE XXVII MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES

Rule XXVII contains the minimum performance criteria for local health authorities to receive their portion of license fees collected by the department. This provision is based on the following statutes: Section 50-51-204(1), MCA, provides that the Department is to deposit 85% of fees from public accommodation licenses in a local board inspection fund. Section 50-51-303(1), MCA, provides that the Department must distribute the proceeds from the local board inspection fund if:

- (a) there is a functioning local board of health; and
- (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:
 - (i) assist in inspections and enforcement of the provisions of this chapter [the public accommodation statutes under Title 50, chapter 51, MCA] and the rules adopted under it; and
 - (ii) meet minimum program performance standards as established under rules adopted by the Department.

The Department's authority to enact Rule XXVII stems from 50-51-303(1)(b)(ii), MCA. The Department has adopted similar rules for all establishments licensed by the Department, including retail food service establishments, wholesale food manufacturers, public swimming pools and swimming areas, and campgrounds and trailer parks. Not having Rule XXVII would mean that the Department would have no standards to distribute the portion of bed and breakfast license fees to local health jurisdictions, and the Department would be violating 50-51-303(1)(b)(ii), MCA.

Rule XXVII and all of the preceding rules, do not increase any revenue for the Department or local health authorities. Bed and breakfast establishments are currently licensed by the Department even though no operational rules have yet been adopted.

Alternatives to devising separate rules for bed and breakfast establishments were considered. One alternative was to allow bed and breakfast establishments to be regulated by the Department's general public accommodation rules found in ARM Title 37, chapter 111, subchapter 1. These rules apply to facilities serving hundreds of people per day, and they require food services in the facilities to be in compliance with all Department food service rules found in ARM Title 37, chapter 110, subchapter 2. Bed and breakfast establishments serve fewer numbers of guests in homelike environments, and meeting all of the standard public accommodation and food establishment rules would be cost prohibitive and in some cases unnecessary. Bed and breakfast operators and the Montana Bed and Breakfast Association preferred to tailor rules that were specific to their establishments while protecting public health and safety at the same time. Also, local health authorities were experiencing frustration when enforcing the general public accommodation rules upon small bed and breakfast establishments when many of the rules were not applicable.

Another alternative considered was to exempt bed and breakfast establishments from any of the Department rules. The lack of health and safety regulations would result in some bed and breakfast establishments offering healthful and safe accommodations on a voluntary basis, and other establishments not doing so. The public expects that all public accommodations, including bed and breakfast establishments, will be in compliance with certain minimal health and safety requirements. Furthermore, the bed and breakfast industry wanted the rules. The industry insisted that the rules were necessary to protect the public they serve, thereby enhancing their industry. Operators of high quality establishments welcome Department inspection and regulation as another evaluation of their own high standards. Therefore, the idea of having no rules at all was rejected.

4. The Department intends that these proposed adoptions will be effective July 1, 2003.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 5, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of

administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of new rules I through XXXIX) ON PROPOSED ADOPTION
pertaining to intermediate)
care facilities for the)
developmentally disabled)
(ICF/DD))

TO: All Interested Persons

1. On May 29, 2003, at 2:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED (ICF/DD): APPLICATION OF OTHER RULES: COURT ORDERS (1) To the extent that other licensure rules in ARM Title 37 conflict with the provisions of this subchapter, the provisions of this subchapter will apply to intermediate care facility for the developmentally disabled (ICF/DD).

(2) Notwithstanding the requirements of this chapter, the facility shall comply with the terms and conditions of an order issued by a court of competent jurisdiction, including, but not limited to, the observance of any limitations placed upon a client's rights by the court.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE II DEFINITIONS (1) "Abuse" is defined at 52-3-803, MCA.

(2) "Administrator" means a designated individual having daily overall management responsibility for the operation of a facility.

(3) "Client" means an adult resident, 18 years of age or older, receiving services from a facility.

(4) "Comprehensive functional assessments" identify the client's presenting problems, disabilities, specific developmental strengths, specific developmental and behavioral management needs, and need for services. This assessment must take into consideration the client's age and the implications for treatment and habilitation at each stage.

(5) "Department" means the department of public health and human services.

(6) "Direct care staff" means present on-duty staff that provide personal care and habilitation services in each defined residential living unit as well as client support services.

(7) "Direct care services" are services provided by direct care staff of the facility.

(8) "Exploitation" is defined at 52-3-803, MCA.

(9) "Facility" means an intermediate care facility for the developmentally disabled.

(10) "Guardian" means a person or entity appointed by a court in a proceeding under Title 72, chapter 5, MCA, to make decisions on behalf of an incapacitated adult.

(11) "Habilitation" is defined at 53-20-102, MCA.

(12) "Individual treatment plan" means a written plan that outlines individualized treatment activities for the treatment and habilitation of the client.

(13) "Interdisciplinary team" means individuals representing the professions, disciplines or service areas that are relevant to identifying and serving the client's needs. The team uses comprehensive functional assessments to develop and maintain the individual treatment plan for each client.

(14) "Intermediate care facility for the developmentally disabled (ICF/DD)" means a long term care facility that provides intermediate developmental disability care.

(15) "Intermediate developmental disability care" is defined at 50-5-101, MCA.

(16) "Long term care facility" is defined at 50-5-101, MCA.

(17) "Neglect" is defined at 52-3-803, MCA.

(18) "Preliminary evaluation" means evaluation of client's background information as well as currently valid assessments of functional, developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(19) "Program staff" means facility staff serving the needs of the client within the scope of their education and training.

(20) "Sexual abuse" is defined at 52-3-803, MCA.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE III GOVERNING BODY AND MANAGEMENT (1) The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must:

(a) exercise general policy, budget, and operating direction over the facility; and

(b) appoint the administrator of the facility.

(2) The administrator appointed by the governing body shall, at a minimum:

(a) hold a current Montana nursing home administrator license;

(b) be a licensed health care professional; or

(c) have equivalent credentials approved by the department.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE IV COMPLIANCE WITH APPLICABLE LAWS (1) The facility must be in compliance with all applicable provisions of state and local laws, regulations and codes.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE V CLIENT RECORDS (1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, treatment and habilitation, including preliminary evaluation, comprehensive functional assessments, individual treatment plan, progress notes, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the client's records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE VI SERVICES PROVIDED UNDER AGREEMENTS WITH OUTSIDE PROVIDERS (1) If a service required under this subchapter is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must:

- (a) contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and
- (b) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subchapter.

(3) The facility must assure that outside services meet the needs of each client.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE VII CLIENT PROTECTIONS, THE PROTECTION OF RESIDENTS' RIGHTS (1) The facility must ensure the rights of all of the clients, and must:

(a) inform each client or legal guardian of the client's rights and the rules of the facility;

(b) inform each client or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) inform the individual client of their rights as a client of the facility, including the right to file complaints and the right to due process;

(d) allow the individual client to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that each client is not subjected to abuse, sexual abuse, neglect, exploitation or punishment;

(f) ensure that each client is free from unnecessary drugs and unnecessary physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure that each client is not compelled to perform services for the facility and ensure that each client who does work for the facility is compensated for their efforts at prevailing wages and commensurate with their abilities;

(i) ensure each client the opportunity to communicate, associate and meet privately with individuals and to send and receive unopened mail except as contraindicated by factors identified within their individual treatment plan;

(j) ensure that each client have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual treatment plan;

(k) ensure that each client has the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in their own clothing each day except as contraindicated by factors identified within their individual treatment plan;

(l) ensure the client the opportunity to participate in social, religious and community group activities except as contraindicated by factors identified within their individual treatment plan; and

(m) permit a husband and wife who both reside in the facility to share a room except as contraindicated by factors identified within their individual treatment plan.

(2) Reasonable limitations may be placed upon the client's rights stated in (1)(d), (g), (i) and (j) through (m), if the limitations are necessary to accomplish a goal of the client's individual treatment plan or are in the client's best interests, or if the limitations are necessary to protect the client, other clients, staff or members of the public.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE VIII CLIENT FINANCES (1) The facility must establish and maintain a system that:

(a) assures a full and complete accounting of each client's personal funds entrusted to the facility on behalf of each client; and

(b) precludes any commingling of a client's funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client or legal guardian.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE IX COMMUNICATION WITH CLIENTS, PARENTS, AND GUARDIANS

(1) The facility must:

(a) promote participation of the legal guardian in the process of providing treatment and habilitation to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from the client's family and friends promptly and appropriately;

(c) permit visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(d) permit visits by the guardian to any area of the

facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(e) notify the client's guardian of changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE X PREVENTION, INVESTIGATION, AND REPORTING OF CLIENT ABUSE, SEXUAL ABUSE, NEGLECT AND EXPLOITATION (1) The facility must develop and implement written policies and procedures to prevent abuse, sexual abuse, neglect, or exploitation of the client.

(2) Facility staff must report all known or suspected incidents of client abuse, sexual abuse, neglect or exploitation to the facility administrator, and the facility administrator or his or her designee shall report said incidents to the department in accordance with the requirements of Title 52, chapter 3, part 8, MCA.

(3) The facility must develop and implement written policies and procedures for the investigation of allegations of client abuse, sexual abuse, neglect or exploitation.

(4) The results of all facility investigations of client abuse, sexual abuse, neglect or exploitation must be reported to the department when the investigation has been initiated. If an allegation of client abuse, sexual abuse, neglect or exploitation is verified, appropriate corrective action must be taken.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XI PROFESSIONAL PROGRAM SERVICES (1) Each client must receive the professional program services necessary to implement the treatment and habilitation program defined by each client's individual treatment plan. In providing these services, professional program staff must work directly with each client and with paraprofessional, nonprofessional and other professional program staff who work with each client.

(2) The facility must have available program staff to carry out and monitor the interventions in accordance with the stated goals and objectives of every individual treatment plan.

(3) Program staff must participate as members of the interdisciplinary team in relevant aspects of the treatment and habilitation process.

(4) Professional program staff must be licensed, certified, or registered, as applicable, by the state of Montana to provide professional services.

(5) Program staff must serve the special needs of the client as defined by the individual treatment plan.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XII FACILITY STAFFING (1) The facility must not depend upon the client or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24 hour basis, when any client is present, to take prompt, appropriate action in case of injury, illness, fire or other emergency.

(3) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XIII DIRECT CARE STAFF (1) The facility must provide sufficient direct care staff to manage and supervise each client in accordance with their individual treatment plan.

(2) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(a) a staff to client ratio of 1 to 3.2 for each defined residential living unit serving:

(i) any severely and profoundly retarded client;

(ii) a client with severe physical disabilities;

(iii) any client who is aggressive, assaultive, or a security risk; or

(iv) any client who manifests severely hyperactive or psychotic-like behavior.

(b) for each defined residential living unit who serves any moderately retarded client, the staff to client ratio is 1 to 4.

(c) for each defined residential living unit who serves any client who functions within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(3) The above staff to client ratios shall be calculated for each defined residential living unit based on the number of direct care staff who are present and on-duty during all shifts in a 24 hour period.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XIV STAFF TRAINING (1) The facility must provide each staff member with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For staff members who work with any client, training must focus on skills and competencies directed toward the client's developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of any client.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual treatment plan for each client for whom they are responsible.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XV INDIVIDUAL RESIDENTIAL TREATMENT AND HABILITATION NEEDS (1) Each client must be offered a treatment and habilitation program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subchapter, that is directed toward:

(a) the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(b) the prevention or deceleration of regression or loss of current optimal functional status.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XVI ADMISSIONS, TRANSFERS, AND DISCHARGE

(1) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources, except that admission procedures regarding clients which have been committed to the facility by a court of competent jurisdiction shall be conducted pursuant to Title 53, chapter 20, part 1, MCA.

(2) A preliminary evaluation must contain background information as well as currently valid assessments of functional, developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(3) If a client is to be either transferred or discharged from the facility, the facility must:

(a) have documentation in the client's record that the client was transferred or discharged for good cause; and

(b) provide a reasonable time to prepare the client or guardian for the transfer or discharge (except in emergencies).

(4) At the time of the discharge, the facility must:

(a) develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client or legal guardian, provide a copy to authorized persons and agencies; and

(b) provide a post-discharge plan of care that will assist the client in adjusting to the new living environment.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XVII INDIVIDUAL TREATMENT PLANS (1) Each client must have an individual treatment plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessments required in (3); and

(b) designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example a young adult, an elderly person) and the implications for treatment and habilitation at each stage, as applicable, and must:

(a) identify the presenting problems and disabilities and where possible, their causes;

(b) identify the client's specific developmental strengths;

(c) identify the client's specific developmental and behavioral management needs;

(d) identify the client's need for services without regard to the actual availability of the services needed; and

(e) include physical development and health, nutritional status, sensory motor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual treatment plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by (3), and the planned sequence for dealing with those objectives. These objectives must be:

- (a) stated separately, in terms of a single behavioral outcome;
 - (b) assigned projected completion dates;
 - (c) expressed in behavioral terms that provide measurable indices of performance;
 - (d) organized to reflect a developmental progression appropriate to the individual; and
 - (e) assigned priorities.
- (5) Each written training program designed to implement the objectives in the individual treatment plan must specify:
- (a) the methods to be used;
 - (b) the schedule for use of the method;
 - (c) the person responsible for the program;
 - (d) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;
 - (e) the inappropriate client behavior(s), if applicable; and
 - (f) provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.
- (6) The individual treatment plan must also:
- (a) describe relevant interventions to support the individual toward independence;
 - (b) identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found;
 - (c) include, for each client who lacks them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs) until it has been demonstrated that the client is developmentally incapable of acquiring them;
 - (d) identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support;
 - (e) provide that each client who has multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible; and
 - (f) include opportunities for client choice and self-management.
- (7) Relevant portions of each client's individual treatment plan must be made available to appropriate staff, including staff of other agencies who work with the client and to the client or legal guardian.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XVIII PROGRAM IMPLEMENTATION (1) As soon as the interdisciplinary team has formulated a client's individual treatment plan, each client must be offered a continuous treatment and habilitation program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual treatment plan.

(2) Except for those facets of the individual treatment plan that must be implemented only by licensed personnel, each client's individual treatment plan must be implemented by all staff who work with the client.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE IX PROGRAM DOCUMENTATION (1) Data relative to accomplishment of the criteria specified in client individual treatment plan objectives must be documented in measurable terms.

(2) The facility must document significant events that are related to the client's individual treatment plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(3) The facility staff must prepare progress notes which indicate whether or not the stated individual treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives. The progress notes must be entered into the client's clinical record at least weekly and upon the occurrence of any significant change in the client's condition.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XX PROGRAM MONITORING AND CHANGE (1) At least annually the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual treatment plan must be revised, as appropriate, repeating the process set forth in [RULE XVII(3)].

(2) The individual treatment plan for each client must be reviewed by the interdisciplinary team every 90 days and whenever there is a significant change in the client's condition. The individual treatment plan must be revised, as appropriate.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, legal guardians, clients (as appropriate), qualified persons who have either experience or training in

contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

(a) review, approve, and monitor individual treatments designed to manage inappropriate behavior and other treatments that, in the opinion of the committee, involve risks to client protection and rights;

(b) insure that these treatments are conducted only after the client or legal guardian has been informed; and

(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to:

(i) drug usage;

(ii) physical restraints;

(iii) time-out rooms;

(iv) application of painful or noxious stimuli;

(v) control of inappropriate behavior;

(vi) protection of client rights and funds; and

(vii) any other area that the committee believes needs to be addressed.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXI MANAGEMENT OF CONDUCT BETWEEN STAFF AND THE CLIENT (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and the client. These policies and procedures must:

(a) promote the growth, development and independence of the client;

(b) address the extent to which the client's choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(c) specify client conduct to be allowed or not allowed; and

(d) be available to all staff, the client and the legal guardian.

(2) To the extent possible, each client must participate in the formulation of these policies and procedures.

(3) The client must not discipline any other client, except as part of an organized system of self-government, as set forth in facility policy.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXII MANAGEMENT OF INAPPROPRIATE CLIENT BEHAVIOR

(1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of [RULE XXI], and must:

(a) specify all facility-approved interventions to manage inappropriate client behavior;

(b) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(c) insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(d) address the following:

(i) the use of secured units;

(ii) the use of observation and seclusion rooms;

(iii) the use of physical restraints;

(iv) the use of appropriate medication to manage inappropriate behavior;

(v) the application of painful or noxious stimuli;

(vi) the staff members who may authorize the use of specified interventions; and

(vii) a mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of each client are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for a treatment and habilitation program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual treatment plan.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXIII OBSERVATION AND SECLUSION ROOMS (1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(a) The placement is a part of an approved systematic observation and seclusion program as required by [RULE XXII]. Thus, emergency placement of a client into an observation and seclusion room is not allowed.

(b) The client is under the direct constant visual supervision of designated staff.

(c) The door to the room may be locked. The lock must comply with the standards for locks in [RULE XXXVII(9)].

(2) Placement of a client in an observation and seclusion room must be reassessed and documented in writing every hour. A client cannot be placed in an observation and seclusion room for

more than 24 continuous hours.

(3) A client placed in an observation and seclusion room must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of observation and seclusion activities must be kept.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXIV PHYSICAL RESTRAINTS (1) The facility may employ physical restraint only as:

(a) an integral part of an individual treatment plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(b) an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(c) a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(a) in effect no longer than 12 consecutive hours; and

(b) obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXV DRUG USAGE (1) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual treatment plan that is directed specifically toward the reduction of and eventual elimination of the behaviors for

which the drugs are employed.

(2) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(3) Drugs used for control of inappropriate behavior must be monitored closely, in conjunction with the physician and the drug regimen review requirement at [RULE XXIX], for desired responses and adverse consequences by facility staff.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXVI HEALTH CARE AND PHYSICIAN SERVICES (1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24 hour licensed nursing care. This plan must be integrated in the individual treatment plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(a) evaluation of vision and hearing;

(b) immunizations, using as a guide the recommendations of the public health service advisory committee on immunization practices or of the committee on the control of infectious diseases of the American academy of pediatrics;

(c) routine screening laboratory examinations as determined necessary by the physician, and special studies when needed; and

(d) tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American college of chest physicians or the rule of diseases of the chest of the American academy of pediatrics, or both.

(4) To the extent permitted by Montana law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this rule.

(5) A physician must participate in:

(a) the establishment of each newly admitted client's initial individual treatment plan; and

(b) if appropriate, the review and update of an individual treatment plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXVII NURSING SERVICES AND STAFF (1) The facility must provide each client with nursing services in accordance with their needs, including:

(a) participation as appropriate in the development, review, and update of an individual treatment plan as part of the interdisciplinary team process;

(b) the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(c) for each client who is certified as not needing a medical care plan, a review of their health status which must:

(i) be by a direct physical examination;

(ii) be by a licensed nurse;

(iii) be on a quarterly or more frequent basis depending on client need;

(iv) be recorded in the client's record; and

(v) result in any necessary action (including referral to a physician to address client health problems);

(d) other nursing care as prescribed by the physician or as identified by client needs; and

(e) implementation of appropriate protective and preventive health measures that include, but are not limited to:

(i) training any client and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) training of direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the client.

(2) The facility must:

(a) employ or arrange for licensed nursing services sufficient to care for the client's health needs including any client with a medical care plan;

(b) utilize registered nurses as appropriate and required by Montana law to perform the health services specified in this rule;

(c) have a formal arrangement with a registered nurse to be available for verbal or on site consultation to the licensed practical or vocational nurses (if utilizing only licensed practical or vocational nurses to provide health services); and

(d) permit non-licensed nursing personnel who work with any client under a medical care plan to do so only under the supervision of licensed persons.

(3) Nurses providing services in the facility must have a current license to practice in Montana.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXVIII DENTAL SERVICES AND TREATMENT (1) The facility must provide or make arrangements for comprehensive dental diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals must participate in the development, review and update of an individual treatment plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(4) Comprehensive dental diagnostic services must include:

(a) a complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within 12 months before admission);

(b) periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(c) a review of the results of examination and entry of the results in the client's dental record.

(5) Comprehensive dental treatment services must include:

(a) the availability for emergency dental treatment on a 24 hour basis by a licensed dentist; and

(b) dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(6) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit. If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXIX PHARMACY SERVICES AND DRUG REGIMEN REVIEW

(1) The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to each client. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(2) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly, and:

(a) report any irregularities in the client's drug regimen to the prescribing physician and interdisciplinary team; and

(b) prepare a record of each client's drug regimen reviews which must be maintained by the facility.

(3) As appropriate, the pharmacist must participate in the development, implementation, and review of each client's individual treatment plan either in person or through written report to the interdisciplinary team.

(4) The facility must maintain an individual medication administration record for each client.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXX DRUG ADMINISTRATION, STORAGE, AND RECORDKEEPING

(1) The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that:

(a) all drugs are administered in compliance with the physician's orders;

(b) all drugs, including those that are self-administered, are administered without error;

(c) each client is taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(d) the client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(e) no client self-administers medications until he or she demonstrates the competency to do so;

(f) drugs used by any client while not under the direct care of the facility are packaged and labeled in accordance with Montana law; and

(g) drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(2) The facility must:

(a) store drugs under proper conditions of sanitation, temperature, light, humidity, and security;

(b) keep all drugs and biologicals locked except when being prepared for administration, and only permit authorized persons to have access to the keys to the drug storage area, except that any client who has been trained to self-administer drugs may have access to keys to their individual drug supply;

(c) maintain records of the receipt and disposition of all controlled drugs;

(d) on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et seq., as implemented by 21 CFR part 308; and

(e) comply with the regulations of controlled drugs if the facility maintains a licensed pharmacy.

(3) Labeling of drugs and biologicals must:

(a) be based on currently accepted professional principles and practices; and

(b) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(4) The facility must remove from use:

(a) outdated drugs; and

(b) drug containers with worn, illegible, or missing labels.

(5) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXI LABORATORY SERVICES (1) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in 42 CFR part 493.

(2) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of service in accordance with the requirements of 42 CFR part 493.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXII PHYSICAL ENVIRONMENT (1) The facility must not:

(a) house any client of a grossly different age, developmental level, and social need in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together; or

(b) segregate the client solely on the basis of their physical disabilities. It must integrate the client who has ambulation deficits or who is deaf, blind, or has a seizure disorder, etc., with others of comparable social and intellectual development.

(2) Bedrooms must:

(a) be rooms that have at least one outside wall;

(b) be equipped with or located near toilet and bathing facilities;

(c) accommodate no more than four clients;

(d) measure at least 80 square feet per client in multiple client bedrooms and at least 100 square feet in single client bedrooms; and

(e) have walls that extend from floor to ceiling.

(3) If a bedroom is below ground level, it must have a window that is:

(a) usable as a second means of escape by the client occupying the room; and

(b) no more than 44 inches (measured to the window sill)

above the floor unless the facility is surveyed under the health care occupancy chapter of the Life Safety Code (LSC), 2000 edition, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(4) The facility must provide each client with:

(a) a separate bed of proper size and height for the convenience of the client;

(b) a clean, comfortable mattress;

(c) bedding appropriate to the weather and climate; and

(d) functional furniture and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client and appropriate to the client's needs.

(5) The facility must provide:

(a) space and equipment for daily out-of-bed activity for each client who is not yet mobile, except those who have a short-term illness or any client for whom out-of-bed activity is a threat to health and safety; and

(b) suitable storage space, accessible to the client, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(6) The facility must:

(a) provide toilet and bathing facilities appropriate in number, size and design to meet the needs of the client;

(b) provide for individual privacy in toilets, bathtubs and showers; and

(c) in areas of the facility where the client who has not been trained to regulate water temperature and is exposed to hot water, ensure that the temperature of the water does not exceed 110°F.

(7) Each client bedroom in the facility must have:

(a) at least one window to the outside; and

(b) direct outside ventilation by means of windows, air conditioning or mechanical ventilation.

(8) The facility must:

(a) maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(b) ensure that the heating apparatus does not constitute a burn or smoke hazard to the client.

(9) The facility must have:

(a) floors that have a resilient, nonabrasive and slip-resistant surface;

(b) nonabrasive carpeting, if the area used by a client is carpeted and serves a client who lies on the floor or ambulates with parts of their bodies, other than feet, touching the floor; and

(c) exposed floor surfaces and floor coverings that promote mobility in an area used by a client and promote maintenance of sanitary conditions.

(10) The facility must:

(a) provide sufficient space and equipment that includes adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility. This enables staff to provide the client with needed services as required by this subchapter and as identified in each client's

individual treatment plan in:

- (i) dining;
 - (ii) living;
 - (iii) health services;
 - (iv) recreation; and
 - (v) program areas;
- (b) furnish and maintain in good repair and teach the client to use and to make informed choices about the use of:
- (i) dentures;
 - (ii) eyeglasses;
 - (iii) hearing and other communications aids;
 - (iv) braces; and
 - (v) other devices identified by the interdisciplinary team as needed by the client; and
- (c) provide adequate clean linen and dirty linen storage areas.
- (11) The facility must:
- (a) use lead free paint inside the facility; and
 - (b) remove or cover interior paint or plaster containing lead so that it is not accessible to the client.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXIII EMERGENCY PLAN AND PROCEDURES (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and a missing client.

(2) The facility must communicate, periodically review, make the plan available and provide training to the staff.

(3) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to:

(a) ensure that all personnel on all shifts are trained to perform assigned tasks;

(b) ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(c) evaluate the effectiveness of emergency and disaster plans and procedures.

(4) The facility must:

(a) actually evacuate the clients during at least one drill each year on each shift;

(b) make special provisions for the evacuation of a client with a physical disability;

(c) file a report and evaluation on each evacuation drill;

(d) investigate all problems with evacuation drills, including accidents, and take corrective action; and

(e) during fire drills, a client may be evacuated to a safe area in the facility certified under the health care occupancies chapter of the LSC.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-

5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXIV FIRE PROTECTION (1) The facility must meet the applicable provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code (LSC), 2000 edition, of the National Fire Protection Association (NFPA), 2000 edition, which is incorporated by reference. A copy of the LSC, 2000 edition, may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(a) The department may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(b) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (appendix F).

(2) For facilities that meet the LSC definition of a health care occupancy:

(a) the department may waive, for a period it considers appropriate, specific provisions of the LSC if:

(i) the waiver would not adversely affect the health and safety of clients; and

(ii) rigid application of specific provisions would result in an unreasonable hardship for the facility.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXV INFECTION CONTROL (1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be policies and procedures for the prevention, control and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with the client and their food.

(5) All staff shall use the proper hand washing techniques after providing direct care to a resident.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXVI DIETETIC SERVICES (1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a treatment to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the "Nutrition and Your Health: Dietary Guidelines for Americans", 2000, 5th edition of the recommended dietary allowances published by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(7) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with:

(a) not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(b) not less than 10 hours between breakfast and the evening meal of the same day.

(8) Food must be served:

(a) in appropriate quantity;

(b) at appropriate temperature;

(c) in a form consistent with the developmental level of the client; and

(d) with appropriate utensils.

(9) Food served to the client individually and uneaten must be discarded.

(10) Menus must:

(a) be prepared in advance;

(b) provide a variety of foods at each meal;

(c) be different for the same days of each week and adjusted for seasonal changes; and

(d) include the average portion sizes for menu items.

(11) Menus for food actually served must be kept on file for 60 days.

(12) The facility must:

(a) serve meals for each client, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

(b) provide table service for each client who can and will

eat at a table, including a client in a wheelchair;

(c) equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(d) supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level; and

(e) ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

RULE XXXVII SECURED UNITS (1) A secured unit within a facility shall have a written policy outlining the admission criteria for the placing of a resident into the secured unit.

(2) Provisions should be made for secured unit residents to access large group activities when provided by the facility, e.g., holiday activities, etc. except as contraindicated by factors identified within their individual treatment plans.

(3) A secured unit within a facility is considered a separate unit. A staff station shall be located within the secured unit. The station shall provide at a minimum the following:

(a) provisions for charting;

(b) provisions for hand washing;

(c) provisions for medication storage and preparation;

(d) telephone access; and

(e) a nurse/staff call system as required by the "Guidelines for the Construction and Equipment of Hospital and Medical Facilities", as adopted in ARM 37.106.302.

(4) The nurse/staff call system for a secured unit within a facility shall report to the unit nurse/staff station. The call system may also annunciate the call at another location, such as a main nurse station.

(5) A secured unit within a facility shall provide for a nourishment station. The nourishment station shall contain a work counter, refrigerator, storage cabinets and a sink for serving nourishments between meals. Ice for patient consumption should be provided by icemaker-dispenser units. The nourishment station should include space for trays and dishes used for nonscheduled meal service. Hand washing facilities shall be in or immediately accessible from the nourishment station.

(6) Dining, activities and day space must be provided at a ratio of 30 square feet per resident, with at least 14 square feet dedicated to the dining space.

(7) Resident rooms must be at a ratio of 100 square feet for single bedrooms and 80 square feet for multiple bedrooms. The room square footage should not include bathrooms, door swings, alcoves or vestibules. No more than four residents shall reside in a single room, except in new construction which

limits single rooms to two residents.

(8) Each resident must have access to a toilet without requiring them to enter the corridor except as contraindicated by factors identified within their individual treatment plans.

(9) A secured unit within a facility shall comply with the following requirements for special locking arrangements. In buildings protected throughout by an approved supervised automatic fire detection system or approved supervised automatic sprinkler system, the doors in low and ordinary hazard areas may be equipped with approved, listed, locking devices which shall:

(a) unlock upon actuation of an approved supervised automatic fire detection system or approved supervised automatic sprinkler; and

(b) unlock upon loss of power controlling the lock or locking mechanism.

(10) All locks used must be electromagnetic. The use of mechanical locks, such as a dead bolt is not permitted.

(11) All secured doors must have a manual electronic key release.

(12) Provisions must be made for the rapid removal of occupants by such reliable means as the remote control of the locks. Typically, this is done by placing a staff accessible switch at the nurses station which is capable of releasing all doors.

(13) All the locks on all secured doors must automatically release upon any of the following conditions:

(a) the actuation of the approved supervised automatic fire alarm system;

(b) the actuation of an approved supervised automatic sprinkler system; or

(c) upon the loss of the power controlling the locks or locking mechanisms.

AUTH: 2003 Laws of Montana, Chapter 403, Section 5 and 50-5-103, MCA

IMP: 2003 Laws of Montana, Chapter 403, Section 5, 50-5-103 and 50-5-201, MCA

3. 2003 Laws of Montana, Chapter 403, Section 5 which has been passed by the 2003 Legislature, 58th Regular Session, prohibits the operation of an intermediate care facility for the developmentally disabled without a license, and requires the Department to adopt procedures for licensing ICF/DD. 2003 Laws of Montana, Chapter 403, Section 5 also grants authority to the Department to adopt rules establishing standards for licensing ICF/DD which must address the protection of residents' rights, individual resident treatment and habilitation needs, staffing requirements and qualifications, resident behavior and facility practices, health care services, physical environment, dietetic services, and recordkeeping.

The purposes of 2003 Laws of Montana, Chapter 403, Section 5 then, are to regulate the operation of ICF/DD by requiring that said facilities be licensed by the Department, and to establish

a set of minimum standards which must be met by facilities to be eligible for licensure. In order to implement these purposes, it is necessary for the Department to adopt rules setting minimum standards for the licensure of ICF/DD, including standards for the protection of residents' rights, individual resident treatment and habilitation needs, staffing requirements and qualifications, resident behavior and facility practices, health care services, physical environment, dietetic services, and recordkeeping. On that basis, the Department proposes to adopt the foregoing administrative rules.

More specifically, the Department proposes to establish a licensure category for ICF/DD which is substantially the same as the federal Medicare/Medicaid intermediate care facility for the mentally retarded (ICF/MR). The proposed rules contain no requirements which are more stringent than the federal ICF/MR certification standards, the result of which will be that compliance with federal certification standards will equate to compliance with state licensure standards.

The alternatives to enacting a state regulatory system which substantially mirrors the federal ICF/MR certification rules would be to adopt a completely different set of requirements, which could be either more or less stringent than the federal certification rules. The Department chose to adopt standards which are substantially the same as the federal certification standards in order to avoid a risk of placing facilities in a situation of having to choose between compliance with federal certification requirements and state licensure requirements.

Proposed Rule XXXVII, however, is not reflected in the federal ICF/MR standards. Rather, this proposed rule reflects a particular need in Montana to provide for clients committed to the Montana Developmental Center (MDC) through either civil or criminal court commitments who demonstrate behaviors which pose a serious risk of harm to themselves or others.

Because MDC is mandated by statute and by court order to serve these clients, it is necessary to provide a method by which the risk of harm presented by court-committed clients exhibiting harmful and dangerous behaviors for which other methods of intervention have proven unsuccessful may be controlled and reduced. In order to provide for the best interests of the court-committed clients exhibiting such behaviors, it is also necessary to set minimum standards for a secured unit designed to control and reduce such risks of harm.

The alternatives to adoption of these proposed rules would be to not provide a method by which MDC may control and reduce such risks of harm, and to not set minimum standards for secured units. The failure to provide a method by which MDC may control and reduce the risk of harm posed by the clients and behaviors described above would equate to a failure to protect other residents and staff. The failure to provide minimum standards

for secured units could pose a risk of harm to residents placed in such units.

4. The Department intends that these proposed new rules will be effective July 1, 2003.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 5, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

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

In the matter of the)
amendment of ARM 37.106.302)
and 37.106.401 pertaining to)
minimum standards for a)
hospital, general)
requirements)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 29, 2003, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.106.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY: ADDITION, ALTERATION, OR NEW CONSTRUCTION: GENERAL REQUIREMENTS (1) through (3) remain the same.

(4) The department hereby adopts and incorporates by reference:

(a) remains the same.

(b) NFPA 101, "Life Safety Code 1994 2000 edition", published by the national fire protection association, which sets forth construction and operation requirements designed to protect against fire hazards.

(c) through (f) remain the same.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, 50-5-201 and 50-5-204, MCA

37.106.401 MINIMUM STANDARDS FOR A HOSPITAL: GENERAL REQUIREMENTS (1) A hospital shall comply with the Conditions of Participation for Hospitals in 42 CFR 482.2 through 482.62, revised as of October 1, 1995 2002.

(2) If a hospital provides skilled nursing care or

intermediate nursing care, as those levels of care are defined in 50-5-101, MCA, the hospital shall comply with the skilled nursing facility requirements listed in 42 CFR 482.66(b) revised as of October 1, ~~1995~~ 2002.

(3) The department hereby adopts and incorporates by reference 42 CFR 482.2 through 482.62 and 42 CFR 482.66(b), revised as of October 1, ~~1995~~ 2002. 42 CFR 482.2 through 482.62 set forth the conditions of participation a hospital must meet to participate in the medicare program. 42 CFR 482.66(b) sets forth the skilled nursing facility requirements a hospital provider of long-term care services must meet to participate in the medicare program. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: Sec. 50-5-103 and 50-5-404, MCA

IMP: Sec. 50-5-103, 50-5-204 and 50-5-404, MCA

3. The proposed amendment to ARM 37.106.302 will incorporate by reference the 2000 edition of the National Fire Protection Association (NFPA) 101 "Life Safety Code (LSC)". The current rule incorporates the 1994 edition of the NFPA 101 Life Safety Code.

The Life Safety Code is the industry standard manual regarding fire safety and construction of healthcare facilities, and is updated every three years in order to reflect changes in building technology and fire safety design. The Life Safety Code has been updated twice since the 1994 edition was released, and the 2000 edition is the most current edition. Additionally, the 2000 edition of the Life Safety Code has been endorsed by the Joint Commission on Hospital Accreditation.

On this basis, it is reasonably necessary for the Department to adopt the proposed amendment to ARM 37.106.302. The alternative would be to continue to regulate construction of licensed healthcare facilities by reference to the 1994 edition of the Life Safety Code, which does not reflect changes in building technology and fire safety design derived since the release of the 1994 edition, thereby applying obsolete construction and safety standards to the construction of new facilities.

The proposed amendment to ARM 37.106.401 will incorporate by reference the conditions of participation for hospitals in the Medicare and Medicaid programs stated in the October 2002 version of 42 CFR 482.2 through 482.62. The current rule incorporates the October 1, 1995 version of the same federal rules.

The October 2002 version of 42 CFR 482.2 through 482.62 contains the most recent version of the Medicare/Medicaid standards applied by the Centers for Medicare and Medicaid Services (CMS) to hospitals participating in the Medicare and Medicaid

programs. It is therefore reasonably necessary for the Department to adopt the proposed amendment to ARM 37.106.401, in that the proposed amendment will make state licensing requirements consistent with federal Medicare/Medicaid certification standards. The alternative would be to continue to apply the 1995 standards, thereby requiring facilities to meet separate and different standards for state licensure and federal certification.

Incorporation of the 2002 version of 42 CFR 482.2 through 482.62 will also permit the State of Montana to exercise an "opt-out" provision regarding certified registered nurse anaesthetists (CRNAs) not available in the 1995 version of the federal rules. Exercise of the opt-out provision will permit CRNAs to conduct certain anesthesiology services without direct physician supervision. The Board of Medical Examiners and the Board of Nursing have recommended to Governor Martz that the State exercise the opt-out provision, and Governor Martz has concurred with this recommendation, and instructed the Department to proceed with the rule-making process.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 5, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
adoption of New Rule I;)	ON PROPOSED ADOPTION,
amendment of ARM 42.29.101)	AMENDMENT, AND REPEAL
and 42.31.401; and repeal of)	
ARM 42.31.503 relating to)	
miscellaneous fees collected)	
by the department)	

TO: All Concerned Persons

1. On May 29, 2003, at 1:00 p.m., a public hearing will be held in the Director's Conference Room of the Sam W. Mitchell Building at Helena, Montana, to consider the adoption of New Rule I; amendment of ARM 42.29.101 and 42.31.401; and repeal of ARM 42.31.503 relating to miscellaneous taxes and fees collected by the department.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., May 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I REPORTING REQUIREMENTS FOR THE PUBLIC SERVICE COMMISSION AND CONSUMER COUNCIL (1) If the total amount of the fee is less than \$50 in each of the quarters during the preceding calendar year, the taxpayer may file with the department an annual return in lieu of filing quarterly returns required by 69-1-223, MCA, provided the annual return is filed along with full payment by the last day of the month after the close of the calendar year.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 69-1-223, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to allow taxpayers to file on an annual basis versus quarterly. This rule allows taxpayers and the department to reduce paperwork and administrative costs. Currently, the department allows taxpayers to file other taxes annually. This

rule would promote consistency among taxes and fees collected.

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

42.29.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (12) remain the same.

(13) "Universal system benefits programs," means public purpose programs for:

(a) through (d) remain the same.

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance; ~~and~~

~~(g) energy conservation measures for irrigated agriculture.~~

AUTH: Sec. 69-8-413, MCA

IMP: Sec. 69-8-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.29.101 because Initiative 117 passed by the voters in 2001 repealed the law enacted by HB 474 which allowed for this provision.

42.31.401 REPORTING REQUIREMENTS (1) Quarterly reporting forms must be completed by the provider on or before the last day of the month following the end of each calendar quarter.

(2) The quarterly reporting form must provide the following information:

(a) through (g) remain the same.

(h) amounts collected that quarter for any accounts which were listed as uncollectible in a previous quarter should the provider elect credit under (2)(g) above; and

(i) remains the same.

(3) If the total amount of the fee is less than \$50 in each of the quarters during the preceding calendar year, the taxpayer may file an annual return in lieu of filing the quarterly returns provided the annual return is filed along with full payment by the last day of the month after the close of the calendar year.

AUTH: Sec. 10-4-203, 10-4-212, and 15-1-201, MCA

IMP: Sec. 10-4-201, 10-4-203, 10-4-204, and through 10-4-211, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.31.401 to allow taxpayers to file on an annual basis versus quarterly. This rule allows taxpayers and the department to reduce paperwork and administrative costs. Currently, the department allows taxpayers to file other taxes annually. This rule would promote consistency.

5. The Department proposes to repeal the following rule:

42.31.503 ADVANCE TELECOMMUNICATIONS INFRASTRUCTURE CREDIT which can be found on page 42-3150 of the Administrative Rules

of Montana.

AUTH: Sec. 15-53-155, MCA

IMP: Sec. 15-53-202, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.503 because HB 96 of the 2003 legislative session was passed February 19, 2003, repealing the advanced telecommunications infrastructure tax credit. The rule is no longer applicable.

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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than June 6, 2003.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 28, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rules I through) ON PROPOSED ADOPTION
IV relating to fees for nursing)
facilities)

TO: All Concerned Persons

1. On May 28, 2003, at 9:00 a.m., a public hearing will be held in the Director's Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through IV relating to fees for nursing facilities.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., May 21, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I REPORTING REQUIREMENTS FOR NURSING FACILITIES - ANNUAL FILING (1) If the total amount of the fee is less than \$50 in each of the quarters during the preceding calendar year, the taxpayer may file with the department an annual return in lieu of filing quarterly returns, provided the annual return is filed along with full payment by the last day of the month after the close of the calendar year.

AUTH: 15-60-104, MCA
IMP: 15-60-201, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to allow taxpayers to file on an annual basis versus quarterly. This rule allows taxpayers and the department to reduce paperwork and administrative costs. Currently, the department allows taxpayers to file other taxes annually. The intent of the rule is to promote consistency for similar returns and reports.

NEW RULE II TAX RECORDS (1) For the nursing facility bed tax, each nursing facility responsible and liable for the collection of the fee will keep records showing the total number

of bed days in the facility subject to the utilization fee.

(2) All records may be inspected by the department in accordance with the provisions of ARM 42.2.305.

AUTH: 15-60-104, MCA

IMP: 15-60-201 and 15-60-202, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to satisfy the legislature's intent to have the department establish requirements for the maintenance of records and other documents required to ensure proper payment of the nursing facility utilization fee.

NEW RULE III ESTIMATION AND COLLECTION OF DELINQUENT OR UNPAID FEES (1) If a nursing facility fails, neglects, or refuses to file the report in accordance with 15-60-201, MCA, or [New Rule I] within the time required, or fails to pay the fee within the required period, the department shall estimate the number of bed days subject to the fee.

(2) The department shall estimate the fee amount and notify the facility of the assessment setting forth the amount of the delinquent fee, penalty, and interest due. The department shall inform the facility that if payment is not made, a warrant for distraint may be filed in accordance with 15-1-216, MCA.

AUTH: 15-60-104, MCA

IMP: 15-1-216, 15-60-201, 15-60-204, and 15-60-205, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to clarify the department's process of estimating and collecting delinquent or unpaid fees applicable to this law.

NEW RULE IV HEARING RIGHTS (1) All facilities have the right to request a hearing on its fee liability as provided in ARM 42.2.510 and 15-1-211, MCA.

AUTH: 15-60-104, MCA

IMP: 15-1-211 and 15-60-206, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to advise the nursing facilities of the process followed by the department for handling dispute resolutions relating to the payment of the nursing facility utilization fees.

4. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than June 6, 2003.

5. Cleo Anderson, Department of Revenue, Director's

Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 28, 2003

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment)	
of ARM 2.43.201, 2.43.202,)	
2.43.203, 2.43.204, and 2.43.205)	NOTICE OF AMENDMENT
pertaining to procedural rules,)	
the appeal of administrative)	
decisions, and contested case)	
procedures for the Public)	
Employees' Retirement Board)	

TO: All Concerned Persons

1. On February 27, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-321 regarding the proposed amendments to ARM 2.43.201, 2.43.202, 2.43.203, 2.43.204, and 2.43.205, pertaining to procedural rules, the appeal of administrative decisions, and contested case procedures for the Public Employees' Retirement Board at page 266 of the 2003 Montana Administrative Register, Issue Number 4.

2. The Board has amended ARM 2.43.201, 2.43.202, 2.43.203, 2.43.204, and 2.43.205 as proposed.

3. The following comment was received and appears with the Board's response:

COMMENT 1: A comment was received asking whether the Board, after issuing an initial decision and perhaps a reconsideration of the initial decision, can sit as an impartial reviewer of the hearing examiner's proposed Findings of Fact, Conclusions of Law and Order.

RESPONSE: The Board's initial decision is based solely on information provided by the Board's staff, or the Board's medical consultant and disability examiner. The Board generally reviews no medical documents or testimony prior to issuing its initial decision. If the Board is asked to reconsider its initial decision, the Board may hear testimony from the affected retirement system member and argument from the member's legal counsel. Again, the Board generally reviews no medical documents or medical testimony, relying instead on summaries provided by Board staff and the Board's medical consultants.

If the affected retirement system member requests a contested case hearing, the Board appoints a hearings examiner to conduct the contested case hearing. The hearings examiner conducts the hearing, then prepares proposed findings of fact, conclusions of law and an order for the Board's consideration. At this point, the Board reviews the entire file, the proposed decision of the hearings examiner, and listens to argument from both Board staff and the appealing party prior to issuing

its decision upholding or reversing the hearing examiner's proposed order. The above-described process is consistent with and reflects approved administrative procedures.

The Board's impartiality is not compromised by the earlier review of the recommendations of the Board's medical consultant and staff members. The hearings examiner is tasked with reviewing all exhibits entered into the record and hearing all testimony offered by both parties. The hearings examiner is further tasked with determining the facts that are supported by the substantial evidence on the record and the conclusions of law that flow from the application of those facts. The Board then considers exceptions and listens to argument regarding those proposed findings of fact and conclusions of law and determines whether to accept them. This final review is in greater depth and far more detailed than the review that precedes the Board's initial decision.

The Board can and does impartially review the hearing examiner's proposed findings of fact, conclusions of law and order. There is no need to change this well-established process which encourages early resolution of contested matters while at the same time providing for an administrative review process consistent with federal and Montana administrative law.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State April 28, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.94.3718 pertaining to)
the administration of the 2002-)
2003 Federal Community)
Development Block Grant Program)

TO: All Concerned Persons

1. On December 26, 2002, the Department of Commerce published MAR Notice No. 8-94-35 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 3454, 2002 Montana Administrative Register, issue number 24. The Department convened the hearing on January 15, 2003, at 1:30 p.m., in Room 226 of the Park Avenue Building, 301 S. Park Ave., Helena, Montana.

2. The Department has amended ARM 8.94.3718 exactly as proposed. However, the Department has made one minor change in the application guidelines as discussed in paragraph 4, below.

3. Six members of the public attended the hearing and the Department received two written comments during the comment period provided for by the Montana Administrative Procedure Act. All testimony and written comments supported the proposed amendment.

4. The Department originally proposed to amend ARM 8.94.3718 to set aside \$25,000 of its FY 2003 CDBG Housing and Public Facilities grant funds for a contract with Montana Rural Development Partners (RDP), Inc., Anaconda, Montana, to provide technical assistance to local governments in preparing local needs assessments and in carrying out other strategic planning activities. Since publishing the notice of the hearing on this proposed amendment, the Department has learned that RDP's technical assistance functions will soon be assumed by the Montana Economic Developers Association or some other non-profit entity. The Department intends to support this technical assistance effort regardless of which entity will provide it and, thus, has deleted the specific reference to RDP from its 2002-2003 application guidelines.

Reviewed by: COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

/s/ G. Martin Tuttle BY: /s/ Mark A. Simonich
G. MARTIN TUTTLE MARK A. SIMONICH, DIRECTOR
Rule Reviewer DEPARTMENT OF COMMERCE

Certified to the Secretary of State April 28, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
a new rule pertaining to the)
administration of the 2003-2004)
Federal Community Development)
Block Grant Program)

TO: All Concerned Persons

1. On December 26, 2002, the Department of Commerce published MAR Notice No. 8-94-34 regarding a notice of public hearing on the proposed adoption of the above-stated rule at page 3451, 2002 Montana Administrative Register, issue number 24. The Department convened the hearing on January 15, 2003, at 1:30 p.m., in Room 226 of the Park Avenue Building, 301 S. Park Ave., Helena, Montana.

2. The Department has adopted new rule I (8.94.3719) exactly as proposed. However, the Department has made two minor changes in the application guidelines as discussed in paragraph 4, below.

3. Six members of the public attended the hearing and the Department received two written comments during the comment period provided for by the Montana Administrative Procedure Act. All testimony and written comments supported the proposed rule.

4. (a) The Department originally proposed to set aside \$25,000 of its FY 2003-2004 CDBG Housing and Public Facilities grant funds for a contract with Montana Rural Development Partners (RDP), Inc., Anaconda, MT, to provide technical assistance to local governments in preparing local needs assessments and in carrying out other strategic planning activities. Since publishing the notice of the hearing on its 2003-2004 guidelines the Department has learned that RDP's technical assistance functions will soon be assumed by the Montana Economic Developers Association or some other non-profit entity. The Department intends to support this technical assistance effort regardless of which entity will provide it and, thus, has deleted the specific reference to RDP from its application guidelines.

(b) The CDBG Housing Application guidelines for 2002/2003 included "Need for Project" and "Need for Financial Assistance" as two separate ranking criteria. However, during the Department's review of the Housing applications this winter, it became apparent to the ranking staff that the issues addressed by these two criteria were so intertwined as to be inseparable.

Consequently, for the October 2003 competition (for FFY 2004

funds), the Department will return to the basic housing project ranking criteria the CDBG Program used in 2001 by combining "Need for Project" and "Need for Financial Assistance" in a single "Need" criterion with the following point weighting:

Housing Category Ranking Criteria - October, 2003 Competition for FFY 2004 Funds

Housing applications will be evaluated according to the following criteria and may be assigned up to a maximum of 800 points:

1. Community Planning and Needs Assessment	150 Points
2. Need	150 Points
3. Project Strategy and Community Efforts	200 Points
4. Benefit to Low and Moderate Income	150 Points
5. Implementation and Management	<u>150 Points</u>
TOTAL:	800 Points

Issues related to "need for financial assistance" will be addressed under the "Need" ranking criterion.

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

BY: /s/ Mark A. Simonich
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

Reviewed by:

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

Certified to the Secretary of State, April 28, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 10.57.218)
regarding renewal unit)
verification)

TO: All Concerned Persons

1. On March 27, 2003, the Board of Public Education published MAR Notice No. 10-57-227 regarding the public hearing on the proposed amendment of a rule concerning renewal unit verification at page 508 of the 2003 Montana Administrative Register, Issue Number 6.

2. The Board of Public Education has amended ARM 10.57.218 exactly as proposed.

3. The following comment was received and appears with the Board of Public Education's response:

COMMENT 1: Donna Maddux, Flathead County Superintendent of Schools submitted a comment in favor of the proposed amendment.

RESPONSE: The Board of Public Education thanks Ms. Maddux for her comment.

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

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

Certified to the Secretary of State April 28, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 10.57.410,)
10.57.411 and 10.57.413)
relating to educator)
licensure)

TO: All Concerned Persons

1. On March 27, 2003, the Board of Public Education published MAR Notice No. 10-57-228 regarding the proposed amendment of rules concerning educator licensure at page 510 of the 2003 Montana Administrative Register, Issue Number 6.

2. The Board of Public Education has amended ARM 10.57.410, 10.57.411 and 10.57.413 exactly as proposed.

3. The following comment was received and appears with the Board of Public Education's response:

COMMENT 1: Donna Maddux, Flathead County Superintendent of Schools, submitted a comment questioning the net effect of the amendment and whether or not a licensee would be required to obtain college credits if they let their license lapse.

RESPONSE: The Board of Public Education thanks Ms. Maddux for her comment. Section (4) of each of the rules states the requirements for reinstating a lapsed license. This is the reason that (5) was removed. The language is confusing and not necessary.

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

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

Certified to the Secretary of State April 28, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.37.108,)
37.37.111, 37.37.115 and)
37.97.524 pertaining to)
staffing of therapeutic youth)
group homes)

TO: All Interested Persons

1. On March 13, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-274 regarding the public hearing on the proposed amendment of the above-stated rules relating to staffing of therapeutic youth group homes, at page 374 of the 2003 Montana Administrative Register, issue number 5.

2. The Department has amended ARM 37.37.108, 37.37.111 and 37.37.115 as proposed.

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

37.97.524 YOUTH GROUP HOME: STAFF (1) through (4) remain as proposed.

(5) The resident to staff ratio on the premises shall be as follows:

(a) moderate level therapeutic youth group home providers must meet the minimum staffing requirements specified in ARM 37.37.108;

(b) campus based level therapeutic youth group home providers must meet the minimum staffing requirements specified in ARM 37.37.111; and

(c) intensive level therapeutic youth group home providers must meet the minimum staffing requirements specified in ARM 37.37.115.

AUTH: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111, 52-2-603, 52-2-622, 53-4-111 and 53-4-212, MCA

IMP: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-113, 52-2-603, 52-2-622, 53-2-201 and 53-4-113, MCA

4. No comments or testimony were received.

5. The Department inadvertently deleted cross-references in ARM 37.97.524 that allow the licensing bureau to enforce minimum staffing requirements as a condition of therapeutic group home licensing. Specific cross references for each level of care were restored in the final rule.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

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

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through XXI)
pertaining to the child and)
adult care food program)

TO: All Interested Persons

1. On December 26, 2002, the Department of Public Health and Human Services published MAR Notice No. 37-260 regarding the public hearing on the proposed adoption of the above-stated rules relating to the child and adult care food program, at page 3524 of the 2002 Montana Administrative Register, issue number 24.

2. The Department has adopted rules II [37.75.108], XII [37.75.202] and XV [37.75.209] as proposed.

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

RULE I [37.75.101] DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active recruitment" means direct contact initiated by a sponsoring organization with a day care home currently participating with another sponsor for the purpose of soliciting a provider to enroll with any particular sponsoring organization. Examples of direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through email, through a mailing or through a newsletter disseminated by a sponsoring organization to CACFP participants that it does not sponsor.

(2) through (7) remain as proposed.

(8) "Center" means a child care center, adult day care center, outside-school-hours care center, special after school snacks center, head start center or a proprietary center that enters into an agreement with the department to administer the CACFP in a specific area for a specific period of time.

(8) through (13) remain as proposed but are renumbered (9) through (14).

~~(14) (15) "Entity" means a sponsoring organization, child care center, outside-school-hours care center, special after school snacks center, head start center, proprietary Title XX center, or proprietary free, reduced, paid center that enters into an agreement with the department to administer the CACFP in a specific area for a specific period of time or center.~~

(15) through (17) remain as proposed but are renumbered (16) through (18).

~~(18) (19) "Proprietary center" means a qualifying child~~

care center participating in the CACFP as a for-profit center and is a ~~Title XX facility provided either:~~

(a) a proprietary Title XX center with at least 25% of enrolled or authorized capacity that is paid from a state-pooled funding source which includes federal Title XX funds; and or

(b) a free and reduced price center with at least 25% of its enrollment or authorized capacity that is in the free and reduced price category.

~~(19) "Provider recruitment" means the act of seeking to enroll prospective program participants into the CACFP.~~

~~(20) "Provider" means the persons providing care in a family or group day care home.~~

~~(20) through (23) remain as proposed but are renumbered (21) through (24).~~

~~(25) "Title XX" means Title XX of the Federal Social Security Act.~~

~~(24) remains as proposed but is renumbered (26).~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE III [37.75.109] AUDIT GRANTS (1) An entity may be eligible to receive a grant from the department for the purpose of reimbursing an entity for all or part of the CACFP portion of an audit. To qualify for a grant, an entity must meet the following minimum requirements:

(a) and (b) remain as proposed.

(c) Prior to beginning an audit, the entity must submit to the department for approval:

(i) remains as proposed.

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal office of management and budget (OMB) curricular circular A-133 and the USDA OMB supplement for the catalog of federal domestic assistance (CFDA) 10.558, child and adult care food program, dated March 2002;

(iii) through (3) remain as proposed.

~~(4) All potential auditors of CACFP entities' CACFP programs may be required to attend and successfully complete CACFP-specific training in order to perform audits that are eligible for grants under this rule and to learn any CACFP-program specific requirements. Publication and announcements relating to such training will occur not less than 120 days prior to the date training will be offered.~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE IV [37.75.102] CIVIL RIGHTS (1) remains as proposed.

(2) The CACFP is a federally funded program which requires the inclusion of the USDA nondiscrimination statement and an

appropriate statement of equal opportunity to be used in all informational materials disseminated to the public. The following ~~full complete~~ nondiscrimination statement must be included in ~~correspondence pertaining to the CACFP all~~ informational materials disseminated to the public wherever possible:

(a) through (3) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE V [37.75.601] APPEALS AND FAIR HEARINGS (1) Except as provided in (2), an entity may appeal an adverse administrative action through the department's office of fair hearings pursuant to the procedures provided in ARM Title 37, chapter 5. An entity must file a written request for an appeal within 15 calendar days of receiving notification of an adverse administrative action by providing the written request either to the ~~CACFP or state staff located at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952~~ or to the center's sponsoring organization Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

(2) A day care home, ~~participating may only participate in CACFP through a sponsoring organization.~~ A participating day care home may appeal through the department's office of fair hearings when there is a determination to terminate the home's participation in the CACFP. All other adverse administrative actions taken against a day care home must be reviewed through the sponsoring organization's internal review process.

(3) remains as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE VI [37.75.602] CORRECTIVE ACTION PLAN (1) An entity receiving notice that it is seriously deficient, or deficient in some aspect of the CACFP, shall submit to the department a corrective action plan to correct the deficiency, postmarked within 30 days of receipt of the deficiency notice provided by the department. Any entity that fails to submit a timely corrective action plan ~~shall~~ will be determined to be seriously deficient, or if the original notice stated the entity was seriously deficient, the entity may be subject to termination in accordance with the provisions set forth in ~~{Rule I}~~ 7 CFR 226.6.

(2) remains as proposed.

(3) The department hereby adopts and incorporates by reference 7 CFR 226.6 (2002), which specifies the administrative responsibilities, including those when a serious deficiency exists, of a state agency administering the CACFP. A copy of 7 CFR 226.6 (2002) may be obtained from the Department of Public

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

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE VII [37.75.302] INFANT MEAL REIMBURSEMENT (1) All meal components required by the USDA infant meal pattern contained in 7 CFR 226.20, which is hereby adopted and incorporated into this rule, must be supplied by the child care provider or center, with the exception of breast milk, for a meal to be eligible for reimbursement. A copy of 7 CFR 226.20 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(2) Except as provided in (6), meals containing breast milk served to infants may be claimed for reimbursement. Other required or optional meal components must be supplied by the child care provider or center. If the parent supplies any meal component other than breast milk, the meal may not be claimed for reimbursement.

(3) remains as proposed.

(4) Except as provided in (6), infant formula must be supplied by the child care provider or center for the meal to be eligible for reimbursement. If parents provide infant formula, meals cannot be claimed.

(5) Except as provided in (6), a child care provider or center must provide an infant with iron-fortified formula or soy-based formula if recommended by the infant's parent or the infant's health care provider.

(6) If an infant requires a specialty formula such as nutramigen, pregestimil, alimentum, and lofenalac that is much more expensive or difficult to obtain than a regular infant formula, the provider or center may request that the parent pay the difference between a regular priced formula and the much higher priced formula. ~~In~~ If the parents supply the specific formula, in lieu of receipt of cash, the provider or center may credit the parents for the value of the formula the provider or the center would have supplied if the parents supply the special formula. A written agreement signed by both the provider or center and the parent(s) indicating how specialty formulas ~~shall~~ are to be provided must be kept and must be available for review by CACFP staff and auditors.

(7) remains as proposed.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE VIII [37.75.303] COMBINATION FOODS (1) Each day care center or day care home shall list components of combination foods on menus as required by the Montana CACFP. Combination foods include, but are not limited to the following:

(a) and (b) remain as proposed.

(c) tacos (soft tortilla/ground beef/cheese/lettuce and

tomato). The provider or center is responsible for ensuring that combination foods provide adequate amounts of the required meal components for the age group being served.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE IX [37.75.301] MENU EVALUATION (1) through (3) remain as proposed.

~~(4) Acceptable documentation of the use of appropriate processed meat must be maintained. Acceptable documentation includes labels indicating nutritional specifics about the product(s) used. Without nutritional documentation meals using processed meat will be disallowed. All documentation must be kept on site for review.~~

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE X [37.75.401] TRAINING AND TRAINING RECORDS (1) A center must provide annual staff training on CACFP requirements, including those related to nutrition education, meal services and food safety.

~~(1) (2) Each entity must provide free training to each day care home provider or center it sponsors under the CACFP. Initial training for each provider or center must occur before any meal or snack is served for which CACFP reimbursement is claimed. Thereafter, training sessions must be provided at least annually.~~

(3) Training sessions must be provided at least annually for each day care provider or sponsored center.

(2) through (3)(e) remain as proposed but are renumbered (4) through (5)(e).

~~(3) (6) Each sponsor of day care homes must provide, free of charge, a minimum of five hours of training to the day care home providers it sponsors concerning CACFP requirements, including those relating to nutrition education, meal service, and food safety. The training to be provided by the sponsor must be submitted to the department in a written training plan and must be approved by the department as part of its annual renewal packet and whenever the training content or method of providing the training changes. Sponsors shall provide the approved training frequently enough and in convenient locations so that day care home providers have a reasonable opportunity to participate in the training.~~

~~(4) (7) Each sponsor must retain on site all information relating to training provided by that sponsor for a period of at least the three prior federal fiscal years, plus the current federal fiscal year.~~

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE XI [37.75.201] DAY CARE HOME SPONSORING ORGANIZATIONS

(1) through (8) remain as proposed.

(9) In the event that a sponsoring organization discontinues or becomes disqualified from continued participation in the CACFP, the department shall provide the day care homes being served by the terminating sponsorship shall be provided with a list of alternative alternate sponsoring organizations available in the service area. The day care homes ~~shall~~ will be permitted 30 days to select a new sponsoring organization. If a day care home fails to select a new sponsor within 30 days, the department shall assign a new sponsor to be selected on a random basis from among those qualified in the service area.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE XIII [37.75.205] PROVIDER ENROLLMENT (1) A sponsor shall complete the following when enrolling a new day care home:

(a) ~~performance of obtaining Montana CACFP pre-approval prior to performing a pre-approval visit, and performing a pre-approval visit at the day care home prior to the day care home beginning participation in the CACFP.~~ During the pre-approval visit, the sponsor must:

(i) through (iii) remain as proposed.

(iv) discuss CACFP procedure, including ~~records~~ record retention procedures, and provide training to ensure CACFP compliance.

(b) through (7)(a) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE XIV [37.75.206] RECRUITMENT (1) A sponsoring organization ~~shall~~ may not engage in active recruitment of a day care home if that home is participating in the CACFP under a current agreement with any sponsoring organization.

(2) and (3) remain as proposed.

(4) Disciplinary action may include the following:

(a) remains as proposed.

(b) Second violation, a letter warning that a second contract violation has occurred and indicating that the sponsoring organization is considered seriously deficient, and:

(i) the sponsor ~~shall~~ will be required to submit a corrective action plan; and

(ii) the sponsor will ~~not~~ be restricted ~~from~~ to recruiting only new providers who are not currently participating in the CACFP under a current agreement with any other sponsoring organization.

(c) through (5) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE XVI [37.75.501] ADMINISTRATIVE REVIEWS OF DAY CARE HOME SPONSOR/SPONSORING ORGANIZATIONS ORGANIZATION OF DAY CARE HOMES

(1) The department will conduct at least one administrative review of each day care home sponsoring organization during each period consisting of two federal fiscal years (FFY) for sponsoring organizations with 100 or more homes. The department will conduct at least one administrative review of each day care home sponsoring organization during each period consisting of three FFYs for sponsoring organizations with less than 100 homes.

(2) The sponsoring organization must ensure that all program records are available during any administrative review. Program records include:

(a) remains as proposed.

(b) documentation of claims processed and fiscal activity for the three preceding years FFY, plus the current FFY.

(3) During the administrative review of a sponsoring organization:

(a) and (b) remain as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE XVII [37.75.502] ADMINISTRATIVE REVIEWS OF CENTERS AND SPONSORS OF CENTERS (1) through (7) remain as proposed.

(8) Each full month may be subject to an administrative review.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE XVIII [37.75.402] MILK PRODUCTION RECORDS (1) All administrative reviews and financial reviews of centers performed by department staff and auditors under department contract will evaluate the milk purchase quantity documentation and compare it to the meals claimed that require a milk volume component.

(2) remains as proposed.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

RULE XIX [37.75.403] RECIPES REQUIRED (1) All program providers or centers must maintain documentation as to the creditability of baked goods as a bread/bread alternate.

(2) through (3)(e) remain as proposed.

(4) It is the responsibility of the provider or center to ensure that all items claimed as bread/bread alternates meet the criteria listed in the grains/breads section of "Crediting Foods in Child and Adult Care Food Program". The August 2001 edition of "Crediting Foods in the Child and Adult Care Food Program" is hereby adopted and incorporated by this reference. A copy of the grains/breads section of "Crediting Foods in Child and Adult Care Food Program" is available from the Department of Public

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

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE XX [37.75.105] HEAD START CATEGORICAL ELIGIBILITY

(1) ~~Head start children are~~ A child enrolled in a head start organization that is participating in the CACFP as a day care center or sponsor of centers is categorically eligible for the CACFP if:

(a) the child is enrolled in the head start program on the basis of a determination that the child is a member of a family that meets the low-income criteria, including those children who are automatically eligible for a second year of head start based on low-income.

(2) through (4)(f) remain as proposed.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

RULE XXI [37.75.603] TERMINATION AND RE-ENROLLMENT OF A DAY CARE HOME PROVIDER

(1) When a sponsoring organization terminates a day care home provider for being seriously deficient ~~and for cause~~, the sponsoring organization shall send to the department a copy of the termination letter that is sent to the provider ~~and to the department~~. Upon receipt of this notification, the terminated provider's name ~~shall~~ will be added to the state list of terminated providers, ~~and sent to all sponsors sponsoring organizations~~, and ~~will be~~ included on the national disqualified list.

(2) If a terminated provider wants to return to program participation, the provider must:

(a) fully and permanently correct the serious deficiency ~~or the cause that precipitated termination~~, ~~must~~;

(b) provide proof that the provider is no longer listed on either the state or national disqualified list, ~~and must~~;

(c) contact the terminating sponsor and request re-enrollment.

(3) If the sponsor does re-enroll a provider who has been terminated for cause one or more serious deficiencies, the sponsor shall complete the following:

(a) through (4) remain as proposed.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

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

Rule I (37.75.101) - Definitions

COMMENT #1: The definition of "active recruitment" is not

specific enough, because "direct contact" has been variously interpreted by DPHHS and Department enforcement of the requirement among sponsors is inconsistent. Clearer language in the definition that clarifies DPHHS' expectations would be helpful to both sponsors and DPHHS. Recommended examples of specific types of contact that should be included in the definition are telephone calls, in-person conversations, and correspondence.

RESPONSE: The Department agrees and is adding examples of "active recruitment" to the definition.

COMMENT #2: The definition of "active recruitment" should prohibit sponsors from spreading misinformation and derogatory comments about rival sponsorships and their staff members to providers.

RESPONSE: The Department feels the definition is sufficient as it is, in that the actions described are not "active" recruitment but rather unprofessional actions that sponsor staff should be educated to avoid.

COMMENT #3: Again concerning the definition of "active recruitment", multi-purpose agencies should not be prohibited from including in their newsletters information about CACFP training, menu deadlines, and CACFP program rules, as DPHHS has done, because such newsletter information does not rise to the level of "active recruitment". This issue illustrates the need for more specificity in the definition, especially since violation of the active recruitment prohibition carries such a heavy penalty in Rule XIV (37.75.206).

RESPONSE: The Department did not make the requested change. Newsletters of sponsoring organizations that are also resource and referral agencies reach CACFP participants that are not participating through their sponsorship. Newsletters of sponsoring organizations that are not resource and referral agencies, on the other hand, reach only their own CACFP participants. The Department feels that allowing sponsoring organizations that are resource and referral agencies to provide CACFP program information in their agency newsletters offers an unfair recruiting advantage that can be avoided by issuing a separate newsletter for their CACFP participants.

COMMENT #4: "Active recruitment" should specify limits on communication once a provider has given notice to a sponsor that it intends to switch to a competing sponsor.

RESPONSE: It is not clear from the comment whose communications the commentor is requesting be limited. Presumably, what is meant is that the original sponsor should cease communicating in some manner with the provider who is intending to switch. Since it is not clear precisely what the commentor is suggesting, no change was made in the rules, but CACFP remains open to further

discussion of the issue and suggested rule changes in the future.

COMMENT #5: The definition of "proprietary center" should be expanded to include a free and reduced price center as well as a Title XX center, as allowed now by the federal Department of Agriculture.

RESPONSE: The Department agrees and has added the language.

COMMENT #6: The definition of "center" should include adult day care centers, since adult day care is part of the Child and Adult Care Food Program.

RESPONSE: The Department agrees and has added "adult day care center" to the "center" definition.

COMMENT #7: In the definition of "entity", everything listed except "sponsoring organization" is included within the definition of "center"; it would shorten the definition and make for easier reading if "center" were substituted for the long list following "sponsoring organization".

RESPONSE: The Department agrees and has made the change.

COMMENT #8: "Title XX" should be defined.

RESPONSE: The Department agrees and has made the change.

COMMENT #9: A definition of "provider" should be added to clarify that it means only a family or group day care home.

RESPONSE: The Department agrees and has added the definition.

COMMENT #10: The definition of "provider recruitment" should be deleted because it is not used anywhere in the rules.

RESPONSE: The Department agrees and has deleted the definition.

Rule III (37.75.109) - Audit Grants

COMMENT #11: Rule III(1)(c)(iii) (37.75.109) requires that the audit proposal certify that the audit will include a test of CACFP in accordance with current federal OMB Circular A-133. However, audits include random compliance testing, with more extensive scrutiny of the designated major program, which, in a multi-purpose agency, may or may not be CACFP in any given year. If CACFP is not the major program, there will be less testing of CACFP, but the audit will still be in compliance with OMB A-133. The rule should be clarified to avoid the implication that CACFP is always to be regarded as a major program every year.

RESPONSE: Supplemental information from the USDA Office of Management and Budget, dated March, 2002, relates the specifics

of tests to be performed when auditing CFDA 10.558, the Child and Adult Care Food Program. The requirement to comply with this supplement has been added to Rule III (37.75.109), and will avoid the problem noted in Comment #11. The misspelling of "circular" is also corrected.

COMMENT #12: Section (4) of Rule III (37.75.109) requires auditors of CACFP entities to attend and complete CACFP-specific training in order for the audited agency to obtain a grant. That requirement may limit the firms available for CACFP audits unless training is provided several times a year and in multiple locations throughout the state. It may also increase the cost of the audit, which would be of particular concern to rural entities. Because federal audit guidance exists and CACFP sponsors are regularly monitored by DPHHS, including financial monitoring, this provision is unnecessary and should be eliminated.

RESPONSE: The Department agrees and has eliminated the requirement, as the training of auditors by the Department is not required under the applicable federal rules (7 CFR 226).

Rule IV [37.75.102] - Civil Rights

COMMENT #13: Rule IV(2) (37.75.102) states that the federal civil rights language must be included in all "correspondence" pertaining to CACFP. While the federal regulations do require the language in all printing, such as brochures and newsletters, it should not be required in routine correspondence.

RESPONSE: Because the civil rights requirement in the federal rules is that the referenced language be included on all information materials disseminated to the public, the phrase "...correspondence pertaining to the CACFP..." has been removed and replaced with "materials disseminated to the public".

Rule V (37.75.601) - Appeals and Fair Hearings

COMMENT #14: Any request for a fair hearing/appeal should be addressed and sent to the Department's fair hearings office rather than to the CACFP.

RESPONSE: The Department agrees and has made the change.

COMMENT #15: The first sentence of section (2) of Rule V (37.75.601) implies that a day care home can participate in CACFP without a sponsor, which is not the case.

RESPONSE: The Department agrees and has amended the language to make it clear that homes must have a sponsor as a condition of CACFP participation.

Rule VI (37.75.602) - Corrective Action Plan

COMMENT #16: Section (1) erroneously indicates that termination procedures for seriously deficient entities are in Rule I (37.75.101), the definition rule.

RESPONSE: The Department has noted the error and has added the proper provision of the federal rules that contains the termination procedures. It also added a non-substantive phrase to the first sentence in (1) clarifying that its mandate applies to sponsors with 100 or more homes, not just those sponsoring exactly 100 homes.

Rule VII (37.75.302) - Infant Meal Reimbursement

COMMENT #17: Section (6) of Rule VII (37.75.302) requires the provider to purchase specialty formula and to be reimbursed by the parent for the difference between its cost and that of normal formula. In one instance, a child with a serious medical condition was prescribed formula that cost \$80 per can. In that case, the Department allowed the parent to provide the formula, because it was covered under the family's insurance, and allowed the provider to claim the meal for CACFP reimbursement because additional food items were served. Therefore, language should be added to allow providers, when special medical circumstances exist, to obtain from their sponsors a waiver from the requirement that the provider has to buy the formula. Also, that section should be clarified to indicate that it applies to centers as well as providers, who are now defined as family or group day care homes.

RESPONSE: The rule does not require a provider to pay for higher priced formulas, but, rather, allows several options for the provider to collect the additional costs. The rule requires there to be a written agreement setting the terms for collecting the monetary difference for the higher priced formula, and is not meant to cover all possible scenarios and situations. Because the federal CACFP rules (7 CFR Part 226) do not allow a sponsor or center to waive the requirement that providers supply formula for infants, the requested changes could not be made to section (6) of the rule. However, in order to clarify the meaning of section (6), it was edited slightly. In addition, "or center" was added wherever "provider" was mentioned in Rule VII (37.75.302) and in Rule XIX (37.75.403) in order to clarify that the requirements equally apply to centers.

Rule IX (37.75.301) - Menu Evaluation

COMMENT #18: Section (4) of Rule IX (37.75.301) requires that acceptable documentation for the use of appropriate processed meat must be maintained. This is not a federal requirement. As CACFP is a very highly regulated program at the federal level, additional rules should not be imposed by the Department. While processed meat is a nutritional concern, so are pop-tarts, yet they are allowed as reimbursable food under this program. Increased provider regulation may result in lower provider

participation in CACFP, the result being less opportunity to positively impact children's nutrition. Education, rather than more regulation, is preferable. In addition, the phrase "appropriate processed meat" is too imprecise in meaning. While baked goods are dealt with in some specificity in the federal regulations, this is not the case for processed meat. The rule's language should inform sponsors and providers of specific requirements for processed meat, e.g., grams of protein, limitations on filler, etc.

RESPONSE: Because of the difficulty of adequately responding, at this point in time, to the valid concerns raised by the commentor, the Department has deleted section (4) from the rule, and may propose a revised provision at a later date.

Rule X (37.75.401) - Training and Training Records

COMMENT #19: Subsection (2)(d) of Rule X (37.75.401) requires that a training session roster with course name, subject, and participants' signatures be maintained. Previous sections of the rule require there to be an agenda, learning objectives, and trainer records. Including "subject" on the training roster should be dropped as a requirement because the subject of the training should be generally understood from the title. The subject covered will certainly be clear in the educational outcomes. As a course may be repeated on more than one date, it would be more useful to document the date of the training on the roster than the subject of the training.

RESPONSE: The Department decided to drop this particular subsection from the current rulemaking because so many questions were raised about its meaning and applicability. It will be rewritten and proposed as a rule in the future.

COMMENT #20: In section (4) [which is renumbered section (7)], it is unclear which years' training information must be retained.

RESPONSE: Language was added to the rule to state specifically which years' training information had to be retained. In addition, because the rule inadvertently contains two sections numbered (3), the numbering of those two sections and subsequent sections is being corrected.

COMMENT #21: Does the renewal application constitute the written training plan and approval required by Rule X (37.75.401)?

RESPONSE: No. The written training plan should be submitted annually upon renewal and whenever the training plan is revised or changed. Approval should be prior to supplying or introducing the training (such as online training) to providers.

Rule XI (37.75.201) - Sponsoring Organizations

COMMENT #22: Rule XI (37.75.201) in its entirety is strongly opposed because it would limit the ability of a third sponsor to serve a county where at least two day care home sponsors are already available. There are many counties in Montana that have two sponsoring organizations assigned to them, yet they are served by only one of the assigned sponsors or not served at all. Therefore, this proposed rule would unfairly limit an organization's ability to grow and service additional areas in CACFP.

In many other states, having sponsor areas open to additional sponsors is viewed as positive for both sponsors and providers, in that the healthy competition creates choices for the providers and increases the quality of services offered by the sponsors. Currently, two sponsoring organizations in Montana are allowed to serve 55% of the counties, which is disproportionate and arbitrary. Additionally, because there are seven counties being served by three agencies, the precedent has already been established for more than two sponsorships per county. The factors determining whether a sponsor should cover additional counties should be the sponsor's choice to cover additional areas, its financial viability and accountability, and the appropriateness of its staff, not whether there are two sponsors already serving an area.

RESPONSE: Many of the counties served by only one sponsoring organization are so served because there is not enough need present in those areas and, in most cases, the counties are located in very rural parts of the state. The lack of need in the counties also applies to the two sponsoring organizations serving 55% of the counties. Putting a limit on the number of sponsors is cost-effective for the CACFP, in that it limits the number of sponsors that CACFP staff must review; scarce CACFP resources are thereby conserved. As for the counties being served by three sponsoring organizations, that arrangement was in existence prior to the establishment of the CACFP policy on sponsor limits per county. Therefore, the Department does not feel that a precedent has been set. As the sponsoring organizations have not reached a consensus on this issue and the need for additional sponsors has not been shown in the areas mentioned, the Department believes that the existing rule provides for the most efficient operation of the CACFP program.

COMMENT #23: The DPHHS-approved management plan of one sponsoring organization describes its current practice of serving all of three counties but, in addition, providers in a town in another county who request its sponsorship. That service area has been disclosed to and approved by DPHHS during the annual renewal process for the past several years. However, this type of service area appears to violate section (1), which states that geographic boundaries follow county lines. In the foregoing case, the sponsor which would normally serve the providers in the town in question has given approval for the first sponsor to serve that town, with the condition that the

first sponsor will not actively recruit providers elsewhere in the second sponsor's county.

However, aside from this case, given the tenor of existing competition and the existence of sponsorships that serve half of the state, the likelihood of obtaining approval to offer services in adjacent areas seems highly unlikely. The rules should allow sponsors to serve providers in adjacent areas (within 30 miles of the county boundary) at the request of the provider, along with an explanation, and with the approval of DPHHS. Boundaries do not need to be officially altered to accommodate occasional exceptions.

RESPONSE: The rule already contains a provision allowing a sponsor to serve outside of specified county lines when the affected sponsors agree, which means that the arrangement made by the commentor above to serve a few homes over the county line does not conflict with the rule. The Department feels agreements between the affected sponsors has to be a prerequisite in this case because the existing sponsors are fundamentally impacted by the addition of another sponsor and their approval is vital to maintaining a positive working relationship within the CACFP program.

COMMENT #24: Section (9) requires homes being served by a terminating sponsor to be given a list of alternative sponsors, but does not say who must provide the list to the homes. DPHHS should be responsible for doing so, because terminating sponsors may not follow through with this important responsibility, to the detriment of impacted child care homes.

RESPONSE: The Department agrees and has added language indicating that the Department would provide the list. It also added language to the title clarifying that the rule applies only to sponsors of day care homes, rather than sponsors of centers, and changed the reference to "alternative sponsoring organizations" to "alternate sponsoring organizations". Neither of the latter changes is substantive.

Rule XIII (37.75.205) - Provider Enrollment

COMMENT #25: Subsection (1)(a) of the rule should include the requirement that a pre-approval request be sent to the Department and approved prior to conducting the pre-approval visit.

RESPONSE: The Department agrees and has added the requirement, as it is also a USDA requirement for the CACFP to pre-approve day care homes and centers.

Rule XIV (37.75.206) - Recruitment

COMMENT #26: Subsection (4)(b)(ii) should be rephrased to eliminate a double negative.

RESPONSE: The Department agrees and has changed the language accordingly. In addition, an editing change is being made in subsection (4)(b)(i) to conform to rule drafting standards; the meaning remains unchanged.

Rule XV (37.75.205) - Changing Sponsoring Organization

COMMENT #27: The rule should allow sponsorship changes only during the period 60 days prior to the end of the fiscal year. Doing that would establish a specific time frame within which providers could change sponsors, thereby enabling sponsoring organizations to have better management of their budgets. New federal regulations concerning staffing requirements make such budgeting management essential for sponsoring organizations. The restricted time frame is reasonable, and the providers' interest is protected by the appeal process.

RESPONSE: The Department believes the time frame suggested is too restrictive for the providers. The number of providers that switch sponsoring organizations is minimal. Typically, very few providers switch sponsoring organizations throughout the course of a year. This being the case, the impact on staffing ratio requirements caused by sponsor changes should be inconsequential, and any needed budget amendments are now and will be allowed to be processed throughout the year as the circumstances of individual sponsoring organizations change. Therefore, no change was made in the rule.

Rule XVI (37.75.501) - Administrative Review of Sponsors

COMMENT #28: The period required by subsection (2)(b) for fiscal record retention should be more clearly specified, and three federal fiscal years are recommended as the period, as the federal fiscal year is the CACFP contract period.

RESPONSE: The Department agrees to clarify the retention period as suggested, including specifying that the current federal fiscal year is included.

Rules XVI (37.75.501), XVII (37.75.502) and XVIII (37.75.402) Administrative Review of Sponsors, Administrative Reviews of Centers and Sponsors of Centers and Milk Production Records

COMMENT #29: References to "administrative reviews" should delete the word "administrative" because federal rules for the CACFP program use "administrative reviews" to refer to fair hearings, which the reviews referred to in the Department's rules are not.

RESPONSE: The Department has made the change, and the title of Rule XVI (37.75.501) has been clarified as well.

Rule XVIII (37.75.402) - Milk Production Records

COMMENT #30: This rule should specify that it applies to child care centers and homes. As written, the rule may be interpreted to mean that sponsors must maintain recipe records, which is not the federal requirement or current practice. Another commentor felt that the rule should apply only to centers.

RESPONSE: The Department agrees and has reworded the rule accordingly, specifically limiting its application to centers.

Rule XIX (37.75.403) - Recipes Required

COMMENT #31: The rule refers to program providers, but the rule containing definitions, while defining "program" as CACFP, does not define "provider". Are homes and centers meant to be the "providers", or are sponsors meant to be included as providers as well?

RESPONSE: Sponsors are providers only if they have a day care and are participating in the CACFP. A definition of "provider" has also been added to the definition rule [Rule I] (37.75.101), indicating that a provider is a family or group day care home.

COMMENT #32: Rule XIX (37.75.403) should specify that it applies to child care centers and homes. As written, the rule may be interpreted to mean that sponsors must maintain recipe records, which is not the federal requirement or current practice.

RESPONSE: The rule, especially with the added definition referred to in Comment #31, specifies which entities are required to maintain these recipes, and the Department believes this to be sufficiently clear. Therefore, no further changes have been made.

Rule XX (37.75.105) - Head Start Categorical Eligibility

COMMENT #33: Since there are several categories of children who are categorically eligible for CACFP, all of them should be included in the rule, rather than just those in the Head Start category.

RESPONSE: This rule is intended for those organizations that are participating in the CACFP as head start centers or sponsors of centers. The rule is not meant to define categorical eligibility for tier purposes required by sponsoring organizations of day care homes, as this is clearly defined in the federal regulations. Section (1) of the rule has been changed to clarify which entities are affected by this rule.

Rule XXI (37.75.603) - Termination and Re-Enrollment

COMMENT #34: The word "and" [fourth word from the end of the first sentence of section (1)] seems to be unnecessary, and the

sentence needs to be revised. The second sentence should clarify that the Department is responsible for adding the provider to the list of terminated providers, as described in federal guidance.

RESPONSE: The section has been reworded to be grammatically correct and to specify that the Department will do the notification necessary for placement of a provider on the National Disqualified List.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.85.207,)
37.85.406, 37.86.606,)
37.86.1102, 37.86.1806,)
37.86.1807, 37.86.2405,)
37.86.2801 and 37.86.2905)
pertaining to medicaid)
reimbursement and reductions)
in medicaid rate)
reimbursement and services)

TO: All Interested Persons

1. On March 13, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-273 regarding the public hearing on the proposed amendment of the above-stated rules pertaining to medicaid reimbursement and reductions in medicaid rate reimbursement and services at page 363 of the 2003 Montana Administrative Register, issue number 5.

2. The Department has amended ARM 37.85.207, 37.85.406, 37.86.606, 37.86.1102, 37.86.1806, 37.86.1807, 37.86.2405, 37.86.2801 and 37.86.2905 as proposed.

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

COMMENT #1: The Department received several comments that providers of Durable Medical Equipment, Orthotics and Prosthetics and supplies have had prior reimbursement rate reductions. The provider's costs are not decreasing. Providers will be forced to lay off employees, causing a downward spiraling effect on an already depressed economy, or limit the level of service, if any, to the consumer. To eliminate services would be tantamount to putting providers of Prosthetics and Orthotics out of business.

RESPONSE: The Department recognizes the impact of these cuts on Medicaid providers and needy Montanans. All Medicaid budget reduction causes concern but the Department must remain within the State fiscal year 2003 appropriation despite the increasing Medicaid caseload and increasing demand for Medicaid services. The Department has reviewed previous reductions made in the Medicaid programs prior to proposing the current reductions. These cuts are necessary to allow the Department to maintain the core Medicaid services required by the federal government while at the same time remaining within the funding level appropriated by the 2001 Legislature.

COMMENT #2: Providers have grave concerns about the prior authorization of wheelchairs. Often a patient only needs a wheelchair for a week. The time and paperwork required for prior authorization is not cost effective in those circumstances. Providers have to finance the purchases prior to being reimbursed. They cannot afford to do so if they are not going to be reimbursed. Department rules state that providers cannot deny services and they would be breaking the law if they refuse or deny services.

RESPONSE: The purpose of the prior authorization process is to ensure that, prior to payment, the Department is only providing reimbursement for appropriate, medically necessary services. If the wheelchair is authorized, current administrative rules provide that Medicaid will pay the entire initial monthly rental fee even if the rental period is less than a full month. (ARM 37.86.1806(3)(d)(i)). It is a condition of participation in the Montana Medicaid Program that a provider's acceptance of a Medicaid eligible individual applies to all covered services of the provider. A provider may not accept Medicaid payment for some covered services but refuse to accept Medicaid on other covered services.

COMMENT #3: The state should utilize its computer system to the best of its ability. Currently, claims are entered and paid without any questions. Should the state develop a system that catches errors up-front, it would not be in the position of paying out monies when it should not. The Department should look for ways to impose some modification of the current program that would reduce spending, as well as work diligently to prevent fraudulent practices.

RESPONSE: The Department is committed to paying Medicaid provider claims as quickly as possible. To do so Medicaid claims are electronically processed and usually are not reviewed prior to payment. Although the computerized system can detect and deny some erroneous claims, there are many erroneous claims that it cannot detect. For this reason, payment of a claim does not mean that the service was correctly billed or the payment made to the provider was correct. Periodic retrospective reviews are performed to determine if the services provided were appropriately billed.

If a claim is paid and the Department later discovers that the service was incorrectly billed or the claim was erroneous in some other way, the Department is required by federal regulation governing the Medicaid program to recover any overpayment that occurred. Ultimately, providers are responsible to meet the criteria outlined in their respective provider manuals prior to billing Medicaid for the services.

COMMENT #4: Medicaid reimbursement is significantly below average cost for providing transportation services. There is a high rate of denial of service reimbursement and there is a

great deal of misuse of transportation services across the state for medical transportation. These cutbacks are one of the reasons Montana ranks so low in payments to employees. Providers cannot afford to pay for quality paramedics with 7% cutbacks.

RESPONSE: The Department believes that the Transportation and Ambulance reimbursement system is reasonable and is adequate for the program. During the 2001 legislative session, the Department was given approval to increase the reimbursement rate for ambulance providers to approximately 70% of charges. Before the rate increase, the Medicaid reimbursement for ambulance services in aggregate was about 37% of usual and customary charges. The Department implemented a new fee schedule and reimbursement system in July 2001 that provided rate increases to ambulance providers. The Department agrees that it is important to provide accurate information to providers. It has provided every ambulance company with a provider manual that outlines the services that are covered by Medicaid and the procedure to receive reimbursement for the Medicaid covered services.

COMMENT #5: The Department needs to look at all areas before finalizing these cuts and to spread the cutbacks equally across the board for all Medicaid providers. The Department needs to continue to reduce staff, combine positions, reduce overhead expenses, freeze wages, reduce wages if need be and take other measures. The Director and Governor need to look at the management of the Department, especially in the Health Policy and Services Division (HPSD). It seems that both the Senior and Long Term Care and the Disability Services Divisions have the capabilities to operate and manage a budget. The commentor does not see how legislation and government can allow things like large salaries and bonuses and continue to cut on the poor.

RESPONSE: The Department agrees that it is important to continually monitor administrative costs. Montana Medicaid has one of the lowest administrative overhead burdens among health care delivery organizations. The Department continues to reduce overhead expenditures. During State fiscal year 2003, staffing has been reduced and hiring has been frozen. In addition to staff reductions, overhead expenses such as travel, training, contracts, subscriptions and office supplies have also been reduced. During these difficult times, fewer staff are called upon to find new efficiencies and implement necessary changes while continuing to efficiently administer health care programs.

While all Divisions of the Department are under severe fiscal pressure with the current crisis in Medicaid expenditures, those areas where costs are rising the fastest - hospital and pharmacy - are both located within the Health Policy and Services Division (HPSD). Another factor disproportionately affecting HPSD is the increase in Medicaid enrollment. This surge in enrollment is concentrated in the Temporary Assistance for Needy

Families (TANF) population served by HPSD rather than the disabled and elderly populations whose numbers are relatively unaffected by economic recessions. Within the past two years, Medicaid enrollment has risen from just under 70,000 eligibles in 2001 to the current level of 79,000 eligibles.

COMMENT #6: The Department needs to work collaboratively with the provider and consumer populations to find innovative ways to reduce this deficit. The commentor requests that the Department not make decisions in a vacuum and allow the public to participate in fixing the problem without all suffering the consequences. The commentor is very concerned that these new reductions were sprung upon patients and providers at the last minute.

RESPONSE: The Department agrees that it must work collaboratively with providers and consumers. It seeks and receives advice and input from the provider and recipient community about how to deal with the budget deficits. As examples, the Department has participated in town meetings held by the Governor throughout the state, has solicited advice and comments from the community at large and has developed work groups to look at health care resources and exploring ways to reduce the over-utilization of health care services. The Department will continue its efforts at improving communication with providers and consumers.

COMMENT #7: The State continues to ignore the daily needs of our handicapped and impaired. It seems that the State of Montana has found a way to place a dollar figure on the quality of life and independent living of Medicaid recipients, while reminding its constituents how invaluable the members of staff at the Capital are. Sense and sensibility should not be placed on the shoulders of those with a heavy load already. Please consider those dependent on Medicaid. Please keep the needs of severely disabled people in mind, and allow some flexibility in those rare cases where it is needed.

RESPONSE: The Department recognizes the impact of these proposals on needy Montanans and on Medicaid providers. The proposed measures are an attempt to minimize the negative impact on providers and clients without more drastic program cuts in the future. The Department has considered alternative cuts in the Medicaid program. The reductions proposed had the least impact on the provider and recipient community. The Department agrees with the commentor that all Medicaid reductions cause problems but is required to remain within the funding allocated by the 2001 Legislature.

COMMENT #8: It may be more cost effective to purchase pills in 100 units as opposed to smaller amounts.

RESPONSE: The 100-dosage allowance theoretically allows a client a 100-day supply of medication prescribed once daily.

This has the potential for waste from changes of the initial prescription or supplying prescription drugs beyond the monthly assignment of benefits available under Medicaid.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 28, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.18.125))
relating to access to property)
for the purpose of auditing)
and appraising the property)
for tax purposes)

TO: All Concerned Persons

1. On March 13, 2003, the department published MAR Notice No. 42-2-713 regarding the proposed adoption of the above-stated rule relating to access to property for the purpose of auditing and appraising the property for tax purposes, at page 392 of the 2003 Montana Administrative Register, issue no. 5.

2. A public hearing was held on April 14, 2003, to consider the proposed adoption. Oral testimony was received at the hearing and is summarized as follows along with the response of the department:

COMMENT NO. 1: William E. Leary, representing himself and the Helena Property Owners' Association, testified in favor of the rule. He stated that the association supports the need for this rule and also supported the legislation. Mr. Leary stated that some of the members were confused by the postcards that they received from the department. Several taxpayers own both property in the city and also in the county and they were not sure which property the card covered. He stated that he now understands that these cards were only mailed to individuals with rural addresses, so he suggested that in the future the department might want to identify the rural property somehow on the card to reduce this confusion.

RESPONSE NO. 1: Postcards were mailed this year because the law became effective on February 6, 2003, and it states that "no later than November 30 of each year, the department shall publish in a newspaper of general circulation in each county a notice that the department may enter property for the purpose of appraising or auditing property." The department appraisers will be conducting appraisals throughout the state over the next several months and the department needed a mechanism to notify property owners of their right to request that they be present when these appraisals were conducted on their property.

The postcards will not be used in the future. The method of notifying taxpayers that appraisals will be conducted will be through publication in the general newspapers for the area, as specified in the law.

COMMENT NO. 2: Mr. Leary also stated that there was some concern with the terminology on the cards. The card states "property staff may be entering your property . . ." and Mr.

Leary stated that some taxpayers are concerned that this means that the department can enter the dwelling without permission.

RESPONSE NO. 2: The department apologizes for any confusion that might have occurred from the use of the term "entering". That was not the intent of this phrase. It is meant that the auditor could come onto the property for the sole purpose of conducting an audit to value the property.

COMMENT NO. 3: Mr. Leary stated that it might be helpful for the department to speak to the homeowner associations to explain the process and reduce some of the confusion and concern.

RESPONSE NO. 3: Upon invitation, the department would be happy to speak to any property association regarding this process.

3. The department adopts New Rule I (42.18.125) as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 28, 2003

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2002. This table includes those rules adopted during the period January 1, 2003 through March 31, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2002, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2002 Montana Administrative Registers.

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