

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the end of each register.

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

LABOR AND INDUSTRY, Department of, Title 24

8-32-66 (Board of Nursing) Notice of Public Hearing on Proposed Amendment - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse - Conduct of Nurses.	516-519
24-29-192 Notice of Public Hearing on Proposed Amendment - Travel Expense Reimbursement for Workers' Compensation Medical Services.	520-524
24-35-193 Notice of Public Hearing on Proposed Amendment - Fee for Independent Contractor Exemption Certificates - Fee for Construction Contractor Registration.	525-529
24-183-29 (Board of Professional Engineers and Land Surveyors) Notice of Public Hearing on Proposed Amendment - Form of Corner Records.	530-534
24-219-20 (Board of Social Work Examiners and Professional Counselors) Notice of Public Hearing on Proposed Amendment - Defining Pastoral Counseling.	535-537

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-107 (Board of Oil and Gas Conservation)
Notice of Proposed Amendment - Privilege and
License Tax Rates for Oil and Gas. No Public
Hearing Contemplated. 538-540

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-344 Notice of Public Hearing on Proposed
Adoption and Amendment - School Immunization
Requirements. 541-567

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-190 Amended Notice of Proposed Adoption,
Amendment, and Repeal - Telecommunications Service
Standards. No Public Hearing Contemplated. 568-570

RULE SECTION

ADMINISTRATION, Department of, Title 2

REP Parental Leave. 571

COMMERCE, Department of, Title 8

NEW Administration of the 2005-2006 Federal
Community Development Block Grant (CDBG)
Program. 572-574

EDUCATION, Title 10

(Board of Public Education)

NEW Student Discipline - Student Records. 575
AMD

AMD Professional Educator Preparation Programs. 576

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Board of Environmental Review) (Public Water
Supply) Fees for Review of Public Water and
Sewage System Plans and Specifications. 577-580

LABOR AND INDUSTRY, Department of, Title 24

TRANS Construction Blasters - Hoisting and Crane
Operators - Boiler Engineers. 581-582

LABOR AND INDUSTRY, Continued

NEW	Boilers - Terminology - Licensure -	
REP	Examinations - Responsibility of Licensees -	
	Training.	583-589

SPECIAL NOTICE AND TABLE SECTION

	Function of Administrative Rule Review Committee.	590-591
	How to Use ARM and MAR.	592
	Accumulative Table.	593-601

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.32.402) ON PROPOSED AMENDMENT
licensure by examination,)
ARM 8.32.403 reexamination -)
registered nurse, ARM 8.32.404)
reexamination - practical nurse,)
and ARM 8.32.413 conduct of nurses)

TO: All Concerned Persons

1. On, May 5, 2005 at 1:00 p.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., April 29, 2005, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

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

8.32.402 LICENSURE BY EXAMINATION (1) through (9) remain the same.

(10) Candidates who fail shall receive the results of the examination and are not eligible to re-test for ~~90~~ 45 days.

(11) Each school of nursing in Montana shall receive a quarterly statistical summary reports ~~of the test results from that school its NCLEX results as well as state and national NCLEX results.~~

(12) and (13) remain the same.

AUTH: 37-8-202, MCA
IMP: 37-8-406, 37-8-416, MCA

REASON: The Board of Nursing finds it necessary to amend this rule because the National Council of State Boards of Nursing has recently revised its rules to allow an individual to retest after only 45 days. The previous waiting period was 90 days. Amending this rule will allow those who fail the exam to retest within 45 days instead of waiting 90 days. The

Board believes that the sooner an individual passes the exam and begins working as a nurse, the less likely the individual is to lose clinical competency skills.

The amendment will affect all license applicants who fail the NCLEX examination. Approximately 12 practical nursing applicants and 15 registered nursing applicants fail the NCLEX each year in Montana.

This amendment presents no fiscal impact.

8.32.403 REEXAMINATION - REGISTERED NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after ~~90~~ 45 days. Effective October 1, 2000, a candidate may retake the examination one time. If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again. A candidate may take the test a maximum of five times in three years. If a candidate does not pass the examination within three years, the individual will be required to complete a school of nursing program before being able to test a sixth time.

AUTH: 37-8-202, MCA
IMP: 37-8-202, 37-8-406, MCA

REASON: The Board of Nursing finds it necessary to amend this rule because the National Council of State Boards of Nursing has recently revised its rules to allow an individual to retest after only 45 days. The previous waiting period was 90 days. Amending this rule will allow those who fail the exam to retest within 45 days instead of waiting 90 days. The Board believes that the sooner an individual passes the exam and begins working as a nurse, the less likely the individual is to lose clinical competency skills.

The amendment will affect all license applicants who fail the NCLEX examination. Approximately 15 registered nursing applicants fail the NCLEX each year in Montana.

This amendment presents no fiscal impact.

8.32.404 REEXAMINATION - PRACTICAL NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after ~~90~~ 45 days. Effective October 1, 2000, a candidate may retake the examination one time. If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again. A candidate may take the test a maximum of five times in three years. If a candidate does not pass the examination within three years, the individual will be

required to complete a school of nursing program before being able to test a sixth time.

AUTH: 37-8-202, MCA
IMP: 37-8-202, 37-8-416, MCA

REASON: The Board of Nursing finds it necessary to amend this rule because the National Council of State Boards of Nursing has recently revised its rules to allow an individual to retest after only 45 days. The previous waiting period was 90 days. Amending this rule will allow those who fail the exam to retest, and hopefully pass within 45 days instead of waiting 90 days. The Board believes that the sooner an individual passes the exam and begins working as a nurse, the less likely the individual is to lose clinical competency skills.

The amendment will affect all license applicants who fail the NCLEX examination. Approximately 12 practical nursing applicants fail the NCLEX each year in Montana.

This amendment presents no fiscal impact.

8.32.413 CONDUCT OF NURSES (1) through (2)(s) remain the same.

(t) failing to participate and cooperate in a professional and occupational licensing division investigation; and

(u) failing to report to the board office within 30 days of the date of the final judgment, order, or agency action, any malpractice, professional misconduct, criminal, or disciplinary action in which the nurse or the nurse's employer, on account of the nurse's conduct, is a named party.

AUTH: 37-1-105, 37-1-319, 37-8-202, MCA
IMP: 37-1-316, 37-1-319, 37-8-202, MCA

REASON: Presently, nurses are required to disclose on their license renewal applications, any malpractice-related or criminal or disciplinary actions against them since their last renewal. Because licenses are renewed every 2 years, grounds for discipline including license suspension or revocation may exist for nearly that long before the Board office becomes aware of such information. That circumstance poses a risk to public safety. This proposed rule amendment would help ensure that license discipline and appropriate interventions are undertaken in a more timely manner.

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, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-

mail to dlibsdnur@mt.gov, and must be received no later than 5:00 p.m., May 13, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at <http://www.nurse.mt.gov>. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of 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, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

8. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
KAREN POLLINGTON, RN, CHAIRPERSON

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State April 4, 2005.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.29.1409,) ON PROPOSED AMENDMENT
relating to travel expense)
reimbursement for workers')
compensation medical services)

TO: All Concerned Persons

1. On May 11, 2005, at 1:00 p.m. the Department of Labor and Industry will hold a public hearing in the First Floor Conference Room, room 104 of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.29.1409 regarding travel expense reimbursement for workers' compensation purposes.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., May 5, 2005, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulation Bureau, Attn: Jeanne Johns, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or via email jjohns@mt.gov.

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

24.29.1409 TRAVEL EXPENSE REIMBURSEMENT (1) and (2) remain the same.

(3) For claims arising ~~on or after~~ from July 1, 1993, through June 30, 2001, travel expenses are not reimbursed unless the travel is at the request of the insurer. Travel is "at the request of the insurer" when the insurer directs the claimant to: change treating physician; attend an independent medical examination; use a preferred provider; or be treated by a managed care organization. If travel expenses are to be reimbursed, then reimbursement shall be determined as follows:

(a) through (e) remain the same.

(4) For claims arising on or after July 1, 2001, payment of travel expense is subject to the following:

(a) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for travel expense reimbursement that are not submitted within 90 days may be denied by the insurer. The insurer must notify the injured worker that the request for travel expense reimbursement must be submitted within 90 days from the date the expense was incurred in order to be reimbursed. If the insurer fails to notify the

claimant of the claimant's entitlement to travel expenses and 90 days has passed since the expense was incurred, the insurer must pay the travel.

(b) The type of travel selected must be the least costly form of travel unless the travel is not suitable for the claimant's medical condition.

(c) Reimbursement of travel is excluded under the following conditions:

(i) The first 100 miles of automobile travel are excluded each month unless the insurer requested the travel.

(ii) Travel to a medical provider within the claimant's community is excluded.

(iii) Travel outside the claimant's community is excluded if comparable treatment is available within the community, unless the insurer requests the claimant to travel to another community.

(iv) Travel is excluded when it is incurred while traveling to unauthorized or disallowed treatment or procedures.

(d) For purposes of this rule, "community" means the area within a 30 mile radius of the claimant's residence as determined by the most direct automobile route between the claimant's residence and the provider.

(e) The insurer is not liable for injuries that result from an accident that occurs during travel for treatment of the claim as provided in 39-71-704, MCA.

(f) Reimbursement for travel expenses shall be determined as follows:

(i) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the claimant's residence and the provider.

(ii) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(iii) Actual out-of-pocket receipted lodging expenses incurred by the claimant shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the claimant stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.

(iv) Miscellaneous transportation expenses, such as taxi fares or parking fees are reimbursable and must be supported by paid receipts.

(4)(a)(5) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the ~~injured worker~~ claimant, or when less costly forms of travel are not suitable to the ~~injured worker's~~

claimant's medical condition.

~~(b)(a)~~ If ~~an injured worker~~ a claimant chooses to use commercial transportation when a less costly form of travel suitable to ~~his~~ the claimant's medical condition is available, reimbursement shall be made according to the rates associated with the least costly form of travel.

(6) When liability has not been accepted on a claim under the Occupational Disease Act and the department schedules a medical examination, the insurer shall reimburse the claimant for travel expenses pursuant to this rule.

(5) remains the same, but is renumbered (7).

AUTH: 39-71-203, 39-72-203 and 39-72-402, MCA

IMP: 39-71-704, 39-72-602 and 39-72-608, MCA

REASON: There is reasonable necessity to amend this rule to set out changes in travel expense reimbursement requirements pursuant to amendments made to section 39-71-704, MCA, in 2001. Currently, the rule outlines reimbursement requirements depending on the date of loss. The additions to the rule are necessary to clarify the requirements for claims arising on or after July 1, 2001. Some elements of section 39-71-704, MCA, are restated for ease of reference of the claimants and adjusters who look to this rule for all claims, no matter what the time period in which the underlying claim was incurred.

Specifically, it is necessary to state that insurers must give notice to claimants that travel expense reimbursement requests must be received within 90 days of travel. The rule clarifies that if an insurer fails to give notice of the 90 day requirement, the insurer must pay for the expense. Conversely, the rule clarifies that if after receiving notice, the claimant fails to submit an expense within 90 days, the insurer may deny reimbursement for the expense.

There is reasonable necessity to list the types of travel that are excluded from reimbursement as directed by section 39-71-704, MCA. Because of the different types of communities in Montana, it is also reasonably necessary to add to the definition of community in (3)(a) by further defining a community in (4)(d) as the area within a 30 mile radius of the claimant's residence for purposes of the rule.

Because insurers have indicated confusion regarding travel reimbursement when the department orders an examination of a claimant on a disputed claim under the Occupational Disease Act pursuant to section 39-72-602, MCA, it is reasonably necessary to clarify that the insurer must pay for travel associated with the evaluation, as directed by section 39-72-608, MCA.

Finally, there is reasonable necessity to amend the AUTH and IMP citations to clarify that the rule applies to occupational disease claims and claimants.

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:

Keith Messmer, Bureau Chief
Workers' Compensation Regulation Bureau
Employment Relations Division
Department of Labor and Industry
PO Box 8011
Helena, Montana 59624-8011

and must be received by no later than 5:00 p.m., May 18, 2005. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://dli.state.mt.us/forum.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., May 18, 2005. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. The Department maintains lists 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 mailing lists shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the Department.

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

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State: April 4, 2005

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.35.121) ON PROPOSED AMENDMENT
regarding the fee for)
independent contractor)
exemption certificates and)
ARM 24.33.121 regarding)
the fee for construction)
contractor registration)

TO: All Concerned Persons

1. On May 10, 2005, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of ARM 24.35.121 regarding the fee for independent contractor exemption certificates and ARM 24.33.121 regarding the fee for construction contractor registration.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., May 4, 2005, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulation Bureau, Attn: Dallas Cox, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-9587; fax (406) 444-3465; TDD (406) 444-5549; or email dcox@mt.gov.

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

24.35.121 APPLICATION AND RENEWAL FEE FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE (1) For the purposes of this rule, the following definitions apply:

(a) "Initial application" means a person's first-time application for exemption as an independent contractor in a particular trade(s), occupation(s), profession(s) or business(es).

(b) "Renewal application" means an application for renewal of an existing independent contractor exemption certificate held by that person.

(c) "Subsequent application" means:

(i) an application submitted for reconsideration following the department's denial of an initial application or renewal application;

(ii) an application submitted during a current exemption certificate period requesting the deletion, revision or addition

of the trades, occupations, professions, or businesses for which the current exemption certificate was issued; or

(iii) an application to reinstate an independent contractor exemption certificate that has been suspended, revoked or terminated.

(2) A fee, ~~as set by 39-71-401, MCA, will be of \$125 is~~ charged for each initial, subsequent and renewal application.

(3) Exemption certificates are issued for a two-year period, as provided by law.

~~(3)(4)~~ The department may charge a \$10 fee for the reissuance of a current certificate.

~~(4) If a person is concurrently registering with the department as a construction contractor pursuant to Title 39, chapter 9, MCA, and rules adopted to implement that chapter, the initial and renewal application fee for an independent contractor exemption is waived.~~

AUTH: ~~39-9-103,~~ 39-71-203 and 39-71-401, MCA

IMP: ~~39-71-206,~~ 39-71-120, 39-71-401, [Senate Bill 108, Sections 1 and 2, L. 2005], MCA

REASON: There is reasonable necessity to amend this rule due to changes to the Independent Contractor (IC) exemption program process contemplated by Senate Bill 108. Because Senate Bill 108 will be effective immediately on passage and approval, it is reasonably necessary to propose the necessary changes before the bill actually becomes law. The fee changes will only be effective upon final agency action, if and only if the bill becomes law.

Specifically, it is reasonably necessary to set the fee for an independent contractor exemption certificate at \$125 for a two-year period because the Department determined this fee will generate revenue sufficient to fully fund the costs of operating the revised program. The proposed fee will address the structural imbalance between historical operating costs and the statutory \$17 fee. The fee level assumes there would be 10,000 IC applications each fiscal year by averaging the number of applications from the previous two years; in FY 2003 there were 8,215 and in FY 2004 there were 12,141 applications. This rate further assumes enforcement of Senate Bill 108 would require six additional FTE, all grade 14 auditors, hired at market rates and given standard support services including vehicles, computers, phones, and office furniture. The rate further assumes the IC program would contract to design and implement a web-based computer system to handle the applications and the history of the IC applicants. The contract amount is estimated to be \$500,000 spread over the biennium. The IC program would also spend \$185,000 each year on a statewide education component. The Department estimates that approximately 10,000 individuals a year will be directly affected by the proposed rule changes, with an estimated approximate aggregate increase of \$1,080,000 per year.

In addition, it is reasonably necessary to clarify the terminology used in the rule to indicate independent contractor exemption "certificates" because Senate Bill 108 uses the term "certificates" for the revised program.

It is also reasonably necessary to delete former section (4) because Chapter 133, Laws of 2005 (Senate Bill 64) removed the statutory provision that waives the independent contractor exemption certificate fee for individuals registering as construction contractors and replaces it with a statutory provision that requires individuals to pay both the construction contractor registration fee and the independent contractor exemption certificate fee. Senate Bill 64 became law on March 30, 2005.

Finally, it is reasonably necessary to delete the inaccurate IMP citation that should have been section 39-9-206, MCA, as the formerly implemented provisions have been stricken by Senate Bill 64. The Department notes that the citations to Senate Bill 108 will be replaced with MCA cites as soon as sections 1 and 2 of the bill are codified.

24.33.121 CONSTRUCTION CONTRACTOR REGISTRATION FEES

(1) The fee for the issuance, renewal or reinstatement of a construction contractor certificate of registration is ~~\$70.00~~ \$53.00. ~~As of July 1, 1997, registrations are made for a two-year period, as provided by law.~~

AUTH: 39-9-103, MCA
IMP: 39-9-206, MCA

REASON: It is reasonably necessary to amend this rule due to changes to the Construction Contractor Registration program required by Chap. 133, L. of 2005 (Senate Bill 64).

Specifically, Senate Bill 64 removed the statutory provision that waives the independent contractor exemption certificate fee for individuals registering as construction contractors and replaces it with a statutory provision that requires individuals to pay both the construction contractor registration fee and the independent contractor exemption certificate fee. Because the Department will no longer have to process independent contractor exemption certificates as part of the construction contractor registration program, this separation of the fees results in reduced revenue needed for the contractor registration functions. The Department is required to set the fee at an amount that will cover the costs of the program by 39-9-206, MCA, so the amendment proposes to reduce the fee accordingly. The Department estimates that the number of construction contractor registration certificates will remain relatively stable. There are currently 10,601 contractor registration certificates issued. In FY 2004, the department issued 2,471 contractor registration certificates. The department assumes that these certificates will be up for renewal in FY 2006 and

anticipates the remaining 8,130 will be renewed in FY 2007. The Department estimates that approximately 10,000 individuals per biennium will be affected by the proposed change, and that construction contractor registrations fees will decrease approximately \$170,000 during the biennium.

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:

Keith Messmer, Bureau Chief
Workers' Compensation Regulation Bureau
Employment Relations Division
Department of Labor and Industry
PO Box 8011
Helena, Montana 59624-8011

and must be received by no later than 5:00 p.m., May 17, 2005. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://dli.state.mt.us/forum.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., May 17, 2005. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. The Department maintains lists 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 mailing lists shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written requests may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the Department.

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

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

9. The Department, as noted in the statement of reasonable necessity, intends to implement the proposed amendments to ARM 24.35.121 not sooner than the date Senate Bill 108 is effective, or as soon as possible after the effective date of the bill. The Department intends to apply the amendments to ARM 24.35.121 retroactively to applications for independent contractor exemption certificates made on or after the effective date of Senate Bill 108.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State: April 4, 2005

BEFORE THE BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.183.1001,) ON PROPOSED AMENDMENT
pertaining to form of corner)
records)

TO: All Concerned Persons

1. On May 5, 2005, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Todd Boucher no later than 5:00 p.m., April 29, 2005, to advise us of the nature of the accommodation you need. Please contact Todd Boucher, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpels@mt.gov.

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

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the board of professional engineers and land surveyors. The approved version of the form for public land survey system was adopted by the board on July 1, 1981, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, ~~82 Stonecrest Drive, Kalispell~~ P.O. Box 359, Columbia Falls, Montana 59901 59912, ~~or~~ by contacting the association directly at (406) ~~756-0680~~ 892-4579, or on the internet at www.marls.com.

(2) The information to be included in a corner record is as follows:

(a) ~~Original and subsequent record: This item should describe or quote~~ A description or quotation of those portions of the original or subsequent record which were used in evaluating the corner position.

(i) The original record for corners of government surveys will usually be the general land office field notes.

(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey or other surveys of record.

(iii) Subsequent record can come from several sources: such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data helps support the reestablished corner position because they clearly show on what history the surveyor based his the corner position on. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, should if applicable, must appear on the corner record.

~~(b) Description of evidence found or method of locating corner position: This item will describe~~ A description of the original or subsequent record evidence found that locates the corner position.

(i) If portions of the found evidence cannot be reconciled with the record, then the disregarded record should must be noted, and if possible, an opinion as to its cause narrated.

(ii) If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated corner (single proportion, fence intersection, parol evidence, terrain calls, centerline of road, etc.) shall be indicated.

(iii) Measurements used to establish proportioned positions must be shown on the corner recordation form or on a filed certificate of survey or subdivision plat referenced on the recordation form.

~~(c) Description of monuments and accessories set to perpetuate the corner position: This item should list~~ A listing of all details about the corner and its location which will help exclusively identify the corner position, including size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included.

(i) For public land survey system corners requiring recordation, sufficient information must be shown on the form to enable subsequent surveyors to verify the corner position identified on the form, and to reestablish the corner position if the monument is obliterated. Ideally, the references will be to at least two identifiable accessories or surveyed dimensions to two survey monuments.

(ii) References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to certificate of survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are

shown, then the control upon which they are based should be indicated.

(d) ~~Sketch of corner: This item will usually~~ A sketch of the corner to show how a found or set corner is marked and may also or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified.

(e) ~~Certification: The name and signature of the ground party chief is optional.~~ The surveyor who performed or directed the field work which is depicted on the ~~"certified corner record"~~ corner record shall sign and affix his the licensee's seal in the certification.

(i) The affixing of the licensee's seal constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana and the rules implementing the Act.

(ii) The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.

(f) ~~Cross index and section diagram: The~~ For public land survey system corners, the cross index at the bottom of the page should must be completed by the surveyor. Only the single township and range index where the corner is filed shall is to be completed.

(i) For corner records to be filed under the survey of record index, the index information must be filled in as completely as possible by the surveyor and made clear the name and number(s) of the recorded survey and the lot or parcel designation. The lower righthand corner is a corner location diagram and should must have the pertinent section number filled in at the top and a closed circle indicating the appropriate corner position in the section filled in. This is intended to be an aid in searching the "record" record once it has been filed.

AUTH: 37-67-202, 70-22-107, MCA
IMP: 70-22-107, MCA

REASON: There is reasonable necessity for the Board of Professional Engineers and Land Surveyors (the Board) to amend ARM 24.183.1001 to update the references to the most recently adopted corner recordation form, which was approved by the Board in February 2004 at the request of the Montana Association of Registered Land Surveyors. In addition, there is reasonable necessity to amend the rule by clarifying the various items of information that are to be included by the surveyor on the form, in order to update terminology and usage. There is reasonable necessity to update the citation with an additional source of the Board's rulemaking authority

when the rule is otherwise being amended. Finally, there is reasonable necessity to amend the rule to delete the so-called internal catchphrases, pursuant to ARM 1.2.215(1), and to make usage consistent with the style guidelines promulgated in the Legislative Services Division's Bill Drafting Manual.

The Board notes that somewhat similar changes were proposed for ARM 24.183.1001 last year (in MAR Notice No. 24-183-28, published July 22, 2004), but that after public comment, the Board decided not to take final action at that time. The version proposed here incorporates, in part, comments made about the prior proposal.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Todd Boucher, Board of Professional Engineers and Land Surveyors, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpels@mt.gov and must be received no later than 5:00 p.m., May 13, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://engineer.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

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

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
PAULETTE FERGUSON, PRESIDING
OFFICER

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 4, 2005

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.219.301) ON PROPOSED AMENDMENT
defining pastoral counseling)

TO: All Concerned Persons

1. On May 6, 2005, at 10:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors no later than 5:00 p.m., on May 2, 2005, to advise us of the nature of the accommodation needed. Please contact Cynthia Reichenbach, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdswp@mt.gov.

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

24.219.301 DEFINITIONS (1) remains the same but is renumbered (4).

(2) remains the same but is renumbered (1).

(3) "Pastoral counseling" means services as provided by:

(a) a rabbi, priest, minister or member of the clergy of any religious denomination or sect when engaged in activities within the scope of the performance of the clergy member's regular or specialized ministerial duties and for which no separate charge is made; or

(b) individuals not engaged in private practice and performed, without charge, for or under the sponsorship of an established and legally recognizable church, denomination, or sect, individually or in conjunction with other services, and when the individual rendering such services remains accountable to the established authority thereof.

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

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

(5) remains the same.

AUTH: 37-22-201, 37-23-103, MCA

IMP: 37-22-102, 37-22-201, 37-22-305, 37-23-201, MCA

REASON: The Board has determined there is reasonable necessity

to amend this rule to further define and delineate what constitutes "pastoral counseling." Adoption of this definition will help to alleviate the substantial confusion that exists among licensees and the general public concerning the exemption from licensure for pastoral counseling activities pursuant to 37-22-305 and 37-23-201, MCA. In addition, there is reasonable necessity to re-order the defined terms into alphabetical order to make it easier for readers to find those terms.

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 mailed to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to (406) 841-2305, or e-mailed to dlibsdswp@mt.gov and must be received no later than 5:00 p.m., May 16, 2005.

5. An electronic copy of the Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.mt.gov/dli/swp>, in the Board's rule notice section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board 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 wants to receive notices regarding all Board of Social Work Examiners and Professional Counselors administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed or delivered to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to (406) 841-2305, e-mailed to dlibsdswp@mt.gov, or may be made by completing a request form at any rules hearing held by the Department.

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

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

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
MARY MEIS, CHAIR

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State April 4, 2005

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 36.22.1242) AMENDMENT
relating to privilege and)
license tax rates for oil and) NO PUBLIC HEARING
gas) CONTEMPLATED

TO: All Concerned Persons

1. On June 9, 2005, the board proposes to amend ARM 36.22.1242 relating to privilege and license tax rates for oil and gas production.

2. The Board of Oil and Gas Conservation will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Oil and Gas Conservation no later than 5:00 p.m. on May 19, 2005, to advise us of the nature of the accommodation you need. Please contact Terri Perrigo, Board of Oil and Gas Conservation, P.O. Box 201601, Helena, Montana 59620-1601; telephone (406) 444-6675; fax number (406) 444-2453; e-mail address tperrigo@mt.gov.

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

36.22.1242 REPORTS BY PRODUCERS - TAX REPORT - TAX RATE

(1) remains the same.

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be ~~86.66~~ 60.00% ~~per cent (2.6/10ths~~ 1.8/10ths of 1%) of the rate authorized in 82-11-131, MCA, (3/10ths of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after ~~July 1, 2001~~ July 1, 2005 ~~through June 30, 2006, at which time the rate returns to the maximum authorized in 82-11-131, MCA.~~

AUTH: 82-11-111, MCA

IMP: 82-11-123, 82-11-131, MCA

REASONABLE NECESSITY: The Board of Oil and Gas Conservation proposes to reduce its assessment of privilege and license tax, as authorized in Section 82-11-131, MCA, because the revenue distributed to the Board at the current assessment rate exceeds the amount needed to support Board operations and the Board does not want its fund balance to continue to grow.

Privilege and license tax is paid by approximately 350 oil and gas operators and producers in the State of Montana. The Board's current assessment of privilege and license tax is 2 and 6/10's of one percent on each barrel of crude petroleum produced and each 10,000 cubic feet of natural gas produced. The Board is proposing to reduce that assessment to 1 and 8/10's of one percent. However, the proposed reduction to the Board's assessment will not reduce the amount of privilege and license taxes paid by operators and producers. While the Board will receive a reduced distribution of privilege and license tax proceeds through its assessment reduction, House Bill 758 allocates the revenue derived from the difference between the current and reduced Board assessment rates to counties.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Terri Perrigo
Board of Oil and Gas Conservation
P.O. Box 201601
Helena MT 59620-1601

Any comments must be received no later than June 2, 2005.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Terri Perrigo at the address above. A written request for a hearing must be received no later than June 2, 2005.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee; from a governmental subdivision or agency; 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 35 persons based on 350 active oil and gas operators.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's website at <http://www.dnrc.state.mt.us>. The department strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version, as printed in the Montana Administrative Register. However, the department advises that it will decide any conflict between the official printed version and the electronic version in favor of the official printed version. In addition, the department advises that the

website might be inaccessible at times, due to system maintenance or technical problems.

8. The Board of Oil and Gas Conservation 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 4 above or faxed to the office at (406) 444-2453, or may be made by completing a request form at any rules hearing held by the Board.

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

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BOARD OF OIL AND
GAS CONSERVATION

By: /s/ Mary Sexton
MARY SEXTON
Director

By: /s/ Terri Perrigo
TERRI PERRIGO
Executive Secretary
Board of Oil and Gas
Conservation

By: /s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State April 4, 2005.

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

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of New Rules I through III)	ON PROPOSED ADOPTION AND
and the amendment of ARM)	AMENDMENT
37.114.701, 37.114.702,)	
37.114.704, 37.114.705,)	
37.114.708, 37.114.709,)	
37.114.710, 37.114.715,)	
37.114.716, 37.114.720 and)	
37.114.721 pertaining to)	
school immunization)	
requirements)	

TO: All Interested Persons

1. On May 6, 2005, 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 adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 25, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS (1) The following are considered adequate documentation of immunization for the purposes of this subchapter, subject to the restriction in (2):

(a) a record from any local health department in the United States, signed by a local health officer or nurse;

(b) a certificate signed by a local health officer or nurse;

(c) any immunization record, if information has been recorded and signed or stamped by a physician, physician's designee, local health officer, or that officer's designee;

(d) a form approved by the U.S. federal government;

(e) any state's official parent maintained immunization record;

(f) the international certificates of vaccination approved by the world health organization;

(g) the conditional enrollment form prescribed by the department;

(h) documentation of a medical exemption signed by a physician;

(i) documentation of a religious exemption, signed and notarized at the start of each school year, or, in a postsecondary setting, each year beginning with the date the pupil commences attendance; or

(j) in the case of vaccine administered outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.

(2) Vaccine administration data may not be filled out by a parent, guardian or other person unless they are a physician, health department official or person otherwise authorized to do so by this subchapter.

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-402, MCA

RULE II DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE IN A POSTSECONDARY SCHOOL

(1) Postsecondary schools must keep immunization data for each pupil either on HES 101 or on another document that includes, at a minimum:

(a) the pupil's name and birth date;

(b) the vaccination dose type administered to the pupil; and

(c) the month, day and year each dose was administered, unless only the month and year of administration are known, in which case the administration date will be considered to be the first day of that month.

(2) Documentation of the proof of measles and rubella immunity required by ARM 37.114.709 must meet the following standards:

(a) there must be adequate documentation of the doses required by ARM 37.114.709, subject to the following restrictions:

(i) no measles vaccination given before 1967 is valid; and

(ii) no rubella vaccination given before 1969 is valid;

(b) if the pupil was born prior to January 1, 1957, proof of age must be made through a driver's license, school transcript, birth certificate, or passport, as long as the date of birth is indicated on the document;

(c) if a laboratory report is submitted to prove immunity, it must come from a CLIA approved laboratory report and:

(i) indicate that the person is immune to either measles and rubella, or rubella alone if the pupil was born prior to 1957;

(ii) specify the type of test performed and the test date; and

(iii) include a determination from the clinician interpreting the laboratory results.

(3) The documentation of immunization status must be kept on file with the immunization records required by (1).

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-406, MCA

RULE III REQUIREMENTS FOR CONDITIONAL ENROLLMENT IN A POSTSECONDARY SCHOOL (1) A prospective pupil who has not received two doses of live measles (rubeola) and rubella vaccine or provided the school with the alternative documentation allowed by ARM 37.114.709(2) may be admitted to postsecondary school under the following conditions:

(a) the prospective pupil must receive a second dose of live measles and rubella vaccine before the beginning of the succeeding school term and no earlier than 28 days after administration of the first dose of measles and rubella vaccine; and

(b) the conditional enrollment form must be signed by the prospective pupil, acknowledging the measles and rubella immunization schedule and deadline date for compliance.

(2) If the pupil attending school conditionally fails to complete measles and rubella immunization within the time period indicated in (1)(a), the pupil must either qualify for and claim an exemption from measles and rubella immunization or be excluded immediately from school by the school administrator or that person's designee.

(3) A pupil excluded from school due to failure to receive the second dose of measles and rubella vaccine by the deadline specified in (1)(a) may continue school only after the pupil has received a second dose of measles and rubella vaccine or claims an exemption from immunization.

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-402, 20-5-404, 20-5-405 and 20-5-408, MCA

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

37.114.701 DEFINITIONS The following definitions, together with the definitions contained in 20-5-402, MCA, apply throughout this subchapter:

(1) "ACIP" means the advisory committee on immunization practices of the U.S. public health service.

~~(1) (2)~~ "Adequate documentation" means that documentation required by either ARM 37.114.708 or 37.114.799, depending upon the date when school attendance commenced or is to commence documentation which meets the specifications set forth in [Rule I].

(3) "CLIA" means the federal clinical laboratory improvement amendments of 1988.

~~(2) (4)~~ "Commencing attendance for the first time" means the first occasion a ~~student~~ pupil attends any Montana school, and does not include transfers from one Montana school to

another.

~~(3)~~ (5) "Department" means the department of public health and human services.

~~(4)~~ (6) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

~~(5)~~ (7) "DTP vaccine" and "DTaP vaccine" ~~means a mean~~ vaccines containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, ~~including a vaccine referred to as DtaP~~ that are recommended for children under seven years of age.

~~(6)~~ (8) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

~~(7)~~ "~~Laboratory confirmation of measles disease~~" ~~means a copy of a laboratory test result from the department's public health laboratory which documents that a person has had measles and does not include either the results of immunity testing or a physician's diagnosis that the person has had measles.~~

~~(8)~~ (9) "MMR vaccine" means a vaccine containing a combination of measles, mumps, and rubella vaccine.

(10) "Montana certificate of immunization form (HES 101)" means the form prescribed by the department as required by 20-5-406, MCA. Copies of the form may be requested from the Department of Public Health and Human Services, Public Health and Safety Division, Communicable Disease Control and Prevention Bureau, Immunization Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, telephone: (406)444-4735 or (406)444-5580.

(11) "MR vaccine" means a vaccine containing a combination of measles and rubella vaccine.

~~(9)~~ (12) "Official parent-maintained immunization record" means a standard document that is distributed by the department or by another state's principal health agency to record the immunization status of a child, ~~is and~~ is designed to be retained and maintained by the parents of that child, ~~and~~ includes the following:

(a) the child's legal name, birthdate, sex and vaccination date (month, day and year) by vaccine type, except that in a postsecondary school, if only the month and year of administration are listed, the administration date will be considered to be the first day of that month; and

(b) for each administration of vaccine, the vaccination data must be completed and signed or stamped by the physician or officer of a health department who administered the vaccine or designee of the physician or officer.

~~(10)~~ (13) "Physician" is a person licensed to practice medicine in any jurisdiction in the United States or Canada and who holds a degree as a doctor of medicine or of osteopathy.

~~(11)~~ (14) "Polio vaccine" means a trivalent polio vaccine, known by the abbreviations ~~OPV, EIPV, or IPV.~~ or enhanced inactivated polio vaccine, known by the abbreviation of IPV.

(15) "Preschool" means any facility that is established chiefly for educational purposes, limits its services to children who are at least three years of age, and meets the definition of a preschool in 20-5-402, MCA.

~~(12)~~ (16) "Pupil" means a person who receives school instruction:

~~(a)~~ in a school other than a post secondary school, a person who receives instruction in classes at the school, in a preschool or kindergarten through grade 12 setting, including a foreign exchange student, regardless of the length of attendance or whether credit is received;

(b) in a home school, but only while participating in a group activity with pupils in a school otherwise subject to the requirements of Title 20, chapter 5, part 4, MCA, such as laboratories, libraries, gymnasiums, and team activities; or

~~(b)~~ (c) in a post-secondary school, a person who is attending classes on the school's campus and who has either matriculated into a degree program or is registered for more than one-half of the full-time credit load that is normal for that school.

(17) "School enterer" means a pupil who is commencing attendance for the first time.

~~(13)~~ (18) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids and intended for administration to adults and to children seven years of age and older.

~~(14)~~ (19) "Transfer" means to change school attendance, at any time, from one public school district to another, between private schools, or between public and private schools, and includes a change which occurs between the end of one school year and commencement of the next.

~~(15)~~ (20) "Vaccine" means:

(a) if administered in the United States, an immunizing agent recommended by ACIP and approved by the bureau of biologics, food and drug administration, U.S. public health service; or

(b) if administered outside of the United States, an immunizing agent:

(i) reviewed and approved by a local, state or federal public health official as equivalent to a vaccine recommended by the ACIP;

(ii) 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 noted in ARM 37.114.708

(iii) having adequate documentation.

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-402 and 52-2-703, MCA

37.114.702 GENERAL IMMUNIZATION REQUIREMENTS FOR ALL SCHOOLS (1) This subchapter specifies the immunization requirements of 20-5-403, MCA.

~~(1)~~ (2) Administration of a vaccine is only acceptable if it is done in accordance with the standards and schedules for vaccine use adopted by the advisory committee on immunization practices (ACIP) of the U.S. public health service or the American academy of pediatrics (AAP).

~~(2)~~ (3) Half doses of vaccine are unacceptable for

purposes of meeting the school immunization requirements of these rules.

~~(3) Immunity testing in lieu of vaccine use may not be used to meet the requirements of these rules, except as specifically allowed in ARM 37.114.705(c)(i) and (iii)(B) and 37.114.709(ii).~~

~~(4) Only MMR (combined measles, mumps, and rubella) vaccine is acceptable for doses given after June 11, 1993, to meet the requirements of these rules for vaccination against either measles, mumps, or rubella. Doses of MMR vaccine, to be acceptable under these rules, must be given no earlier than 12 months of age, and a child who receives a dose prior to 12 months of age must be revaccinated before attending school. Dose two must be separated from dose one by at least 28 days.~~

~~(5) DTP and DTaP vaccines are not recommended or required to be administered to children seven years of age or older.~~

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-403, MCA

37.114.704 REQUIREMENTS FOR ATTENDANCE AT A PRESCHOOL

~~(1) Before a child may attend a Montana preschool, that school must be provided with the documentation required by (3) below that the child has been immunized as required below for his/her age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B (Hib), unless s/he qualifies for conditional attendance in accordance with (7) below or the school has been provided with a record of an appropriate exemption from one or more of the required immunizations, in which case documentation must be provided of those immunizations for which no exemption is on file.~~

~~Total Immunizations Required, By Age~~

Age at Entry	Number Doses — Vaccine Type
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 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 less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.~~

~~(3) Documentation of each required vaccination must include the date of birth and the month, day, and year of each vaccination.~~

~~(4) In order to continue attending a preschool, a child must continue to be immunized on the schedule described in (1) above and must be immediately excluded from attendance if s/he is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the preschool a record of an appropriate exemption or a conditional enrollment form which indicates that no vaccine dose is past due [see (7) below].~~

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

~~(6) 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 preschool.~~

(1) Before a prospective pupil may attend a Montana preschool, that school must be provided with adequate documentation that the prospective pupil has been immunized in accordance with the following standards:

(a) the prospective pupil must have received three doses of polio vaccine and four doses of DTP/DTaP vaccine or DT vaccine, subject to the requirement that DT vaccine administered to children is acceptable only if accompanied by a medical exemption for that prospective pupil from pertussis vaccination;

(b) the prospective pupil must receive one dose of MMR vaccine, administered no earlier than 12 months of age. A prospective pupil who receives a dose prior to 12 months of age must be revaccinated before attending a preschool; and

(c) one dose of Hib vaccine must be administered on or after the first birthday, unless the prospective pupil is older than 59 months of age.

(2) If a prospective pupil is not vaccinated with all of the vaccines required in (1), the prospective pupil must be immediately excluded from the preschool unless the prospective pupil is completely vaccinated, an exemption from a vaccine or vaccines is claimed, or the prospective pupil is enrolled conditionally.

~~(7) (3) A child prospective pupil may initially~~

~~conditionally~~ attend a pre-school with conditional enrollment if:

(a) ~~s/he~~ the prospective pupil has received at least one dose of each of the vaccines required for ~~his/her~~ the prospective pupil's age;

(b) a department-prescribed form documenting the ~~child's~~ prospective pupil's conditional immunization status is on file at the preschool, attached to ~~the department's Montana certificate of immunization (HES-101);~~ and

(c) ~~s/he~~ the prospective pupil is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(4) A preschool must keep immunization data for each enrolled pupil on HES 101, including the date, month and year of administration of all required vaccines.

(5) HES 101 must be completed with adequate documentation provided by the pupil's guardian, copies of which must be attached to HES 101 if the form is completed by daycare or school personnel.

(6) If a religious or medical exemption is claimed, the preschool must maintain the record of that exemption in accord with the requirements of ARM 37.114.715 or 37.114.716, whichever applies.

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-403 and 20-5-406, MCA

37.114.705 REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A SCHOOL OFFERING ANY PORTION OF GRADES KINDERGARTEN THROUGH 12

(1) ~~A school, other than a preschool or a post secondary school, may not allow a pupil to attend that school without restriction unless that school receives adequate documentation that the following immunizations were performed on the schedule and with the agents noted below:~~ Before a prospective pupil may unconditionally attend a Montana school offering any portion of kindergarten through grade 12, that school must be provided with adequate documentation that the prospective pupil has been immunized through administration of the vaccines and on the schedules specified in this rule.

~~(a) (2) Agents~~ Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

~~(i) (a)~~ A child pupil or prospective pupil less than seven years of age must be administered four or more doses of DTP or DTaP vaccine, at least one dose of which must be given after the ~~4th~~ fourth birthday;

~~(ii) (b)~~ A person pupil or prospective pupil seven years old or older who has not completed the requirement in ~~(i) above~~ (2)(a) must receive additional doses of Td vaccine to reach a minimum of three doses of any combination of ~~either~~ DTP, DTaP, DT, or Td. Neither DTP nor DTaP vaccine, each of which contains pertussis vaccine, is recommended or required for a pupil seven years of age or older {note (iii) below};

~~(iii) Neither pertussis nor DTP (containing pertussis vaccine) vaccine is required or recommended for a person seven~~

~~years of age or older.~~

~~(c) Prior to entering the seventh grade, a pupil must receive a dose of Td vaccine, unless:~~

~~(i) a five year interval has not passed since the pupil's previous doses of DTP, DTaP, DT or Td;~~

~~(ii) the pupil is not yet 11 years of age; or~~

~~(iii) a dose of Td was given to the pupil at seven years of age or older;~~

~~(d) If a pupil enters the seventh grade before reaching 11 years of age, a booster shot of Td must be administered to the pupil as soon as possible after the pupil attains that age, unless the pupil already was administered a dose of Td at seven years of age or older;~~

~~(iv) (e) DT vaccine administered to children pupils less than 7 seven years of age is acceptable for purposes of this chapter only if accompanied by a medical exemption pursuant to ARM 37.114.715 that exempts the child pupil from pertussis vaccination.~~

~~(b) (3) Polio vaccine must be administered to a child less than 18 years of age prospective pupil in three or more doses of trivalent poliomyelitis vaccine, at least one dose of which must be given after the 4th fourth birthday. Polio vaccination is not required or recommended for persons 18 years of age and older for attendance in a Montana school.~~

~~(c) Live measles vaccine must be administered to pupils attending kindergarten through 12th grade in accordance with ARM 37.114.702(4) and as follows:~~

~~(i) A person entering a Montana school for the first time on or after June 11, 1993, except a person described in (iii) below, must either be administered one dose of measles vaccine at or after 12 months of age or produce laboratory confirmation that s/he has had measles disease.~~

~~(ii) A person who entered a Montana school before June 11, 1993, with the exception of a person described in (iii) below, must either:~~

~~(A) have been administered one dose of measles vaccine at or after 12 months of age; or~~

~~(B) produce a physician's certification that s/he has had measles disease and the date of the measles disease diagnosis.~~

~~(iii) A person who is entering middle school or junior high; a student entering the 6th grade in a school system without a middle school or junior high; and a person who reaches age 13 must either:~~

~~(A) have been administered two doses of measles vaccine at or after 12 months of age separated by at least one month between doses;~~

~~(B) produce laboratory confirmation of measles disease; or~~

~~(C) if the person was attending a Montana school prior to June 11, 1993, have on file at the school documentation of a physician's diagnosis that s/he has had measles disease; no additional documentation of measles immunity is required in this case.~~

~~(iv) By the beginning of the 1994-1995 school year and each school year thereafter, pupils in grades and of ages~~

~~exceeding those noted in (iii) above must have been administered two doses of measles vaccine at or after 12 months of age separated by at least one month between doses, unless publicly-funded MMR vaccine is not available due to supply deficiencies, in which case those pupils will be allowed to attend until publicly funded vaccine is available to them.~~

~~(d) One dose of live rubella vaccine must be administered at or after 12 months of age.~~

~~(e) One dose of live mumps vaccine must be administered at or after 12 months of age.~~

~~(2) A school, other than a preschool or post secondary school, may allow a pupil to attend the school without restriction if that school receives adequate documentation of the following dates for each vaccine noted:~~

~~(a) If a person attended school prior to June 11, 1993, or is transferring to a Montana school from out of state, the following documentation must be provided:~~

~~(i) For DTP, DT, Td, and polio vaccines, the month and year the last dose was administered;~~

~~(ii) For rubella vaccine, the month and year of administration if the date of vaccination was at least 13 months after the birthdate, or the month, day, and year of administration if vaccination took place during the 12th month after birth;~~

~~(iii) For measles vaccine, the month and year for the first dose of vaccine if the date of vaccination was at least 13 months after the birthdate (or the month, day, and year of administration if vaccination took place during the 12th month after birth), and the month, day and year for the second dose.~~

~~(b) If a person did not attend school prior to June 11, 1993, documentation must be provided of the month, day, and year each dose of all required vaccines was administered.~~

(4) Beginning with the 2005-2006 school year, the following pupils must have received two doses of live measles, mumps and rubella vaccine at/or after 12 months of age, separated by at least one month between doses:

(a) a pupil entering kindergarten, or, in the case of a school with no kindergarten, first grade; or

(b) a pupil entering any grade from seventh grade to twelfth grade who has not already received the two required doses.

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-403, 20-5-405 and 20-5-406, MCA

37.114.708 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE FOR THE FIRST TIME AFTER JULY 31, 1980 IN PRESCHOOL OR KINDERGARTEN THROUGH GRADE 12 (1) ~~With the exception of post secondary schools, a school must keep immunization data on the department's Montana certificate of immunization form (HES 101), signed by a physician, physician's designee, local health officer, or that officer's designees, if the data is submitted to the school on that form.~~

(1) A school must obtain and keep the following

immunization data for each pupil on HES 101 after receiving adequate documentation of:

(a) legal name;

(b) birthdate;

(c) sex; and

(d) the vaccination date (month, day and year) of each vaccine administered.

(2) HES 101 may be accepted by the school without reference to other adequate documentation if:

(a) sections I and II are completed and signed by a physician, local health department official or the designee of either; and

(b) section IV is signed by a physician.

~~(2) (3) With the exception of post secondary schools, if the documentation If the information required by (1) has not been provided to the school on a Montana certificate of immunization form HES 101:~~

~~(a) immunization data must be transferred onto the Montana certificate of immunization form HES 101 from adequate documentation; one or more of the other types of documentation listed in (3) below; and~~

~~(b) sections I and II of HES 101 the Montana certificate of immunization must be signed and dated by the a school official or the official's designee; and transferring the information each time additional immunization information is documented.~~

~~(c) beginning with pupils entering a Montana school for the first time during or after the 2005-2006 school year, a copy of the adequate documentation must be attached to HES 101.~~

~~(3) Immunization data may only be transferred onto the Montana certificate of immunization form from one or more of the types of documentation listed below:~~

~~(a) an official school medical record from any school in the United States;~~

~~(b) the department's cumulative health record;~~

~~(c) a record from any local health department in the United States, signed by a local health officer or nurse;~~

~~(d) a certificate signed or stamped by a physician;~~

~~(e) any parent maintained immunization record, if information has been recorded and signed or stamped by a physician, physician's designee, local health officer, or that officer's designee;~~

~~(f) any state's official parent maintained immunization record if the record includes the following:~~

~~(i) the child's legal name, birthdate, sex, and vaccination date (month, day, and year) by vaccine type;~~

~~(ii) for each administration of vaccine, a signature or stamp by the physician or officer of a health department who administered the vaccine, or designee of the physician or officer; and~~

~~(iii) the date the next dose of vaccine is due;~~

~~(g) the international certificates of vaccination approved by the world health organization;~~

~~(h) for persons who entered school prior to June 11, 1993,~~

~~and for measles (rubeola) only, a letter or statement signed by a physician indicating that the person had measles (rubeola) disease, with the date of diagnosis indicated.~~

~~(4) Post secondary schools must:~~

~~(a) keep immunization data for each pupil either on the department's Montana certificate of immunization form (HES 101) or on another document that includes, at a minimum, the pupil's name, birth date, vaccination dose type administered, and the month, day, and year each dose was administered; and~~

~~(b) accept as sources of the required immunization data only those sources listed in (3) above, as well as, in the case of rubella, laboratory test results showing immunity to rubella if they are signed by a physician and indicate what type of test was conducted and the test date.~~

~~(5) No parent, guardian, or other person may fill out any immunization information or sign any immunization documentation unless they are a physician, local health officer, or person otherwise authorized to do so in (1), (2), or (3) above.~~

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-406, MCA

37.114.709 REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A POST-SECONDARY SCHOOL ~~(1) Before a person may enter a Montana post secondary school as a pupil for the first time on or after June 11, 1993, the person must provide the school with the proof of measles (rubeola) immunity required by (a) below, as well as the proof of rubella immunity required by (b) below, unless the person was born before January 1, 1957, in which case (c) applies:~~

~~(a) Any of the following documentation is acceptable proof of measles immunity:~~

~~(i) Certification by a physician of the fact that the person has had measles disease and the date of diagnosis; or~~

~~(ii) The documentation required by ARM 37.114.708 of the fact that the person was administered either one or two doses of live measles vaccine which were administered at or after 12 months of age and after the year 1967, along with the month, day, and year each dose was administered. In the case of two doses, the doses must have been administered at least one month apart.~~

~~(b) A physician's diagnosis of rubella disease is not acceptable. Any of the following documentation is acceptable proof of rubella immunity (a physician's diagnosis of rubella disease is not acceptable):~~

~~(i) The documentation required by ARM 37.114.708 of the fact that the person was administered one dose of live rubella vaccine, administered at or after 12 months of age and after the year 1969, along with the month, day, and year the dose was administered; or~~

~~(ii) Either a copy of a laboratory report or test results signed by a physician that indicate the person is immune to rubella, as well as the type of test conducted and the test date.~~

~~(c)(i) A prospective pupil who was born prior to January 1, 1957, must:~~

~~(A) prove his/her age to the school by providing it with a driver's license, school transcript, birth certificate, or passport, so long as the date of birth is indicated on the document in question; and~~

~~(1) Before a prospective pupil may enter a Montana postsecondary school, the prospective pupil must provide the school with the proof of measles (rubeola) and rubella immunity as specified in (2) or (3), whichever is applicable.~~

~~(2) If a prospective pupil was born in 1957 or later, the school must receive either:~~

~~(a) adequate documentation that:~~

~~(i) the prospective pupil was administered two doses of live MMR or MR vaccine, or any equivalent combination of measles and rubella vaccines, subject to the restrictions in [Rule II(2)]; and~~

~~(ii) dose one was administered at or after 12 months of age, and dose two was administered at least 28 days after dose one; or~~

~~(b) a CLIA approved laboratory report that meets the requirements of [Rule II(2)] and indicates the prospective pupil is immune to measles and rubella.~~

~~(3) If a prospective pupil was born prior to 1957, the school must receive either:~~

~~(a) one of the forms of proof of measles and rubella immunity cited in (2); or~~

~~(b) the evidence of date of birth required by [Rule II(2)] and a CLIA approved laboratory report that meets the requirements of [Rule II(2)] and indicates the prospective pupil is immune to rubella.~~

~~(B) (4) In the event of an outbreak of either measles or rubella, a pupil must provide the documentation required by (b) above (2)(a) or be excluded from classes and other school-sponsored activities until the local health officer indicates to the school that the outbreak is over.~~

~~(ii) (5) The school must maintain a list of students pupils who were born prior to 1957 and who provide the school only with the documentation specified in (i)(A) above; in (3)(b). In the event of an outbreak of measles or rubella, the school must exclude those pupils students if the conditions described in (i)(B) above apply as required by (4).~~

~~(2) With the exception noted in (3) below, a person who enters a post secondary school who has not had measles disease and has had only one dose of live measles vaccine is conditionally enrolled and must receive a second dose in accordance with the conditional enrollment requirements of ARM 37.114.710(2).~~

~~(3) The requirements of (1) above apply equally to a person who entered a Montana post secondary school as a pupil prior to June 11, 1993, with the sole exception of the requirement of (2) for two doses of live measles vaccine; a pupil to whom this paragraph applies needs to have only one dose of live measles vaccine rather than two.~~

(6) A pupil who enters a postsecondary school may be conditionally enrolled as allowed by [Rule III] if that pupil has received only one dose of MMR or MR, but must have received the second dose before being eligible to attend during the next school term.

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-403 and 20-5-406, MCA

37.114.710 REQUIREMENTS FOR CONDITIONAL ENROLLMENT IN A PRESCHOOL OR A SCHOOL OFFERING ANY PORTION OF KINDERGARTEN THROUGH GRADE 12

(1) A ~~person~~ prospective pupil who does not meet school immunization entry requirements for a preschool or a school offering any portion of kindergarten through grade 12 school other than a post secondary school may be admitted to school under the following conditions:

(a) ~~a~~ A physician or local health department must indicate on the department's conditional attendance form that immunization of the ~~person~~ prospective pupil has already been initiated by the ~~person~~ prospective pupil receiving, at a minimum, one dose of each of the vaccines required in ARM 37.114.705~~(1)~~. If a ~~person~~ prospective pupil is exempt from any of the foregoing vaccinations, the requirements of this rule apply to the remaining immunizations for which no exemption exists.

(b) The conditional attendance form must include the date each dose of the required ~~vaccine(s) is to~~ vaccines are to be administered, the signature of the physician, the physician's designee or the school or public health department official who established the foregoing immunization schedule, and the signature of a parent or guardian acknowledging the immunization schedule; and

(c) The parent or guardian must return the form to the school before the ~~child~~ prospective pupil may attend.

~~(d)~~ (2) The conditional attendance form prescribed by the department must be used to document conditional attendance status and must be retained in the ~~person's~~ pupil's school record.

~~(e)~~ (3) If the ~~person~~ pupil who is attending school conditionally fails to receive vaccines on the date they are due, as stated on the conditional exemption form, ~~s/he~~ the pupil must either:

(a) be vaccinated;

(b) qualify for and claim an exemption from the immunizations not received and documented; or

(c) be excluded immediately from school by the school administrator or by their designee.

~~(f)~~ (4) A ~~person~~ pupil who is excluded from school due to failure to meet the requirements of the conditional exemption may ~~continue~~ return to school only after the school receives the required documentation that ~~s/he~~ the pupil has been administered the ~~vaccine(s) which,~~ vaccines that were due according to the immunization schedule on the conditional form, ~~were due.~~ In this case, if If additional immunizations are still required,

~~the a physician, physician's designee or the school or public health department official must re-establish the schedule as stated in (1)(b) above.~~

~~(2) A person entering post secondary school who has not had measles disease or received two doses of live measles (rubeola) vaccine under the conditions specified in ARM 37.114.709(1)(a)(ii) may be admitted to school under the following conditions:~~

~~(a) The person must receive a second dose of live measles vaccine before the beginning of the succeeding school term and no earlier than one month after administration of the first dose of measles vaccine.~~

~~(b) The conditional enrollment form must be signed by the student, acknowledging the measles immunization schedule and deadline date for compliance.~~

~~(c) If the person who is attending school conditionally fails to complete measles immunization within the time period indicated in (2)(a) above, s/he must either qualify for and claim an exemption from measles immunization or be excluded immediately from school by the school administrator or that person's designee.~~

~~(d) A person who is excluded from school due to failure to receive the second dose of measles vaccine by the deadline specified in (2)(a) above, may continue school only after s/he has received a second dose of measles vaccine or claims an exemption from immunization.~~

AUTH: Sec. 20-5-407, MCA

IMP: Sec. 20-5-402, 20-5-404, 20-5-405 and 20-5-408, MCA

37.114.715 MEDICAL EXEMPTION (1) A person prospective pupil seeking to attend school is not required to have any immunizations which are medically contraindicated. A written and signed statement from any a physician that an immunization is medically contraindicated will exempt a person prospective pupil from whatever those immunization requirements of 20-5-403, MCA, the statement indicates necessary as deemed necessary by the physician. The required vaccines are listed in 20-5-403, MCA.

(2) The statement must include:

(a) which specific immunization is contraindicated;

(b) the period of time during which the immunization is contraindicated; and

(c) the reasons for the medical contraindication; and

(d) when deemed necessary by a physician, the results of immunity testing performed on a pupil entering kindergarten through grade 12. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab. A copy of the test result must be attached to HES 101, beginning with school enterers in school year 2005-2006.

(3) A It is preferred, but not mandatory, that a physician's medical exemption may be recorded on HES 101 the department's Montana certificate of immunization form or a form obtained from the department for use as documentation.

(4) The physician's written statement must be maintained by the school as part of the immunization record of the ~~person~~ pupil qualifying for the exemption. In preschool and kindergarten through grade 12 settings, the written statement must be attached to the HES 101 beginning with the 2005-2006 school year.

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-405 and 20-5-406, MCA

37.114.716 RELIGIOUS EXEMPTION (1) A ~~person~~ prospective pupil seeking to attend school is exempt from all or part of the immunization requirements if the parent or guardian of that ~~person~~, prospective pupil, an adult responsible for that ~~person~~ prospective pupil, or the ~~person~~ prospective pupil himself if an adult or an emancipated minor, 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.

(2) ~~A~~ In any school other than a postsecondary school, a claim of exemption from immunization requirements on religious grounds must be notarized annually and maintained on a form HES 113, Affidavit of Exemption on Religious Grounds, provided by the department. and The form must be provided to the school prior to each school year by the parent, or guardian or adult responsible for of the pupil. ~~for which a religious exemption is claimed, or adult responsible for him or her, unless~~ If the pupil is 18 years of age or older or emancipated, ~~in which case the pupil may claim his or her own the~~ exemption.

(3) In a postsecondary setting, a religious exemption must be maintained on form HES 113 and signed, notarized and submitted each year of attendance, beginning with the date of initial attendance at the school. The form must be completed and resubmitted each year thereafter.

~~(3)~~ (4) The original copy of the claim of religious exemption must be kept by the school as part of the ~~person's~~ pupil's school record.

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-405 and 20-5-406, MCA

37.114.720 REPORT OF IMMUNIZATION STATUS (1) A report of the immunization status of the pupils in every school must be sent each year to the department by the ~~principal or other person in charge of a school~~ school's governing authority or designee on a form provided by the department.

(2) The report must include the immunization status of all pupils ~~who commence attendance on or before November 15~~ and must be submitted by December 1 of each school year.

(3) A copy of the report must be sent concurrently from the school to the local health department, or, if there is no local health department, to the local board of health or local health officer.

(4) The school must keep a record of any change in

immunization status of a pupil from that stated on the report. Such records must be available upon request to the department or local health authority.

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-408, MCA

37.114.721 REPORT OF NON-COMPLIANCE FOR KINDERGARTEN THROUGH GRADE 12 ~~(1) If a person is excluded from school other than a preschool or a post secondary school due to the failure to provide documentation of completed immunization, claim an exemption, or qualify for conditional attendance, the school must place in the U.S. mail notice of that fact to the following by the end of the third day following the exclusion, if the person excluded has not returned to school with the required documentation:~~

(1) If a pupil is excluded from a school offering kindergarten through grade 12 due to the failure to meet the requirements for conditional enrollment in ARM 37.114.710, the school must notify by the end of the third day following the exclusion, by U.S. mail, the following:

(a) the local health officer; and
(b) the Department of Public Health and Human Services, Health Policy and Services Division Public Health and Safety Division, Communicable Disease Control and Prevention Bureau, Immunization Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, ~~phone: (406)444-0273~~ telephone: (406)444-4735 or (406)444-5580. ~~Concurrent telephone notification of either or both of the above agencies is encouraged but not required.~~

(2) If adequate documentation has been provided prior to the end of the three days, notification is not necessary.

(3) Concurrent telephone notification of either or both of the above agencies is encouraged but not required.

~~(2)~~ (4) The notification must include:
(a) the name of the excluded person;
(b) his or her address;
(c) the name of ~~his or her parent(s)~~ the parents, guardian or responsible adult; and
(d) the date of exclusion.

~~(3)~~ (5) Written documentation of that notification must be placed in the school file, if any, of the person pupil excluded, or in a special file established for such documentation, if the person pupil has no school file. Such documentation must include the information noted in ~~(2)~~ above (4), date of mailing, and name of the individual giving the notification.

AUTH: Sec. 20-5-407, MCA
IMP: Sec. 20-5-408~~(2)~~, MCA

4. The Department's rules setting immunization standards for students attending preschool, grades kindergarten through 12, and postsecondary schools are required by statutes contained in Title 20, chapter 5, part 4, of the Montana Code Annotated. Those statutes were enacted initially in 1989 by the Montana

Legislature to ensure that school children and, as later amended, students attending postsecondary schools are protected against vaccine preventable diseases in an appropriate and timely manner, thereby preventing epidemics of vaccine preventable diseases. The diseases covered by these rules can be prevented, or their severity greatly reduced, by vaccination. Ultimately, immunization requirements such as these result in high levels of immunization within the populace, reduction in disease, and a healthier school and community environment for all Montanans. In addition, effective immunization programs produce substantial savings for the state by reducing the number of children who have birth defects resulting from fetal exposure to disease, many of whom will need state medical assistance and special educational programs for the blind, deaf, and mentally retarded. In order to most effectively carry out the Department's statutory mandate, the rules need to be amended, primarily to incorporate the most recent nationally accepted and recommended medical standards for immunization of students. The following delineates why the proposed new rules and amendments to existing rules are necessary.

Rule I

ARM 37.114.701 contains the definitions of terms utilized throughout the immunization rules, including the definition of "adequate documentation" of immunization status. While the current rules define what constitutes adequate documentation in several of the rules, the Department found it more efficient to include in one place all of the types of documentation considered adequate. The list was expanded to include all of the types of documentation found reliable over the years. Because that list is fairly extensive, the list is set out in a separate single new rule, which is proposed to be incorporated by reference in the definition of "adequate documentation" in ARM 37.114.701.

The language in section (2) of Rule I was also transferred from ARM 37.114.708 to ensure that only qualified individuals were allowed to complete immunization data on such documentation.

Rule II

Instead of continuing to include all the requirements for documentation of immunization status for postsecondary students within the current ARM 37.114.709, for easier reading the Department proposes to split out those requirements from the general standards for postsecondary enrollment in order to make two more specific, shorter rules.

Rule II(1)(c) varies from current requirements in that the dose administration date will now be considered to be the first of the month in cases where only the month and year of administration are known. That change was requested by postsecondary nursing staff to deal with the occasional case

where the day of administration was not included in the documentation. Since that problem is most likely to occur only in the postsecondary setting, with older students, adding the alternative method of setting the day of administration is both reasonable and needed.

Subsection (2)(c) adds the requirement that if a laboratory report is submitted to prove immunity, the laboratory must be approved under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA), a requirement needed to ensure the quality of the laboratory and recommended by the U.S. Public Health Service's Advisory Committee on Immunization Practices (ACIP). Additionally, because school staff with varying degrees of medical expertise, if any, will be checking the documentation for adequacy, the Department proposes to require that the lab report include an interpretation of the results from a physician, rather than simply show the lab results. Section (2) now also allows laboratory proof of immunity to measles, which is needed in order to follow guidelines from the ACIP and the Centers for Disease Control and Prevention's 2003 publication "Epidemiology and Prevention of Vaccine-Preventable Diseases".

Finally, because it is now considered acceptable to assume measles immunity if one was born prior to 1957, in accord with ACIP recommendations, that provision was added to proposed Rule II.

Rule III

Because the conditional enrollment requirements for postsecondary students are different from those for the other types of schools, the Department proposes to delete them from ARM 37.114.710 and to move them into a separate rule, thereby making them easier for postsecondary staff and students to find and use. The only difference between the requirements in ARM 37.114.710 and those proposed for Rule III is the requirement that there be 28 days rather than one month between rubella and rubeola doses. That change is needed because "month" is an imprecise time frame and because the U.S. Public Health Service's Advisory Committee on Immunization Practices has established 28 days as the proper standard.

ARM 37.114.701

This rule contains the definitions of terms used throughout the immunization rules. The proposed new definitions are necessary to ensure the meaning of all terms is clear. The need for the following new definitions is explained below.

The definition of "adequate documentation" incorporates the list contained in Rule I, as explained above.

A definition of "DTaP vaccine" is included because DTP vaccine is no longer manufactured, and DTaP vaccine is the only

combination for diphtheria, pertussis and tetanus protection currently available. The DTP definition is retained necessarily because some children will have received one or more doses of this vaccine, a fact that is recognized in the balance of the immunization rules. The definition has also been expanded to clarify that DTaP and DTP vaccines are not meant for children seven years of age or older.

The definition of "laboratory confirmation of measles disease" was deleted as no longer relevant, since the phrase is no longer used in the rules.

The elements added to the definition of "official parent maintained immunization record" are already required of an acceptable parent maintained record elsewhere in the rules, but are proposed to be included within the definition itself in order to be absolutely clear about what the phrase means. Additional clarity is advisable because there are still a few states that, rather than requiring the health care practitioners administering the vaccines to sign, allow the information in a parent maintained immunization record to be endorsed by the parent alone, a practice that renders the immunization information unreliable.

The definition of "preschool" needs to be added in order to combine the preschool definition contained in 20-5-402, MCA, of the school immunization statutes with language in 52-2-703(4)(b), MCA, that distinguishes a preschool from a daycare facility. Since the "preschool" definition in 20-5-402, MCA, does not include a lower age limit, but 52-2-703(4)(b), MCA, does, distinguishing from a daycare facility any educational group facility limiting its services to children age three and older, the combined definition is needed to clearly distinguish a daycare from a preschool.

The definition of "pupil" needs to be amended to cover home schooled children when they are involved in school activities with children attending that school full-time. Failing to include them as pupils subject to the immunization requirements would increase the likelihood of an epidemic resulting from the interaction in close quarters of vaccinated but possibly still vulnerable children with unvaccinated children.

The definition of "vaccine" needs to be changed to indicate that the term includes only those immunizing agents recommended by the national authority on vaccines, the Advisory Committee on Immunization Practices. The reference to approval by the Bureau of Biologics needs to be deleted because it no longer exists. Finally, the definition needs to be expanded to include additional requirements for immunizing agents administered outside of the U.S. in order to ensure their effectiveness. Adding the requirement that a public health official has to review the foreign documentation in order to determine whether the vaccines used and the schedule upon which they were

administered meets the requirements of these rules helps ensure the efficacy of the vaccinations.

ARM 37.114.702

Proposed new (1) does not state a requirement of these rules, but simply highlights for those using the rules the primary Montana statute the rules implement.

Section (2) is to be amended to eliminate the American Academy of Pediatrics as an alternate source of vaccine administration standards, since the primary nationally accepted source of standards at this point in time is the U.S. Public Health Service's Advisory Committee on Immunization Practices (ACIP).

Section (3) is proposed for deletion because immunity testing for measles and rubella is now an ACIP recommended option and is included in the rules for postsecondary schools. In addition, the citations to other rules in (3) were incorrect.

The language to be deleted from section (4) is no longer appropriate, in that it requires only combined MMR vaccine to be used to immunize against measles, mumps, and rubella. The current language has created some confusion about MMR requirements. While ARM 37.114.702 states that only MMR vaccine is acceptable after 1993, ARM 37.114.704 states that two doses of measles, one dose of rubella, and one dose of mumps are required. As a result, many physicians have opted to vaccinate their patients with two doses of measles vaccine, one dose of rubella, and one dose of mumps vaccine instead of using MMR vaccine. That fact has created difficulties for pupils, the schools and pupils' parents in that those children have had to receive yet another dose of vaccine to comply with the MMR requirement. To date, many health care providers are opting to vaccinate with single antigen measles and rubella vaccine, which are licensed available, and appropriate according to the ACIP.

The medical consensus is that a child receiving the single antigen is adequately protected and that a third dose of MMR would be over immunization. Requiring the third dose is therefore now considered to be a waste of vaccine and an unnecessary financial burden to parents or students. The deleted language is to be replaced by equivalent language imported from existing rules. While it is possible to leave the provisions where they are currently in the rules for preschools and postsecondary schools, including them here makes them appropriately applicable to grades kindergarten through 12 as well, in conformity with national standards.

The requirement in section (4) that MMR doses be separated by 28 days conforms to ACIP standards.

Section (5) is to be added to this rule as a general requirement for all schools, but is not a new requirement and is stated

elsewhere in the current rules.

ARM 37.114.704

It is proposed that the table entitled "Total Immunizations Required, By Age" be removed. The table delineates an immunization schedule for children at ages 2 months through 19 months, which age is too young for preschool attendance. The table is actually more helpful in daycare settings with children attending in those age groups. The Department's Immunization Program has received numerous phone calls from confused preschool teachers, school nurses and public health nurses regarding immunization requirements for children considered by law to be too young to attend preschool. Therefore, in place of the table, the Department proposes to replace it with a simpler restatement of the vaccinations the child has to have had before entering preschool at age three or later, followed by a clear listing of the available options if a child has not been vaccinated on schedule. These changes, by and large, are not different from current requirements but simply eliminate detail unnecessary to determine adequate immunization upon entry to preschool.

Subsection (1)(a) does propose to add a provision allowing DT vaccine, rather than DTP or DTaP vaccine, to be administered if there is a medical reason for it for avoiding pertussis vaccine, in conformity with accepted medical practice.

Subsection (1)(c) is a restatement of the current Hib vaccine administration standards, stating the cutoff date for Hib vaccination as older than 59 months, rather than five years of age. The use of 59 months is used because it is a more precise measure than five years.

For ease of record keeping, the Department proposes to add the requirement that preschool immunization data has to be kept on the Department's HES 101 immunization form. Also, at the request of school nurses in order to eliminate transcription errors in the record, the documentation of vaccinations that was presented to the preschool now is to be attached to the HES 101 form if the form is completed by daycare or school personnel.

Finally, to ensure that all pertinent vaccination status data are kept readily available, if a religious or medical exemption has been claimed, documentation of it has to be kept in accord with the specific rules for those exemptions, ARM 37.114.715 and 37.114.716. That level of record keeping and accessibility is important in case of an outbreak of a vaccine preventable communicable disease in the preschool, because pupils who are unvaccinated against that disease but exempt from vaccination can be immediately identified and excluded for the duration of the outbreak.

The other amendments in the rule are for consistency of language

and editorial in nature, rather than substantive.

ARM 37.114.705

This rule contains the requirements for unconditional attendance at a school offering any portion of grades kindergarten through 12, and has been simplified for easier use by school staff, while incorporating the most recent nationally accepted standards for immunization that have been endorsed by the ACIP. Many of the changes are simply editorial, rewording or reordering for better comprehension and consistency of language. The explanations of the need for the changes that are substantive follow.

DTaP (diphtheria, tetanus, and acellular pertussis) vaccine is now proposed to be specifically and separately mentioned, although it currently is included as part of the definition of DTP vaccine in ARM 37.114.701. That is appropriate because DTaP vaccine is now the only vaccine available against diphtheria, tetanus, and pertussis combined. However, since there are children in school who will have received DTP vaccine prior to the availability of DTaP vaccine, both vaccines are listed.

Subsection (2)(c), requiring a tetanus and diphtheria (Td) dose prior to entering the 7th grade, is proposed for addition because of updated ACIP recommendations as published in the document "Immunization of Adolescents" (1996). This recommendation for immunization of adolescents was developed to improve vaccination coverage among adolescents and to facilitate a routine visit to health care providers for adolescents ages 11 and 12 years. Available data back up the need for the additional vaccination. During 1991 through 1994, 191 (95%) of the 201 reported cases of tetanus in the U.S. occurred in persons less than 20 years of age. Nine of the 20 cases of diphtheria reported occurred in persons less than 20 years old. In a survey conducted in Montana in 2000, only 32% of high school seniors had protection against diphtheria and tetanus prior to leaving high school. The new requirement will necessarily reduce the incidence of those dangerous diseases.

As for proposed new section (4), the ACIP and the American Academy of Pediatrics have both recommended two doses of measles, mumps and rubella vaccine prior to entering kindergarten, rather than by middle school entry, as is currently required. Section (4) incorporates that recommendation. Research has demonstrated that an average of 3,750 cases of measles was reported each year during 1984 through 1988 and 58% of those cases were children under the age of 10 years, most of whom had received only one dose of vaccine. Recurrent outbreaks among vaccinated school aged children prompted both the Advisory Committee on Immunization Practices and the American Academy of Pediatrics in 1989 to recommend that all children receive two doses of measles containing vaccine, preferable as MMR. Although administration of the second dose

was originally recommended either at entry to primary school (by the Advisory Committee of Immunization Practices) or middle school (by the American Academy of Pediatrics), the Advisory Committee on Immunization Practices, the American Academy of Pediatrics, and the American Academy of Family Physicians now recommend that a child receive the second dose before school entry, rather than delaying it until the child is aged 11 through 12 years. In a measles outbreak in Anchorage, Alaska, in 1998, 30 to 33 cases had received a dose of measles vaccine. This is epidemiological evidence that the efficacy of live measles vaccine is 95%.

If you have a population of 100 students in a kindergarten age group in a school setting, with 95 out of 100 responding positively to the first dose of measles vaccine, that leaves five that are nonresponders and therefore still vulnerable to measles. Our Montana schools also allow for medical and religious exemptions from vaccination, which approximately 1.1% of the student population have utilized. These children have not been immunized. This effectively adds one child to the number of unprotected children, resulting in a total of six children out of 100 who are susceptible to disease and who can effectively cause an outbreak within the rest of the student and community population. Failing to incorporate the two dose requirement would unreasonably increase the measles risk to the rest of the school population.

ARM 37.114.708

In order to make documentation requirements easier for school personnel to find, this rule is proposed to be restricted to documentation requirements for all schools except postsecondary schools. As previously noted, the postsecondary documentation requirements have been incorporated into proposed new Rule II.

The rule has also been rewritten to organize the documentation requirements and to clarify misconceptions about who has the authority to sign certain sections of the required Montana Certificate of Immunization (HES 101) form.

More detailed information about necessary documentation is proposed for this rule because the Department's Immunization Program has received numerous phone calls needing clarification on what documentation was acceptable and who had the authority to sign certain sections of the Montana Certificate of Immunization. Most of the work of monitoring and documentation of immunization records is carried out by clerical staff in Montana schools, who need the information to be presented in as straightforward a manner as possible.

In addition, since it has become apparent that checking the validity of the documentation is enhanced by keeping the documentation with the certificate of immunization form, the Department now proposes to require a copy of the documentation

to be attached to the form itself, beginning with the upcoming school year.

ARM 37.114.709

This rule, setting requirements for unconditional attendance at a postsecondary school, has been reordered and reworded for clarity and consistency. The substantive changes, and the need for them, are outlined below.

The proposed substantive changes in this rule reflect updates and changes in the measles and rubella recommendations published in the ACIP's "Measles, Mumps and Rubella Statement" of May 22, 1998. In that document, more specific criteria for documentation of immunity were recommended for students attending postsecondary schools. The ACIP recommended that students at post-high school educational institutions have to show immunity to measles and rubella through showing either documentation of vaccination, laboratory evidence of immunity, which was previously allowed only for rubella or proof that they were born before 1957. Adopting these updated recommendations keeps Montana in step with other states and with the most up-to-date nationally accepted school immunization recommendations. The new recommendations and now proposed requirements would include allowing laboratory immunity testing as documentation of immunity for measles as well as rubella, and would specifically require that only CLIA approved laboratories would be acceptable for immunity testing, a requirement that ensures the validity of test results. Consolidation of the measles and rubella requirements will also make administration of the rules easier to use for those who evaluate the immunization records of postsecondary students.

The consolidation of the measles and rubella requirements also means that the proposed amended rule will require, in the case of an outbreak of either measles or rubella, rather than rubella alone, as in the current rule the exclusion of any student who has not provided proof of actual vaccination.

As previously noted, conditional enrollment requirements for postsecondary students are now set out in separate new Rule III, for easier reference.

ARM 37.114.710

Because the conditional enrollment requirements for postsecondary students have been included in a separate proposed new Rule III, this rule needs to be amended to eliminate the postsecondary requirements. In new section (3), which sets out the alternatives available to a student who fails to get vaccinated on the schedule required for conditional enrollment, the Department proposes to add one obvious alternative, that they get vaccinated. The balance of the proposed amendments is editorial only, rather than substantive.

ARM 37.114.715

This rule, governing the medical exemption allowed by law, proposes to add an allowance for submission of the results immunity testing by a CLIA approved lab that show serological evidence of immunity in a child in any of grades kindergarten through 12, whenever a physician deems submission of such a test necessary. Immunity testing for children in grades kindergarten through 12 is not routinely recommended. However, the ACIP's 2001 General Recommendations do allow immunity testing when immunization status is unknown and additional doses of vaccine may be deemed harmful by a physician. If the Department did not add the provision for lab testing, a reasonable medical option would be disallowed, which would not be medically sound.

ARM 37.114.716

The rule concerning religious exemption from immunization needs to be amended to allow students in postsecondary schools to renew their exemption form annually on the date they initially began attendance at the school. Since postsecondary students can enter school at different times during the year, the amendment allows such students to renew their exemption at the same time each year, rather than before the onset of the next school year, as is the case with preschools, elementary and secondary schools. The explicit requirement for notarization is also necessary to ensure the validity of the exemption. The balance of the amendments are editing for clarification rather than substantive.

ARM 37.114.720

Section (1) is proposed to be amended to utilize the phrase "school's governing authority" instead of "principal" because the former phrase is the one used in the school immunization statutes (20-5-403, MCA) and because many schools do not designate their school head as a "principal". The change is nonsubstantive.

In section (2), the Department proposes to delete the time limit defining which pupils are to be included in the annual report, retaining only the deadline for submission of the report. The intent of the annual report of immunization status is to provide a "snapshot in time" of what level of immunization exists at the end of each year. The result of elimination of the cutoff date will result in data only slightly varying from the current practice, but the change will make completion of the report simpler for schools.

ARM 37.114.721

This rule requires a report to be filed whenever a pupil in grades kindergarten through 12 is excluded from school for

failure to meet the terms of conditional enrollment. The name of the Department's division to which the report must be sent has changed, necessitating the amendment to the division information. The balance of the amendments are not substantive changes but intended only for clarification, easier reading and consistency in use of the term "pupil".

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 12, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to Secretary of State, April 4, 2005.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the)	AMENDED NOTICE OF
proposed adoption of New)	PROPOSED ADOPTION,
Rules I through XIII;)	AMENDMENT AND REPEAL
amendment of ARM 38.5.3301,)	
38.5.3320, 38.5.3330,)	NO PUBLIC HEARING
38.5.3331, 38.5.3332,)	CONTEMPLATED
38.5.3333, 38.5.3334,)	
38.5.3335, 38.5.3336,)	
38.5.3337, 38.5.3339,)	
38.5.3343, 38.5.3350,)	
38.5.3351, 38.5.3352,)	
and 38.5.3353; and repeal of)	
ARM 38.5.3302, 38.5.3338,)	
38.5.3341, 38.5.3360,)	
38.5.3361, 38.5.3362,)	
38.5.3370, and 38.5.3371,)	
pertaining to)	
telecommunications service)	
standards)	

TO: All Concerned Persons

1. On October 21, 2004, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice Number 38-2-183 regarding a public hearing on the proposed adoption, amendment, and repeal of the above-stated rules pertaining to telecommunications service standards at page 2518 of the 2004 Montana Administrative Register, issue number 20. The notice is being amended as follows to correct a typographical error and to allow time for further comment.

2. New rule V is being changed as follows, stricken matter interlined, new matter underlined:

NEW RULE V INSTALLATION OF LOCAL EXCHANGE SERVICE

(1) through (3)(b) remain as proposed.

(c) The carrier shall complete ~~95%~~ 99% of all installation orders, excluding those orders where the customer specifically requested a later due date, within 30 calendar days of the application date.

(d) through (7) remain as proposed.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-103, 69-3-108, and 69-3-201, MCA

3. Amending the new rule is necessary because the rule as proposed included a typographical error. The 99% is necessary to ensure customers receive adequate service.

4. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this

rulemaking or need an alternative accessible format of this notice. If you require an accommodation contact the PSC no later than 5:00 p.m. May 10, 2005, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, or e-mail conniej@mt.gov.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@mt.gov. Any comments must be received no later than May 17, 2005. PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-05.04.4-RUL."

6. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@mt.gov. A written request for a hearing must be received no later than May 12, 2005.

7. If the PSC receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of people using telecommunications services in Montana.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities,

providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

Greg Jergeson
Chairman,
Public Service Commission

Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State, April 4, 2005.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF REPEAL
of ARM 2.21.1001 through)
2.21.1004 and 2.21.1011)
pertaining to Parental Leave)

TO: All Concerned Persons

1. On February 24, 2005, the Department of Administration published MAR Notice No. 2-2-352 regarding the proposed repeal of ARM 2.21.1001 through 2.21.1004, and 2.21.1011 pertaining to Parental Leave at page 286 of the 2005 Montana Administrative Register, issue number 4.

2. The department has repealed the rules as proposed.

3. No comments or testimony were received.

BY: Dal Smilie
Dal Smilie
Rule Reviewer

Janet Kelly
Janet Kelly
Director

Certified to the Secretary of State April 4, 2005.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
AND THE BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of a new rule (ARM 8.94.3721))
for the administration of the)
2005-2006 Federal Community)
Development Block Grant (CDBG))
Program)

TO: All Concerned Persons

1. On January 13, 2005, the Department of Commerce published MAR Notice No. 8-94-45 regarding the public hearing on the proposed adoption of a new rule concerning the administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program at page 1 of the 2005 Montana Administrative Register, Issue Number 1.

2. The Department has adopted the new rule (8.94.3721) exactly as proposed.

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

Comment No. 1: A comment was made that the funding ratio between Housing and Public Facilities should remain at one-third set aside for Housing and two-thirds for Public Facilities. According to the comment, the number of Housing applications being received has been increasing and funding is becoming skewed toward Housing at the expense of Public Facilities.

Response: The CDBG Program sets the relative allocation between Housing and Public Facilities according to the average number of applications received from local governments for the previous two years for the respective categories. Using a two-year average adjusts for any variability in the demand for CDBG Public Facilities funding that may be associated with the biennial cycle of the State's legislatively approved infrastructure funding programs: the Department of Natural Resources and Conservation (DNRC) Renewable Resources Grant and Loan Program and the Department of Commerce Treasure State Endowment Program (TSEP).

In this way, the funding reserved for each category can respond to changing demand for CDBG Housing and Public Facilities grants over time. Through this method, the amounts allocated between the two categories will change based upon actual past demand; however, the basic method of distribution remains unchanged. This system is designed to be responsive to the

priorities established by local officials for addressing community needs through the Housing and Public Facilities categories. If the priorities of CDBG applicants change, the funding allocations will respond accordingly.

Comment No. 2: One comment was received in regards to the evaluation of financial need for water and wastewater projects within the Public Facilities category of the CDBG program. The comment stated that CDBG as well as TSEP look at overall cost of the water and/or sewer service and consider this cost against a community's median household income (MHI) to evaluate financial need. Currently, a fair-share service cost is estimated as 2.2% of the median household income being paid for combined water and sewer service (referred to as the "target rate").

The comment stated that the combined target rate should be calculated according to a different method so that communities where the average family income is less than \$33,000 per year (the median household income for all Montana families according to the 2000 Census was \$33,024) would have a target rate less than the current 2.2%, with an adjusted scale of up to 2.5% for a community median household income of over \$45,000.

Response: Target rate analysis is a key part of the financial assessment for CDBG and TSEP water, wastewater and solid waste projects. It is used by the Department of Commerce to help determine the amount of grant funds a community needs to keep its user rates, resulting from a proposed improvement to a water, wastewater, or solid waste project, at a reasonably affordable level for its citizens relative to other communities. The idea of target rates is based on the concept that the ability of a community, as a whole, to pay a particular user rate is related to the overall median household income level in the community, and that communities with higher median household incomes can afford higher rates than those with lower median household incomes.

The target percentage is multiplied times a community's MHI in order to compute its target rate. A community's target rate is computed by multiplying the community's MHI by the combined target percentage (2.3%) to measure residential household ability to pay combined water and wastewater rates - 1.4% for water systems plus .9% for wastewater systems equals 2.3%. (The target rate was raised to 2.3% from 2.2% last year in 2004.)

By basing the target rate on the community's MHI, a community with a lower MHI will have a lower target rate than a community with a higher MHI. The current system actually favors smaller communities in that larger communities have so many households to distribute their costs among that it is more difficult for them to reach the target rate of 2.3% based upon their MHI.

COMMUNITY DEVELOPMENT DIVISION
BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE
ANTHONY J. PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State April 4, 2005

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION
adoption of new rule I) AND AMENDMENT
student discipline and the)
amendment of ARM 10.55.909)
relating to student records)

TO: All Concerned Persons

1. On February 10, 2005, the Board of Public Education published MAR Notice No. 10-55-235 regarding the proposed adoption and amendment of the above-stated rules concerning student records at page 194 of the 2005 Montana Administrative Register, Issue Number 3.

2. The Board of Public Education has adopted new RULE I (ARM 10.55.910) STUDENT DISCIPLINE RECORDS exactly as proposed.

3. The Board of Public Education has amended ARM 10.55.909 exactly as proposed.

4. The following comment was received and appears with the Board of Public Education's response:

COMMENT 1: A commentor questioned if the new rule meant that detention and records other than out of school suspension and expulsion records could not be included in the records.

RESPONSE 1: The Board of Public Education thanks the commentor for his question and states that the rule provides what documents must be included in a student's disciplinary record file. It does not prohibit a school district from maintaining or transferring additional records if school policy provides otherwise.

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

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

Certified to the Secretary of State April 4, 2005.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 10.58.103)
relating to professional)
educator preparation programs)

TO: All Concerned Persons

1. On February 24, 2005, the Board of Public Education published MAR Notice No. 10-58-235 regarding the proposed amendment of the above-stated rule concerning professional educator preparation programs at page 289 of the 2005 Montana Administrative Register, Issue Number 4.

2. The Board of Public Education has amended ARM 10.58.103 exactly as proposed.

3. No comments or testimony were received.

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

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

Certified to the Secretary of State April 4, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.38.106 pertaining to)
fees for review of public)
water and sewage system plans) (PUBLIC WATER SUPPLY)
and specifications)

TO: All Concerned Persons

1. On December 16, 2004, the Board of Environmental Review published MAR Notice No. 17-223 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2983, 2004 Montana Administrative Register, issue number 24.

2. The Board has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.38.106 FEES (1) through (2)(a) remain as proposed.

(b) The fee schedule for designs requiring review for compliance with department Circular DEQ-2, 1999 edition, is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans,	
engineering reports (minor).....	\$ 300
comprehensive facility plan (major).....	\$1,000
Chapter 30 Design of sewers	
< 1320 lineal feet with standard specs.....	\$ 150
< 1320 lineal feet without standard specs.....	\$ 450
> 1320 lineal feet with standard specs.....	\$ 300
> 1320 lineal feet without standard specs.....	\$ 600
Sewer extension certified checklist.....	\$ 100
Chapter 40 Sewage pumping station	
100 <u>1000</u> gpm or less.....	\$ 800 <u>400</u>
greater than <u>1000</u> gpm.....	\$ 1,200 <u>800</u>
Chapter 60 Screening grit removal.....	\$1,000
<u>screening devices and comminutors</u>	\$ 300
<u>grit removal</u>	\$ 300
<u>flow equalization</u>	\$ 500
Chapter 70 Settling.....	\$ 800
Chapter 80 Sludge handling.....	\$1,600
Chapter 90 Biological treatment.....	\$2,400
nonaerated treatment ponds.....	\$ 800
aerated treatment ponds.....	\$1,400
Chapter 100 Disinfection.....	\$ 500
Appendices A, B, C & D (per design).....	\$ 700

(c) through (7) remain as proposed.

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

COMMENT NO. 1: One commentor was concerned with the amount of time that he expended in trying to get a well, which was constructed without prior review, approved.

RESPONSE: Section 75-6-112, MCA, and the Administrative Rules of Montana require that a person may not commence any construction or alteration of a public water supply system prior to the Department reviewing and approving plans and specifications. This requirement is in place to ensure that the proposed construction or alteration will meet design standards. The amount of time required in reviewing a system or component that is already constructed may be very large; however, the Department is still required by 75-6-108, MCA, to recover costs associated with those reviews. By submitting plans prior to construction, a person may avoid such extended review times. The subject of the commentor's concern is not addressed by the proposed rulemaking. Because this comment is beyond the scope of the proposed rule, no change to the proposed rule is being made in response to the comment.

COMMENT NO. 2: Several commentors were concerned that they were being required to pay to have an existing system reviewed.

RESPONSE: The proposed fees will affect only those persons proposing to construct new systems or to modify an existing system. Existing systems that are not making changes to their system will not be affected by these amendments.

COMMENT NO. 3: One commentor was concerned with the proposed increases as they may affect a small system like his.

RESPONSE: Section 75-6-108, MCA, which establishes the Board's authority to set fees for public water supply systems, does not set out a fee schedule based on size of systems. The statute requires the Department to recover its costs associated with the review process. Because smaller systems are generally less complex and have fewer components, they would pay lower fees than larger systems.

COMMENT NO. 4: One commentor was concerned that the increase in fees is associated with the costs of conducting required monitoring, and that the increase in fees would lead to an increase in monitoring requirements.

RESPONSE: The proposed fees for this rule are applicable only to plan and specification reviews of new systems or existing systems being submitted for alteration or modification. The proposed fees do not reflect sampling requirements or costs.

COMMENT NO. 5: One commentor stated that review fees had been made in the past and no permit had been received.

RESPONSE: The permit in question was for a Montana Pollutant Discharge Elimination System (MPDES) permit, and that permit process is still on-going.

COMMENT NO. 6: Several comments were received stating a concern that the amount of review time indicated, by division of

the fee by the flat rate of \$50 per hour, was excessive for that particular type of review. One comment was specific to "grit removal," Chapter 60, and another commentor was specific to sewage pumping stations, Chapter 40.

RESPONSE: There are two methods by which the fee table sets fees. One is to set fees for a specific component and the other is to set fees to cover a chapter, which may have multiple components within it. For instance, a chapter covers three specific components; if a project submits plans with one of those components, the cost is the same as if the project included all three items. The fees were estimated to try and average a cost of the chapter as opposed to line items within the chapter. Ideally, the fee would be accurate for a project that contains two of the three components. For Chapter 60, Screening, Grit Removal and Flow Equalization, the Department agrees with the commentor that the proposed fees for that chapter may benefit from further review. For the proposed fees associated with Chapter 40, Sewage pumping stations, the Board agrees with the commentor that the proposed fees may be excessive. The Board will make changes as indicated by interline for removed language and underline for added language. The Board expects to propose modifications to the fee table based on a review of future receipts and plan submittals.

COMMENT NO. 7: One commentor was concerned that the addition of various fee items may make the cost of review excessive.

RESPONSE: The additional fee items are necessary to reflect the greater amount of time and resources required to complete that review.

COMMENT NO. 8: Several comments were received indicating that the Department should consider placing the review service on independent contract.

RESPONSE: The Department attempted this approach and returned to review by Department engineers because of issues that arose concerning cost, conflict of interest, and management of files and records.

COMMENT NO. 9: One commentor gave an example of a "three-party small water system" and the estimated costs associated with the proposed fees as being an overly burdensome expense to a small system.

RESPONSE: Because a "three-party small water system" does not meet the statutory definition of a public water supply, it would be exempt from these proposed rules.

COMMENT NO. 10: One commentor was concerned that other expenses were being included in the fee table.

RESPONSE: Section 75-6-108, MCA, requires that the Department collect fees that must be "... commensurate with the cost to the Department of reviewing plans and specifications." The fees include overhead costs such as floor space rental, administrative assistance, file maintenance, electrical bills,

equipment, etc. for review staff. Inclusion of these items in fees is necessary to comply with the statute's direction to cover costs. Modifications to the fee table may be made based on a review of future receipts.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, April 4, 2005.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.15.101 through)
8.15.302, pertaining to)
construction blasters,)
hoisting and crane operators)
and boiler engineers)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, construction blasters, hoisting and crane operators and boiler engineers program was transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, Chapters 122, 131 and 135.

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

<u>OLD</u>	<u>NEW</u>	
8.15.301	24.122.401	Fee Schedule For Boiler Operating Engineers
8.15.102	24.131.301	Definitions
8.15.101	24.131.401	Purpose
8.15.106	24.131.405	Training Programs
8.15.104	24.131.406	Use Of Explosives -- Incorporation Of Standards Of National Organizations And Federal Agencies
8.15.105	24.131.410	Variances
8.15.103	24.131.501	Construction Blaster License Requirements
8.15.107	24.131.506	Suspension, Revocation Or Refusal To Renew Construction Blaster's License
8.15.202	24.135.301	Definitions
8.15.201	24.135.401	Purpose
8.15.206	24.135.410	Procedure To Prohibit Use Of Equipment In Violation Of Title 50, Chapter 76 Concerning Hoisting Engines And Crane Operators
8.15.203	24.135.501	Hoisting Operators License Requirements
8.15.205	24.135.516	Crane Hoisting Operators License Requirements
8.15.204	24.135.530	Mine Hoisting Operators License Requirements

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

Chapter 483, Laws of Montana 2001.

The rules are being transferred into three individual chapters to more easily identify which rules are applicable to boiler operating engineers, crane and hoisting operating engineers and construction blasters. This separation will make the rules easier to use by program staff and the public. The content of the rules is not modified; only the numbering scheme is changed as shown.

DEPARTMENT OF LABOR AND INDUSTRY
BOILERS, BLASTERS AND CRANES

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State April 4, 2005.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
New Rules I through VII, and the) AND REPEAL
repeal of ARM 8.15.302, all)
pertaining to boilers, terminology,)
licensure, examinations,)
responsibility of licensees, and)
training)

TO: All Concerned Persons

1. On October 21, 2004, the Department of Labor and Industry published MAR Notice No. 8-15-4 regarding the public hearing on the proposed adoption and repeal of the above-stated rules relating to boilers, terminology, licensure, examinations, responsibility of licensees, and training, at page 2492 of the 2004 Montana Administrative Register, issue no. 20.

2. On November 12, 2004, at 10:00 a.m., a public hearing was conducted in Helena, Montana, and numerous members of the public spoke at the hearing. In addition, a number of written comments were received prior to the closing of the comment period.

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

COMMENT 1: Comments were received asking for a better definition of the term "operating" than that in New Rule I(6) because the definition proposed is unclear.

RESPONSE 1: The Department agrees with the commenters and will amend the definition accordingly.

COMMENT 2: Several comments were made objecting to the requirement that power boilers be attended whenever being operated, as required by New Rule VI(2).

RESPONSE 2: The requirement for continual attendance applies only to the situation where a power boiler is being operated while the water feed is shut off, and the boiler is being forced to its maximum capacity. If either one of those conditions is not present (i.e., the water feed is not shut off, or the boiler is not being forced to its maximum capacity), then continual attendance by the operator is not required by New Rule VI(2).

COMMENT 3: Numerous comments were received regarding New Rule VI(3) which requires an operator to personally check the operation of a power boiler at a minimum of every 120 minutes.

Several commenters stated that many employers cannot afford to hire licensed operating engineers to personally check the operation of an automatically fired power boiler at least once every two hours.

RESPONSE 3: New Rule VI(3) only applies to power boilers as defined. The Department understands there is some confusion on the definition of "power boiler". ARM 24.301.711 defines the term "power boiler". The Department has now added an explicit definition for power boiler to New Rule I - Use of Terminology. Also, the catchphrase for New Rule I - Use of Terminology is being changed to "Definitions" to be consistent with other department definition rules.

The Department will amend New Rule VI(3) to clarify that when a power boiler is being manually operated, the boiler must be checked at no more than 120 minute intervals, or in accordance with the boiler manufacturer's requirements specified in AMSE CSD 1. The Department will also amend the rule to specify that other boilers (those not meeting the definition of a "power boiler") are to be checked as required by the manufacturer as specified in AMSE CSD, or whenever the boiler is being manually operated.

COMMENT 4: Several commenters objected to the approval of any training standards in New Rule VII that would provide lesser training and experience than already provided by existing state-approved training programs.

RESPONSE 4: The Department does not intend to lower the training standards that have been developed by various employers or organizations and approved by the Department. The legislation that amended 50-74-304(6)(a), MCA, did not include any requirements for the minimum amount of hours for training courses. The Department will clarify the rule by specifying that training courses for a low pressure license or a third class license must have a minimum of 30 hours of classroom and shop time. The requirement for those licenses is "completion of a training course acceptable to the department", plus 40 hours of experience. The statute does not allow for training courses as an alternative to the requirements for first or second class operating engineer licenses, nor has the Department proposed any such action.

COMMENT 5: Numerous comments were received regarding New Rule V(4) which would require that at the time of license renewal, operators inform the department in writing or by online renewal on the forms provided, which boiler(s), identified by the Montana Boiler Number (MTB#) and location, the operator is responsible for operating and/or monitoring. Those commenters all felt it would be difficult and burdensome for licensees to do that.

RESPONSE 5: The Department has reviewed New Rule V and agrees that it may be too burdensome. As a consequence, (4) will be removed from New Rule V and the remainder of the rule will be adopted and its remaining provisions renumbered.

COMMENT 6: Comments were received stating that New Rule V(5) was burdensome because it required a licensed operator to indicate in writing or by online renewal the name(s) of any person(s) they are currently training. One commenter suggested that trainees, not the licensee, should be required to keep a training log, similar to those used by individuals learning to pilot an airplane.

RESPONSE 6: The Department notes that the licensed operator is the responsible operator for the boiler(s), and is held responsible for any person(s) the licensee is training. Additionally, the Boiler Experience Verification Affidavit on the application is to be filled out by the licensed operator (not the trainee), and sworn to before a notary public. The Department relies on the sworn statement of the existing licensee as the best evidence available to verify that the applicant has obtained the required amount of training. The Department believes that it is necessary to adopt the provisions of New Rule V(5) as proposed.

COMMENT 7: An employee of the Harford Steam Boiler Insurance Company submitted data from the National Board of Boiler Pressure Inspectors (the 1992-2002 incident report) for the Department's review. He noted that twice as many fatalities were caused by hot water heater and boiler explosions than were caused by steam heating boilers.

RESPONSE 7: The Department acknowledges receipt of the data and notes the points made.

COMMENT 8: One person commented on the provisions of New Rule I(1)(b)(i), that the Department may require the boiler owner to provide appropriate verification from the power supplier, which establishes the BTU per hour or horsepower per hour rate at which the boiler is being fired, as applicable. He was not sure how that could be accomplished, because without an efficiency factor, the amount of heat input does not necessarily equal the amount of power produced.

RESPONSE 8: The commenter is correct that actual work output of a boiler system is less than the energy input for the system. It is the intent of the Department that the nominal operating output be identified in order to determine what class of license is required to operate the boiler system. The formula for determining the nominal operating output figures is: $\text{BTU hr input} / 1\text{hp} / 34,000 \text{ BTU hr input} = \text{hp}$. The Department believes that the nominal operating output calculation is the most practical way of estimating the actual output of an operating boiler.

COMMENT 9: The same person also commented on an issue involving whether the training and experience a nuclear-power-trained engineer gained in the military would qualify as appropriate training and experience for Montana licensing purposes.

RESPONSE 9: The Department believes proposed New Rule III allows the Department to consider such experience and training on a case-by-case basis. The Department reviews and considers military experience under 50-74-305(2), MCA currently and will continue to evaluate military experience based on the authority provided in the statute.

COMMENT 10: Representative Jim Keane, who was the prime sponsor of House Bill 525 during the 2003 Legislature, expressed concern whether the proposed New Rules would change the first class boiler license requirements.

RESPONSE 10: The New Rules do not in any way change the requirements for a first class license.

COMMENT 11: Rep. Keane also stated his opposition to any reduction in the 40 hours of operating experience for low pressure or third class licenses.

RESPONSE 11: As noted in Response 4, the statutory minimum of 40 hours of experience is in addition to whatever time is spent in an approved training course.

COMMENT 12: An individual questioned whether the Department was creating a new class of licensure, the limited low pressure operating engineer, and questioned whether the Department had the legal authority to do so.

RESPONSE 12: After further review of 50-74-304 and 50-74-305, MCA, the Department concludes that there is no clearly expressed statutory authority for it to provide by rule for a sub-class of license. The New Rules will be amended to eliminate the questioned class of license, "limited low pressure operating engineer".

COMMENT 13: A commenter expressed frustration that he was unable to deliver his comments using the e-mail address or the fax number listed in the Notice of Public Hearing and suggested that the comment period be extended until those problems were corrected.

RESPONSE 13: The Department regrets that the commenter experienced the difficulties he described. The Department checked both the e-mail address listed, dlibsdboi@state.mt.us, and the fax number listed, (406) 841-2305, as soon as it was aware someone was having difficulty with access. The Department found (and promptly fixed) a technical glitch in

the e-mail system. The Department found the fax number to be working. The Department notes that it received comments from other persons via e-mail and by fax during the comment period. The Department concludes that the difficulties the commenter experienced were isolated incidents, and do not justify an extension of the comment period.

4. After consideration of all comments received, the Department adopts New Rules II (24.122.501) and IV (24.122.510) exactly as proposed, and adopts New Rules I (24.122.301), III (24.122.505), V (24.122.515), VI (24.122.410) and VII (24.122.405) as proposed but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.122.301) USE OF TERMINOLOGY DEFINITIONS

For the purposes of this chapter, the following ~~terminology is used~~ definitions apply:

(1) through (3) remain as proposed.

~~(4) "Limited low pressure operator" means a person who has been issued a boiler operating engineer's license specifically authorizing the monitoring of low pressure hot water heating boilers and hot water supply boilers only.~~

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

~~(6)(5) "Operating" a power boiler or steam engine means the manual operating and monitoring of an automatically fired power boiler or steam engine, which requires the operator to be present while the boiler is fired. For purposes of this chapter, "operating" does not include monitoring an automatically fired steam heating boiler, provided that no operations are performed upon the boiler other than maintenance and emergency shut down in alarm situations.~~

(6) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch gauge pressure (psig).

(7) Additional definitions related to boiler operators are in building code rules found at ARM 24.301.711. The department incorporates by reference the definitions contained in the September 30, 2004, version of ARM 24.301.711, which include the following terms:

- (a) boiler;
- (b) high temperature water boiler;
- (c) hot water heating boiler;
- ~~(d) power boiler;~~

(e) through (k) remain the same, but are renumbered (d) through (j).

AUTH: 50-74-101, MCA

IMP: 50-74-101, MCA

NEW RULE III (24.122.505) APPLICATION FOR LICENSURE

(1) through (3) remain as proposed.

~~(4) Applicants may apply for a limited low pressure boiler operating engineer's license which limits them to low~~

~~pressure hot water heating boilers and hot water supply boilers only. To qualify for a low pressure boiler operating engineer's license for operation of both steam and hot water boilers, applicants must pass both the steam and hot water portions of the low pressure operator examination.~~

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

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-308, MCA

NEW RULE V (24.122.515) RENEWAL OF LICENSE (1) through (3) remain as proposed.

~~(4) At the time of license renewal, operators shall inform the department, in writing or by online renewal on the forms provided, which boiler(s), identified by Montana boiler number (MTB#) and location, the operator is responsible for operating and/or monitoring.~~

~~(5)~~(4) At the time of license renewal, operators shall inform the department, in writing or by online renewal on the forms provided, of the name(s) of any person(s) currently being trained to operate and/or monitor the boiler(s) ~~listed in (4).~~

AUTH: 50-74-101, MCA

IMP: 50-74-313, MCA

NEW RULE VI (24.122.410) RESPONSIBILITY OF LICENSEE

(1) and (2) remain as proposed.

(3) The operator shall personally check the operation of a power boiler, the necessary auxiliaries, and the water level in the boiler at such intervals as are necessary to ensure safe operation of the boiler. In no case when the power boiler is being manually operated may this interval exceed 120 minutes-, or the requirements of the boiler manufacturer as set forth in ASME CSD 1, which ever period is shorter.

(4) The operator of any boiler, other than a power boiler, whenever the boiler is being manually operated, shall personally check the operation of such boiler in intervals established by the requirements of the boiler manufacturer as set forth in ASME CSD 1.

(4) through (6) remain the same, but are renumbered (5) through (7).

AUTH: 50-74-101, MCA

IMP: 50-74-106, 50-74-210, 50-74-214, MCA

NEW RULE VII (24.122.405) APPROVAL OF TRAINING COURSES

(1) remains as proposed.

(2) Minimum training course hours are as follows:

~~(a) For limited low pressure boiler operating engineers, applicable to the monitoring of low pressure hot water heating and hot water supply boilers only, a minimum of 16 hours, with a minimum of eight hours of classroom training is required.~~

~~(b)(a)~~ For all ~~other classes of~~ low pressure and third class boiler operating engineer training courses, a minimum of 30 hours, including classroom instruction and field or shop time is required.

(3) through (3)(d) remain as proposed.

(e) the name of each ~~person~~ licensed operator who will act as an instructor for the course; and

(f) a copy of the instructor's boiler operating engineer's license or other documentation acceptable to the department, which outlines the instructor qualifications to teach the course.

(i) Instructors who are not currently licensed by the state of Montana as a boiler operating engineer ~~with a~~ must have a class of license at least equal to the level of training class being offered and are required to successfully pass the applicable written examination prior to teaching the training course.

(4) through (6) remain as proposed.

AUTH: 50-74-101, MCA

IMP: 50-74-304, MCA

5. The department has repealed ARM 8.15.302 exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY
BOILERS, BLASTERS AND CRANES

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 4, 2005

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2004. This table includes those rules adopted during the period January 1, 2005 through March 31, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2004, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2004 and 2005 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.

GENERAL PROVISIONS, Title 1

- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2366, 2821
- 1.3.102 Guidelines Governing Public Participation at Public Meetings, p. 2987, 258
- 1.3.102 Guidelines Governing Public Participation at Public Meetings, p. 2343, 2806

ADMINISTRATION, Department of, Title 2

- I & II Trust Company Examination Fees - Required Bond Amounts for the Licensing of Escrow Businesses, p. 1179, 1947, 2276
- I-X State of Montana Voluntary Employees' Beneficiary Association, p. 2779
- 2.21.701 and other rules - Leave of Absence without Pay, p. 141, 372
- 2.21.801 and other rules - Sick Leave Fund, p. 2027, 2545
- 2.21.1001 and other rules - Parental Leave, p. 286
- 2.59.1701 and other rule - Definitions - License Renewal of Mortgage Brokers and Loan Originators, p. 2959, 320

- (Public Employees' Retirement Board)
- 2.43.441 and other rule - Transfer of Funds for Certain Service Purchases, p. 400

(State Fund)

2.55.320 Classifications of Employments, p. 2429, 3013

AGRICULTURE, Department of, Title 4

4.3.601 and other rules - Rural Development Loans, p. 2333, 2805
4.10.201 and other rules - Pesticide Certification, p. 2031, 2546
4.17.106 and other rule - Organic Certification Fees, p. 2865, 161

STATE AUDITOR, Title 6

I-XII Insurance Standards for Safeguarding Personal Information, p. 2435, 426
6.6.511 Sample Forms Outlining Coverage, p. 2336, 3014
6.6.1906 Operating Rules for the Montana Comprehensive Health Association, p. 2123, 2907
6.6.3504 Contents of Annual Audited Financial Report, p. 2432, 2908
6.6.8501 and other rules - Viatical Settlements, p. 1877, 71
6.10.148 Custody of Notice Filings for Offerings of Federal Covered Securities under 18(b)(3) or (4) of the Securities Act of 1933, p. 1427, 2850, 2369

(Classification Review Committee)

6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 2870, 251
6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Social Services Operations and Bottling Operations, p. 1874, 2045, 2909

COMMERCE, Department of, Title 8

I Administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program, p. 1
8.119.101 Tourism Advisory Council, p. 404

EDUCATION, Title 10

(Superintendent of Public Instruction)

10.10.301C Out-of-State Attendance Agreements, p. 2441, 3015

(Board of Public Education)

10.55.909 and other rule - Student Discipline Records - Student Records, p. 194
10.55.909 Student Records, p. 1659, 2277
10.57.102 and other rules - Educator Licensure, p. 407
10.57.201 and other rules - Educator Licensure, p. 1661, 2910
10.58.103 Review of Professional Educator Preparation Program, p. 289

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- I Hunting Season Extensions, p. 1887, 2341, 2911
- I-VII Exotic Wildlife, p. 358
- I-XII River Recreation, p. 1436, 2718
- I-XVI Blackfoot River Special Recreation Permit Program,
p. 4, 430
- 12.11.202 and other rules - Beaverhead and Big Hole Rivers,
p. 144
- 12.11.3985 No Wake Zone on Seeley Lake, p. 2874, 373

(Department of Fish, Wildlife, and Parks and the Fish, Wildlife,
and Parks Commission)

- 12.9.204 Lone Pine Game Preserve, p. 1101, 1552, 2370

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.345 Subdivisions - Adoption by Reference of Department
Circular DEQ-4, p. 1345, 2589
- 17.50.215 Junk Vehicle - Disposal of Junk Vehicles through
State Disposal Program, p. 885, 2382
- 17.50.802 and other rules - Septage Cleaning and Disposal -
Cesspool, Septic Tank and Privy Cleaners, p. 2350,
698, 2383, 2914
- 17.53.102 and other rules - Hazardous Waste - Authorization of
the Hazardous Waste Program, p. 14, 442
- 17.56.101 and other rules - Underground Storage Tanks -
Installation of Underground Storage Tanks, p. 2877,
443
- 17.56.502 and other rule - Underground Storage Tanks - Release
Reporting - Corrective Action, p. 2668, 87

(Board of Environmental Review)

- 17.8.102 and other rules - Air Quality - Incorporation by
Reference of Current Federal Regulations and Other
Materials into Air Quality Rules, p. 291
- 17.8.335 Air Quality - Maintenance of Air Pollution Control
Equipment for Existing Aluminum Plants, p. 2456, 321
- 17.8.505 and other rule - Air Quality - Air Quality Operation
Fees - Open Burning Fees, p. 1355, 2547
- 17.20.201 and other rules - Major Facility Siting Act,
p. 2459, 252
- 17.24.301 and other rules - Montana Strip and Underground Mine
Reclamation Act, p. 777, 2548
- 17.30.716 and other rules - Water Quality - Incorporation by
Reference of DEQ-4 as It Pertains to Water Quality,
p. 1347, 2579, 86
- 17.30.1303 and other rules - Water Quality - Concentrated
Animal Feeding Operations (CAFOs) - Adoption of
Department Circular DEQ 9 (Montana Technical
Standards for CAFOs), p. 2962
- 17.38.101 and other rules - Public Water Supply - Public Water
and Sewage System Requirements, p. 2444, 3016, 257

17.38.106 Public Water Supply - Fees for Review of Public Water and Sewage System Plans and Specifications, p. 2983

(Petroleum Tank Release Compensation Board)

17.58.311 and other rule - Definitions - Applicable Rules Governing the Operation and Management of Petroleum Storage Tanks, p. 2487, 3018

TRANSPORTATION, Department of, Title 18

(Transportation Commission)

I-VII Montana Scenic-Historic Byways Program, p. 2677, 93

18.6.202 and other rules - Outdoor Advertising, p. 2126, 89

I-VI Acceptance and Use of Electronic Records and Electronic Signatures, p. 1891, 2915

18.8.101 and other rules - Motor Carrier Services Regulations for Overdimensional Vehicles and Loads, p. 1558, 2392

18.9.302 and other rules - Posting a Bond by Certain Fuel Tax Licensees - Other Fuel Tax Reporting Requirements, p. 1553, 2278

CORRECTIONS, Department of, Title 20

I-VI Establishment of the Eastmont Chemical Dependency Treatment Program in Glendive, Montana, for Fourth Offense DUI Offenders, p. 1897, 3019

JUSTICE, Department of, Title 23

I-V Operation of the Criminal Intelligence Information Section - Access of Participating Law Enforcement Agencies to Information Maintained by the Criminal Intelligence Information Section, p. 304

1.3.102 Guidelines Governing Public Participation at Public Meetings, p. 2987, 258

1.3.102 Guidelines Governing Public Participation at Public Meetings, p. 2343, 2806

23.7.101A and other rules - NFPA 1 Uniform Fire Code, p. 2990, 260

23.10.101 List of Precursors to Dangerous Drugs, p. 1903, 2807

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Safety and Health in Mines Other than Coal Mines, p. 1906, 2812

I Abatement of Renewal Fees, p. 1292, 2286

8.15.301 Boiler Operating Engineer License Fees, p. 2501, 3028

- 8.15.302 and other rules - Boilers - Terminology - Licensure - Examinations - Responsibility of Licensees - Training, p. 2492
- 8.19.101 and other rules - Transfer from the Department of Commerce - Fire Prevention and Investigation - Fireworks Wholesalers, p. 261
- 8.77.101 and other rules - Weights and Measures, p. 2997, 445
- 24.30.102 and other rules - Occupational Safety Matters in Public Sector Employment, p. 1909, 2811, 98
- 42.17.501 and other rules - Transfer from the Department of Revenue - Unemployment Insurance Tax Matters, p. 2149, 2808, 3035

(Board of Alternative Health Care)

- 24.111.301 and other rules - Definitions - Naturopathic Physician Natural Substance Formulary List - Direct-entry Midwife Apprenticeship Requirements - Required Reports, p. 2786

(Board of Barbers and Cosmetologists)

- I-XXXVII and other rules - Licensure, Fees and Regulation of Barbers, Cosmetologists, Electrologists, Estheticians and Manicurists under the New Board of Barbers and Cosmetologists - Board of Barbers - Board of Cosmetologists - Interim Rule, p. 1666, 2813, 262

(State Electrical Board)

- 24.141.403 Licensee Responsibilities, p. 317
- 24.141.405 and other rule - Fee Schedule - Master Electrician Qualifications, p. 2349, 325

(Board of Funeral Service)

- 24.147.1101 and other rule - Crematory Facility Regulation - Designation as Crematory Operator or Technician, p. 197

(Board of Hearing Aid Dispensers)

- 24.150.510 Allowable Dispensing Fees, p. 1372, 2816

(Board of Landscape Architects)

- 24.153.403 Fee Schedule, p. 365
- 24.153.403 Fee Schedule, p. 1449, 2287

(Board of Nursing)

- 8.32.305 and other rules - Educational Requirements and Other Qualifications Applicable to Advanced Practice Registered Nursing - Clinical Nurse Specialist Practice - Application for Initial Approval - Special Reports - Initial Application Requirements for Prescriptive Authority - Special Limitations Related to the Prescribing of Controlled Substances, p. 311

- 8.32.402 and other rules - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse, p. 2345
- 8.32.405 and other rules - Licensure by Endorsement - Licensure for Foreign Nurses - Inactive Status - Fees - Grounds for Denial of License - License Probation or Reprimand of a Licensee - Definitions - Licensure of Medication Aides, p. 1277, 2393, 3032
- 8.32.1701 and other rules - Delegation, p. 30

(Board of Nursing Home Administrators)

- 8.34.101 and other rules - Transfer from the Department of Commerce, p. 375
- 8.34.415 and other rule - Renewals - Continuing Education, p. 2138, 377

(Board of Occupational Therapy Practice)

- 8.35.101 and other rules - Transfer from the Department of Commerce, p. 2280
- 24.165.301 and other rules - Modalities - Medications - Definitions - Approval to Use Modalities - Permission to Use Electrical or Sound Physical Agents, p. 2505, 447

(Board of Optometry)

- 24.168.401 Fees, p. 200

(Board of Physical Therapy Examiners)

- 8.42.101 and other rules - Transfer from the Department of Commerce, p. 380

(Board of Psychologists)

- 8.52.101 and other rules - Transfer from the Department of Commerce, p. 2282

(Board of Public Accountants)

- 8.54.422 and other rules - Examinations and Professional Quality Monitoring - Composition of the Screening Panel, p. 2142, 2916

(Board of Radiologic Technologists)

- 8.56.101 and other rules - Transfer from the Department of Commerce, p. 3033
- 8.56.602C and other rules - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Code of Ethics, p. 2682

(Board of Real Estate Appraisers)

- 24.207.502 Application Requirements, p. 369

(Board of Respiratory Care Practitioners)

- 24.213.301 and other rules - Definitions - Application for Licensure - Temporary Permit - Examination - Institutional Guidelines Concerning Education and

Certification and Authorization to Perform Pulmonary Function Testing and Spirometry, p. 2352, 453

(Board of Sanitarians)

24.216.402 and other rule - Fee Schedule - Minimum Standards for Licensure, p. 2994, 382

(Board of Speech-Language Pathologists and Audiologists)

8.62.101 and other rules - Transfer from the Department of Commerce, p. 2284

(Board of Veterinary Medicine)

8.64.101 and other rules - Transfer from the Department of Commerce, p. 323

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 2047, 2591

32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 2358, 2817

(Board of Horse Racing)

32.28.501 and other rules - Horse Racing, p. 45, 383

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-XXIX Complete and Correct Application, Department Actions, and Standards Regarding Water Rights - Definitions, p. 2163, 3036, 101, 162, 264

36.23.101 and other rules - Purpose - Definitions - Use of the State Revolving Fund - Application - Evaluation of Projects and Applications - General Obligation Bonds - Revenue Bonds - Special Improvement Districts - Loans to Disadvantaged Municipalities - Other Types of Bonds or Additional Security or Covenants for Municipalities - Covenants Regarding Facilities Financed by Loans - Fees - Evaluation of Financial Matters and Commitment Agreement - Requirements for Disbursing of Loan - Terms of Loan and Bonds, p. 1714, 2288

36.23.102 and other rule - Tax Increment Revenue Bonds under the Water Pollution Control State Revolving Fund Act, p. 210, 457

36.24.102 and other rule - Tax Increment Revenue Bonds under the Drinking Water State Revolving Fund Act, p. 203, 458

36.24.102 and other rules - Definitions and Construction of Rules - Fees - Evaluation of Financial Matters and Commitment Agreement - Disbursing of Loan, p. 1730, 2291

(Board of Land Commissioners and the Department of Natural Resources and Conservation)

- 36.25.117 Renewal of Lease or License and Preference Right, p. 2361, 2918
- 36.25.128 and other rules - Land Banking, p. 1452, 2399

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37.5.304 and other rules - Substantiation of Child Abuse and Neglect - Fair Hearing Rights, p. 1571, 2409
- 37.40.311 Medicaid Payments to Nursing Facilities, p. 411
- 37.49.112 IV-E Foster Care Eligibility: Living with a Specified Relative, p. 1735, 2292
- 37.70.106 and other rules - Low Income Energy Assistance Program (LIEAP), p. 2200, 2818
- 37.80.101 and other rules - Child Care Subsidy - Legally Unregistered Provider - Child Care Provider Merit Pay - Star Quality Tiered Reimbursement Programs, p. 217
- 37.82.101 Medicaid Eligibility, p. 2894, 163
- 37.85.414 and other rules - Medicaid Provider Requirements, p. 2690, 459
- 37.86.805 and other rules - Medicaid Reimbursement Rates for Ambulance Services, Hearing Aids and Durable Medical Equipment, p. 53, 385
- 37.86.2105 and other rules - Medicaid Eyeglass Reimbursement - Medicaid Hospital Reimbursement, p. 2883, 265
- 37.86.4401 and other rules - Reimbursement of Rural Health Clinics and Federally Qualified Health Centers, p. 60
- 37.106.312 Minimum Standards for All Health Care Facilities: Blood Bank and Transfusion Services, p. 2905, 268

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Utility Implementation of Rate Changes and Billing Practices, p. 421
- I Eligible Telecommunications Carriers and Lifeline/Link-Up, p. 423
- I-VII Energy Utility Service Standards, p. 416
- I-XIX Eligible Telecommunications Carriers, p. 2697
- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 1595, 2592
- 38.3.402 and other rule - Motor Carrier Protestant Filing Requirements - Motor Carrier Application Fees, p. 1739, 2931
- 38.5.301 and other rules - Municipality-Owned Utilities, p. 1746, 2933
- 38.5.2202 and other rule - Pipeline Safety, p. 2795, 386
- 38.5.3301 and other rules - Telecommunications Service Standards, p. 2518
- 38.5.3403 Operator Service Providers, p. 1744, 2934

REVENUE, Department of, Title 42

- I & II Qualified Research Expenses for a Qualified Corporation, Individual, Small Business Corporation, Partnership, Limited Liability Partnership, or Limited Liability Company, p. 2707, 164
- I & II Capital Gain Credit, p. 2098, 2600
- 42.4.103 and other rules - Personal Income Taxes, Credits, Incentives, and Exemptions, p. 429, 1965, 2601
- 42.9.101 and other rules - Pass-through Entities, p. 1919, 2751
- 42.12.122 and other rule - Liquor Licensing, p. 3010, 269
- 42.15.112 and other rules - Personal Income Taxes, p. 2213, 3147
- 42.16.101 and other rules - Personal Income Taxes, p. 2251, 3153
- 42.17.101 and other rules - Business and Estimated Payment Taxes, p. 2054, 2754
- 42.18.106 and other rules - Annual Appraisal Plan - Exemption for Qualified Disabled Veterans for Property Taxes, p. 2264, 3156
- 42.19.1235 and other rules - Industrial Property, p. 2798
- 42.20.601 and other rules - Agricultural Property Taxes, p. 2710, 3160
- 42.21.113 and other rules - Personal, Industrial and Centrally Assessed Property Tax Trend Table Updates, p. 2077, 2603
- 42.31.101 and other rules - Cigarette and Tobacco Taxes, p. 1925, 2935

SECRETARY OF STATE, Title 44

- I Filing for Certification Authorities, p. 1945, 2415
- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2366, 2821
- 44.6.105 and other rules - Fees for Filing Documents--Uniform Commercial Code - Corporations-Profit and Nonprofit Fees - Limited Liability Company Fees - Miscellaneous Fees - On-line Filing Fees, p. 2715, 3162

(Commissioner of Political Practices)

- I Lobbying and Regulation of Lobbying - Payment Threshold, p. 158