

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure by endorsement, temporary practice permits, renewals, standards related to registered nurse's responsibilities, prescriptive authority committee, initial application requirements for prescriptive authority, limitations on prescribing controlled substances, quality assurance of advanced practice nursing, and renewal of prescriptive authority) ) NOTICE OF PUBLIC HEARING  
) ON THE PROPOSED AMENDMENT  
) OF ARM 8.32.405 LICENSURE  
) BY ENDORSEMENT, 8.32.408  
) TEMPORARY PRACTICE PERMIT,  
) 8.32.411 RENEWALS,  
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) REGISTERED NURSE PRACTICE  
) AND 8.32.1510 RENEWAL OF  
) PRESCRIPTIVE AUTHORITY

TO: All Concerned Persons

1. On July 20, 2000, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., on July 10, 2000, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-7762; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667; e-mail compolnur@state.mt.us.

3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.32.405 LICENSURE BY ENDORSEMENT (1) will remain the same.

(2) The board ~~will not~~ may, on a case-by-case basis, issue a license to an applicant for licensure by endorsement whose license is under investigation or in disciplinary action of a board in another jurisdiction or to an applicant who is under investigation for a felony criminal offense.

(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice professional or practical nursing pursuant to the provisions of ARM 8.32.408(3).

(3) will remain the same but be renumbered (4).

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-1-304, MCA

REASON: The Board is proposing the amendment of subsection (2) to allow licensing of applicants by endorsement who are under investigation for a felony offense or a licensing issue, subject to board review on a case by case basis, and the addition of new subsection (3) to expedite an applicant's ability to work in Montana if the applicant holds a current, unencumbered license in another state.

8.32.408 TEMPORARY PRACTICE PERMIT (1) through (2) will remain the same.

(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice professional or practical nursing provided the applicant has submitted a completed application as described in ARM 8.32.405(1)(a) and that the initial screening by board staff shows no current discipline as identified in ARM 8.32.405(2) in the last two years. The temporary permit will remain valid until the applicant completes the endorsement process, but shall not exceed 90 days without board approval.

(3) will remain the same but be renumbered (4).

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-1-304, MCA

REASON: The Board is proposing this amendment to expedite the nurse's ability to work in Montana if that nurse holds a current unencumbered license in another state.

8.32.411 RENEWALS (1) will remain the same.

(2) A license shall be renewed by January 1. A person shall not continue in the practice of nursing without a valid renewal certificate in their possession. Any person practicing nursing during the time a license has elapsed shall be considered an unlicensed person and may be subjected to the penalties provided for violators under the provisions of this chapter.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing this amendment to clarify when a license is no longer valid.

8.32.1404 STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION

(1) The registered nurse shall:

(1) through (8) will remain the same, but will be renumbered (a) through (h).

~~(9)~~ (i) report unsafe nursing practice to immediate supervisor and the board of nursing and unsafe practice conditions to any and all recognized ~~legal authorities~~ federal, state, county, municipal or private bodies organized with powers to regulate and enforce nursing practice conditions;

(10) through (17) will remain the same, but will be renumbered (j) through (q).

Auth: Sec. 37-1-131, 37-8-202, MCA

IMP: Sec. 37-1-131, 37-8-202, MCA

REASON: The Board is proposing this amendment to clarify the nurse's responsibility to report unsafe practice conditions to entities with the power to regulate and enforce nursing practice conditions.

8.32.1503 PRESCRIPTIVE AUTHORITY COMMITTEE (1) through (1)(a) will remain the same

(b) The committee members will select a chairman ~~and a secretary.~~

(c) through (6)(b) will remain the same.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing this amendment to remove the requirement of having a secretary on the committee.

8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY (1) will remain the same.

(a) evidence of completion of a minimum of 15 continuing education hours ~~of education~~ in pharmacology and/or the clinical management of drug therapy which has been obtained within a three-year period immediately prior to the date the application is received at the board office. The majority of the course work must concern the study of pharmaceutical medications and not herbal therapies. This requirement is in addition to the education necessary for an advanced practice registered nurse to obtain original certification. Six of the 15 continuing education hours must have been obtained within one year immediately prior to the date the application is received at the board office. One-third of all continuing education hours must be face-to-face meetings or interaction.

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

Auth: Sec. 37-8-202, MCA  
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing this amendment to clarify what is acceptable continuing education.

8.32.1506 SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES (1) through (2) will remain the same.

(3) A prescription for schedule II drugs will not exceed the quantity necessary for ~~34 days~~ a three-month period. Prescriptions for schedule III-V drugs will not exceed the quantity necessary for ~~34 days~~ a three-month period.

(4) will remain the same.

Auth: Sec. 37-8-202, MCA  
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing this amendment to increase the amount of prescription drugs that a client may receive to correspond with what insurance carriers recognize as convenient. This will allow the public to participate in prescription plans requiring this amount of product without an inordinate amount of paperwork.

8.32.1508 QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) and (2) will remain the same.

(a) 30 charts or 5% of all charts handled by the advanced practice nurse, whichever is less, must be reviewed quarterly. Review shall be accomplished through the use of a mixture of peer review and review by a physician of the same specialty, as appropriate. Reviewers must avoid any conflict of interest with the licensees. The peer reviewer must hold prescriptive authority.

(b) through (3) will remain the same.

Auth: Sec. 37-8-202, MCA  
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing this amendment to assure the unbiased review of the licensee's charts and that the peer reviewer is a licensee with prescriptive authority.

8.32.1510 RENEWAL OF PRESCRIPTIVE AUTHORITY (1) through (2)(b) will remain the same.

(c) A minimum of six contact hours of continuing education in pharmacology or pharmacology management is required during the two-year period immediately preceding the effective date of the prescriptive authority renewal. The continuing education will be by a professional accrediting organization approved by the board of nursing and a minimum of two hours will be face-to-face interaction. The majority of the course work must concern the study of pharmaceutical medications and not herbal therapies.



(3) will remain the same.

Auth: Sec. 37-8-202, MCA  
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing this amendment to clarify the quality of the required continuing education.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, or by e-mail to compolnur@state.mt.us and must be received no later than 5:00 p.m. July 27, 2000.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 444-1667, e-mailed to compolnur@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF NURSING  
KIM POWELL, RN, BSN, PRESIDENT

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 19, 2000.

BEFORE THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, temporary permits, examinations and licensure of out-of-state applicants ) NOTICE OF PROPOSED AMENDMENT OF ARM 8.64.501 APPLICATION REQUIREMENTS, 8.64.502 TEMPORARY PERMITS, 8.64.503 EXAMINATION FOR LICENSURE AND 8.64.509 LICENSURE OF OUT-OF-STATE APPLICANTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons:

1. On July 31, 2000, the Board of Veterinary Medicine proposes to amend the above-stated rules.
2. The Board of Veterinary Medicine will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine, no later than 5:00 p.m., on July 17, 2000, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5436; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667; e-mail cbrandt@state.mt.us.
3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.64.501 APPLICATION REQUIREMENTS (EXAMINATION)

(1) Applicants for licensure by examination in the state of Montana shall submit a completed application with the proper fee and supporting documents to the board office no later than 45 days prior to the jurisprudence examination date as set by the board. Applicants for the North American veterinary licensing examination (NAVLE) wishing to sit as a Montana candidate shall submit the Montana state licensure application to the board no later than 65 days prior to the first date of each NAVLE test window. Montana NAVLE candidates shall submit the NAVLE application and fee directly to the national board examination committee. Supporting documents for the Montana state licensure application shall include:

- (a) ~~copy of diploma~~ a certified transcript from a school of veterinary medicine accredited or approved by the American veterinary medical association council on education showing evidence of graduation in and receiving a degree;
  - (i) ~~senior veterinary students who have not yet received a diploma graduated,~~ when submitting the application, shall submit a letter from the dean of the school of veterinary medicine attended, stating that he/she is a senior student and

the expected date to receive the degree of doctor of veterinary medicine or its equivalent. No license shall be issued, however, until such time as the board office receives a photostatic certified copy of the diploma transcript.

(b) photograph approximately 2" x 2" taken within 2 one years of the date of application.

(2) All applicants must:

(a) pass the NAVLE at or above the designated passing standard established by the national board examination committee; or

(b) have taken passed the national board examination and the clinical competency test within 62 months prior to the next scheduled jurisprudence examination date as set by the board with a converted score of 70 or greater and have their scores reported to the board office through the interstate reporting service or its equivalent official score reporting agency.

~~(a) It is the responsibility of each applicant to take the national board examination and the clinical competency test wherever and whenever possible. Montana will not administer the national board examination or the clinical competency test unless deemed necessary by the board.~~

(3) will remain the same.

(4) An application for examination shall expire two one years from the date of the application. An applicant who, for any reason, fails or neglects to take the examination within the two one years shall be required to file another application and submit another application for examination fee.

Auth: Sec. 37-1-131, 37-18-202, MCA

IMP: Sec. 37-18-202, 37-18-302, 37-18-303, MCA

REASON: The proposed amendment will affect those applying for licensure as a veterinarian by the examination method. The two current national examinations for veterinarians are being discontinued and replaced by one computerized exam. The changes to this rule reflect that exams qualifying an applicant for licensure by examination will be either the two previously offered national examinations or the new computerized national exam. The rule also specifies that a transcript must now be submitted to verify appropriate education instead of a copy of the diploma as was previously required.

8.64.502 TEMPORARY PERMITS (1) and (2) will remain the same.

(3) An applicant for licensure ~~who is taking the jurisprudence examination by endorsement~~ may be issued a temporary permit if he/she is working under the supervision of a veterinarian licensed in Montana.

(4) will remain the same.

Auth: Sec. 37-1-319, 37-18-202, MCA

IMP: Sec. 37-1-305, MCA

REASON: The proposed amendment will affect those requesting a temporary permit if they are applying for licensure by endorsement. Previously, the Board required that only those applicants for licensure that were applying by endorsement take the jurisprudence exam. The proposed rule change clarifies the type of temporary permit that can be obtained by those applicants applying by endorsement as all applicants now take the jurisprudence exam prior to licensure and this phrase no longer differentiates between examination and endorsement candidates.

8.64.503 EXAMINATION FOR LICENSURE (1) The examination for licensure as a veterinarian shall consist of:

(a) the national board examination and the clinical competency test pursuant to the requirements set forth in ARM 8.64.501, which must have been passed with a converted score of 70 or greater. The scores must be received by the board from the official score reporting agency; or

~~(b) the clinical competency test pursuant to the requirements set forth in ARM 8.64.501, which must have been passed with a converted score of 70 or greater. The scores must be received by the board from the official score reporting agency; or~~ the North American veterinary licensing examination (NAVLE) pursuant to the requirements set forth in ARM 8.64.501, which must have been passed at or above the designated passing standard established by the national board examination committee. The scores must be received by the board from the official score reporting agency; and

(c) will remain the same.

~~(2) All applicants must have taken the national board examination and the clinical competency test within five years prior to submission of the Montana licensure application, as per ARM 8.64.501.~~

(3) will remain the same but be renumbered (2).

Auth: Sec. 37-18-202, MCA

IMP: Sec. 37-18-303, MCA

REASON: The proposed amendment to this rule will affect those applying for licensure as a veterinarian by the examination method. The two current national examinations for veterinarians are being discontinued and replaced by one computerized exam. The changes to this rule reflect that exams qualifying an applicant for licensure by examination will be either the two previously offered national examinations or the new computerized national exam and indicates the acceptable passing scores on each exam.

8.64.509 LICENSURE OF OUT-OF-STATE APPLICANTS (ENDORSEMENT) (1) and (1)(a) will remain the same.

(b) The candidate has passed:

(i) the North American veterinary licensing examination

at or above the designated passing standard established by the national board examination committee;

(ii) the national board examination and the clinical competency test with a converted score of 70 or greater as received by the board from the official score reporting agency; or

(iii) have has passed the national board examination and has been licensed on the basis of a competency (not jurisprudence) examination by a veterinary examination board under the laws of another state of the United States or a Canadian province.

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

(g) The candidate has not previously taken and failed to pass the veterinary practical licensing examination in this state.

(h) will remain the same.

Auth: Sec. 37-1-131, 37-18-202, MCA

IMP: Sec. 37-1-304, MCA

REASON: The proposed amendment to this rule will affect those applying for licensure as a veterinarian by the endorsement method. The two current national examinations for veterinarians are being discontinued and replaced by one computerized exam. The changes to this rule reflect that exams qualifying an applicant for licensure by endorsement will be the two previously offered national examinations, a state practical exam and the national board exam, or the new computerized national exam. The proposed rule change indicates the acceptable passing scores on each exam.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667 or by e-mail to cbrandt@state.mt.us, to be received no later than 5:00 p.m., July 27, 2000.

5. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, or by e-mail to cbrandt@state.mt.us to be received no later than 5:00 p.m., July 27, 2000.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be

published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be five based on approximately 50 applicants each year in Montana.

7. The Board of Veterinary Medicine maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Board of Veterinary Medicine administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Veterinary Medicine, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406)444-1667, emailed to cbrandt@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF VETERINARY MEDICINE  
KENNETH BROWN, DVM, PRESIDENT

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 19, 2000.

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of a rule pertaining ) OF A RULE PERTAINING TO  
to investments by banks to ) INVESTMENTS BY BANKS TO  
promote the public welfare ) PROMOTE THE PUBLIC WELFARE

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 29, 2000, the Division of Banking and Financial Institutions proposes to adopt a rule pertaining to investments by banks to promote the public welfare incorporating the Office of Comptroller of Currency Procedures.

2. The Division of Banking and Financial Institutions 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 Division of Banking and Financial Institutions, no later than 5:00 p.m., on July 17, 2000, to advise us of the nature of the accommodation that you need. Please contact Becky Schneckloth, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; telephone (406) 444-2091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186; e-mail bschneckloth@state.mt.us.

3. The proposed adoption will read as follows: (new material underlined; deleted matter interlined)

I INVESTMENTS BY BANKS TO PROMOTE THE PUBLIC WELFARE

(1) The department incorporates by reference the Office of Comptroller of Currency Code of Federal Regulations (12 CFR Part 24.1 through 24.7, 1996 edition) that implements 12 USC 24, which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low and moderate income areas or individuals, such as providing housing, services or jobs.

(2) A copy of 12 CFR Part 24.1 through 24.7 may be obtained from the Division of Banking and Financial Institutions of the Department of Commerce, PO Box 200546, Helena, MT 59620-0546.

Auth: Sec. 32-1-422, MCA; IMP, Sec. 32-1-422, MCA

**REASON:** The Department proposes to adopt the rule because section 32-1-422(4), MCA, requires the Department to establish an amount that banks may invest that serve the public welfare, including the welfare of low and moderate income families and communities in need of jobs, housing and public services. The Office of Comptroller of Currency Code of Federal Regulations sets forth the amount of an investment

for national banks which the Department maintains would also serve Montana state chartered financial institutions.

4. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Division of Banking and Financial Institutions, PO Box 200546, Helena, MT 59620-0546, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., July 27, 2000.

5. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Division of Banking and Financial Institutions administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Division of Banking and Financial Institutions, 846 Front Street, PO Box 200546, Helena, MT 59620-0546 or by facsimile at (406) 444-4186, or may be made by completing a request form at any rules hearing held by the agency.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a government agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directed affected have been determined to be 20 based on the number of banks and branch banks in Montana.

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

DIVISION OF BANKING AND FINANCIAL  
INSTITUTIONS

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE



BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 19, 2000.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the	)	
repeal of rules 12.3.117	)	NOTICE OF PUBLIC HEARING
through 12.3.119 and adoption	)	ON PROPOSED REPEAL OF RULES
of new rules pertaining to	)	AND ADOPTION OF NEW RULES
special permits	)	
and special license drawings,	)	
and establishing a license	)	
preference system.	)	

TO: All Concerned Persons

1. On August 3, 2000, at 8:00 p.m. a public hearing will be held in the Fish, Wildlife and Parks commission room, 1420 East Sixth Avenue, Helena, Montana, to consider the repeal of ARM 12.3.117, 12.3.118, 12.3.119, and to consider the adoption of new rules I through VIII which pertain to special permits and special license drawings to allow for the establishment of a license preference system.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2000, to advise us of the nature of the accommodation that you need. Please contact Beth Smith, Fish, Wildlife and Parks, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701, FAX: (406) 444-4952; telephone: (406) 444-3792.

3. The rules as proposed to be repealed are as follows:

12.3.117 is on page 12-112 of the Administrative Rules of Montana.

AUTH: 87-2-506, MCA  
IMP: 87-2-506, MCA

12.3.118 is on pages 12-113 and 12-114 of the Administrative Rules of Montana.

AUTH: 87-1-304, 87-2-506, 87-2-701, 87-2-705, 87-2-706, MCA  
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, 87-2-706, MCA

12.3.119 is on page 12-114 of the Administrative Rules of Montana.

AUTH: 87-1-301, MCA  
IMP: 87-2-104, MCA

4. The proposed new rules provide as follows:

NEW RULE I BONUS POINTS: AWARD AND ACCUMULATION

(1) There is a bonus point program.

(2) An applicant for a permit/license drawing who is unsuccessful shall be awarded a bonus point for that species for each year the applicant is unsuccessful, if the applicant has elected to participate in the bonus point program.

(3) An applicant's bonus points accumulate until the applicant is successful in drawing a permit/license for a species in their first choice district or until the applicant fails to apply for a permit/license for more than two consecutive years for a particular species. However, if the applicant is a Montana resident in full time active military status, as verified by military orders, said time period can be for as many additional years as the applicant is on active duty.

(4) If an applicant is successful in drawing a permit/license for a species in the first-choice district, the applicant loses all accumulated bonus points for that species only.

(5) Rejection of an application pursuant to [New Rule II] is equivalent to failure to apply.

(6) Applicants who lose hunting and fishing privileges through court action will lose accumulated bonus points for all species.

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705,  
87-2-706, MCA

NEW RULE II APPLICATION FOR DRAWINGS

(1) The deadline date for the moose, sheep, and goat special drawings is on or before May 1. The deadline date for elk, deer and antelope special drawings is on or before June 1. All applications for participation in any special permit/license drawing, except drawings under ARM 12.9.801 (damage hunts) provided for by these regulations must be postmarked by the US postal service on or before the deadline date of the current license year, or delivered by private mail service on or before the deadline date; or if personally delivered, received in the Helena fish, wildlife and parks office by 5:00 p.m., on the deadline date of the current license year. If the deadline date for application for any license or drawings, as set by the department, falls on a Sunday or state holiday, that date shall be automatically extended to 5:00 p.m. of the next full work day. The deadline may be extended by the department if necessary to provide adequate time for the applicants to apply.

(2) The department shall reject an application for any permit/license drawing or for surplus, mountain lion, black bear, trapping, buffalo, or grizzly bear licenses if:

(a) application is not made on the current year's form provided by the department;

(b) applicant fails to provide mandatory information on the form;

(c) applicant fails to sign the application; or  
(d) applicant fails to submit the proper fee. The department will not accept personal checks from nonresidents for nonresident license applications and drawing fees.

(3) Submittal of more than one application for any one drawing by an individual will disqualify that individual's applications from the drawing for which the multiple applications were submitted.

(4) No corrections or changes may be made after the department has received the drawing application, except those types that can be made without contacting the applicant. These include:

- (a) adding hunter safety numbers;
- (b) moving valid district choices up to replace invalid choices;
- (c) eliminating species choices on those applications that are short money when the shortfall is the amount for that species; and
- (d) adjusting party applications to insure party consistency.

(5) Any category of correction made by the department must be applied to all applications. In addition, the department will accept corrections on the applications of those seeking landowner preference. Unless otherwise provided by these rules, all drawings will take place in Helena.

(6) All applications for participation in buffalo, spring grizzly bear, swan and turkey drawings must be postmarked by the US postal service by the advertised deadline date, or delivered by private mail service on or before the date to the address indicated for the particular drawing which is being applied for.

(7) If an application for any species is rejected by the department pursuant to this rule:

- (a) the application must not be included in the procedure for awarding the permits/licenses applied for;
- (b) the applicant must not be awarded a bonus point for that drawing for that species; and
- (c) the drawing fee, once the application is entered into the drawing, will be retained by the department. Applications not processed in the drawing because of errors will be returned to the applicant with all fees.

AUTH: 87-1-304, 87-2-701, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

NEW RULE III COMPUTERIZED SYSTEM OF DRAWING: BONUS POINT PROGRAM (1) The department shall award permits/licenses through a random order selection process conducted pursuant to a computerized system of drawing. Each eligible applicant in the drawing will receive a number of additional draw opportunities equal to the number of bonus points the applicant has accumulated.

(2) Each drawing to award a permit/license is subject to the bonus point program for eligible applicants for each species in the first-choice district only. The applicant has the burden

of proving applicant's eligibility to participate in the bonus point program if the department records fail to confirm applicant's eligibility.

(3) The bonus point program is optional and will be accumulated separately for each species.

(4) Landowners will be eligible for the bonus point program in the landowner drawings.

(5) Nonresidents who fail to obtain a nonresident combination license in any one license year will have the opportunity to purchase elk and/or deer permit bonus points for the appropriate fee for that year.

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

NEW RULE IV BONUS POINTS: NONTRANSFERABILITY; APPLICABILITY TO A PARTY (1) The bonus points that have been accumulated by each applicant for each species may not be transferred to any other person or applied to any other species.

(2) The number of bonus points applicable to a group of applicants who are applying as a party for each species is the quotient of the total number of bonus points held by the members of the party for a particular species, divided by the number of applicants in the group, rounded to the nearest whole number.

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

NEW RULE V MEMBERS OF A PARTY; EFFECT OF REJECTION OF APPLICATION OF ONE MEMBER; EFFECT OF SPECIFICATION OF AN INCORRECT DISTRICT OR SPECIES (1) If the department is required, pursuant to [New Rule II], to reject an application submitted by one member of a party, the department will not reject the applications of the remaining members, if submitted correctly, and they will remain in the party.

(2) If a member of a party specifies on the application a species or district different from that specified by any other member or members of the party, that application will be eliminated from the party and entered into the drawing as an individual.

(3) As used in this part, "party" means two or more persons applying together as a group to obtain a permit/license.

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

NEW RULE VI ERROR BY THE DEPARTMENT (1) If the department commits an error which results in the rejection or incorrect processing of an application that has been submitted in compliance with the regulations for a permit/license, the authorized number of permits/licenses, established by the

commission, may be exceeded by up to 10% of the quota for each district by at least one license.

(2) The issuance of the permit/license referred to in (1) will be considered on a case-by-case basis only to accommodate those applicants who might have received a permit/license if not for an error on the part of the department in processing the application. This increase in the quotas must be approved by the director and may not exceed 50 for all species in any license year. Any necessary quota extension in excess of the number herein authorized must be approved by the commission.

(3) If the department confirms an error on a rejected or incorrectly processed application and no permit/license can be issued, the department shall award that applicant a bonus point, if applied for, for the species for which the application was submitted.

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705,  
87-2-706, MCA

NEW RULE VII THIRD PARTY ERRORS (1) The department is not responsible for third-party errors, including errors committed by a bank, the US postal service, or a private mail carrier. If an applicant for a permit/license drawing proves to the satisfaction of the department the rejection of the application was due solely to a third-party error, and the department deems there is sufficient time to complete the processing of the application before the drawing is held, the department shall include the application in that drawing.

(2) If the application of an applicant who is entitled to participate in a bonus point program is not entered into that drawing solely because of a third-party error, and the applicant fails to obtain a permit/license for the year the application was submitted, the applicant is entitled to purchase a bonus point for that year.

(3) As used in this rule, "third-party error" means the failure to act or commission of an act by a person or entity other than the department or applicant, which is grounds for rejection of an application pursuant to [New Rule II].

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705,  
87-2-706, MCA

NEW RULE VIII PHASE-IN PROCESS (1) Bonus points shall be collected for resident and nonresident moose, sheep, and goat licenses and nonresident B-10 (general big game combination) and B-11 (general deer combination) licenses beginning in the 2001 license year.

(2) Bonus points for other permit/license drawings shall be phased in to this program as established by the department.

AUTH: 87-2-113, MCA

IMP: 87-2-113, MCA

5. The Fish, Wildlife and Parks Commission spearheaded the effort to institute a license preference system. The commission appointed a citizen/sportsmen committee, known as the Preference 2001 Advisory Committee, to study the issue and make recommendations. The recommendations were considered by the 1999 Legislature, which passed SB 59 providing the statutory approval for the adoption of a new license preference system. The legislature chose not to adopt a specific preference system by statute and instead left to the commission the task of developing the administrative rules containing the details and implementation strategies of a new preference system. The adoption of these new rules is consistent with the Preference 2001 Advisory Committee recommendations and legislative approval. In addition, the commission adopted a phase-in of the resident and nonresident moose, sheep, goat, antelope, deer and elk drawings. Moose, sheep, and goat would be under the preference system for the 2001 season. The remainder of the drawings would be under the preference system sometime after 2001. The new rules place primary responsibility with the hunter to provide a unique identifying number as a prerequisite to participation in the bonus point system. Finally, the rules provide that bonus points are nontransferable.

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 Beth Smith, Fish, Wildlife and Parks, P.O. Box 200701, 1420 East 6th Avenue Helena, MT 59620-0701, and must be received no later than July 28, 2000.

7. John F. Lynch, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701 has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this 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 the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

BY:

/s/ S.F. Meyer

/s/ Robert N. Lane

S.F. MEYER  
Commission Chairman

ROBERT N. LANE  
Rule Reviewer

Certified to the Secretary of State June 19, 2000



BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption )  
of new rules concerning the )  
use of a full legal name on a )  
driver's license; change of )  
name on a driver record; )  
collection of an applicant's )  
social security number; )  
proof of residence; and )  
the amendment of ARM 23.3.131, )  
23.3.140, and 23.3.147. )

NOTICE OF PUBLIC  
HEARING ON THE PROPOSED  
ADOPTION AND AMENDMENT  
OF DRIVER LICENSE AND  
IDENTIFICATION CARD RULES

To: All Concerned Persons

1. On July 27, 2000, at 9:15 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption of new Rules I through V and the amendment of ARM 23.3.131, 23.3.140 and 23.3.147.

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 of Justice no later than 5:00 p.m. on July 21, 2000, to advise us of the nature of the accommodation that you need. Please contact Phyllis Holm, Department of Justice, Motor Vehicle Division, P.O. Box 201430, Helena, MT 59620-1430; (406) 444-1772; TTY (406) 444-1987; FAX 406-444-1631.

3. The proposed new rules provide as follows:

RULE I FULL LEGAL NAME, NAME COMBINATION AND LENGTH

(1) Except as provided in (3), an applicant's full legal name is required on a driver's license application, including a renewal application, and on the license itself.

(2) The name of an individual on a driver's license must be the full legal name as shown on a primary document unless:

(a) the applicant submits one or more documents as specified in [Rule II] that verify a name change;

(b) the applicant wants to replace a middle name with the applicant's last name prior to marriage; or

(c) the name has been truncated in accordance with (3).

(3) The space provided for recording a full legal name on a driver record or driver's license may not exceed 28 characters, exclusive of up to three field delimiters.

(a) If the full legal name exceeds 28 characters on an original or renewal application, the name will be truncated by the department in a manner that will permit proper record storage and printing on the license.

(i) If the full legal name of an individual must be shortened, each middle name will be truncated beginning with the last character of the middle name and proceeding, as necessary, through the second letter of the middle name. Each middle initial must be recorded.

(ii) If, after truncating the middle name(s), the full name still exceeds 28 characters, truncation will continue starting with the last character of the first name and proceeding, as necessary, through the second letter of the first name. The first initial of the first name must be recorded.

(b) If an individual has only one name, that name must be recorded as the individual's last name.

(c) If the individual's first name is unknown, no first name may be recorded.

(d) Multiple middle names must be recorded with a space separation and, if necessary, truncated according to (3)(a)(i) above.

(e) No titles of address, such as "Ms" or "Dr", may be recorded unless such title actually appears on the primary document presented by the applicant.

(f) If an individual has more than one middle name or more than one last name, the last name must be recorded in combination separated by a hyphen only if that is how it is recorded on the presenting primary document.

(4) A license renewal applicant will not be required to present a primary document to verify the applicant's full legal name unless the driver record maintained by the department for the applicant contains more than one name. If more than one name or an alias is present, the applicant will be required to present a primary document, other than the applicant's Montana driver's license or identification card, to verify the applicant's correct full legal name.

AUTH: 61-5-125, MCA  
IMP: 61-5-107, 61-5-111, MCA

RULE II CHANGE OF NAME ON DRIVER RECORD (1) When the holder of a Montana driver's license wants to change the full legal name on the department's driver record, the holder must make application for a name change and verify the legal change of full legal name by presenting one of the following documents:

(a) a certified copy of the applicant's marriage certificate from the issuing government jurisdiction;

(b) a certified copy of a decree or judgment granting a name change from a court of competent jurisdiction;

(c) a certified copy of a divorce decree or dissolution of marriage granted the applicant that specifies the change of name required; or

(d) a certified copy of a US department of justice, immigration and naturalization service, certificate of naturalization (forms N-550, N-570) issued to the applicant.

(2) An applicant may use the applicant's last name prior to marriage on the driver's license in place of the applicant's

middle name. A certified copy of the applicant's certificate of birth from a US or Canadian jurisdiction as specified in ARM 23.3.131 is acceptable as proof of that name.

(3) Upon payment of the proper fees, an applicant may also apply for a duplicate driver's license in the legally changed name.

AUTH: 61-5-125, MCA

IMP: 61-5-111, 61-5-115, MCA

RULE III COLLECTION AND VERIFICATION OF SOCIAL SECURITY NUMBER ON DRIVER'S LICENSE APPLICATIONS; PROCESSING OF AN APPLICANT WHO DOES NOT HAVE A SOCIAL SECURITY NUMBER (1) An

applicant who has been issued a social security number will be required to provide it to the department upon application for an original driver's license or upon renewal of a driver's license, if the applicant has not supplied, and the department has not verified, the number in a prior application process.

(2) The social security number supplied by the applicant will be electronically submitted by the department to the social security administration for verification. If the social security number supplied by the applicant to the department is not verified by the social security administration, the applicant must provide proof of the social security number by presenting a document listed in (3) that shows the applicant's name and social security number.

(3) The following are acceptable documents for confirming an applicant's social security number:

(a) an original social security card issued by the social security administration;

(b) a US internal revenue service wage and tax statement (W-2 form);

(c) a US or state income tax return from a previous year;

(d) a payroll check or payroll check stub;

(e) a document prepared by a bank, an insurance company, or a brokerage firm;

(f) a letter from the social security administration or computer print-out from the social security administration;

(g) an unexpired US military identification card;

(h) a pilot's license;

(i) a medicare or medicaid card;

(j) a health insurance benefits card, if the member number represents the applicant's social security number; or

(k) a veterans' administration card with social security number preprinted on the card.

(4) If an applicant has not been issued a social security number, the applicant must sign a statement, under penalty of law, attesting that the applicant does not have a social security number before the application process may be completed.

(5) The application process will be terminated and a license will be denied for incomplete information if an applicant:

(a) refuses to provide a social security number and sign a statement that the applicant has not been issued a social security number; or

(b) provides a social security number that cannot be verified.

(6) An applicant's social security number may not be used as the applicant's driver's license number or be included as part of the applicant's driver's license number on a driver's license issued or renewed on or after October 1, 2000, unless the applicant submits a written request for the social security number to be used, in part, as the applicant's driver's license number.

AUTH: 61-5-125, MCA

IMP: 61-5-107, 61-5-111, MCA

RULE IV PROOF OF RESIDENCE (1) Upon original application for a driver's license, an applicant must present proof of Montana residence. A Montana residence or street address must be provided; if the applicant does not receive mail at the residence or street address, a Montana post office box or mailing address also must be provided.

(2) The department will accept the following documents as proof of residency, provided the document shows the applicant's name and Montana residence address as it appears on the driver's license application:

(a) any primary or secondary document as listed in ARM 23.3.131;

(b) a US or Montana income tax return for the previous year;

(c) a Montana voter registration card;

(d) an unexpired US passport;

(e) a receipt for personal or real property taxes paid within the last year to the state of Montana or a Montana county;

(f) a current automobile or life insurance policy or statement;

(g) a certified copy of school records issued by the school the applicant is currently attending or attended within four months of the application;

(h) if the applicant is under 18 years of age, a written statement from a parent or guardian who has an unexpired Montana driver's license or identification card that the applicant resides at the same address as the parent or guardian and that address is shown on department records for the parent or guardian;

(i) the original copy of a rental agreement signed by the landlord or rental agent that includes the applicant's name and residence address;

(j) home mortgage or equity loan papers showing the applicant's name and residence address;

(k) any of the following, dated or issued not more than four months prior to application:

(i) a payroll check or payroll check stub;

- (ii) a bank statement;
- (iii) a utility bill or utility hook-up order;
- (iv) canceled mail addressed to the applicant; or
- (1) if the applicant is homeless, a descriptive address of the location where the applicant primarily resides, e.g., "under the west end of the east street bridge." The applicant must also provide a separate mailing address and present a written statement from a social service agency on the agency's letterhead verifying the applicant's homeless status and the descriptive address given by the applicant.

AUTH: 61-5-125, MCA

IMP: 61-5-103, 61-5-107, 61-3-111, MCA

RULE V REJECTION OF DOCUMENTS; TRANSLATION OF FOREIGN-LANGUAGE DOCUMENTS

(1) The department will not accept a document as proof of identity, age, social security number, or residence if there is reason to believe it has been altered, fraudulently obtained, or is fake, forged, counterfeit, or otherwise non-genuine or illegitimate. In addition to the documents listed in [Rules III, IV], and ARM 23.3.131, the department may require additional documentation if there is reason to suspect that fraudulent, fake, forged, altered, otherwise non-genuine or illegitimate documents have been submitted.

(2) A document in a language other than English may be submitted to the department by an applicant as proof of identity, full legal name, date of birth, or residence if:

(a) the document is accompanied by a translation of that document into the English language;

(b) the translation is sworn to by the translator as being a true and accurate translation;

(c) the translator is not related by blood or marriage to the applicant; and

(d) the translator is either:

(i) certified by the American translators association;

(ii) certified by a court of competent jurisdiction;

(iii) approved by an embassy or consulate of the United States or diplomatic or consular official of a foreign country assigned or accredited to the United States;

(iv) affiliated with or approved by the US department of justice, immigration and naturalization service, or a government jurisdiction within the US; or

(v) an attorney licensed to practice in the US.

AUTH: 61-5-125, MCA

IMP: 61-5-103, 61-5-105, 61-5-107, 61-5-111, MCA

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

23.3.131 DOCUMENTING PROOF OF NAME, IDENTITY, AND DATE OF BIRTH, AND SOCIAL SECURITY NUMBER FOR ORIGINAL DRIVER'S LICENSE, AND DUPLICATE DRIVER'S LICENSE APPLICATIONS (1) Upon original application for a driver's license or application for a duplicate driver's license, the applicant must provide proof of identity, including full legal name and date of birth, by presenting one primary document and one or more secondary documents from the lists specified in (2) and (3).

(2) The primary document submitted must show the applicant's full legal name and date of birth and must be verifiable by the governmental authority that issued the document. The following may be presented as a primary document:

(a) a driver's license or identification card, with color photograph or digitized image of the applicant and not expired for more than one year, issued by a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada;

(b) an original or certified copy of a birth certificate issued by a government bureau of vital statistics or board of health of a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada, or a report of a birth abroad of a US citizen issued by the US department of state or a US embassy;

(c) an unexpired military identification card (form DD-2) issued to the applicant by the US department of defense for active duty, reserve or retired personnel;

(d) a valid, unexpired passport issued to the applicant by the US department of state or by the Canadian government;

(e) a valid, unexpired passport issued to the applicant by a jurisdiction other than the United States or the Canadian government with either:

(i) a US department of justice, immigration and naturalization service (INS) record of arrival and departure (form I-94) attached, bearing the same name as that on the passport and containing an unexpired endorsement of the alien's nonimmigrant status; or

(ii) an unexpired resident alien I-551 stamp.

(f) one of the following valid unexpired documents issued by the US department of justice, immigration and naturalization service:

(i) certificate of naturalization (form N-550, N-570, or N-578);

(ii) certificate of citizenship (form N-560, N-561, or N645);

(iii) Northern Mariana card (form I-551 bearing the imprint "Northern Mariana," not "resident alien");

(iv) American Indian card (form I-551 bearing the imprint "American Indian," not "resident alien");

(v) United States citizen identification card (form I-179 or I-197);

(vi) resident alien card (form I-551);

(vii) temporary resident identification card (form I-688);

(viii) US reentry permit (form I-327);  
(ix) refugee travel document (form I-571);  
(x) employment authorization card (form I-688A, I-688B, or I-766); or

(xi) record of arrival and departure, stamped "refugee" (form I-94 without a valid passport but stamped "refugee" with a photo affixed).

(g) a US or Canadian-issued instruction or learner's driving permit, if it is current and contains a photo of the permittee.

(3) In addition to presenting a primary document, the applicant must also present one or more secondary documents to confirm the applicant's identity and date of birth from the following list:

(a) a second primary document as listed in (2) above;

(b) a driver's license or identification card that has expired for more than one year but not more than five years, or that is current but without a photograph;

(c) a certified copy of a court order or judgment from a US or Canadian court of competent jurisdiction containing the applicant's full legal name and date of birth;

(d) any INS document listed in (2)(f), not expired more than one year;

(e) a current employee photo identification card from a US or Canadian-based employer;

(f) a certified copy of a birth certificate issued by a jurisdiction other than by a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada;

(g) a military identification card issued to dependents of active duty personnel by the US department of defense (DD-1173 series);

(h) certification of release of discharge issued by the US department of defense (DD-214);

(i) a certified copy of a marriage certificate or license issued by a government jurisdiction;

(j) an unexpired permit to carry a firearm or concealed weapon issued by a chief of police in an organized, full-time police department or the county sheriff in a local jurisdiction within the US, bearing a color photo of the applicant;

(k) a current pilot's license issued by the US department of transportation, federal aviation administration;

(l) a copy of records or a transcript containing the applicant's full name and date of birth certified by the issuing elementary, secondary, or post-secondary school;

(m) a certificate of completion of a traffic or driver's education course approved by the department and the superintendent of public instruction containing the applicant's name and date of birth;

(n) a US nonmetal social security card or a Canadian social insurance card; or

(o) a current school photo identification card with the student's name and date of birth.

The name and date of birth on all original and duplicate

~~driver license applications must be verified by a birth certificate or other satisfactory evidence. In addition, social security numbers may be requested to ensure ready identification. Applicants must produce acceptable documents as follows:~~

- ~~(1) Birth certificate; or~~
- ~~(2) Any two of the following documents at the discretion of the examiner:~~
  - ~~(a) School census record;~~
  - ~~(b) Federal census record;~~
  - ~~(c) Applicant's own child's birth certificate;~~
  - ~~(d) Printed notice of birth in newspaper;~~
  - ~~(e) Birthday or baby book;~~
  - ~~(f) Hospital records;~~
  - ~~(g) Voting registration card;~~
  - ~~(h) Adoption decree;~~
  - ~~(i) Legal change of name as recorded in a court decree;~~
  - ~~(j) From members of the military, a letter from the base commander, or a personnel officer, certifying name and date of birth from their records, or a military identification card;~~
  - ~~(k) Military discharge or a release from service form, or certified copy;~~
  - ~~(l) A valid or expired driver's license issued by any other state or country;~~
  - ~~(m) A passport;~~
  - ~~(n) Any confirmation of birthdate in a court;~~
  - ~~(o) Marriage license;~~
  - ~~(p) Baptismal record;~~
  - ~~(q) Physician's office record, if physician is one attending birth;~~
  - ~~(r) Sworn statement of physician, midwife or attendant present at birth;~~
  - ~~(s) Family Bible or photostat of page showing parentage and birth entries; or~~
- ~~(3) Any other documentary evidence which confirms to the satisfaction of the examiner the true identity and date of birth of the applicant.~~

AUTH: ~~44-1-103, 61-5-125, MCA~~

IMP: ~~61-5-111(1), 61-5-105, 61-5-107, 61-5-111, MCA~~

23.3.140 MAIL RENEWALS (1) If a person is temporarily out of state and will not be returning to Montana prior to the expiration of the person's noncommercial driver's license, the person may apply, upon a form prescribed by the department, for the renewal of the license by mail.

(2) Mail renewal applications must be submitted within the grace period prescribed in 61-5-111, MCA, and must be accompanied by the appropriate license fees, an eye examination report (form 22-1801) completed by a licensed ophthalmologist or optometrist, and a driver medical evaluation report (form 20-1900) completed by a licensed physician. If the department does not have a digitized photograph or signature record of the renewal applicant, the applicant must also submit a color head



and shoulders photograph of the applicant no larger than 2 x 2 inches in size and an exemplar of the applicant's signature.

(3) A commercial driver's license that does not include a hazardous endorsement may also be renewed by mail if the licensee is temporarily out of state and will not be returning to Montana prior to the expiration of the license. In addition to completing the requirements of (2), the applicant must also submit a copy of the applicant's current DOT card. Driver's licenses may be renewed by mail providing that the proper fee is submitted to the County Treasurer on or before the expiration or the individual affected has initiated a request through the Motor Vehicles Division headquarters prior to expiration. Persons requesting such mail renewals will on the first such request be required to submit a report of eye examination (Form DL-63 or equivalent). A person making a second or subsequent request shall submit a report of eye examination and a 1-inch by 1-1/4 inch close-up photograph of head and shoulders. Granting of a second or subsequent request is at the discretion of the Chief Examiner.

AUTH: 61-5-111(1), 61-5-125, MCA  
IMP: 61-5-111, MCA

23.3.147 IDENTIFICATION CARDS (1) Any person over 18 years who is a Montana resident and who does not have a driver an unexpired driver's license from any a jurisdiction other than Montana may apply for an identification card.

(2) An identification card applicant must appear in person at a Montana driver's examination station, submit a completed application, on a form prescribed by the department, and provide proof of his or her identity and date of birth in accordance with ARM 23.3.131 and proof of Montana residence in accordance with [Rule IV]. Proof of age and identity is required as outlined in ARM 23.3.131. Only a Montana mailing address may be used on an identification card, and if the applicant has separate mailing and residence addresses, both addresses must be included on the application.

(3) When the holder of an identification card obtains a driver license:

— (a) The identification card must be returned to the Motor Vehicles Division.

— (b) No refund is authorized.

— (4) Identification card while driver license or privilege is suspended, revoked or canceled:

— (a) A person whose driver's license or privilege is revoked or canceled does not have a driver's license. Therefore, that person may have an identification card.

— (b) A person whose driver's license or privilege is suspended does have a driver's license in effect. Therefore, that person may not have an identification card.

— (5) Fee:

— (a) Except as provided in (4) and (5), the The fee for an identification card is \$1 8.

(b) A receipt for payment of the fee is valid to obtain an

identification card for a period of 12 months.

(4) An identification card applicant who presents a discharge certificate or parole order from a Montana state correctional facility showing release within a 60-day period immediately prior to application is entitled to one free identification card upon initial release.

(5) An identification card applicant who is certified by the department of public health and human services as a person with a disability in accordance with the Montana Persons with Disabilities Employment Preference Act, is entitled to a free identification card upon completion of an otherwise proper application.

~~(c)(6)~~ A duplicate identification card may will not be issued if a card is lost or destroyed or the personal information on the card has changed. However, there is no limit to the number of original identification cards issued to an the individual may apply for a new identification card.

(7) If an identification card applicant already has a Montana driver's license, the personal information submitted for the identification card must be identical to the personal information contained in the driver record maintained by the department for the applicant.

~~(6)(8)~~ Identification cards must be canceled upon evidence that: the cardholder submitted incomplete or false information to the department on the identification card application or was convicted of an offense under 61-5-302, MCA.

~~(a) The holder obtained a driver's license;~~

~~(b) The holder altered the date of birth which appears on the identification card; or~~

~~(c) The holder is not entitled to an identification card.~~

AUTH: 61-12-502, MCA

IMP: ~~61-12-501 through 61-12-504,~~ 61-12-501, 61-12-502, 61-12-504, MCA

5. The department proposes the adoption of rules I through V and the amendment of ARM 23.3.131, 23.3.140 and 23.3.147 to implement statutory changes by the 1999 Legislature. Additionally, these changes are intended to generally improve the security and reliability of driver's licenses and identification cards issued by the department. Finally, these changes are designed to ensure that driver's licenses and identification cards are issued to Montana residents.

1999 Mont. Laws ch. 29, § 2 requires all driver's license applicants, not just applicants for a commercial vehicle operator's license as required under prior law, to include the applicant's social security number on their application. (61-5-107(2), MCA). Section 3 of the same law also prohibits the department from using an applicant's social security number as the applicant's driver's license number unless the applicant expressly authorizes such use.

1999 Mont. Laws ch. 309 generally revised the laws

governing driver's licensing and specifically amended statutes pertaining to the residency requirement for Montana licensure (§ 61-5-103, MCA) and the use of an applicant's full legal name on driver's license applications and the driver's license itself (61-5-107(2), 61-5-111(2), MCA). Renewal of a driver's license by mail, in limited instances, is also permitted (61-5-111(4)(d), MCA).

Rule I implements the full legal name requirement and establishes a procedure for truncating an applicant's full legal name, if necessary, for record keeping or placement on the license itself. This rule, in combination with Rule II and the changes to ARM 23.3.131, will prevent individuals from adopting aliases and creating several driver records to circumvent licensure actions based on convictions or other actions.

Rule II establishes the requirements for changing a licensee's full legal name of record following marriage, dissolution of marriage, legal name change, or naturalization. Informal name changes will not be permitted because they undermine the reliability of record information.

Rule III establishes the procedures for collecting and verifying an applicant's social security number as part of the driver's license application process. Federal law, specifically the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(i), authorizes a state to obtain the social security number as an identifier for driver licensing purposes. Additionally, the Personal Responsibility and Work Opportunity Reconciliation Act, specifically 42 U.S.C. § 666(a)(13)(A), requires states to have laws in effect for the collection of a social security number on all driver's licenses to improve the effectiveness of child support enforcement. 1999 Mont. Laws ch. 29 was enacted in response to this federal requirement.

Rule III, as proposed, allows an applicant to include his or her social security number on an application, without requiring physical proof of the number in the first instance. Only when the number given by the applicant cannot be verified by the Social Security Administration will an applicant be required to present proof of his or her social security number. If an individual does not have a social security number, the applicant must sign a statement to that fact in order to proceed through the application process. An applicant who refuses to give a social security number, refuses to sign a statement that the applicant has no social security number, or who submits a number that cannot be verified will be denied a license.

Rule IV establishes standards for proving Montana residency for purposes of driver licensing. These guidelines will aid both applicants and department employees in driver examination field offices in determining a person's status under driver licensing laws.

Rule V prescribes the conditions for the acceptance of an other-than-English language document as proof of identity, full legal name, date of birth, or residence. With clearly articulated translation standards for foreign language documents, applicants will know what is required to use a non-English language document for proof in the application process. Rule V also authorizes the rejection of documentation that appears to be fraudulent or altered and requires submission of additional documentation upon a suspicion of submission of non-genuine or illegitimate documents.

The amendment of ARM 23.3.131 is necessary to update and standardize the requirements for proving an applicant's identity, including full legal name and age as part of the driver licensing process.

Driver's licenses and identification cards issued by state motor vehicle departments are widely used and accepted for personal identification. Thus, it is critical that an applicant for a driver's license or identification card provide positive proof of their identity and age at the time of application. If the standards for proving identity and age are inadequate, the risk of identity fraud or theft increases, as does the likelihood that the information concerning a driver or recordholder is incomplete or erroneous. Inadequate verification of identity and age also undermines the "one license, one record" concept under the Driver License Compact, codified at 61-5-401, MCA, by allowing proliferation of licenses and associated records in several jurisdictions under different names by the same individual.

The standards proposed in the amendments to ARM 23-3-131 are derived from the uniform identification practices model program published by the American association of motor vehicle administrators, a voluntary, nonprofit, membership organization that represents state and provincial offices in the United States and Canada who are responsible for the administration and enforcement of laws pertaining to motor vehicles and their use. Primary documents used to establish identity and age may be subjected to verification by the issuing governmental authority and thus are reliable indicia for both. Secondary documents corroborate primary document identity and age and provide additional measure of security as to the accuracy and authenticity of personal information regarding an applicant.

References to an applicant's social security number are deleted in ARM 23.3.131. The procedures governing collection of an applicant's social security number are consolidated in Rule III.

The authority reference for ARM 23.3.131 is amended to delete 44-1-103, MCA, the statute under which the Montana highway patrol formerly administered driver licensing, to 61-5-125, MCA, which currently governs the department's

authority, as exercised by the motor vehicle division of the department. The implementing sections are changed to delete the internal reference to 61-5-111(1), MCA, and replace it with 61-5-105, 61-5-107 and 61-5-111, MCA, which together govern driver license eligibility, applications, and license issuance.

The amendments to ARM 23.3.140 implement the mail renewal option re-authorized under 1999 Mont. Laws ch. 309. Mail renewals have been permitted for many years, notwithstanding the inadvertent deletion of authorization in the 1997 legislative session, but the 1999 bill narrows the availability of the option to non-successive renewals. The eye examination report and the driver medical evaluation report are required in the absence of a vision examination being done at the driver exam station on an in-person renewal and in the absence of a personal assessment of the applicant's physical and mental condition at the time of renewal. Both reports provide vital safety information about the renewal applicant's present functional ability to safely operate a motor vehicle.

The authority reference is changed from 61-5-111(1), MCA, to 61-5-125, MCA, to reflect current law.

ARM 23.3.147 is amended to eliminate the restriction upon persons over the age of 18 years having both a driver's license and an identification card. Many people prefer to have two separate, readily usable forms of identification, such as a driver's license and an identification card issued by the department. This amendment will permit the issuance of both, while also ensuring that the personal information on both is consistent. The rule is also clarified to expressly restrict identification card eligibility to Montana residents and to remove the possibility that a person could hold an out-of-Montana driver's license at the same time as a Montana identification card.

Additionally, proof of identity, age, and residency requirements for driver's licenses are incorporated by reference into ARM 23.3.147. The amendments also clarify that duplicate identification cards will not be available if a card is lost or destroyed, or a change in personal information is required; rather, application for a new identification card must be made.

The fee for an identification card is being changed in ARM 23.3.147 to reflect statutory authority and current practice. The actual fee will not change for any person, since the fee currently charged is \$8 and no fee is currently charged to persons with disabilities. Thus, 2-4-302, MCA, is not implicated.

Finally, the implementing references are changed to reflect the statutes that are actually being implemented--61-12-501, 61-12-502, and 61-12-504, MCA. No rules are required to implement 61-12-503, MCA.

7. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Brenda Nordlund, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401, FAX (406) 444-3549, by surface mail, or be submitted electronically to contactdoj@state.mt.us and must be received no later than July 27, 2000.

8. Brenda Nordlund, Assistant Attorney General, P.O. Box 201401, Helena, MT 59620-1401 has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices 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 the Attorney General's Office, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, e-mailed to contactdoj@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, apply and have been fulfilled.

By: /s/ Joseph P. Mazurek  
JOSEPH P. MAZUREK, Attorney General  
Department of Justice

/s/ Elizabeth S. Baker  
ELIZABETH S. BAKER, Rule Reviewer

Certified to the Secretary of State June 19, 2000.

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 Rules I through XV, the	)	ON PROPOSED ADOPTION,
amendment of ARM 37.95.102,	)	AMENDMENT AND REPEAL
37.95.106, 37.95.108,	)	
37.95.117, 37.95.210,	)	
37.95.602, 37.95.606,	)	
37.95.610, 37.95.611,	)	
37.95.613, 37.95.618,	)	
37.95.619, 37.95.620,	)	
37.95.701, 37.95.705,	)	
37.95.706, 37.95.708,	)	
37.95.715, 37.95.720,	)	
37.95.1001, 37.95.1002,	)	
37.95.1003, 37.95.1004,	)	
37.95.1010, 37.95.1011,	)	
37.95.1015, 37.95.1016,	)	
37.95.1021 and the repeal of	)	
ARM 37.95.101, 37.95.107,	)	
37.95.112, 37.95.113,	)	
37.95.116, 37.95.125,	)	
37.95.201, 37.95.220,	)	
37.95.221, 37.95.230,	)	
37.95.231, 37.95.232,	)	
37.95.235, 37.95.240,	)	
37.95.601, 37.95.603,	)	
37.95.607, 37.95.612,	)	
37.95.621, 37.95.630,	)	
37.95.707, 37.95.716,	)	
37.95.717, 37.95.721,	)	
37.95.722, 37.95.726,	)	
37.95.901, 37.95.905,	)	
37.95.906, 37.95.910,	)	
37.95.911, 37.95.912,	)	
37.95.913 and 37.95.1020	)	
pertaining to day care	)	

TO: All Interested Persons

1. On July 19, 2000, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services 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 request an accommodation, contact the department no later than 5:00 p.m. on July 10, 2000, 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 CAREGIVER QUALIFICATIONS FOR ALL DAY CARE FACILITIES (1) Each caregiver must have experience in the care and supervision of children. Aides and volunteers lacking the experience with children required by this rule may obtain such experience through provision of supervised care in the facility.

(2) No caregiver, adult or person in residence shall:

(a) have been convicted or adjudicated of a crime involving harm to children or physical or sexual violence against any person.

(i) A caregiver who is charged with a crime involving children or physical or sexual violence against any person and awaiting trial may not provide care or be present in the facility pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist.

(i) The department may request that a caregiver obtain a psychological or psychiatric evaluation at the caregiver's own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the caregiver to obtain an evaluation at the caregiver's own expense if there is reasonable cause to believe chemical dependence exists; or

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.

(3) The provider and all caregivers shall possess good character, and be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider and all caregivers shall comply with tuberculosis testing requirements set out in ARM 16.28.1005 and the immunization requirements of [RULE VIII].

(4) The provider is responsible for assuring that the persons covered by this subchapter have met these requirements before providing care or within a reasonable time from the date that the person begins providing care.

(5) No staff member, aide, volunteer or other person having direct contact with the children in the facility shall



pose any potential threat to the health, safety and well being of the children in care.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-723, 52-2-731 and 52-2-735, MCA

RULE II DAY CARE PARENT INFORMATION (1) The following written information shall be made available to all parents:

- (a) a typical daily schedule of activities;
- (b) admission requirements, enrollment procedures, hours of operation;
- (c) frequency and type of meals and snacks served;
- (d) fees and payment plan;
- (e) regulations concerning sick children;
- (f) transportation and trip arrangements;
- (g) discipline policies; and
- (h) department day care licensing requirements.

(2) Day care facility shall post a copy of the facility registration or license and the phone number of state and local quality assurance division offices in a conspicuous place. Parents should be encouraged to contact the division if they have questions regarding the license or the day care regulations.

(3) Unless prohibited by court order, parents or guardians must have unlimited access to the day care facility during day care hours.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-723, 52-2-731 and 52-2-735, MCA

RULE III SAFETY REQUIREMENTS (1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(2) All medications must be kept in their original containers, labeled with the original prescription label in a place inaccessible to children.

(3) No extension cord will be used as permanent wiring. All appliances, lamp cords and exposed light sockets must be suitably protected to prevent electrocution.

(4) Any pet or animal, present at the home, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The provider must make reasonable efforts to keep stray animals off the premises.

(5) Guns must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.

(6) The home and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or

other health hazards.

(7) Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair without any holes or spaces greater than 4 inches in diameter or natural barriers to restrict children from these areas.

(8) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.

(9) Toys and objects with a diameter of less than 1 inch (2.5 centimeters), objects with removable parts that have a diameter of less than 1 inch (2.5 centimeters), plastic bags, styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.

(10) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel or woodchips with a depth of the ground cover being at least 6 inches.

(11) Trampolines are prohibited.

(12) The poison control number (1-800-524-5042) must be posted at all telephone locations at the day care facility.

(13) Use of waterbeds, water mattresses, gel pads or sheepskin covers for children's sleeping surface is prohibited.

(14) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.

(a) First story main levels must have 2 accessible exit doors that are unlocked when children are in care and are easily operable from the inside with a single action. The 2 exit doors must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to exit doors must be kept clear of obstructions. Deadbolt locks that can be opened from the inside only with a key are prohibited.

(b) Exit doors, windows, and their opening hardware must be maintained in good repair at all times.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE IV DAY CARE FACILITIES SWIMMING (1) Children may not be allowed to use a swimming pool, unless it and the surrounding area are constructed and operated in accordance with ARM 37.95.227.

(2) Portable wading pools, if used, must be drained, cleaned, sanitized and refilled with fresh water at least daily in accordance with ARM 37.95.227(2)(b).

(3) All in ground and above ground swimming pools located in the outdoor play space area or accessible to children must be

fenced with a locked gate. When children are swimming, supervision must include at all times at least 1 person certified in red cross advanced life saving or an equivalent certificate by a recognized organization.

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-731 and 52-2-735, MCA

RULE V DAY CARE FACILITIES, SMOKE-FREE ENVIRONMENT

(1) Children shall be afforded a smoke-free environment during all day care hours, whether indoors or outdoors.

(2) The registrant or other licensee shall ensure that no smoking occurs within the facility while children are in care.

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-704 and 52-2-731, MCA

RULE VI DAY CARE FACILITIES, HEALTH CARE REQUIREMENTS

(1) The parent(s) of each child admitted to the day care facility shall provide the name of the physician the parent wishes to have called for the parent's child and a release authorizing the provider to call said physician in case of emergency.

(2) If, while in care, a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(3) The department hereby adopts and incorporates by reference ARM 16.28.1005, which sets standards for tuberculin testing of those working in day care facilities, and treatment and monitoring of positive cases among them. A copy of ARM 16.28.1005 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620-2951.

(4) The director, owner, manager, or person in charge of the day care facility must designate a staff member to check daily the health status of each child immediately upon that child's entry into the day care facility, and to exclude any child showing symptoms of illness, under the following guidelines:

(a) Children must be without fever of 101°F or greater for 24 hours before they return to the day care facility, except that children with immunization-related fevers need not be excluded if they are able to participate in the routine of the day care facility.

(b) Children must be without vomiting and diarrhea for 24 hours before they return to the day care facility. Vomiting includes 2 or more episodes in the previous 24 hours. Diarrhea is defined as an increased number of stools, increased water in the stool, and/or decreased form to the stool that cannot be contained by a diaper or clothing;

(c) Children with any of the bacterial infections listed below must be treated with antibiotics for 24 hours before they

return to the day care center:

- (i) strep throat;
- (ii) scarlet fever;
- (iii) impetigo;
- (iv) bacterial conjunctivitis (pinkeye); and
- (v) skin infections such as draining burn or infected wounds or hangnails;

(d) Generalized rashes, including those covering multiple parts of the body, must be evaluated by a health care provider to determine their cause before the child can return to the day care facility;

(e) Children with chickenpox may not be admitted to the day care facility until their sores dry up, which usually takes 5 to 7 days. Day care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents;

(f) Children who are jaundiced must be excluded until a health care provider evaluates the cause and authorizes the child to return to the day care facility;

(g) Children with symptoms of severe illness, such as uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, poor food or fluid intake, or a seizure, must be evaluated by a health care provider before they may return to the day care facility;

(h) A child need not be excluded for a discharge from the nose which is not accompanied by a fever.

(5) If a child develops symptoms of illness while at the day care facility and after the parent or guardian has left, the day care facility must do the following:

(a) isolate the child immediately from other children in a room or area segregated for that purpose;

(b) contact and inform the parent or guardian as soon as possible about the illness and request the parent or guardian to pick up the child;

(c) report each case of suspected communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.

(6) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If a reportable communicable disease is suspected, the provider shall inform a health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that the child's return will not harm that child or the other children. Disease charts that identify the reportable diseases are available from the department.

(7) The day care facility may readmit a child excluded for illness whenever, in its discretion:

(a) the child either shows no symptoms of illness;

(b) the child has been free of fever, vomiting, or diarrhea for 24 hours; or

(c) the child has been on antibiotics for at least 24 hours for bacterial infections.

(8) The parent or guardian may also provide the day care

facility with a signed certification of health from a licensed physician, except that the following restrictions must be followed:

(a) If a child is excluded for shigellosis or salmonella, the child may not be readmitted until the child has no diarrhea or fever, the child's parent or guardian produces documentation that 2 stools, taken at least 24 hours apart, are negative for shigellosis or salmonella, and the local health authority has given written approval for the child to be readmitted to the day care facility;

(b) If a child is excluded for hepatitis A virus infection, the child shall remain excluded until either 1 week after onset of illness or jaundice, if the symptoms are mild, or until immune globulin has been administered to appropriate children and staff in the day care facility as directed by the local health authority.

(9) Good health habits, such as washing hands, must be taught during everyday activities.

(10) Every employee, volunteer, or resident at a day care facility must:

(a) have an examination for tuberculosis prior to commencing work at the day care facility, in conformity with ARM 16.28.1005;

(b) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold, or if the person exhibits any of the symptoms outlined in (4) above for which a child would be excluded;

(c) wash their hands and exposed portions of their arms with a cleaning compound in a sink by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clear water, paying particular attention to the areas underneath the fingernails and between the fingers, at the following times:

(i) after touching bare human body parts other than clean hands and clean exposed portions of arms;

(ii) after using the toilet;

(iii) after every diapering;

(iv) after coughing, sneezing, or using a handkerchief or disposable tissue;

(v) immediately before engaging in food preparation and before feeding any child;

(vi) during food preparation as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; and

(vii) after engaging in other activities that contaminate the hands; and

(d) provide documentation of complete measles, mumps, and rubella immunizations and a tetanus and diphtheria booster within the 10 years prior to commencing work, volunteering, or residing at the day care facility.

(11) Each provider shall develop policies for first aid. These policies must include directions for calling parents or someone else designated as responsible for the child when a child is sick or injured. The provider shall immediately call

the poison control number (1-800-525-5042) when a child is suspected of having been poisoned.

(12) A first aid kit must be kept on site at all times and contain at least the following:

- (a) syrup of ipecac (one ounce bottle) or activated charcoal;
- (b) sterile, absorbent bandages;
- (c) a synthetic ice or gel pack;
- (d) tape and a variety of band-aids;
- (e) tweezers and scissors;
- (f) the poison control number (1-800-525-5042); and
- (g) disposable single use gloves.

(13) A portable first aid kit containing at least the items listed in (12) above must accompany staff and children on trips away from the facility.

(14) The provider shall submit a report to the appropriate local office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the child(ren) involved, and a copy retained on file at the day care facility.

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

(16) All children of an appropriate age shall be taught to use and flush the toilet, and to wash their hands after using the toilet, and before eating.

AUTH: Sec. 52-2-704 and 52-2-735, MCA

IMP: Sec. 52-2-731 and 52-2-735, MCA

RULE VII DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS

(1) A day care facility must have on file a health record form, provided by the department, concerning any special health risks that would affect other children. This must be obtained and kept on file by the provider prior to residence or enrollment of the infant in the day care facility. The health record form must be signed by:

(a) a physician licensed to practice medicine in Montana pursuant to Title 37, chapter 3, MCA; or

(b) a physician assistant-certified licensed to practice in Montana and practicing under a utilization plan approved by the board of medical examiners; or

(c) a person licensed in Montana as a professional nurse and recognized by the board of nursing as a nurse practitioner or clinical nurse specialist; or

(d) a naturopathic physician licensed under Title 37, chapter 26, MCA.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE VIII IMMUNIZATION (1) Before a child may attend a Montana day care facility, that facility must be provided with the documentation required by (4) below that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (8) below:

<u>Age at Entry</u>	<u>Number of Doses-Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
by 19 months of age	3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age

(\* ) varies depending on vaccine type used.

(2) If the child is at least 12 months old but not less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.

(3) DT vaccine administered to a child less than 7 years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 16.28.707 that exempts the child from pertussis vaccination.

(4) Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101), including the date of birth, the name of each vaccine provided, and the month, day and year of each vaccination.

(5) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) above and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.

(6) Hib vaccine is not required or recommended for children 5 years of age and older.

(7) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated before attending a day care facility.

(8) A child may initially conditionally attend a day care facility if :

(a) the child has received at least 1 dose of each of the vaccines required for the child's age;

(b) a form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (HPS-101); and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(9) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.

(10) The day care facility must maintain a written record of immunization status of each enrolled child and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

(11) A child seeking to attend a day care facility is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization is medically contraindicated will exempt a person from the applicable immunization requirements of this rule.

(12) A child under 5 years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement.

(13) The department hereby adopts and incorporates by reference ARM 16.28.707 which sets the requirements for a



medical exemption from vaccination. A copy of ARM 16.28.707 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

(14) The department hereby adopts and incorporates by reference ARM 16.28.704, which contains standards for documentation of the immunization status of persons commencing school attendance. A copy of ARM 16.28.704 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 52-2-735, MCA

IMP: Sec. 52-2-735, MCA

RULE IX TRANSPORTATION (1) The provider shall obtain written consent from the parent(s) for any transportation provided.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid driver's license.

(3) The passenger doors on the vehicle must be locked whenever the vehicle is in motion.

(4) With the exception of public transportation or rented or leased buses which are not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints, which must remain fastened at all times the vehicle is in motion.

(5) Children shall never be left unattended in a vehicle.

(6) The back of pickup trucks must not be used to transport children.

(7) The requirements of ARM 37.95.1010 must also be met when transporting children.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE X RECORDS (1) The facility shall keep a daily attendance record of the children for whom care is provided.

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

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

(4) Prior to a child being enrolled or entered into a day care facility, the following must be on file:

(a) written information on each child explaining any special needs of the child, including allergies;

(b) a release or authorization of persons allowed to pick up the child;

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

(d) an emergency consent form. This form must accompany

staff when children are away from the day care site for activities.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE XI DAY CARE CENTERS, LICENSING SERVICES PROVIDED

(1) The department will provide the following:

(a) assistance to the applicant to meet licensing requirements;

(b) referral services concerning child problems;

(c) consultation to the day care center in providing enrichment experiences for the children, proper environment and nutrition; and

(d) technical assistance to day care centers for staff training.

(2) The department or its authorized representative shall make periodic unannounced visits to all licensed day care centers to ensure continued compliance with licensing requirements.

(3) The department may investigate and inspect the conditions and qualifications of any day care center and/or any person seeking or holding a license.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731 and 52-2-733, MCA

RULE XII GROUP DAY CARE AND FAMILY DAY CARE HOMES, REGISTRATION SERVICES PROVIDED (1) The department will provide the following:

(1) The department will provide the following:

(a) assistance to the applicant to meet registration requirements;

(b) referral services concerning children's problems; and

(c) consultation to the day care provider in providing enrichment experiences for the children, proper environment and nutrition.

(2) The department may investigate and inspect the conditions and qualifications of any family day care home and group day care home holding a registration certificate.

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

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731 and 52-2-733, MCA

RULE XIII GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS (1) Except for approved overlap care there shall be at least 2 caregivers caring for the children at all times when there are more than 6 children present at the home.

(1) Except for approved overlap care there shall be at least 2 caregivers caring for the children at all times when there are more than 6 children present at the home.

(2) There shall be no more than 6 infants in a group day care home or 3 infants in a family day care home at any time, unless care is provided for infants only.

(3) There shall be sufficient staff so that an adult is

always present and supervising all children.

(4) Except for approved overlap care, the provider may not provide care for a child if caring for that child would cause the provider to exceed the number of children the provider is registered to care for on the registration certificate.

(5) The provider shall keep a daily attendance record of the children for whom care is provided.

(6) The provider shall have a master list of the name, address and phone number of all children in care and their parents.

(7) All records of the day care home shall be made available to the department upon request.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

RULE XIV GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP

(1) Day care homes offering night care must develop plans for program, staff, equipment and space which will provide appropriately for the personal safety and emotional and physical care of children away from their families at night.

(2) This requirement shall be deemed to have been met if:

(a) special attention is given by the caregiver and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;

(b) a selection of toys for quiet activities which can be used with minimal adult supervision is provided for children prior to bedtime;

(c) bathing facilities, comfortable beds or cots, and complete bedding are provided;

(d) staff are available to assist children during eating and pre-bedtime hours and when dressing;

(e) during sleeping hours, staff have a plan of supervision which involves practices where no child is left alone and staff are in the immediate vicinity and on the same floor level of sleeping children in order to adequately hear the children should they wake and to provide for the needs of children and respond to any emergency; and

(f) at appropriate times a nutritious dinner and/or breakfast is served to children and a bedtime snack is offered.

(3) An individual day care provider may not provide care consecutively day and night without at least one additional caregiver. No caregiver may have responsibility for the care and supervision of children for more than 12 consecutive hours in a 24 hour period.

(4) Overlap care may be approved by the department in situations, such as before and after school, when the number of children in care over 3 years of age would exceed, for a short period of time, the registered capacity.

(a) Overlap of children under 3 years of age shall not be permitted.

(b) Overlap care shall not exceed 3 hours total in any day care day.

(c) Group day care facilities may be approved to provide

overlap care for up to 4 additional children during the approved overlap time if there are at least 2 caregivers providing direct care at any time there are more than 6 children being cared for at the facility.

(d) Family day care homes may care for 2 additional children during the approved overlap time.

(e) Day care facilities providing 2 shifts of 12-hour care may be granted 3 hours of overlap care for each 12 hours of continuous care upon the written approval of the department representative.

(f) There must be 35 square feet per child of indoor space including the additional children during approved overlap hours.

(g) If a provider wishes to provide overlap care, the provider shall file a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(h) Overlap care shall not occur until the provider has received written approval of this plan from the department.

(i) Group day care homes which exceed 12 children during approved overlap are subject to inspection by the state fire prevention and investigation bureau and the state sanitarian.

AUTH: Sec. 52-2-735, MCA

IMP: Sec. 52-2-735, MCA

RULE XV GROUP AND FAMILY DAY CARE FACILITY NUTRITION

(1) Nutritious meals and snacks must be provided to children in such quality and quantity to meet the national research council or the USDA child and adult care food program recommended dietary allowances for children of each age. Minimum nutritional requirements, age appropriate, will be supplied to the provider by the state or county health department.

(2) The above requirement in (1) shall be deemed to have been met if the provider provides nutritious meals and snacks as follows:

(a) children in care for a continuous period of 5 hours to 10 hours shall be provided at least one meal appropriate to the time of day and two snacks; or

(b) children in care for a continuous period of 10 hours or more shall be provided at least one meal every 6 hours and one snack between meals. The 6 hours requirement does not apply during the hours that the child is sleeping when night care is provided; or

(c) children in care for 2 to 6 hours shall be provided one snack every 2 1/2 hours.

(3) Special diet orders must be kept on file by the provider as submitted to the provider in writing by parents.

(4) For the child requiring a rigid diet, food shall be brought from home and labeled clearly.

(5) Menu plans shall be available to parent upon request.

(6) A record of food served shall be kept on file for at least 1 month.

(7) Meal and snack service to children and the preparation of food by children shall be carefully supervised.

(8) Fresh drinking water shall be available to children and offered at frequent intervals.

(9) Proper methods of handling, preparing, and serving food in a safe and sanitary manner shall be consistently implemented by the provider.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731, MCA

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

37.95.102 DEFINITIONS (1) ~~"Day care facility" means a person, association or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day care home, a day care center, or a group day care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, or any group facility established chiefly for educational purposes that limits its services to children who are three years of age or older.~~

(2) ~~"Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care. The term also includes the status of a child as described above resulting from a step or adoptive relationship.~~

(3) ~~"Family day care home" means a place in which supplemental parental care is provided to three to six children, no more than 3 children under 2 years of age unless care is provided for infants only. For places providing care only for infants, "family day care home" means a place in which supplemental parental care is provided for up to 4 infants. No other children shall be in attendance.~~

(4) ~~"Day care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis.~~

(5) ~~"Group day care home" means a place in which supplemental parental care is provided to 7 to 12 children on a regular basis unless care is provided for infants only. For places providing care only for infants, "group day care home" means a place in which supplemental parental care is provided for up to 8 infants. No other children shall be in attendance. The staff: infant ratio of ARM 11.14.516 applies to group day care homes.~~

(6) ~~"Supplemental parental care" means the provision of child care by an adult other than a parent, guardian, or person in loco parentis on a regular basis for daily periods of less than 24 hours.~~

(7) ~~"Regular basis" means providing supplemental parental care to children of separate families for 3 or more consecutive weeks.~~

~~(8) "Registration" means the process whereby the department maintains a list of all family day care homes and group day care homes, promulgates rules for registration, and requires the day care provider to certify that the provider is in compliance with the registration rules.~~

~~(9) "Registration certificate" means a written document issued by the department to show that the registrant has, in writing, certified to the department the registrant's compliance with the applicable rules for either a family day care home or a group day care home.~~

~~(10) "License" means a written document issued by the department to show that the license holder has complied with the applicable licensing rules for day care centers.~~

~~(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.~~

~~(12) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.~~

~~(13) "Department" means the department of public health and human services.~~

~~(14) "Full day care" for state paid day care means care given to a child in a day care facility licensed or registered by the department which is provided for a continuous period of not less than 6 hours per day to 10 hours per day.~~

~~(15) "Part-time care" for state paid day care means care given to a child in a day care facility licensed or registered by the department which is provided for a period of less than 6 hours per day paid on an hourly basis.~~

~~(16) "Combination full/part day care" means care given to a child in a day care for a continuous period beyond full day care. The hourly rate will be paid in addition to a full day rate, as defined in ARM 11.5.1002 up to 16 hours/day. Care in excess of 16 hours/day will be reimbursed at 2 full day care days in a 24 hour period.~~

~~(17) "Overlap care" means care provided at a day care facility and approved by the department for a designated period of time not to exceed two hours per day when the number of children in care may exceed the number of children registered for care on the registration certificate.~~

~~(18) "Night care" means care provided for a child between the hours of 7 p.m. and 7 a.m. in which the parent(s) desires a child to sleep.~~

~~(19) "Infant" means a child under the age of 24 months of age.~~

~~(20) "Preschooler" means a child between 24 months of age and the age the child will be when he or she initially enters the first grade of a public or private school system.~~

~~(21) "School-age child" means a child who attends school and who is between 5 and 13 years of age.~~

~~(22) "Caregiver" means a licensee, registrant, employee, aid or volunteer who is responsible for the direct care and supervision of children in a day care facility.~~

(1) "Caregiver" means a licensee, registrant, employee, aide or volunteer who is responsible for the direct care and

supervision of children in a day care facility.

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

(3) "Day care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

(4) "Day care facility" means a person, association or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family; or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than 2 children from another home being cared for by the same provider.

(5) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(6) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

(7) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid and acellular pertussis vaccine combined.

(8) "Family day care home" means a private residence in which day care is provided to 3 to 6 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means: a day care facility providing care to no more than 3 children under 2 years of age unless care is provided for infants only. For facilities providing care only for infants, family day care home means a place in which supplemental parental care is provided for up to 4 infants. No other children shall be in attendance.

(9) "Group day care home" means a private residence or

other structure in which day care is provided to 7 to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means: a day care facility providing care to 7 to 12 children unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which supplemental parental care is provided for up to 8 infants. No other children shall be in attendance.

(a) Facilities caring for infants shall maintain a staff/infant ratio of 1 caregiver for each 4 infants in attendance unless precluded by other facility staffing requirements.

(10) "Health care provider" means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.

(11) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

(12) "Infant" means a child under the age of 24 months of age.

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

(14) "Local health authority" means a local health officer, local department of health, or local board of health.

(15) "MMR vaccine" means a live virus vaccine containing a combination of measles, mumps and rubella vaccine.

(16) "Night care" means care provided for a child between the hours of 7 p.m. and 7 a.m. during which the parent(s) desires a child to sleep.

(17) "Overlap care" means care provided at a day care facility for children age 3 and older for the times before and after school and approved by the department for a designated period of time not to exceed 3 hours when the number of children in care may exceed the number of children registered for care on the registration certificate.

(18) "Physician" means a person licensed to practice medicine under Title 37, chapter 3, MCA.

(19) "Preschooler" means a child between 36 months of age and the age the child will be when he or she initially enters the first grade of a public or private school system.

(20) "Provider" means the applicant for license or registration, the licensee or registrant.

(21) "Provisional certificate" means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to 3 months. A second 3 month certificate may be issued at the discretion of the day care licensing program manager.

(22) "Public sewage system" means a system of collection, transportation, treatment or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.



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

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

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

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

(27) "Regular certificate" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, or group day care homes, or day care centers.

(28) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance 4 or more days a week for 6 hours a day or more.

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

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

(30) "Restricted certificate" means a license/registration status given to a registrant/licensee when it has been determined that the provider is unable to meet certain specific requirement criteria but is participating in an agreed upon plan of correction.

(31) "School-age child" means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.

(32) "Supplemental parental care" means the provision of day care by an adult other than a parent, guardian, or person in loco parentis on a regular basis for daily periods of less than 24 hours.

(33) "Toddler" means a child who is 24 months of age to 36 months of age.

(34) "Vaccine" means one of the following:

(a) if administered in the United States, an immunizing

agent approved by the bureau of biologics, food and drug administration, United States public health services; or

(b) if administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 16.28.704.

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

IMP: Sec. 52-2-702, 52-2-703, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-501, 53-4-504, 53-4-601, 53-4-611 and 53-4-612, MCA

37.95.106 DAY CARE FACILITIES, REGISTRATION OR LICENSING APPLICATION (1) Any individual may apply for a registration certificate to operate a family day care home or group day care home. Any individual, agency or group may apply for a license to operate a day care center. However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within six months 1 year of the denial or revocation. If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until 1 year after the date of the decision of the hearing officer. Applications may be obtained from any district office the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953.

(2) Refer to 52-2-722, MCA for applications for a license or registration certificate by Indians residing on Indian reservations.

(3) Before a license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) a certificate of approval an annual approved inspection report from the state fire marshal or his the fire marshal's official designee indicating the fire safety rules have been met;

(b) a certificate an annual approved inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM 16.24.406 37.95.205 through 16.24.418 37.95.227, [RULES VI, VII and VIII];

(c) proof of current fire and liability insurance coverage for the day care center;

(d) a schedule of daily activities;

(e) a sample weekly menu;

(f) a DFS-33 DPHHS personal statement of health for licensure form for each caregiver, aide or volunteer who has direct contact with the children in care;

(g) a criminal background and child and adult protective services check on the provider or staff, including caregivers, aides, volunteers, kitchen and custodial staff and persons over

age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

~~(g)~~ (h) list of current staff with ages, addresses and telephone numbers;

(i) a written fire and emergency evacuation plan. For license renewal there must also be documentation of 8 annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility;

~~(h)~~ (j) upon initial application only, the names, addresses, and telephone numbers of three 3 personal references not related to the applicant who have knowledge of the applicant's character, experience and ability; and

~~(i)~~(k) such other information which may be requested by the department to determine compliance with the licensing requirements.

(4) Before a registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) A a DFS-33 DPHHS personal statement of health form for each caregiver, aide or volunteer who has direct contact with the children in care;

(b) upon initial application only, the Names names, addresses and telephone numbers of three 3 personal references not related to the applicant(s) who have knowledge of the applicant's character, experience and ability;

(c) Proof of current fire and liability insurance coverage for the provision of day care in the home;

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

(e) a written fire and emergency evacuation plan. For registration certificate renewal there must also be documentation of 8 annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and

~~(d)~~ (f) Such any such other information which may be requested by the department to determine compliance with registration requirements.

(5) remains the same.

(6) A day care facility may not provide care for more than the number of children permitted at any one time by its day care license or registration certificate.

~~(6)~~ (7) Any individual, group or other agency may request that the department determine whether a facility should be licensed or registered according to law. Referral may be either in writing or by telephone.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-722, 52-2-731, 53-4-504 and 53-4-507, MCA

37.95.108 CHILD DAY CARE FACILITIES, REGISTRATION AND

LICENSING PROCEDURES (1) A family day care home or group day care home must be registered. A day care center must be licensed.

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

~~(2) No registrant~~ (3) Registrant or licensee shall not discriminate in child admissions or employment of staff on the basis of race, sex, religion, creed, color, or national origin or disability. Any determination of discrimination will be made by the Montana human rights commission.

~~(3)~~ (4) Within 30 days of receipt of the signed and completed application forms, the department will evaluate the application for registration or licensure based upon the requirements found in these rules.

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

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

~~(4)~~ (5) A provisional registration certificate or license may be issued for a period of up to 3 months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second 3 month provisional certificate or license may be issued in special circumstances, at the discretion of the community social worker program supervisor, the total length of time of issuance not to exceed 6 months.

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

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

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

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

~~(5) (6)~~ Regular registration certificates and licenses are issued from the department's quality assurance division licensure bureau central office for periods not to exceed ~~1 year up to 3 years.~~

~~(6) (7)~~ The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate or license upon finding that:

~~(a)~~ The the applicant has not met the requirements for licensure or registration set forth in these rules; ~~or~~

~~(b)~~ the licensee or registrant has received ~~3 warnings of non-compliance with the registration or licensing requirements. The requirement of 3 warnings does not apply to revocation, suspension or refusal of a provisional certificate or registration;~~

~~(c)~~ However, suspension (8) Suspension or revocation may be immediate if:

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

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

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

~~(iv) (d)~~ the provider, a member of the provider's household or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM ~~11-14-515~~ 37.95.1016.

~~(7) (9)~~ The provider shall maintain all policies, records, and reports that are required by the department. These policies, records and reports must be reviewed and updated annually.

~~(8) (10)~~ The licensee or registrant shall allow custodial and non-custodial parental access to the facility at any time during which child day care services are provided, barring any court order preventing parent-child contact.

~~(9) (11)~~ The registration certificate or license is not transferable to another operator or site.

~~(10) (12)~~ The department must be notified of any changes that would affect the terms of the registration or licensure.

~~(11) (13)~~ Separate registration certificates and licenses shall be required for programs maintained on separate premises even when operated by the same provider under the same auspices.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-723 and 52-2-731, MCA

37.95.117 CHILD DAY CARE FACILITIES, JOINT PROGRAMS

(1) Any day care facility which operates a day care program in connection with another program on the same premises

must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.

(2) Children attending the facility for day care shall not come in contact with other persons who are receiving care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety and well-being of the children in day care.

(3) If multiple programs, including multiple day care programs or facilities in the same building, increase the number of people regularly in the building to more than 12 individuals, all fire, safety and sanitation requirements which may be impacted must be complied with by the day care facility.

(4) Persons, corporations or organizations may be licensed or registered for more than one day care facility if facility sites, staff, and space are completely separate from one another.

(a) If the day care facility is housed in a private single-family living structure, the structure can only obtain one registration or license.

(b) If the multiple program day care facility is in a non-residential structure, it will be licensed as a center and will be required to meet all center regulations.

(c) If the day care facility is contained in a multi-family structure, such as an apartment building, the structure will be allowed to house multiple day care facilities that meet the requirements of (1) through (4) above.

(d) If the facility is licensed or registered as a day care facility, but also serves as a foster care home, the department's child and family services (CFS) regional administrator and quality assurance division (QAD) must approve the dual license or registration.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING CRIBS OR DIAPERS (1) If a day care center cares for children requiring cribs or diapers, it must:

(a) ensure that cribs, playpens, and toys used by those children are made of washable, nontoxic materials and are kept clean and sanitized with a solution containing at least 100 ppm chlorine (1/4 cup household bleach to 1 gallon water) or equivalent sanitizing solution, air dried, rinsed with clean water after the first air drying step, and air dried again. This must be done daily;

(b) either provide separate cribs for each such child, or launder bedding in accordance with ARM 37.95.206(4) above;

(c) have adequate facilities to bathe such children when necessary that are separate from food service, food preparation, and play or sleeping areas;

(d) handle diapers in the following manner:

(i) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;

(ii) after each diapering, thoroughly clean and sanitize the diapering area, using a solution of at least 100 ppm chlorine (1/4 cup household bleach to 1 gallon water) or an equivalent sanitizing solution, air dry, rinse with clean water after the first air drying step, and air dry the area again;

(iii) store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, clean, and wash the receptacles once per day or more often as needed;

(iv) refrain from dipping soiled diapers in a toilet, although fecal contents of diapers may be shaken into a toilet;

(v) ensure that all staff members who diaper children wash their hands immediately after each diapering following the procedures outlined in ARM 37.95.221(7)(c). The hands of the diapered infant must also be washed; and

(vi) equip diapering and toilet areas with a hand washing sink that is separate separated by at least 6 feet from the infant food preparation area, hand washing sink, and equipment used for food preparation, except if the provider submits to the local health authority a written plan which describes an alternative means that does not have the potential to cause adverse health effects.

(e) request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use;

(f) allow the use of non-disposable diapers. If non-disposable diapers are used, they must be handled in accordance with the following, in addition to the requirements of (1)(d):

(i) Soiled diapers for each child must be placed in a plastic sack designated for that child, which in turn must be placed in a non-permeable, covered container and either picked up by a diaper service or commercial laundry or sent home the same day with the parent in the plastic sack;

(ii) Soiled diapers must either be laundered by a commercial laundry or diaper service, or at another site removed from the day care facility;

(iii) If a diaper service or commercial laundry is used, soiled diapers must be picked up by the service or laundry at least twice weekly; and

(iv) Soiled cloth diapers may not be rinsed on site.

AUTH: Sec. 52-2-735, MCA

IMP: Sec. 52-2-735, MCA

### 37.95.602 CHILD DAY CARE CENTERS, PROGRAM REQUIREMENTS

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

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation and approves , reviews

the written daily program and confirms the program is based upon the criteria below:

(i) the center maintains an on-going process of parent-staff cooperation in development and modification of program goals;

(ii) the center provides a diversity of experiences during the day for each child with opportunity for quiet and active experiences, group and individual activities, the exercise of choice and experience with different types of equipment and materials;

(iii) the center provides opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of his the child's own clothing;

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

(v) the center provides learning experiences for the children regarding the value of food in relation to growth and development;

(vi) the center provides opportunities for children to develop language skills and to improve readiness for reading and writing by regularly exposing the children to books, drama, poetry, music and other forms of expression.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-704, 52-2-723, 53-4-504 and 53-4-508, MCA

37.95.606 CHILD DAY CARE CENTERS, DISCIPLINE

(1) ~~Caregivers shall use appropriate forms of discipline. but must not use spanking or other forms of corporal punishment or any other technique~~ Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in day care facilities. Discipline shall include positive guidance, redirection and the setting of clear limits that foster the child's ability to become self-disciplined.

(2) Any punishment or discipline which is humiliating, shaming, frightening, or otherwise damaging to children is strictly prohibited.

(3) Parental or guardian permission does not allow for the use of any punishments listed in (1) or (2) above.

~~(2)~~(4) The provider is responsible for ensuring that shall require each caregiver to participate ~~participates~~ in an in-service training session regarding discipline and guidance techniques appropriate for children.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

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

37.95.610 CHILD DAY CARE CENTERS, SPACE (1) A day care



center must have sufficient indoor and outdoor space for the number and ages of children in care.

(2) This requirement shall be deemed to have been satisfied if:

(a) the facility has a minimum of 35 square feet per child of indoor space, exclusive of floor area devoted to fixed equipment or support functions such as kitchens, bathrooms, offices, etc. as well as 75 square feet per child of outdoor play space; and

(b) the equipment and furniture arrangement permits unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care, as well as arrangements of sleeping equipment which permit easy access to every child and unobstructed exits.

(3) Outdoor play areas at the facility must be surrounded by a fence that is at least 4 feet high and in good repair without any holes or spaces greater than 4 inches in diameter.

~~(3)(4)~~ The center can may obtain a variance an exception from the department from the above requirements for the following reasons:

(a) limited outdoor space is offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;

(b) limited indoor space is offset by sheltered outdoor space where climate permits reliance on outdoor space for activities normally conducted indoors; or

~~(c) scheduling for the limited outdoor or unfenced space is offset by the availability or use of an adjacent school playground, nearby parks, or other safe outdoor play area. cleared vacant safe lots, and/or a street blocked off by local authorities.~~

AUTH: Sec. 52-2-704 and 53-4-503, MCA

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

37.95.611 CHILD DAY CARE CENTERS, SUPPORT SERVICES SPACE AND EQUIPMENT (1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions and to provide for the reasonable comfort and convenience of staff and parents.

~~(a)~~(2) This requirement shall be deemed to have been satisfied if:

~~(i)~~ The the center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:

~~(A)~~(a) administrative office functions, record storage, meeting arrangements for staff or for parent conference offering privacy of conversation;

~~(B)~~ (b) food preparation and serving;

~~(C)~~ (c) custodial services;

~~(D)~~ (d) laundry;

~~(E)~~ (e) rest area for staff relief periods; and

~~(F)~~ (f) storage of program materials and manipulative toys to be used and rotated at different times during the year.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

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

37.95.613 CHILD DAY CARE CENTERS, MATERIALS AND EQUIPMENT

(1) The amount and variety of materials and equipment available, and their arrangement and use, must be appropriate to the developmental needs of the children in care.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the selection, arrangement and use of materials and equipment, based on the criteria below:

(i) Centers shall maintain a housekeeping area, table activities (manipulative toys) area, block building area, library or other quiet area, and a creative arts area. Arrangement of these areas shall be such that quiet and active zones are separated and not conflicting;

(ii) the quantity and quality of materials and equipment shall be sufficient to permit multiple use of the same item by several children so excessive competition and long waits are avoided;

(iii) materials and equipment shall be of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;

(iv) furniture shall be durable, safe, and clean and be child size or appropriately adapted for children's use;

(v) storage shelves shall be provided to children at their level.

~~(2) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.~~

~~(3) Toys and objects with a diameter of less than 1 inch (2.5 centimeters), objects with removable parts that have a diameter of less than 1 inch (2.5 centimeters), plastic bags, and styrofoam objects must not be accessible to children under 3 years of age and those children who are still placing objects in their mouths.~~

~~(4) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions.~~

~~(5) (2) Play equipment and materials must include items from each of the following six categories: dramatic role playing, cognitive development, visual development, auditory development, tactile development and large-muscle development.~~

~~(6) (3) High chairs, when used, must have a wide base and a safety strap.~~

~~(7) (4) Each child, except school-age children who do not take naps, shall have clean, sanitized and age-appropriate rest equipment such as a crib, cot, bed or mat. Seasonably appropriate covering, such as sheets or blankets, for a crib, cot, bed or mat must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.~~

~~(8) (5) Each facility must have a working telephone.~~

(9) (6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center (1-800-525-5042) must be posted by each telephone.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

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

37.95.618 CHILD DAY CARE CENTERS, AFTER SCHOOL CARE

(1) A day care center serving school-age children shall supplement and augment the child's activities at school and at home.

(2) This requirement shall be deemed to have been satisfied if the licensing representative has observed the program in operation and approved the program is based on the criteria below:

(a) adult supervision is provided for individual and group pursuit, in developmentally appropriate crafts, sewing, cooking, art, music, or other activities; ;

(b) provision is made for children to participate in activities outside the center with appropriate adult supervision; ;

(c) children have the opportunity appropriate to the child's age to participate in making rules and have opportunities to express objections to them;

(d) children have the opportunity to choose the activity in which they would like to participate and have ample opportunities to participate in child directed activities; and

(d)(e) parents have had the opportunity to participated participate in planning and approving the after-school activities and have participated in approving rules and agree on the handling of infractions of the rules.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

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

37.95.619 CHILD DAY CARE CENTERS, NIGHT CARE

(1) A day care center offering night care must develop plans for program, staff, equipment and space which will provide appropriately for the personal safety and emotional and physical care of children away from their families at night.

(2) This requirement shall be deemed to have been met if:

(a) special attention is given by the caregiver and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;

(b) a selection of toys for quiet activities which can be used with minimal adult supervision is provided for children prior to bedtime;

(c) bathing facilities, comfortable beds or cots, and complete bedding, are provided;

(d) staff are available to assist children during eating and pre-bedtime hours and during the morning period when dressing;

(e) during sleeping hours, staff are awake, and in the

immediate vicinity, and on the same floor level of sleeping children in order to provide for the needs of children and respond to any emergency; and

(f) at appropriate times a nutritious meal dinner and/or breakfast is served to children and a bedtime snack is offered.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

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

37.95.620 CHILD DAY CARE CENTERS, STAFFING REQUIREMENTS

~~(1) Child:staff ratio.~~

~~(a) 4:1 for infants 0 to 24 months;~~

~~(b) 8:1 for children 2 to 4 years;~~

~~(c) 10:1 for children 4-6 years;~~

~~(d) 14:1 for children over 6 years;~~

~~(e) only the provider, primary caregivers and aides may be counted as staff in determining the staff ratio.~~

~~(2) Qualifications of staff.~~

(1) Each day care center will have a director.

(a) The director shall have an associate a bachelor's degree in a related field plus 1 year experience in child day care or child development associate certification (CDA) or 3 years experience in child care. or in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, he the director must meet the qualifications of a primary caregiver.

(b)(2) A primary caregiver must be at least 18 years of age and shall meet all of the qualifications of an aide (3)(d) plus the following:

(i)(a) 2 years experience as a licensed or registered group or family day care home provider or day care center staff person or hold a bachelor of arts or an associate degree in education or a related field;

(ii)(b) trained in hold a current course completion card in cardio-pulmonary resuscitation including infant choking response. If the caregiver is only caring for children over the age of 8 years, adult CPR will suffice; and or multi-media first aid.

(c) be currently certified in standard first aid.

(3) An aide is must be directly supervised by a primary caregiver and shall be at least 16 years of age and meet the following qualifications:

(a) sufficient language skills to communicate with children and adults;

(b) be in good mental and physical health;

(c) have at least 1 day of on-the-job orientation; and

(d) verify that they have received a minimum of at least 8 hours of training, continuing education annually within the first year, in at least two separate sessions provided either by the department or other professional child care education and development programs of national, state or local child care organizations, or college course work in early childhood areas, or child development. or center or other trainer in the following areas:

- ~~(i) 4 hours - to include emotional, cognitive, physical and social development of children and creative activities for children;~~
- ~~(ii) 1 hour - appropriate discipline;~~
- ~~(iii) 1 hour - first aid;~~
- ~~(iv) 1.5 hours - nutrition and sanitation; and~~
- ~~(v) .5 hours - fire safety.~~

Continuing education must relate to the Montana early care and education knowledge base, including, at a minimum:

- (i) personal attributes/characteristics;
- (ii) health, safety and nutrition;
- (iii) child growth and development;
- (iv) environmental design;
- (v) child guidance;
- (vi) family and community partnerships;
- (vii) program management;
- (viii) curriculum;
- (ix) observation and assessment; or
- (x) professionalism.

~~(4) The provider must assure that each caregiver possesses good character and is physically, mentally and emotionally competent to care for children and free from communicable disease.~~

~~(a) (4) The provider shall maintain written records regarding each employed caregiver which include:~~

- ~~(i) (a) a record of training and experience; and~~
- ~~(ii) (b) three references from persons unrelated to the employed caregiver attesting to the employee's caregiver's character and suitability for the job.~~

~~(b) Each caregiver must have experience in the care and supervision of children.~~

~~(c) Unless an exception is granted by the regional administrator, no caregiver shall:~~

~~(i) have been convicted or adjudicated of a crime involving harm to children or physical or sexual violence against any person. A caregiver who is charged with a crime involving children or physical or sexual violence against any person and awaiting trial may not provide care or be present in the center pending the outcome of the trial. In excluding from the center any caregiver adjudicated of a crime involving harm to children or physical or sexual violence against any person, the department shall give due regard for the non-criminal nature of such adjudications under 41-5-106, MCA;~~

~~(ii) be currently diagnosed or receiving therapy or medication for a mental illness which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request that a caregiver obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness exists;~~

~~(iii) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor.~~

~~The department may request the caregiver to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists; or~~

~~(iv) have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.~~

~~(d) The provider is responsible for assuring that the persons covered by this subsection have met these requirements before providing care or within a reasonable time from the date that the person begins providing care. Aides and volunteers lacking the experience with children required by this rule may obtain such experience through provision of supervised care in the center.~~

~~(5) No staff member, aide, volunteer or other person having direct contact with the children in the center shall conduct themselves in a manner which poses any potential threat to the health, safety and well being of the children in care.~~

~~(6) The licensee shall submit a report to the appropriate district office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized or any fire in the facility when the services of the fire department were required.~~

~~(7) (5) The provider and all director, assistant director or any staff members member of the day care center shall report immediately any child suspected of being who suspects that a child may have been abused or neglected shall report their concerns to the county welfare county office of the department or the child abuse hotline, 1-800-332-6100.~~

~~(8) (6) The provider shall keep personal information about the child and his the child's family confidential.~~

~~(7) The child to staff ratio for a day care center is:~~

~~(a) 4:1 for infants 0 to 24 months;~~

~~(b) 8:1 for children 2 to 4 years;~~

~~(c) 10:1 for children 4 to 6 years; and~~

~~(d) 14:1 for over 6 years.~~

~~(8) Only the provider, primary caregiver(s) and aides may be counted as staff in determining the staff ratio.~~

AUTH: Sec. 53-4-503 and 52-2-704, MCA

IMP: Sec. 52-2-723, 53-4-504, 53-4-506, 53-4-508, 52-2-702, 52-2-704, 52-2-731 and 52-2-735, MCA

37.95.701 GROUP CHILD AND FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care home must be at least 18 years of age and must be in good mental and physical health.

(2) The provider and all staff, including caregivers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility must obtain a completed criminal background check and a completed child protective

services check before providing direct care to the children attending the day care facility. The director or provider/owner of the facility is responsible for ensuring that copies of these reports are on file at the facility.

~~(2)(3) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within through active involvement or observation in a group and family day care home facilities.~~

~~(3) The providers shall have experience in the care and supervision of children.~~

~~(4) The providers and all persons responsible for children in the group day care home shall possess good character, and be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider and all caregivers shall comply with tuberculosis testing requirements set out in ARM 16.28.1005, and the immunization requirements of ARM 37.95.231.~~

~~(5) Unless an exception is granted by the regional administrator, no provider, caregiver or other person present in the home while the children are in care shall:~~

~~(a) have been convicted or adjudicated of a crime involving harm to children or physical or sexual violence against any person. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence against any person and awaiting trial may not provide care or be present in the home pending the outcome of the trial. In excluding any individual adjudicated of a crime involving harm to children or physical or sexual violence against any person, the department shall give due regard for the non-criminal nature of such adjudications under 41-5-106, MCA;~~

~~(b) be currently diagnosed or receiving therapy or medication for a mental illness which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness exists;~~

~~(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists; or~~

~~(d) have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.~~

~~(6) (4) The provider shall report immediately any child suspected of being abused or neglected to the county office of the department, or the child abuse hotline, 1-800-332-6100.~~

~~(7)~~ (5) The provider shall cooperate with the department regarding all aspects of registration and shall allow department workers immediate access to their homes for on site visits at all times the children are in care.

~~(8)~~ The provider shall submit a report to the appropriate district office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized or any fire in the home when the services of the fire department were required.

~~(9)~~ (6) The provider shall keep personal information about the child and his the child's family confidential.

~~(10)~~ (7) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first 60 90 days of certification. This orientation must include the following areas:

(a) emotional, cognitive, physical and social development of children and creative, developmentally appropriate activities for children;

(b) appropriate discipline of children;

(c) first aid;

(d) nutrition, sanitation and universal precautions; and

(e) fire safety.

(8) The provider and all caregivers must verify that they have received a minimum of at least 8 hours of continuing education annually provided by the department or other professional child care education and development programs of national, state or local child care organizations, or college course work in early childhood areas or child development. Continuing education must relate to the Montana early care and education knowledge base, including, at a minimum:

(a) personal attributes/characteristics;

(b) health, safety and nutrition;

(c) child growth and development;

(d) environmental design;

(e) child guidance;

(f) family and community partnerships;

(g) program management;

(h) curriculum;

(i) observation and assessment; or

(j) professionalism.

~~(11)~~ It is strongly recommended that the (9) The provider have training must hold a current course completion card in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard red cross first aid procedure. including infant choking response. If the caregiver is caring for children under the age of 8, it is also required that the provider have certification in infant-child CPR and standard first aid.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731 and 53-4-504, MCA

37.95.705 GROUP CHILD AND FAMILY DAY CARE HOMES, BUILDING



REQUIREMENTS (1) The day care home must have a minimum of 35 square feet of usable space per child per child of indoor space, excluding floor area devoted to fixed equipment or support functions such as kitchen, offices, bathrooms, etc., as well as 75 square feet per child of outdoor play space.

(2) All areas used for day care purposes must have at least one door for egress of not less than 34 inches wide and a minimum of one other means of egress of at least 24 inches high by 20 inches wide of full clear opening. If windows are used for egress, the total area must be 5.7 square feet of clear opening. All exits must be unobstructed at all times.

(3)(2) Basements, if in use, must be dry, well ventilated, warm and well lighted.

(4) ~~All rooms used for napping by children must have at least one window which can be readily used for rescue and ventilation.~~

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

(6) (4) Doorways and stairs must be clear of any obstruction.

(7) (5) Every closet door must be such that children can open the door from the inside.

(8) (6) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency and the opening device must be readily accessible to the provider.

(9) (7) Protective receptacle covers must be installed on electrical outlets in all areas occupied by children under 5 years of age.

(10)(8) Maintenance: A maintenance program shall be provided to maintain the The home and grounds used by children must be maintained to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are easily cleanable reasonably clean;

(c) the building and grounds are reasonably free of harborage for insects, rodents and other vermin; and

(d) that the children attending the facility shall not be exposed to no paint containing lead in excess of .06% shall be used.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.706 GROUP CHILD AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS (1) ~~If the sleeping room is on the second story, there must be a plan to rescue children if the stairway is blocked. A UL approved smoke detector, which is properly maintained and regularly tested, must be located on the second floor and basement, if they are being used for day care.~~

(2) ~~A portable fire extinguisher with a minimum rating of 2A10BC is required. Extinguishers must be readily accessible at all times.~~

(3) ~~Mobile homes must meet all criteria plus:~~

~~(a) smoke detecting devices near all sleeping areas;~~

~~(b) exit doors which open by turning knob.~~

(1) In an emergency, all occupants of the day care facility must be able to escape from the home or building in a safe and timely manner.

(a) the ground/main level must have two accessible exit doors easily opened from the inside with a single action. Deadbolt locks that can be opened from the inside only with a key are prohibited. The two exit doors must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to exit doors must be kept clear of obstructions.

(2) Exit doors, windows and their opening hardware must be maintained in good working order at all times.

(3) A fire extinguisher must be easily accessible on each floor level. The minimum level of extinguisher classification is 2A10BC. Fire extinguishers shall be located near outside exit doors. All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications. If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly and have new operating batteries installed at least once each calendar year; and

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

(4) All wood burning stoves must meet building codes for the installation and use of such stoves. be properly installed and inspected by the local fire marshal. If used during the hours of care, the stove must be provided with a protective enclosure.

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

(6) No stove or combustion heater will be located as to block escape in case of malfunctioning of the stove or heater. A minimum of 8 fire drills must be conducted annually, at least one month apart as weather permits. Records, including who conducted the drill, when the drill took place, and how long it took to evacuate everyone must be available for review.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.708 GROUP CHILD AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS (1) Each home must have hot and cold running water with at least one toilet provided with toilet paper and one sink provided with soap and paper towels.

(2) Each facility must have a working telephone. Those facilities which have an unlisted number must make this number available to the parents and emergency contact persons of the children in care, and the appropriate regional or district local

offices of the department.

(3) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center (1-800-525-5042) must be posted by each telephone.

(4) No provider shall actively operate another business in the facility during the time the children are present for day care services.

(5) When a municipal water supply system is not available, a private system may be developed and used as approved by the state or local health department. Testing must be conducted at least annually by a certified lab to ensure that the water supply remains safe. Sanitary drinking facilities shall be provided by means of disposable single-use cups, fountains of approved design, or separate, labeled or colored glasses for each child.

(6) An adequate and safe sewage disposal system shall be provided.

(7) Garbage cans shall be provided in sufficient number and capacity to store all refuse between collections and shall be corrosion resistant, fly tight, watertight and rodent proof with lids. Kitchen garbage containers must have lids or be stored in an enclosed area.

(8) All food shall be from an approved source and shall be transported, stored, covered, prepared and served in a sanitary manner to prevent contamination.

(a) Milk and other dairy products shall be pasteurized.

(b) Use of home canned foods other than jams, jellies and fruits is prohibited.

(c) Perishable foods shall be kept at temperatures above 140°F or below 45°F.

(d) No persons with boils, infected wounds, respiratory diseases or other communicable diseases shall handle food or food utensils.

(e) All food utensils shall be properly washed and rinsed after each usage. A domestic style dishwasher may be used if equipped with a heating element.

(f) Single service utensils may only be used once.

(9) Folding of clean laundry must not take place on the same work surface used for sorting dirty laundry. Bedding shall be laundered when necessary and aired out periodically to prevent mildew.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.715 GROUP CHILD AND FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

(1) A written plan of daily activities and routines, in addition to free play, must be established. The plan must be flexible to accommodate the ages and needs of individual children and the group as a whole. It must be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest.

~~(2) The provider shall provide:~~

~~(a) daily activities for the children which foster sound~~

~~social, intellectual, emotional and physical growth;~~

~~(b) opportunities for individual and small group activities;~~

~~(c) time and opportunity for creative experiences for children through art, music, books and stories, and dramatic play;~~

~~(d) outdoor play each day except when precluded by severity of weather.~~

~~(3) Supervision of children.~~

(2) There must be developmentally appropriate activities for the children which foster sound social, intellectual, emotional and physical growth including:

(a) opportunities for individual and small group activities;

(b) time and opportunity for creative experiences for children through art, music, books, and stories, and dramatic play; and

(c) outdoor play each day except when precluded by severity of weather.

(a) (3) The provider or other caregiver who is at least 18 years of age shall be on the premises at all times children are in care.

(b) (4) Providers shall use appropriate forms of discipline, but must not use

(a) spanking Physical punishment, including spanking or shaking and other forms of corporal punishment or any other disciplinary technique which is humiliating, shaming, frightening or otherwise damaging to the children. are strictly prohibited in day care facilities. Discipline shall include positive guidance, redirection and the setting of clear limits that foster the child's ability to become self-disciplined.

(b) Any punishment or discipline which is humiliating, frightening, or otherwise damaging, is prohibited.

(c) Parental or guardian permission does not allow the use of punishments or disciplines prohibited in (4)(a) and (b) above.

(c) (5) Television or movie watching during the hours children are in care shall not be excessive and shall be limited to child-appropriate programs.

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.720 GROUP CHILD AND FAMILY DAY CARE HOMES, EQUIPMENT (i) Play equipment.

(a)(1) Play equipment and materials must be provided that are appropriate to the developmental needs, individual interests, and ages of the children. There must be a sufficient amount of play equipment and materials so that there is not excessive competition and long waits.

(b)(2) Play equipment and materials must include items from each of the following six categories: dramatic role playing, cognitive development, visual development, auditory development, tactile development and large-muscle development.

~~(2) Physical equipment.~~

~~(a)(3) High chairs, when used, must have a wide base and a safety strap. Portable high chairs that hook onto tables are not allowed.~~

~~(b)(4) Each child, except school-age children who do not take naps, shall have clean, age-appropriate rest equipment, such as a crib, cot, bed or mat. Seasonably appropriate top and bottom covering, such as sheets or blankets, must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.~~

AUTH: Sec. 52-2-704 and 53-4-503, MCA

IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1001 CHILD DAY CARE FACILITIES CARING FOR INFANTS, DIAPERING AND TOILET TRAINING

(1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the infant's child's family may be used. If non-disposable diapers are used, the facility may launder the diapers using a germicidal process approved by the state or local health department. In the absence of such a process, the facility may not launder non-disposable diapers of enrolled children.

(2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected daily. Soiled disposable diapers shall be disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall be removed from the facility daily.

(3) Diaper-changing surfaces shall be cleaned after each use by washing or by changing a pad or disposable sheeting and sanitized or covered for reuse.

(4) Soft, absorbent, disposable towels or clean reusable towels which have been laundered between each use shall be used for cleaning the infant child.

~~(5) Safety pins shall be kept out of reach of infants and toddlers. Infants shall not be left unattended on a surface from which they might fall.~~

(5) Safety pins shall be kept out of reach of infants and toddlers.

(6) Children shall not be left unattended on a surface from which they might fall.

~~(6) (7) All toilet articles shall be identified and separated as to each infant child and kept in a sanitary condition.~~

~~(7) (8) Diapering and toileting areas shall contain a wash basin that is separate from that used for food preparation.~~

~~(8) (9) Toilet training shall be initiated when readiness is indicated for the child is ready and in consultation with the child's parents or placement agency. There shall be no routine~~

attempt to toilet train infants children under the age of 18 months.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1002 CHILD DAY CARE FACILITIES CARING FOR INFANTS, CHILDRENS' WET OR SOILED CLOTHING (1) Wet or soiled clothing shall be changed promptly. Parents shall provide additional clothing and it is the responsibility of the parents to care for the clothing.

(2) If an older, toilet trained child has an accident causing wet or soiled clothes, the child shall be changed promptly.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1003 CHILD DAY CARE FACILITIES CARING FOR INFANTS, FEEDING (1) An individualized diet and feeding schedule shall be provided according to a written plan submitted by the parents or by the child's physician with the knowledge and consent of the parents, guardian or placement agency. A change of diet and schedule shall be noted on each child's daily activity diet and feeding schedule.

(2) A day's supply of formula or breast milk in nursing bottles or formula requiring no more preparation than dilution with water shall be provided by the parents, unless an alternative agreement is reached between the parents and provider ensuring that the infant's nutritional needs are sufficiently met. Bottles of formula or breast milk shall be clearly labeled with each infant's name and date and immediately refrigerated. After use bottles shall be thoroughly rinsed before returning to the parent at the end of the day. Special dietary foods required by the infant shall be prepared by the parents.

(3) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings. Children who use a bottle should not be allowed to lie on their backs when drinking from the bottle. Older infants and toddlers shall be fed in safe high chairs or at baby feeding tables. Infants 6 months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant. Bottles shall be taken from the infant when he/she the child finishes feeding, when the bottle is empty and while the infant is sleeping.

(4) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants shall be provided suitable foods which encourage freedom in self-feeding. Unused infant food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads and similar foods shall be stored in clean, covered

containers.

(5) If the container in which the formula was purchased does not include a sanitized bottle and nipple, then transfer of ready-to-feed formula from the bulk container to the bottle and nipple feeding unit must be done in a sanitary manner in the kitchen. Bottles filled on the premises of the facility should be refrigerated immediately if not used and contents discarded if not used within 12 hours.

(6) If bottles and nipples are to be used by the facility, they must be sanitized by boiling for 5 minutes or more just prior to refilling. Terminal (one-step) sterilization of bottles, nipples and formula is acceptable.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1004 CHILD DAY CARE FACILITIES CARING FOR INFANTS, BATHING (1) Bathing shall not be done routinely by the facility but if required:

(a) No child shall be left unattended in the bathing area;

(b) Bathing materials shall be sanitized after bathing the infant. a child;

(c) Nonallergic Nonallergenic soap shall be used;

(d) Arrangements shall be made so no child can not turn on hot water while being bathed. Water supply to bathing area will not be over 120° F; and

(e) The bathing area shall be out of drafts and provisions should be made so the child may be completely dried after a bath.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1010 CHILD DAY CARE FACILITIES CARING FOR INFANTS, TRANSPORTATION (1) Facilities providing transportation for infants children under 4 years of age or 40 pounds shall comply with the following requirements:

(a) All vehicles shall be equipped with car beds and/or children's car seats that meet federal department of transportation standards. for the age and weight of the child being transported;

(b) Car beds shall be anchored securely to the floor of the vehicle. Infants shall be strapped in the car bed.

(c) (b) Car seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts anchored to the floor;

(i) Any infant who has developed skill to sit alone safely shall use a car seat, not a car bed.

(ii) (c) There shall be no more than one infant child in each car bed or car seat; and

(d) There shall be one adult in addition to the driver for each four 3 infants/toddlers being transported. When transporting more than two infants, there will be a minimum of two

adults. No child shall be left unattended in a vehicle. An adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1011 CHILD DAY CARE FACILITIES CARING FOR INFANTS, ACTIVITIES (1) All infants shall have ample opportunity during each day for freedom of movement, such as creeping or crawling or rolling in a safe, clean, open, uncluttered area.

(2) An infant who is awake shall not spend more than 1 hour 30 minutes of consecutive time confined in a crib, playpen, jump chair, or walker or highchair.

(3) Each infant shall have individual personal contact and attention by the same adult on a regular daily basis at least once each hour during nonsleeping hours. Examples of personal contact and attention include being held, rocked, taken on walks inside and outside the center, talked to and played with.

(a) there shall be sufficient staff so that an adult is always present and supervising.

(4) There shall be provisions for the infant to safely explore and investigate the environment. There shall be both stimulation and time for quiet activity. Infants shall be taken outside for some period during each day in good weather.

(5) Each infant shall be allowed to maintain his/her the child's own pattern of sleeping and waking period according to instructions from the parents.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1015 CHILD DAY CARE FACILITIES CARING FOR INFANTS, BUILDING AND SPACE OUTDOOR ACTIVITIES (1) Infants Children shall be protected from draft and prolonged exposure to direct sunlight. With the parent's permission, sun screen shall be applied to children over 6 months old when outdoor conditions dictate.

(2) The outdoor activity area shall be adjacent to the facility, fenced and free of hazards which are dangerous to the health and life of infants the children. The outdoor area shall be designed so that all parts are always visible to and easily supervised by staff. Every time a child is outdoors, the child must be supervised by a caregiver.

(3) Adequate protection against insects shall be provided.

(4) Provision shall be made for both sunny and shady activity areas.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1016 CHILD DAY CARE FACILITIES CARING FOR INFANTS, EQUIPMENT (1) Feeding tables equipped with a harness or



highchairs with a broad base and a harness for securing the child, shall be provided for every four children.

(2) The facility shall provide, in adequate numbers, and safe equipment such as walkers, swings, playpens, jump chairs and adult rocking chairs. All equipment must meet current federal safety regulations.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

37.95.1021 CHILD DAY CARE FACILITIES CARING FOR INFANTS, SPECIAL REQUIREMENTS FOR CHILD DAY CARE CENTERS (1) Day care centers shall post the each infant's diet and schedule in an area clearly visible to the center's infant care staff.

(2) Individual storage space that is labeled for the infant's clothing and other personal items shall be provided.

(3) Each infant shall be assigned a primary caregiver. There shall be sufficient staff so that an adult is always present and directly supervising infants.

(3) Clothing worn to and from work by the day care center staff members shall be covered by or replaced with clean comfortable non-irritating washable smock or similar clothing.

(4) Play areas for infants shall be separate from older children's play areas, or not be used for any other group of children while being used for infants. Sleeping areas shall be separate from play areas.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-504, MCA

4. The rule 37.95.101 found on page 37-23279 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 52-2-704, 53-4-503 and 53-4-212, MCA  
IMP: Sec. 52-2-702, 52-2-713, 52-2-721, 53-2-201, 53-4-211, 53-4-502, 53-4-601, 53-4-611 and 53-4-612, MCA

The rule 37.95.107 found on page 37-23295 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 52-2-702, MCA  
IMP: Sec. 52-2-702, 52-2-704 and 52-2-731, MCA

The rules 37.95.112 and 37.95.113 found on page 37-23301 and 37.95.230 on page 37-23363 of the Administrative Rules of Montana are proposed to be repealed.

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-704 and 52-2-731, MCA

The rules 37.95.116 found on page 37-23303; 37.95.231 on page 37-23363; 37.95.232 on page 37-23366; 37.95.235 on page 37-23371; 37.95.240 on page 37-23379; 37.95.630 on page 37-23445; 37.95.707 on page 37-23470; 37.95.716 on page 37-23477;

37.95.717 on page 37-23479; 37.95.721 on page 37-23481; 37.95.905 on page 37-23505; 37.95.906 on page 37-23506; 37.95.910, 37.95.911 and 37.95.912 on page 37-23511; 37.95.913 on page 37-23512 and 37.95.1020 on page 37-23549 of the Administrative Rules of Montana are proposed to be repealed.

AUTH: Sec. 53-4-503, MCA  
IMP: Sec. 53-4-504, MCA

The rule 37.95.125 found on page 37-23307 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 2-4-201 and 52-2-704, MCA  
IMP: Sec. 2-4-201 and 52-2-726, MCA

The rules 37.95.201 found on page 37-23321; 37.95.220 on page 37-23347 and 37.95.221 on page 37-23350 of the Administrative Rules of Montana are proposed to be repealed.

AUTH: Sec. 52-2-735 and 53-4-506, MCA  
IMP: Sec. 52-2-735 and 53-4-506, MCA

The rule 37.95.601 found on page 37-23411 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 53-4-503, MCA  
IMP: Sec. 53-4-503, 53-4-504, 53-4-508, 53-4-511, MCA

The rules 37.95.603 found on page 37-23412; 37.95.612 on page 37-23424; 37.95.722 on page 37-23482 and 37.95.726 on page 37-23487 of the Administrative Rules of Montana are proposed to be repealed.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-731 and 53-4-503, MCA

The rule 37.95.607 found on page 37-23417 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 53-4-503, MCA  
IMP: Sec. 53-4-504 and 53-4-508, MCA

The rule 37.95.621 found on page 37-23435 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 53-4-503, MCA  
IMP: Sec. 53-4-504, 53-4-506 and 53-4-508, MCA

The rule 37.95.901 found on page 37-23501 of the Administrative Rules of Montana is proposed to be repealed.

AUTH: Sec. 52-2-704 and 53-4-503, MCA  
IMP: Sec. 52-2-702, 52-2-704, 52-2-731 and 53-4-504, MCA

5. The current day care rules are being reorganized and republished. The reorganization was necessary because: definitions are found in four different places; the existing rules are redundant with the same requirements repeated in four places for each license and registration category; the rule reorganization will reduce the number of pages of administrative rules as required by legislative mandate; and this rule modification has been requested by various provider groups, the Interim Legislative Committee on Children, Families, Health and Human Services, the QAD Licensure Bureau, the QAD Administrator, and the DPHHS Director.

The department has chosen to continue to use the term day care, rather than child care, throughout the rule reorganization notice. This was done because Montana statutes, upon which these rules are based, consistently use the term day care in referring to the licensure and registration categories for day care facilities. For example, although 52-2-703, MCA defines both day care and child care, 52-2-721, MCA, the statute on licensure and registration of these facilities, continues to use the terms day care center, family day care home, and group day care home. If the Montana Legislature changes the use of the terms in the statutes, the rules will reflect that change in the future.

The department believes that reorganizing the rules is the simplest manner with which to standardize the rules without repetition. There is a need for certain rules to become consistent across child care environments, in all four licensing and registration categories. Rather than add new subsections within the rules for every category, and create more repetition, the department through this particular rule making structure, is proposing one subchapter of rules that deals with all four categories in establishing these particular standards. This makes the rules more viable across the board and creates less of a chance of rules being omitted in the different subchapters. Many of the portions of this rule making notice are not new rules, but rather are simple reorganization of existing rules.

The reorganization will consist of grouping those rules which apply to all four licensing and registration categories in the first subchapter, to be entitled "General Requirements". This will be the most lengthy subchapter, and will contain all rules being amended in this rule notice which are numbered ARM 37.95.102 through 37.95.117. This general requirements subchapter will also contain new Rules I through X.

The second subchapter will be entitled "Public Health Requirements for Day Care Centers". This subchapter will apply health requirements for day care centers (caring for 13 or more children) only. The centers have different health requirements than group or family facilities due to the larger numbers of children served. These health requirements for day care centers already exist, but will be grouped in subchapter two. The

licensing bureau will not enforce the public health requirements. These requirements will be enforced by Food and Consumer Safety Section of the Department of Public Health and Human Services. This subchapter will contain all rules numbered ARM 37.95.205 through 37.95.227, of which only ARM 37.95.210 is being amended, and so is the only rule in this area that is being printed in this notice.

The third subchapter will be entitled "Day Care Centers". This subchapter will apply to only those day care providers specifically licensed as a day care center, caring for 13 or more children. This subchapter will contain all rules being amended in this rule notice which are numbered as ARM 37.95.602 through 37.95.620, as well as new Rule XI.

The fourth subchapter will be entitled "Group and Family Day Care Homes". This subchapter will apply only to those day care providers specifically licensed as either a group day care home (caring for 7 to 12 children), or a family day care home (caring for 3 to 6 children). This subchapter will contain all rules being amended in this rule notice which are numbered as ARM 37.95.701 through 37.95.726, as well as new Rules XII through XV.

The fifth subchapter will be entitled "Infant Day Care". This subchapter will apply to only those day care providers specifically licensed to provide infant day care (children under the age of 24 months). This subchapter will contain all rules being amended in this rule notice which are numbered ARM 37.95.1001 through 37.95.1021.

There are fifteen rules being proposed which are designated as new rules. All of these rules have been created by using currently existing language from various subsections of various existing rules and combining them under appropriate topics for new rules. Once the subsections were incorporated into various new rules, the old rules were listed for repeal. Many of the current rules were specific to one particular child care environment. By combining the various subsections to create them as new rules, and placing them in the General Requirements subchapter that applies to all four licensing and registration categories, or in a specific subchapter, the department will be consistent with its mission to standardize the application of basic health and safety standards across child care environments, and in all four licensing and registration categories.

Proposed Rule I is necessary because all caregivers, regardless of the child care environment, should have the same requirements expected of them. It's critical that persons providing care to children be free of criminal backgrounds which indicate harm to persons, be free of protective services substantiations, and be mentally and physically capable of providing care to children. This new rule will allow these specifications to be consistent

across the continuum of care environments, in all four licensing and registration categories.

Proposed Rule II is necessary in order for parents to adequately understand what is expected of them in terms of placing their child in a licensed or registered day care facility; and it is also necessary because day care providers need to have a decorum of protocol about the services they will provide and the regulations under which they operate. Current rules and regulations in group care and center care address these issues clearly, but under the family day care rules, the parent information is not indicated. This information is as critical in the smaller environments, as it is in the larger environments. Every parent, regardless of the environment, has a right to know this information, and should be expected to receive it from the day care provider. In doing so, the department creates a level of professional expectation. The rule will apply to all four licensing and registration categories.

Proposed Rule III is another rule that requires the minimum set of safety requirements be consistent across the board. There should be no exceptions when dealing with this level of safety for children. In order to make these standards consistent, Rule III is necessary so that all levels of care are required to maintain the same semblance of safety structure. The rule will apply to all four licensing and registration categories.

Proposed Rule IV is again necessary, regardless of child care environment, in order to protect children from water accidents. This particular rule has been in place for certain licensing categories, but was not in place for smaller child care environments. The Department felt that as in the safety requirements indicated above, there should be no differentiating in levels of basic water safety in any child care environment. A serious accident can occur in a small wading pool, just as easily as it can in an in-ground swimming pool. Therefore, the department proposes this rule be applicable to each child care environment. The rule will apply to all four licensing and registration categories.

Proposed Rules V through VIII are necessary, regardless of child care environment, in order to protect children in all four license categories. New Rule V will ensure smoke-free environments for all children. New Rule VI will establish uniform health care requirements for all licensure categories and all children in day care facilities. New Rule VII will ensure all children are free from unusual health risks in all licensure categories to protect all children in day care. New Rule VIII will establish uniform immunization standards for all licensure categories to protect all children in day care from disease risks. New Rule VII(1)(d) will include naturopathic physicians licensed under Title 37, chapter 26, MCA, to the list of those authorized to sign the health record form. This function is within the legal scope of their practice and,

therefore, they should be included in the list of those providers qualified to perform health assessments and to sign the form provided by the department. Again, all these "new" rules currently exist, but have been grouped in the general requirements subchapter to ensure their application to all day care settings.

Proposed Rule IX is necessary as it outlines transportation requirements for all four licensing categories. Currently, there are two different rules which address transportation of children in either family/group settings or day care center settings. Since the transportation requirements are the same, only one rule is needed under General Requirements to address transportation for all day care facilities.

Proposed Rule X is necessary as it sets forth the types of records which must be maintained by all day care facilities in all four licensing categories. Currently, this records rule pertains to day care centers only, yet its requirements have universal application in all four licensing categories to protect the safety of children in care. By placing this rule under General Requirements, the rule will apply to all four licensing categories.

Proposed Rule XI will outline licensing services to be provided by the Department for day care centers. The proposed rule is necessary to ensure day care center applicants and licensees comply with licensing requirements. The proposed rule will apply to the day care centers only, and will be found in subchapter 6.

Proposed Rules XII through XV are versions of existing rules that previously applied only to Group Day Care Home facilities. The department believes that there should be no differentiating in these requirements between family day care homes and the group day care homes. These are basic requirements that need to be consistent across the two day care environments.

The amendment to ARM 37.95.102 on definitions contains both statutory language from 52-2-703, MCA, as well as ARM rule language only. The department found it necessary to repeat some statutory language in order to better group all definitions in one source for provider use. The department also chose to repeat statutory language in the rule so that terms used throughout the rules which follow can be better and more easily defined while referencing and using the rules.

The amendment to ARM 37.95.210 is to clarify that there must be sufficient separation between diapering areas (including the diapering hand washing sink) and food preparation areas (including the food preparation area hand washing sink) to reduce fecal-oral cross contamination potential. (NOTE: Food preparation areas must have a hand washing sink, as required by ARM 16.10.221(3), which is adopted by reference in ARM

37.95.214(1) and (2).) The proposed amendment is necessary to minimize communicable disease risk in day care centers licensed to provide infant care. This amendment will minimize fecal-oral cross contamination routes of communicable disease transmission for day care centers that place an infant formula preparation and serving area in the infant care area without sufficient separation of equipment and space between the food preparation and diapering operations.

The department chose the separation by distance method as the least restrictive, yet effective, method to reduce potential cross contamination between diapering and food preparation areas and equipment. The most effective method to reduce cross contamination potential would be to prohibit food preparation in the infant care room. However, this may create difficulties for day care centers to meet required staff to infant ratios when formula and other infant foods must be prepared at a different location.

The Department is also proposing to amend ARM 37.95.106, 37.95.108, 37.95.117, 37.95.602, 37.95.606, 37.95.610, 37.95.611, 37.95.613, 37.95.618, 37.95.619, 37.95.620, 37.95.701, 37.95.705, 37.95.706, 37.95.708, 37.95.715, 37.95.720, 37.95.1001, 37.95.1002, 37.95.1003, 37.95.1004, 37.95.1010, 37.95.1011, 37.95.1015, 37.95.1016 and 37.95.1021. All of these rules are proposed for amendment to update the rule language and ensure that all requirements are consistent for the appropriate type of day care facility.

The amendments to ARM 37.95.106, 37.95.108, and 37.95.117 will be a part of the subchapter on general requirements for all day care facilities, in addition to the new rules. These amendments will incorporate language that will apply to all day care facilities such as licensure/registration requirements; licensure/registration procedures; and joint programs.

The amendments to ARM 37.95.602, 37.95.606, 37.95.610, 37.95.611, 37.95.613, 37.95.618, 37.95.619, and 37.95.620 will be a part of the subchapter on day care centers, in addition to some new rules. These amendments will incorporate language that will apply to day care centers ONLY such as: program requirements; discipline; space; support services; material and equipment; after school care; night care; and staffing requirements.

The amendments to ARM 37.95.701, 37.95.705, 37.95.706, 37.95.708, 37.95.715, and 37.95.720 will be a part of the subchapter on group and family day care facilities, in addition to some new rules. These amendments will incorporate language that will apply to group and family day care facilities ONLY such as: provider responsibilities and qualifications; building requirements; fire safety requirements; other facility requirements; program requirements; and equipment.

The amendments to ARM 37.95.1001, 37.95.1002, 37.95.1003, 37.95.1004, 37.95.1010, 37.95.1011, 37.95.1015, 37.95.1016 and 37.95.1021 will be a part of the subchapter on facilities caring for infants. These amendments will incorporate language that will apply to all day care facilities caring for infants such as: diapering and toilet training; children's wet or soiled clothing; feeding; bathing; transportation; activities; outdoor activities; equipment; and special requirements for day care centers caring for infants.

The Department has proposed the listed rules for repeal because the information previously found in the rules has been transferred elsewhere within this notice. Some of the repealed language has become a part of a new rule, and some of the language has been moved into a different rule as an amendment. Finally, some outdated and unused language has been deleted entirely. The repeals are necessary to accomplish the reorganization of these rules and eliminate the repetitiveness currently found in the entire chapter of rules.

The department considered the option of specifying these new rules in each category of care provided. But, as indicated earlier, that is redundant and serves no purpose but to confuse the public and replicate information that is easier understood if placed in one section that is applicable to all. Additionally, mistakes have been made in past rule making that omitted the information, thus creating the problem that currently exists: some environments have rules and regulations that are basic to the health and safety of small children, while others do not. These rules must be consistent across environments. By breaking them out into separate rule areas and perhaps omitting one section by mistake, it creates many problems for the department when enforcing and attempting to assist providers to create a minimum level of safety for the children in care.

The department considered the option of retaining the current organization of the rules, but decided there were many inconsistencies in licensing and registration requirements for the four different categories of licensing and registration. This reorganization option was chosen as it was deemed necessary to standardize the licensing and registration requirements for all four categories, while allowing different requirements as necessary in individual categories by use of the subchapters devoted to each category.

6. 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 July 27, 2000. 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](mailto: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.

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

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

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 19, 2000.

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

In the matter of the )  
amendment of ARM 37.86.1101 )  
pertaining to outpatient )  
drugs definitions )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 26, 2000, at 10:00 a.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 rule.

The Department of Public Health and Human Services 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 request an accommodation, contact the department no later than 5:00 p.m. on July 17, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS

~~(1)~~(4) "Outpatient drugs" means drugs which are obtained outside of a hospital.

(2) "Legend drugs" means drugs that federal law prohibits dispensing without a prescription.

(3) "Maximum allowable cost (MAC)" means the upper limit the department will pay for multi-source drugs. In order to establish base prices for calculating the maximum allowable cost, the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in 42 CFR 447.331 and 447.332 (1996). The maximum allowable cost for multi-source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to the price established under the methodology set forth in 42 CFR 447.331 and 447.332 for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity. A copy of the above-cited regulations may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, Montana MT, 59620-2951.

~~(4)(1)~~ "Estimated acquisition cost (EAC)" means the cost of drugs for which no MAC price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is the ~~direct price (DP) charged by manufacturers to retailers. If there is no available DP for a drug or the department determines that the DP is not available to providers in the state, the EAC is the average wholesale price (AWP) less 10%.~~ :

(a) the direct price (DP) charged by manufacturers to retailers;

(b) if there is no available DP for a drug or the department determines that the DP is not available to providers in the state, the EAC is the average wholesale price (AWP) less 10%; or

(c) the department may set an allowable acquisition cost for specified drugs or drug categories when the department determines that acquisition cost is lower than (1)(a) or (b) based on data provided by the drug pricing file contractor.

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

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

3. Medicaid provides health care to low-income Montanans. The program is jointly funded by the federal and state government using public monies. One benefit provided by Medicaid is prescription drugs. In order to administer the program efficiently and contain costs, if possible, the rules regarding drug acquisition costs need clarification in order to avoid overpayment of drug claims.

The proposed amendments change the definition of "estimated acquisition cost (EAC)" to allow the department to use as the EAC a drug price that reflects the drug's acquisition cost more accurately than the direct price (DP) or average wholesale price (AWP) less 10%.

An additional definition of EAC has been added to ARM 37.86.1101 to allow the department to use as the EAC an allowable acquisition cost (AAC) which is different from the DP and the AWP less 10%. This change allows the department to set the AAC when there is evidence that the DP and discounted AWP do not accurately reflect the provider's acquisition cost.

The concern regarding accurate pricing information arose as the result of a whistle-blower fraud investigation conducted by the Office of the Inspector General and several State Medicaid Fraud Control Units. The investigation revealed "a pattern of misrepresentations by some drug manufacturers of the average wholesale prices and wholesale acquisition costs of certain of their products". The misrepresented prices result in inflated claims being paid by Medicaid.

To remedy the inaccurate pricing, representatives of the State Medicaid Fraud Control Units worked with First DataBank, Inc. (FDB), to develop procedures to improve the accuracy and validity of the pricing information provided to states. Specifically, FDB agreed to base average wholesale prices on market prices, rather than prices identified by manufacturers. Additionally, FDB will not report a price for a product unless its manufacturer has certified the completeness and accuracy of the pricing information submitted. Comparisons of FDB's new prices and the prior average wholesale prices demonstrated that significant overcharges to Medicaid have occurred. The proposed rule amendments are necessary to prevent overbilling on drugs in the future, but still reimburse providers fairly, including their cost of acquisition.

The Department considered maintaining the current reimbursement methodology. However, the proposed rule amendments implement a pricing system which better reflects the provider's costs while still ensuring a fair price to the Medicaid program. Thus, the Department chose to implement these changes.

Based on our review of this issue, discussions with providers, and the experience of other states, the Department has determined that it is necessary to revise the current drug reimbursement methodology to include an additional methodology that allows use of the new prices determined by FDB without further discounting. To use the current pricing methodology of AWP less 10% could result in reimbursement less than the provider's acquisition cost. Because the intent of the revised rule is to provide more accurate reimbursement to providers for drugs, the rules will be applied retroactively to July 1, 2000.

The Department estimates that the proposed amendments will result in a 24% decrease in expenditures for drugs. Based on the fourth quarter of 1999, this would equate to a savings of approximately \$295,000 in state and federal funds per fiscal year. There are approximately 300 pharmaceutical providers which may be affected by this proposed rule amendment.

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 August 1, 2000. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to [dphslegal@state.mt.us](mailto:dphslegal@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.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 19, 2000.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT
amendment of ARM 2.21.227,	)	OF ARM 2.21.227, RELATED
related to the Annual	)	TO THE ANNUAL VACATION
Vacation Leave Policy	)	LEAVE POLICY

TO: All Concerned Persons

1. On April 13, 2000, the Department of Administration published notice of the proposed amendment of ARM 2.21.227 related to the Annual Vacation Leave Policy at page 903 of the 2000 Montana Administrative Register, issue number 7.

2. The department has amended the rule as proposed.

3. One comment opposing the amendment was received.

COMMENT #1: contends the amendment (a) runs counter to established employment contracts, (b) is outside the authority of the department, and (c) deprives employees of property rights.

RESPONSE: Regarding comment #1(a), the Department recognizes in cases where administrative rules conflict with labor agreements containing specific provisions, for example, provisions about annual leave administration, such agreements have precedence over rules. This precedence is addressed in part at 2-18-102(1), MCA.

Regarding comment #1(b), the Department disagrees because 2-18-604, MCA, grants authority to the Department to "promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof." The authority found in this part extends to the implementation of 2-18-616, MCA, which broadly addresses determination of annual vacation leave dates.

Regarding comment #1(c), the Department disagrees because the proposed rule merely establishes a procedure for approving annual leave requests. None of the language in the proposed rule amendment attempts to divest or deprive an employee of accrued annual leave benefits.

BY: Dal Smilie  
Dal Smilie  
Rule Reviewer

Lois Menzies  
Lois Menzies  
Director

Certified to the Secretary of State June 19, 2000.

BEFORE THE ALFALFA SEED COMMITTEE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 4.8.203 )  
relating to grant funding )

TO: All Concerned Persons

1. On May 11, 2000, the Alfalfa Seed Committee published notice of the proposed amendment of ARM 4.8.203 relating to grant funding on page 1129 of the 2000 Montana Administrative Register, Issue Number 9.

2. The committee has amended ARM 4.8.203 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/Ernest Johnson  
Ernest Johnson, Chairman  
ALFALFA SEED COMMITTEE

/s/ W. Ralph Peck  
Ralph Peck, Director

/s/ Tim Meloy  
Tim Meloy, Attorney  
Rule Reviewer

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT OF ARM
of rules pertaining to )	8.30.402 APPLICATIONS,
applications, fees, inactive )	8.30.407 FEE SCHEDULE,
status and reactivation, )	8.30.412 INACTIVE STATUS
contracts, federal trade )	AND REACTIVATION, 8.30.414
commission regulations, con- )	CONTRACT FOR FUNERAL GOODS
tinuing education, disclosure )	AND SERVICES, 8.30.416
statements on embalming, )	FEDERAL TRADE COMMISSION
unprofessional conduct, )	REGULATIONS, 8.30.502
crematory facility regulation, )	CONTINUING EDUCATION
processing of cremated remains,) )	REQUIREMENTS, 8.30.608
perpetual care and maintenance )	DISCLOSURE STATEMENT ON
fund reports, restrictions on )	EMBALMING, 8.30.701
officers, transfer of cemetery )	UNPROFESSIONAL CONDUCT,
ownership, perpetual care and )	8.30.801 CREMATORY FACILITY
maintenance funds, repeal of )	REGULATION, 8.30.805
a rule regarding prepaid )	PROCESSING OF CREMATED
funeral arrangements and the )	REMAINS, 8.30.904 PERPETUAL
adoption of new rules regarding) )	CARE AND MAINTENANCE FUND
branch establishment facili- )	REPORTS, 8.30.907
ties, definitions, prearranged,) )	RESTRICTIONS ON OFFICERS,
prefinanced or prepaid )	8.30.908 TRANSFER OF
funerals, requirements for )	CEMETERY OWNERSHIP,
sale of at-need, pre-need )	8.30.909 PERPETUAL CARE AND
and prepaid funeral )	MAINTENANCE FUNDS, THE
arrangements, pre-need funeral )	REPEAL OF 8.30.606
agreements and trust funds )	PREARRANGED, PREFINANCED OR
)	PREPAID FUNERALS AND THE
)	ADOPTION OF NEW RULE I
)	BRANCH FACILITY, NEW RULE
)	II DEFINITIONS, NEW RULE
)	III PREARRANGED,
)	PREFINANCED OR PREPAID
)	FUNERALS, NEW RULE IV
)	REQUIREMENTS FOR SALE OF
)	AT-NEED, PRE-NEED AND
)	PREPAID FUNERAL ARRANGE-
)	MENTS, NEW RULE V PRE-NEED
)	FUNERAL AGREEMENTS, AND NEW
)	RULE VI TRUST FUNDS

TO: All Concerned Persons

1. On March 16, 2000, the Board of Funeral Service published a notice of the proposed amendment, repeal and adoption of the above-stated rules at page 668, 2000 Montana Administrative Register, issue number 5. The hearing was held April 12, 2000.

2. The Board has amended ARM 8.30.402, 8.30.407, 8.30.412, 8.30.414, 8.30.416, 8.30.502, 8.30.608, 8.30.701,



8.30.801, 8.30.805, 8.30.904, 8.30.907, 8.30.908 and 8.30.909 exactly as proposed.

3. The Board has repealed 8.30.606 as proposed.

4. The Board adopted NEW RULE I (ARM 8.30.1001) BRANCH FACILITY, NEW RULE IV (ARM 8.30.1004) REQUIREMENTS FOR SALE OF AT-NEED, PRE-NEED AND PREPAID FUNERAL ARRANGEMENTS and NEW RULE VI (8.30.1006) TRUST FUNDS as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I BRANCH FACILITY (1) A branch facility need only consist of space for the purpose of visitation and funeral rites. ~~A branch facility shall not include a preparation room nor shall funeral arrangements or sales of funeral goods or services be permitted.~~ Funeral arrangements and sale of funeral goods and services shall be permitted in this facility. ~~Performance of embalming shall not be permitted.~~ An annual renewal fee is required but no inspection will be mandated.

NEW RULE IV REQUIREMENTS FOR SALE OF AT-NEED, PRE-NEED AND PREPAID FUNERAL ARRANGEMENTS (1) No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, pre-need funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral director.

~~(2) Any and all moneys paid to a funeral director, mortician, mortuary, cemetery, or any other person, firm or corporation, under or in connection with an agreement for the sale of personal property to be used in connection with a funeral or burial, or for the furnishing of personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such funeral goods or services are to be furnished shall be trust funds in the possession of such funeral director, mortician, mortuary, cemetery, or other person, firm or corporation. Said trust funds shall be deposited within three business days after receipt thereof in a special account maintained exclusively for the deposit of such moneys in a banking institution, savings or building and loan association or credit union that must have its principal place of business in this state and must be organized under the laws of this state or of the United States. Said trust funds shall be held on deposit, together with any interest thereon until said personal property has been delivered and said personal services have been rendered, unless sooner repaid, in whole or in part. The following monies shall be construed as trust funds in the possession of a funeral director, mortician, mortuary, cemetery, or any other person, firm or corporation:~~

~~(a) A receipt for the deposited funds shall be returned to the purchaser by the depository institution. any monies paid under or in connection with a funeral trust agreement where:~~

~~(i) the funeral trust agreement is intended to provide~~

funeral goods and/or service for the named person referred to in this part as beneficiary, who may or may not be the same person as the purchaser;

(ii) the sale of personal property to be used in connection with a funeral or burial, wherein the delivery of such personal property is not to occur until after the death of the beneficiary of the trust; and/or

(iii) the furnishing of personal services are not rendered until the occurrence of the death of the beneficiary of the trust.

(3) Trust funds shall be deposited within three business days after receipt in a special account maintained exclusively for the deposit of monies in a banking institution, savings or building and loan association or credit union that must have its principal place of business in this state and must be organized under federal and/or Montana law.

(4) Trust funds shall be held on deposit, together with any interest until the personal property has been delivered and the personal services have been rendered, unless sooner repaid, in whole or in part.

(5) Any funeral trust agreement shall include that a receipt for the deposited funds shall be returned to the purchaser of the depository institution.

~~(b) No depository institution shall be liable for the misuse, misapplication or improper withdrawal by any such funeral director, mortician, mortuary, cemetery or other person, firm or corporation, of any moneys deposited in such depository institution pursuant to this subchapter.~~

~~NEW RULE VI TRUST FUNDS (1) The trustees of a trust fund established pursuant to this subchapter shall be entitled to withdraw administrative expenses of not more than 1% per annum of the interest earnings of the trust fund. All expense incurred in the administration of such a trust or the services rendered thereby shall be deducted from income received by the trustees, and in no event shall the trustee invade the corpus of the trust funds.~~

~~(2) No licensee of the Montana board of funeral service, or any director, officer, or employee of any mortuary, cemetery, crematory, or other provider shall directly or indirectly, for the director or officer, or as the partner or agent of others, borrow any prepaid funeral trust funds, including principal or accrued interest. No such person shall become an endorser or surety for loans to others, nor in any manner be an obligor for money borrowed from or loaned by the prepaid funeral trust. No business entity, of which a mortician, funeral director, mortuary employee, mortuary owner or family member of a mortician or funeral director, mortuary owner, or mortuary employee or business entity in which either of them is in any manner interested, shall borrow any of the funds of a pre-need funeral trust.~~

5. The Board has adopted NEW RULE II (ARM 8.30.1002) DEFINITIONS, NEW RULE III (ARM 8.30.1003) PREARRANGED,

PREFINANCED OR PREPAID FUNERALS, and NEW RULE V (ARM 8.30.1005) PRE-NEED FUNERAL AGREEMENTS exactly as proposed.

6. The Board received comments from 13 individuals/businesses. The comments received and the Board's responses are as follows:

ARM 8.30.407(5)(b)

COMMENT NO. 1: One comment was received stating that the Board should leave the fees for mortician renewal and crematory and mortuary inspections at the current level rather than raising them.

RESPONSE: The Board responded that this comment does not apply to the proposed changes. The Board is not proposing a change in the current fees regarding mortician renewals or crematory and mortuary inspections.

ARM 8.30.502

COMMENT NO. 2: Steve Yeakel, Executive Director of the Montana Funeral Directors Association (MFDA) stated that the MFDA strongly supports the inclusion of the 10% audit.

RESPONSE: The Board thanks the MFDA for its support of this proposed change.

COMMENT NO. 3: One commentator stated that he does not feel that an affidavit submitted with the renewal application is sufficient documentation of continuing education even with the increased chance of audit.

RESPONSE: The Board appreciates the comment but will remain with the rule as proposed. The punishment for filing a false affidavit will be severe enough to encourage licensees to meet the continuing education requirements.

ARM 8.30.801

COMMENT NO. 4: One commentator suggested that telephone contact with the coroner having jurisdiction would be sufficient.

RESPONSE: The Board stated that the proposed rule requires that a crematory must have, in its possession, written authorization. No amendments will be made to this rule as proposed.

ARM 8.30.805

COMMENT NO. 5: One commentator stated that he assumed non-human residue refers to any metal left from the cremation container and prostheses.

RESPONSE: The Board agrees with his comment and no amendment is required.

ARM 8.30.904

COMMENT NO. 6: Two commentors stated that there needs to be more clarifying language to state specifically who hires a CPA to do an audit on trust funds. Does the business have to hire an auditor?

RESPONSE: The Board replied that no changes are necessary because subsections (2) and (3) answer the question raised.

COMMENT NO. 7: A comment was received stating that if a cemetery is to submit an annual report, the governing entity should provide forms so that the exact requirements are met. The commentors did not agree that only private sectors must abide by the rules. They feel all cemeteries should be licensed.

RESPONSE: The Board responded that the legislature has given the Board authority over private-for-profit cemeteries only. The Board does not feel that changes are necessary because subsections (2) and (3) cover their concerns.

ARM 8.30.908

COMMENT NO. 8: Two commentors stated that they wanted this rule voided.

RESPONSE: The Board responded that it will not void the proposed rule.

NEW RULE I

COMMENT NO. 9: Several commentors feel that a branch facility must have the capability of having a preparation room and casket display and the ability to make arrangements if it is to be licensed. The commentors feel that it is an injustice to the public to require them to travel to the main facility to make and finalize funeral arrangements at a time of need. They are opposed to the licensing of a facility if there is no preparation or casket display room.

RESPONSE: The Board amended New Rule I by changing the second sentence to read "Funeral arrangements and sale of funeral goods and services shall be permitted in this facility. The performance of embalming shall not be permitted." The remainder of New Rule I will remain the same.

COMMENT NO. 10: Two commentors stated that they disagree with the proposed rule.

RESPONSE: The Board's response is that the rule will be adopted as amended.

RULE III

COMMENT NO. 11: One commentor questioned the board as follows: (1) Is this mandating a cemetery price list and (2) does this apply to all cemeteries or only privately held for profit cemeteries?

RESPONSE: The Board replied, (1) This is a mandate to provide information to the consumer. (2) This applies to only privately held for profit cemeteries because that is all the Board has authority to regulate.

NEW RULE IV

COMMENT NO. 12: Alan R. Fangsrud, Sr. Vice President, Investment Officer of Norwest Investment Management & Trust stated that the proposed rule would require additional administrative time and responsibilities for the trusting institution, but felt that it is important that the purchaser be assured that their funds have been appropriately deposited and processed.

RESPONSE: The Board thanks Mr. Fangsrud for his support of this proposed rule.

COMMENT NO. 13: One commentor stated that subsection (2) is not clear. He suggested that beginning on line six of subsection (2) the following language be used, "...for whose funeral or burial such funeral goods or services are to be furnished. Such funds shall be trust funds in the possession of such funeral director, mortician, mortuary, cemetery, or other person, firm or corporation."

RESPONSE: The board noted that the spelling of moneys in subsection (2) is incorrect and will be changed to monies. The Board agrees with the comment that this section is not clearly written. Ed Myers, Board Counsel will try to reword this subsection to clarify the meaning.

NEW RULE V

COMMENT NO. 14: Two commentors stated that they feel the Board needs a statute stating that no change can be made on a purchaser's desire for either cremation or burial. As they are now able to transfer pre-need funds, should they receive funds back by doing so if the costs are less elsewhere? They further stated that it is not the Board's right nor in the consumer's best interest to provide Medicaid information.

RESPONSE: The Board responds that these comments are not germane to the new rule.

COMMENT NO. 15: One commentor asked if the proposed rule means that pre-need cremation authorization supercedes rights and responsibilities of the survivor in charge.

RESPONSE: The Board replied that the rule will remain as proposed, but the Board will address the issue raised at a future board meeting. This arises from an underlying conflict in statute.

COMMENT NO. 16: One commentor stated that he feels this rule is excessively complex and not well worded and proposed rewording this section and gave an example.

RESPONSE: The board appreciates the comment but will keep the wording of the proposed rule intact.

#### NEW RULE VI

COMMENT NO. 17: Alan Fangsrud, Sr. Vice President, Investment Officer of Norwest Investment Management & Trust, Steve Yeakel, Executive Director of the MFDA and two other commentors were concerned with trying to regulate the administrative fees that a bank charges.

RESPONSE: The Board agreed with the comments and will delete the wording in subsection (1) entirely.

COMMENT NO. 18: Two commentors stated that if certain trustees withdraw administrative expenses from a trust fund it should be stated in the contract, as no hidden fees should be allowed without consumer consent. They further stated that those who do not belong to the MFDA need and have a right to know when a representative is giving a report about State board matters and feel that they should be invited to freely listen to any reports that the Board presents at any convention or conference.

RESPONSE: The Board stated that the subject comments do not pertain to the proposed rules.

COMMENT NO. 19: One commentor thanked the Board for their work on the rules and stated that he feels they address the areas that have been lacking. He further stated that he would suggest that it would be easier to understand the effects of the amendments to the rule if the rules were sent in their entirety with the cross outs and additions.

RESPONSE: The Board responded that it uses the generally accepted procedure in filing notices of rule amendments which does not include restating portions of the rules not affected by the amendment.

COMMENT NO. 20: One commentor thanked the Board and congratulated the persons who reviewed and updated the amendment of rules regarding funeral service in the state of Montana. He states that they have done a commendable update and should be congratulated. He particularly congratulated them on allowing a license emeritus to be held after 49 years of licensure.

RESPONSE: The Board thanks the commentor for his words of praise.

BOARD OF FUNERAL SERVICE  
JEAN RUPPERT, BOARD CHAIR

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 19, 2000.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the )  
amendment of ARM 23.16.101, )  
23.16.1901, 23.16.1906, ) NOTICE OF AMENDMENT  
23.16.1907, 23.16.1909, and )  
23.16.1911 concerning video )  
gambling machines )

TO: All Concerned Persons

1. On May 11, 2000, the Department of Justice published notice of the proposed amendment to ARM 23.16.101, 23.16.1901, 23.16.1906, 23.16.1907, 23.16.1909, and 23.16.1911 at page 1203 of the 2000 Montana Administrative Register, Issue Number 9.

2. No comments were received.

3. The department has amended ARM 23.16.101, 23.16.1901, 23.16.1906, 23.16.1907, 23.16.1909, and 23.16.1911 as proposed.

By: /s/ Joseph P. Mazurek  
JOSEPH P. MAZUREK, Attorney General  
Department of Justice

/s/ Elizabeth S. Baker  
Elizabeth S. Baker, Rule Reviewer

Certified to the Secretary of State June 19, 2000.



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

In the matter of the ) NOTICE OF AMENDMENT OF  
amendment of Montana's ) PREVAILING WAGE RATES-  
prevailing wage rates, ) BUILDING CONSTRUCTION  
pursuant to ARM 24.16.9007 ) SERVICES and HEAVY AND  
 ) HIGHWAY CONSTRUCTION  
 ) SERVICES

TO: All Concerned Persons

1. On April 13, 2000, the Department published notice to consider the amendment of the above-captioned rule at pages 922 through 924 of the 2000 Montana Administrative Register, Issue No. 7.

2. On May 4, 2000, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of May 12, 2000.

3. The Department has thoroughly considered the comments and testimony received on the proposed prevailing wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Bob Papin, Business Representative for Plumbers and Pipefitters Local 30, opposed prevailing wage and benefit rates in Districts 8, 9 and 10 as there may be some residential wages included. Mr. Papin asked that the hours and wages be analyzed and adjusted.

Response 1: An analysis was undertaken and employers with relatively low wages were telephoned to ascertain if the hours they submitted were for residential or commercial work. The residential hours were then discarded and new wage rates calculated in all three districts.

Comment 2: Jerry Ball, Montana District Council of Laborers, opposed the overall rates. Mr. Ball is concerned that there is cheating by non-union contractors driving wages down.

Response 2: The bottom of the Montana Prevailing Wage Survey form reads: "Your signature is certification that the information submitted on this form is true and correct." The Department believes that the certification justifies the Department's reliance on the information submitted, in the absence of specific information alleging that data submitted is inaccurate.

Comment 3: Terry Leishman, Operating Engineers Local 400, believes the way the highway rates are established is not correct. Mr. Leishman also had concerns about Riverside Contracting and the role of the Montana Department of Transportation and the Montana Contractors' Association.

Response 3: The Department adopts the most current Federal Davis Bacon Wages for the Heavy and Highway Construction occupations. Mr. Leishman's concerns about the wage rates should be directed to the U. S. Department of Labor which sets the Federal Davis Bacon wage rates.

Comment 4: John Owens, Business Agent for Operating Engineers, Sandy Curriero of the Operators Union, John Johnson, an operator, and Daniel Doogan of the Teamsters Union stated that they believe the heavy and highway wages are too low.

Response 4: See Response 3 above.

Comment 5: Gene Fenderson, Manager of the Montana District Council of Laborers, would like the Department to look at its own guidelines and asks the Commissioner to appoint a balanced bipartisan committee to look at the rules.

Response 5: The Department will take Mr. Fenderson's comments under advisement. The Department notes that over the past few years, the Department has convened various non-partisan advisory groups with regards to proposed changes to prevailing wage statutes and rules.

Comment 6: Lars Erickson, Pacific Northwest Regional Council of Carpenters, questioned why the amount paid for vacations is surveyed. Mr. Erickson also questioned the wages for Carpenters and asked that the data be analyzed.

Response 6: The Department determined that fringe benefit rates should first be set based on survey data. If there was not enough data to determine a district rate, collective bargaining agreements that were in effect during the survey period would be used to set fringe benefit rates. The Department concludes that the fringe benefit computation methodology is appropriate given the particular language in 18-2-401(9)(ii), MCA. The Department believes that its methodology fairly implements the statutory language and is not biased for or against union or non-union work.

An analysis was undertaken and employers with relatively low wages were telephoned to ascertain if the hours they submitted were for residential or commercial work. The residential hours were then discarded and new wages rates calculated for Districts 2, 3, 4, 5, 6 and 10.

Comment 7: Jim Lechner, Montana Steel Erectors and Billings Area Master Plumbers Association, stated that those in the industry should have access to the wage data - "a list of who submitted what and what they're paying."

Response 7: All information provided by employers or union representatives is considered by the Department to be confidential. The survey form states, "All data and the identity of all respondents will be held in confidence." The Department concludes that survey respondents have a legitimate and reasonable expectation that financial data (such as wages and hours paid) will not be released in a way that individuals

(including competitors) will be able to identify information submitted by a particular employer. The Department concludes that providing confidentiality with respect to data supplied by an identifiable respondent increases the response rate to its voluntary wage survey and serves the public interest by attracting a higher response rate, and thus providing more accurate data from which to calculate a prevailing wage rate.

Comment 8: Lloyd Davison submitted a statewide agreement for the Communication Technician occupation.

Response 8: The agreement was used to revise rates for Communications Technicians in Districts 3 and 4.

Comment 9: John E. Gottula, Bricklayers and Allied Craftsmen Union, submitted a copy of the collective bargaining agreement for the same time period as the survey.

Response 9: The agreement was used to revise wage rates in District 10.

Comment 10: Don Halverson, United Association 459 Plumbers and Pipefitters Union, asked that the plumber wage rates for District 1 and 2 be analyzed. Mr. Halverson also submitted new union travel pay and subsistence.

Response 10: An analysis was undertaken and employers with relatively low wages were telephoned to ascertain if the hours they submitted were for residential or commercial work. The residential hours were then discarded and new wage rates calculated for Districts 1 and 2.

The union travel and subsistence pay submitted was not used as it was not for the period of the survey (October 1, 1998 - September 30, 1999)

Comment 11: Glenn Gregor, Business Manager, Laborers Local #254, submitted fringe benefit information and questioned the use of zone pay in submitting survey data.

Response 11: Mr. Gregor's information was used to revise fringe benefit rates in all districts. The Department has not studied the positive or negative effect of zone pay on wages.

Comment 12: Mark F. Meek, Frontline Glass, disagrees with including Health and Welfare as a part of the Prevailing Wage.

Response 12: Prevailing wage administrative rules state that if there is no union contract in a district, contiguous district rates will be set if there is enough data. The Department determined that there were sufficient hours for contiguous district rates to be set for the prevailing wage and health and welfare benefit in District 5. Health and Welfare is an integral part of the prevailing wage rate.

Comment 13: Bryan Cook, Chairman, aBCC Erectors, states they can offer a better health and dental package plan for less money than is mandated under the prevailing wage laws. Mr. Cook also believes the pension plan amount is not in line with what is

standard and the proposed wage rates are higher than what is considered to be the average.

Response 13: After a thorough review, the Department has determined the prevailing wage survey was conducted properly and the wage rates are accurate as amended. The survey is sent to all Montana employers involved in building construction activities, but is voluntary, not mandatory. Rates are set by the Department based solely on response received.

Comment 14: Richard Miller, Field Representative, Pacific Northwest Regional Council of Carpenters, stated that the vacation rate should not be included in the prevailing wage publication.

Response 14: The Prevailing Wage Building Construction publication states that vacation is listed for informational purposes only, unless otherwise specified. Vacation is typically included in the wage rate and is provided for informational purposes.

4. After consideration of the comments received on the proposed amendments, the Department has amended the rules exactly as proposed. The Department adopts and incorporates by reference the prevailing rates of wages included in the year 2000 edition of the document "State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" for heavy and highway construction services. The heavy and highway construction rates are adopted exactly as proposed. The Department adopts and incorporates by reference the prevailing rates of wages included in the year 2000 edition of the document "State of Montana Prevailing Wage - Rates Building Construction Services" for building construction services. The building construction rates are adopted as proposed, but with changes in the standard prevailing rate of wages and fringe benefits for the following occupations following correction and recalculation as described in Paragraph 3, above:

<u>Occupation</u>	<u>District</u>	<u>Type</u>	<u>Old rate</u>	<u>New rate</u>
Bricklayer	Dist. 10	wages	\$16.00	\$18.37
		pension	\$ 1.82	\$ 2.50
Carpenter	Dist. 2	wages	\$14.64	\$15.32
		H/W	\$ 2.09	\$ 2.12
		pension	\$ 1.93	\$ 1.97
		vacation	\$ .95	\$ .98
	Dist. 3	wages	\$14.83	\$14.89
		pension	\$ 2.42	\$ 2.60
	Dist. 4	wages	\$14.26	\$14.50
		H/W	\$ 2.06	\$ 2.04
		vacation	\$ .98	\$ 1.00
	Dist. 5	wages	\$13.36	\$13.73
Dist. 6	wages	\$13.77	\$14.28	

<u>Occupation</u>	<u>District</u>	<u>Type</u>	<u>Old rate</u>	<u>New rate</u>
Carpenter	Dist. 10	wages	\$14.11	\$14.28
Carpenter Foreperson				
	Dist. 2	wages	\$16.61	\$16.80
		H/W	\$ 2.00	\$ 2.12
	Dist. 4	H/W	\$ 2.06	\$ 2.04
Drywall Applicator Foreperson				
	Dist. 1	training	\$ .13	\$ .14
Drywall Applicator				
	Dist. 6	wages	\$14.80	\$ 9.47
	Dist. 8	wages	\$11.00	\$13.09
Cement Mason				
	Dist. 1	wages	\$14.15	\$14.68
	Dist. 3	wages	\$10.69	\$16.70
		pension	\$ 1.80	\$ 1.79
	Dist. 4	wages	\$14.74	\$15.14
	Dist. 10	wages	\$ 9.46	\$ 9.45
Communications Technician				
	Dist. 3	wages	\$16.00	\$16.47
		H/W	\$ 2.00	\$ 2.52
		pension	\$ .20	\$ 1.99
		training	\$ 0.00	\$ .21
	Dist. 4	wages	\$16.00	\$16.47
		H/W	\$ 2.00	\$ 2.52
		pension	\$ .20	\$ 1.99
		training	\$ 0.00	\$ .21
Ironworker-Structural Steel, Rebar placer				
	Dist. 1	vacation	\$ 3.00	\$ 0.00
Ironworker, Foreperson				
	Dist. 1	vacation	\$ 3.00	\$ 0.00
Blaster	All			
		H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
Wagon Driller	All			
		H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
Fence Erector	All			
		H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00

<u>Occupation</u>	<u>District</u>	<u>Type</u>	<u>Old rate</u>	<u>New rate</u>
<b>General Laborer</b>				
	Dist. 1	wages	\$10.61	\$10.65
		H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 2	wages	\$11.96	\$12.17
		H/W	\$ 2.19	\$ 2.21
		pension	\$ 1.29	\$ 1.30
		vacation	\$ .50	\$ 1.00
	Dist. 3	wages	\$12.30	\$12.36
		H/W	\$ 2.30	\$ 2.41
		vacation	\$ .95	\$ 1.00
	Dist. 4	wages	\$11.50	\$11.63
		H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .95	\$ 1.00
	Dist. 5	wages	\$10.18	\$10.22
		vacation	\$ .50	\$ 1.00
	Dist. 6	wages	\$11.04	\$11.43
		H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 7	H/W	\$ 2.00	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 8	wages	\$10.87	\$12.33
		H/W	\$ 1.80	\$ 2.24
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ .93
	Dist. 9	H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 10	wages	\$11.61	\$11.76
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
<b>Sandblaster</b>				
	All	H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
<b>Hod carrier</b>				
	Dist. 1	H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 2	H/W	\$ 2.30	\$ 2.36
		vacation	\$ .50	\$ 1.00
	Dist. 3	H/W	\$ 2.30	\$ 2.41
		pension	\$ 1.51	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 4	H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00

<u>Occupation</u>	<u>District</u>	<u>Type</u>	<u>Old rate</u>	<u>New rate</u>
Hod carrier	Dist. 5	H/W	\$ 2.30	\$ 2.50
		pension	\$ 1.55	\$ 1.45
		vacation	\$ .50	\$ 1.00
	Dist. 6	H/W	\$ 2.30	\$ 2.41
		vacation	\$ .50	\$ 1.00
	Dist. 7	H/W	\$ 2.30	\$ 2.50
		vacation	\$ .50	\$ 1.00
	Dist. 8	wages	\$12.24	\$13.21
		H/W	\$ 2.30	\$ 2.38
		pension	\$ 1.55	\$ 1.45
	Dist. 9	vacation	\$ .50	\$ 1.00
		H/W	\$ 2.30	\$ 2.50
pension		\$ 1.55	\$ 1.45	
Dist. 10	vacation	\$ .50	\$ 1.00	
	H/W	\$ 2.30	\$ 2.50	
	pension	\$ 1.55	\$ 1.45	
Water well laborer All	H/W	\$ 2.30	\$ 2.50	
	pension	\$ 1.55	\$ 1.45	
	vacation	\$ .50	\$ 1.00	
Landscape laborer All	H/W	\$ 2.30	\$ 2.50	
	pension	\$ 1.55	\$ 1.45	
	vacation	\$ .50	\$ 1.00	
Lawn sprinkler installer All	H/W	\$ 2.30	\$ 2.50	
	pension	\$ 1.55	\$ 1.45	
	vacation	\$ .50	\$ 1.00	
Fork truck operator Dist. 8	H/W	\$ 2.32	\$ 2.32	
Glazier Dist. 5	vacation	\$ .46	\$ .44	
Painter Dist. 8	wages	\$12.52	\$12.98	
	Dist. 10	wages	\$11.89	\$12.98
Plumber & pipefitter foreperson	Dist. 8	wages	\$23.31	\$23.00
		H/W	\$ 2.90	\$ 2.88
		pension	\$ 4.01	\$ 4.70
	Dist. 10	wages	\$19.35	\$23.60
Plumber & pipefitter Dist. 1	wages	\$18.32	\$19.37	
	H/W	\$ 2.25	\$ 2.23	
	vacation	\$ 1.79	\$ 1.85	

<u>Occupation</u>	<u>District</u>	<u>Type</u>	<u>Old rate</u>	<u>New rate</u>
Plumber & pipefitter				
	Dist. 2	wages	\$20.61	\$21.03
		vacation	\$ 1.92	\$ 1.98
	Dist. 5	wages	\$21.48	\$21.74
		pension	\$ 3.62	\$ 3.54
	Dist. 8	wages	\$20.75	\$20.88
	Dist. 9	wages	\$18.95	\$20.35
		pension	\$ 2.78	\$ 3.72
	Dist. 10	wages	\$18.28	\$20.19
		vacation	\$ .81	\$ 1.00
Roofer				
	Dist. 5	wages	\$ 8.48	\$11.38
		H/W	\$ 2.25	\$ 2.00
		pension	\$ 2.00	\$ 2.00
	Dist. 6	H/W	\$ 2.25	\$ 1.31
Sheetmetal foreperson				
	Dist. 2	pension	\$ 2.46	\$ 2.47
	Dist. 5	wages	\$22.94	\$21.04
		pension	\$ 2.47	\$ 2.45
Sheetmetal worker				
	Dist. 1	wages	\$12.23	\$21.23
	Dist. 2	wages	\$20.73	\$21.20
	Dist. 3	wages	\$20.62	\$21.23
	Dist. 4	wages	\$19.82	\$20.24
	Dist. 5	wages	\$20.57	\$21.23
	Dist. 6	wages	\$19.30	\$21.23
	Dist. 8	wages	\$19.56	\$20.04

5. The amendments are effective July 1, 2000, and apply to contracts first let for bid on or after that date.

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

/s/ PATRICIA HAFHEY  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 19, 2000.



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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 24.21.414 ) OF ARM 24.21.414 BY THE  
by the adoption of ) ADOPTION OF WAGE RATES  
wage rates for certain )  
apprenticeship programs )

TO: All Concerned Persons

1. On April 13, 2000, the Department published notice to consider the amendment of the above-captioned rule at pages 925 through 927 of the 2000 Montana Administrative Register, Issue No. 7.

2. On May 4, 2000, a public hearing was held in Helena concerning the proposed amendment at which oral and written comments were received. Additional written comments were received prior to the closing date of May 12, 2000.

3. The Department has thoroughly considered the comments and testimony received on the proposed journey-level wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Terry Schend, owner of Tempo Electric, stated that he felt the language in the Prevailing Wage rules was discriminatory due to the fact that the wage applied only to those who were not signatories to a collective bargaining agreement and felt that this could impact the bidding process.

Response 1: The rule proposed for amendment in this matter concerns establishing a minimum journey-level worker wage rate upon which an apprentice's wages are set, not the establishment of a prevailing wage rate for use on public works contracts. The rule is applicable to any employer that is operating a registered apprenticeship training program, without regards to whether the employer is or is not a signatory to a collective bargaining agreement.

Comment 2: Don Halverson, Business Manager, UA Local 459, stated the wage rates listed for plumbers and pipefitters in the proposed Montana prevailing wage rates are lower than the last period, that the union travel pay and subsistence stated is lower than actual and the pension rate is also listed as lower than actual.

Response 2: As noted in Response 1, above, this rule pertains to journey-level worker wage rates for apprenticeship purposes only. The Department surveys eligible employers in order to establish the wage rates used for prevailing wage purposes and also for wage rates used for apprenticeship purposes. Except when there is insufficient data submitted, the rates calculated are the weighted average of the wages paid (and reported in response to the survey) in that occupation in the area. The

Department believes that the wage rates established accurately reflect the information provided to the Department by employers.

Comment 3: Doris Romanisko, Apprenticeship Administrator, Montana Operating Engineers, states that zone pay should be figured into the journeymen wage rate depending on length of travel from home to job site and should be considered the actual journeymen rate. Furthermore, Ms. Romanisko states that negotiated benefits should be included as a part of the apprenticeship survey rate package since it is included in both the state and federal prevailing wage surveys, and that negotiated benefits are often accepted by workers in lieu of a higher rate of pay. Don Halverson also voiced opposition to the method used to calculate apprentice wage rates.

Response 3: The methodology for what pay components are included in the journey-level wage rate set as a minimum for apprenticeship purposes has not been proposed to be changed at this time. The methodology, including the identification of seven "urban" counties and five non-urban regions used to calculate apprentice wage rates, reflects the consensus of a joint advisory board (union and independent [non-union] sponsors of apprenticeship) established in 1995 to assist the Department in deciding whether to provide for a minimum journey-level wage rate applicable for newly registered apprentices. However, the Department will keep the comments in mind if in the future it contemplates changing that methodology.

Comment 4: K.C. Barnhart, Montana Roofers Association, stated his concerns about the disparity in journeymen wage rates from one county to the next and would like to see a state-wide rate established. James Lechner, representing the Montana Steel Erectors and the Billings area Master Plumbers, stated that the apprentice wage survey should reflect the 10 districts included in the state prevailing wage survey. Gene Fenderson, Business Manager of the Montana District Council of Laborers, commented that the rural regions currently used in the survey should be revamped into smaller localized districts and that the journeymen wage rate should reflect the smaller district rates, not a separate larger regional rate.

Response 4: The Department is aware that there are arguments for and against the use of a number of small areas for rate calculations and arguments for and against the use of a single, state-wide rate for an occupation. However, as noted in Response 3, above, the Department's methodology was established via a consensus process, but is not presently proposed for amendment.

Comment 5: Daniel Padron, with Sheet Metal Workers Local 103, questioned why, as a statewide organization, does only region II reflect some form of journeymen rate, and why doesn't their state wide wage rate apply to all of the rural regions. Dexter Thiel, Montana Roofers Association, stated several concerns about the survey. Mr. Thiel stated that the Montana Roofers Association should be contacted for the survey to represent the

industry since the association member performs 80% of the commercial work in this state. He also commented that there seems to be a major disparity in wages from one urban county to the next in the state prevailing wage survey and given the fact that roofers usually work on a state-wide or regional basis, the survey should not discriminate between urban counties and rural regions.

Response 5: According to ARM 24.21.414(4)(a), in the rural regions, only program sponsors located on a full-time basis in that region may respond to the apprenticeship wage survey. Subsection (4)(a) was created during the consensus process discussed above as a way to address concerns that an employer, based outside of a non-urban region and not typically working in the region, could distort the region's wage rate as the result of that employer's work on a short-term, but large, project. As noted in Response 3, above, the Department's methodology was established via a consensus process, but is not presently proposed for amendment.

Comment 6: James Lechner, representing the Montana Steel Erectors and the Billings area Master Plumbers, stated that the survey should be conducted on a more timely basis.

Response 6: The Department agrees that survey-derived wage rates by their very nature reflect wages paid at some point in the past, and that the shorter the time period between collection of the information and calculation of a wage rate, the closer the wage rate reflects current wages being paid. Presently, there is about a six month lag between the time the initial survey data is first reported and wage rates are calculated and noticed for public comment. Part of the lag time comes from the fact that employers are slow to respond to the request for wage rate information, and that employer participation is voluntary. The Department continues to look for ways to increase the timeliness and rate of responses to its surveys.

Comment 7: James Lechner stated that the survey should make considerations for areas that have journeymen rates affected by national agreements, so that local apprentices do not suffer from a lower negotiated wage rate. George Baker, Merit Mechanical and Roofing, and member of the Montana Roofing Contractor Association, stated that their shop starts most people entering the roofing trade at a higher wage than prescribed by either contract or other obligations and that he would like to see the survey rates reflect a more uniform journeymen wage rate on a state-wide basis.

Response 7: The Department believes that the survey methodology reflects the wages and hours that are actually paid in the area and reported to the Department. The Department notes that an employer is free to pay an apprentice at a higher rate; the wage rates provided by this rule are merely a minimum, not a ceiling rate.

Comment 8: Lydia and Bob Rooney, owners of Rooney's Quality Construction and Plumbing, state that they would like to see the existing plumber and pipefitter surveyed journeymen wage rate in Meagher County remain at \$15.46.

Response 8: Meagher County is a part of Region IV in the survey area and the rate established for that region will be based on the total response to the survey and the weighted average of journey-level hours and pay rates submitted in that region. The Department points out that the new rate will only apply to apprenticeship agreements entered into on or after July 1, 2000.

Comment 9: Felicity McFerrin, Training Director, Laborers AGC Training Program, submitted information for journeymen wage rates for construction craft laborers in the five rural regions and requested inclusion of that occupation in the wage rates publication.

Response 9: The Department acknowledges that the Laborer's AGC Training Program has recently registered an apprenticeship training program for construction craft laborers in Montana, and that it is the only apprenticeship sponsor for that particular occupation in the state. The Department has incorporated the data in the regional wage rates for that occupation.

4. After consideration of the comments received on the proposed amendments, the Department has amended the rule exactly as proposed. The Department adopts and incorporates by reference the rates of wages included in the year 2000 edition of the publication entitled "State of Montana Base Journey-Level Rates for Apprentice Wages". The rates are adopted as proposed, but with changes in the rate of wages for the following occupations, following data correction and recalculation as described in Paragraph 3, above:

Increased wage rates resulting from data corrections and recalculations:

<u>Occupation</u>	<u>Urban county</u>
Carpenter	Silver Bow, Cascade, Lewis & Clark Gallatin
Drywall applicator	Yellowstone
Cement mason	Flathead, Silver Bow, Cascade
Painter (incl. paperhangers)	Yellowstone
Plumber and pipefitter	Flathead, Lewis & Clark, Yellowstone
Roofer	Lewis & Clark
<u>Occupation</u>	<u>Urban county</u>
Sheet metal worker	All seven urban counties

Decreased wage rates resulting from data corrections and recalculations:

<u>Occupation</u>	<u>Urban county</u>
Heat and frost insulator	Missoula
Carpenter	Missoula
Drywall applicator	Gallatin
Plumber and pipefitter	Missoula

Additional apprenticable occupation wage rate established:

General laborer	All regions
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5. The amendments are effective July 1, 2000, and apply to apprenticeship agreements entered into on or after that date.

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

/s/ PATRICIA HAFHEY  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 19, 2000.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of amendment	)	CORRECTED NOTICE
of ARM 32.24.301 regarding	)	OF AMENDMENT AND
the pricing of producer	)	REPEAL
milk; and the repeal of	)	
ARM 32.24.521 and 32.24.522	)	
and amendment of ARM	)	
32.24.523 in regards to	)	
utilization, procedures to	)	
purchase and marketing of	)	
surplus milk	)	DOCKET NO. 1-00

To: All Concerned Persons

1. On May 25, 2000, the Montana board of milk control published a notice of the amendment and repeal of the above-captioned rules at page 1336 of the 2000 Montana Administrative Register, Issue No. 10.

2. The reason for the correction is the board had intended, based on discussion at its April 17, 2000, meeting, for the amendment and repeal to be effective August 1, 2000, rather than May 26, 2000.

DEPARTMENT OF LIVESTOCK

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

By: /s/ Bernard A. Jacobs  
Bernard A. Jacobs, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State June 17, 2000.

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

In the matter of the adoption	)	NOTICE OF ADOPTION,
of rules I through XVIII and	)	AMENDMENT, TRANSFER AND
the amendment, transfer and	)	REPEAL
repeal of rules from ARM	)	
Titles 11, 16, 37 and 46	)	
relating to fair hearings and	)	
contested case proceedings	)	

TO: All Interested Persons

1. On February 10, 2000, the Department of Public Health and Human Services published notice of the proposed adoption, amendment, transfer and repeal of the above-stated rules at page 356 of the 2000 Montana Administrative Register, issue number 3.

2. The Department has amended and transferred rules 11.18.121 [37.100.316], 11.19.109 [37.100.416], 46.2.202 [37.5.307], 46.2.203 [37.5.503], 46.2.207 [37.5.322], 46.2.208 [37.5.318], 46.2.209 [37.5.325], 46.2.210 [37.5.328], 47.2.211 [37.5.331], 46.2.212 [37.5.334], 46.2.214 [37.5.337], 46.12.216 [37.85.205], 46.12.307 [37.85.411], 46.12.310 [37.85.416], 46.12.408 [37.85.513], 46.12.509 [37.86.2801], 46.12.509A [37.5.310], 46.12.513 [37.40.406], 46.12.556 [37.40.1102], 46.12.558 [37.40.1106], 46.12.559F [37.40.1315], 46.12.1221 [37.40.301], 46.12.1232 [37.40.315], 46.12.1260 [37.40.346], 46.12.1919 [37.86.3411], 46.12.3223 [37.82.435], 46.12.3227 [37.82.437], 46.12.4815 [37.86.5012], 46.12.4824 [37.86.5025] and 46.12.5014 [37.86.5120] as proposed.

3. The Department has amended rules 16.24.108, 16.24.109, 16.25.104, 16.30.301, 16.32.917, 16.35.104, 37.2.101, 37.2.102, 37.2.301, 37.2.302, 37.2.305, 37.2.720, 37.8.126, 37.30.2570, 37.34.226, 37.34.919, 37.34.2313, 37.41.109, 37.50.306, 37.50.316, 37.50.525, 37.70.106, 37.71.106, 37.100.135 and 46.18.332 as proposed.

4. The Department has repealed rules 11.2.201, 11.2.203, 11.2.205, 11.2.207, 11.2.209, 11.2.210, 11.2.211, 11.2.212, 11.2.214, 11.2.215, 11.2.220, 46.2.213, 46.12.409 and 46.12.1268 as proposed.

5. The Department has adopted the rules I (37.5.101), II (37.5.103), III (37.5.105), IV (37.5.107), V (37.5.109), VI (37.5.113), VII (37.5.115), VIII (37.5.117), IX (37.5.119), X (37.5.121), XI (37.5.123), XII (37.5.125), XIII (37.5.127), XIV (37.5.129), XV (37.5.131), XVI (37.5.301), and XVII (37.5.311) as proposed.

6. 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 XVIII] 37.5.305 APPLICABILITY OF NOTICE REQUIREMENTS

(1) ~~{Rule XIX}~~ This rule, ARM 37.5.503 and 37.5.505 apply only to claimants under the following programs:

(a) through (l) remain as proposed.

AUTH: Sec. 50-1-202, 53-2-201 and 53-6-113, MCA

IMP: Sec. 41-3-1103, 50-1-202, 52-1-103, 53-2-201, 53-2-904, 53-4-202, 53-4-606, 53-6-111, 53-6-113, 53-6-131, 53-20-305 and 69-8-412, MCA

7. The Department has amended and transferred 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.

11.11.113 [37.93.210] CHILD PLACING AGENCY, APPLICABLE HEARING PROCEDURES (1) remains as proposed.

AUTH: Sec. 52-2-111, 52-2-403, 53-4-111 and 53-4-403(3), MCA

IMP: Sec. 52-2-113, 53-4-113(4) and 53-4-403, MCA

11.12.110 [37.97.118] YOUTH CARE FACILITY, APPLICABLE HEARING PROCEDURES (1) remains as proposed.

AUTH: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111 and 53-4-111, MCA

IMP: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-113, 53-2-201 and 53-4-113, MCA

46.2.201 [37.5.304] DEFINITIONS (1) through (2)(a) remain as proposed.

(b) a failure of the department to act within a reasonable time with reasonable promptness on a claimant's application for benefits;

(c) through (12)(d) remain as proposed.

AUTH: Sec. 2-4-201, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-3-107, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-5-504, 53-6-111, 53-6-113, 53-7-102 and 53-20-305, MCA

IMP: Sec. 2-4-201, 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305, MCA

46.2.204 [37.5.505] NOTICE UPON ADVERSE PUBLIC ASSISTANCE ACTION (1) remains as proposed.

(a) This rule applies only to adverse actions against claimants;

(b) Notice and hearing rights of providers are governed by ARM 37.5.307; and



(c) This rule shall not be construed to require notice to a claimant when the department provides notice to a provider.

(2) through (5)(b) remain as proposed.

(c) the specific regulations supporting the proposed adverse action;

~~(c)~~ (d) a statement of the claimant's right to a hearing;  
and

(e) how to obtain a hearing;

(f) telephone number to call for additional information;

(g) the right to be represented by legal counsel, friend, relative or other spokesman;

(h) the availability of free legal assistance if such assistance is known to the department program manager involved in the denial of the claim;

~~(d)~~ (i) if applicable, whether or not benefits are to be continued and the liability of the claimant for benefits received pending hearing if the hearing decision is adverse; and

~~(e)~~ (j) any other information as specifically required by applicable law, including department rule.

(6) and (7) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA

IMP: Sec. 53-2-201, MCA

46.2.205 [37.5.313] DENIAL OR DISMISSAL OF HEARING (1) A hearing need not be granted or may be dismissed when:

(a) through (3) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA

IMP: Sec. 53-2-201, MCA

46.2.206 [37.5.316] CONTINUATION OF PUBLIC ASSISTANCE BENEFITS

(1) through (1)(c) remain as proposed.

(2) For purposes of this rule, benefits do not include services being received under the medicaid home and community-based services program for persons who are elderly or who have a disability, or developmental disability services funded under the medicaid program. Applicants for such services who are aggrieved by a department determination are not entitled to continued medicaid home and community-based services under this rule.

(3) through (13) remain as proposed.

AUTH: Sec. 53-2-201, 52-2-111, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-6-111, 53-6-113 and 53-7-102, MCA

IMP: Sec. 52-2-112, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112 and 53-6-111, MCA

8. The Department amended [Rule XVIII] to correct a clerical mistake in the proposed reference to "[Rule XIX]". The reference was intended to refer to [Rule XVIII], the term "this

rule" was substituted in the final rule to correct the mistake.

The Department amended the catchphrases of 11.11.113 and 11.12.110 to make them consistent with other rules.

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

COMMENT #1: Deletion of the word "promptly" from ARM 46.2.201(2)(b) may lead to confusion. The applicable federal Medicaid regulation entitles a Medicaid recipient to a hearing if a claim is not acted on with "reasonable promptness". The department should apply that language to all public assistance programs.

RESPONSE: The Department agrees and has changed the final rule accordingly.

COMMENT #2: ARM 46.2.204 should be clarified so it cannot be interpreted as applying to providers. It would create a huge burden on the Medicaid program to provide notice to claimants of every adverse decision on provider claims. More often than not, Medicaid's denial of a provider claim is based on failure to provide complete and correct information about the claim. Providers may resubmit denied claims with corrections and additions as often as necessary for a period of up to one year. This multiplicity of claims for the same service would create an administrative burden for the Medicaid program and confusion for Medicaid claimants if notice must be given to claimants.

RESPONSE: The Department agrees and has changed the final rule accordingly. It was the department's intent to consolidate all provider hearing rules at ARM 46.12.509A. Although not specifically stated, 46.2.204 was intended to apply only to claimants. The final rule is intended to make that distinction clear by specifically stating the location of the rule governing adverse actions against providers.

COMMENT #3: ARM 46.2.204(5)(c) requiring that a notice cite the specific rule supporting an adverse action should be retained. A specific cite is useful because it allows a claimant to more easily understand the basis for an adverse action. A citation makes it easier for a claimant to assess their position and to prepare for administrative proceedings. Requiring a cite to a specific rule would help the Department apply its rules more consistently and accurately.

RESPONSE: The Department agrees and has restored the text in the final rule.

COMMENT #4: ARM 46.2.204(5)(f) requiring that a notice list a telephone number the claimant may call for additional information should be retained. It would be more convenient for

a claimant to have the direct telephone number of a department employee who can answer questions and provide information, rather than having to go through a switchboard operator or receptionist.

RESPONSE: The Department agrees and has restored the text in the final rule.

COMMENT #5: ARM 46.2.204(5)(g) requiring that a notice advise the claimant of the right to be represented by legal counsel, friend, relative or other spokesman should be retained. Claimants may not be aware of their right to have a friend or relative present, especially when the administrative proceeding is conducted by telephone. The right to be represented by an attorney is so important that every notice should advise the claimant of that right.

RESPONSE: The Department agrees and has restored the text in the final rule.

COMMENT #6: ARM 46.2.204(5)(h) requiring that a notice advise the claimant of the availability of free legal assistance should be retained. The Department should qualify the rule so that it applies only when the Department is aware of potentially free legal services from sources such as the Montana Advocacy Program or Montana Legal Services Association.

RESPONSE: The Department agrees and has changed the final rule accordingly.

COMMENT #7: The proposed amendment to ARM 46.2.204 adding (6) which would have allowed a notice to be effective although it contained errors and omissions would give the department an inappropriate opportunity to avoid technical challenges to proposed adverse actions.

RESPONSE: The department does not agree. The intention of the department is to restate existing law on administrative notices, not to create a new standard of procedural due process. Adverse department actions should not be denied solely on technical grounds. If errors or omissions are made in good faith, they should be allowed provided they do not prejudice the substantial rights of the claimant. The department believes the rule complies with procedural due process rights under the Montana and Federal constitutions and has adopted the amendment as proposed.

COMMENT #8: It should not be up to the department to determine when a claimant or provider is aggrieved by an adverse action. The provision in ARM 46.2.205(1)(h) allowing denial or dismissal of a hearing for that reason should be withdrawn. A claimant or provider should be granted an opportunity to show how they are aggrieved by the department's proposed adverse action.

RESPONSE: The amendment is intended to address instances in which a claimant or provider whose rights are not adversely affected by a proposed department action requests a hearing. The idea is similar to the principle of "standing" in judicial proceedings. For example, when the department denies a claim from a Medicaid provider, the recipient should not be granted a hearing unless necessary medical services were denied or unless the recipient would be financially liable for the cost of a denied claim. If the person requesting a hearing cannot allege some right affected by an adverse department action, the department should not be required to expend valuable resources adjudicating the matter. Accordingly, (1)(h) is adopted as proposed.

The Department agrees that a hearing should not be denied (not granted) simply because it is not obvious how the claimant or provider is aggrieved. The Department believes it would be better practice to allow claimants or providers an opportunity to specify how they are aggrieved in response to a motion to dismiss. Therefore, the final rule has been changed to delete the references to denial of a hearing.

COMMENT #9: The proposed exemption of services under the Medicaid home and community-based services program from the continuation of benefits rule in ARM 46.2.206 should be withdrawn. There is no reason persons already receiving home and community-based services should not be able to request continuation of those services pending the outcome of an administrative fair hearing on a proposed adverse department action.

RESPONSE: The Department agrees and has changed the final rule to include services under the Medicaid home and community-based services program in the benefits subject to continuation pending a hearing decision in the case of a contested adverse Department action.

COMMENT #10: Proposed 46.2.207(2)(h) allowing the hearing officer authority to grant summary judgment should be withdrawn. The provision would unduly disadvantage claimants unless they were represented by an attorney.

RESPONSE: The Department disagrees. The proposed summary judgment provisions were only intended to restate Montana case law. The department does not intend them to create new hearing officer powers. The Department anticipates that a moving party's brief would advise a claimant of the need to allege a genuine issue of material fact. The hearing officer would afford the claimant an opportunity to make such an allegation. Often, neither the department nor the claimant are represented by an attorney. When an attorney represents the department and a claimant is not represented, the hearing officer would have a duty to ask questions leading to possible issues of material fact, and should not grant summary judgment unless the claimant

could not articulate a genuine issue upon which a hearing could be conducted. Therefore, the Department has adopted the amendment as proposed.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 19, 2000.

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

In the matter of the transfer        )       NOTICE OF TRANSFER AND  
and amendment of ARM                )       AMENDMENT  
16.35.101 through 16.35.113         )  
pertaining to end stage renal        )  
disease (ESRD) recipients            )

TO: All Interested Persons

1. On April 27, 2000, the Department of Public Health and Human Services published notice of the proposed transfer and amendment of the above-stated rules at page 1023 of the 2000 Montana Administrative Register, issue number 8.

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

16.35.101 [37.55.101] DEFINITIONS (1) through (6) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA  
IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.102 [37.55.201] APPLICATION PROCEDURES (1) through (6) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA  
IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.103 [37.55.202] TIME PERIOD FOR BENEFITS (1) through (1)(b) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA  
IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.104 [37.55.1001] RIGHT TO HEARING (1) remains the same.

AUTH: Sec. 50-44-102 and 53-6-202, MCA  
IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.105 [37.55.301] NON-FINANCIAL ELIGIBILITY REQUIREMENTS (1) through (1)(d) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA  
IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.106 [37.55.303] FINANCIAL ELIGIBILITY REQUIREMENTS

(1) through (2)(c) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.107 [37.55.501] ELIGIBLE SERVICES AND SUPPLIES:

GENERAL (1) remains as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.108 [37.55.502] ELIGIBLE SERVICES AND SUPPLIES

(1) through (1)(c)(v) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.109 [37.55.505] NON-ELIGIBLE SERVICES (1) through

(1)(j) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.110 [37.55.701] DOCUMENTATION OF CLAIMS (1) through

(7) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.111 [37.55.702] CONDITIONS OF CLAIM PAYMENT

(1) through (5) remain as proposed.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.112 [37.55.705] PRIORITY OF PAYMENT (1) remains the

same.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

16.35.113 [37.55.206] NOTICE OF END OF ESRD BENEFITS

(1) remains the same.

AUTH: Sec. 50-44-102 and 53-6-202, MCA

IMP: Sec. 50-44-102 and 53-6-202, MCA

3. The Department has thoroughly considered all commentary received. The comment received and the department's response follow:

COMMENT #1: The Department cited 53-6-202, MCA in the authority and implementation sections of the notice, but that statute has

been renumbered to 50-44-102, MCA.

RESPONSE: The Department agrees with the comment. However, based on the recommendations of the Secretary of State's office, it is the Department's policy to retain all statutory authority citations, even if renumbered, for historical and research purposes. The Department did inadvertently fail to add the new cite, at 50-44-102, MCA, and did inadvertently underline 53-6-202, MCA. Those errors have been corrected. We appreciate the comment.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 19, 2000.



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

In the matter of the amendment        )       NOTICE OF AMENDMENT  
of ARM 16.38.307 pertaining to        )  
laboratory testing fees                )

TO: All Interested Persons

1. On April 27, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 1003 of the 2000 Montana Administrative Register, issue number 8.

2. The Department has amended rule 16.38.307 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

ertified to the Secretary of State June 19, 2000.

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 37.85.212,	)	
37.86.805, 37.86.1005,	)	
37.86.1006, 37.86.1401,	)	
37.86.1402, 37.86.1405,	)	
37.86.1406, 37.86.1807,	)	
37.86.2105, 37.86.2205,	)	
37.86.2207, 37.86.2405,	)	
37.86.2505, 37.86.2605,	)	
37.86.3201, 37.86.3205	)	
pertaining to resource based	)	
relative value scale (RBRVS);	)	
early and periodic screening,	)	
diagnostic and treatment	)	
services (EPSDT); eyeglasses	)	
services; clinic services;	)	
dental and denturist	)	
services; durable medical	)	
equipment, orthotics,	)	
prosthetics and supplies	)	
(DMEOPS); hearing aid	)	
services; transportation	)	
services and non-hospital	)	
laboratory and radiology	)	
services	)	

TO: All Interested Persons

1. On April 27, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1008 of the 2000 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.85.212, 37.86.805, 37.86.1005, 37.86.1006, 37.86.1401, 37.86.1402, 37.86.1405, 37.86.1406, 37.86.1807, 37.86.2105, 37.86.2205, 37.86.2207, 37.86.2405, 37.86.2505, 37.86.2605, 37.86.3201, 37.86.3205 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 cites to 53-6-141, MCA as being implemented by ARM 37.86.1401, 37.86.1402, 37.86.1405, 37.86.1406, 37.86.1807, 37.86.2105, 37.86.2405, 37.86.2505, 37.86.2605, 37.86.3201 and 37.86.3205. However, 53-6-141, MCA, has been repealed.

RESPONSE: The Department agrees with the comment. However, the

Department does not delete repealed authority. Based on the recommendations of the Secretary of State's office, it is the Department's policy to retain the listing of former statutory authority for historical and research purposes. The Department did inadvertently underline that statute. The underlining has been deleted. We appreciate the comment.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 19, 2000.

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 37.86.2901 )  
and 37.86.2905 pertaining to )  
inpatient hospital services )

TO: All Interested Persons

1. On April 27, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1017 of the 2000 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.86.2901 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: The proposed rule for prospective capital-related expenses may not assure budget neutrality during the first year. If there are changes in inpatient volume, the proposed rule may increase fiscal risk to the facilities. The Department should amend the proposed rules to guarantee that for the first year hospitals would not receive less, in aggregate, than they would have received under existing cost-based reimbursement methodology.

RESPONSE: The Department does not agree. The Department acknowledges the possibility that changes in inpatient volume or Medicaid case loads might have an effect on reimbursement to hospitals under the proposed rules. Alternatively, an increase in the volume of services provided or an increase in Medicaid case load could result in additional reimbursement to hospitals for services rendered. If increases should occur, the Department would not propose a decrease in payment rates to keep the appropriation static. The department calculated the amount of the prospective capital payment to be budget neutral using the best and most recent complete data available: 1998 submitted cost reports from hospitals compiled in a study by Abt Associates.

The Department has adopted the prospective capital-based reimbursement rates as proposed. This decision is based on the Department's assessment that the fairest and most reasonable way to approach the goal of budget neutrality is to accept the risk of service volume and case load increases in return for an acceptance of risk by hospitals that volume and case load will decrease. In view of increasing population and low per capita income in Montana, the Department believes the risk to hospitals

of decreased aggregate reimbursement is minimal. In the future when the Department re-bases the prospective payment system, it will be able to reassess the prospective capital payment component using updated data.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 19, 2000.

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the Matter of the Amendment ) NOTICE OF AMENDMENT  
and Repeal of Certain Rules ) AND REPEAL  
Pertaining to Application and )  
Reporting Fees )

TO: All Concerned Persons

1. On April 13, 2000, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed amendment and repeal of rules concerning application and reporting fees, at page 934 of the 2000 Montana Administrative Register, issue number 7.

2. The PSC has amended the rules exactly as proposed:

38.3.402 APPLICATION FEES

AUTH: 69-12-201, MCA

IMP: 69-12-311, 69-12-312, 69-12-313, 69-12-314, and 69-12-324, MCA

38.3.805 REPORTS AND UNIFORM SYSTEM OF ACCOUNTS

AUTH: 69-12-201, MCA

IMP: 69-12-407, MCA

38.3.2014 LEASE OF CERTIFICATES OF OPERATING AUTHORITY-GENERAL

AUTH: 69-12-201 and 69-12-204, MCA

IMP: 69-12-326, MCA

38.3.2101 SALE OR TRANSFER OF CERTIFICATE OF AUTHORITY

AUTH: 69-12-201, MCA

IMP: 69-12-325, MCA

38.3.2404 ASSISTANCE IN PREPARING TARIFFS AND TIME SCHEDULES

AUTH: 69-12-201, MCA

IMP: 69-12-201, MCA

38.5.2601 RATE TARIFF FILING

AUTH: 69-3-103, MCA

IMP: 69-3-204, 69-3-301, 69-3-302, and 69-3-304, MCA

38.5.2602 ANNUAL REPORTS

AUTH: 69-3-103, MCA

IMP: 69-3-203 and 69-3-204, MCA

3. The PSC has repealed the rules exactly as proposed:

38.4.701 RAILROAD APPLICATION AND PETITION FEES

AUTH: 69-14-111, MCA

IMP: 69-14-111, MCA

38.4.702 ANNUAL REPORTS AND FEES

AUTH: 69-14-111, MCA

IMP: 69-14-251, MCA

4. No comments or testimony were received.

/s/ Dave Fisher  
Dave Fisher, Chairman

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JUNE 14, 2000.

VOLUME NO. 48

OPINION NO. 13

COUNTY COMMISSIONERS - Authority over regulation of county roads;  
HIGHWAYS - Bridge as an extension of the public highway;  
HIGHWAYS - Use of county road easement;  
WATER AND WATERWAYS - Access to streams and rivers from county roads and bridges;  
MONTANA CODE ANNOTATED - Sections 7-14-2101(e), -2102, -2103, -2107, -2112(1), -2615(4), 60-1-103, -201, 61-8-353, 61-12-101;  
MONTANA CODES ANNOTATED, 1895 - Political Code § 2620;  
MONTANA CONSTITUTION, Article IX, section 3;  
REVISED CODES OF MONTANA, 1947 - Sections 32-106, -107, -2808.

- HELD: 1. Use of a county road right-of-way to gain access to streams and rivers is consistent with and reasonably incidental to the public's right to travel on county roads.
2. A bridge and its abutments are a part of the public highway, and are subject to the same public easement of passage as the highway to which they are attached. Therefore, the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments.
3. A member of the public must stay within the road and bridge easement to gain access to streams and rivers. Absent definition in the easement or deed to the contrary, the width of a bridge right-of-way easement is the same as the public highway to which it is attached.
4. Access to streams and rivers from county roads and bridges is subject to the valid exercise of the county commission's police power and its statutory power to manage county roads.
5. Access to streams and rivers from county roads and bridges created by prescription is dependent upon the uses of the road during the prescriptive period.

May 26, 2000

Mr. Patrick Graham, Director  
Department of Fish, Wildlife and Parks  
P.O. Box 200701  
Helena, MT 59620-0701

Mr. Robert R. Zenker  
Madison County Attorney  
P.O. Box 73  
Virginia City, MT 59755-0073

Montana Administrative Register

12-6/29/00



Dear Mr. Graham and Mr. Zenker:

You have requested my opinion on the following question:

May a member of the recreating public gain access from the right-of-way of a public road at a bridge crossing to a stream or river between the ordinary high-water marks?

Your opinion request evolved through a series of controversies between the recreating public and riparian landowners along the Ruby River in Madison County. Recreationists assert that they may use county road bridge crossings as access points to fish and float the Ruby River. Individual landowners have asserted that the public does not have access, and have requested that local law enforcement and the wardens employed by the Department of Fish, Wildlife and Parks cite the public for trespass when the recreationists gain access to the Ruby through the use of bridge crossings. You are seeking guidance as to whether the game wardens and local law enforcement should cite the recreating public for trespass.

As a supplement to your original opinion request, you have provided information concerning three roads and bridges crossing the Ruby River in Madison County:

1. The Todd Bridge on County Road No. 169. County Road No. 169 was created by petition and approved by the Madison County Commission in September 1907. In 1910, the right-of-way was purchased by Madison County from the owner of the underlying estate for \$300.
2. The Water Street Bridge, on County Road No. 59. County Road No. 59 was also created by petition and approved by the Madison County Commission, in June 1889.
3. The Seylor Bridge on Seylor Road (known locally as the "Eastside Road"). You believe Seylor Road was created by prescription. Seylor Road is maintained by the county, and denoted as a county road on an adjacent landowner's certificate of survey, but it is not included on the county road map.

An Attorney General's Opinion does not resolve questions of fact, and I have not engaged in independent fact-finding. In reaching my conclusions as set forth below, I have accepted your representations for the purposes of this opinion that Seylor Road is a county road created by prescription.

I.

Prior to determining whether there is access to streams from bridges and abutments, a threshold determination must be made

whether access exists from county roads. County roads can be created in a number of ways, including by statutory and common law dedication, by petition, and by prescription. According to your representations, all three roads connecting the bridges at issue are county roads. County Roads 59 and 169 were created by petition, and Seylor Road, according to your analysis, was created by prescription.

These roads incorporating the Seylor, Todd and Water Street bridges are all public highways of the state. Public highways include county roads. Mont. Code Ann. § 60-1-201(c) (1999).

The interest that the public typically acquires in a county road is an easement. In establishing a county road, "the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it." Mont. Code Ann. § 7-14-2107(3) (1999). Similar language has been part of our statutory framework for over a century. See Rev. Codes Mont. 1947, § 32-107; Mont. Codes Ann., Political Code § 2620 (1895). The holding of an easement, rather than holding the land underneath the public highway in fee, does not limit the public's use of the county road. 39 Am. Jur. 2d *Highways, Streets, and Bridges* § 218, at 744 (1999) ("[A]s to the right of use by the public in the ordinary manner, there is no substantial difference between streets in which title to the fee is in private individuals and those in which it is in the public").

The general rule is that "[t]he public highways belong to the people for use in the ordinary way." Barney v. Board of R.R. Comm'rs, 93 Mont. 115, 129, 17 P.2d 82, 85 (1932); see also Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 516, 110 P. 237, 240 (1910). The Montana Supreme Court has consistently applied "a liberal interpretation of public highway easement uses." United States v. Gates of the Mountains Lakeshore Homes, Inc., 565 F. Supp. 788, 796 (D. Mont. 1983), rev'd on other grounds, 732 F.2d 1411 (9th Cir. 1984). This has been the case for well over a century. Hershfield v. Rocky Mountain Bell Tel. Co., 12 Mont. 102, 118, 29 P. 883, 887 (1892), cited in Bolinger v. City of Bozeman, 158 Mont. 507, 519, 493 P.2d 1062, 1067 (1972).

The Court has not only liberally construed the use of the road easement for established uses but has also allowed for the possibility of changing and expanding uses to keep pace with the changes and needs of the public. In Kipp, 41 Mont. at 516-18, 110 P. at 240, the Court explained:

The authorities which control streets and highways may use or permit the use of them in any manner or for any purpose which is *reasonably incident[al]* to the appropriation of them to public travel and to the ordinary uses of streets or highways under the different conditions which arise from time to time . . . [I]t must be borne in mind that the way was created for *all uses to which it might be put in view*

*of improved methods and increasing needs of the public; and the limitation is to be given a construction which will not defeat this original purpose.*

(Emphasis added.)

The broad and expansive interpretation of the uses of public highways continues to the present day. My research has disclosed no Montana decision in which the Court has held that a city or county government allowed uses *exceeding* the grant of the easement creating the public highway.

With regard to using public highways to gain access to streams and rivers, it is unmistakably clear that the waters of our state are owned by the state, and held in trust for its people. Mont. Const. art. IX , § 3(3); Montana Coalition for Stream Access v. Curran, 210 Mont. 38, 682 P.2d 163 (1984); Montana Coalition for Stream Access v. Hildreth, 211 Mont. 29, 684 P.2d 1088 (1984). For both navigable and non-navigable waters, this constitutional guarantee grants the public the right to use all waters for recreational purposes that are capable of recreational use. Curran, 210 Mont. at 52; 682 P.2d at 171; Hildreth, 211 Mont. at 39, 684 P.2d at 1093.

Landowners holding private property adjacent to Montana's streams and rivers cannot control or interfere with the public's recreational use of the stream. Curran, 210 Mont. at 52, 682 P.2d at 170 ("no private party may bar the use of those waters by the people"); Hildreth, 211 Mont. at 35, 684 P.2d at 1091 ("no owner of property adjacent to State-owned waters has the right to control the use of those waters as they flow through his property"). The right of public use not only protects against interference, but also provides a limited easement over the adjacent landowner's property--between the low water mark and the high water mark for navigable rivers and between the center of the streambed and the high water mark for non-navigable streams--to allow the public to use and enjoy these waters. Galt v. State, 225 Mont. 142, 148, 731 P.2d 912, 916 (1987) ("Landowners, through whose property a water course flows as defined in Curran and Hildreth, *supra*, have their fee impressed with a dominant estate in favor of the public.").

Given that the public has a right to use public highways for any manner or for any purpose consistent with or reasonably incidental to public travel, I conclude that this right includes using public rights-of-way created by county roads to gain access to streams and rivers. Using the county road as an access point from one public right-of-way, the road, to another public right-of-way, the stream or river, is consistent with and reasonably incidental to the public's right to travel on county roads.

This conclusion should not serve to upset the expectations of

the holders of the servient estates. As explained by the Supreme Court in Bolinger, 158 Mont. at 521, 493 P.2d at 1069 (quoting Wattson v. Eldridge, 278 P. 236, 238 (Cal. 1929)), "[T]he dedicator is presumed to have intended the property to be used in such a way by the public as will be most convenient and comfortable and according to not only the properties and usages known at the time of dedication, but also to those justified by lapse of time and change of conditions." See also 39 Am. Jur. 2d *Highways, Streets, and Bridges* § 223, at 748 (1999) ("The rights of the owner of the underlying fee are always subordinate to the rights of the public and may grow less as the public needs increase.").

This conclusion is also consistent with comments during the 1972 Constitutional Convention that county roads could be used to access Montana's streams and rivers. See V 1972 Mont. Const. Conv. 1304-05 (1981).

Moreover, it is consistent with decisions from other jurisdictions concluding that public roads can be used to access public waters. See Jacobs v. Lyon Township, 502 N.W.2d 382, 384 (Mich. Ct. App. 1993) ("Publicly dedicated streets that terminate at the edge of navigable waters are generally deemed to provide public access to the water."); Heise v. Village of Pewaukee, 285 N.W.2d 859, 864 (Wis. 1979) ("[I]f a public street or highway exists so that its boundary line and the waters of a navigable lake or river meet, the riparian rights incident to the land composing the street belong to the public.").

Finally, this conclusion is also consistent with decisions of other jurisdictions that have found rights of access over publicly impressed lands inherent within the public's right to use these waters. See, e.g., State v. Sorensen, 436 N.W.2d 358, 363 (Iowa 1989) ("Fishing and navigation, whether of a commercial or recreational nature, require means of public access to the river. This means that state-owned land adjacent to the river, as well as the land actually covered by the river, must be part of the public trust."); Matthews v. Bay Head Improvement Ass'n, 471 A.2d 355, 364 (N.J. 1984) ("To say that the public trust doctrine entitles the public to swim in the ocean and to use the foreshore in connection therewith without assuring the public of a feasible access route would seriously impinge on, if not effectively eliminate, the rights of the public trust doctrine."); State v. Town of Linn, 556 N.W.2d 394, 402 (Wis. Ct. App. 1996) ("The general public certainly cannot benefit from the public trust doctrine if it is unable to access the waters.").

## II.

Because the public has access from the county road, they also have access from the bridge and its abutments. A "bridge" includes its abutments, rights-of-way, or other interest in land. Mont. Code Ann, § 7-14-2101(2)(e). Bridges, like county

roads, are public highways. Mont. Code Ann. §§ 60-1-103(18), -103(22). The law is settled in Montana that a bridge is but an extension or a part of the highway, road or right-of-way upon which it is built. See State ex rel. Judith Basin County v. Poland, 61 Mont. 600, 604, 203 P. 352, 353 (1921) ("It is conceded, as it must be, that a complete bridge used by the public is part of the public highway."); State ex rel. Furnish v. Mullendore, 53 Mont. 109, 113-15, 161 P. 949, 951-52 (1916) ("a bridge is part and parcel of the highway upon which it is built. . . . If the highways belong to the public, it must follow that anything permanently affixed to them, either in the way of repairs or in the form of completed structures, such as bridges and the like, become a part of them, and as much of public right as the highways themselves."); State ex rel. Foster v. Ritch, 49 Mont. 155, 156-57, 140 P. 731 (1914) ("A bridge is to be treated as but a portion of a public highway.").

The bridge is the intersection of two rights-of-way, and it would be inconsistent with the public's rights of passage on both--the highway and the stream or river--to conclude this intersection does not provide access from one right-of-way to the other. The bridge, as a public highway, offers the same access to streams and rivers for recreational use as does the highway to which it is attached. 39 Am. Jur. 2d. *Highways, Streets, and Bridges* § 217, at 743 (1999) ("Because bridges constitute a part of the highways, they are subject to the same public easement of passage.").

### III.

Several interested parties have argued that the public's right of access may be limited by the terms of an express grant of an easement for a public road. Since none of the three examples you have provided appears to involve such a limited express grant, that issue is not presented by your request. Nothing in this opinion should therefore be read to express a conclusion regarding the right of the public to gain access to a stream from a county road or bridge created pursuant to an express grant of an easement that proscribes recreational access to a stream from the road or bridge.

The conclusions expressed herein are, however, subject to three limitations:

#### A.

First, the recreating public must stay within the county road right-of-way. Since statehood, the width of county roads has been 60 feet, unless otherwise stated in the petition or dedication creating the road. Mont. Code Ann. § 7-14-2112(1); see also Rev. Codes Mont. 1947, § 32-2808 (1977); § 32-106 (1947).

Although the statute defining the presumptive width of county roads as 60 feet specifically excepts bridges, state law does not distinguish whether the width of bridges is to be greater or less. This may very well be due to the fact that the plain language of Mont. Code Ann. § 7-14-2112(1) defines the *actual width of the road*. It is only through subsequent interpretation that this statute has been applied to set the *actual width of the easement*. For example, if the road does not cover the entire 60 feet, the public still maintains use of the entire 60-foot right-of-way. Sheldon v. Flathead County, 218 Mont. 270, 272-74, 707 P.2d 540, 542-43 (1985); City of Butte v. Mikosowitz, 39 Mont. 350, 357, 102 P. 593, 595-96 (1909). Moreover, a city cannot abandon the right to the full dedication through non-use or acquiescence in the use or occupation by private parties. Baertsch v. County of Lewis & Clark, 256 Mont. 114, 122-24, 845 P.2d 106, 111-12 (1992).

Absent statutory or deeded definition of the width of the bridge right-of-way, I conclude that the width of the bridge right-of-way is the same as the public highway to which it is connected. As earlier noted, a bridge is a part of the public highway upon which it is built. Even if the actual width of the bridge is less than the county road, it does not follow that the otherwise undefined right-of-way must also be less.

Moreover, irrespective of the actual width of the bridge, the width of the easement over the waterway susceptible to recreational use is presumably without limit. The constitution guarantees the public the right to use all waters capable of recreational use, thus making any notion of an easement over our streams and rivers nonsensical. As a result, the only right-of-way at issue is the point where the county road right-of-way ends, and the bridge right-of-way begins. It would be illogical to conclude that the bridge somehow extinguishes access that would otherwise exist, if the bridge had not been built. See 39 Am. Jur. 2d *Highways, Streets, and Bridges* § 66, at 628 (1999) ("A public highway leading and extending to navigable waters will keep even pace with the extension of the land, . . . the presumption being that the intent was that the way should reach the water so as to enable the public to enjoy the right of navigation.").

Accordingly, as long as the recreating public stays within the easement created by the county road and bridge, which is assumed to be 60 feet unless otherwise stated in the petition or dedication, the recreationist may traverse from the public highway right-of-way to the high-water mark of the river or stream.

B.

Second, access can be limited by the exercise of the governing body's police power to control the use of roads for purposes such as safety and parking. See, e.g., Mont. Code. Ann. §§ 61-8-

353, 61-12-101. The Board of County Commissioners has the statutory authority to "control, and manage county roads and bridges," Mont. Code Ann. § 7-14-2101(1)(2)(i), to do in their discretion "whatever may be necessary for the best interest of the county roads," Mont. Code Ann. § 7-14-2102, and to exercise general supervision over county roads. Mont. Code Ann. § 7-14-2103.

However, a county commission's powers are not without limitation. They are limited first by the requirement that their actions must be reasonably related to their statutory authority. State ex rel. Bowler v. Board of County Comm'rs, 106 Mont. 251, 257-58, 76 P.2d 648, 652 (1938). For example, a county commission cannot abandon a right-of-way without giving due consideration to the importance of the right-of-way's use to access public lands. See Mont. Code Ann. § 7-14-2615(3) ("The board may not abandon a county road or right-of-way used to access public land unless another public road or right-of-way provides substantially the same access."); see also Lane v. City of Redondo Beach, 122 Cal. Rptr. 189 (Cal. Dist. Ct. App. 1975) ("a municipality's admitted power to vacate a municipal street does not include the power to destroy the right of public access to tidelands or navigable waters.").

C.

Finally, the manner in which the public highway was created may limit its usage. Montana law is clear that a road created by prescription is limited--both in size and usage--to the original use during the prescriptive period. In State v. Portmann, 149 Mont. 91, 423 P.2d 56 (1967), the issue was whether a road created by prescriptive easement must be 60 feet in width. The court answered in the negative, holding that the predecessor statute to Mont. Code Ann. § 7-14-2112 "was intended by the Legislature to apply only to public roads which were laid out by the official acts of the proper officials and was never intended to apply to prescriptive easements." Portmann, 149 Mont. at 96, 423 P.2d at 58. The court further held that the "rights acquired by adverse use can never exceed the greatest use made of the land for the full prescriptive period." 149 Mont. at 96, 423 P.2d at 58. The Montana Supreme Court has "never wavered" in restricting usage of prescriptive easements to those uses established during the prescriptive period. Kelly v. Wallace, 1998 MT 307, ¶ 31, 292 Mont. 129, 922 P.2d 1117. Those uses may include access for hunting, fishing, and recreation. Warnack v. Coneen Family Trust, 278 Mont. 80, 86, 923 P.2d 1087, 1091 (1996).

Accordingly, for county roads and bridges established by prescription, their use as access to waters is dependent upon their width and use during the prescriptive period. Whether such restrictions exist with respect to the Seylor Bridge involves factual inquiries beyond the scope of an Attorney General's Opinion.

IV.

With the limitations as set forth above, I conclude that access to Montana's waterways is allowed from the public right-of-way created by a county road and bridge. This access is limited inasmuch as the party must stay within the limits of the prescriptive easement or the dedication of the easement, or if no dedication is specified, within the statutory 60-foot easement. Unless there are recorded limitations placed upon the easement, the right-of-way for a bridge on a county road created by express grant extends to the high-water mark of navigable and non-navigable rivers, even if the actual width of the bridge spanning the waterway is less than the easement provided for by the county road.

Applied to the instant matter, and assuming the documents creating the easements contain no express contrary provision, access to the Ruby River exists from the bridge and its abutments for the Water Street and Todd Bridges, and local law enforcement and game wardens should not cite the public for trespass. Concerning the Seylor Road and Bridge, created by prescriptive easement, whether a recreationist could be cited for trespass is a factual determination that cannot be resolved in an Attorney General's Opinion.

THEREFORE, IT IS MY OPINION:

1. Use of a county road right-of-way to gain access to streams and rivers is consistent with and reasonably incidental to the public's right to travel on county roads.
2. A bridge and its abutments are a part of the public highway, and are subject to the same public easement of passage as the highway to which they are attached. Therefore, the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments.
3. A member of the public must stay within the road and bridge easement to access streams and rivers. Absent definition in the easement or deed to the contrary, the width of a bridge right-of-way easement is the same as the public highway to which it is attached.
4. Access to streams and rivers from county roads and bridges is subject to the valid exercise of the county commission's police power and its statutory power to manage county roads.
5. Access to streams and rivers from county roads and bridges created by prescription is dependent upon the width and uses of the road during the prescriptive period.



Sincerely,

/s/ Joseph P. Mazurek

JOSEPH P. MAZUREK  
Attorney General

jpm/scb/dm

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the Petition )  
of Continental Energy )  
Services, Inc. to declare ) DECLARATORY RULING  
certain provisions of ARM )  
Title 17, chapter 20, )  
subchapters 8 through 16 under )  
the Montana Major Facility )  
Siting Act not applicable to )  
the proposed energy generation )  
facility in Silver Bow County )

The Montana Department of Environmental Quality (DEQ) is charged with administration of the Montana Major Facility Siting Act, Title 75, chapter 20, MCA, (MFSA) and its implementing rules found at ARM Title 17, chapter 20 regulating the construction of certain major energy-related "facilities" including certain electric generation facilities. Continental Energy Services, Inc. (Petitioner) is a Montana corporation specializing in the development, financing, ownership and operation of non-utility electric generation projects. Petitioner proposes to build a nominal 500 megawatt (MW) combined cycle electric generating plant in Silver Bow County, Montana to be fueled by natural gas. The power generated at the plant would be sold into the deregulated power market. The proposed plant constitutes a "facility" under MFSA and Petitioner anticipates filing an application for certification of the proposed facility under MFSA in the near future.

The 1997 Montana Legislature enacted comprehensive amendments to MFSA substantially modifying the decisional criteria applicable to certification of electric generation facilities. The 1997 amendments also reduced the time in which a decision must be made under MFSA. Sections 12 and 15, Ch. 329, Laws of Montana 1997. However, the administrative rules implementing MFSA have not been amended to conform to the 1997 statutory amendments to MFSA.

On June 12, 2000, Petitioner submitted its above-referenced petition for declaratory ruling. The purpose of the petition is to determine the applicability to the Silver Bow generation project of various provisions of DEQ's administrative rules implementing MFSA in light of amendments to MFSA by the 1997 Montana Legislature.

This declaratory ruling is one of three components that will identify application requirements for the proposed Silver Bow generation facility. DEQ will issue an order pursuant to 75-20-211, MCA, specifying other additional information that

DEQ requires for this project. It is also anticipated that Petitioner will request that certain requirements of the rules be omitted as not relevant to the project as provided in ARM 17.20.804.

THEREFORE, having duly considered the above-referenced petition for declaratory ruling, the Montana Department of Environmental Quality finds that:

The petition contains a sufficiently detailed statement of facts upon which this declaratory ruling is based and is hereby incorporated by reference. The stated facts show that Petitioner will be affected by this ruling. Petitioner has stated that it is not aware of any person or entity that is interested in the requested ruling.

Chapter 329, Laws of Montana 1997 amended MFSA in six respects that caused the portions of the administrative rules indicated below to be inapplicable to this project. For the sake of brevity, each rule provision declared not applicable refers to one of these changes as the reason for that determination.

- Change 1: Sec. 15, Ch. 329, L. 1997 eliminated the alternative siting study for generation facilities (See 75-20-301(4)(c), MCA)
- Change 2: Sec. 15, Ch. 329, L. 1997 eliminated requirement of a finding of minimum adverse impact considering the nature and cost of alternatives for generation. (Compare 75-20-301(1) and (3), MCA)
- Change 3: Sec. 15, Ch. 329, L. 1997 eliminated requirement for a finding of the basis of the need for a generation facility. (Compare 75-20-301(1)(a) and (3), MCA)
- Change 4: Sec. 15, Ch. 329, L. 1997 narrowed the range of alternatives to be considered for a proposed generation facility. (See 75-20-301(4)(c), MCA)
- Change 5: Sec. 15, Ch. 329, L. 1997 eliminated requirement for a finding of public interest, convenience and necessity for generation facilities. (Compare 75-20-301(1) and (3), MCA)
- Change 6: Sec. 12, Ch. 329, L. 1997 reduced the time allowed to process an application for certification to one year. (See 75-20-216(3), MCA)

Rules or parts of rules declared not applicable to Petitioner's proposed project are indicated below either by number of a section or sub-section or by interlineations (~~strikeouts~~) of text within a rule. The basis for each declaratory ruling is indicated after that ruling in the following manner: [Reason: Change 1]. In some cases a word or two has been added, as shown by underscoring, to clarify the meaning of the portion of a provision that remains applicable.

Administrative Rules of Montana  
Title 17, Chapter 20  
Sub-Chapter 8

17.20.801 REQUIREMENTS OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW (1) An application must contain the information required by the department of environmental quality and the board of environmental review to determine compliance with applicable standards, permit requirements, and implementation plans under their jurisdiction for the ~~primary and reasonable alternate locations for the proposed facility~~ pursuant to 75-20-216(3), MCA. [Reason: Change 1]

17.20.803 APPLICATION, FORMAT

- (1) remains applicable.
- (2) remains applicable.
- (3) through (3)(c) remain applicable.
- ~~(d) explanation of the need for the facility;~~ [Reason: Change 3.]
- (e) remains applicable
- ~~(f) alternative siting study;~~ [Reason: Change 1.]
- (g) through (i) remain applicable.

17.20.805 SUPPLEMENTAL MATERIAL

- (1) through (1)(b) remain applicable.
- ~~(c) any other changes materially affecting the basis of need for the facility,~~ the engineering design of the facility, or the costs or the environmental impact of the facility. [Reason: Change 3.]
- (2) remains applicable.

17.20.812 is not applicable. [Reason: Change 2]

17.20.817 is not applicable. [Reason: Change 2]

17.20.818 is not applicable. [Reason: Change 2]

Sub-Chapter 9

17.20.901 through 17.20.911, inclusive, are not applicable. [Reason: Change 3]

Sub-Chapter 12

17.20.1201 through 17.20.1203, inclusive, are not applicable. [Reason: Change 3]

Sub-Chapter 13

17.20.1301 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES

- (1) through (5) are not applicable. [Reason: Change 4]
- (6) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially

reduce the ~~cost~~ or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by ARM 17.20.1418(8) and 17.20.1419(8) and (9). [Reason: Change 1]

17.20.1302 is not applicable. [Reason: Change 4]

17.20.1303 is not applicable. [Reason: Change 4]

17.20.1309(1), (2), (4) and (5), inclusive, are applicable only to the extent they are consistent with 75-20-301(4), MCA.

17.20.1309(3) remains applicable only to the extent it is consistent with 75-20-301(4), MCA, except as follows:

An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the ~~cost~~ or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by ARM 17.20.1419(8) and (9). Documentation for process tradeoff studies performed by the applicant must be provided. Published tradeoff studies may be cited by reference. A description of the methods used to select the proposed design for major process areas must be included. [Reason: Change 1]

17.20.1310(1), (3) and (4) remain applicable only to the extent they are consistent with 75-20-301(4), MCA.

17.20.1310(2) remains applicable only to the extent it is consistent with 75-20-301(4), MCA, except as follows:

(a) Performance criteria include:

~~(i) the first year and levelized delivered cost of energy or product, including incremental transmission or transportation costs calculated with and without assistance;~~

(ii) through (b)(ii) remain applicable.

#### Sub-Chapter 14

17.20.1401 through 17.20.1417, inclusive, are not applicable. [Reason: Change 1]

17.20.1418 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of ~~at least 3 alternative sites~~ the proposed site and ~~their~~ its impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facility, and to identify mitigation strategies, ~~and to select the preferred site.~~ [Reason: Change 1]

(2) and (3) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(4) An application must contain an overlay or overlays, as appropriate, to the base map required by (2) of this rule of the baseline data required by ARM 17.20.1419 that can be mapped, ~~the exclusion areas listed in 17.20.1403, the sensitive areas listed in 17.20.1404, and the areas of concern listed in 17.20.1405,~~ that and are within the impact zones associated with each alternative the proposed site. The applicant shall organize the information according to the categories listed in ARM 17.20.1420(3)(c) through (e) and (h) through (m) and shall present the information on the minimum number of overlays to the base map. The applicant shall provide 1 mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations. [Reason: Change 1]

(5) through (8) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

17.20.1419 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected short and long-term changes and impacts that would result from construction, operation and maintenance of the facility and associated facilities for each ~~alternative~~ the proposed site and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and site-specific mitigation measures to reduce or eliminate these impacts. ~~This information shall serve as a basis for evaluating and comparing alternative sites as required by ARM 17.20.1420 and selecting a preferred site as required by 17.20.1421.~~ Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by ARM 17.20.1418(2) that will clearly portray the information. [Reason: Change 1]

(1) An application must contain an overlay depicting the land use information ~~required by ARM 17.20.1416(1)~~ and the following information for an impact zone that includes the area within 5 miles of each ~~alternative~~ the proposed site: [Reason: Change 1]

(a) through (d) remain applicable.

(2) An application must contain a description of the anticipated construction crew for the proposed facility by size, skill, and wage levels, and the variation in size as it relates to the construction schedule, ~~and any significant variations in these factors among the alternative sites.~~ These data must also be provided for the permanent work force, except that variations in size, if any, shall be described as they relate to the operation and maintenance schedule. [Reason: Change 1]

(3) An application must contain an assessment of land use impacts of the facility on agricultural, residential, commercial, industrial, mining, and public land uses based on the information required by (1) of this rule. ~~An application must specify land uses for which there are no significant differences in impacts among the alternative sites.~~ The assessment of land use impacts must address the following:  
[Reason: Change 1]

(a) through (c) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(d) remains applicable.

(4) An application must contain a detailed qualitative and quantitative assessment of social impacts and impacts of the facility on the economy, public and private services, and the fiscal affairs of local governments and school districts for an impact zone that encompasses the area within approximately a 50-mile radius of each ~~alternative~~ the proposed site. ~~At a minimum, the assessment must expand upon and refine information required by ARM 17.20.1416(6). An application must specify any economic, social, public or private services or fiscal characteristics for which there are no significant differences in impacts among the alternative sites.~~ An application must describe the social and economic impacts, if any, on persons involved in agricultural operations and the impacts of changes in agriculture on the overall social and economic characteristics of the impact zone. [Reason: Change 1]

(5) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (c) remain applicable.

(d) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(6) and (7) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (c) remain applicable.

(i) and (ii) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(d) and (e) remain applicable.

(8) An application must contain data concerning the proposed, and if applicable, alternative fuel sources for the facility, ~~and an analysis of the differences in fuel sources among the alternative sites, if any,~~ including the following:  
[Reason: Change 1]

(a) through (9) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (c) remain applicable.

(10) An application must contain visual resource and viewer sensitivity data for each ~~alternative~~ the proposed site

from any recreation area, residential area, national register or national register eligible site ~~identified by ARM 17.20.1403, 17.20.1404 and 17.20.1405.~~ For an impact zone that includes the area from which the facility would be clearly visible, not to exceed 30 miles from the proposed facility, the following information is required: [Reason: Change 1]

(a) through (e) remain applicable.

(f) photographs taken from selected observation point(s) ~~toward the alternative sites,~~ showing in profile or outline form the visible portion of the proposed facility. The photographs must show the full range of study area visual characteristics and must be accompanied by or cross-referenced to appropriate data provided for (c), (d) and (e) above; and [Reason: Change 1]

(g) remains applicable.

(11) through (13) remain applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) and (b) remain applicable.

(c) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(i) through (vii) remain applicable.

(14) An application must contain the following baseline data concerning cropping patterns and natural vegetation for ~~each alternative~~ the proposed site and an impact zone that includes the water intake, storage and/or discharge points and structures, and a 1-mile buffer zone surrounding these associated facilities, areas receiving cooling tower salt deposition greater than 10 lbs./acre/yr., areas receiving the highest tenth percentile of 1-hour, 3-hour, 24-hour, growing season and annual sulfur dioxide concentrations and any other pollutants as depicted on the overlays required by (13) of this rule, and areas within a 1-mile radius of high 1-hour, 3-hour, 24-hour, growing season and annual sulfur dioxide or other pollutant deposition. [Reason: Change 1] ~~To avoid delays in preparing an application that may arise from the sequential analysis required by (13) and (14) of this rule, an application may contain baseline vegetation data collected from areas that existing meteorological or other data suggests will contain the impact zone defined in this section, provided that the applicant submits all additional information necessary to fully comply with the requirements of this section within 6 months of filing its application.~~ [Reason: Change 6]

(a) through (g) remain applicable.

(15) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (f) remain applicable.

(16) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]



(a) through (f)(iv) remain applicable.

(17) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) remains applicable.

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a) above, including a description of biological impacts that would occur, ~~in the sensitive areas or areas of concern listed in ARM 17.20.1404(1)(a) through (e), (h), (2)(c), (i), and (j), (3)(a) and (c), and 17.20.1405(1)(a), (2)(b) through (e), and (3)(d) through (g);~~ [Reason: Change 1]

(c) through (f) remain applicable.

(g) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(h) remains applicable.

(18) ~~Based on the cultural resource description required by ARM 17.20.1416(8),~~ <sup>a</sup>An application must contain cultural resource data for each alternative the proposed site and its impact zones. The impact zones include lands where surface disturbance that occurs during construction and operation of the facility would directly affect the integrity of cultural resources and known sites from which the facility would be clearly visible from a distance of 30 miles or less where the values of the cultural resources may be significantly affected by the visual presence of the facility. An application must contain the following data: [Reason: Change 1]

(a) remains applicable.

(b) based on the results of (a) above and appropriate field checking of site boundaries, a discussion of the accuracy of the ~~overview~~ predictions ~~required by ARM 17.20.1416(8)~~ concerning: [Reason: Change 1]

(i) through (c) remain applicable.

(19) An application must contain an assessment of the potential impacts of the facility on cultural resources for each alternative the proposed site. The assessment must address the potential for physical destruction or degradation during construction or operation of the facility. Cultural resource-related information required by (12) and (21) of this rule will satisfy the visual and recreation-related impact requirements of this section. ~~In addition, for each potentially affected cultural resource property or site defined by ARM 17.20.1404(1)(i) and (2)(d) or by 17.20.1405(2)(f) and (g), and for any properties or sites identified by (18)(c) of this rule that may be potentially eligible for listing on the national register,~~ <sup>t</sup>The assessment must include a discussion of whether the facility would significantly affect the qualities for which these sites or properties were listed or could be listed. [Reason: Change 1]

(20) An application must contain baseline data concerning recreation areas for each alternative the proposed site and its impact zones. For the recreation areas defined

~~by ARM 17.20.1403, 17.20.1404(1)(b) through (e), (1)(i), and (2)(e), national natural landmarks where recreation is listed as a current site use, (2)(d) and (e), and by 17.20.1405(1)(a) and (2)(e) and (h), the impact zone includes the area within a 30-mile radius of the facility if the facility is within view or within a 10-mile radius if not within view of the facility. For the recreation areas listed in (a) and (b) below, the impact zone includes the area within a 5-mile radius of each alternative the proposed site. [Reason: Change 1]~~

(a) and (b) remain applicable.

(c) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(d) remains applicable.

(21) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (d) remain applicable.

(22) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (23) remain applicable.

(24) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (25) remain applicable.

(26) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

(a) through (27) remain applicable.

17.20.1420 is not applicable. [Reason: Change 1]

17.20.1421 is not applicable. [Reason: Change 1]

#### Sub-Chapter 15

17.20.1501 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

17.20.1502 ENERGY GENERATION AND CONVERSION FACILITIES, DESIGN CHARACTERISTICS

(1) through (5) remain applicable.

(6) remains applicable except for references to alternative sites. All requirements apply only to the proposed site. [Reason: Change 1]

#### Sub-Chapter 16

17.20.1601 and 17.20.1602 are not applicable. [Reason: Change 3]

17.20.1603 is not applicable. [Reason: Change 3]

17.20.1604 is not applicable. [Reason: Change 2]

The Department of Environmental Quality hereby declares that the administrative rule provisions indicated above are not applicable to the proposed electric generation project described in the petition for the reasons indicated herein. However, this ruling does not apply to any associated non-generation facilities that independently meet the definition of "facility" at 75-20-104(8), MCA.

This declaratory ruling is subject to judicial review under Title 2, chapter. 4, part 7, MCA.

Curt Chisholm  
Curt Chisholm, Deputy Director

Reviewed by:

Richard R. Thweatt  
Richard R. Thweatt

CERTIFIED TO THE SECRETARY OF STATE JUNE 19, 2000.

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.

Business and Labor 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 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, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, 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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

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To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2000, 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 1999 and 2000 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in May 2000, appear. Vacancies scheduled to appear from July 1, 2000, through September 30, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 5, 2000.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MAY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Nursing Home Administrators (Commerce)			
Ms. Lori Henderson	Governor	Faus	5/30/2000
Havre			5/28/2003
Qualifications (if required): nursing home administrator			
Ms. Donna Kay Jennings	Governor	Vauthier	5/30/2000
Missoula			5/28/2001
Qualifications (if required): representative who cares for aged patients			
Ms. Deborah M. Wilson	Governor	Jennings	5/30/2000
Kalispell			5/28/2005
Qualifications (if required): nursing home administrator			
Board of Real Estate Appraisers (Commerce)			
Mr. David Heine	Governor	Rose	5/26/2000
Kalispell			5/1/2003
Qualifications (if required): real estate appraiser			
Ms. Janeth Martin	Governor	Flechtsenhar	5/26/2000
Helena			5/1/2003
Qualifications (if required): public member			
Board of Realty Regulation (Commerce)			
Ms. Laura Odegaard	Governor	reappointed	5/9/2000
Billings			5/9/2004
Qualifications (if required): realtor			
Board of Veterans' Affairs (Military Affairs)			
Mr. Ruben McKinney	Governor	reappointed	5/18/2000
Havre			5/18/2005
Qualifications (if required): veteran			

BOARD AND COUNCIL APPOINTEES FROM MAY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Disability (Administration)			
Mr. Edward Myers III	Governor	Jones	5/18/2000
Helena			8/12/2000
Qualifications (if required):	public member		
Martin Luther King Holiday Commemorative Commission (Community Services)			
Ms. Gwendolyn Kircher	Governor	not listed	5/8/2000
Billings			3/23/2002
Qualifications (if required):	public member		
Montana Heritage Preservation and Development Commission (Historical Society)			
Mr. F. W. Howell	Governor	reappointed	5/23/2000
West Yellowstone			5/23/2003
Qualifications (if required):	managing a facility catering to tourists		
Ms. Mary Oliver	Governor	Gustafson	5/23/2000
Ennis			5/23/2003
Qualifications (if required):	businessperson		
State Library Commission (Education)			
Ms. Rosemary Garvey	Governor	reappointed	5/22/2000
Butte			5/22/2003
Qualifications (if required):	public member		
Mr. David Johnson	Governor	reappointed	5/22/2000
Billings			5/22/2003
Qualifications (if required):	public member		
Upper Clark Fork River Basin Remediation and Restoration (Environmental Quality)			
Ms. Carol Fox	Governor	Collins	5/24/2000
Helena			4/26/2002
Qualifications (if required):	representative of the Natural Resource Damage Litigation		

BOARD AND COUNCIL APPOINTEES FROM MAY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration (Environmental Quality) cont.			
Ms. Carole Lankford	Governor	not listed	5/24/2000
Pablo			4/26/2002
Qualifications (if required): representative of the Salish and Kootenai Tribes			

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Community Service (Governor) Ms. Nancy Coopersmith, Helena Qualifications (if required): representing K-12 education	Governor	7/1/2000
Ms. Gertrude Downey, Butte Qualifications (if required): representing private citizens	Governor	7/1/2000
Mr. George Dennison, Missoula Qualifications (if required): representing higher education	Governor	7/1/2000
Mr. Joseph Lovelady, Helena Qualifications (if required): representing volunteer organizations	Governor	7/1/2000
Major Joel Cusker, Helena Qualifications (if required): representing Department of Military Affairs	Governor	7/1/2000
Ms. Kathy Ramirez, Helena Qualifications (if required): representing private citizens	Governor	7/1/2000
Aging Advisory Council (Public Health and Human Services) Mr. Dwight MacKay, Billings Qualifications (if required): public member from Region II	Governor	7/18/2000
Ms. Roberta Feller, Stockett Qualifications (if required): public member from Region X	Governor	7/18/2000
Ms. Eloise England, Dupuyer Qualifications (if required): public member from Region VII	Governor	7/18/2000
Alternative Health Care Board (Commerce) Dr. Michael Bergkamp, Helena Qualifications (if required): naturopath	Governor	9/1/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Funeral Services (Commerce) Mr. John Michelotti, Billings Qualifications (if required): mortician	Governor	7/1/2000
Board of Hearing Aid Dispensers (Commerce) Mr. Dudley Anderson, Missoula Qualifications (if required): licensed hearing aid dispenser	Governor	7/1/2000
Board of Landscape Architects (Commerce) Mr. Jim Foley, Billings Qualifications (if required): licensed landscape architect	Governor	7/1/2000
Board of Nursing (Commerce) Ms. Jean E. Ballantyne, Billings Qualifications (if required): registered nurse with teaching experience	Governor	7/1/2000
Board of Pharmacy (Commerce) Mr. Wayne Hedman, Hamilton Qualifications (if required): pharmacist	Governor	7/1/2000
Board of Physical Therapy Examiners (Commerce) Ms. Christine Jensen, Clinton Qualifications (if required): public member	Governor	7/1/2000
Board of Private Security Patrol Officers and Investigators (Commerce) Mr. Gary Racine, Cut Bank Qualifications (if required): representing a county sheriff's department	Governor	8/1/2000
Board of Psychologists (Commerce) Ms. JoAnn Witt, Carter Qualifications (if required): public member	Governor	9/1/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Radiologic Technologists (Commerce) Ms. Jane Christman, Dutton Qualifications (if required): radiologic technologist	Governor	7/1/2000
Board of Research and Commercialization Technology (Commerce) Mr. Gary Buchanan, Billings Qualifications (if required): none specified	President of the Senate	7/1/2000
Board of Sanitarians (Commerce) Ms. Denise Moldroski, Superior Qualifications (if required): registered sanitarian	Governor	7/1/2000
Board of Veterinary Medicine (Commerce) Dr. Deborah Yarborough, Kalispell Qualifications (if required): veterinarian	Governor	7/31/2000
Ms. Mary Hinebauch, Rosebud Qualifications (if required): public member	Governor	7/31/2000
Burial Preservation Board (Indian Affairs) Mr. Duncan Standing Rock, Sr., Box Elder Qualifications (if required): representing the Chippewa-Cree Tribe	Governor	8/22/2000
Mr. Gilbert Horn, Harlem Qualifications (if required): representing the Gros Ventre Tribe	Governor	8/22/2000
Mr. Mickey Nelson, Helena Qualifications (if required): representing the Montana Coroner's Association	Governor	8/22/2000
Committee on Telecommunications Access Services for Disabled (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representing the Montana Public Service Commission	Governor	7/1/2000



VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Access Services for Disabled (Public Health and Human Services) cont.		
Mr. Norman Eck, Helena	Governor	7/1/2000
Qualifications (if required):	representing senior citizens and is not handicapped	
Ms. Sheri Devlin, Billings	Governor	7/1/2000
Qualifications (if required):	representing the Department of Public Health and Human Services	
Ms. Barbara Ranf, Helena	Governor	7/1/2000
Qualifications (if required):	representing the largest exchange carrier in Montana	
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Ms. Lois A. Menzies, Helena	Governor	7/1/2000
Qualifications (if required):	State Treasurer	
Family Support Services Advisory Council (Public Health and Human Services)		
Ms. Jackie Jandt, Helena	Governor	9/14/2000
Qualifications (if required):	addictive and mental disorders representative	
Ms. Barbara Stefanic, Laurel	Governor	9/14/2000
Qualifications (if required):	representing public preschool service providers	
Ms. Sharon Wagner, Helena	Governor	9/14/2000
Qualifications (if required):	representing services for children with special health care needs	
Ms. Sylvia Danforth, Miles City	Governor	9/14/2000
Qualifications (if required):	representing Part C contractors	
Ms. Gwen Beyer, Polson	Governor	9/14/2000
Qualifications (if required):	representing families of children with disabilities	

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Ms. Millie Kindle, Malta Qualifications (if required): representing families of children with disabilities	Governor	9/14/2000
Mr. Ted Maloney, Missoula Qualifications (if required): representing the public	Governor	9/14/2000
Ms. Sue Forest, Missoula Qualifications (if required): representing higher education/personnel preparation	Governor	9/14/2000
Ms. Beth Kenny, Helena Qualifications (if required): representing families of children with disabilities	Governor	9/14/2000
Mr. John Holbrook, Helena Qualifications (if required): representing technical expertise on private insurance issues	Governor	9/14/2000
Ms. Chris Volinkaty, Missoula Qualifications (if required): representing Part C contractor agencies	Governor	9/14/2000
Mr. Dan McCarthy, Helena Qualifications (if required): representing Office of Public Instruction	Governor	9/14/2000
Ms. Sandi Marisdotter, Helena Qualifications (if required): representing Part C contractor agencies	Governor	9/14/2000
Governor's Council on Disability (Administration) Mr. Bill Roberts, Helena Qualifications (if required): public member	Governor	8/12/2000
Mr. James Meldrum, Helena Qualifications (if required): public member	Governor	8/12/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Disability (Administration) cont. Mr. Michael Regnier, Missoula Qualifications (if required): public member	Governor	8/12/2000
Mr. Peter Leech, Missoula Qualifications (if required): public member	Governor	8/12/2000
Ms. Mary Morrison, Missoula Qualifications (if required): public member	Governor	8/12/2000
Governor's Council on Families (Public Health and Human Services) Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): public member	Governor	8/12/2000
Rep. Loren Soft, Billings Qualifications (if required): public member	Governor	8/18/2000
Mr. Kirk Astroth, Belgrade Qualifications (if required): public member	Governor	8/12/2000
Historical Society Board of Trustees (Historical Society) Mr. John Burke, Butte Qualifications (if required): public member	Governor	7/1/2000
Ms. Ana Brenden, Scobey Qualifications (if required): public member	Governor	7/1/2000
Mr. Jack Hayne, Dupuyer Qualifications (if required): public member	Governor	7/1/2000
Montana Historical Records Advisory Council (Historical Society) Mr. Timothy Bernardis, Crow Agency Qualifications (if required): public member	Governor	9/14/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Historical Records Advisory Council (Historical Society) cont. Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	9/14/2000
Ms. Kathryn Otto, Helena Qualifications (if required): State Archivist	Governor	9/14/2000
Mr. Robert M. Clark, Helena Qualifications (if required): public member	Governor	9/14/2000
Montana Mint Committee (Agriculture) Mr. Philip Clarke, Columbia Falls Qualifications (if required): mint grower	Governor	7/1/2000
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): mint grower	Governor	7/1/2000
Montana Wheat and Barley Committee (Agriculture) Mr. Duane Arneklev, Plentywood Qualifications (if required): Democrat from District I	Governor	8/20/2000
Mr. Dan DeBuff, Shawmut Qualifications (if required): Republican from District V	Governor	8/20/2000
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Harry Woll, Kalispell Qualifications (if required): none specified	Director	9/23/2000
Mr. LaMonte Schnur, Townsend Qualifications (if required): none specified	Director	9/23/2000
Mr. Dennis Perry, Choteau Qualifications (if required): none specified	Director	9/23/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Ms. Marjorie Schuler, Carter Qualifications (if required): none specified	Director	9/23/2000
Mr. Bob McNeill, Dillon Qualifications (if required): none specified	Director	9/23/2000
Mr. Kerry Kovanda, Columbus Qualifications (if required): none specified	Director	9/23/2000
Mr. W. Ralph Peck, Helena Qualifications (if required): none specified	Director	9/23/2000
Mr. Don Walker, Glendive Qualifications (if required): none specified	Director	9/23/2000
Mr. Robert Carlson, Butte Qualifications (if required): none specified	Director	9/23/2000
Mr. Ray Ditterline, Bozeman Qualifications (if required): none specified	Director	9/23/2000
Mr. Dennis Cash, Bozeman Qualifications (if required): none specified	Director	9/23/2000
Risk Management Advisory Council (Administration) Mr. Gary Managhan, Helena Qualifications (if required): representing the Secretary of State's Office	Governor	8/26/2000
Ms. Karen Munro, Helena Qualifications (if required): representing the Department of Justice	Governor	8/26/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (Administration) cont. Mr. Bruce Swick, Helena Qualifications (if required): representing the Department of Natural Resources and Conservation	Governor	8/26/2000
Ms. Geralyn Driscoll, Helena Qualifications (if required): representing the Office of Public Instruction	Governor	8/26/2000
Ms. Donna Campbell, Helena Qualifications (if required): representing the Department of Fish, Wildlife and Parks	Governor	8/26/2000
Mr. Forest Farris, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	8/26/2000
Mr. Thomas H. Gibson, Bozeman Qualifications (if required): representing the University System	Governor	8/26/2000
Mr. Bob Person, Helena Qualifications (if required): representing the Office of the Legislative Services Division	Governor	8/26/2000
Ms. Cathy Muri, Helena Qualifications (if required): representing the Governor's Office	Governor	8/26/2000
Mr. Michael Buckley, Helena Qualifications (if required): representing the Department of Transportation	Governor	8/26/2000
Mr. Patrick A. Chenovick, Helena Qualifications (if required): representing the Montana Judiciary	Governor	8/26/2000
Ms. Barb Charlton, Helena Qualifications (if required): representing the Department of Commerce	Governor	8/26/2000

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2000 through SEPTEMBER 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (Administration) cont. Ms. Laura Calkin, Helena Qualifications (if required): representing the Public Service Commission	Governor	8/26/2000
State Banking Board (Commerce) Ms. Barbara Skelton, Butte Qualifications (if required): public member	Governor	7/1/2000
Tourism Advisory Council (Commerce) Mr. Ed Henrich, Anaconda Qualifications (if required): representing Gold West Country	Governor	7/1/2000
Mr. Tim Prather, Red Lodge Qualifications (if required): representing Yellowstone Country	Governor	7/1/2000
Ms. Donna Madson, West Yellowstone Qualifications (if required): representing Yellowstone Country	Governor	7/1/2000