ISSUE NO. 24

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed amendment of ARM 10.55.701, 10.55.801 and 10.55.1003 relating to accreditation standards | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On January 23, 2006 at 9:00 a.m. a public hearing will be held in the Office of the Commissioner of Higher Education conference room of the NY Building at 46 North Last Chance Gulch, Helena, Montana, to consider the amendment of the above-stated rules relating to accreditation standards.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on January 9, 2006 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

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

10.55.701 BOARD OF TRUSTEES (1) through (3)(f) remain the same.

(g) a policy that is designed to prevent bullying, intimidation, and harassment of students and school personnel;

(g) through (n) remain the same but are renumbered (h) through (o).

(4) through (8) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.55.801 SCHOOL CLIMATE (1) through (1)(c) remain the same.

(d) develop policies, procedures, and rules that respect the rights of all learners, ~~and~~ promote an awareness of and concern for the well-being of others, and prevent bullying, intimidation, and harassment of students and school personnel;

(e) through (j) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.55.1003 PROGRAM FOUNDATION STANDARDS (1) through (1)(a)(ii) remain the same.

(iii) provide physically, emotionally, and educationally safe and supportive learning and working environments, including environments free from bullying, intimidation and harassment;

(iv) through (1)(c)(vi) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

4. Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend these rules because language requiring school districts to adopt a policy on bullying, intimidation, and harassment does not currently exist in the Montana Accreditation Standards. The Board of Public Education has concluded a lengthy public input process in regard to this subject matter as a result of debate and discussion surrounding SB 198 introduced in the 2005 legislative session. The Board of Public Education assured the legislature that it would review this issue and act accordingly.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on January 23, 2006.

6. Steve Meloy has been designated to preside over and conduct the hearing.

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding accreditation standards or other school related rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to smeloy@bpe.montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

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

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

Certified to the Secretary of State December 12, 2005.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the proposed adoption of New Rules I through XIII, amendment of ARM 10.102.1151, 10.102.1152, 10.102.1153, 10.102.1154, and 10.102.1156, and the repeal of ARM 10.102.1150 pertaining to public library standards | ) NOTICE OF PUBLIC HEARING ) ON PROPOSED ADOPTION, ) AMENDMENT, AND REPEAL |

TO: All Concerned Persons

1. On January 11, 2006, at 2:00 p.m., a public hearing will be held in the conference room of the Montana State Library, at 1515 East 6th Ave., Helena, Montana to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The State Library 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 State Library no later than 5:00 p.m. on January 4, 2006, to advise us of the nature of the accommodation that you need. Please contact Julie Stewart, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, phone (406) 444-3384, TDD (406) 444-3005, fax (406) 444-0266, or email jstewart2@mt.gov.

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

RULE I PUBLIC LIBRARY STANDARDS: GENERAL (1) Public libraries receiving state payments must meet the following essential standards by July 2007 and each year following.

(2) General essential standards for public libraries are as follows:

(a) The library is established under Montana's laws according to 22-1-301 through 22-1-317, 22-1-701 through 22-1-1711, or Title 7, MCA.

(b) The board conforms to all applicable state, local, and federal laws, rules, and regulations.

(c) Monthly, or at least quarterly, library board meetings are held in an accessible location at times and a place convenient to the public and according to state laws on public meetings.

(d) The library submits the Montana Public Library Annual Statistical Report to the Montana state library.

(3) General enhanced standards for public libraries are as follows:

(a) In order for the board to be knowledgeable about current library issues, new board members receive an orientation by the library director and/or others.

(b) On an annual basis, board members report on how they have promoted and supported the library, its programs, and services.

(c) Library board meetings are held every other month.

(4) General excellent standards for public libraries are as follows:

(a) The library provides for continuing education for its trustees by allocating funds to support continuing education costs, including travel expenses.

(b) At least two members of the library board will attend a regional or statewide library related activity each year.

(c) Board members will discuss library issues with local government officials at least twice a year, and state and/or national government officials at least once a year.

(d) Every three years, the board will review, evaluate, and compare its own governance structure with different governance structures for the library. This includes districting, county library systems, etc.

(e) At least three library board members join any professional library association and dues are paid by the library.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE II PUBLIC LIBRARY STANDARDS: POLICIES AND BYLAWS

(1) General essential standards for public libraries are as follows:

(a) Every three years, the board reviews and updates its bylaws as necessary.

(b) The board develops, studies, evaluates, reviews, updates, and adopts as necessary all library policies at least once every three years. When the board reviews library policies, the policies' effect on the library's relations with the public are evaluated.

(c) The public must have easy access to written policies, procedures, and bylaws.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE III PUBLIC LIBRARY STANDARDS: PLANNING AND EVALUATION (1) General essential standards for public libraries are as follows:

(a) The board uses the Montana Public Library Annual Statistical Report to review the library's year-to-year progress and performance.

(b) The library must have a written mission statement.

(c) The library governing authority adopts emergency response plans that ensure the safety of the public and staff as the primary priority.

(2) General enhanced standards for public libraries are as

follows:

(a) The library has a written three to five year long-range plan, and reviews it annually. The long-range plan addresses services, facilities, public relations, technology, etc.

(b) The board evaluates the library's performance against the stated objectives in the long-range plan.

(c) The library must have a vision statement.

(3) General excellent standards for public libraries are as follows:

(a) Community representatives, the board, and the director develop a long-range plan for the library.

(b) At least every five years, the library conducts community studies and makes use of other needs assessment techniques to ensure community participation in the design and delivery of library service.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE IV PUBLIC LIBRARY STANDARDS: FINANCE (1) General essential standards for public libraries are as follows:

(a) The board and the director follow fiscal procedures consistent with state law and local government requirements in preparing, presenting, and administering its budget.

(b) Local tax revenues provide at least 50% of the support for the library. Grants, donations, and other revenue sources supplement but do not supplant local tax support.

(c) The director works with the board to develop an annual financial plan or budget.

(d) The board and the director annually review the adequacy of insurance coverage for the collection and building, and update the coverage as necessary.

(2) General enhanced standards for public libraries are as follows:

(a) The library sets aside money in a depreciation fund to meet requirements for capital expenditures.

(b) Local tax revenues provide at least 60% of the support for the library. Grants, donations, and other revenue sources supplement but do not supplant local tax support.

(3) General excellent standards for public libraries are as follows:

(a) The library has established a foundation or endowment.

(b) The foundation board and/or the library board develops a plan for planned giving.

(c) The foundation board and/or the library board establishes a policy regarding the acceptance of gifts of real and personal property, endowment funds, and planned giving.

(d) The library has a Friends of the Library organization.

(e) Local tax revenues provide at least 70% of the support for the library. Grants, donations, and other revenue sources supplement but do not supplant local tax support.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE V HUMAN RESOURCES STANDARDS: LIBRARY DIRECTOR

(1) General essential standards for public libraries are as follows:

(a) The board hires the director according to local, state, and federal regulations and delegates the day-to-day management of the library to the director.

(b) The board evaluates the performance of the director annually.

(c) Each public library has a paid director who is responsible for the administration of library services.

(d) Libraries that serve more than 25,000 people employ a library director with a graduate degree in library or information science or its equivalent.

(e) Libraries that serve less than 25,000 people employ a library director who is or will be within three years of hire certified by the state library.

(2) General enhanced standards for public libraries are as follows:

(a) The director conducts a formal performance appraisal of each staff member at least annually.

(b) The library director informs the board of pending legislation that affects libraries on the local, state, and national levels.

(c) The library director reviews and updates procedures every three years.

(d) The library director must join the state library association.

(3) General excellent standards for public libraries are as follows:

(a) The library director provides a climate that encourages development of innovative programs and projects by providing at least three informal staff discussions about innovative programs or opportunities.

(b) The director keeps the community and funding officials aware of the library's purpose, planning, and services through the use of newspaper articles, websites, radio programs, attending meetings, etc.

(c) The director forms collaborative partnerships with other agencies and organizations in the library's service area.

(d) Libraries that serve less than 25,000 people employ a library director who has an AA/AS or higher degree.

(e) In addition to the library director's annual evaluation, the library director is evaluated every three years by the board with the input of staff, library users, and/or library nonusers.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE VI HUMAN RESOURCES STANDARDS: GENERAL (1) General essential standards for public libraries are as follows:

(a) The library board provides continuing education for the director and staff members by allocating funds to support continuing education costs, including travel expense and salary.

(b) Paid staff persons are present during 90% of all open hours.

(c) The board must adopt and review a personnel policy every three years.

(d) The library maintains written, up-to-date job descriptions.

(e) All libraries must have internet access for staff.

(2) General enhanced standards for public libraries are as follows:

(a) Volunteer programs have written policies, procedures, and job descriptions.

(b) Every staff member attends at least one continuing education eligible training program per year.

(c) Appropriate library staff have e-mail accounts available for communication and professional development.

(d) There is at least one personal computer for staff use only.

(3) General excellent standards for public libraries are as follows:

(a) Regardless of population, total library staff is not less than one full-time employee.

(b) The library board encourages and supports staff involvement in community organizations and activities.

(c) Employees have access to health insurance and retirement through the public library.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE VII HUMAN RESOURCES STANDARDS: ACCESS (1) General essential standards for public libraries are as follows:

(a) The board and the director determine the days of the week and the hours during the day to be open to provide maximum service.

(b) The library is open during the week at least the following minimum hours. Many libraries exceed this minimum because the community, the board, and the director recognize that the number of hours of public service leads to greater use by the public. A library with more than one service outlet may use the total nonoverlapping hours of all outlets to meet the minimum requirement.

| Population | Minimum | Desirable |
|---|---|---|
| less than 3,500 | 15 | 25-40 |
| more than 3,500 | 30 | 40-50 |
| more than 10,000 | 40 | 50-60 |
| more than 25,000 | 50 | 60+ |

(c) Library users who wish to copy materials available from noncirculating items or from computer files must have access to a photocopy machine or printer.

(d) The library must have a telephone and answer telephone inquiries.

(e) The library must provide access to resources and services for patrons with disabilities.

(2) General enhanced standards for public libraries are as follows:

(a) Library customers are able to access library information from remote locations.

(b) When necessary, the library refers customers to other places to fulfill the customer's information needs.

(3) General excellent standards for public libraries are as follows:

(a) The library provides appropriate access to library services for specialized populations, including, but not limited to, the homebound, the institutionalized, and non-English speaking populations.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE VIII MATERIALS AND COLLECTIONS STANDARDS: COLLECTION DEVELOPMENT (1) General essential standards for public libraries are as follows:

(a) The board adopts a collection management policy that it reviews every three years. The policy addresses the use of electronic resources. The library submits its collection development policy to the Montana state library.

(b) The board and the director develop an annual materials budget as part of the library budget.

(c) The library uses at least one professionally recognized review source.

(d) The library provides access to federal, state, and local government documents that are appropriate to its community.

(2) General enhanced standards for public libraries are as follows:

(a) The library cooperates with other community institutions to plan and implement access to electronic resources.

(b) The library provides access to materials for those with disabilities and others who may have special needs.

(c) The library is on the collection management honor roll.

(3) General excellent standards for public libraries are as follows:

(a) The library cooperates with other local and regional libraries in collection development to provide a wide range of materials in a variety of formats to meet the needs of the community.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE IX PUBLIC LIBRARY STANDARDS: ACCESS TO THE COLLECTION (1) General essential standards for public libraries are as follows:

(a) Materials are purchased to ensure a steady flow of materials for the public.

(b) The library catalogs and organizes its collection according to standard cataloging and classification systems and procedures. Automated records comply with the machine-readable catalog (MARC) format.

(c) The library offers interlibrary loan and follows the Montana state interlibrary loan protocols.

(2) General enhanced standards for public libraries are as follows:

(a) The library uses an online interlibrary loan system.

(b) The library has an automated system for circulation, cataloging, and public access catalogs that has reporting features and supports MARC records.

(3) General excellent standards for public libraries are as follows:

(a) The library collection is available online.

(b) The library, if appropriate, has joined a shared integrated library system, also known as a shared catalog.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE X PUBLIC LIBRARY STANDARDS: COLLECTION EVALUATION

(1) General essential standards for public libraries are as follows:

(a) The library's collection is continually evaluated based on the library's collection management policy. The entire collection is evaluated within each three-year period.

(2) General enhanced standards for public libraries are as follows:

(a) The library monitors the use of the collection through analyzing statistical information, including circulation per capita and the collection's turnover rate.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE XI PUBLIC LIBRARY FACILITIES STANDARDS (1) General essential standards for public libraries are as follows:

(a) The board and the director evaluate the library building every three years to determine adequate space needs.

(b) The board and the director address any identified facility shortcomings in a building plan.

(c) The library facility is safe for the public and staff.

(d) The library's facilities conform to local requirements for accessibility.

(2) General enhanced standards for public libraries are as follows:

(a) The library has an exterior sign visible from the nearest roadway that identifies it as the library.

(b) The library has a public meeting area available.

(c) The library facility is evaluated for accessibility.

(3) General excellent standards for public libraries are as follows:

(a) The library has adequate, well-lit parking.

(b) The library's facilities conform to federal requirements for accessibility.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

RULE XII PUBLIC LIBRARY PUBLIC RELATIONS STANDARDS

(1) General essential standards for public libraries are as follows:

(a) The library cooperates in state, regional, and national efforts to promote library services.

(b) The library uses basic PR/marketing tools such as brochures, flyers, bookmarks, newspaper, radio, TV, public service outlets, websites, story times, displays, and programs in the library.

(2) General enhanced standards for public libraries are as follows:

(a) The library targets special groups within the community for programs or services (seniors, ethnic populations, etc.)

(b) Funds are budgeted for publicity either by the library and/or the Friends of the Library.

(c) Staff and board are encouraged to bring the library's message to the community at appropriate venues.

(3) General excellent standards for public libraries are as follows:

(a) The library allocates funds for public relations, has a community awareness program, and actively promotes its mission.

(b) The library conducts a community assessment to evaluate the library's marketing efforts.

(c) The library establishes or works with existing community advisory groups to encourage community involvement and improve service. Examples of such groups include youth, seniors, genealogy, local history, and other identified segments of the population.

(d) The library has a Friends of the Library organization.

(e) The library maintains an up-to-date webpage.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-

330, 22-1-331, MCA

RULE XIII PUBLIC LIBRARY SERVICES STANDARDS (1) General essential standards for public libraries are as follows:

(a) On an annual survey, library customers indicate that they have received courteous and helpful service from all library staff.

(b) The library uses comparative statistics, annual surveys, or other methods to evaluate the services offered.

(c) The library offers programming for children and adults.

(d) The library has policies and/or procedures for services provided.

(e) The Library programming is free and open to all.

(f) The library must make every effort to maintain confidentiality of library records as addressed in 22-1-1103, MCA.

(g) Core library services as defined by the local community and library are provided all hours the library is open. Examples include lending circulating materials, reference, and interlibrary loan.

(2) General enhanced standards for public libraries are as follows:

(a) The library provides information about the community to customers.

(b) The library offers programming for children, adults, and young adults.

(c) The library offers or makes patrons aware of virtual reference services.

(3) General excellent standards for public libraries are as follows:

(a) The library collaborates with other community organizations and educational institutions to promote library services.

(b) The library provides library outreach services.

(c) The library has a Friends of the Library organization.

(d) The library has wireless internet access for patrons.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

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

10.102.1151 CERTIFICATION STATEMENT (1) The Montana state library will send a certification statement to public libraries each fiscal year.

(a) This statement will provide for a status report regarding each essential standard and will require the signature of the library director and the library board chair.

(b) The signed and dated certification statement will be returned to the state library by ~~August 25th~~ July 25th of each year.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1,329, 22-1-330, 22-1-331, MCA

10.102.1152 DEFERRALS (1) Any library may request a waiver from the state librarian in writing by ~~August 25th~~ July 25th of each year.

(a) The state librarian may grant a waiver of any of the standards in ARM ~~10.102.1150~~ [NEW RULE V] if:

(i) through (b) remain the same.

(c) Any library may request a one-year extension of the waiver from the state librarian in writing by ~~August 25th~~ July 25th of each year. The library shall provide the state librarian with an updated compliance plan and a statement that the application of the standard will cause a hardship.

(d) remains the same.

(e) Any library that employs a director without a graduate degree in library or information science or its equivalent as of July 1, 2001 is exempt from ARM ~~10.102.1150(1)(c)~~ [NEW RULE V].

AUTH: 22-1-103, MCA
IMP: 22-1-103, MC

10.102.1153 FINAL ARBITER (1) For any questions arising because of ARM ~~10.102.1150~~ 10.102.1151, 10.102.1152, 10.102.1154 through 10.102.1157, [NEW RULES I through XIII], the final arbiter is the state library commission.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

10.102.1154 APPEALS PROCESS (1) remains the same.

(a) Any public library shall have the right to appeal. The request for the appeal shall be made to the State Librarian at P. O. Box 201800, Helena, MT 59620-1800 ~~(406 444 3115)~~ ((406) 444-3115) within 12 working days of the receipt of the letter denying payment.

(b) through (f) remain the same.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-3-330, 22-1-331, MCA

10.102.1156 EFFECTIVE DATE (1) In order to give all public libraries time to meet these standards, ARM ~~10.102.1150 through 10.102.1157~~ [NEW RULES I through XIII] will become effective on ~~July 1, 2001~~ July 1, 2006.

(2) The effective date for certification requirement of ARM ~~10.102.1150(1)(d),~~ [NEW RULES I through XIII] is ~~July 1, 2002~~ July 1, 2007.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

5. The rule proposed to be repealed provides as follows:

10.102.1150 PUBLIC LIBRARY STANDARDS found on page 10-1225 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

6. The repeal, adoption and amendment are proposed for the following reasons:

(a) The standards are the result of a cooperative project between the Montana state library (MSL) and the Montana library association (MLA) public library division.

(b) Together, MSL and MLA reviewed the 1999 edition of the standards and identified concerns and issues to be addressed in an updated edition.

(c) The joint committee debated each issue through in-person, e-mail, and telephone conversations.

(d) The Montana state library commission approved the Montana public library standards in February 2005.

(e) The commission, MSL staff, and the public library division hope that library staff and trustees find these standards helpful as they plan for the improvement of local library services.

(f) In particular, we intend that these standards:

(i) provide a tool to assess the quality and effectiveness of the library;

(ii) help each library determine areas to improve;

(iii) aid each library in taking an active role to gain maximum community support;

(iv) provide a basis for collecting useful statistics for planning and evaluation; and

(v) provide for additional accountability in the use of state aid monies in Montana libraries.

7. 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 Julie Stewart, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800 no later than 5:00 p.m. on January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406) 444-0266 or by email to jstewart2@mt.gov.

8. An electronic copy of this Notice of Public Hearing is available through the State Library's website at http://msl.mt.gov. The State Library 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 State Library 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 email address do not excuse late submission of comments.

9. Darlene Staffeldt, State Librarian, has been designated to preside over and conduct this hearing.

10. The Montana State Library maintains a list of persons who wish to receive notices of rulemaking actions proposed by the State Library. 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 State Library administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed to Julie Stewart, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, faxed to the Library at (406) 444-0266, emailed to jstewart2@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

By: /s/ Donald Allen
State Library Commission
Donald Allen, Chairperson

By: /s/ Darlene Staffeldt
Darlene Staffeldt, State Librarian
Rule Reviewer
Montana State Library

Certified to the Secretary of State December 12, 2005.

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

| | | |
|---|---|---|
| In the matter of the adoption of new rule I pertaining to an annual lottery of hunting licenses | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On January 11, 2006, at 7:00 p.m. a public hearing will be held at the Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana, to consider the adoption of new rule I pertaining to an annual lottery of hunting licenses.

2. The Fish, Wildlife and Parks Commission (commission) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 28, 2005, to advise us of the nature of the accommodation that you need. Please contact Hank Worsech, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-2663; fax (406) 444-3707; e-mail hworsech@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I SUPER-TAG HUNTING LICENSES (1) The department will issue one deer, one elk, one shiras moose, one mountain sheep, and one mountain goat hunting license each year through a lottery. These hunting licenses are known as "super-tags."

(2) For each species, an unlimited number of chances to draw a super-tag will be sold at $5 per chance. Chances will be sold by license agents as defined in ARM 12.3.201A or through the department authorized website on the internet. License agents will receive a commission of $0.50 for each super-tag transaction for a species. A transaction in this case means the purchase of one or more super-tag chances of the same species at one time. Individuals purchasing a ticket through the internet shall pay a convenience fee in accordance with the current internet provider contract.

(3) After the completion of the special license drawing for a species, the department will conduct a computerized drawing selecting randomly the super-tag winner for that species. The department shall issue the appropriate super-tag to the lottery winner.

(4) Only a person legally able to be licensed under current Montana statutes may purchase chances to draw a super-tag or use a super-tag. A person must possess a valid conservation license to be eligible to purchase a chance to draw a super-tag.

(5) The super-tag is valid for the taking of one animal of the species for which it is issued and is valid only for the current license year. A super-tag may be used in any legally described hunting district open for hunting of that species. A super-tag may be used only during the legal hunting season for the species for which it is issued. The person using the super-tag may use it only during a hunting district's open season and is subject to all hunting regulations, including special weapons regulations, that apply to a hunting district. However, if a hunting district requires a permit to hunt that species in that district, a super-tag can be used without the special permit.

(6) In the event that a person who drew a license or purchased a license is also drawn for the super-tag for the same species, the person must surrender the license to the department before receiving the super-tag. The department will refund the license fee paid by the winner of the super-tag. The person winning the super-tag shall retain any accumulated bonus points for that species.

(7) The super-tag is a nontransferable license.

AUTH: 87-1-271, 87-1-301, MCA
IMP: 87-1-271, MCA

4. The new rule is being proposed to implement legislation passed in the 2005 Legislative Session. The Montana Legislature passed HB 235 which allows the commission to issue through a lottery one license each year for deer, elk, shiras moose, mountain sheep and mountain goat, with all proceeds from the annual lottery of these hunting licenses being dedicated to hunting access enhancement. HB 235 was presented to the 2005 Legislature as a recommendation from the Private Lands Public Wildlife Council (PLPWC) to create additional funding for the hunting access enhancement program and law enforcement.

Since HB 235 created new authority for the department to issue licenses through a lottery and directs the commission to establish rules regarding the conduct of the lottery, the use of the license issued, and the price of the lottery ticket, it is necessary for the commission to adopt rules for issuing lottery licenses authorized under its new authority.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Hank Worsech, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-2663; fax (406) 444-3707; or email at hworsech@mt.gov and must be received no later than January 19, 2006.

6. Hank Worsech, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made be completing the request form at any rules hearing held by the department.

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

/s/ Steve Doherty
Steve Doherty, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State December 12, 2005

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 17.50.201 and 17.50.202, and the adoption of new rule I pertaining to motor vehicle wrecking facility license | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (MOTOR VEHICLE RECYCLING AND DISPOSAL) |

TO: All Concerned Persons

1. On February 16, 2006, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

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

17.50.201 LICENSE TO OPERATE--APPLICATION

(1) ~~(a) Application for license to operate a motor vehicle wrecking facility shall be made on forms furnished by the department.~~ An applicant for a license to operate a motor vehicle wrecking facility shall use application forms provided by the department.

(2) ~~There shall be submitted with the application a statement~~ An applicant shall submit, with the application, a written certification signed by the appropriate local government official having knowledge of local zoning ordinances ~~certifying~~ that the ~~site~~ operation of the proposed facility ~~does~~ would not violate any local government zoning ordinance in effect on the date that the application is filed with the department. If the appropriate local government official states that the operation would violate such an ordinance, the department shall deny the license application. If the appropriate local government official ~~refuses~~ fails to ~~certify that the proposed facility does not violate any local government ordinance and~~ make the certification and the applicant indicates the failure in writing on the application, the department shall determine~~s that no~~ if a zoning ordinance ~~will~~ would be violated~~, the department shall consider the application~~. If it determines that the operation

of the proposed facility would violate a zoning ordinance, the department shall deny the application. If it determines that the operation of the facility would not violate a zoning ordinance, the department shall continue to process the application.

~~(b) All the information requested on the application form must be completed before the department will act on the application.~~

~~(c) The department may deny the application if the applicant fails to provide information requested by the department.~~

~~(2) When the completed application is received, the department is to approve the site location before a license will be issued.~~

(3) ~~Before an application is approved and a license to operate is issued, the department shall inspect the facility and the facility must be in compliance with the shielding requirements of ARM 17.50.202.~~ If the department determines that an application is not complete, it shall return the application to the applicant with a written statement that it is not complete. The department may not continue to process the application until the applicant submits a complete application. A determination that an application is not complete is not a denial of the application.

(4) As required by 75-10-516, MCA, in deciding whether to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses.

(5) Before approving a license application and issuing a license, the department shall inspect the facility. The department may not issue a license if the facility is not in compliance with the shielding requirements of ARM 17.50.202.

AUTH: 75-10-503, MCA
IMP: 75-10-503, MCA

17.50.202 SHIELDING OF FACILITIES (1) and (2) remain the same.

(3) A person possessing a junk vehicle shall shield it in compliance with the following requirements:

(a) Fences must be constructed of sound building materials.

(b) Rough dimensional lumber or better is acceptable. Slabs are not considered rough dimensional lumber. Other types of fencing of equivalent performance, attractiveness, and shielding qualities are also acceptable. Plastics or other materials placed over junk vehicles are not acceptable, except that a reasonably attractive car cover specifically designed to attach tightly to and cover a motor vehicle is acceptable for shielding one junk vehicle at a single location.

(b) through (4) remain the same, but are renumbered (c) through (e).

~~(5)~~ (4) ~~To preclude misunderstanding, prior approval should be obtained from the department for fences other than the~~

~~2 types specified above (i.e., metal and wood fences).~~ A person may not use a fence for shielding if it is made of material other than wood consisting of rough dimensional lumber or better, as provided in (3)(b), or chain link with inserts, as provided in (3)(c), unless the person first submits a request in writing to the department and obtains the department's written approval. Unless otherwise specifically approved by the department, a person may not use ~~no~~ more than one type of approved shielding material ~~may be used~~ on any one side of the facility. Unless otherwise specifically approved by the department, shielding on any one side of the facility must be of a uniform color.

~~(6)~~ (5) ~~It is realized that in certain situations~~ A licensee of a motor vehicle wrecking ~~facilities which existed~~ facility existing prior to July 1, 1973, that cannot be successfully shielded from certain viewpoints~~,~~ (for example, a view from a public road located at a higher elevation than a facility)~~. In such instances~~, shall shield as determined appropriate by the department ~~shall make a decision as to the degree of shielding necessary~~ on a case-by-case basis.

(7) and (8) remain the same, but are renumbered (6) and (7).

(8) The following materials are not acceptable for use as shielding, but may be used as structural support for shielding if they are concealed from public view:

(a) semitrailers;

(b) shipping containers (an exception allowing use as shielding may be approved on a case-by-case basis);

(c) mobile homes;

(d) trailer houses; or

(e) baled tires (except that they may be used as shielding when encased in a material that will maintain the integrity of the bale upon failure of the bale restraining devices, as provided in 75-10-250, MCA).

AUTH: 75-10-503, MCA
IMP: 75-10-503, MCA

4. The proposed new rule provides as follows:

NEW RULE I COMPLETION OF SHIELDING (1) If the department decides, after determining that an applicant for a license has met all the licensing requirements of this subchapter except for the shielding requirements in ARM 17.50.202, that a license should be issued when the applicant has complied with shielding requirements, the department shall issue and mail to the applicant a written statement that the applicant has complied with all requirements, other than shielding, of Title 75, chapter 10, part 5, MCA, and this subchapter, and that it has decided that a license should be issued if the shielding requirements are satisfied within eight months. If the applicant then complies with the shielding requirements in ARM 17.50.202 and submits acceptable evidence of that compliance to the department within eight months after the date that the

department issued the statement, and otherwise remains in compliance with Title 75, chapter 10, part 5, MCA, and this subchapter, the department shall inspect and determine compliance under ARM 17.50.502(3). If it determines that the applicant is complying with shielding and other requirements, the department shall issue the license.

(2) If an applicant who has received a statement under (1) violates any requirement of Title 75, chapter 10, part 5, MCA, this subchapter, or an order of the department issued pursuant to Title 75, chapter 10, part 5, MCA, or this subchapter, the department may take enforcement or other action authorized by Title 75, chapter 10, part 5, MCA, or this subchapter.

AUTH: 75-10-503, MCA
IMP: 75-10-503, MCA

REASON: Minor clerical revisions are proposed for ARM 17.50.201 and 17.50.202 that are intended to make the rules clearer. They are not intended to affect the meaning of the rules. ARM 17.50.201(1)(b) and (c) are proposed to be modified and renumbered to make it clear that the Department cannot process an application that is not "complete." The Department intends "complete" to have the same meaning as in the Montana Environmental Policy Act, where it is defined in 75-1-220(2), MCA, to mean containing all information necessary for an approval.

ARM 17.50.201(2), concerning local zoning requirements, is being proposed for amendment to clarify how the Department addresses local zoning issues when evaluating motor vehicle wrecking facility license applications. If the local zoning officer certifies that the facility does not violate a zoning ordinance, the Department would be required to continue to process the application. If the zoning officer states that the facility would violate a zoning ordinance, the Department would be required to deny the application. If the zoning officer makes no statement, the Department would make its own determination: if it determines the facility would violate an ordinance, the Department would deny the application; and if it determined that no zoning violation would occur, it would continue to process the application.

ARM 17.50.202(3), concerning shielding of junk vehicles and facilities, is being proposed for amendment to make the rules conform to standard rulemaking format and to use active voice to make it clear that duties are imposed on the entity specified. Other sections in ARM 17.50.202 are being renumbered to reflect the reformatting just discussed.

ARM 17.50.202(8) would provide a list of materials that are unacceptable for use as shielding. These unacceptable materials include semitrailers, shipping containers, mobile homes, trailer houses, and baled tires. Various parties have used one or more of these materials in attempts to meet the shielding requirements of ARM 17.50.202.

The Department believes that semitrailers, shipping containers (in most cases), mobile homes, trailer houses, and

baled tires do not accomplish the legislative intent behind the shielding requirement in 75-10-501(9), MCA, which is to prevent unsightly junk vehicles from being seen from public view (defined as six feet above the center of a public roadway). The Legislature required the Department to adopt rules pertaining to shielding in 75-10-503(1)(f), MCA. The Department has determined that the materials listed above are unsightly when used as shielding, and that their use would defeat the purpose of the shielding requirement. Therefore, the Department proposes to ban their use, but a person wishing to shield a junk vehicle with a shipping container may submit a written request to the Department. The Department may grant the request only by making a written determination that the requestor has demonstrated that the container is not unsightly and that its use would not defeat the purposes of the shielding requirement. Also, in ARM 17.50.202(8)(e), the Department is proposing to allow the use of baled tires as shielding only if the tires are encased in a material that maintains the integrity of the bale. The cables, straps, or wires holding the tires together must be sufficient to keep the bale from failing. Baled tires encased in a material designed to maintain their integrity are not likely to be unsightly, and may be used for aboveground uses under 75-10-250, MCA. The proposed rule recognizes that encased tires may also be used as shielding. Another rule, ARM 17.50.202(5), renumbered ARM 17.50.202(4), requires that shielding on each side of a facility be a uniform color, and that would apply to the material encasing baled tires.

New Rule I is necessary to minimize the risk that a license applicant takes on in constructing shielding, and allows for construction at a time when the ground will not be frozen. If an applicant for a license has met all the motor vehicle wrecking facility licensing requirements except for the shielding requirements in ARM 17.50.202, and the Department, after taking into account the effects on adjoining landowners and land uses, has decided that a license should be issued, the proposed new rule would require the Department to inform the applicant that it will get a license if it completes shielding within eight months and otherwise remains in compliance with the motor vehicle wrecking facility laws and rules.

The reason for this proposed new rule is that the construction of shielding may be the most expensive part of constructing a motor vehicle wrecking facility; it may run into tens of thousands of dollars. Because a license applicant cannot get a license until it complies with shielding requirements, the applicant currently runs a risk that it will have to spend a lot of money to comply with shielding requirements before it knows if it can obtain the license. For instance, a local government can make a decision (that is binding on the Department) not to allow the facility to obtain a license, and the Department can make a discretionary decision not to grant a license based on the effects on adjoining landowners and land uses. The Department believes it is not fair to subject a licensee to the risk of constructing shielding only to find that the facility will not be approved. So, it is

proposing New Rule I to require the Department to send a licensee a statement so that it will know that it will be able to obtain a license if it otherwise stays in compliance and constructs shielding within eight months after the statement is issued. The Department is proposing eight months for the length of the period because it believes that in any eight-month period there will be enough time for an applicant to construct shielding during a time when the ground is not frozen.

An applicant should be aware that the Department's statement is not a guarantee that a facility can be built or operated; an applicant must still comply with all federal, state, and local laws, rules, regulations, and other requirements before constructing shielding or operating a facility. For instance, the facility might be subject to enforcement by a county or city if it did not meet zoning or building codes when it started to construct or operate.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov., no later than February 23, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Norm Mullen, attorney, has been designated to preside over and conduct the hearing.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must 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: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

*John F. North* BY: *Richard H. Opper*
JOHN F. NORTH RICHARD H. OPPER, Director
Rule Reviewer

Certified to the Secretary of State, December 12, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.8.504, 17.8.505, 17.8.744, and 17.8.1204 and the adoption of new rules I through IX pertaining to establishing a registration system for certain facilities that presently require an air quality permit | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION<br><br>(AIR QUALITY) |

TO: All Concerned Persons

1. On January 23, 2006, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board 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 no later than 5:00 p.m., January 13, 2006, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

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

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1) through (4) remain the same.

(5) Concurrent with submittal of a registration form, as specified in [NEW RULES I through V], the owner or operator shall submit a registration fee of $500.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) An annual air quality operation fee must be submitted to the department by the owner or operator of each facility:

(a) ~~each facility~~ for which a Montana air quality permit has been issued by the department and remains in effect; ~~and~~

(b) ~~each facility~~ for which an air quality operating permit has been issued by the department and remains in effect~~.~~; and

(c) registered with the department in accordance with [NEW RULES I through V].

(2) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS (1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

(a) through (i) remain the same.

(j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7) through (9); ~~or~~

(k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement~~.~~; or

(l) any facility that has been registered with the department in accordance with [NEW SUBCHAPTER I].

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

17.8.1204 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1) through (2)(c) remain the same.

(3) The department may exempt a source listed in (1) from the requirement to obtain an air quality operating permit by establishing federally enforceable limitations which limit that source's potential to emit, such that the source is no longer a major stationary source, as defined by ARM 17.8.1201(23).

(a) and (b) remain the same.

(c) Federally enforceable limitations that limit a source's potential to emit may be established through conditions contained in a Montana air quality permit, or limits established as a registered facility, or through a judicial order or an administrative order issued by the department or the board, that has been adopted into the Montana state implementation plan.

(d) through (7) remain the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, MCA

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter:

(1) "Emitting unit" means:

(a) any equipment that emits or has the potential to emit any regulated air pollutant under the Clean Air Act of Montana through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant under the Clean Air Act of Montana.

(2) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and

restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(3) "Registered facility" means any registration eligible facility that has been registered for operation under the requirements in this subchapter.

(4) "Registration" means identifying equipment and/or processes to the department in accordance with this subchapter.

(5) "Registration eligible facility" means an oil or gas well facility as defined in 75-2-103(13), MCA.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE II APPLICABILITY (1) The owner or operator of a registration eligible facility may register with the department in lieu of submitting an application for, and obtaining, a Montana air quality permit (MAQP). Nothing in this subchapter precludes an owner or operator from obtaining and/or maintaining a MAQP in accordance with ARM Title 17, chapter 8, subchapter 7.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE III REGISTRATION PROCESS AND INFORMATION (1) A registration eligible facility is registered upon the department's receipt of the form and information required in (2) and (3) and the appropriate fee required in [NEW RULE IV]. The department shall acknowledge receipt of a registration within 30 days after receiving the registration.

(2) The owner or operator shall provide the following information to the department, using a form provided by the department:

(a) facility name and mailing address;

(b) owner or operator's name, address, and telephone number;

(c) physical location of facility (legal description to the nearest 1/4 section);

(d) contact person and telephone number;

(e) general nature of business;

(f) standard industrial classification code (SIC);

(g) SIC description;

(h) narrative description of the site and facility; and

(i) site map.

(3) The owner or operator shall provide the following additional equipment-specific information to the department for each emitting unit, including any air pollution control equipment:

(a) manufacturer's name;

(b) unit type;

(c) serial number;

(d) date of manufacture; and

(e) maximum rated design capacity.

(4) The owner or operator of a registered facility shall notify the department, using the registration form provided by the department, of any change(s) to the registration information, within 15 days after the change(s).

(5) The owner or operator of a registered facility that is modified and becomes subject to the provisions of 42 USC 7475, 7503, or 7661 shall meet the requirements of ARM Title 17, chapter 8, subchapters 8, 9, 10 and/or 12.

(6) The owner or operator of a registration eligible facility may not commence operations under the provisions of this subchapter until the facility has been registered with the department, except as provided in [NEW RULE VI(1)].

(7) The owner or operator of a registration eligible facility for which a valid MAQP has been issued may register with the department and request revocation of the MAQP.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE IV REGISTRATION FEE (1) The registration fee required by ARM 17.8.504 must be submitted to the department with each registration submitted under this subchapter. No fee is required for notifying the department, pursuant to [NEW RULE III(4)], of changes to registration information.

(2) The registration fee must be paid in its entirety at the time the registration form is submitted to the department.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE V OPERATING REQUIREMENTS: FACILITY-WIDE

(1) The owner or operator of a registered facility shall allow the department's representatives access to the facility at all reasonable times for the purpose of making inspections or surveys, collecting samples, obtaining data, auditing any monitoring equipment, observing any monitoring or testing, and otherwise conducting all necessary functions related to this subchapter.

(2) The owner or operator of a registered facility shall monitor and record annual production information for all emission points, as required by the department in the annual emission inventory request. The request will include, but is not limited to, all emissions associated with emitting units registered to operate at the facility. Production information must be gathered on a calendar year basis and submitted to the department by the date required in the emission inventory request. Information must be in the units required by the department.

(3) The owner or operator of a registered facility shall maintain onsite records showing daily hours of operation and daily production rates and corresponding emission levels for the previous 12 months. The records compiled in accordance with this subchapter must be maintained by the owner or operator for

at least five years following the date of the measurement, must be available at the plant site for inspection by the department, and must be submitted to the department upon request.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE VI OIL OR GAS WELL FACILITIES GENERAL REQUIREMENTS (1) The owner or operator of an oil or gas well facility may submit to the department a complete registration form, pursuant to [NEW RULES I through V], within 60 days after the initial well completion date for the facility.

(2) The owner or operator of an oil or gas well facility shall limit production, hours of operation and/or fuel consumption such that the facility's potential to emit is less than 100 tons per year (tpy) of any airborne pollutant that is regulated under this chapter, less than 10 tpy of any individual hazardous air pollutant (HAP), and less than 25 tpy of any combination of HAPs. The facility limitations are 12-month rolling limits, calculated monthly.

(3) The owner or operator of an oil or gas well facility who submits an application for a Montana air quality permit to the department by January 3, 2006, may request that the application be used in lieu of a registration form for registration of the oil or gas well facility by completing the department request form.

AUTH: 75-2-111, 75-2-203, 75-2-211, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

NEW RULE VII OIL OR GAS WELL FACILITIES EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a registered oil or gas well facility shall install and operate the following air pollution control equipment and comply with the following air pollution control practices:

(a) volatile organic compound (VOC) vapors greater than 500 British thermal units per standard cubic foot (BTU/scf) from oil or gas wellhead equipment, oil and condensate storage tanks, or loading transport vehicles, with a PTE greater than 15 tpy, must be captured and routed to a gas pipeline if a gas pipeline is located within one-half mile of the oil or gas well facility;

(b) VOC vapors greater than 500 BTU/scf from oil and gas wellhead equipment, oil and condensate storage tanks, or loading transport vehicles, with a PTE greater than 15 tpy and located greater than one-half mile from the oil or gas well facility, must be captured and routed to a gas pipeline, or routed to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system and meeting the requirements of 40 CFR 60.18 or routed to control equipment with equal or greater control efficiency than the smokeless combustion device;

(c) hydrocarbon liquids must be loaded into transport vehicles using submerged fill technology;

(d) stationary internal combustion engines of rich-burn

design greater than 85 brake horsepower (BHP) must be equipped with nonselective catalytic reduction or its equivalent to control air emissions; and

(e) stationary internal combustion engines of lean-burn design greater than 85 BHP must be equipped with oxidation catalytic reduction or its equivalent to control air emissions.

AUTH: 75-2-111, 75-2-203, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE VIII OIL OR GAS WELL FACILITIES INSPECTION AND REPAIR REQUIREMENTS (1) The owner or operator of an oil or gas well facility shall inspect all VOC piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell.

(2) The owner or operator shall make the first attempt to repair any leaking VOC equipment within five days after the leak is detected.

(3) The owner or operator shall repair any leaking VOC equipment as soon as practicable, but no later than 15 days after the leak is initially detected, unless the repair is technically infeasible without a facility shutdown. Such equipment shall be repaired before the end of the first facility shutdown after the leak is initially detected.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

NEW RULE IX OIL OR GAS WELL FACILITIES RECORDKEEPING AND REPORTING REQUIREMENTS (1) The owner or operator of an oil or gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection required by [NEW RULE VIII].

(2) Inspection records must include, at a minimum, the following information:

(a) the date of the inspection;

(b) the findings of the inspection;

(c) the leak determination method used;

(d) any corrective action taken; and

(e) the inspector's name and signature.

(3) All records of inspection and repair must be kept as a permanent business record for at least five years, be available for department inspections, and be submitted to the department upon request.

(4) The owner or operator of an oil or gas well facility shall submit calculations to the department, with the registration form, to verify compliance with [NEW RULE VI(2)].

(5) The owner or operator of an oil or gas well facility shall document, by month, the total production, hours of operation, and/or fuel consumption of the facility. By the 25th day of each month, the owner or operator shall total the production, hours of operation, and/or fuel consumption for the previous month. The monthly information shall be used to determine compliance with the limitation stated in [NEW RULE

VI(2)].

(6) The owner or operator of an oil or gas well facility producing in the Madison (Mississipian), Charles, Ratcliffe, Mission Canyon, Sun River Dolomite, or Duperow (Devonian), or Phosphoria/Tensleep (Permian and Pennsylvanian) geological formations shall submit, with the registration form, an air quality modeling analysis demonstrating compliance with ARM 17.8.210 through 17.8.214 and 17.8.220 through 17.8.223.

(7) The owner or operator of an oil or gas well facility shall certify annually, as required by ARM 17.8.1204(3)(b), that the facility's actual emissions are less than those that would require an air quality Title V operating permit, if the owner or operator has established a limit under [NEW RULE VI(2)]. The annual certification shall comply with the certification requirements of ARM 17.8.1207. The annual certification must be submitted by March 1 and may be submitted with the annual emission inventory information.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: The Board is proposing to amend rules and adopt new rules to implement a registration system for certain facilities that presently require an air quality permit. The proposed new rules would establish a general registration system and would establish rules that apply the system to oil and gas well facilities. Currently, with specified exemptions, the administrative rules adopted under the Clean Air Act of Montana require the owner or operator of sources of air pollution to obtain a permit prior to construction or operation. House Bill 700, passed by the 2003 Montana Legislature and codified as 75-2-234, MCA, allows the Board to adopt a registration system in lieu of permitting.

The proposed new rules would provide a system for the owner or operator of a facility to register with the Department in lieu of submitting a permit application and obtaining a permit. The owner or operator of a registered facility still would be required to supply information that is consistent with the type and amount of information currently required in a permit application. Registered facilities would still be required to follow rules of operation that are similar to permit conditions. These rules of operation would include emission limitations, air pollution control equipment installation and operation requirements, and requirements for testing, monitoring and reporting. The registered facilities would still be required to comply with any other applicable requirements not listed within the new rules, such as ambient air quality standards, reasonable precautions standards, opacity standards, etc.

Registration in lieu of permitting is appropriate for source categories in which there are a large number of homogenous sources subject to identical requirements and for which there is no substantial benefit from individual permitting. For these homogenous facilities the permit conditions and environmental impact vary little from facility to

facility. Oil and gas well facilities fit into this category of sources. Implementing a registration system would allow the Department to use air program staff more efficiently, focusing on major source permitting issues and field compliance activities.

The new rules would include requirements for emission control and operating limitations when necessary. Recordkeeping and reporting requirements would also be required as part of the registration program.

This rulemaking process, and any future rulemaking to include additional source categories in the registration system, will provide the opportunity for public comment.

New rules I through V would provide general facility registration information, including definitions, applicability, a description of the registration process, information that must be provided, and a cross-reference to ARM 17.8.504 for the registration fee.

New rules VI through IX would apply specifically to oil and gas well facilities and contain additional requirements that they would be required to comply with through the registration process. The Board is proposing the oil and gas well facility registration rules as an alternative to regulating the large number of oil and gas well facilities that are currently required to obtain a Montana air quality permit, which requires lengthy review of permit applications and preparation of draft and final permits. The registration process would allow the Air Resources Management Bureau to focus on establishing appropriate air pollution control requirements for other sources that require individual permitting and focus on monitoring compliance, while reducing the administrative overhead for both the regulated entities and the Department. This registration approach is necessary to allow the Department to maintain the current level of environmental protection without significantly increasing current staffing levels.

New rule VI would include the general requirements for a registered oil or gas well facility, and new rule VII would provide the requirements for emission controls. Oil and gas well facilities would also be required to conduct leak checks and repair any leaks under specified timeframes. These requirements are included in new rule VIII. New rule IX would include additional recordkeeping and reporting requirements for an oil or gas well facility. Air pollution control and monitoring, recordkeeping, and reporting requirements would be substantially the same under the registration process as under traditional permitting.

The Board also is proposing to amend ARM 17.8.504 and 17.8.505 to include the fees for registered facilities, and is proposing to amend ARM 17.8.744 to exclude registered facilities from the requirement to obtain a Montana air quality permit. The Board also is proposing to amend ARM 17.8.1204 to include registration as a process to limit potential to emit below the threshold that would require a Title V operating permit.

The proposed amendments to ARM 17.8.504 and 17.8.505 would require the owner or operator of a registered facility to pay a

registration fee in lieu of a Montana air quality permit application fee and pay an annual operation fee. These fees would be the same as the air quality permit application and annual operation fees. The Board does not know the cumulative amount of registration fees and annual operating fees that would be paid for registered facilities or the number of persons that would be affected, because the registration process would be an optional alternative to the air quality permit process for facilities eligible for registration. However, the total fees paid and the fees paid by individual owners and operators would be the same as under the existing rules, because the fees for registered facilities would be the same as the fees for facilities subject to an air quality permit. Amendments to ARM 17.8.1204 would allow the owner or operator of an oil or gas well facility to establish a limitation through new rule VI(2) and submit the limitation calculations with the requested registration form to maintain potential emissions below the Title V operating permit threshold. An owner or operator of a facility who establishes such limits also would be required to annually certify that emissions are below the Title V operating permit threshold.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., January 30, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a

request form at any rules hearing held by the Board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*/s/ DAVID M. RUSOFF* BY: */s/ JOSEPH W. RUSSELL*
DAVID M. RUSOFF JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State December 12, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.24.132, 17.24.133, 17.24.134, 17.24.136, 17.24.1206, 17.24.1211, 17.24.1218, 17.24.1219, 17.24.1220, 17.56.121 and the repeal of 17.24.1212 pertaining to revising enforcement procedures under the Montana Strip and Underground Mine Reclamation Act, the Metal Mine Reclamation Laws and the Opencut Mining Act, and the amendment of ARM 17.30.2001, and 17.30.2003, repeal of 17.24.1212, 17.30.2005, 17.30.2006 and 17.38.606 and the adoption of new rules I through VII pertaining to providing uniform factors for determining penalties | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL AND ADOPTION<br><br>(AIR QUALITY)<br>(ASBESTOS)<br>(HAZARDOUS WASTE)<br>(JUNK VEHICLES)<br>(MAJOR FACILITY SITING)<br>(METAL MINE RECLAMATION)<br>(OPENCUT MINING)<br>(PUBLIC WATER SUPPLY)<br>(SEPTIC PUMPERS)<br>(SOLID WASTE)<br>(STRIP AND UNDERGROUND MINE RECLAMATION)<br>(SUBDIVISIONS)<br>(UNDERGROUND STORAGE TANKS)<br>(WATER QUALITY) |

TO: All Concerned Persons

1. On January 31, 2006, at 10:30 a.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 152, State Capitol, Helena, Montana, to consider the proposed amendment, repeal and adoption of the above-stated rules.

2. The Board and Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., January 23, 2006, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

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

17.24.132 ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES (1) Except as provided in (4) ~~of this rule~~, the department shall ~~issue a notice of violation, if~~ send a violation letter for a violation of the Act, this subchapter, or the permit, license, or exclusion ~~is identified as a result of any inspection~~. The ~~notice~~ violation letter must be served and

must state that the alleged violator~~,~~ may, by filing a written response within 15 days of receipt of the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty under (2).

(2) ~~Within 30 days after issuance of the notice of violation, the department shall serve a statement of proposed penalty.~~ The department may issue a notice of violation and administrative order for a violation identified in a violation letter. The administrative order may assess a penalty, require corrective action, or both.

(3) The ~~person~~ alleged violator may, within ~~20~~ 30 days of service of the ~~statement of proposed penalty~~ notice of violation and order, respond in writing ~~to the statement~~ and may request an informal conference, a contested case hearing, or both, on the issues of whether the violation occurred, whether the ~~abatement~~ corrective action ordered by the department is reasonable, and whether the penalty ~~proposed to be~~ assessed is proper.

~~(4) Whenever an authorized representative of the department observes a minor violation that clearly does not represent a potential harm to public health, public safety, or the environment and clearly does not impair administration of the Act or this subchapter, the representative may issue a violation letter to the person. The violation letter must describe the violation and how the violation can be corrected. If, within 10 days, the violation has been corrected, the department shall waive the imposition of penalty. If the violation is not corrected within 10 days, the department shall issue a notice of violation pursuant to (1) of this rule.~~

~~(5)~~ (4) If a contested case hearing has not been requested~~, the department shall make findings of fact, issue a written decision, and order payment of any penalty as provided in 82-4-361, MCA~~ within 30 days of the date of service of the order, the notice of violation and order become final. If a contested case hearing has been requested, the ~~department~~ board shall hold a hearing~~,~~ make the findings of fact~~,~~ issue the decision~~,~~ and, if a violation is found, order payment of any penalty~~,~~ as provided in 82-4-361, MCA.

AUTH: 82-4-321, MCA
IMP: 82-4-337, 82-4-339, 82-4-361, MCA

REASON: The proposed amendments to (1) and (2) conform the rule to HB 428 by requiring the Department to issue a violation letter for all violations and giving the Department the discretion to issue an administrative order that may assess a penalty and/or require corrective action. The amendment to (1) also deletes the requirement that a violation be documented by an inspection. This requirement unnecessarily excludes violations that may be discovered during the Department's review of records and is inconsistent with HB 428.

The proposed amendment to (3) extends the time within which a person charged with a violation has to request a contested case hearing from 20 to 30 days to be consistent with the time

within which a request for a contested case hearing must be made under HB 428. The amendment to (3) also replaces the word "abatement" with the phrase "corrective action" to reflect HB 428's change in terminology.

The proposed amendment deletes (4) because it is redundant to (1) and (2) as amended.

Finally, the proposed amendment to (5) reflects the streamlined enforcement procedure of HB 428. Rather than a two-step process requiring the Department to issue a notice of violation followed by findings of fact and conclusions of law, the Department issues an order that becomes final as a matter of law unless the alleged violator requests a contested case hearing within 30 days of service of the order.

17.24.133 ENFORCEMENT: ABATEMENT OF VIOLATIONS AND PERMIT SUSPENSION ~~(1) Except when the violation has already been abated, the department shall issue an abatement order with any notice of violation or suspension order.~~

~~(2) The abatement order shall require mitigation of the effects of the activity for which the notice or order was issued.~~

~~(3) Each abatement order shall identify a time frame for completion and may be extended only if the violator documents good cause for extension and the department finds in writing that good cause exists.~~

~~(4) Within 30 days of notification by a violator that an abatement order has been satisfied, the department shall inspect or review the abatement and determine whether or not the abatement order has been satisfied. The department shall notify the violator of its determination.~~

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

~~(6)~~ (2) The director may, after opportunity for an informal conference, suspend a permit or license for a violation of the Act, this subchapter, or the license or permit that:

(a) and (b) remain the same.

(c) remains unabated subsequent to the deadline ~~for abatement~~ contained in ~~an abatement~~ a corrective action order.

AUTH: 82-4-321, MCA
IMP: 82-4-357, 82-4-361, 82-4-362, MCA

REASON: The proposed amendment deletes (1) through (4), which govern the Department's issuance of abatement orders, and which are unnecessary given the enactment of HB 428. HB 428 amends the Metal Mine Reclamation Act to authorize the Department to require a violator to take necessary corrective action within a reasonable period of time to abate the violation. See 82-4-361(6)(a), MCA.

17.24.134 ENFORCEMENT: ASSESSMENT ~~AND WAIVER~~ OF PENALTIES

(1) The department shall consider the ~~following~~ factors identified in 82-4-1001, MCA, in determining ~~whether to institute an administrative civil penalty action and in determining~~ the amount of a penalty for ~~the~~ a violation~~:~~.

~~(a) the nature, extent and gravity of the violation. The nature of the violation must be characterized as either actually or potentially resulting in harm to public health or safety, the environment, or as impairing the department's administration of the Act. This penalty must be determined as follows:~~

~~(i) If the violation created a situation in which the health or safety of the public or the environment was or could have been harmed, up to $1,000 may be assessed, depending upon the extent and gravity of such harm. If the violation created an imminent danger to the health or safety of the public or caused significant actual environmental harm, as documented by the department, up to $5,000 may be assessed.~~

~~(ii) In the case of a violation of an administrative requirement up to $1,000 may be assessed depending on the extent and gravity of the violation. Violation of an administrative requirement does not involve actual or potential harm to public health, safety, or the environment.~~

~~(b) the degree of negligent or willful conduct involved, if any. In addition to the amount assessed under (1)(a), a violation involving negligent or willful conduct on the part of the violator may be assessed up to $500 depending on the degree of negligence.~~

~~(c) the violator's recent history of prior violations. In addition to the amounts assessed under (1)(a) and (1)(b), $50 may be assessed for each notice of violation issued in the last 3 years; $250 may be assessed for each suspension order issued in the last 3 years. A notice of violation or suspension order that is not resolved or that has been vacated must not be counted.~~

~~(d) The department shall consider any voluntary mitigation by the violator. If the violator takes measures beyond those required by law to address or mitigate the violation or its impacts, up to $200 may be deducted from the total penalty assessed depending on the amount of time, money, or effort voluntarily expended and the degree of success. This includes mitigating the violation before the time set in the abatement order. No amount may be deducted for corrective action conducted by the violator in a merely adequate manner pursuant to a department permit, notice or order.~~

~~(2) Notwithstanding the provisions of (1)(a) through (1)(d), the department may not assess a penalty that is less than $100 or more than $1,000 except that for a violation that created an imminent danger to the health and safety of the public, the maximum penalty is $5,000.~~

~~(3) In addition to the penalty for the violation, the department may assess a penalty for each day on which the practice or condition constituting the violation continues. The penalty for each day must be equal to the penalty for the violation.~~

~~(4) Using the best information reasonably available to it at the time of calculating the penalties, the department shall determine any economic benefit or savings that the violator gained as a result of the violation. If the amount of penalties calculated pursuant to (1) through (3) is less than the economic~~

~~benefit or savings, the department may increase the penalty to compensate for all or a portion of the economic benefit not exceeding the total maximum penalties for the violation and days of violation assessable under (2).~~

~~(5) If the violator is unable to immediately pay the full penalty amount, the department may place the violator on a payment schedule with interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due. The department may secure the payment schedule with a promissory note, collateral, or both.~~

~~(6) The department may waive or modify the penalty if it finds the penalty demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver or modification in writing including the consideration of any other matters that justice may require in addition to those factors described in this rule. The department may not waive or reduce the penalty for the sole reason that a reduction in the penalty could be used to offset the costs of abatement.~~

AUTH: 82-4-321, 82-4-361, MCA
IMP: 82-4-361, MCA

REASON: The proposed amendment to (1) deletes the factors for determining whether to institute an administrative civil penalty action. Those factors are currently set forth in 82-4-361, MCA, and need not be repeated in administrative rule. In determining the amount of a penalty, the proposed amendment to (1) replaces the penalty factors currently specified by administrative rule with a reference to the penalty factors set forth in 82-4-1001, MCA, reflecting the enactment of HB 429. HB 429 standardized the factors that are used to calculate penalties for violations of environmental laws.

Sections (2) and (3) pertaining to penalty parameters are proposed for deletion. The minimum and maximum penalties, an exception to the maximum penalty for a violation creating an imminent danger or causing significant environmental harm, and the imposition of daily penalties, are currently addressed in 82-4-361(1), MCA, and need not be repeated in administrative rule.

Section (4), which allowed the Department, when determining the penalty, to consider the economic benefit derived by a violator in committing the violation, is proposed for deletion. Section 82-4-1001(1)(d), MCA, enacted by HB 429, specifically provides economic benefit as a penalty factor, rendering (4) unnecessary.

Section (5) is proposed for deletion because a provision for allowing the payment of a penalty according to a payment schedule is set forth in 82-4-1001(2), MCA, as enacted by HB 429.

The proposed amendment to (6) deletes the provision allowing for waiver or modification of a penalty because the penalty is demonstrably unjust or demonstrably inadequate as a deterrent. That provision is no longer necessary because the Department has that discretion under HB 429. Section 82-4-

1001(1), MCA, requires the Department to take into consideration "other matters that justice may require" in determining the amount of a penalty. The proposed amendment also deletes the provision prohibiting the Department from waiving or reducing a penalty in order to offset the costs of abatement, because that prohibition was codified in statute by enactment of HB 429. Section 82-4-1001(1)(f), MCA, allows the Department to consider only the amount spent by the violator beyond that necessary to abate the violation.

17.24.136 ~~NOTICES AND~~ ORDERS: ISSUANCE AND SERVICE

(1) ~~A notice of violation, statement of proposed penalty, or an abatement, suspension, or revocation order, an order to reclaim, and other orders~~ Orders issued pursuant to the Act must be served upon the person to whom it is directed promptly after issuance by:

(a) delivering a copy of the ~~notice, statement or~~ order in person to the violator; or

(b) sending a copy of the ~~notice, statement or~~ order by certified mail to the violator at the address on the violator's application for a license or permit or exclusion.

(2) Service is complete upon tender of the ~~notice, statement or~~ order in person. Service by mail is complete ~~upon deposit in the U.S. mail, certified, postage prepaid, as set forth above~~ within three business days after the date of mailing and is not incomplete because of refusal to accept.

AUTH: 82-4-321, MCA
IMP: 82-4-341, 82-4-357, 82-4-361, 82-4-362, MCA

REASON: The proposed amendment replaces the references to "notice of violation," "statement of proposed penalty," "abatement order," "suspension order," "revocation order," and/or "order of abatement" in (1) and (2) with the term "order." This amendment reflects the enactment of HB 428 which authorizes the Department to issue an "order" specifying the factual and legal basis for the violation, the penalty, and any necessary corrective action rather than issuing a notice of violation, a statement of proposed penalty, and abatement order. See 82-4-361(6), MCA. The amendment also uses the term "order" to be inclusive of suspension or revocation orders, orders to reclaim, and any other order issued by the Department.

The amendment to (2) also provides that service of an order is completed within three business days after the date of mailing rather than upon the date of mailing to be consistent with HB 428.

17.24.1206 NOTICES, ORDERS OF ABATEMENT AND CESSATION ORDERS: ISSUANCE AND SERVICE (1) remains the same.

(2) A notice of noncompliance, notice of violation, ~~and statement of proposed~~ penalty order, or cessation order must be served upon the person to whom it is directed or his designated agent promptly after issuance by:

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

AUTH: 82-4-204, MCA
IMP: 82-4-251, MCA

REASON: The proposed amendment to (2) implements HB 428. Under HB 428, the Department is required to issue a penalty order that may become final by operation of law rather than a statement of proposed penalty. See 82-4-254, MCA.

17.24.1211 PROCEDURE FOR ASSESSMENT AND WAIVER OF CIVIL PENALTIES (1) remains the same.

(2) Within ~~30~~ 90 days after issuance of the notice of noncompliance, the department shall serve a notice of violation and ~~proposed~~ penalty order or notice of violation and waiver of penalty. Failure to serve the notice of violation and proposed penalty within ~~30~~ 90 days is not grounds for dismissal of the penalty unless the person against whom the penalty is assessed demonstrates actual prejudice resulting from the delay and makes objection in the normal course of administrative review. If the notice of violation and ~~proposed~~ penalty order is tendered by mail at the address of the person, as set forth in the permit in case of a permittee, and he or she refuses to accept delivery of or to collect such mail, service is completed upon such tender. In order to contest the fact of violation or the amount of penalty, the person charged with the violation must file a written request for hearing to the board of environmental review within ~~20~~ 30 days of service of the notice of violation and ~~proposed~~ penalty order. The hearing must be a contested case hearing in accordance with 82-4-206, MCA. If the department vacates the notice of violation, it shall also vacate the notice of noncompliance. At any time after issuance of the notice of violation and ~~proposed~~ penalty order and before commencement of the hearing, or, if a hearing is not requested, before ~~issuance of findings of fact, conclusions of law, and order~~ the notice and order become final, the person may confer with the department regarding the proposed penalty. ~~After the hearing or, if a hearing is not requested, after the 20 day request period has expired, the department shall issue its findings of fact, conclusions of law, and order.~~

(3) The department shall determine the civil penalty in accordance with ~~the point system in ARM 17.24.1212(2)~~ 82-4-1001, MCA. ~~However, the department may waive the point system if it finds that exceptional factors make use of the point system demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver in writing. The department may not waive use of the point system or reduce the penalty on the basis that a reduction in the penalty could be used to offset the costs of abatement. If the department waives the use of the point system, it shall use the criteria listed in ARM 17.24.1212(1), but not the points attributable thereto, to determine the amount of penalty.~~

(4) The violation is minor and the civil penalty may be waived if ~~under ARM 17.24.1212 it receives no points for seriousness and a total of 14 points or less before reduction for good faith~~ a consideration of the penalty factors set forth

in 82-4-1001, MCA, demonstrates that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of the Act. The department shall set forth the basis for waiving the penalty in writing. The department may not waive the penalty on the basis that the waiver could be used to offset the costs of abatement.

AUTH: 82-4-204, 82-4-254, MCA
IMP: 82-4-254, MCA

REASON: The proposed amendment to (2) makes a number of modifications to implement HB 428. See 82-4-254, MCA. First, the proposed amendment replaces "statement of proposed penalty" with "penalty order" because the Department is required to issue a penalty order rather than a statement of proposed penalty under HB 428. Additionally, the proposed amendment extends the time within which a person charged with a violation has to request a contested case hearing from 20 to 30 days to be consistent with the time within which a request for a contested case hearing must be made under HB 428. Furthermore, the proposed amendment provides that the person charged with a violation may enter into settlement negotiations with the Department prior to the notice and order becoming final rather than the Department's issuance of findings of fact, conclusions of law and order. Under HB 428, the notice and order become final by operation of law if a request for a hearing is not received, obviating the need for the Department to issue findings of fact, conclusions of law and order. Finally, the proposed amendment deletes the requirement that the Department issue findings of fact, conclusions of law and order either after the hearing or after the period of requesting a hearing has expired. As previously indicated, a notice and order issued under HB 428 becomes final by operation of law if a request for hearing is not received. Thus, there is no need for the Department to issue findings of fact, conclusions of law and order. The requirement that findings of fact, conclusions of law and order be issued following a hearing is set forth in HB 428 and, thus, does not need to be repeated in this rule.

The proposed amendment to (2) also allows the Department 90 days, rather than 30, to serve the notice of violation and penalty order following issuance of the notice of noncompliance. In practice, 30 days has proven to be an insufficient amount of time within which to issue a notice of violation. In order to be consistent with federal regulations, an alleged violator is afforded an opportunity to submit to the Department's Coal Program a statement of mitigating circumstances regarding the occurrence of the violation and the assessment of the proposed penalty. The Coal Program then reviews and responds in writing to the statement of proposed circumstances. The Enforcement Division takes into consideration the letter of mitigating circumstances and the Coal Program's response to the letter of mitigating circumstances in issuing the notice of violation and in calculating the proposed penalty. Given the time it takes

for the alleged violator to submit a letter of mitigating circumstances and for the Coal Program to review and respond in writing, it is not possible for the Enforcement Program to issue a notice of violation and penalty order within 30 days of the issuance of the notice of noncompliance without a noncommensurate commitment of resources.

The proposed amendment to (3) provides that penalties are to be calculated pursuant to 82-4-1001, MCA, a statute enacted under HB 429, rather than ARM 17.24.1212(2). ARM 17.24.1212 is being repealed because its method of penalty calculation is inconsistent with HB 429, which standardized the penalty factors that are considered for violations of environmental laws.

The proposed amendment also deletes the provision allowing for the waiver of the penalty calculation from (3) and moves it, with modifications, to (4). Section (4) is a more appropriate section for the waiver provisions because it specifically addresses minor violations. The waiver provision is modified to provide that a decision to waive a penalty must be based on whether the violation presents potential harm to public health, public safety, or the environment, or impairs the Department's administration of the Strip and Underground Mine Reclamation Act rather than on the assignment of points under ARM 17.24.1212(2). This amendment is necessary because the point system under ARM 17.24.1212(2) is inconsistent with HB 429 and is being repealed. Requiring a violation to be of no potential harm to the environment and to not impair administration of the Strip and Underground Mine Reclamation Act assures that the violation is sufficiently minor to warrant waiver of a penalty and is comparable to the threshold for waiving a penalty previously set forth in (3) based on a point assessment under ARM 17.24.1212(2). The waiver provision in (4) retains the requirements previously set forth in (3) that the Department document the reason for waiving the penalty in writing and that the reason cannot be to offset the costs of abatement.

17.24.1218 INDIVIDUAL CIVIL PENALTIES: AMOUNT (1) In determining the amount of an individual civil penalty assessed under ARM 17.24.1217, the department shall consider the criteria specified in ~~ARM 17.24.1212~~ 82-4-1001, MCA, including:

(a) through (c) remain the same.

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

AUTH: 82-4-205, MCA
IMP: 82-4-254, MCA

REASON: The proposed amendment to (1) provides that penalties are to be calculated pursuant to 82-4-1001, MCA, a statute enacted under HB 429, rather than ARM 17.24.1212(2). HB 429 standardized the penalty factors that are considered for violations of environmental laws. ARM 17.24.1212 is being repealed because its method of penalty calculation is inconsistent with HB 429.

17.24.1219 INDIVIDUAL CIVIL PENALTIES: PROCEDURE FOR ASSESSMENT (1) The department shall serve on each individual to be assessed an individual civil penalty ~~and~~ a notice of ~~proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order~~ violation and penalty order.

(2) The notice of ~~proposed individual civil penalty assessment becomes~~ violation and penalty order becomes a final order ~~20~~ 30 days after service upon the individual unless:

(a) the individual files within ~~20~~ 30 days of service of the notice of ~~proposed individual civil penalty assessment~~ violation and penalty order a request for hearing pursuant to 82-4-254(3), MCA; or

(b) through (4) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-254, MCA

REASON: The proposed amendments to (1) and (2) require the Department to serve a notice of violation and penalty order on an individual being assessed an individual civil penalty rather than a notice of violation and notice of proposed individual civil penalty assessment. This amendment reflects enactment of HB 428. See 82-4-254, MCA. Under HB 428, the Department is required to issue a penalty order rather than a statement of proposed penalty.

The proposed amendment to (1) also deletes the requirement that the penalty document give an explanation for the penalty as well as its amount. These requirements are set forth in 82-4-254(3)(a) and 82-4-1001, MCA. It is, therefore, unnecessary to impose these requirements by administrative rule.

In addition, the proposed amendments to (2) extend the time within which an individual being assessed an individual civil penalty must request a hearing, from 20 days to 30 days. This amendment reflects the enactment of HB 428. Under HB 428, an operator has 30 days to request a hearing following receipt of a notice of violation and penalty order.

17.24.1220 INDIVIDUAL CIVIL PENALTIES: PAYMENT (1) If a notice of ~~proposed individual civil penalty assessment becomes~~ violation and penalty order become ~~a~~ final ~~order~~ in the absence of a request for hearing ~~or abatement agreement~~, the penalty is due ~~upon issuance of the final order~~ within 30 days after the expiration of the period for requesting a hearing.

(2) If an individual named in a notice of ~~proposed individual civil penalty assessment~~ violation and penalty order files a request for hearing, the penalty is due ~~upon issuance~~ within 30 days after the issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty, unless enforcement of the order is stayed pursuant to 2-4-702, MCA.

(3) If the department and the corporate permittee or individual have agreed in writing on a plan for the abatement of

~~or compliance with the unabated order~~ the violation, the individual named in ~~a~~ the notice of ~~proposed individual civil penalty assessment~~ violation and penalty order may postpone payment until receiving either a final order stating that the penalty is due on the date of the final order or a written notice that abatement ~~or compliance~~ is satisfactory and the penalty has been withdrawn.

(4) through (8) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-254, MCA

REASON: The proposed amendments to (1), (2) and (3) replace the term "notice of proposed individual civil penalty assessment" with "notice of violation and penalty order" to reflect HB 428. See ARM 82-4-254, MCA. HB 428 requires the Department to issue a penalty order rather than a statement of proposed penalty.

The proposed amendments to (1) and (2) also require the payment of a penalty within 30 days after the expiration of the period for requesting a hearing rather than upon issuance of the final order. Pursuant to HB 428, the notice of violation and penalty order become final by operation of law if a request for hearing is not timely made. In this instance, there is no final order. Therefore, the deadline for paying the penalty had to be keyed off of the expiration of the period for requesting a hearing rather than the issuance of a final order.

Section (3) currently provides that an individual who has entered into a written agreement with the Department for "abatement of the violation" or "compliance with the unabated order" may postpone payment until receiving a final order indicating that the penalty is due or has been withdrawn. Compliance with an unabated order, however, is synonymous with the abatement of the violation. The proposed amendment to (3), therefore, deletes the two unnecessary references to "compliance with the unabated order."

17.30.2001 DEFINITIONS For purposes of ARM 17.30.2001 through ~~17.30.2006~~ 17.30.2004, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-5-103, MCA:

(1) through (4) remain the same.

~~(5) "Extent and gravity of the violation" means the extent of a violator's deviation from the applicable permit, authorization, rule, statute, or order. Relevant factors include concentration, volume, percentage, duration, toxicity, and the actual or potential effects of the violation on human health or state waters. Any single factor may be conclusive.~~

~~(6) "Nature of the violation" means the class to which the violation belongs as determined under (1), (2), or (3) of this rule.~~

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

AUTH: 75-5-201, MCA
IMP: 75-5-611, MCA

REASON: These amendments are necessary to make the rule consistent with New Rules I through VII.

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (1) through (6)(b) remain the same.

(7) In lieu of the notice letter under (2), the department may issue an administrative notice together with an administrative order if the department's action:

(a) remains the same.

(b) seeks an administrative penalty only for an activity that the department believes and alleges was or is a violation of 75-5-605, MCA, and the violation was or is:

(i) remains the same.

(ii) a violation of major extent and gravity as described in ~~ARM 17.30.2006~~ [NEW RULE III].

(7) The department shall calculate a penalty in accordance with [NEW RULES I through VII].

(8) remains the same, but is renumbered (9).

AUTH: 75-5-201, MCA
IMP: 75-5-611, MCA

REASON: These amendments are proposed because ARM 17.30.2005 and 17.30.2006 are proposed for repeal and to be consistent with new rules I through VII.

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES

(1) remains the same.

(2) For each violation, the department shall assess ~~the maximum administrative penalty~~ a penalty as provided in [NEW RULES I through VII], and allow the time for corrective action, specified in the table in this rule. Pursuant to 75-11-525(4), MCA, the department may suspend a portion of the maximum administrative penalty based on the cooperation and degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

The chart on pages 17-6040 and 17-6041 of the Administrative Rules of Montana remains the same.

(3) and (4) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, 75-11-525, MCA

REASON: The proposed amendment is necessary to comply with HB 429, which requires that penalties for violations of certain environmental laws be calculated after consideration of standardized penalty factors. See 75-1-1001, MCA.

4. The rules proposed for repeal are as follows:

17.24.1212 POINT SYSTEM FOR CIVIL PENALTIES AND WAIVERS located at pages 17-2383 through 17-2385, Administrative Rules of Montana (AUTH: 82-4-204, 82-4-254, MCA; IMP: 82-4-254, MCA) is proposed for repeal because its provisions have been superceded by HB 429. The factors the Department must consider under the Strip and Underground Mine Reclamation Act in determining a penalty are set forth in 82-4-254, MCA, as amended by HB 429 and 82-4-1001, MCA, as enacted by HB 429.

17.30.2005 FORMULA FOR DETERMINING ADMINISTRATIVE PENALTIES located at pages 17-3179 through 17-3182, Administrative Rules of Montana (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA) is proposed for repeal because its provisions have been superceded by HB 429 and new rules I through VII.

17.30.2006 EXTENT AND GRAVITY OF THE VIOLATION located at page 17-3183, Administrative Rules of Montana (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA) is proposed for repeal because its provisions have been superceded by HB 429 and new rules I through VII.

17.38.606 ADMINISTRATIVE PENALTIES located at pages 17-3673 through 17-3676, Administrative Rules of Montana (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA) is proposed for repeal because its provisions have been superceded by HB 429 and new rules I through VII.

5. The proposed new rules provide as follows:

NEW RULE I PURPOSE (1) This subchapter implements 75-1-1001 and 82-4-1001, MCA, which provide factors for calculating penalties assessed under:

(a) Title 75, chapters 2, 5, 6, 11 and 20, MCA;

(b) Title 75, chapter 10, parts 2, 4, 5 and 12, MCA;

(c) Title 76, chapter 4, MCA; and

(d) Title 82, chapter 4, parts 1, 2, 3, and 4, MCA.

(2) The purpose of the penalty calculation process is to calculate a penalty that is commensurate with the severity of the violation, that provides an adequate deterrent, and that captures the economic benefit of noncompliance.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: In 2005 the Montana Legislature amended most of the environmental laws administered by the Department to standardize the factors that must be considered when calculating penalties for violations of those laws. Some of the environmental laws had listed factors that must be considered in penalty calculations, but the factors varied from statute to statute. Other statutes did not list any penalty factors. As a

result, the Department calculated penalties using a variety of rules and penalty policies. HB 429 standardized the factors that are considered for penalty calculations for violations of environmental laws. See 75-1-1001 and 82-4-1001, MCA.

New Rules I through VII implement HB 429 by setting out the details of how the statutory penalty factors will be used in the penalty calculation process. The statute and these rules are necessary to achieve consistent and fair penalty calculations and to increase the efficient use of enforcement staff.

NEW RULE II DEFINITIONS The following definitions apply throughout this subchapter:

(1) "Continuing violation" means a violation that involves an ongoing unlawful activity or an ongoing failure to comply with a statutory or regulatory requirement.

(2) "Extent" of the violation means the violator's degree of deviation from the applicable statute, rule or permit.

(3) "Gravity" of the violation means the degree of harm, or potential for harm, to human health or the environment, or the degree of adverse effect on the department's administration of the statute and rules.

(4) "Gross negligence" means a high degree of negligence or the absence of even slight care.

(5) "Nature" means the classification of a violation as one that harms or has the potential to harm human health or the environment or as one that adversely affects the department's administration of the statute and rules.

(6) "Ordinary negligence" means the failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: New Rule II provides definitions of certain key terms that are used in the new rules. New Rule II is necessary to clarify the meaning of the rules and to achieve consistent and fair penalty calculations.

NEW RULE III BASE PENALTY (1) As provided in this rule, the department shall calculate the base penalty by multiplying the maximum penalty amount authorized by statute by an extent and gravity factor from the appropriate base penalty matrix in (2) or (3). In order to select a matrix from (2) or (3), the nature of the violation must first be established. The department shall classify the extent of a violation as major, moderate, or minor as provided in (4). The department shall classify the gravity of a violation as major, moderate or minor as provided in (5).

(2) The department shall use the following matrix for violations that harm or have the potential to harm human health or the environment:

| | GRAVITY | | |
|---|---|---|---|
| EXTENT | Major | Moderate | Minor |
| Major | 0.70 | 0.60 | 0.50 |
| Moderate | 0.60 | 0.50 | 0.40 |
| Minor | 0.50 | 0.40 | 0.30 |

(3) The department shall use the following matrix for violations that adversely impact the department's administration of the applicable statute or rules, but which do not harm or have the potential to harm human health or the environment.

| | GRAVITY | | |
|---|---|---|---|
| EXTENT | Major | Moderate | Minor |
| Major | 0.50 | 0.40 | 0.30 |
| Moderate | 0.40 | 0.30 | 0.20 |
| Minor | 0.30 | 0.20 | 0.10 |

(4) In determining the extent of a violation, the factors that the department may consider include, but are not limited to, the volume, concentration, and toxicity of the regulated substance, the severity and percent of exceedance of a regulatory limit, and the duration of the violation. The department shall determine the extent of a violation as follows:

(a) a violation has a major extent if it constitutes a major deviation from the applicable requirements;

(b) a violation has a moderate extent if it constitutes a moderate deviation from the applicable requirements;

(c) a violation has a minor extent if it constitutes a minor deviation from the applicable requirements.

(5) The department shall determine the gravity of a violation as follows:

(a) A violation has major gravity if it causes harm to human health or the environment, poses a significant potential for harm to human health or the environment, results in a release of a regulated substance, or has a significant adverse impact on the department's administration of the statute or rules. Examples of violations that may have major gravity include a release of a regulated substance without a permit or in excess of permitted limits, construction or operation without a required permit or approval, or an exceedance of a maximum contaminant level or water quality standard.

(b) A violation has moderate gravity if it:

(i) is not major or minor as provided in (5)(a) or (c); and

(ii) poses a potential of harm to human health or the environment, or has an adverse impact on the department's administration of the statute or rules. Examples of violations that may have moderate gravity include a failure to monitor, report, or make records, a failure to report a release, leak, or bypass, a failure to construct or operate in accordance with a permit or approval, mining or disturbing land beyond a permitted

boundary, or a failure to provide an adequate performance bond.

(c) A violation has minor gravity if it poses a low risk of harm to human health or the environment, or has a low adverse impact on the department's administration of the statute or rules. Examples of violations that may have minor gravity include a failure to submit a report in a timely manner, a failure to pay fees, inaccurate recordkeeping, and a failure to comply with a minor operational requirement specified in a permit.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: The first step in the penalty calculation process is to identify a base penalty as provided in New Rule III. The base penalty is a percentage of the statutory maximum penalty. The percentage varies depending on how the three statutory factors of "nature", "extent", and "gravity" are weighed. New Rule III defines these three statutory factors and creates two matrices for determining the base penalty. The "nature" of a violation is determined based on whether it harms or has the potential to harm human health or the environment or whether it is an administrative violation. The "extent" of a violation is determined based on a consideration of factors that include the volume, concentration, and toxicity of the regulated substance, the severity and percent of exceedance of a regulatory limit, and the duration of the violation. The "gravity" of a violation is determined based on a consideration of factors that include whether a release has occurred, the degree of risk to human health or the environment, and the extent of impact to the Department’s ability to administer the statute and rules. New Rule III is necessary to clarify how these statutory factors will be implemented, and to ensure that a consistent penalty calculation process is used for all of the environmental laws subject to HB 429.

NEW RULE IV ADJUSTED BASE PENALTY - CIRCUMSTANCES, GOOD FAITH AND COOPERATION, AMOUNTS VOLUNTARILY EXPENDED (1) As provided in this rule, the department may consider circumstances, good faith and cooperation, and amounts voluntarily expended to calculate an adjusted base penalty. Circumstances may be used to increase the base penalty. Good faith and cooperation and amounts voluntarily expended may be used to decrease the base penalty. The amount of adjustment for each of the above factors is based upon a percentage of the base penalty. The amount of the adjustment is added to the base penalty to obtain an adjusted base penalty.

(2) The department may increase a base penalty by up to 30% based upon the circumstances of the violation. To determine the penalty adjustment based upon circumstances, the department shall evaluate a violator’s culpability associated with the violation. In determining the amount of increase for

circumstances, the department's consideration must include, but not be limited to, the following factors:

(a) how much control the violator had over the violation;

(b) the foreseeability of the violation;

(c) whether the violator took reasonable precautions to prevent the violation;

(d) the foreseeability of the impacts associated with the violation; and

(e) whether the violator knew or should have known of the requirement that was violated.

(3) The department may increase a base penalty by:

(a) 1% to 15% for ordinary negligence;

(b) 16% to 29% for gross negligence; and

(c) 30% for an intentional act.

(4) The department may decrease a base penalty by up to 10% based upon the violator's good faith and cooperation. The department expects that a violator will act in good faith and cooperate with the department in any situation where a violation has occurred. The department may decrease the base penalty only if the violator exhibits exceptional good faith and cooperation. In determining the amount of decrease for good faith and cooperation, the department's consideration must include, but not be limited to, the following factors:

(a) the violator's promptness in reporting and correcting the violation, and in mitigating the impacts of the violation;

(b) the extent of the violator's voluntary and full disclosure of the facts related to the violation; and

(c) the extent of the violator's assistance in the department's investigation and analysis of the violation.

(5) The department may decrease a base penalty by up to 10% based upon the amounts voluntarily expended by the violator to address or mitigate the violation or the impacts of the violation. The amount of a decrease is not required to match the amounts voluntarily expended. The department expects that a violator will expend the resources necessary to mitigate a violation or the impacts of a violation. In determining the amount of decrease for amounts voluntarily expended, the department's consideration must include, but not be limited to, the following factors:

(a) expenditures for extra resources, including personnel and equipment, to promptly mitigate the violation or impacts of the violation;

(b) expenditures, not otherwise required, of extra resources to prevent a recurrence of the violation or to eliminate the cause or source of the violation; and

(c) revenue lost by the violator due to a cessation or reduction in operations that is necessary to mitigate the violation or the impacts of the violation. This does not include revenue lost due to a cessation or reduction in operations that is required to modify or replace equipment that caused the violation.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-

105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: New Rule IV sets out procedures for adjusting the base penalty based upon a consideration of the three statutory factors of "circumstances", "good faith and cooperation", and "amounts voluntarily expended". New Rule IV provides for an increase to the base penalty based upon circumstances. In determining the adjustment for circumstances, the rules require a consideration of factors that reflect the culpability of the violator under the circumstances. Rule IV provides for a decrease to the base penalty based upon a consideration of certain factors that reflect the good faith and cooperation of a violator, and a decrease to the base penalty based upon certain voluntary expenditures. New Rule IV results in an adjusted base penalty. New Rule IV is necessary to clarify how these statutory factors will be implemented, and to ensure that a consistent penalty calculation process is used for all of the environmental laws subject to HB 429.

NEW RULE V TOTAL ADJUSTED PENALTY - DAYS OF VIOLATION (1) The department may consider each day of each violation as a separate violation subject to penalties. The department may multiply the adjusted base penalty calculated under [NEW RULE IV] by the number of days of violation to obtain a total adjusted penalty.

(2) For continuing violations, if the application of (1) results in a penalty that is higher than the department believes is necessary to provide an adequate deterrent, the department may reduce the number of days of violation.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: The environmental laws provide the Department with discretion whether and how to bring enforcement actions. Most of the laws state that each day of violation constitutes a separate violation. New Rule V clarifies that, in exercising its statutory enforcement discretion, the Department may limit the number of days for which it assesses penalties if an assessment for the full number of violation days would result in a penalty that was higher than the department believes is necessary to provide an adequate deterrent. Under New Rule V, the adjusted base penalty calculated under New Rule IV is multiplied by the appropriate number of days to arrive at a total adjusted penalty. New Rule V is necessary to clarify how the Department will calculate the number of days of violation.

NEW RULE VI TOTAL PENALTY - HISTORY OF VIOLATION, ECONOMIC BENEFIT (1) As provided in this rule, the department may increase the total adjusted penalty based upon the violator's history of violation as defined in 75-1-1001(1)(c) and 82-4-

1001(1)(c), MCA, and based upon the economic benefit that the violator gained by delaying or avoiding the cost of compliance. Any penalty increases for history of violation and economic benefit must be added to the total adjusted penalty calculated under [NEW RULE V] to obtain a total penalty.

(2) The department may calculate a separate increase for each historic violation. The amount of the increase must be calculated by multiplying the adjusted base penalty calculated under [NEW RULE IV] by the appropriate percentage from (3). This amount must then be added to the total adjusted penalty calculated under [NEW RULE V].

(3) The department shall determine the gravity of each historic violation in accordance with [NEW RULE III(5)]. The department may increase the total adjusted penalty for history of violation using the following percentages:

(a) for each historic violation with major gravity, the penalty increase may be 21% to 30% of the adjusted base penalty calculated under [NEW RULE IV];

(b) for each historic violation with moderate gravity, the penalty increase may be 11% to 20% of the adjusted base penalty calculated under [NEW RULE IV]; and

(c) for each historic violation with minor gravity, the penalty increase may be 1% to 10% of the adjusted base penalty calculated under [NEW RULE IV].

(4) If a violator has multiple historic violations and one new violation, for which a penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together. This composite percentage may not exceed 30%. The composite percentage must then be multiplied by the adjusted base penalty for the new violation to determine the amount of the increase. The increase must be added to the total adjusted penalty for the new violation calculated under [NEW RULE V].

(5) If a violator has one historic violation and multiple new violations, each with a separate penalty calculation under these rules, the adjusted base penalties for the new violations calculated under [NEW RULE IV] must be added together. This composite adjusted base penalty must then be multiplied by the percentage from (3) for the historic violation to determine the amount of the increase. The increase must then be added to the sum of the total adjusted penalties calculated for each new violation under [NEW RULE V].

(6) If a violator has multiple historic violations and multiple new violations, for which a separate penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together, not to exceed 30%, and the adjusted base penalties for each new violation calculated under [NEW RULE IV] must be added together. The composite adjusted base penalties must be multiplied by the composite percentage to determine the amount of the increase. The increase must be added to the sum of the total adjusted penalties calculated for each violation under [NEW RULE V].

(7) The department may increase the total adjusted penalty, as calculated under [NEW RULE V], by an amount based

upon the violator's economic benefit. The department shall base any penalty increase for economic benefit on the department's best estimate of the costs of compliance, based upon information reasonably available at the time it calculates a penalty under these rules. The economic benefit must be added to the total adjusted penalty calculated under [NEW RULE V] to obtain the total penalty.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: New Rule VI sets out the procedures for increasing the total adjusted penalty, calculated under New Rule V, based on certain qualifying prior violations. The definition of what constitutes a qualifying prior violation is set out in statute. New Rule VI provides the amount of the adjustment for prior violations, and sets out procedures for making the adjustment when there are multiple violations. Under New Rule VI, the total adjusted penalty calculated under New Rule V is adjusted for prior violations to arrive at a total penalty. New Rule VI is necessary to clarify how the Department will calculate the adjustment for prior violations.

NEW RULE VII OTHER MATTERS AS JUSTICE MAY REQUIRE

(1) The department may consider other matters as justice may require to increase or decrease the total penalty. The department may not decrease the penalty to offset the costs of correcting a violation.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

REASON: New Rule VII provides that the Department may consider the statutory penalty factor of "other matters as justice may require" to either increase or decrease a penalty. New Rule VII does not attempt to define the scope of this factor, except by prohibiting any adjustment to offset the costs of correcting the violation. The Department expects that this factor will be used only when, based on particular facts and circumstances, the application of the factors in New Rules I through VI would result in an injustice.

6. The Board requests public input on whether the penalty calculation factors set forth in the proposed new rules would result in a penalty that is appropriate, too high, or too low for the violation categories. Based on this testimony, the Board may adjust the factors upward or downward.

7. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written

data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., February 7, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

8. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

9. The Board and Department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*/s/ JAMES M. MADDEN*
JAMES M. MADDEN
Rule Reviewer

BY: */s/ JOSEPH W. RUSSELL*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: */s/ RICHARD H. OPPER*
RICHARD H. OPPER, Director

Certified to the Secretary of State December 12, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.24.116 pertaining to application requirements for operating permit | AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT<br><br>(HARD ROCK MINING) |

TO: All Concerned Persons

1. On September 8, 2005, the Board of Environmental Review published MAR Notice No. 17-230 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1649, 2005 Montana Administrative Register, Issue No. 17. The hearings were scheduled for January 10, 2006, at 10:00 a.m. at the Fellowship Hall, 213 West Centennial Avenue, Boulder, Montana, and on January 11, 2006, at 8:00 a.m. at the Fort Belknap Bingo Hall, Fort Belknap, Montana. The notice of public hearing is being amended to change the time for the hearing at Fort Belknap on January 11, 2006, from 8:00 a.m. to 10:00 a.m. The hearing on January 10, 2006, in Boulder, Montana, will still be held at 10:00 a.m.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., January 3, 2006, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

3. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., January 18, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The Board of Environmental Review will preside over and conduct the hearings.

5. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage

systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

Certified to the Secretary of State December 12, 2005.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed amendment of ARM 24.210.667 and 24.210.661 related to continuing real estate education and new licensee mandatory continuing education - salespersons | ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On January 13, 2006, at 10:00 a.m., a public hearing will be held in room 489 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 Realty Regulation no later than 5:00 p.m., on January 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

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

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (3) remain the same.

(4) By ~~October~~ August 1 of each year, the board shall prescribe topics in which the 12 hours of education must be obtained for the following reporting year. A minimum of four hours must come from mandatory topics determined by the board and eight hours may come from elective topics approved by the board.

~~(5) No more than six hours of elective topics may be carried over. No mandatory hours may be carried over to any other year except as elective credits.~~

~~(6)~~ (5) No course shall be repeated for credit in the same ~~calendar~~ reporting year.

(7) through (11) remain the same, but are renumbered (6) through (10).

~~(12) An education reporting form attesting to the successful completion of the continuing education requirement must be submitted to the board by December 31 of each year. Filing of an education reporting form after December 31, but~~

~~on or before February 15 will result in a late filing fee. No affidavit will be accepted after February 15.~~

~~(13) An incomplete education reporting form will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the December 31 deadline, or late filing fees will be required.~~

(11) All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within 10 days of the course offering.

(12) Instructors or their designee must report all education attendance in a format approved and provided by the board.

(13) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course approval or withdrawal of the instructor approval.

(14) All continuing education courses must be taken and completed within ~~a calendar year~~ the reporting period.

~~(15) The board may audit licensees for compliance with continuing education requirements. Audited licensees must provide copies of completion certification to the board as verification of compliance within 30 days after mailing of the audit request.~~

~~(16) Failure to comply with the completion or reporting requirements established by the board is unprofessional conduct and will result in disciplinary action by the board.~~

~~(17) Education reporting forms will be mailed to all real estate licensees at their last address of record. Failure to receive an education reporting form does not eliminate the reporting requirement. Each licensee is required to annually report continuing education.~~

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, 37-51-204, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-203, 37-51-204, MCA

REASON: It is reasonably necessary to change the date on which the board shall prescribe topics in which the 12 hours of continuing education must be obtained for the following reporting year in order to accommodate the new rule date for licensees.

It is reasonably necessary to amend the real estate continuing education rules to require on-line reporting of continuing education, attendance of all licensees, and elimination of carry-over hours in order to accommodate the new education tracking system. This education tracking system will allow a licensee to check their education on the Internet throughout the year and determine the amount of continuing education they need to complete prior to renewal. It will display what courses have been reported to the board for an individual licensee and allow the licensee to monitor their attendance and accumulation of hours. The tracking system will allow the

board to determine at renewal time which licensees are eligible to renew. The education tracking system will eliminate the necessity for licensees to report continuing education at the end of each year and eliminate the necessity for the board to conduct audits of attested continuing education reported by licensees. However, the new tracking system currently has no ability to keep track of carry-over credits. Therefore, it is reasonably necessary to eliminate carry-over credits.

The Board has also determined it is reasonably necessary to amend the authority and implementation cites to provide the complete sources of the Board's rulemaking authority and to accurately reflect all statutes implemented through the rule.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS (1) All new sales licensees are required to complete the board mandated new licensee mandatory continuing education requirement by ~~December~~ October 31 following their original license issue date ~~of the calendar year of the initial license date~~.

(2) New sales licensees will receive an interim license that will expire ~~December~~ October 31 ~~of the year of the initial license date~~.

(3) remains the same.

~~(4) Evidence of completion of the new licensee mandatory continuing education may be forwarded to the board office at any time after completion of the mandatory course, but prior to December 31 of the year of the initial license date.~~

~~(5)~~ (4) The new licensee mandatory continuing education does not replace the 12 hour continuing education requirement which begins with the second ~~calendar~~ year of licensing.

~~(6)~~ (5) All licensees are required to submit the renewal form and renewal fee by ~~December~~ October 31 of their license renewal year.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: It is reasonably necessary to amend the text in the new licensee mandatory continuing education rule in order to coincide with the change of renewal dates for the board of realty regulation set by the Department of Labor and Industry. The Department is attempting to remove the spike in workload involved with all the large licensing boards renewing at the end of the year. The Department and Board agreed to move the renewal deadline for the Board of Realty Regulation from December 31 to October 31.

It is reasonably necessary to eliminate the requirement that evidence of new licensee mandatory continuing education be forwarded to the board because the Board offers the class, maintains the roster, and already knows who attends.

The Board has also determined it is reasonably necessary to amend the authority and implementation cites to provide the complete courses of the Board's rulemaking authority and to accurately reflect all statutes implemented through the rule.

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 Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrre@mt.gov and must be received no later than 5:00 p.m., January 20, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at www.realestate.mt.gov under the Board of Realty Regulation rule notice section. 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 Realty Regulation 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 Realty Regulation administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrea@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. Gene Allison, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
TERRY HILGENDORF, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State December 12, 2005

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed amendment of ARM 32.24.513, pertaining to computation of price for quota milk and excess milk | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On January 21, 2006, the department proposes to amend ARM 32.24.513, pertaining to the computation of price for quota milk and excess milk.

2. The department of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on January 12, 2006 to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts Street - Room 308, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-7323; TTD number: 1-800-253-4091; fax:(406)444-1929; e-mail: mbridges@mt.gov.

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

32.24.513 COMPUTATION OF PRICE FOR QUOTA MILK AND EXCESS MILK (1) remains the same.

(a) Combine the figures for butterfat and skim usage by class of pool producers' milk ~~into one figure the utilization values~~ for all pool handlers ~~for the month, as computed under ARM 32.24.301 and 32.23.102 and add thereto one half of the remaining balance in the pool settlement reserve~~ to determine a total dollar amount for butterfat and skim respectively.

(b) Add or deduct any increased ~~subtract a~~ value received or transportation/handling charges accrued to surplus/excess milk (per ARM 32.24.516) to the appropriate butterfat and/or skim totals in (1)(a). ~~computed by multiplying the weighted average value of butterfat in pool milk times the pounds by which the total butterfat in all pool milk is less, or more respectively, than the pounds obtained by multiplying the total pounds of pool milk by .035.~~

(c) To the skim total in (1)(b) add one-half the settlement reserve and deduct an amount equal to 12 cents per hundredweight of quota milk. ~~Subtract an amount arrived at by assigning the total quantity of excess milk to the classes of utilization in series, beginning with the total pool milk assigned to class III, and then as necessary to the remaining pool milk in sequence beginning with class II and then class I, and multiplying the quantities so assigned to classes by~~

~~the appropriate class prices, combining the resulting values, and subtracting any hauling or other cost with respect to pool milk that was deducted in computing pool handlers obligations for such milk. The sum so arrived at shall be divided by the total pounds of excess milk and the resulting figure, rounded to the nearest whole cent, shall be the excess price for milk testing 3.5%.~~

(d) Divide the skim dollar amount derived in (1)(c) by the total skim pounds to determine a poolwide value per skim pound. Similarly, divide the butterfat dollar amount derived in (1)(b) by the total butterfat pounds to determine a poolwide value per butterfat pound. ~~Subtract an amount of money equal to twelve cents per hundredweight of quota milk, and adjust this figure downward (after making the computations under (1)(e) hereof) as necessary to offset the fractional balance resulting from rounding their quota price. The amount so computed shall be deposited into the pool settlement reserve.~~

(e) The quota price at 3.5% test will be $1.50 higher than excess. The $1.50 differential will be split proportionately between butterfat and skim. ~~Compute a quota price by dividing the remaining balance by the total hundredweight of quota milk for the month, and rounding the resultant price to the nearest whole cent.~~

(f) ~~Announce to all interested persons on or before the 13th day of each month, or the first business day thereafter, the quota and excess prices for milk testing 3.5% butterfat as computed pursuant to (1)(e) and (1)(e) hereof, and a butterfat differential for quota and excess milk as provided for producer milk under ARM 32.24.301 to adjust for differences in butterfat content of the milk~~. To calculate the quota price, divide the excess pounds by total producer pounds. Multiply the resultant percentage by the differential in (1)(e) and add the amount so derived proportionately to the butterfat and skim components of the poolwide prices in (1)(d). This skim price per pound in (1)(d) multiplied by 96.5 added to the butterfat price per pound in (1)(d) multiplied by 3.5 will result in the quota price at 3.5% for the month.

(g) To calculate the excess price, subtract the butterfat and skim proportions of the differential in (1)(f) from the quota components in (1)(g). The skim figure so derived multiplied by 96.5 added to the butterfat figure so derived multiplied by 3.5 will result in the excess price at 3.5% for the month.

(2) The administrator shall announce to all interested persons on or before the 13th day of each month, or the first business day thereafter, the quota and excess prices for milk testing 3.5% butterfat as computed pursuant to (1)(f) and (1)(g), and a butterfat price for quota and excess milk as provided for producer milk under ARM 32.24.301 to adjust for differences in butterfat content of the milk.

AUTH: 81-23-104, 81-23-302, MCA
IMP: 81-23-104, 81-23-302, MCA

REASON: The proposed amendment is reasonably necessary to stabilize and strengthen the present quota system by ensuring that the quota blend price will maintain a constant $1.50 higher price per hundredweight than the excess blend price. There has been concern over the past couple of years that quota did not have a value advantage and should be thrown out because of the variations between the value of quota and excess. A few times in the past, the excess price exceeded the quota blend price. Using the $1.50 differential, the quota blend will always be $1.50 higher than the excess blend price helping the producers to project their earnings and encouraging more production within the state.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Marc Bridges, 301 N. Roberts Street, - Room 308, PO Box 202001, Helena, MT 59620-2001, by faxing to (406)444-1929 or e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m., January 19, 2006.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 4. A request for hearing must be received no later than 5:00 p.m., January 19, 2006.

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 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 10 based upon the current number of producers in the state.

7. An electronic copy of this Proposal Notice is available through the department's web site at www.liv.mt.gov.

8. The Montana department of livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street - Room 308, PO Box 202001, Helena, MT 59620-2001, faxed to (406)444-1929, e-mailed to mbridges@mt.gov, or

may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

| | |
|---|---|
| /S/ Marc Bridges | /s/ Carol Grell Morris |
| Marc Bridges | Carol Grell Morris |
| Executive Officer | Rule Reviewer |
| Department of Livestock | |

Certified to the Secretary of State December 12, 2005.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.111.825 pertaining to public accommodations, school health supervision and maintenance | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Interested Persons

1. On January 11, 2006, at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who 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 January 3, 2006, 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@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.111.825 HEALTH SUPERVISION AND MAINTENANCE (1) remains the same.

(2) Sanitary napkin disposal must be provided for girls of age 10 or older and in teachers' toilet rooms and nurses' toilet rooms~~;~~. ~~the~~ The school must provide either sanitary napkin dispensers in the girls', nurses', and teachers' toilet rooms or some other readily available on-site access to sanitary napkins.

(3) If a child develops symptoms of illness while at school, the responsible school officials shall do the following:

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

(b) remains the same.

(4) Schools shall develop and enforce policies on first aid which include, at a minimum, the following:

(a) and (b) remain the same.

(c) emergency coverage, including the presence of a person with a currently valid American red cross standard first aid card or current certification from an equivalent first aid course, during school-sponsored activities, including field trips, athletic, and other off-campus events. Recommendations

for first aid supplies and policies may be secured from the Department of Public Health and Human Services, ~~Health Policy and Services~~ Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(5) Smoking must be prohibited during school hours in rooms and any other areas used by children, and no smoking signs must be posted in each hallway, entryway, gymnasium, lunchroom, and restroom, though not in each classroom~~;~~. ~~smoking~~ Smoking must be prohibited in school vehicles while used by children for school-related functions.

(6) In addition to the requirements of this rule, school officials should also be aware of the need to comply with the laws and rules relating to the immunization of children (20-5-402, et seq., MCA; ARM ~~16.28.701~~ 37.114.701, et seq.), ~~health certification of teachers (20-4-104(b), MCA; ARM 16.28.1005)~~ the health of school employees (ARM 37.114.1010), and the reporting of communicable diseases (ARM ~~16.28.201, 16.28.202, and 16.28.601~~ 37.114.201, 37.114.202, and 37.114.501, et seq.). Copies of these requirements may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services~~ Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(7) through (7)(g) remain the same.

AUTH: Sec. 50-1-206, MCA
IMP: Sec. 50-1-203, and 50-1-206, MCA

3. In ARM 37.111.825(4)(c), the Department of Public Health and Human Services (the Department) proposes that first aid certification be provided by the American Red Cross or an equivalent training organization. Some school districts in the state have had problems getting certification from the American Red Cross because of the organization's limited availability. The Department has learned that other organizations, such as the American Heart Association, provide equivalent certification. The proposed rule change is necessary to assist schools in meeting first aid certification requirements in order to assure the safety of students.

Additionally, the Department made minor changes to the rule. References to the Health Policy and Services Division in ARM 37.111.825(4)(c) and (6) were changed to the Public Health and Safety Division. The division underwent a name change in 2004.

In (6) of the rule, citations to the various administrative rules in ARM Title 16 were changed to reflect their current numbering in ARM Title 37. The renumbered rules contain no substantive changes.

Also in (6), the reference to "health certification of teachers, (20-4-106(b), MCA)" was removed because the 1991 State Legislature eliminated the certification requirement (1991 Laws

of Montana, Chapter 257, Sec. 1). Health certification required teachers to be examined by health care providers and given certificates of good health. In its place, the Department added "the health of school employees", which substitutes for health certification and is covered in ARM 37.114.1010. Other nonsubstantive changes were made to ARM 37.111.825 in order to conform with the secretary of state=s required formatting.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

| | |
|---|---|
| Dawn Sliva | Joan Miles |
| Rule Reviewer | Director, Public Health and Human Services |

Certified to the Secretary of State December 12, 2005.

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

| | | |
|---|---|---|
| In the matter of the adoption of Rules I through XV pertaining to the pharmacy access prescription drug benefit program (Big Sky Rx) | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Interested Persons

1. On January 11, 2006, at 4:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2006, 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@mt.gov.

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

RULE I BIG SKY RX PROGRAM (1) The rules in this chapter implement the pharmacy access prescription drug benefit program established in 53-6-1004, MCA. This program is referred to in these rules as the big sky Rx program.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE II DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) "Assets" mean cash or other resources that a person owns and could convert to cash to be used for his or her support and maintenance.

(2) "Closed" means an individual or case that was enrolled but is no longer receiving a benefit amount or was on a waiting list but is no longer on the waiting list.

(3) "Completed application" means the applicant has provided all required information to the department.

(4) "Contract" means an agreement between the department and a PDP provider for the provision of premium payments for enrollees of the program.

(5) "Countable income" means the amount of an applicant's

income that is compared to the federal poverty level (FPL) to determine the applicant's FPL percentage.

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

(7) "Earned income" means salary, wages, and self-employment net earnings.

(8) "Eligible" means an applicant has met all the big sky Rx program eligibility criteria stated in [RULE V].

(9) "Eligibility threshold" means big sky Rx program income up to 200% of FPL.

(10) "Enrolled" means an eligible applicant enrolled in the program.

(11) "Extra help" means the federal program that assists with premiums, co-payments, and deductibles for clients who meet the social security program's requirements. The program is sometimes referred to as low income subsidy (LIS).

(12) "Family" means individuals residing together, related by blood, marriage, or adoption, and dependent on the household for at least one-half of their support.

(13) "Federal poverty level (FPL)" means the poverty income guidelines published annually in the Federal Register by the U.S. department of health and human services.

(14) "First in first served" means completed applications will be processed and eligible applicants enrolled based on the date the complete application is received by the department.

(15) "Income" or "family income" means salary, wage, self-employment net earnings, in-kind support, royalties, honoraria, social security benefits, veterans benefits, railroad benefits, pensions, workers compensation, alimony, net rental income, trust income, dividends, and interest.

(16) "Incomplete" means the application is missing information required by [RULE VIII].

(17) "Ineligible" means the individual or case does not meet the criteria for enrollment in the program.

(18) "In-kind income" means the value of food and shelter given to the person for which someone else pays.

(19) "Insurer" means an authorized insurer of the federal medicare Part D prescription drug plan (PDP).

(20) "Low income subsidy (LIS)" means the federal program that assists with premiums, co-payments, and deductibles for clients who meet the social security program's requirements. The program is sometimes referred to as extra help.

(21) "Open" means a case or individual that is pending, currently enrolled or eligible to receive the benefit amount but on a waiting list.

(22) "Pending" means the department is waiting to determine eligibility because the individual's application was incomplete.

(23) "Premium assistance" or "benefit amount" means the amount of money the department either pays monthly to an insurer for the provision of benefits for an enrollee or pays to an enrollee.

(24) "Pre-populated" means a computer generated document that includes information from the department's records to be

verified by the applicant.

(25) "Prescription drug plan (PDP)" means the private insurance plans for federal prescription drug benefit for people with medicare. The benefit was created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), (42 USC 1302, 1395w-101 through 1395w-152, and 1395hh). It is implemented at 42 CFR, part 423.

(26) "Processing" means the application is matched against program criteria.

(27) "Program" means the big sky Rx program administered by the department.

(28) "Qualified" means the applicant is a Montana resident with a family income at or below 200% of the FPL.

(29) "Renewal" means the process for applicants to return their pre-populated application timely to remain eligible for big sky Rx benefits.

(30) "Representative" means a person who the applicant has given permission to assist the applicant with program requirements by communicating with the program and receiving information from the department.

(31) "Residing" means living in Montana voluntarily with the intention of making a home here and not for a temporary purpose.

(32) "Unearned income" means any income other than salary, wages, and earnings from self-employment.

(33) "Waiting list" means the list compiled by the department of applicants who are eligible for premium assistance but who are not enrolled in the big sky Rx program because funds are not available to pay their program benefits.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE III BIG SKY RX SCOPE AND PURPOSE (1) Beginning January 1, 2006, medicare prescription drug plans (PDPs) will be available to people with medicare. This is a voluntary federal program created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) 42 USC 1302, 1395w-101 through 1395w-152, and 1395hh). It is referred to as "medicare Part D" in these rules and implemented in 42 CFR Part 423.

(2) An individual entitled to benefits under medicare Part A or enrolled in medicare Part B is eligible to enroll in a medicare Part D PDP. An individual enrolled in a PDP pays a premium and receives prescription drug coverage. There is also a federal premium subsidy called "social security extra help" for some individuals that assists in paying co-payments, deductibles, and premiums.

(3) The purpose of Montana's big sky Rx program is to pay a portion or all of the cost of the PDP premium for eligible Montana residents who have income at or below 200% of the FPL and do not qualify for federal automatic enrollment. A Montana resident who qualifies for the federal extra help program is eligible for big sky Rx benefit only to the extent needed to supplement the extra help benefit up to $33.11 per month.

(4) The individual enrolled in Part D must choose and enroll in a federally approved PDP.

(5) The program does not provide assistance with selecting or enrolling in a PDP.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE IV AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the big sky Rx PDP premium assistance may receive a benefit not to exceed $33.11 per month. The benefit amount will not exceed $33.11 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the extra help program, the big sky Rx program will pay the applicant's portion of the PDP premium up to $33.11 per month.

(b) Big sky Rx does not pay for the cost of an enrollee's drugs or the cost of an enrollee's deductible, coinsurance or co-payments.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, $33.11, is determined based on the maximum extra help benefit. This amount extends the social security extra help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE V ELIGIBILITY FOR BIG SKY RX (1) An applicant must be eligible and enrolled in the program to receive premium assistance.

(2) To qualify the applicant must:

(a) be a resident of the state of Montana; and

(b) have a family income at or below 200% FPL.

(3) If a qualified applicant's income is at or below 150% of FPL and the applicant has assets of less than $11,500 for a single person and $23,000 if married and living together, then the applicant must provide a determination from social security extra help.

(4) An individual who is eligible for medicaid is not eligible for the big sky Rx program.

(5) An individual who the federal government automatically enrolled in a LIS program with full premium subsidy is not eligible.

(6) Eligibility determinations shall be effective for 12 months from the date of determination regardless of change in income or household size. This also applies to an applicant on the waiting list as provided in [RULE X].

(7) Enrollees in the program must comply with procedures specified by the PDP, the department, extra help, and social security (if applicable) to receive premium assistance.

(8) Program eligibility terminates the end of the month for any of the following events:

(a) the enrollee becomes medicaid eligible;

(b) by eligibility verification, the enrollee's income is found to exceed 200% of the FPL;

(c) the enrollee is no longer enrolled in a PDP;

(d) the enrollee did not provide an extra help determination, if appropriate, or reapply for extra help;

(e) the enrollee dies;

(f) the enrollee is incarcerated; or

(g) the enrollee fails to provide information requested by the department.

(9) Termination of the benefit amount will be effective at the end of the month that notice of termination is given to the enrollee.

(10) Big sky Rx eligibility and benefits are not an entitlement. If funding is insufficient, the department may reduce enrollment numbers or enrollment criteria to limit the number of individuals who are eligible to participate.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE VI INCOME AND FAMILY SIZE CRITERIA FOR BIG SKY RX

(1) Family income must be at or below 200% FPL to qualify for the program. Assets are not considered. Family income is the total of the applicant's income and the spouse's income if married and living together. For purposes of determining big sky Rx eligibility, the income items listed in this rule are included in family income.

(2) Earned income includes gross wages, net earnings from self-employment, payment for services performed in a sheltered workshop or work activities center, royalties, and honoraria.

(3) Unearned income includes social security benefits, veterans benefits, railroad benefits, public and private pensions, annuities, workers' compensation, alimony, income from a trust, net rental income, dividends, interest, and inheritances.

(4) The applicants' declared value of in-kind support.

(5) Income tax refunds, assistance based on need funded by a state or local government, and small amounts of income received infrequently or irregularly are not counted. The income listed in (2), (3), and (4) may also be decreased based on the adjustments stated in 20 CFR 416 to calculate income for purposes of social security supplemental income (SSI).

(6) The result of adding (2), (3), and (4) and making any disregards of income provided for in (5) equals countable income.

(7) Compare countable income with household size to figure FPL.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE VII MAXIMUM BIG SKY RX PROGRAM ENROLLMENT (1) The

department will enroll the number of participants it determines can be served based on the amount of appropriation.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE VIII PROCESSING BIG SKY RX PARTICIPANT APPLICATIONS

(1) The department will process applications on a first in first served basis using the date the application is received by the department.

(a) The program will not enroll or pay benefits retroactively.

(b) Benefits will only be paid to eligible and enrolled individuals as of the first month following enrollment.

(2) Applications will be processed by the department and individuals will be notified in writing of their eligibility status as:

(a) ineligible;
(b) qualified but incomplete;
(c) incomplete;
(d) eligible and enrolled; or
(e) eligible and on the waiting list for the big sky Rx program.

(3) A completed application consists of:

(a) a signed big sky Rx application form with the following information:

(i) applicant's and spouse's (if applicable) name;
(ii) social security number;
(iii) medicare number;
(iv) date of birth;
(v) gender;
(vi) home phone number;
(vii) street address;
(viii) mailing address;
(ix) family size;
(x) family income;
(xi) gross wages;
(xii) family assets;
(xiii) in-kind support;
(xiv) disability or blind related work expense;
(xv) name of applicants' PDP; and
(xvi) payment option of direct deposit or mail if applicant wishes to be paid directly.

(4) An applicant must sign the application and self-declare Montana residency and application for big sky Rx.

(5) An applicant must provide documentation of medicare Part D PDP or medicare advantage plan enrollment including documentation of Part D name, group number, and premium payment portion amount.

(6) An applicant must provide documentation of a social security extra help determination if the applicant has family income at or below 150% FPL and assets of less than $11,500 if single or $23,000 if married and living together.

(7) An application is incomplete if it is missing any item

listed in (3) through (6).

(8) Individuals not meeting the eligibility criteria in [RULE V] will be considered ineligible and mailed a program notice containing the reason for ineligibility. An individual may request an appeal, as provided in [RULE XI]. An individual may reapply for the program at any time.

(9) Qualified but incomplete applications will be marked "pending" until the applicant provides the PDP information and, if appropriate, the social security extra help determination.

(a) The applicant will be notified that the application is pending. The application will be held for 60 business days from the date of the notice. Following the 61st business day, a notice will be sent to the applicant reminding him of the missing information.

(b) The application will remain "pended" until the information can be processed. If the information is still missing on the 91st business day following the original notice, the department will consider the applicant ineligible and the individual will be notified. The department will take no further action.

(10) Incomplete applications that are not otherwise qualified are considered "pending" by the department. These individuals will be notified of the missing information.

(a) A pended application will be held for 20 business days waiting for missing information. If the missing information is received within the 20 business days from the date of the notice, the application will be processed.

(b) Following the 21st business day the department will consider the application incomplete. The applicant becomes ineligible, and will be notified. The department will take no further action.

(11) Eligible individuals must meet all of the eligibility criteria in [RULE V]. An eligible applicant will be enrolled in the program on a first in first served basis using the date the completed application is received by the department.

(12) Program enrollment starts the first day of the following month. Enrollees will be sent an enrolled notice, including the approved premium benefit amount. The premium benefit amount will be paid to the PDP or the individual for the following month.

(13) If no premium assistance is available because of funding, eligible individuals will be placed on the department's waiting list. If funds become available, a notice will be sent and the applicant will be enrolled.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE IX BIG SKY RX APPLICATION RENEWAL (1) Sixty days prior to the end of the 12-month eligibility period, a pre-populated notice will automatically be generated and sent to the client. This notice is generated based on the eligibility enrollment determination date.

(2) The client must verify the program information on the

notice by noting any changes on the application and returning it to the department before the eligibility period ends.

(a) The enrollee's renewal application will be processed as a renewal application when received by the department.

(b) The application will be processed according to [RULE VIII].

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE X MAINTENANCE OF A WAITING LIST FOR THOSE DETERMINED ELIGIBLE FOR BIG SKY RX (1) The department will process applications and will notify eligible individuals in writing of their program status.

(2) If no available program slot exists, the eligible individuals will not be enrolled and will be maintained on a waiting list until a slot becomes available.

(3) When slots are available, individuals will be notified in writing prior to the month of enrollment.

(4) The 12-month eligibility stated in [RULE V] applies.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE XI BIG SKY RX GRIEVANCE AND APPEAL PROCEDURES (1) All decisions of the department related to the administration of the big sky pharmacy Rx program are reviewable using the procedures stated at ARM 37.5.101, 37.5.304, 37.5.307, 37.5.313, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, and 37.5.334.

(2) An applicant contesting a denial, or an enrollee or guardian contesting a benefit or enrollment denial, benefit reduction, disenrollment, closure, or termination of big sky Rx may request a fair hearing.

(3) If a written request for hearing is not received by the department within 90 days of the mailing date of a notice of adverse action, the hearing officer may deny a hearing as provided in ARM 37.5.313.

AUTH: Sec. 53-2-201, 53-6-1004, and 53-6-1011, MCA
IMP: Sec. 53-2-606, MCA

RULE XII BIG SKY RX APPEAL PROCEDURES (1) Hearings to contest adverse department actions under the big sky Rx program, Title 53, chapter 6, part 10, MCA, are available to the extent granted by statute or rule in accordance with [RULE XI].

AUTH: Sec. 53-2-201, 53-6-1004, and 53-6-1011, MCA
IMP: Sec. 53-2-606, MCA

RULE XIII VERIFICATION OF ELIGIBILITY FOR BIG SKY RX (1) A random sample of enrolled individuals will be required to participate in an eligibility verification review and provide documentation to verify the income as stated on the

application.

(2) An individual will have 20 business days from the date of the written request by the department to submit the required income documentation. The client will remain enrolled during the verification process.

(a) If the required documentation is not received by the department after 20 days, the enrolled individual will be disenrolled from the program the following month.

(b) An individual who provides income verification documentation after 21 business days will have the application reprocessed as if it is a new application.

(3) If verified income is over 200% FPL, the applicant will be disenrolled effective the last day of the month in which the determination was made and the client was notified.

(4) For purposes of this rule, necessary income documentation may include one or more of the following:

(a) state or federal income tax returns;

(b) pay stubs or other pay statements;

(c) employee's W-2 forms;

(d) self employment records documenting income and expenses;

(e) check copies;

(f) correspondence from an employer specifying a benefit;

(g) records of any government payor; or

(h) other appropriate, persuasive documentation may be accepted at the discretion of the department.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE XIV BIG SKY RX PREMIUM PAYMENTS (1) Monthly premium payments will be made to:

(a) an insurer that has contracted with the department;

(b) directly to clients if:

(i) their monthly premium is deducted from their social security check;

(ii) they enroll in a PDP provided by an insurer that does not contract with the department; or

(iii) the client chooses to be paid directly.

(c) direct payments to enrollees can be made:

(i) by check mailed to the enrollee; or

(ii) through direct deposit.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

RULE XV BIG SKY RX PDP CONTRACTS (1) An insurer receiving direct payment of all or part of a PDP premium from the state on behalf of an enrollee must enter into a contract with the department.

AUTH: Sec. 53-2-201, and 53-6-1004, MCA
IMP: Sec. 53-6-1001, 53-6-1004, and 53-6-1005, MCA

3. The 2005 Legislature enacted 2005 Laws of Montana

Chapter 287 (SB 324), which provides for a pharmacy access program to complement the federal Medicare Part D program. These rules are necessary to establish how the Department of Public Health and Human Services (Department) will administer the State Pharmacy Access program. The Department is calling this program the "Big Sky Rx program".

The Medicare Part D Prescription Drug Plans (PDPs) are private insurance plans established as part of the federal Medicare Part D program. Insurance policies from qualifying companies, with varying rates and coverage, will be available to all Medicare recipients who want to buy insurance coverage for prescription drugs.

The Big Sky Rx program is a state funded program to pay a portion of the PDP premiums for Montana residents with income up to 200% of the Federal Poverty Level (FPL). To qualify for state assistance, a resident must enroll in a PDP plan and have income at or below 200% of the FPL. Individuals who are at or below 150% of the FPL and have limited assets may qualify for federal assistance to pay for a portion of the premium. Those individuals must apply for the Federal Extra Help program.

Eligibility for the Federal Extra Help program is limited to individuals with assets of less than $10,000. Montana does not have an asset limit for eligibility. The Department will require an individual or married couple who report assets of less than $11,500 or $23,000, respectively and income at or below 150% of FPL to apply for and be determined ineligible for federal assistance before that individual can enroll in the Big Sky Rx program.

The Legislature appropriated approximately $15,750,000 over the biennium to fund the programs described in 2005 Laws of Montana Chapter 287 (SB 324). The Department is establishing the Big Sky Rx program first and will allocate the appropriation based on demand. Eligible individuals will be enrolled on a first come first serve basis. If the Department determines there is insufficient appropriation to meet demand, enrollment will be limited and eligible individuals will be on a waiting list until benefits become available.

RULE I Big Sky Rx Program

This rule is necessary to identify the program implemented in these new rules. The Legislature appropriated $15,750,000 over two fiscal years to implement 2005 Laws of Montana Chapter 287 (SB 324).

RULE II Definitions

This rule defines words and phrases that are not defined in statute but are used extensively in these rules.

RULE III Big Sky Rx Scope and Purpose

This rule is necessary to explain the scope and purpose of the Big Sky Rx program. The purpose of the state program is to coordinate with the federal program to make prescription drug insurance coverage available to Medicare recipients. All Medicare recipients are eligible to purchase prescription drug insurance coverage. All Medicaid and most SSI recipients will automatically be enrolled in the Part D program and their premiums will be paid through the federal program. The federal government also has a program, called Extra Help, to assist individuals and couples with income below 150% and assets below $10,000 pay for the coverage. The Big Sky Rx program is intended to assist Montana residents with income at or below 200% of FPL who are not eligible for full federal assistance. Eligibility for federal assistance may limit an individual's eligibility for state assistance.

RULE IV Amount of the Big Sky Rx Benefit

The state program will provide up to $33.11 a month in assistance to Montana residents who qualify. This amount is determined by the Department. It is the maximum benefit amount available from the federal government through its Extra Help programs. State assistance is limited to the premium price paid for a PDP up to $33.11. The state program, unlike the federal Extra Help, does not pay co-pays or deductibles. This rule is necessary to establish the amount of the benefit.

RULE V Eligibility for Big Sky Rx

This rule states the eligibility criteria for state assistance through the Big Sky Rx program. An individual must submit a completed application showing that he or she is a Montana resident with family income at or below 200% of FPL.

The Department will do a case by case review to determine which qualified applicants it believes may be eligible for federal assistance based on income at or below 150% of FPL and assets below $11,500 if single or $23,000 if married and living together. Those qualified applicants will be notified that if they wish to be enrolled in the Big Sky Rx program they must first submit proof that they applied for and were denied federal assistance before they are eligible for state assistance.

An eligible applicant must comply with the procedures specified by the PDP, the Department, and the Extra Help program to receive assistance.

RULE VI Income and Family Size Criteria for Big Sky Rx

The rule is necessary to detail income and family size that will be used for eligibility criteria. The Department is using the same income and family size as the Social Security Extra Help because these criteria are equitable and using the same criteria

simplifies the application process for both the Applicant and the Department.

RULE VII Maximum Big Sky Rx Program Enrollment

This rule is necessary for the Department to administer the program within the appropriation provided by the Legislature. It states how the Department will determine how many eligible applicants to enroll. The Legislature has given the Department discretion to allocate the appropriation for the Prescription Drug Expansion program to the Pharmacy Access program if the Department determines that there are "excess funds for the pharmacy access program" (53-6-1004(6), MCA). The Department is going to make that determination based on the number of eligible applications it receives. A waiting list will be maintained if the Department determines the appropriation will not be sufficient to provide benefits to all eligible individuals for a 12-month period.

RULE VIII Processing Big Sky Rx Participant Applications

This rule is necessary to explain what information the Department will require and how the Department will process applications using the eligibility criteria established in Rule V and the family size and income criteria in Rule VI. Applications will be processed and classified into five groups - ineligible, qualified but incomplete, incomplete, eligible and enrolled, or eligible but on a waiting list. This rule establishes various deadlines for applicants to provide additional information, including proof that federal assistance was denied, if the Department determines that is necessary. An applicant who does not provide additional information within the time allowed must resubmit his or her application if he or she wants to be considered for premium assistance.

RULE IX Big Sky Rx Application Renewal

This rule is necessary to establish how an enrollee renews his or her Big Sky Rx benefit on an annual basis. An enrollee will receive a notice, with preprinted information to be verified, 60 days before the benefit period expires. The enrollee must reapply every year but his or her benefits are renewed, not placed on the waiting list, if funds are available.

RULE X Maintenance of a Waiting List for Those Determined Eligible for Big Sky Rx

This rule is necessary if the program receives applications from more qualified residents than there is funding available. This rule states how a waiting list will be maintained if there are more eligible applicants than funds allocated to provide Big Sky Rx benefits. The new rules will be applied retroactively to November 1, 2005. Big Sky Rx will begin taking applications November 15, 2005 but will not begin to pay benefits until the

month of January 2006.

RULE XI Big Sky Rx Grievance and Appeal Procedures

This rule is necessary to state the appeal process that will be available to applicants and enrollees who are not satisfied with a program decision. The Board of Public Assistance will hear and resolve disputes using its fair hearing procedures, which conform to the requirements of the Montana Administrative Procedure Act.

RULE XII Big Sky Rx Appeal Procedures

This rule is necessary to provide a cross reference in the Big Sky Rx program rules to the appeal procedures stated in Rule XI, which will be codified in the Department's rules governing appeals - ARM Title 37, Chapter 5.

RULE XIII Verification of Eligibility for Big Sky Rx

This rule is necessary to state the Department's quality assurance procedures for verification of eligibility. As a prerequisite of receiving benefits, an enrollee must agree that if he or she is randomly selected to participate in an eligibility verification review, the enrollee will cooperate with the reviewer and provide documentation of eligibility. Verification of eligibility is necessary to monitor that the program is being implemented according to statute.

RULE XIV Big Sky Rx Premium Payments

This rule is necessary to explain how the monthly benefit amount will be disbursed. The Big Sky Rx program requires coordination between the Department and the insurance company providing the PDP for the transfer of funds and the establishment of coverage dates. The enrollee may choose his or her PDP provider. If that insurer accepts the terms of participating in Montana's Big Sky Rx program, payment will be made directly to the insurer. This will assist the enrollee and improve program efficiency.

RULE XV Big Sky Rx PDP Contracts

The Department is entering into contracts with insurers who provide PDPs. The contracts are going to be uniform among insurers. This rule will state the requirements of an insurer to participate in the Big Sky Rx program.

The Department estimates that the program will serve approximately 20,000 Montanans with incomes up to 200% of FPL annually. $7,000,000 in SFY 2006 and $8,750,000 in SFY 2007 have been appropriated from I-149 Tobacco Tax revenues.

4. These rules will be applied retroactively to November 1, 2005. There is no negative impact as a result of applying

these rules retroactively.

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 January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. 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.

Russell Cater
Rule Reviewer

John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State December 12, 2005.

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

| | | |
|---|---|---|
| In the matter of the adoption of Rules I through XXIX and amendment of ARM 37.95.102, 37.95.106, 37.95.108, 37.95.121, 37.95.132, 37.95.139, 37.95.140, 37.95.141, 37.95.214, 37.95.215, 37.95.225, 37.95.602, 37.95.610, 37.95.611, 37.95.613, 37.95.702, 37.95.705, 37.95.706, 37.95.708 and 37.95.1005 and the repeal of ARM 37.95.109, 37.95.618, 37.95.620, 37.95.701, and 37.95.907 pertaining to licensure of day care facilities | ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL |

TO: All Interested Persons

1. On January 12, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who 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 January 3, 2006, 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@mt.gov.

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

RULE I DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES (1) A licensed or registered day care provider will be sent notification at least 90 days prior to the expiration of the current license/registration certificate.

(a) The notice shall advise the provider that the current license/registration is expiring and shall inform the provider how to access the information needed to renew the certificate.

(b) the notice will also provide information on where and when to submit renewal information and will explain the

consequences for late or incomplete submission of renewal materials.

(c) The provider and all staff must complete required training hours, including training in first aid and CPR, and the provider must submit proof that the training was completed prior to the date the day care certificate expires.

(d) If a complete renewal application is received on or before the current certificate expiration date, a "regular renewal certificate" will be issued and no break in the certificate date span will occur.

(e) If a renewal application is received before the current certificate expiration date but is incomplete, the department will identify to the provider, in writing, what items are missing. If those missing items are received before the certificate expiration date, there shall be no break in the certificate date span.

(2) If a provider is unable to fulfill all aspects of the renewal process due to circumstances beyond the provider's control such as a personal crisis involving the death of an immediate family member, a major medical emergency, or other good cause shown, the department may grant the provider a three month "provisional" registration. All licensing requirements for renewal must be completed by the end of the provisional period or the license will lapse. If all required materials are submitted within the three month period, the license will be reactivated as a regular renewal certificate.

(3) A "delayed registration" will be granted if a provider submits a renewal application which is received by the department prior to the expiration date of the current certificate, but the application is incomplete due to one or both of the following factors:

(a) events such as required provider or staff training or CPR classes are scheduled close to the expiration date of the license certificate and the department does not receive verification that the provider or staff have completed the required training until after the certificate expiration date; or

(b) a required event that is scheduled to occur before expiration of the license is cancelled at no fault of the provider and the event must be rescheduled after the expiration of the license certification.

(4) When a complete renewal packet is received after the expiration date, a regular registration will be issued effective the date the packet was submitted to the department, unless the department has another basis for taking negative licensing action and the license is or has been summarily suspended by the department pursuant to 2-4-631(3), MCA. The license will be deemed to have lapsed on the date of expiration.

(a) When a renewal packet is received after the expiration date and is incomplete, the department will notify the provider of what items must still be submitted to the department and a break in the certificate date span will occur until those missing items are submitted. The issuance date of the certificate will be the date the last requested item is received

by the department.

(b) When a certificate has lapsed for 60 or more days, it will be deemed to have automatically terminated.

(5) Any provider whose license or registration is deemed terminated based upon failure to complete the renewal process within the timelines provided in this rule may be relicensed by filing a new license or registration application and meeting all initial licensure requirements.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-721, 52-2-722, and 52-2-725, MCA

RULE II DAY CARE FACILITIES: STAFF RECORDS (1) The provider shall maintain written records regarding each caregiver which include:

(a) a record of training and experience;

(b) results of a criminal and protective services background check;

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

(d) immunization records that establish compliance with ARM 37.95.140.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, and 52-2-732, MCA

RULE III DAY CARE FACILITIES: MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT (1) The director, assistant director or any staff member of the day care facility who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter promptly to the department child abuse hotline at 1(866)820-5437. The day care provider or staff member shall make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 41-3-102, and 52-2-704, MCA

RULE IV DAY CARE CENTERS: CONFIDENTIALITY REQUIREMENTS (1) The provider and all staff and volunteers shall maintain personal information about the child and the child's family as confidential.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, and 52-2-723, MCA

RULE V GROUP AND FAMILY DAY CARE HOMES: PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care home must:

(a) be at least 18 years of age;

(b) demonstrate they are physically, emotionally, and mentally capable of performing the essential function of their position with or without reasonable accommodations;

(c) be free of communicable disease;

(d) have met the immunization requirements of ARM 37.95.140; and

(e) demonstrate they are of good moral character.

(2) The provider and all staff, including caregivers, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. Pursuant to ARM 37.95.109(8), the director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the caregiver providing care.

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

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

(a) health;

(b) safety;

(c) child development/well being;

(d) discipline/guidance;

(e) nutrition/food safety; or

(f) business aspects of a child care business.

(5) Orientation training does not count toward the required eight hours of continuing education as specified in (6).

(6) The provider and all caregivers must annually verify that they have met the training requirements set out in [Rule VIII].

(7) The provider must hold current course completion cards in CPR for infant, child and adult CPR; infant choking response; and standard first aid (1st aid). Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.

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

RULE VI DAY CARE FACILITIES: CRIMINAL BACKGROUND CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each day care provider, on all staff, including caregiver, administrative staff, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or who stays in the day care facility regularly or

frequently.

(2) If the provider, staff member, volunteer, or resident has always lived in Montana, a Montana based criminal background check will be conducted based upon a name based criminal records check.

(3) If the provider, staff member, volunteer, resident of the facility, or any person who regularly or frequently stays in the facility, has lived outside of Montana for any portion of the previous five years, that person must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.

(4) If an applicant has lived in states other than Montana, a check will be made of the violent offender and criminal history registries if this information is available for states in which the applicant has lived.

(5) If after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting to his lack of criminal history or to the details of existing criminal history. The affidavit will be accepted in lieu of receipt of results from a criminal history check.

(6) An applicant who has not lived in Montana for at least five years cannot be licensed without receipt of results of a criminal records check from every state in which the applicant has lived since the age of 18.

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

(8) Persons formerly licensed as day care providers will be treated as new applicants if the former provider has not been licensed for a period of more than one year or if the provider has lived out-of-state for any period of time since being licensed in Montana.

(9) A name based check for criminal records will be used for applicants who have lived in Montana since the expiration of their previous license or registration if it has been less than one year since the expiration of the license.

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

RULE VII DAY CARE FACILITIES: COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS (1) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary and any time children are in care.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-732, and 52-2-733, MCA

RULE VIII DAY CARE FACILITIES: REQUIRED ANNUAL TRAINING

(1) The provider and all caregivers at any day care facility must each verify that they have successfully completed a minimum of at least eight hours of continuing education annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date.

(2) The training may be obtained from the department or other department approved professional child care education and development programs offered by national, state, or local child care organizations, or through successful completion of college level course work in early childhood areas or child development.

(3) Continuing education must relate to the Montana early care and education knowledge base and must fall within the following categories:

(a) personal attributes/characteristics;

(b) health, safety, and nutrition which may include training on prevention of sudden infant death syndrome (SIDS) and medication administration;

(c) child growth and development;

(d) environmental design;

(e) child guidance;

(f) family and community partnerships;

(g) program management;

(h) curriculum;

(i) observation and assessment;

(j) professionalism; or

(k) cultural and developmental diversity.

(4) With the exception of volunteers, any person who provides care to children in a day care facility for at least 160 hours a year is required to successfully complete eight hours of continuing education annually.

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

RULE IX DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

(1) After written notice to the applicant, licensee, or registrant, the department shall deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a registration certificate or license upon finding that:

(a) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest,

child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) the applicant, licensee, or registrant or a member of the applicant's, licensee's, or registrant's household has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture of delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;

(d) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

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

(a) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;

(b) the day care is not in compliance with fire safety standards imposed by these rules, or by the state fire marshal or other authority having jurisdiction;

(c) the day care has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;

(d) the provider has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the provider is obligated to disclose to the department, regarding any aspect of the day care or its operations;

(e) the provider, any staff member, volunteer, or any person residing in the day care or anyone staying in the facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;

(f) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation by the department, or by a law enforcement agency determines that there is probable cause to believe that a child in the facility may be in danger of harm;

(g) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(h) the results of a psychological or medical examination provided reasonable grounds for the department to believe that the provider, any staff member, or volunteer in the day care is not an appropriate caretaker for a child;

(i) the provider, any staff member, or any volunteer, may pose any risk or threat to the safety or welfare of a child in the day care;

(j) the day care has failed to protect the health, welfare, or safety of a child, or the day care presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child;

(k) a director, caregiver, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a licensing regulation which resulted in harm to a child as defined in 41-3-102, MCA or knowingly allowed harm to occur to a child as defined in 41-3-102, MCA, whether or not that person was prosecuted or convicted of child abuse or neglect; or

(l) a day care license or registration may be suspended, restricted, or revoked at the discretion of the department if the licensee's child is removed from the licensee by the department.

(3) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action. Such a determination may be based on findings including, but not limited to the following situations:

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

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

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

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

(e) through a child care licensing investigation, it is determined that the provider, provider's staff, or member of the provider's household has violated a licensing regulation that has resulted in harm to a child which falls within the definitions of child abuse and neglect set out in 41-3-102, MCA, whether or not a criminal prosecution is initiated.

(4) If a licensee is placed on a probationary or other provisional status, the department may notify all parents and guardians of all children attending the facility of the status

of the license, the basis for the reduced status and the time period for which the license is reduced. The department may do so by personal notice, by written notice, or by posting notice on the day care license, which is required to be posted in plain view at the facility.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-726, and 52-2-731, MCA

RULE X DAY CARE CENTERS: CHILD TO STAFF RATIOS (1) The child to staff ratio for a day care center is:

(a) 4:1 for infants zero months through 23 months;

(b) 8:1 for children two years through three years;

(c) 10:1 for children four years through five years; and

(d) 14:1 for six years and over.

(2) For day care center programs providing care exclusively to school aged children, the child to staff ratio is 14:2 for the first 28 children, with a ratio of 14:1 to be maintained for numbers in excess of 28.

(3) Only the provider, primary caregivers and aides may be counted as staff in determining the staff ratio.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-703, 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XI DAY CARE FACILITIES: RECORDS (1) The provider shall maintain all policies, records, and reports that are required by the department. These policies must be reviewed and updated annually by the facility.

(2) The department must be given access to all records and an opportunity to copy the records whenever children are in care.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, and 52-2-732, MCA

RULE XII DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE (1) The registration certificate or license is not transferable to another operator or site.

(2) A license or registration is valid only for the person and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of the facility, the license or registration certificate must be physically returned to the department.

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

RULE XIII DAY CARE FACILITIES: NOTICE OF CHANGES (1) The department must be notified of any changes, including changes in staff, changes in the category of children in day care, or changes to the day care property, that would affect the terms of the registration or licensure.

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

RULE XIV DAY CARE FACILITIES: LICENSE FOR EACH PREMISES (1) Separate registration certificates and licenses shall be required for programs maintained on separate premises, even when operated by the same provider.

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

RULE XV DAY CARE FACILITIES: LICENSE OR REGISTRATION CERTIFICATE TO BE POSTED (1) Each day care facility must post its license in plain view where it is readily viewable by parents dropping off or picking up children.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-703, 52-2-704, and 52-2-721, MCA

RULE XVI DAY CARE CENTERS: STAFFING QUALIFICATIONS (1) All providers, staff members, and volunteers at a day care center must be:

(a) able to demonstrate they are physically, emotionally, and mentally capable of performing the essential functions of the position with or without reasonable accommodations;

(b) free of communicable disease;

(c) immunized in compliance with ARM 37.95.140; and

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

(2) Each day care center must have an on site director who can be either a teaching or nonteaching director.

(3) Any on site teaching director newly employed at any day care center on or after the effective date of this rule shall have:

(a) a current child development associate (CDA) credential; or

(b) child care development specialist (CCDS) apprenticeship certificate; or

(c) an associate's or bachelor's degree in early childhood education/child development; or

(d) a degree in education or social science with at least 20 credits in early childhood education/child development; or

(e) an associate's or bachelor's degree in an unrelated field with at least 20 semester credits in early childhood education/child development and 1000 hours of documented experience in an early childhood program, such as a day care center, a family or group day care home, head start, or another recognized preschool program.

(4) An administrative nonteaching director newly employed at any day care center on or after the effective date of the rule must have an associate's or bachelor's degree in accounting, business administration, finance, human service/public administration, or a similar field; and

(a) 4000 hours (two years) of experience working in an

early childhood program such as a day care center, a family or group day care home, head start, or recognized preschool program; or

(b) the director must be employed in a day care center that also employs an education coordinator/program director who qualifies as a primary caregiver and who oversees curriculum and program components.

(5) A center director, newly employed at any day care center on or after the effective date of these rules, whether teaching or nonteaching, must qualify for a level three or higher on the Montana early care and education career path and must obtain 15 hours of approved training on an annual basis.

(6) A primary caregiver must:

(a) be at least 18 years of age;

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

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

(d) receive a minimum of at least eight hours of documented continuing education annually as provided in [Rule VIII]; and

(e) have the following training and experience:

(i) two years of experience in an early childhood program such as a day care center, a family or group day care home, headstart, early headstart, or another recognized preschool program; or

(ii) child development associate credential; or

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

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

(g) be currently certified in standard first aid.

(7) Course completion as indicated in (6)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.

(8) An aide must be directly supervised by a primary caregiver and shall be at least 16 years of age and must:

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

(b) have at least one day of on-the-job orientation; and

(c) successfully complete a minimum of at least eight hours of documented continuing education annually as required in [Rule VIII].

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

RULE XVII DAY CARE FACILITIES: SCHOOL AGED CARE (1) A day care center that exclusively provides care to school aged children must meet all licensing requirements for a regular day care center license except where specifically exempted and must meet all additional requirements set in these rules for a program exclusively providing care to school aged children.

(2) School based day care programs serving children in

kindergarten through grade six do not need a separate inspection if the area being used for day care has met the school safety requirements for disaster drills, notification to the local fire department and inspection of exits set out in 20-1-401 through 20-1-407, MCA.

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

RULE XVIII DAY CARE FACILITIES: MEDICATION ADMINISTRATION

(1) No day care employee, owner, or operator may administer any medication to a child without the written authorization of the parents including the child's name, date or dates for which the authorization is applicable, dosage instructions, and the signature of the child's parent or guardian.

(2) If an emergency arises and the parents or guardian of the child is unavailable, an employee, owner, or operator may administer medicine to a child if:

(a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical provider's signature; or

(b) a medical practitioner, emergency service provider, or 911 responder verbally directs the employee, owner, or operator of the day care facility to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a medical practitioner for follow up care within a reasonable time by the child's parent or guardian or by an employee, owner, or operator of the day care facility.

(3) An employee, owner, or operator of a day care facility may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a medical provider as provided in 52-2-736, MCA.

(4) If the provider/facility elects to administer medication to children, the provider/facility must maintain the following documentation on site:

(a) A medication record which includes:

(i) the written authorization of the parents for the caregiver to administer medication;

(ii) the prescription by a health care provider if required; and

(iii) a medication administration log.

(b) A written medication administration policy which includes at a minimum:

(i) types of medication which may be administered; and

(ii) medication administration procedures to be followed, including the route of medication administration, the amount of medication given, and the times when medication is to be administered; and

(c) A health care and medication plan for children who may have special health care needs or those requiring medication for chronic health conditions which has been approved by a health

care provider licensed in Montana.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733,and 52-2-736, MCA

RULE XIX DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION (1) Any prescription medication brought into the facility by the parent, legal guardian, or responsible relative of a child shall be dated and shall be kept in the original container labeled by a pharmacist with the following information:

(a) child's first and last names;

(b) the date the prescription was filled;

(c) the name of the health care provider who wrote the prescription; and

(d) the medication's expiration date, and specific legible instructions for administration, storage, and disposal (i.e., the manufacturer's instruction or prescription label).

(2) Any nonprescription medication brought into the facility for use by a specific child shall be labeled with the following information:

(a) the date;

(b) the child's first and last names;

(c) specific, legible instructions for administration and storage (i.e., the manufacturer's instructions); and

(d) the name of the health care provider, parent, or guardian who made the recommendation.

(3) All medications, refrigerated or unrefrigerated, shall:

(a) have child-protective caps;

(b) be kept in an orderly fashion;

(c) be stored away from food at the proper temperatures; and

(d) kept in a location inaccessible to children or kept in a locked box.

(4) Medication shall not be used beyond the date of expiration.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, and 52-2-732, MCA

RULE XX DAY CARE CENTERS, SCHOOL AGED CARE: DIRECTOR AND STAFF QUALIFICATIONS (1) All staff providers, members, and volunteers at a day care center that exclusively serves school aged children must be:

(a) mentally, emotionally, and physically capable of performing the essential functions of the position with or without reasonable accommodations;

(b) free from communicable disease;

(c) immunized in compliance with ARM 37.95.140; and

(d) of good moral character.

(2) The provider and all staff, including caregivers, aides, volunteers, kitchen and custodial staff, and all persons

residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. Pursuant to ARM 37.95.109(8), the director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the caregiver providing care.

(3) The minimum duties and qualifications for staff at a day care that exclusively serves school aged children are as follows:

(a) Each center must have a program director who is responsible for the overall management and direction of the program.

(b) The program director must:

(i) be 21 years of age or older; and

(ii) have obtained a bachelor's or associate's degree in early childhood education, child development, elementary or secondary education, or related field such as recreation, physical education, music, art, family and consumer science, psychology, or social services; and

(iii) be currently certified in child and adult CPR and first aid.

(c) Each day care center with a program that exclusively serves school aged children must have a site based director who is responsible for the on site daily operation of the program, including program planning and implementation and staff supervision. The site based director and program director may be the same person if that person meets all qualifications for both positions. A site based director must be present at the facility at all times it is operating.

(d) The site director must:

(i) have a minimum of two years of college education in a field related to early childhood education, child development, elementary or secondary education, music, art, family and consumer science, psychology, or social sciences, or be 21 years of age with two years of experience in an organized recreational or educational setting; and

(ii) have obtained an associate's degree in early childhood education/child development or, if a degree has not been obtained, the site director must have a minimum of five years of experience working directly with children, as evidenced by professional references, education, and on the job performance; and

(iii) have current certification in child and adult CPR and first aid.

(e) Other school aged child care staff include assistants and aides.

(f) Assistants:

(i) must be 18 years of age or older; and

(ii) possess a high school diploma or equivalent; and

(iii) have experience working with school aged children; and

(iv) hold current certification in child and adult CPR and first aid, and must successfully complete two hours of school aged child growth and development training that must be completed before an assistant will be allowed to have sole responsibility for a group of children; and

(v) have sufficient language skills to communicate with school aged children and adults.

(g) Aides:

(i) must be 16 years of age or older; and

(ii) shall be under direct supervision of the site based director or program director; and

(iii) may not be assigned sole responsibility for any group of children; and

(vi) have sufficient language skills to communicate with school aged children and adults.

(4) Only the director, site coordinator, assistants, and aides of a school aged child care program may be counted in determining the child to staff ratio. Volunteers to the program may not be counted in the child to staff ratio.

(5) All approved directors and staff members must complete, on an annual basis, the hours of continuing education as outlined in [Rule VIII].

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

RULE XXI DAY CARE CENTERS, SCHOOL AGED CARE: NOTICE OF CURRENT ADDRESS (1) The provider shall provide the department with any change in the provider's mailing address within 10 days of the change.

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

RULE XXII DAY CARE FACILITY: PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR DRUGS (1) A caregiver, volunteer, support staff person, other adult residing in the day care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense, or awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

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

RULE XXIII DAY CARE FACILITIES: NO THREAT FROM PERSONS IN CONTACT WITH CHILDREN (1) No staff member, aide, volunteer, or other person having direct contact with the children in the facility shall pose any potential threat to the health, safety, and well being of the children in care.

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

RULE XXIV DAY CARE FACILITIES: REQUIRING EXAMINATIONS (1) The department may require an applicant, a provider, a staff person, a volunteer, or any person living in the day care facility or staying in the day care facility on a regular or frequent basis, to undergo a physical, psychological, psychiatric, or chemical dependency evaluation if the department determines such an evaluation is relevant to the department's reasonable belief that the person has engaged in behaviors that may place children or other adults at risk of harm.

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

RULE XXV DAY CARE FACILITIES: SUPERVISION AT ALL TIMES (1) Caregivers must supervise children at all times.

(2) The provider and all caregivers shall be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

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

RULE XXVI DAY CARE FACILITIES: REAPPLICATION AFTER SUSPENSION OF REVOCATION (1) However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within one year of the denial or revocation.

(2) If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until one year after the date of the decision of the hearing officer.

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

RULE XXVII DAY CARE FACILITIES: HEALTH HABITS (1) Good health habits, such as washing hands, must be taught during everyday activities. The caregivers must ensure that each child washes his hands:

(a) upon arriving at the facility;

(b) before eating;

(c) before participating in food preparation activities; and

(d) after using the toilet.

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

(a) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101°F or greater, or if the person

exhibits any of the symptoms outlined in (4) for which a child would be excluded;

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

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

(ii) after using the toilet;

(iii) after every diapering;

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

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

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

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

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

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

NEW RULE XXVIII DAY CARE FACILITIES: FIRST AID REQUIREMENTS (1) Each provider shall adopt and follow written policies for first aid consistent with recommendations from the American red cross. These policies must include but are not limited to:

(a) procedures for handling medical emergencies, including calling the emergency Montana poison control center at 1 (800) 222-1222 when a child is suspected of having ingested any poisonous or toxic substance; and

(b) directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.

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

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

(b) sterile, absorbent bandages;

(c) a cold pack;

(d) tape and a variety of band-aids;

(e) tweezers and scissors;

(f) the toll free number for the emergency Montana poison control center, 1 (800)222-1222;

(g) disposable single use gloves;

(h) the director, owner, manager, or person in charge of the day care facility shall take appropriate precautions to minimize the risk of any child suffering sunburn and to minimize the risk of any child contracting west nile virus; and

(i) each day care provider is responsible for notifying the department of any hazard to the health, welfare, or safety of children in care.

(3) A portable first aid kit containing at least the items listed in (2) must accompany staff and children on trips away from the facility.

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

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

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

RULE XXIX DAY CARE FACILITIES: STAFF APPROVAL (1) The department shall not grant approval to any day care facility for any director, care giver, volunteer, or support staff person who has been convicted of a crime identified in [Rule IX(1)].

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

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

37.95.102 DEFINITIONS (1) "Aide" means a facility staff person who carries out assigned caregiving tasks under the direct supervision of a primary caregiver or director.

~~(1)~~ (2) "Caregiver" means a licensee, registrant, employee, aide, or volunteer who is responsible for the direct care and supervision of children in a day care facility.

(3) "CPR" means cardio-pulmonary resuscitation.

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

care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.

~~(3)~~ (5) "Day care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

~~(4)~~ (6) "Day care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis, or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:

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

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

(7) "Delayed renewal application" means a renewal application which is submitted to the department prior to the certificate expiration date, but is submitted in an incomplete manner, resulting in a delay in the issuance of the certificate.

~~(5)~~ (8) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(9) "Director" means the person designated on the center application or otherwise by written notice to the department as the person responsible for the daily operation of a day care center. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility.

~~(6)~~ (10) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

~~(7)~~ (11) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid, and acellular pertussis vaccine combined.

~~(8)~~ (12) "Family day care home" means a private residence in which day care is provided to three to six children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means~~,~~ a day care

facility providing care to no more than three children under two years of age unless care is provided for infants only. For facilities providing care only for infants, family day care home means a place in which supplemental parental care is provided for up to four infants. No other children shall be in attendance.

~~(9)~~ (13) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which supplemental parental care is provided for up to eight infants. No other children shall be in attendance.

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

~~(10)~~ (14) "Harm to children" means harm to a child's health or welfare as defined in 41-3-102, MCA.

~~(11)~~ (15) "Health care provider" means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.

~~(12)~~ (16) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

~~(13)~~ (17) "Infant" means a child under the age of 24 months of age.

(18) "Lapsed registration/license" means:

(a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date;

(b) an application which is incomplete and results in a break-in-license span; or

(c) any break in the license/registration span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.

~~(14)~~ (19) "License" means a written document issued by the department that the license holder has complied with the applicable standards and rules for day care centers.

~~(15)~~ (20) "Local health authority" means a local health officer, local department of health, or local board of health.

~~(16)~~ (21) "MMR vaccine" means a live virus vaccine containing a combination of measles, mumps, and rubella vaccine.

~~(17)~~ (22) "Night care" means care provided for a child between the hours of 7 p.m. and 7 a.m. during which the parent~~(s)~~ desire~~s~~ a child to sleep.

~~(18)~~ (23) "Overlap care" means care provided at a day care facility for children age three and older for the times before and after school and approved by the department for a designated period of time not to exceed three hours when the number of children in care may exceed the number of children registered

for care on the registration certificate.

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

(25) "Nonprescription medication" means any over the counter medication that is not specifically prescribed by a physician, but is recommended by a health care provider or a parent or guardian for a specific child.

(26) "Nonteaching director" means a facility director who meets the requirements as outlined in [Rule XVI] but who does not regularly provide direct care to children who attend the day care facility.

~~(19)~~ (27) "Physician" means a person licensed to practice medicine under Title 37, chapter 3, MCA.

~~(20)~~ (29) "Preschooler" means a child between 36 months of age and the age the child will be when he or she initially enters a public or private school system.

~~(21)~~ (28) "Portable wading pool" means a structure which contains water, ~~and~~ is used for aquatic activities, and is less than 24 inches high.

(30) "Prescription medication" means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy by prescription.

(31) "Primary caregiver" means a facility staff person who meets the requirements as outlined in [Rule XVI] and who regularly provides direct care to the children who attend the day care facility.

(32) "Probationary license" means a day care facility license or registration certificate whose status has been reduced for a specified period of time for a licensing violation and which will be reinstated to regular status upon successful completion of and compliance with remedial measures identified by the department to address specific deficiencies.

~~(22)~~ (33) "Provider" means the applicant for license or registration, the licensee or registrant.

~~(23)~~ (34) "Provisional certificate" means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to three months. A second three month certificate may be issued at the discretion of the day care licensing program manager.

~~(24)~~ (35) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

~~(25)~~ (36) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.

~~(26)~~ (37) "Registrant" means the holder of a registration

certificate issued by the department in accordance with the provisions of Title 52, chapter 2, part 7, MCA.

~~(27)~~ (38) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify compliance with the prescribed standards and promulgated rules.

~~(28)~~ (39) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this rule and the applicable standards for family day care home and group day care homes.

~~(29)~~ (41) "Regular certificate" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, ~~or~~ group day care homes, or day care centers.

~~(30)~~ (40) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week for six hours a day or more.

~~(31)~~ (42) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

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

(43) "Remote means of egress" means escape routes in the day care which consist of two exits whose distance apart is equal to or greater than one half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.

(44) "Renewal registration/license" means a registration or license certificate that has reached its expiration date and the holder of that registration/license desires to renew or continue operations allowed by the registration/license.

~~(32)~~ (45) "Restricted certificate" means a restricted license ~~/~~ or registration status ~~given to a registrant/licensee~~ assigned when it has been determined that the provider is unable to meet certain specific requirement criteria, but the provider is ~~participating in~~ complying with an agreed upon plan of correction.

~~(33)~~ (46) "School—age child" means a person who is at least five years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.

(47) "School age child care facility" means a licensed day care center program operating in a facility other than a private residence that exclusively provides care for school aged children when public school is not in session.

(48) "Substitute" means any person not regularly employed by a child care facility who temporarily takes the place of an approved staff person, other than the director.

~~(34)~~ (49) "Supervision" means the provider and all caregivers shall be able to see or hear the children at all times.

~~(35)~~ (50) "Supplemental parental care" means the provision of day care by an adult other than a parent, guardian, or person in loco parentis on a regular basis for daily periods of less than 24 hours.

(51) "Teaching director" means a person who meets the requirements outlined in [Rule XVI] and who regularly provides direct care to the children who attend the day care facility.

~~(36)~~ (52) "Toddler" means a child who is 24 months of age to 36 months of age.

~~(37)~~ (53) "Vaccine" means one of the following:

(a) if administered in the United States, an immunizing agent approved by the bureau of biologics, food and drug administration, United States public health services; or

(b) if administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 37.114.708.

(54) "Varicella" means an attenuated, live virus vaccine to prevent chicken pox disease.

~~(38)~~ (55) "Volunteer" means any person who enters into service voluntarily, but who when in service is subject to discipline and regulations like any other employee.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-4-212, 53-4-601, 53-4-611, and 53-4-612, MCA

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

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

reservations must follow the requirements of 52-2-722, MCA.

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

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

(b) an annual approved inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM 37.95.128, 37.95.139, 37.95.140, and 37.95.205 through 37.95.227;

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

(d) a schedule of daily activities;

(e) a sample weekly menu;

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

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

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

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

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

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

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

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

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

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

(e) any such other information which may be requested by

the department.

(5) Applications for renewal shall be made by the provider at least 30 days prior to expiration of the license or registration certificate.

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

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

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

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

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

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

(4) A ~~R~~registrant or licensee shall not discriminate in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, or disability. Any determination of discrimination will be made by the Montana human rights commission.

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

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

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

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

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

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

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

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

(7) Regular registration certificates and licenses are issued from the department's quality assurance division licensure bureau for periods up to three years.

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

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

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

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, 52-2-732, and 52-2-733, MCA

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

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

~~(3)~~ (2) No extension cord will be used as permanent wiring. All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent electrocution.

~~(4)~~ (3) Any pet or animal, present at the ~~home~~ facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The provider must make reasonable efforts to keep stray animals off the premises.

~~(5)~~ (4) Guns must be kept in locked storage. Ammunition

must be kept in locked storage separate from the gun.

~~(6)~~ (5) The indoor and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.

~~(7)~~ (6) Any outdoor play area must be maintained free from hazards such as wells, machinery, and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four feet high without any holes or spaces greater than four inches in diameter or natural barriers to restrict children from these areas.

(a) Outdoor play areas shall be designed so that all parts are always visible and easily supervised by staff.

~~(8)~~ (7) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.

~~(9)~~ (8) Toys and objects with a diameter of less than one inch (2.5 centimeters), objects with removable parts that have a diameter of less than one inch (2.5 centimeters), plastic bags, styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.

~~(10)~~ (9) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel, or woodchips with a depth of the ground cover being at least six inches.

~~(11)~~ (10) Trampolines are prohibited for use by children in care. Trampolines on facility premises must be inaccessible to children in care.

~~(12)~~ (11) The emergency Montana poison control center ~~poison control~~ number, ~~(1 800 524 5042)~~, 1 (800) 222-1222 must be posted at all telephone locations at the day care facility.

~~(13)~~ (12) Use of waterbeds, water mattresses, gel pads, or sheepskin covers for children's sleeping surface is prohibited.

~~(14)~~ (13) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.

(a) All facilities must have two accessible exits on each level. ~~that are unlocked when children are in care and are easily operable from the inside with a single action.~~ The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions. ~~Deadbolt locks that can be opened from the inside only with a key are prohibited.~~

(b) If the day care provider chooses to lock the facility door to prevent unauthorized access to the facility or to prevent a child from eloping, the facility shall have no lock or fastening device which prevents free escape from the interior.

(c) The locking device must not require a key, a tool, or special knowledge or effort to open the door from the inside.

(d) The locked door must be easily opened with one motion from the inside of the facility.

(e) Installation of locking devices may not prohibit access by parents. A facility may not utilize locking devices in a manner to prevent unannounced access by authorized individuals, including parents. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized personnel including parents with information on how to gain access.

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

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, 52-2-734, and 52-2-735, MCA

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

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

(a) In day care facilities providing care for school aged children, persons responsible for transportation of children must also possess current CPR and first aid certifications.

(b) Children under four years of age may not be transported in a vehicle which does not provide age appropriate safety restraints or in a vehicle which cannot accommodate a car seat or a booster seat in a manner that conforms with national highway transportation safety administration recommendations.

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

(4) With the exception of public transportation ~~or rented or leased buses which are~~ that is not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age and weight appropriate safety restraints, which must remain fastened at all times the vehicle is in motion. Each child shall have his ~~or her own~~ safety restraint. Children shall not share a safety seat or a safety restraint.

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

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

(7) Facilities providing transportation for children under ~~four years~~ six years of age ~~or 40 pounds~~ or children six years of age but weighing less than 60 pounds shall comply with the following requirements:

(a) all vehicles shall be equipped with children's car seats or booster seats that meet federal department of transportation recommendations ~~standards~~ for the age and weight of the child being transported;

(b) car seats or booster seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts which are secured within the vehicle

according to factory assembly;

(c) there shall be no more than one child in each car seat;

(d) there shall be one adult in addition to the driver for each four infants being transported; and

(e) an adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.

(8) No child shall be left unattended in a vehicle.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-733, MCA

37.95.139 DAY CARE FACILITIES, HEALTH CARE REQUIREMENTS

(1) The parent~~(s)~~ of each child admitted to the day care facility shall provide the name of the physician or health care facility the parent wishes to have called in case of an emergency.

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

~~(3) The department hereby adopts and incorporates by reference ARM 37.114.1010, which sets standards for tuberculin testing of those working in day care facilities, and treatment and monitoring of positive cases among them. A copy of ARM 37.114.1010 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(4)~~ (3) The director, owner, manager, or person in charge of the day care facility must designate a staff member to check daily the health status of each child immediately upon that child's entry into the day care facility, and to exclude any child showing symptoms of illness, under the following guidelines:

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

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

(c) Children with any of the bacterial infections listed below must be treated with antibiotics for 24 hours before they return to the day care center:

(i) strep throat;

(ii) scarlet fever;

(iii) impetigo;

(iv) bacterial conjunctivitis (pinkeye); and

(v) skin infections such as draining burn, infected wounds, or hangnails;

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

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

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

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

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

~~(5)~~ (4) If a child develops symptoms of illness while at the day care facility and after the parent or guardian has left, the day care facility must do the following:

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

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

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

~~(6)~~ (5) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If a reportable communicable disease is suspected, the provider shall inform a health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that the child's return will not harm that child or the other children. Disease charts that identify the reportable diseases are available from the department.

~~(7)~~ (6) The day care facility may readmit a child excluded for illness whenever, in its discretion:

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

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

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

~~(8)~~ (7) The parent or guardian may also provide the day care facility with a signed certification of health from a licensed physician, except that the following restrictions must be followed:

(a) If a child is excluded for shigellosis or salmonella, the child may not be re-admitted until the child has no diarrhea

or fever, the child's parent or guardian produces documentation that two stools, taken at least 24 hours apart, are negative for shigellosis or salmonella, and the local health authority has given written approval for the child to be readmitted to the day care facility;

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

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

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

~~(b) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101E or greater, or if the person exhibits any of the symptoms outlined in (4) for which a child would be excluded;~~

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

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

~~(ii) after using the toilet;~~

~~(iii) after every diapering;~~

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

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

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

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

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

~~(11) Each provider shall develop policies for first aid . These policies must include: directions for calling parents or someone else designated as responsible for the child when a child is sick or injured. The provider shall immediately call the poison control number (1 800 525 5042) when a child is suspected of having been poisoned.~~

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

~~(a) unexpired syrup of ipecac (one ounce bottle) or activated charcoal;~~

~~(i) these substances may only be administered upon directive from the poison control center of the local emergency service program (i.e., 9 1 1 operator, local hospital, or physician);~~

~~(b) sterile, absorbent bandages;~~

~~(c) a synthetic ice or gel pack~~

~~(d) tape and a variety of band aids;~~

~~(e) tweezers and scissors;~~

~~(f) the poison control number (1 800 525 5042); and~~

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

~~(12) All children of an appropriate age shall be taught to use and flush the toilet, and to wash their hands after using the toilet, and before eating.~~

~~(16) A portable first aid kit containing at least the items listed in (12) above must accompany staff and children on trips away from the facility.~~

~~(17) The provider shall submit a report to the appropriate local office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the child(ren) involved, and a copy retained on file at the day care facility.~~

~~(18) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.~~

AUTH: Sec. 52-2-704 and 52-2-735, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

37.95.140 IMMUNIZATION (1) Before a child under the age of five may attend a Montana day care facility, that facility must be provided with the documentation required by (4) ~~below~~ that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with ~~(8)~~ (9) ~~below~~:

| Age at Entry | Number of Doses-Vaccine Type |
|---|---|
| under 2 months old | no vaccinations required |
| by 3 months of age | 1 dose of polio vaccine<br>1 dose of DTP vaccine<br>1 dose of Hib vaccine |
| by 5 months of age | 2 doses of polio vaccine<br>2 doses of DTP vaccine<br>2 doses of Hib vaccine |
| by 7 months of age | 2 doses of polio vaccine |

| | |
|---|---|
| | 3 doses of DTP vaccine<br>*2 or 3 doses of Hib vaccine |
| by 16 months of age | 2 doses of polio vaccine<br>3 doses of DTP vaccine<br>1 dose of MMR vaccine administered no earlier than 12 months of age<br>*1 dose of Hib vaccine given after 12 or 15 months of age |
| by 19 months of age | 1 dose of varicella vaccine<br>3 doses of polio vaccine<br>4 doses of DTP vaccine<br>1 dose of MMR vaccine administered no earlier than 12 months of age<br>*1 dose of Hib vaccine given after 12 or 15 months of age |

(*) varies depending on vaccine type used.

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

(3) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 37.114.715 that exempts the child from pertussis vaccination.

(4) Before a child between the ages of five and 12 may attend a day care facility providing care to school aged children, that facility must be provided with documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whopping cough), tetanus, and Haemophiles influenza type B, unless the child qualifies for conditional attendance in accordance with (9).

| Vaccine | Dosages Required by Age |
|---|---|
| Polio | Each child must receive at least three doses of polio vaccine, one of which is administered after age four. |
| DTP or DTaP | Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus and pertussis) vaccines by age four and one dose of DTaP after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT vaccine or a combination of four doses of DT, DTP, and DTaP vaccines |

| | |
|---|---|
| | before age four and one dose of the DT vaccine after age four but before age seven.<br><br>Because neither DTP nor DTaP vaccines are recommended or required for a child older than age seven, a child in the day care age seven or older who has not received the four doses of DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td. |
| Td | Each child in the day care must receive a Td tetanus diphtheria vaccine intended for children younger than seven years of age booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older. |

~~(4)~~ (5) Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101), including the date of birth, the name of each vaccine provided, and the month, day, and year of each vaccination.

~~(5)~~ (6) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) ~~above~~ and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.

~~(6)~~ (7) Hib vaccine is not required or recommended for children five years of age and older.

~~(7)~~ (8) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated before attending a day care facility.

~~(8)~~ (9) A child may initially conditionally attend a day care facility if:

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

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

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

~~(9)~~ (10) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.

~~(10)~~ (11) The day care facility must maintain a written record of immunization status of each enrolled child and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

~~(11)~~ (12) A child seeking to attend a day care facility is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization is medically contraindicated will exempt a person from the applicable immunization requirements of this rule.

~~(12)~~ (13) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement.

~~(13)~~ (14) The department ~~hereby~~ adopts and incorporates by reference ARM 37.114.715 which sets the requirements for a medical exemption from vaccination. A copy of ARM 37.114.715 may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division, Food and Consumer Safety Section~~ Public Health and Safety Division, P.O. Box 202951, Helena, MT 59620-2951.

~~(14) The department hereby adopts and incorporates by reference ARM 37.114.708, which contains standards for documentation of the immunization status of persons commencing school attendance. A copy of ARM 37.114.708 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620 2951.~~

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

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

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

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

~~(3)~~ (4) All records of the facility shall be made

available to the department upon request.

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

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

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

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

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

(e) a record of each fire drill conducted pursuant to ARM 37.95.706, including who conducted the drill, when the drill took place, how many adults and children were present, the time of day the drill occurred and how long it took to evacuate.

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

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-731, 52-2-732, and 52-2-736, MCA

37.95.214 FOOD PREPARATION AND HANDLING (1) The department ~~hereby~~ adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, with exceptions, which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) A day care center must comply with all requirements set for food service establishments in ARM Title 37, chapter 110, subchapter 2, with the ~~following~~ exceptions ~~from the rules noted below~~ noted in this rule.

(3) A domestic style dishwasher may only be used if it is equipped with a heating element and the following conditions are met:

(a) The dishwasher:

(i) is capable of washing and sanitizing all dishware, utensils and food service equipment normally used for the preparation and service of a meal in one cycle;

(ii) must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization;

(iii) if it uses a heat cycle with a heating element for sanitization, it must be allowed to run through the entire cycle before it is opened;

(b) At least a two—compartment sink is provided as a backup facility in the event the dishwasher becomes inoperable; and

(c) If the two—compartment sink is used, all dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label, and sanitized in the second compartment by immersion in any chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute, and air—drying before being stored.

(4) ARM 37.110.220 and 37.110.221 do not apply to a day care center. Instead, a day care center must provide lavatories, water closets, and urinals in the ratio of the number of each to the number of individuals using them ~~noted below,~~ taking into account children, staff, and volunteers as follows:

| Water Closets | | Urinals | Lavatories |
|---|---|---|---|
| Male 1:20 | Female 1:20 | If over 20 males, may substitute one half the number of toilets required. | 1:60 |
| May combine male and female unless fixture requirement exceeds two. | | | |

(5) ARM 37.110.232(2) through (6) do not apply to a day care center. The food preparation area may be used as a family kitchen.

(6) ARM 37.110.238 does not apply to a day care center, i.e., licensure as a food service establishment is not required.

(7) ARM 37.110.239 does not apply to a day care center, since each day care center is already subject to the inspection and training requirements of 53-4-506, MCA.

(8) Food must be obtained from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and no home canned foods may be used.

(9) Potentially hazardous foods must be maintained at an internal temperature under 45°F or over 140°F. A food (stem) thermometer must be available to measure these temperatures.

(10) Food that has been in family-style service containers, on the table, or in the service area must be disposed of after the meal.

(11) Ground beef must be cooked to a minimum internal temperature of 155EF and have clear juices and a uniform brown color with no pink.

(12) The department ~~hereby~~ adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth requirements for food service establishments. Copies of these rules may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

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

37.95.215 NUTRITION (1) The department ~~hereby~~ adopts and incorporates by reference 7 CFR 226.19 and 226.20, containing meal requirements for day care facilities participating in the child and adult care food program of the US department of agriculture, food and nutrition service. A copy of 7 CFR 226.19 and 226.20 may be obtained from the department's nutrition consultant, Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) Each day care center must do the following, with the exception noted in (4) ~~below~~:

(a) serve meals and snacks which meet the requirements for meals contained in 7 CFR 226.19 and 226.20, including the following:

(i) Breakfast for children who are between one and 12 years old must include one serving of fruit, vegetable, or 100% fruit or vegetable juice~~,~~, one serving of enriched bread or bread alternate~~,~~, and one serving of fluid milk;

(ii) Lunch and supper for children who are between one and 12 years old must include one serving of meat or meat alternate~~,~~, two vegetables or two fruits or one vegetable and one fruit~~,~~, one serving of bread or bread alternate~~,~~, and one serving of fluid milk;

(iii) Snacks for children who are between one and 12 years old must include two of the following four food components: meat or meat alternate, fruit or vegetable or 100% fruit or vegetable juice, bread or bread alternate, or fluid milk;

(iv) Serving sizes must be appropriate to the child's age as outlined in 7 CFR 226.19 and 226.20; and

(v) The specific nutritional requirements for children under one year old as outlined in 7 CFR 226.19 and 226.20 must be followed~~.~~;

(b) serve meals and snacks on, at a minimum, the following schedule to children in attendance:

(i) snacks at mid-morning and mid-afternoon;

(ii) lunch; and

(iii) breakfast, before 9:00 am, or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them~~.~~;

(c) ensure that each bottle-fed infant from newborn to one year of age is held upright during bottle feedings until the child is able to hold the bottle, and that bottles are not propped;

(d) for each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labeled with the child's name;

(e) plan menus at least two weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted before parents arrive to check in children on the date of service;

(f) provide supervision to children while they eat and assist the children to eat, if necessary;

(g) offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children; and

(h) keep on file at the day care center written menu records and special dietary instructions for infants and children for one year following the date of the meal service.

(3) If a day care center does not participate in the department's child care food program, the center must do the following in addition to meeting the requirements contained in (2) ~~above~~:

(a) obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and

(b) within one year after it begins operation, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietician makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:

(i) findings and recommendations pertaining to the nutritional adequacy of food served to the children;

(ii) an assessment of management of meals, and any infant or therapeutic diets;

(iii) date of the evaluation; and

(iv) evaluator's signature and dietitian registration number.

(4) If a parent sends food with a child for consumption at the day care center, the center need not provide meals or snacks for the child to the extent that food is provided by the parent for that meal or snack, but is required to do the following:

(a) provide the child with a meal or snack meeting the requirements of (2) ~~above~~ whenever the parent has not provided food for that meal or snack;

(b) post a copy of the meal requirements referred to in (2)(a) ~~above~~ in an area where it will be readily seen by parents; and

(c) at least annually, provide each parent who has ever sent food to the center for consumption by a child a copy of the meal requirements referred to in (2)(a) ~~above~~.

AUTH: Sec. 52-2-704 and 52-2-735, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

37.95.225 WATER SUPPLY SYSTEM ~~(1) The department hereby adopts and incorporates by reference ARM 17.38.207, stating~~

~~maximum microbiological contaminant levels for public water supplies, and the following department publications setting construction, operation, and maintenance standards for springs (surface water) and wells:~~

~~(a) Circular WQB 1 "Montana Department of Health and Environmental Sciences Standards for Water Works," 1992 edition; and~~

~~(b) Circular WQB 3 "Montana Department of Health and Environmental Sciences Standards for Small Water Systems," 1992 edition.~~

~~(c) Copies of ARM 17.38.207 and Circulars WQB 1 and WQB 3 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620 2951.~~

~~(2) In order to ensure an adequate and potable supply of water, a day care center must either:~~

~~(a) connect to a water supply system meeting the requirements of ARM Title 17, chapter 38, subchapters 2, 3, and 4; or~~

~~(b) if the day care center is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including children, staff, and residents; and an adequate public water supply system is not accessible; utilize a non public water supply system whose construction and use meet those standards set in the following circulars published by the department:~~

~~(i) Circular WQB 1 "Montana Department of Health and Environmental Sciences Standards for Water Works," 1992 edition; and~~

~~(ii) Circular WQB 3 "Montana Department of Health and Environmental Sciences Standards for Small Water Systems," 1992 edition.~~

~~(3) If a non public water supply system is used in accordance with (2)(b) above, a day care center must:~~

~~(a) submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207, incorporated by reference in (1) above;~~

~~(b) prior to beginning operation, submit a water sample to a laboratory licensed by the department to perform chemical analysis of water supplies in order to determine that the maximum contaminant levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded.~~

~~(4) A day care center must replace or repair the water supply system serving it whenever the water supply:~~

~~(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207, as incorporated by reference in (1) of this rule, or nitrate or nitrite in excess of the maximum contaminant level stated in (3)(b) of this rule; or~~

~~(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.~~

(1) A day care facility shall provide an adequate and potable supply of water:

(a) connected to a public water supply system approved by department of environmental quality; or

(b) if the day care facility utilizes a nonpublic water system source:

(i) the facility must have the water source tested prior to beginning operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. Coli bacteria; and

(ii) must provide laboratory tests results to the department as part of the licensing or relicensing process; and

(iii) the day care facility shall take corrective action as needed to ensure the water is safe to drink.

(c) prior to beginning operation, the water must be tested to determine that the maximum contamination levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded; and

(d) documentation of testing must be retained on the premises for 24 months from the date of the test.

(2) The day care facility shall have an adequate and safe sewage system.

(a) For sewage to be safely disposed of, the home must:

(i) connect to a public sewage system approved by the department of environmental quality; or

(ii) if a nonpublic system is used, the day care facility must provide documentation that it has complied with sewage disposal requirements that have been adopted by the local board of health in the jurisdiction in which the day care facility is located; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application;

(B) seepage of effluent from or ponding of effluent on or around the system occurs;

(C) contamination of a potable water supply or state waters is traced to the system; or

(D) a mechanical failure occurs.

AUTH: Sec. 52-2-704, and 52-2-735, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

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

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

(i) the center maintains an ongoing process of parent-

staff cooperation in development and modification of program goals;

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

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

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

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

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

(b) Only (1)(a)(ii) through (iv) are applicable to programs offered by a day care facility exclusively serving school aged children.

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

37.95.610 DAY CARE CENTERS, SPACE (1) A day care center must have sufficient indoor and outdoor space for the number and ages of children in care.

(2) Calculation of the required minimum 35 square feet of space per child must exclude food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, shelving, and other storage spaces.

~~(2)~~ (3) In facilities licensed after the effective date of this rule, ~~This~~ this requirement shall be deemed to have been satisfied if~~:~~

~~(a) the facility has a minimum of 35 square feet per child of indoor space,~~ each designated area for children's activities contains a minimum of 35 square feet of usable floor space per child that will be in the room at any one time, as calculated in (2). When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child shall be provided except for periods when children are using their rest equipment. During sleep periods, the space shall be sufficient to provide spacing between children using sleep equipment. ~~exclusive of floor area devoted to fixed equipment or~~

~~support functions such as kitchens, bathrooms, offices, etc. as well as 75 square feet per child of outdoor play space; and~~

(4) Facilities licensed prior to the effective date of this rule must have a total of 35 square feet of usable interior floor space in the facility per child, as calculated in (2) per child.

~~(b)~~ (5) T~~t~~he equipment and furniture arrangement must permit~~s~~ unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care as well as arrangements of any sleeping equipment used which permit easy access to every child and unobstructed exits.

~~(3)~~ (6) Outdoor play areas at the facility must be surrounded by a fence that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter. Outdoor areas must be designed so that all parts are always visible to allow for direct supervision by child care staff.

~~(4)~~ (7) The center may obtain an exception from the department from the ~~above~~ requirements of this rule for the following reasons:

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

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

(c) limited outdoor or unfenced space is offset by the availability or use of an adjacent school playground, nearby parks, or other safe outdoor play area.

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

37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

(1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions and to provide for the reasonable comfort and convenience of staff and parents.

(2) This requirement shall be deemed to have been satisfied if the center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:

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

(b) food preparation and serving;

(c) custodial services;

(d) laundry;

(e) rest area for staff relief periods; and

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

(3) Day care centers providing care only for school aged children must have appropriate size furniture and supplies to fit the needs of children in care. However, a meeting

room/conference room may be used if needed as a private/confidential place for communications between parents/staff/children.

(a) A kitchen or clean sanitized food preparation area must be approved by the local health department.

(b) A convenient, comfortable rest area must be made available for staff who work full days. If no staff area exists, staff must be allowed to leave the facility for a lunch break. The child to staff ratio set in ARM 37.95.620(10) through (11)(a) must be maintained at all times.

(c) Storage for extra equipment/supplies must be in a location easily accessible to staff. Equipment/supplies must be rotated at various times throughout the year to provide for a variety of play and learning experiences. Facilities may arrange to bring supplies that are purchased on a monthly/weekly basis to the site at a time that will not disrupt staff or children at the site.

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

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

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

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

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

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

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

~~(iv)~~ (d) F~~f~~urniture shall be durable, safe, ~~and~~ clean, and be child size or appropriately adapted for children's use;

~~(v)~~ (e) S~~s~~torage shelves shall be provided to children at their level.

(2) Play equipment and materials must include items from each of the following six categories:

(a) dramatic role playing~~,~~;
(b) cognitive development~~,~~;
(c) visual development~~,~~;
(d) auditory development~~,~~;
(e) tactile development; and

(f) large-muscle development.

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

(4) Each child~~,~~ shall have clean, sanitized and age-appropriate rest equipment. Seasonably appropriate covering, such as sheets or blankets, for a crib, cot, bed, or mat must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.

(5) Each facility must have a working telephone.

(6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and the emergency montana poison control center ~~poison control center (1 800 525-5042)~~ (1 (800) 222-1222) must be posted by each telephone.

(7) Center programs that exclusively serve school aged children are exempt from (1)(a), (1)(b), and (2). All other provisions of this rule remain applicable to such programs.

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

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

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

(3) There shall be sufficient staff so that an adult is always present and supervising all children.

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

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

~~(6)~~ (5) The provider shall ~~have a~~ maintain an up-to-date master list ~~of~~ with the name, address, and phone number of all children in care and their parents or guardians.

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

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

37.95.705 GROUP AND FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS (1) The day care home must have a minimum of 35 square feet per child of indoor space, ~~excluding floor area devoted to fixed equipment or support functions such as kitchen, offices, bathrooms, etc.~~ not including food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, and storage shelving spaces, as well as 75 square feet per child of outdoor play space.

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

(3) Remotely located means of egress from each room as required in (2) are not required in buildings protected throughout by an approved, automatic residential sprinkling system, or where the room or space has a door leading directly to the outside of the building.

~~(2)~~ (4) ~~Basements, if in use, must be dry, well ventilated, warm and well lighted.~~ If basements are used for day care purposes:

(a) in facilities newly licensed on or after the effective date of these rules or for which there is a change in ownership on or after the effective date of these rules each designated area for children's activities must have two means of egress that are remote from each other unless:

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

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

(b) the basement must be dry, well ventilated, warm and well lighted.

~~(3)~~ (5) All rooms used for napping by children ~~must have at least one operable window which can be readily used for ventilation. If this window is also considered for rescue or exiting, then the window(s) must meet egress requirements and the provider must have a feasible evacuation plan~~ must have at least two means of escape, at least one of which shall be a door or a stairway providing a means of unobstructed travel to the outside of the building at street or ground level to the public way. The second means of escape may be a window which meets the egress requirements of (2).

~~(4)~~ (6) Third stories in dwellings must not be used for day care purposes and must be barricaded or locked to prevent entry by children.

~~(5)~~ (7) Doorways and stairs must be clear of any obstruction.

~~(6)~~ (8) Every closet door must be such that children can open the door from the inside.

~~(7)~~ (9) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency and

the opening device must be readily accessible to the provider.

~~(8)~~ (10) Protective receptacle covers must be installed on electrical outlets in all areas occupied by children under five years of age.

~~(9)~~ (11) The home and grounds used by children must be maintained to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are reasonably clean;

(c) the building and grounds are reasonably free of insects, rodents and other vermin; and

(d) ~~that~~ the children attending the facility shall not be exposed to paint containing lead in excess of .06%.

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

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

~~(a) the ground or main level must have two accessible exits easily opened from the inside with a single action. Deadbolt locks that can be opened from the inside only with a key are prohibited. The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions.~~

~~(2) Exit doors, windows and their opening hardware must be maintained in good working order at all times.~~

~~(3)~~ (2) A fire extinguisher must be easily accessible on each floor level. The minimum level of extinguisher classification is 2A10BC. Fire extinguishers shall be mounted ~~located~~ near outside exit doors.

~~(4)~~ (3) All day care facilities must have operating UL smoke detecting devices ~~installed throughout the facility~~ on each floor of the facility, installed in accordance with the manufacturer's specifications. Smoke detectors must be installed in front of the doors to stairways and in corridors of all floors occupied by the day care. Smoke detectors must be installed in any room in which children sleep. ~~If individual battery operated smoke detectors are used, the following maintenance is required: All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications.~~ If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly and have new operating batteries installed at least once each calendar year; and

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

~~(5)~~ (4) All wood burning stoves must meet building codes

for the installation and use of such stoves. If used during the hours of care, the stove must be provided with a protective enclosure.

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

~~(7)~~ (6) A minimum of eight fire drills must be conducted annually, at least one month apart as weather permits. Records, including who conducted the drill, when the drill took place, how many adults and children were present during the drill, the time of day the drill occurred, and how long it took to evacuate everyone must be maintained at the facility and made available for review.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-734, MCA

37.95.708 GROUP AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS (1) Each home must have hot and cold running water with at least one toilet provided with toilet paper and one sink provided with soap and paper towels.

(2) Each facility must have a working telephone. Those facilities which have an unlisted number must make this number available to the parents and emergency contact persons of the children in care, and the appropriate regional or local offices of the department.

(3) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and ~~poison control center~~ the emergency montana poison control center ~~(1 800 525-5042)~~ (1 (800) 222-1222) must be posted by each telephone.

(4) No provider shall actively operate another business in the facility during the time the children are present for day care services.

(5) When a municipal water supply system is not available, a private system may be developed and used as approved by the state or local health department. Testing must be conducted at least annually by a certified lab to ensure that the water supply remains safe and the licensee or registrant shall provide laboratory results to the department during the licensing or relicensing process. Sanitary drinking facilities shall be provided by means of disposable single-use cups, fountains of approved design, or separate, labeled or colored glasses for each child.

(6) An adequate and safe sewage disposal system shall be provided and used as approved by the state or local health department.

(7) Garbage cans shall be provided in sufficient number and capacity to store all refuse between collections and shall be corrosion resistant, fly tight, watertight, and rodent proof with lids. Kitchen garbage containers must have lids or be stored in an enclosed area.

(8) All food shall be from an approved source and shall be transported, stored, covered, prepared, and served in a sanitary manner to prevent contamination.

(a) Milk and other dairy products shall be pasteurized.

(b) Use of home canned foods other than jams, jellies, and fruits is prohibited.

(c) Perishable foods shall be kept at temperatures above 140°F or below 45°F.

(d) No persons with boils, infected wounds, respiratory diseases, or other communicable diseases shall handle food or food utensils.

(e) All food utensils shall be properly washed and rinsed after each usage. A domestic style dishwasher may be used if equipped with a heating element.

(f) Single service utensils may only be used once.

(9) Folding of clean laundry must not take place on the same work surface used for sorting dirty laundry. Bedding shall be laundered when necessary and aired out periodically to prevent mildew.

AUTH: Sec. 52-2-704, and 52-2-735, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING (1) There shall be adequate opportunities for sleep periods during the day suited to the infants' individual needs.

(2) Unless the child's parent has provided medical documentation from a health care provider ordering otherwise, infants shall be placed on their back and on a firm surface to reduce the risk of sudden infant death syndrome (SIDS).

~~(2)~~ (3) Each ~~Infants~~ infant shall be provided with a crib~~s~~ or play pen for sleeping until, at the discretion of the parent and provider, they are safe on a cot or mat.

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

(b) Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.

~~(3)~~ (4) Cribs shall be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib ~~sidereal~~ siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots, or mats shall be thoroughly cleansed before assignment to another infant.

~~(4)~~ (5) Cribs, cots, or mats shall be spaced to allow for easy access to each child, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied. No child or infant shall be placed in a stackable crib.

(6) All pillows, quilts, comforters, sheepskins, bumper pads, stuffed toys, and other soft products shall be removed from the crib and play pen. If blankets are used, the infant's head shall remain uncovered during sleep.

~~(5)~~ (7) Each infant shall have been provided by the parent with a clean washable blanket or other suitable covering for

his~~/her~~ use while sleeping. Each infant's bedding shall be stored separate from bedding used by other infants.

~~(6)~~ (8) All cries of infants shall be investigated.

AUTH: Sec. 52-2-704, and 52-2-735, MCA
IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

4. The rules 37.95.109, 37.95.618, 37.95.620, 37.95.701, and 37.95.907 as proposed to be repealed are on pages 37-23291, 37-23437, 37-23438, 37-23491, 37-23492, and 37-23536 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-503, MCA
IMP: Sec. 53-4-504, MCA

5. The proposed new rules and amendments to current rules are reasonable and necessary for the following reasons:

Rule I Day Care Facilities: License or Registration Renewal Procedures

This entire rule is new rule language. The rule defines and clarifies the program's license or registration renewal process. The process has previously been defined through department policy, but due to the Vainio Supreme Court decision, this information is now being implemented through rule.

The department also decided to put this process into rule, because the consequences for late or incomplete renewal applications can ultimately have financial impact to the provider. For example, a lapsed renewal can affect a provider's ability to receive state payment for families participating in the Best Beginnings Program and can affect the provider's ability to receive subsidies through the Child and Adult Food Program. Placing the requirements in the rule makes the information readily available to providers so they can verify their application is complete.

Rules II, VII, XI, XIV, XV, XXI, XXIII, XXV, XXVI, and XXIX

These rules are not new requirements, but are rules made up of language that was contained within several other areas throughout the existing rules. The department decided to put the language into individual rules with separate headings to make it easier for providers to locate the information. These newly split out rules address the following topics: staff records; the requirement of cooperating with the department and with department assessment; record keeping; licenses being required for each facility; the need to post the license or registration certificate; notification of facility address changes; ensuring that persons in the day care pose no threat to the children; and the need to supervise children at all times.

Rule III Day Care Facilities: Mandated Reporting of Suspected

Child Abuse and Neglect

This rule establishes the time frame in which day care providers, who are mandatory reporters must report suspected child abuse or neglect to the department. Child care providers are often the "first line of defense" and may be one of the first to observe physical indicators of abuse. Because of the relationship with the provider, the provider may be the one person the child is comfortable disclosing abuse to. This information must be promptly reported to the department in order to ensure that children are protected, that appropriate investigation is begun and, when necessary, appropriate services are provided to the family and the child.

Rule IV Day Care Centers: Confidentiality Requirements

This new rule is necessary to ensure that personal information regarding a day care child, or the family or a day care child is not indiscriminately shared with others. The rule describes the responsibility of the provider and all caregivers to keep information regarding a day care child or the child's family confidential.

Rule V Group and Family Day Care Homes: Provider Responsibilities and Qualifications

This rule describes the general requirements for day care providers, caregivers and others in a direct care capacity, and is necessary to ensure that providers, caregivers and others are appropriate persons to provide care to children and do not pose a risk of harm to the children.

Rule VI Day Care Facilities: Criminal Background Checks

This rule is not a new rule, but one of the existing rules which was broken out and given its own heading. The rule is necessary to emphasize the process, the expectation of providers and the importance of conducting criminal background checks. This rule outlines the process and provides for an exception process for applicants who cannot be successfully fingerprinted or for whom the department of justice is unable to successfully read fingerprint cards. The rule defines the process to be followed when assessing applicants who have lived in states other than Montana and provides for an annual name based check for renewal of the care registration or license. The rule also establishes the process to obtain a child protective services check.

Rule VIII Day Care Facilities: Required Annual Training

Since 2000, day care providers have been subject to annual training requirements. The language in this rule is not new language, but is broken out to assist providers in locating the information. The rule clarifies the department requirements for ongoing training requirements and further clarifies that the

hours of training are to be attended during the license/registrants license year.

Rule IX Day Care Facilities: Negative Licensing Action

This rule is not a new rule, but one of the existing rules which was broken out and given its own heading. The rule is being separated out to emphasize the department's authority to take negative licensing actions following written notification to an applicant or licensee when the department has determined that circumstances warrant such action. The rule explains the criteria the department applies under its authority to ensure that applicants or licensees who are appropriate to provide day care services because they or other persons living in their home or in the day care facility pose a threat to children's safety and well being do not become licensed or registered or do not remain licensed or registered.

Rule X Day Care Centers: Child to Staff Ratios

This rule is not new language, but was contained in other areas throughout the rule. The department decided to put the language into one primary area under a separate heading to make it easier for providers to locate the information. The rule defines the ratios for day care centers who provide care to children 0-12 years of age as well as those facilities who provide care exclusively to school aged children. It further defines who can be counted as staff for purposes of determining the staff ratio.

Rule XII Day Care Facilities: License or Registration Not Transferable

This rule is not new language, but was contained in several areas within the existing rules. The department decided to put the language into one primary area under a separate heading to make it easier for providers to locate the information. The department has proposed to add under this new rule that if the operation is discontinued, or a transfer of ownership occurs, the department requires that the exiting licensing certificate be physically returned to the department. This will prevent any misconception on the part of the new owners, or parents concerning the status of the facility license.

Rule XIII Day Care Facilities: Notice of Changes

This rule is necessary to ensure that the department receives prompt notice of changes within the child care program which would affect the terms of the license. Changes such as those listed can affect the overall care children receive.

Rule XVI Day Care Centers: Staffing Qualifications

The changes in qualification for center director are being made for the following reasons. The director of the facility is the

team leader of a small business. Both administrative and child development skills are essential for this individual to manage the facility and set appropriate expectations. College level course work has been shown to have a measurable positive effect on meeting or exceeding the child care standards, whereas the sole "experience" qualifier per se, has not. The director of a center plays a pivotal role in ensuring the day to day smooth functioning of the facility. The department has decided to discontinue the use of the out of date terms referring only to a "facility director" and add language differentiating between an on site director teaching director and an administrative nonteaching director to allow for flexibility in how the facility and staff are managed, but yet maintain the importance of child development and educational leadership. In doing so, Montana will be in line with the National Standard recommendations pertaining to qualifications and managerial skills for day care center directors.

Because of the reasons stated above, the department is proposing to increase the training requirements for center directors. It is the department's position that center directors, because they are the "leaders" of the facilities and are the responsible persons accountable for all program policies, need to have broader education and higher levels of ongoing training. Additionally, many center directors also provide direct in-service training to their staff. As such, it is logical that center directors should maintain a higher number of annual training hours.

Language is being added to clarify the CPR/First Aid training requirement. The existing language of "current course completion" was interpreted by several providers to mean they could take an online CPR course without the benefit of the practical demonstration of the CPR skills. In discussing the issue with the American Red Cross and the American Heart Association, the department understands and supports the importance of providers being tested in the practical applications of CPR skills. Thus this language is added to make it clear that the department is requiring completion of a CPR course that includes the practical and demonstrated application of the skills.

Rule XVII Day Care Facilities: School Aged Care

Due to the nature of school aged child care, the existing center rules are not always appropriate for facilities exclusively serving the children ages 5 through 12. Rather than create a whole new rule which would apply only to SACC programs (and repeat many other of the exact same rules throughout), the department chose to specify the criteria in this manner. The specifications of SACC care are outlined throughout the regulations and categorized accordingly.

Rule XVIII Day Care Facilities: Medication Administration

This rule is being added to strengthen the department's rule on medication administration. The American Academy of Pediatrics (AAP) and the American Public Health Association (APHA) support these changes in whole. The department's previous rule regarding medication administration was very vague and incomplete which has contributed to medication errors being committed. The new language safeguards children from inappropriate administration of medications - the new language defines what can be given and the proper documentation that must be secured and maintained whenever medication, whether it be prescription or nonprescription is given.

Additionally, caregivers should not administer medications based solely on a parent's verbal request. Before assuming responsibility for administration of medicine, facilities should have written confirmation from the parent and, if necessary, a physician or other medical professional to include clear, accurate instruction and medical confirmation of the child's need for the medication while in the facility.

Rule XIX Day Care Facilities: Storage and Administration of Medication

Much of the language in this rule is not new language, and was contained within another area of the existing rule. Given the department's emphasis on medication administration procedures, and the enactment of Dane's Law, it was decided to update the information and to make this a separate rule under a separate heading. In doing so, it will make it easier for providers to locate the information.

Rule XX Day Care Centers, School Aged Care: Director and Staff Qualifications

Title Change - Care provided for children of school age is no longer referred to as "after school". Because this type of care can be provided before school, before and after kindergarten, after primary grades, and during school breaks, the department is simply updating this rule to refer to the now accepted language of school aged care.

The various changes within this rule are being added at the request of the Montana School's Out Project. This project was comprised of several existing providers of school aged care, staff from various child care resource and referral agencies, elementary and secondary school principals, and other early childhood advocates. The mission of this group has been to increase awareness for the need of quality school aged child care services, of which many day care programs fall into. The need to revisit the regulations governing these programs was a major undertaking as the rules which existed needed to be updated to reflect current national trends and current program structures.

It is critical that caregivers of school aged children be able to demonstrate knowledge about and competence with the social and emotional needs and development tasks of five to 12 year old children, be able to recognize and appropriately manage difficult behaviors and know how to implement a socially and cognitively enriching program. It is a shared belief between the Montana School's Out Project and other early care and education advocates that persons providing school aged care must possess the background and educational experience as specified in this proposed language in order to achieve these developmental goals for this age of children. The language as proposed is consistent with National Standards associated with school aged care programs.

Further, the Montana School's Out Project requested the department to adopt specification for site directors because many programs are housed at various school locations, but are operated singly by the school district or other community organization. The site coordinator is critical to the safe and proper implementation of the SAC program. All staff of SAC programs must have the appropriate hours of training and must be certified in CPR and first aid as any other child care professional in any other child care environment.

Rule XXI Day Care Centers, School Aged Child Care: Notice of Current Address

It is very important that as facilities change locations, that the department be notified timely of this happening. This rule has been separated out to assist providers in easily locating the information.

Rule XXII Day Care Facilities: Protection of Children from Person Charged with Crime Involving Children, Violence or Drugs

This rule contains existing requirements from ARM 37.97.109, which is being repealed because it is broken out into separate rules with separate headings. The existing rule prohibits any caregiver charged with a crime involving children or violence or any felony drug offense from providing care or being present in the facility pending the outcome of the trial. The new rule also prohibits volunteers, support staff, or other adults residing in the facility or staying in the facility on a regular or frequent basis from providing care or being present in the facility pending the outcome of the trial.

Rule XXIV Day Care Facilities: Requiring Physical, Psychological, Psychiatric, or Chemical Dependency Evaluation

New Rule XXIV provides that the department may require an examination of a staff person, volunteer, or person residing at the facility or regularly or frequently staying at the facility in cases where the department has reasonable belief that the

person has engaged in behaviors that may place others at risk.

Rule XXVII Day Care Facilities: Health Habits

Section (8) sets out specific hand washing requirements to meet the standards recently reviewed by the American Academy of Pediatrics and the American Public Health Association. Hand washing is the most important way to reduce the spread of infection.

Rule XXVIII Day Care Facilities: First Aid Requirements

Adds language requiring that a provider adopt and follow first aid policies consistent with American Red Cross recommendations and which establish procedures for dealing with medical emergencies. There has been much controversy regarding Syrup of Ipecac. The American Academy of Pediatrics publicly denounced the use of Ipecac in home first aid kits. However, in discussing the issue with the Regional Poison Control Center in Denver, because of Montana's rural nature and the potential for long transport times, they are recommending that first aid kits contain Ipecac, so long as the substance may only be used under poison control or medical direction.

ARM 37.95.102 Definitions

Several definition sections were renumbered only in order to accommodate the addition of other definitions in alphabetical order.

The department is providing definitions of the following terms to assist providers in understanding the substantive rule provisions: "Aides", "CPR", "Delayed Renewal Application", "Director", "Lapsed Registration/License", "Nonprovider Staff", "Nonprescription Medication", "Nonteaching Director", "Primary Caregiver", "Prescription Medication", "Probationary License", "Remote Means of Egress", "Renewal Registration/License", "School Age Child Care Facility", "Substitute", "Teaching Director", and "Varicella".

The department has made slight grammatical changes in the following definition section and subsection to make them more understandable: (13)(a) and (45).

ARM 37.95.106 Day Care Facilities: Registration or Licensing

The department is removing "Application" from the heading of the existing rule.

The department is adding the proposed language to make the rule consistent with the statute and allow groups or organizations to run a day care program limited to 6 to 12 children.

Section (3) specifies the differences in submission requirements for a program issued a one year license certificate (center) vs. a program who is granted an extended certificate.

Subsection (3)(i) clarifies that all buildings in which child care is provided must have a written fire and emergency evacuation plan.

Section (4) identifies the requirements that apply for a one year regular certificate.

ARM 37.95.108 Day Care Facilities, Registration and Licensing Procedures

Section (7) provides criteria for issuance of a 3 year license or registration certificate, and for a 2-year license or registration, and clarifies that a provider must be in operation at least one year before he can be considered for issuance of an extended license/registration.

ARM 37.95.109 Caregiver Qualifications for All Day Care Facilities

This rule is being repealed because it has been broken out into new rules with separate headings to make the information easier to find or because provisions were redundant with other rule sections.

ARM 37.95.121 Safety Requirements

Section (2) is being stricken because the department is proposing new rules with regard to medication administration. See [RULE XVIII].

Section (3) extends the requirement that an animal be in good health to center based programs. Previous language pertained only to home programs.

Sections (4) through (13) are renumbered.

The proposed change to (11) adds the National Poison Control Center as the number for whom day care providers should call if an accidental poisoning occurs. It is the department's understanding that a person who calls this number will be automatically routed to their respective regional poison control center. By using the National number, day care providers will be connected with the appropriate center whatever that number may be. Providers will only need to know one basic number.

The changes are being proposed to (13)(a) through (d) due to concerns expressed by day care providers involving personal safety. Specifically, providers were worried that by failing to lock their doors, they would be leaving themselves and the children vulnerable to entry by persons who could cause them

harm. The original rule was established to (1) allow unobstructed exiting in the event of a fire and (2), to allow unlimited parental access. However, based upon interactions with providers, the department has come to understand the overriding safety concerns. The language as proposed is the department's attempt to allow providers to feel safe within their own homes while making sure there is a means for exiting - in the event of a fire or other emergent condition - and unlimited means for parents to access their children.

ARM 37.95.132 Transportation

This rule, as amended, will require a provider to have a valid Montana driver's license, rather than a license from any state. It also requires that any person transporting children possess current CPR and first aid certificate since the person providing transportation may be the only adult overseeing the child while being transported. It also provides that providers shall place the child in an age appropriate child restraint seat which meets federal department of transportation recommendations.

The language in (2)(b) is being proposed to bring the rule into compliance with the National Highway Transportation Safety Administration's guidelines for transportation of children.

The changes in section (7) and subsection (7)(a) make the language consistent with 2003 Laws of Montana, Chapter 407, which was passed in 2003.

ARM 37.95.139 Day Care Facilities, Health Care Requirements

The rule strikes requirements pertaining to tuberculosis which the Centers for Disease Control and Prevention no longer recommends since it does not offer any significant degree of safety to public health and adds unnecessary cost to the day care operation.

ARM 37.95.140 Immunization

The Department is proposing the additional language in (1) in order to specify the differences in immunization schedule between children under the age of two and those who are five and older. Section (4) breaks out the schedule for children aged five and older.

Also the department is adding the requirement that children receive the Varicella vaccine by 19 months of age as a condition of continued attendance in day care. According to the American Academy of Pediatrics (AAP), "Varicella is very contagious and can occur in a high proportion of susceptible children in an institutionalized setting. All healthy children one year of age or older who lack a reliable history of varicella should be immunized."

Also according to the AAP, "The majority of cases (approximately 85%) occur among children less than five years of age. The highest age specific incidence of varicella is among children one through four years of age, who account for 39% of all cases. The age distribution is probably a result of earlier exposure to VZV in preschool and child care settings."

For these reasons, the department proposes to add the requirement that children attending day care be immunized with Varicella by 19 months of age.

Sections (5) through (14) are renumbered only.

This division has had a change in title, and the language in (14) reflects that change. The stricken language deals with a rule that no longer applies.

ARM 37.95.141 Records

The proposed language in (3) and (5) specifies that providers maintain records of medication administration and records of fire drills conducted. The additions here are simply added to make sure that proper documentation is secured. Other changes are grammatical.

For ease and consistency, the department has developed appropriate forms for compliance with these areas, which will be required in order to ensure that the same categories of information are consistently gathered.

ARM 37.95.214 Food Preparation and Handling and ARM 37.95.215 Nutrition

Changes to these rules are made to update the language with the new division titles, as well as to make grammatical corrections.

ARM 37.95.225 Water Supply System

Existing language is being stricken and replaced with new language. This is being done to update the language with the correct DEQ standards and the EPA guidelines for water supply systems.

ARM 37.95.602 Day Care Centers, Program Requirements

Most day care programs develop a schedule of activities or implement a curriculum without the direct involvement of parents. Parents are typically informed of activities and curriculum areas, but don't technically "approve" each and every activity. As the department examined this rule, it was felt that while parental consent to activities is critical, supervision of these activities is far more important. Safety and supervision are paramount the proper learning experiences for children.

According to developmental theory, at particular ages it is very important that children be able to guide and plan their own activities. By doing so, children learn to be responsible for themselves and they learn that they have value and worth in their world.

The requirements of subsections (1)(a)(i), (a)(v), and (b) are not appropriate for and do not apply to programs provided to school aged child care programs. Rather than create an entirely new rule on SACC care -- which would ultimately repeat several of the center regulations -- the department simply decided to specify which regulations in this rule apply and to exempt school aged child programs from others.

ARM 37.95.610 Day Care Centers, Space

Child behavior tends to be more constructive when sufficient space is organized to promote developmentally appropriate skills. Crowding has been shown to be associated with increased risk of developing upper respiratory infections. Also, having sufficient space will reduce the risk of injury from simultaneous activities occurring in limited space. It also allows for proper and timely exiting in the event of a fire or other emergent condition.

The previous language referred to "facility" space issues, rather than identifying space that is useable for activities with the children. The new language focuses on useable space and requires that a facility have 35 square feet of useable space per child as recommended by the American Public Health Association and the American Academy of Pediatrics.

The department is grandfathering existing facilities in under the existing rule provisions for calculating the required space.

Other changes are grammatical.

ARM 37.95.611 Day Care Centers, Support Services Space

This language was suggested by the Montana School's Out Project. It recognizes that SACC programs are often housed in school buildings and are conducted in space which is used by school children during the greater part of the day and that SACC program coordinators must be creative in the use of the individual spaces and the use and storage of program materials and equipment, while also providing appropriate services and equipment for the ages of children being served.

ARM 37.95.613 Day Care Centers, Materials and Equipment

These changes are made for grammatical and formatting correctness or to make the language easier to read.

The language in (6) updates the Poison Control Center number.

Due to the nature of SACC care, all of the rules as specified are not appropriate in SACC settings and (7) exempts SACC programs from those requirements.

ARM 37.95.702 Group Day Care and Family Day Care Homes, Staffing and Additional Requirements

Language is being stricken as redundant and for clarity.

ARM 95.705 Group and Family Day Care Homes, Building Requirements

The language in (1) is being added for clarity. The areas listed, are not appropriate areas for child activity and should therefore not be counted in calculating total space/area for purposes of square footage calculations.

The language proposed in (2) is meant to help define "means of egress" based upon Life Safety Code practices, as well as the practices utilized by fire prevention personnel. This language is necessary in order to have clear access out of the building in the event of fire or other emergent condition.

The language regarding clear opening further defines the minimum measures for windows relied upon as a means of egress and the rule designates the maximum distance the egress window may be from the ground. The previous language was confusing for providers and licensors alike.

Section (3) gives providers alternatives to the "two remote means of egress" based upon uniform fire practices and the Life Safety Code.

Based upon current fire prevention practices, if basements are equipped with sprinkling systems, there is no need to require remotely located means of egress, or to have minimum dimensions required for a window relied upon as a means of egress because the sprinkling system will douse any fire before the fire blocks exit from the area. There are a large number of day care facilities where care is situated in basements. Constructing egress windows or constructing direct openings from the basement area can be costly. The installation of a residential sprinkling system is comparable in cost, but also provides basic fire protection which will reduce the risk of persons being harmed, at the same time it reduces property destruction.

The department is allowing existing facilities to be "grandfathered" in because those facilities have been allowed to operate under the existing rules for several years. Many programs have made modifications (at large financial costs) by constructing either a second door, or by adding an egress window to meet the minimum fire safety practices. However, because

exit from basement areas can be extremely difficult, the department feels that enactment of these rules is necessary for new programs.

Sections (6) through (11) are renumbered only.

ARM 37.95.706 Group and Family Day Care Homes, Fire Safety Requirements

(1)(a) through (2) are stricken and have been clarified in ARM 37.95.705.

Section (2) is renumbered and now requires that fire extinguishers be mounted near exit doors, which is consistent with current fire prevention practices.

Section (3) will require that smoke detectors be installed in front of the doors to stairway, in corridors on all floors of the facility and is in rooms in which children sleep to be consistent with current fire prevention practices.

Sections (4) through (5) have been renumbered.

The department desires the records in (6) to be maintained on site at each day care facility. Upon inspection, the department will request the records and review them at that time. It is not necessary to review the documents other than when we are onsite.

ARM 37.95.708 Group and Family Day Care Homes, Other Facility Requirements

This rule is being amended for the same reasons as ARM 37.95.121.

ARM 37.95.907 Family Child Care Homes, Safety Requirements

This entire rule was previously incorporated into ARM 37.95.121 and should have been repealed in the last rule amendment. As such, the department finds this language repetitive and unnecessary and therefore, proposes to repeal it at this time.

ARM 37.95.1005 Child Care Facilities Caring for Infants, Sleeping

According to the National SIDS Resource Center and the Back to Sleep Campaign, the supine (back) position presents the least risk of SIDS. Once infants develop the motor skills to move from their back to their side, or stomach it is safe to put them to sleep on their backs and allow them to adapt to whatever position makes them comfortable. If a child has an illness or a disability that predisposes the child to airway obstruction in the back sleeping position, providers should have a physician's

note specifying the need for prone sleeping and any other special arrangements required for that child.

The change to (3) was made for grammatical purposes. According to the National SIDS Resource Center, and the American Academy of Pediatrics, infants allowed to routinely sleep in car seats, infant swings and other apparatus (except for cribs, sleeping beds) are at a higher risk of SIDS. An infant's neck can bend forward potentially causing the baby to suffocate. Children can fall asleep in these apparatus, but should then be moved to an appropriate sleeping surface, such as a crib.

Section (4) prohibits use of stackable cribs, based upon national statistics documenting an increase in serious injuries to infants due to problems with the latching devices on these cribs.

Section (6) prohibits the listed items from being left in any crib or playpen in which an infant sleeps based upon the risk of suffocation. Infants have been found dead on their stomachs with their faces, noses, and mouths covered by soft bedding, such as pillows, quilts, comforters and sheepskins. However, some infants have been found dead with their heads covered by soft bedding even while on their backs. As such, the National SIDS Resource Center, the Back to Sleep Campaign and the AAP recommends that these items be eliminated from all infant sleeping apparatus.

No fiscal impact is expected as a result of these rule changes.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

| | |
|---|---|
| Dawn Sliva | Russ Cater for |
| Rule Reviewer | Director, Public Health and Human Services |

Certified to the Secretary of State December 12, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the proposed adoption of New Rules I through VI relating to the issuance of administrative summons by the department | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On January 17, 2006, at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules relating to the issuance of administrative summons by the department.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms found in this subchapter:

(1) "Contact person" means the department representative designated to answer questions regarding the information contained in the administrative summons.

(2) "Interested person" means the taxpayer to whom the summons relates or any other person to whom the records or testimony pertains, including a third-party record keeper.

(3) "Records" means books, papers, and other data, whether in paper or electronic form.

(4) "Third-party record keeper" means, but is not limited to:

(a) an attorney;
(b) an accountant;
(c) a registered agent;
(d) a conservator;
(e) a bank or credit union;
(f) a broker-dealer or investment advisor; or

(g) any other person engaged in the making or keeping of records involving transactions of other individuals.

AUTH: 15-1-201, MCA
IMP: 2-4-104, 15-1-301, 15-1-302, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I because it is necessary to define terms used in the rules of this subchapter.

NEW RULE II ADMINISTRATIVE SUMMONS (1) Section 15-1-301, MCA, authorizes the department to summon witnesses to appear and give evidence and produce documents and records. The statute also provides for taking the depositions of witnesses on notice to the interested party if necessary.

(2) The rules in this subchapter govern department investigatory actions that may or may not result in a tax assessment against a particular taxpayer and do not apply to a disputed matter that has been referred to the department's office of dispute resolution as provided in ARM 42.2.615.

AUTH: 15-1-201, MCA
IMP: 2-4-104, 15-1-301, 15-1-302, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule II because it has a responsibility to the citizens of Montana to ensure the effectiveness of our tax laws, that such laws are properly administered, and that taxpayers comply with the various directives contained in our tax code. Therefore, the department is adopting New Rule II to notify the public of how it will exercise its enforcement powers under 15-1-301, MCA to obtain information from taxpayers and third parties.

NEW RULE III ISSUANCE OF AN ADMINISTRATIVE SUMMONS

(1) An administrative summons issued under the authority of 15-1-301, MCA, will be issued by the director or the director's designee.

(2) The summons may require the personal appearance and testimony of a person in addition to the production of records, or it may require only the production of records.

(3) If the personal appearance and testimony of a person is required, the summons will specify the date, time, and place where the appearance shall occur.

(4) If only the production of records is required, the items must be delivered to the department at the Sam W. Mitchell Building, 125 N. Roberts, Helena, MT 59604, or to the location designated on the administrative summons on or before the date and time specified in the summons.

(5) The summons will:

(a) to the best of the department's knowledge, identify the taxpayer to whom the summons relates or the other person to whom the records pertain;

(b) will provide information to enable the person summoned to locate the records required under the summons;

(c) identify a contact person;

(d) be personally served as provided in Rule 45(b) of the Montana Rules of Civil Procedure;

(e) state the fees for appearing, which shall be the same amount witnesses are compensated in Montana district court; and

(f) include a state warrant (check) for one day's witness fee and mileage.

(6) A form for claiming additional witness fees will be provided when the person appears before the department.

(7) Questions about the identity of any person or the scope of a record request should be addressed to the contact person.

(8) If the summons requires the giving of testimony or relates to the production of any records with respect to any person other than the person who is identified in the summons, the department will, within three days after the date of service of the summons, mail a copy of the summons by registered or certified mail, to that person. Additionally, the department will explain the person's right to bring a proceeding to quash the summons.

(9) On receipt of a summons to which this section applies for the production of records, the summoned party, including a third-party record keeper shall proceed to assemble the records requested, or such portion thereof as the department may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(10) Nothing in this section may be construed to limit the department's ability to obtain information, other than by summons, through formal or informal procedures authorized by 15-1-301, MCA.

AUTH: 15-1-201 and 25-5-103, MCA
IMP: 15-1-301, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule III because according to 15-1-301, MCA, the department has a broad mandate to examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered. The department proposes the new rule to set forth the manner in which the department will issue summonses to taxpayers and third-party record keepers when conducting investigations pursuant to 15-1-301, MCA, particularly when the identity of the taxpayer(s) is unknown to the department at the time the summons is issued. In that regard, the procedures are based upon the broad statutory authority granted the department and were borrowed, in large part, from the procedures outlined in Section 7602, et. seq. of the Internal Revenue Code.

NEW RULE IV PROCESS TO QUASH AN ADMINISTRATIVE SUMMONS

(1) Interested persons served with notice of an administrative summons may begin a proceeding to quash the summons in either the district court in the county in which the person resides or in the district court of the first judicial district not later than the 20 days after the notice of summons is received by the interested person. Notice is deemed given as provided for in Rule 45, Montana Rules of Civil Procedure.

(2) If a person begins any such proceeding, such person shall mail, by registered or certified mail, a copy of the petition to the person summoned and to the department's contact person.

(3) In any proceeding to quash the summons, the department may seek compliance with the summons.

(4) If no proceeding to quash is brought within the period proscribed in (1), the interested person may not interfere with the voluntary giving of testimony or disclosure of records sought in the department's summons. Failing to initiate such a proceeding to quash, however, does not prohibit an interested person from intervening in a subsequent action brought by the department to enforce the summons.

AUTH: 15-1-201 and 25-5-103, MCA
IMP: 15-1-301, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule IV to inform taxpayers and third-party record keepers that an interested party may object both the issuance and subsequent enforcement of an administrative summons. Additionally, the rule provides an interested party with the time frame within which an action to quash may be brought.

NEW RULE V PROCESS TO INTERVENE (1) An interested person may attend a deposition and may intervene in any proceeding the department initiates to enforce the summons and such person is bound by the decision in such proceeding whether or not the person intervenes.

(2) Any person entitled to notice of a summons may begin a proceeding to intervene in either the district court in the county in which the person resides or in the district court of the first judicial district not later than 20 days after the notice of administrative summons is received. Notice is deemed given as provided for in Rule 45, Montana Rules of Civil Procedure.

(3) If a person intervenes, the person shall mail, by registered or certified mail, a copy of the petition to the person summoned and to the department's contact person. In any proceeding to intervene, the department may seek to compel compliance with the summons.

AUTH: 15-1-201 and 25-5-103, MCA
IMP: 15-1-301, MCA

REASONABLE NECESSITY: The department proposes to adopt New

Rule V to inform taxpayers and third-party record keepers that an interested party may intervene and object both the issuance and subsequent enforcement of an administrative summons. Additionally, the rule provides an interested party with the time frame within which an action to intervene may be brought.

NEW RULE VI ENFORCEMENT OF ADMINISTRATIVE SUMMONS

(1) In case of disobedience of any summons issued and served under the rules of this subchapter or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a proceeding before the department, the department will apply to a district court in the state for an order to compel compliance with the summons or the giving of testimony.

(2) If another method of summons enforcement or compelling testimony is provided by statute, the department may use it as an alternative to the methods provided for in the rules of this subchapter.

(3) If the department initiates an action to enforce a summons, the department will, within three days after initiating the enforcement action, notify the summoned person and any person identified in the summons of the pending action.

AUTH: 15-1-201, MCA
IMP: 2-4-104 and 15-1-302, MCA

Reasonable Necessity: The department proposes to adopt New Rule VI to clarify that summonses issued pursuant to 15-1-301, MCA, are not self-enforcing and require the intervention of a district court to require the production of information or the compelling of testimony. Thus, once a summons is ignored or challenged, either by a taxpayer or a third-party recordkeeper, a court is charged with determining whether the summons was issued pursuant to a legitimate investigative purpose.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701

and must be received no later than January 20, 2006.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide

Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

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

Certified to Secretary of State December 12, 2005

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed adoption of New Rules I, II and III; amendment of ARM 42.4.201, 42.2.203, 42.4.204 and 42.4.4109; and repeal of ARM 42.4.4110 relating to alternative and wind energy credits | ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On January 18, 2006, at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment and repeal of the above-stated rules relating to alternative energy credits.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I CALCULATION OF THE ENERGY CONSERVATION CREDIT

(1) Taxpayers are entitled to an energy conservation credit for energy conservation investments made to existing buildings and new construction. The energy conservation credit is available in the tax year that the taxpayer paid for and completed the installation of the energy conservation investments.

(2) For an existing building, an example of how the credit would be applied is:

(a) The taxpayer purchased and completed installation of an ENERGY STAR qualifying furnace in the taxpayer's home during October 2005, half of the total price of the furnace was paid for in 2005 and the other half in 2006. The energy conservation credit is available in tax year 2005 only and the taxpayer is not entitled to an additional energy conservation credit for the second half payment made in 2006.

(3) For new construction, the energy conservation credit is available in the tax year that the construction is completed. An example of how the credit would be applied is:

(a) The taxpayer began construction of a new home in 2004 and finished it in 2005. The taxpayer invested in energy conservation measures that exceeded the 2003 International Energy Conservation Code with Montana amendments. The energy conservation credit is available in tax year 2005 only and the taxpayer is not entitled to an energy conservation credit for tax year 2004 even though the construction began in 2004.

(4) For multi-unit buildings such as apartment complexes and condominiums, an energy conservation credit will be allowed for each unit when it can be demonstrated that the expense was attributed to a specific unit. Examples of these expenditures are:

(a) an ENERGY STAR qualifying furnace that only serves one unit of a multi-unit building would qualify as one expenditure and one credit;

(b) an ENERGY STAR qualifying furnace that serves all units of a multi-unit building is considered only one energy conservation investment and would qualify as one expenditure and one credit; or

(c) installation of an ENERGY STAR qualifying furnace in each unit of a multi-unit building would qualify as a separate expenditure and credit for each unit.

(5) The energy conservation credit is available to all owners of a building who invest in energy conservation expenditures. Examples of this application are:

(a) A husband and wife replace windows and exterior doors with qualifying investments in their existing home for a total cost of $6,000. Each spouse is entitled to a maximum $500 energy conservation credit. ($6,000 x .25 = $1,500 with a maximum credit of $500 per individual.)

(b) Four individuals who own a commercial building replace windows, exterior doors and the heating system with qualifying investments for a total cost of $20,000. Each individual is entitled to a maximum $500 energy conservation credit. ($20,000 x .25 = $5,000 with a maximum credit of $500 for each individual.)

AUTH: 15-32-105, MCA
IMP: 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to further clarify the application of the energy conservation credit as it applies to existing buildings, new construction, multi-unit buildings and multiple owners of a building. The rule defines when the energy conservation credit may be claimed when the installation or investment (whether that investment is made in an existing structure or new construction) occurs in more than one tax year. In addition, this rule clarifies that a building includes multi-unit complexes, and how the energy conservation credit is calculated for each unit when the investment is made in a

multi-unit building. The third element of this new rule provides instructions regarding how the energy conservation credit will be applied when more than one taxpayer is involved in the investment.

NEW RULE II NEW CONSTRUCTION STANDARDS (1) For new construction, the energy-conserving expenditure must exceed the following equipment standards:

(a) air-source heat pumps - specification (split systems - greater than or equal to 8.0 HSPF or single package system - greater than or equal to 7.6 HSPF) - reference (ENERGY STAR qualified);

(b) boilers - specification (rating of 85% AFUE or greater) - reference (ENERGY STAR qualified);

(c) central air conditioners - specification (split systems - greater than or equal to 13 SEER - single package system - greater than or equal to 12 SEER) - reference (ENERGY STAR qualified);

(d) demand or instantaneous water heaters - specifications (gas-fired instantaneous - .82 or greater energy factor and electronic ignition) - reference (GAMA directory rating certified);

(e) furnaces - specifications (rating of 90% AFUE or greater) - reference (ENERGY STAR qualified);

(f) heat recovery ventilators - specifications (CSA C439-00 standard) - reference (HVI certified product);

(g) indirect water heaters - specifications (high efficiency) - reference (minimum of two inches foam insulation);

(h) light fixtures - specifications (electronic ballast and compact or linear fluorescent lamp) - reference (ENERGY STAR qualified);

(i) skylights - specifications (skylights must have a U-factor of .60 or less and meet ENERGY STAR qualifications) - reference (national fenestration rating council (NFRC) window label);

(j) thermostats - specifications (programmable thermostat) - reference (ENERGY STAR qualified); and

(k) windows and doors - specifications (windows and doors must have a U-factor of .35 or less and meet ENERGY STAR qualifications - reference (national fenestration rating council (NFRC) window label.

(2) In order to qualify for energy conservation credits for new construction, the energy-conserving expenditure must exceed the following Montana prescriptive path requirements:

(a) ceilings - R-49;

(b) crawlspace walls - R-20;

(c) exterior walls - R-21;

(d) finished basement walls - R-11;

(e) floors over unconditioned spaces - R-21;

(f) heating/cooling equipment - federal minimum standards;

(g) slab perimeter area four feet vertical or horizontal - R-13; and

(h) windows U-factor - U-.35.

AUTH: 15-32-105, MCA
IMP: 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to identify the standards of the 2003 International Energy Conservation Code (IECC). These are the standard building codes adopted by the State of Montana. These standards provide guidance to taxpayers and contractors when establishing the cost of energy conservation investments in new construction when calculating their energy conservation credit.

NEW RULE III RECORD RETENTION REQUIREMENTS (1) In order to claim the energy conservation credit, the taxpayer is required to retain invoices, sales agreements or receipts that document the work done and the equipment installed. The records should clearly state the equipment manufacturer, make and model number of any installed item or product that will determine the qualifications for the energy conservation credit.

AUTH: 15-32-105, MCA
IMP: 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to provide guidance to taxpayers regarding the records that the department will require for verification of energy conservation expenditures when the taxpayer claims the energy conservation credit.

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

42.4.201 DEFINITIONS The following definitions apply to this sub—chapter:

(1) "AFUE" means annual fuel utilization efficiency rating for furnaces and boilers expressed as the ratio of energy output to energy input.

(2) "Building" means an enclosed structure with external walls and a roof. This includes single units within multi-unit complexes such as apartment complexes, condominiums and commercial complexes.

~~(1)~~(3) "Customer" is defined as a retail purchaser or distribution service provider.

(4) "Energy factor" is the efficiency rating for water heaters. A higher percentage indicates higher efficiency.

(5) "ENERGY STAR" is a program of the U.S. Environmental Protection Agency, which identifies high efficiency products and equipment.

(6) "GAMA" means gas appliance manufacturers association, which is an independent agency for rating space and water heating devices.

(7) "Heat recovery ventilator" is a device or system designed and installed to provide balanced fresh air ventilation for homes and to transfer energy from the outgoing air stream to the incoming air stream.

(8) "HSPF" means heating season performance factor, which is a measure of the heating efficiency of a heat pump system expressed as a ratio of Btu per watt-hour.

(9) "HVI" means home ventilating institute, which is a rating agency for home ventilation products.

(10) "IECC" means the 2003 International Energy Conservation Code, which is the current energy code version adopted by the state of Montana and enforced statewide.

(11) "National fenestration rating council" (NFRC) means the independent agency that rates windows, doors and skylights.

~~(2)~~(12) "New construction" means construction of, or additions to, buildings, living areas, or attached garages that comply with the established standards of new construction as determined by the building code statutes in Title 50, MCA.

AUTH: 15-1-201, ~~15-30-305, 15-32-407, and 15-35-122~~ 15-32-105, MCA
IMP: ~~15-31-501~~, 15-32-105, and 15-32-109~~, 15-32-404, and 15-35-103~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.201 to define terms used in various rules contained in this subchapter.

42.4.203 ~~DEDUCTION OR~~ CREDIT FOR ENERGY CONSERVATION INVESTMENT ~~FOR ENERGY CONSERVATION~~ (1) ~~In new construction, credit is not allowed for that portion of capital expense incurred in meeting established standards. For new buildings, only the cost of that portion of a capital expenditure in excess of established standards is to be used in calculating the credit. The minimum standards utilized by the department in determining allowances will be taken from the currently recognized energy building code in Montana and the United States office of housing and urban development. If Montana does not have an applicable energy building code, then national standards meeting the demands of this geographical area will be followed. The energy code or standard relied upon by the department is to be updated on an annual basis.~~ Eligible investments for the energy conservation credit in new construction are the investments that exceed the requirements of the IECC with Montana amendments as described in [NEW RULE II]. An example of a correct application is:

(a) Example, if a taxpayer installs an ENERGY STAR qualified furnace in a new construction project, the incremental cost of equipment and installation costs above a conventional furnace required by code qualifies for the energy

conservation credit.

(2) ~~In the improvement of~~ For investments in existing buildings, a credit will be given for capital investments that are recognized to substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for proper utilization of the building.

(3) remains the same.

(4) Only investments in buildings located in Montana qualify for the energy conservation credit.

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

AUTH: 15-32-105, MCA
IMP: 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.203 to redefine the application of the credit for new construction by referencing the 2003 International Energy Conservation Code (IECC) that is currently adopted by the State of Montana. In addition, this rule is amended to clarify that the credit is allowed only for energy conservation investment made in buildings located in the State of Montana.

42.4.204 DETERMINATION OF CAPITAL INVESTMENT FOR ENERGY CONSERVATION (1) The following capital investments are among those that can result in the conservation of energy:

(a) remains the same.

(b) insulation in new ~~buildings~~ construction of floors, walls, ceilings, and roofs, ~~insofar as it produces an insulating factor in excess of established standards~~ to the extent it exceeds the requirements of the IECC with Montana amendments;

(c) through (1) remain the same.

(m) replacement of incandescent light fixtures with light fixtures of a more efficient type such as those with electronic ballast and compact or linear fluorescent lamps;

(n) remains the same.

(o) ~~clock regulated~~ programmable thermostats; and

(p) remains the same.

(2) This is not to be considered an exhaustive list of qualifying capital investments. The department will consider other investments that substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for the heating, cooling, or lighting of buildings. The department may consider the cost of the investment against the expected savings in determining whether the investment qualifies.

(3) Investments in an existing building or new construction for which no capital investment for energy conservation purposes is substantiated do not qualify for the energy conservation credit. For example, the investments do not qualify for the energy conservation credit when the taxpayer installs an insulated garage door in an existing building or during new construction and this building does not

consume any energy other than electrical energy for lighting purposes.

(4) The department may request assistance from the department of environmental quality to determine if an investment made by a taxpayer qualifies as an energy conservation investment for the purpose of the energy conservation credit.

AUTH: 15-32-105, MCA
IMP: 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.204 for housekeeping purposes and to allow the department to consider the cost savings factor when determining the energy conservation purpose. In addition, this rule clarifies that the energy conservation credit does not apply to investments in buildings that do not consume energy such as a commonly used garage. The rule also clarifies that the department of environmental quality will assist the department of revenue with the determination of what qualifies for the energy conservation investment.

42.4.4109 WIND ENERGY TAX CREDITS FOR GENERATION FACILITIES LOCATED WITHIN EXTERIOR BOUNDARIES OF A MONTANA INDIAN RESERVATION - TRIBAL EMPLOYMENT AGREEMENT (1) To qualify for the 15-year carry-forward provision ~~and the elimination of the federal limitation as shown in 15-32-403, MCA~~, a copy of the signed agreement with the tribal government of the reservation must be attached to the applicable tax return filed for the first taxable period for which the credit is reported.

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

AUTH: 15-1-201 and 15-32-407, MCA
IMP: 15-31-501, 15-32-403, and 15-32-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4109 because the reference to the federal limitation found in the rule was repealed by the 2003 Legislature, effective July 1, 2005.

5. The Department proposes to repeal the following rule:

42.4.4110 WIND ENERGY TAX CREDITS FOR GENERATION FACILITIES LOCATED ON SCHOOL TRUST LAND which can be found on page 42-645 of the Administrative Rules of Montana.

AUTH: 15-32-407, MCA
IMP: 15-31-501, and 15-32-403, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.4110 because the reference to the federal limitation was repealed by the 2003 Legislature and the rule is no longer applicable.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701

and must be received no later than January 20, 2006.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

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

Certified to Secretary of State December 12, 2005

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 2.55.320 pertaining to classifications of employments | ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On October 27, 2005, the Montana State Fund published MAR Notice No. 2-55-35 regarding the proposed amendment of the above-stated rule at page 1944 of the 2005 Montana Administrative Register, issue number 20.

2. The Montana State Fund Board of Directors has amended ARM 2.55.320 exactly as proposed.

3. No comments or testimony were received.

/s/ Nancy Butler
NANCY BUTLER, General Counsel
Rule Reviewer

/s/ Ed Henrich
ED HENRICH
Chairman of the Board

/s/ Dal Smilie
DAL SMILIE, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State December 12, 2005.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT
of ARM 6.6.8501, 6.6.8502, and )
6.6.8507, relating to viatical )
settlement agreements )

TO: All Concerned Persons

1. On September 8, 2005, the State Auditor's Office published MAR Notice No. 6-163 relating to the public hearing on the viatical settlement agreements, at page 1636 of the 2005 Montana Administrative Register, issue no. 17.

2. On October 4, 2005, a public hearing was held in Helena, Montana, to consider the proposed amendments. The comments following each rule were received and appear with the Department's responses.

3. ARM 6.6.8501, 6.6.8502, and 6.6.8507 are amended as proposed but with the following changes, stricken material interlined, new material underlined:

6.6.8501 DEFINITIONS In addition to the definitions in 33-20-1302, MCA, the following definitions apply to this subchapter:

(1) through (4) remain as proposed.

(5) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can reasonably be expected to live based on accepted actuarial and medical criteria experience. ~~as determined by a physician or physicians considering medical records and appropriate experiential data. A physician making this determination must be the insured's attending physician.~~

(6) through (7)(d) remain as proposed.

(8) "Terminally ill" means having an illness that the attending physician reasonably expects to result in death in 24 months or less. ~~can reasonably be expected to result in death as determined by the insured's attending physician.~~

AUTH: 33-1-313, 33-20-1315, MCA
IMP: 33-20-1302, MCA

COMMENT 1: ARM 6.6.8501(5) Two commenters, representatives of Coventry First and the Viatical and Life Settlement Association of America, propose that life expectancies be determined by the viatical settlement provider because an insured who is not terminally ill should not be forced to visit a physician for a life expectancy determination.

RESPONSE 1: The department agrees.

COMMENT 2: ARM 6.6.8501(6) The commenter, the executive director of the Viatical and Life Settlement Association of America, suggested removing language at the end of the definition of the term "net death benefit."

RESPONSE 2: The department believes this language makes it clear that the benefit should be reduced only by sums owed to the insurer and should remain.

COMMENT 3: ARM 6.6.8501(8) The commenter, a representative of Coventry First, proposed using the definition of terminally ill in the NAIC model regulation. The commenter indicated that a definition of "terminally ill" that specified that the insured had an illness that could reasonably be expected to result in death would allow people with common colds to be classified as terminally ill.

RESPONSE 3: While the department does not agree that a person with a common cold could reasonably be expected to die, it does recognize the difficulty in defining the term "terminally ill." The Department agrees to use the 24 month life expectancy suggested by the commenter.

6.6.8502 LICENSE REQUIREMENTS (1) and (1)(a) remain as proposed.

(b) a copy of an executed bond as surety; ~~and~~ or

(c) through (2)(b) remain as proposed.

(c) submit a copy of an executed bond as surety pursuant to (4)~~,~~ or submit a copy of an errors and omissions policy in an amount commensurate with a broker's exposure;

~~(d) submit a copy of an errors and omissions policy in an amount commensurate with a broker's exposure;~~

(e) and (f) remain as proposed, but are renumbered (d) and (e).

(3) ~~To obtain an initial license as a viatical settlement broker, a~~ A resident or nonresident insurance producer who is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and who has been licensed for at least one year ~~must~~ shall be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker, provided that such producer must:

(a) provide written notice pursuant to 33-20-1303(2)(b)~~(ii)~~(i), MCA, to the department that the insurance producer is acting as a viatical settlement broker, specifically identifying the date on which the insurance producer began acting as a viatical settlement broker;

(b) through (5)(d) remain as proposed.

~~(6) A viatical settlement broker's license obtained under (3) is subject to renewal at the time the licensee's resident or nonresident life insurance producer's license is renewed. A person renewing a viatical settlement broker's license under this rule must:~~

~~(a) indicate the person's intent to continue acting as a viatical settlement broker on the person's life insurance producer license renewal form;~~

~~(b) comply with the reporting requirements under Title 33, chapter 20, part 13, MCA, and the rules promulgated thereunder;~~

~~(c) satisfy the continuing education requirements for a viatical settlement broker pursuant to 33-20-1303(5), MCA; and~~

~~(d) file, in a format approved by the commissioner, certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person pursuant to 33-20-1303(5), MCA, during the preceding biennium.~~

(7) remains as proposed, but is renumbered (6).

(7)~~(8)~~ The commissioner may ask for and an applicant shall provide ~~for~~ such additional information as is necessary to determine whether an applicant complies with the requirements of 33-20-1303, MCA.

AUTH: 33-1-313, 33-20-1315, MCA
IMP: 33-20-1303, MCA

COMMENT 4: ARM 6.6.8502(1) and (2) Two commenters noted that the proposed rule did not reflect the change in 33-20-1315, MCA, allowing providers and brokers to prove financial responsibility by either an errors and omissions policy or a surety bond.

RESPONSE 4: The department agrees to amend sections (1) and (2) to reflect the change in statute.

COMMENT 5: ARM 6.6.8502(3)(a) A representative of the American Council of Life Insurers observed that the subsection was clearly intended to refer to 33-20-1302(2)(b)(ii), MCA, rather than 33-20-1302(2)(b)(i), MCA, as proposed.

RESPONSE 5: The reference has been corrected as suggested by the commenter.

COMMENT 6: ARM 6.6.8502(3) Two commenters, representatives of Coventry First and the Viatical and Life Settlement Association of America, suggest that the department include identical language that would clarify that a life insurance producer licensed for more than a year is qualified to act as a viatical settlement broker.

RESPONSE 6: The department agrees that the proposed language should be added.

COMMENT 7: ARM 6.6.8502(5) A representative of Coventry First contends that no provision authorizes the department to require annual reports from viatical settlement brokers, and therefore, recommends eliminating ARM 6.6.8502(5)(b).

RESPONSE 7: Annual reporting for viatical settlement brokers is required under ARM 6.6.8510, which was not proposed for amendment in this rulemaking. Furthermore, the Commissioner of Insurance has the discretion to require annual reporting under 33-20-1310, MCA.

COMMENT 8: ARM 6.6.8502(6) Two commenters, representatives of Coventry First and the Viatical and Life Settlement Association of America, propose eliminating (6) from the rule. They contend that the rule as proposed conflicts with 33-20-1303, MCA.

RESPONSE 8: The department agrees.

COMMENT 9: ARM 6.6.8502(6) A representative of Coventry First argues that the Department is not authorized to issue a viatical settlement broker's license to duly licensed life insurance producers.

RESPONSE 9: The department agrees.

COMMENT 10: ARM 6.6.8502(8) The commenter, a representative of the American Council of Life Insurers, suggested a minor change in language for the purpose of making the subsection more clear.

RESPONSE 10: The department agrees that the change would clarify the rule.

6.6.8507 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

(1) In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts when the insured is terminally ill or chronically ill:

| Insured's Life Expectancy | Minimum Percentage of Net Death Benefit |
|---|---|
| Less than 6 months | 80% |
| At least 6 but less than 12 months | 70% |
| At least 12 but less than 18 months | 65% |
| At least 18 but no greater than 24 months | 60% |
| 24 months or more | 50% |

(2) ~~If the insured is not terminally ill or chronically ill, the~~ The viator must receive at least the greater of the cash surrender value or accelerated death benefit of the policy in every viatical settlement transaction.

(3) and (4) remain as proposed.

AUTH: 33-20-1315, MCA
IMP: 33-20-1315, MCA

COMMENT 11: ARM 6.6.8507 A representative of Coventry First suggested altering the standards for evaluating reasonableness of payments to specify no minimum percentage for terminally ill insureds with life expectancies of longer than twenty-four months and to apply the same percentages to the chronically ill.

RESPONSE 11: The department agrees.

COMMENT 12: A representative of the Viatical and Life Settlement Association of America also objected to the standards for reasonable payments. The commenter expressed concerns that Montana insureds might be hindered from selling their policies under the department guidelines, observed that a number of states have not established minimum payments, and suggested three alternatives to the approach used by the department. One alternative would delete entirely the reasonableness standards. Another would substitute the NAIC Model Regulation approach, which establishes thirteen factors that could be used to evaluate reasonableness of payments. The last alternative adds language from other states that would allow a provider to pay less than the minimum payment established by this rule when the Commissioner determines that the payment is not unreasonable and would allow the Commissioner to reduce the standard minimum payments when economic conditions warrant.

RESPONSE 12: The department believes the changes made in response to the previous comment will alleviate the potential for hindering the life settlement market. This makes the commenter's proposal unnecessary.

COMMENT 13: A representative of the American Council of Life Insurers expressed concern that the language of the rule could deprive viators of their right to receive the greater of the cash surrender value or accelerated death benefit.

RESPONSE 13: To allay this concern, the department will remove the phrase "If the insured is not terminally ill or chronically ill from the beginning of section (2) and add the words "in every viatical settlement transaction" at the end of (2).

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on December 12, 2005.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of a new rule for the administration of grants awarded by the 2005 Legislature and the repeal of ARM 8.94.3801 and 8.94.3803 pertaining to the Treasure State Endowment Program (TSEP) | ) ) ) ) ) ) ) | NOTICE OF ADOPTION AND REPEAL |

To: All Concerned Persons

1. On October 27, 2005, the Department of Commerce published MAR Notice No. 8-94-50 regarding the public hearing on the proposed adoption and repeal of the above-stated rules relating to the administration of the Treasure State Endowment Program (TSEP) at page 1954 of the 2005 Montana Administrative Register, Issue No. 20.

2. The Department has adopted the new rule (ARM 8.94.3812) and has repealed ARM 8.94.3801 and ARM 8.94.3803 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 glossary of terms is needed.

Response: The Department agrees and will work toward compiling one. However, it will likely not be incorporated until the next revision in two years since it will take some time to create.

Comment No. 2: The project administration process should be documented using a data flow diagram method.

Response: The Department does not think that the process can be simply diagramed because of the complexity of these projects, the fact that each project proceeds differently, and because things that must be done are not always linear. However, the Department will discuss the recommendation further and investigate whether a diagram could be created that would be beneficial.

COMMUNITY DEVELOPMENT 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 December 12, 2005

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 10.6.101, 10.6.103, 10.6.104, 10.6.105, 10.6.108, 10.6.119, 10.6.122, 10.6.123, 10.6.124 and 10.6.127 relating to school controversies | ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On November 10, 2005, the Superintendent of Public Instruction published MAR Notice No. 10-6-114 regarding the public hearing on the proposed amendment of the above-stated rules concerning school controversies, at page 2136 of the 2005 Montana Administrative Register, Issue Number 21.

2. The Superintendent of Public Instruction has amended the above-stated rules exactly as proposed.

3. The following comments were received and appear with the Superintendent of Public Instruction's responses:

COMMENT 1: One comment was received in support of the proposed amendments and suggesting that the State Superintendent adopt a rule permitting a controversy to be disposed of by summary judgment.

RESPONSE 1: The State Superintendent thanks the commentor for his support and will take the summary judgment issue under advisement. It would not be proper to amend the rules at this time to allow this procedure due to lack of notice.

COMMENT 2: One comment was received asking for clarification of the reason to remove the due process hearings mandated by the Family Education Privacy Act (FERPA) from ARM 10.6.101. This commentor also questioned the language in ARM 10.6.104 "enter an order dismissing the appeal." Commentor feels that dismissing the appeal would shut down the right to due process.

RESPONSE 2: The State Superintendent thanks the commentor for her comment and states that the removal of the language regarding FERPA due process hearings from school controversy rules does not eliminate the requirement that the schools conduct a hearing. The only redress following a FERPA hearing at the district level is with the United States Department of Education. Therefore this language is being eliminated from the rules to be followed by County Superintendents and the State Superintendent in school controversy issues because they do not have jurisdiction over FERPA complaints.

In order for a County Superintendent or the State Superintendent to hear or act with respect to a controversy appealed from a decision of a school board, the superintendent must first determine if it is a contested case and if they have jurisdiction. If they do not have jurisdiction they cannot act with respect to the case and therefore must dismiss it. The appellant then has the opportunity to determine the proper jurisdiction for appeal.

/s/ Linda McCulloch
Linda McCulloch
State Superintendent
of Public Instruction

/s/ Catherine K. Warhank
Catherine K. Warhank
Rule Reviewer

Certified to the Secretary of State December 12, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.8.743 pertaining to Montana air quality permits - when required, and adoption of new rules I-VI pertaining to oil and gas well facilities | NOTICE OF AMENDMENT AND ADOPTION<br><br>(AIR QUALITY) |

TO: All Concerned Persons

1. On August 11, 2005, the Board of Environmental Review published MAR Notice No. 17-229 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1479, 2005 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 17.8.743 and adopted new rules III (17.8.1603), IV (17.8.1604), V (17.8.1605), and VI (17.8.1606) exactly as proposed and has adopted new rules I (17.8.1601) and II (17.8.1602) as proposed, but with the following changes:

NEW RULE I (17.8.1601) DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) through (3) remain as proposed.

(4) "Potential to emit (PTE)" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

NEW RULE II (17.8.1602) APPLICABILITY AND COORDINATION WITH MONTANA AIR QUALITY PERMIT RULES (1) The requirements of this subchapter apply to oil and gas well facilities that were completed after March 16, 1979, or that were modified after March 16, 1979, and that have the potential to emit (PTE) more than 25 tons per year (TPY) of any airborne pollutant that is regulated under this chapter~~, 10 TPY or more of any individual hazardous air pollutant (HAP), or 25 TPY or more of any combination of HAPS. For the purposes of this rule, PTE is calculated without regard to any air pollution control equipment used at the facility~~.

(2) through (4) remain as proposed.

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

COMMENT NO. 1: Comments on the proposed rules from several entities dealt with allowing flexibility in the rules for the Department to deal with changing operating scenarios in the application and permit review process.

RESPONSE: Currently an entity that submits an application for a Montana air quality permit may request a change or an amendment to the application at any time prior to the Department issuing a decision on the application. In addition, sources may request some operational flexibility built into their permits, and the Department has the authority to include this operational flexibility in the permit. Therefore, the Board believes this issue is addressed in the existing rules and no change is necessary.

COMMENT NO. 2: Comments were received on the language in New Rule II. The commentor requested a change to the proposed rule by deleting the reference to hazardous air pollutants (HAPS) in New Rule II(1).

RESPONSE: The Board agrees with the comment and has amended the proposed rule to reflect the change. Currently an oil and gas well facility with the potential to emit less than 25 tons per year of any pollutant is not required to obtain a Montana air quality permit under existing air quality rules. The rule was not intended to make the requirement for oil and gas well facilities more stringent than the existing rules for air pollution sources in Montana. Should an oil and gas well facility have potential emissions above the 10/25 tons per year HAP level, a Title V permit would be required.

COMMENT NO. 3: Comments received recommended the Board delete the language that excludes the use of control equipment in determining potential to emit in New Rule II.

RESPONSE: The Board agrees with the comment and has amended the proposed rules to reflect the change. With the addition to the proposed rules of a definition of "potential to emit" (PTE) and clarification in the proposed rules that air pollution control equipment can be considered in the PTE determination only if the requirements are federally enforceable, the need to further clarify the limitation on control equipment in the proposed rules is not necessary and that language has been deleted.

COMMENT NO. 4: One commentor stated that the requirement in New Rule III(1)(f) for oxidation catalytic reduction on lean-burn engines greater than 85 brake horsepower (BHP) is too restrictive. The commentor stated that, by design, lean-burn engines have low emissions and that addition of oxidation catalytic reduction will not reduce emissions of nitrogen oxides. The commentor stated that oxidation catalytic reduction will reduce carbon monoxide emissions but only at a cost that is much greater than the benefit.

RESPONSE: The Board disagrees with the comment for the following reason. The Board believes that controls are appropriate for both rich-burn and lean-burn engines. The Board

believes that it is technically feasible to install control equipment on engines of either design. The five-year annualized cost is less for the rich-burn design engines due to the larger reduction in pollutants from the lean-burn design engines, but neither design is economically infeasible.

Also, the owner or operator of an oil or gas well facility may request alternative operating schedules through the permit application, to allow the control equipment requirement to be changed.

COMMENT NO. 5: One commentor asked why the proposed rule does not include a definition of "potential to emit". The same commentor also asked if these proposed rules were intended to be an entirely new subchapter in the Montana air quality rules or were going to be incorporated into an existing subchapter.

RESPONSE: The Board intends to place these rules in a new subchapter of the Montana air quality rules. The Board agrees with the commentor that a definition of "potential to emit" should be included in the rules. The proposed rules have been amended and now are consistent with other air quality rules.

COMMENT NO. 6: One commentor expressed concern about the inspection and leak repair requirements section of the proposed rules being burdensome on small operating units and not in keeping with current company policy.

RESPONSE: The Board finds that the proposed requirement to inspect all piping components is in keeping with current permitting requirements and believes that this provision protects public health and the environment and is not overly burdensome.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*/s/ DAVID RUSOFF* By: */s/ JOSEPH W. RUSSELL*
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, December 12, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.8.759 pertaining to review of permit applications | NOTICE OF AMENDMENT<br><br>(AIR QUALITY) |

TO: All Concerned Persons

1. On August 11, 2005, the Board of Environmental Review published MAR Notice No. 17-228 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1476, 2005 Montana Administrative Register, issue number 15.

2. The Board has amended the rule as proposed, but with the following changes:

17.8.759 REVIEW OF PERMIT APPLICATIONS (1) through (4) remain as proposed.

(5) The department may, on its own action, or at the request of the applicant or member of the public, extend by 15 days the period within which public comments may be submitted as described in (4)(b)(ii) and the date for issuing a final decision on a permit application as described in 75-2-211(9)(b), MCA, ~~under the following conditions:~~ if the department finds that an extension is necessary to allow the department to make an informed decision.

~~(a) if the department finds that an extension would serve the public interest;~~

~~(b) upon request of the applicant or a member of the public and if the request for an extension is submitted to the department by the date that written comments on the preliminary determination originally were due; or~~

~~(c) if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30 day comment period.~~

(a) Any request for an extension, as provided under (5), by the applicant or a member of the public must be submitted to the department by the date that written comments on the preliminary determination originally were due.

(b) The department shall extend the comment period if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30-day comment period.

~~(6)~~ (c) The department shall notify the applicant of any extensions ~~requests that are~~ granted under (5).

(7) remains as proposed, but is renumbered (6).

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

COMMENT NO. 1: EPA commented that it would be more appropriate to require a 30-day public comment period for those preliminary determinations that contain one or more requirements of 40 CFR part 63 instead of the current language, which states that the Department may extend the public comment period by 15 days (to 30 days) if such requirements were applicable.

RESPONSE: The Board agrees with the comment and has amended the proposed rule to reflect the change. The proposed rule now states, "The Department shall extend the comment period if the preliminary determination contains one or more requirements of 40 CFR part 63 ..., that require a 30-day comment period."

COMMENT NO. 2: The Board received comments that the proposed rule should provide at least some objective criteria by which to determine whether or not a request for an extension should be granted. Specific language was suggested to include the criteria that the Department would need to find that an extension was necessary to allow the Department to make an informed decision.

RESPONSE: The Board agrees with the comment and has amended the proposed rule to reflect the proposed language.

COMMENT NO. 3: The Board received comments that state while the commentor supported an extension of the comment period for complex applications where there is significant public interest, the rule as proposed would make the 30-day comment period essentially automatic. One commentor requested revised language that would allow for 15-day extensions only when the extension request "sets forth unique circumstances justifying an extension." Another commentor requested revised language that would require the requestor to provide some specific explanation as to why an extension was warranted and the Department to make some specific finding about why the usual statutory period is inadequate for the permit at hand.

RESPONSE: The Board does not find that the hearing record supports requiring the requestor to cite "unique circumstances" or requiring the Department to make a finding that the 15-day comment period is inadequate in order to allow additional public comment.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*/s/ DAVID RUSOFF* By: */s/ JOSEPH W. RUSSELL*
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, December 12, 2005.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 20.9.601, 20.9.602, 20.9.603, 20.9.604, 20.9.605, 20.9.606, 20.9.607, 20.9.608, 20.9.609, 20.9.610, 20.9.611, 20.9.612, 20.9.613, 20.9.614, 20.9.615, 20.9.616, 20.9.617, 20.9.618, 20.9.619, 20.9.620, 20.9.621, 20.9.622, 20.9.623, 20.9.624, 20.9.625, 20.9.626, 20.9.627, 20.9.628, 20.9.629, 20.9.630, 20.9.631, 20.9.632, 20.9.633, and 20.9.634 pertaining to licensure of youth detention facilities | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On September 22, 2005, the Department of Corrections published MAR Notice No. 20-7-36 regarding the proposed amendment of the above-stated rules pertaining to licensure of youth detention facilities, at page 1722 of the 2005 Montana Administrative Register, issue number 18.

2. On October 13, 2005 at 10:00 a.m., a public hearing was conducted in Helena, Montana. No one appeared or commented at the hearing. The Legislative Services Division (herein "LSD") and Montana Advocacy Program, Inc. (herein, "MAP") submitted written comments. The Department has thoroughly considered all comments received prior to closing of the comment period. A summary of the comments received and the Department's responses follow:

COMMENT 1: LSD commented there is no explanation why it is necessary to increase the length of time that a parole youth who is placed in detention may be held from 72 hours to 10 days in ARM 20.9.619.

RESPONSE 1: 52-5-129(1), MCA, sets a maximum period of 10 days to detain a youth before a hearing is held or the youth is released. Experience has shown that 72 hours is generally not sufficient to conduct necessary fact-finding, to retain legal counsel for the youth, or to schedule a hearing officer. Additionally, the change will bring consistency to the maximum time period stated in the law and the rule and avoid confusion among officers in the field.

COMMENT 2: MAP commented that ARM 20.9.612(6)(j) and 20.9.628 which substitute the terms "intervention and restraint" for "passive physical restraint" and ARM 20.9.630 which modifies the rule to require POST-certified training of

juvenile detention officers; should be further modified to require that training be provided by national accredited organizations targeting child-specific intervention methods developed especially for use with children.

RESPONSE 2: The proposed change requires POST-certified (peace officer standards training) trainers to conduct the initial correction detention officer basic course. These trainers are also certified by Crisis Prevention Institute, a national organization, which is the current provider of the non-violent crisis intervention curriculum for the basic course. The proposed training standards address the risks to youth posed by the use of restraints. The comment is additionally rejected as imposing an unfunded mandate on detention centers.

COMMENT 3: MAP commented that ARM 20.9.630 "removes the current one-hour limitation on mechanical restraint use, and allows the use of mechanical restraint to continue for more than one hour if the youth is evaluated by a mental health professional...."

RESPONSE 3: The current rules are internally inconsistent regarding a one-hour limitation. The intent is to limit use of restraints no longer than is absolutely necessary, which in extremely rare cases, may exceed an hour. Such exceptions require evaluation by a mental health professional and documentation. This standard is consistent with the American Correctional Association standards for juvenile detention facilities. The comment is rejected.

3. The Department of Corrections has amended the following rules 20.9.601, 20.9.602, 20.9.603, 20.9.604, 20.9.605, 20.9.606, 20.9.607, 20.9.608, 20.9.609, 20.9.610, 20.9.611, 20.9.612, 20.9.613, 20.9.614, 20.9.615, 20.9.616, 20.9.617, 20.9.618, 20.9.620, 20.9.621, 20.9.622, 20.9.623, 20.9.624, 20.9.625, 20.9.626, 20.9.627, 20.9.628, 20.9.629, 20.9.630, 20.9.631, 20.9.632, 20.9.633, and 20.9.634 exactly as proposed.

4. The department has amended ARM 20.9.619 with the following changes, stricken matter interlined, new matter underlined.

20.9.619 ADMISSION (1) remains as proposed.

(2) Any youth held in detention must be between the ages of 10 and 18 years, may not be suffering from a mental disorder, exhibiting current symptoms that require acute hospitalization, or be criminally adjudicated.

(3) through (12) remain as proposed.

AUTH: 41-5-1802, MCA
IMP: 41-5-103, 41-5-332, 41-5-341, 41-5-1802, 52-5-128 and 52-5-129, MCA

COMMENT 4: Respecting 20.9.619(2) LSD commented there is no explanation why it is necessary to change "suffering from a mental disorder" to "seriously mentally ill" since the Youth Court Act, in 41-5-1504 and 41-5-1512(1)(j) specifically refer to "mental disorder" as defined in Title 53. MAP additionally commented that the phrase "suffering from a mental disorder" should be retained because there is a statutory definition of the phrase and it includes severe emotional disturbance.

RESPONSE 4: The change, particularly the qualifying language "exhibiting current symptoms that require acute hospitalization" was intended to provide additional guidance to juvenile detention officers in exercising their discretion. The department accepts the comments and will retain the phrase "suffering from a mental disorder" along with the proposed qualifying language.

/s/ Bill Slaughter
BILL SLAUGHTER, Director
Department of Corrections

/s/ Colleen A. White
Colleen A. White, Rule Reviewer
Department of Corrections

Certified to the Secretary of State December 9, 2005.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the transfer of ARM 8.54.101 through 8.54.906, pertaining to the board of public accountants | ) ) ) ) | NOTICE OF TRANSFER |

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Public Accountants was transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, chapter 201.

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

| OLD | NEW | |
|---|---|---|
| 8.54.101 | 24.201.101 | Board Organization |
| 8.54.201 | 24.201.201 | Procedural Rules |
| 8.54.202 | 24.201.202 | Public Participation Rules |
| 8.54.203 | 24.201.405 | Committees |
| 8.54.204 | 24.201.301 | Definitions |
| 8.54.205 | 24.201.415 | Use Of CPA/LPA Designation |
| 8.54.401 | 24.201.401 | Board Meetings |
| 8.54.408 | 24.201.501 | Education Requirements |
| 8.54.409 | 24.201.502 | Accounting And Auditing Experience Requirements |
| 8.54.410 | 24.201.410 | Fee Schedule |
| 8.54.411 | 24.201.2101 | Expiration - Renewal |
| 8.54.415 | 24.201.528 | Licensure Of Out-Of-State Applicants |
| 8.54.416 | 24.201.529 | Licensure Of Foreign-Trained Applicants |
| 8.54.417 | 24.201.506 | Previous Applications In Effect |
| 8.54.418 | 24.201.535 | Reactivation Of Inactive And Revoked Status |
| 8.54.421 | 24.201.511 | Implementation Of The Computer-Based Uniform Certified Public Accountant Examination |
| 8.54.422 | 24.201.510 | Examinations |
| 8.54.423 | 24.201.518 | Examination Credits - Out-Of-State Candidates |
| 8.54.424 | 24.201.516 | Granting Of Examination Credit |
| 8.54.425 | 24.201.512 | Transition Rule For Applicants Who Have Pre-Computer-Based Examination Conditional Credit |
| 8.54.426 | 24.201.524 | Cheating |
| 8.54.427 | 24.201.517 | Acceptance Of Examination |

| | | Credits |
|---|---|---|
| 8.54.602A | 24.201.701 | Definitions |
| 8.54.603 | 24.201.704 | Independence |
| 8.54.604 | 24.201.705 | Integrity And Objectivity |
| 8.54.605 | 24.201.709 | Commissions |
| 8.54.606 | 24.201.710 | Contingent Fees |
| 8.54.608 | 24.201.706 | Competence |
| 8.54.609 | 24.201.715 | Auditing Standards |
| 8.54.610 | 24.201.716 | Accounting Principles |
| 8.54.611 | 24.201.719 | Forecasts |
| 8.54.612 | 24.201.720 | Confidential Client Information |
| 8.54.613 | 24.201.723 | Records |
| 8.54.614 | 24.201.707 | Discreditable Acts |
| 8.54.616 | 24.201.726 | Advertising |
| 8.54.617 | 24.201.717 | Other Technical Standards |
| 8.54.702 | 24.201.2410 | Enforcement Against Licensees |
| 8.54.703 | 24.201.2411 | Enforcement Procedures - Investigations |
| 8.54.707 | 24.201.2401 | Complaint Procedure |
| 8.54.802 | 24.201.2106 | Basic Requirement |
| 8.54.803 | 24.201.2108 | Who Must Comply - General |
| 8.54.804 | 24.201.2113 | Non-Resident Holders Of A Permit To Practice -- Compliance |
| 8.54.806 | 24.201.2154 | Hardship Exception |
| 8.54.807 | 24.201.2155 | Other Exceptions |
| 8.54.809 | 24.201.2114 | Out-Of-State Applicants Continuing Education Requirement |
| 8.54.810 | 24.201.2161 | ~~Reentry~~ Reinstatement |
| 8.54.811 | 24.201.2130 | Programs Which Qualify |
| 8.54.812 | 24.201.2146 | ~~Controls And~~ Continuing Education Reporting For Permit To Practice |
| 8.54.813 | 24.201.2131 | Acceptable Subject Matter For Qualifying Programs |
| 8.54.814 | 24.201.2132 | Acceptable Programs |
| 8.54.815 | 24.201.2136 | Credit Hours Granted - General |
| 8.54.816 | 24.201.2137 | Credit For Formal Individual Study Programs |
| 8.54.817 | 24.201.2138 | Credit For Service As Lecturer, Discussion Leader, Speaker Or Report Reviewers |
| 8.54.818 | 24.201.2139 | Credit For Published Articles, Books, Etc. |
| 8.54.819 | 24.201.2147 | Evidence Of Completion - Retention |
| 8.54.820 | 24.201.2148 | Verification |
| 8.54.821 | 24.201.2145 | Reporting Requirements |
| 8.54.822 | 24.201.2105 | Advisory Committee |
| 8.54.823 | 24.201.2120 | Statement On Standards For Formal Continuing Education Programs |

| | | |
|---|---|---|
| 8.54.824 | 24.201.2121 | Standards For CPE Program Development |
| 8.54.825 | 24.201.2122 | Standards For CPE Program Presentation |
| 8.54.826 | 24.201.2123 | Standards For CPE Program Measurement |
| 8.54.827 | 24.201.2124 | Standards For CPE Reporting |
| | | |
| 8.54.901 | 24.201.1101 | Introduction |
| 8.54.902 | 24.201.1102 | Definitions |
| 8.54.903 | 24.201.1106 | Statement By Permit Holders |
| 8.54.904 | 24.201.1107 | Filing Of Reports |
| 8.54.905 | 24.201.1108 | Alternatives And Exemptions |
| 8.54.906 | 24.201.1115 | Reviews And Enforcement |

3. The transfer of rules is necessary because this board 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.

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, LPA, CHAIRPERSON

/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 December 12, 2005

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 8.54.410, 8.54.415, 8.54.802, 8.54.803 and 8.54.804, the adoption of NEW RULES I through IV, and the repeal of ARM 8.54.808, related to fees, amount of required experience, continuing education matters, and special practice permits for nonresident certified public accountants | ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT, ADOPTION AND REPEAL |

TO: All Concerned Persons

1. On October 6, 2005, the Board of Public Accountants published MAR Notice No. 8-54-41 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules relating to special practice permits at page 1864 of the 2005 Montana Administrative Register, issue no. 19.

2. On October 28, 2005, at 10:00 a.m., a public hearing was held at the offices of the Board of Public Accountants, in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules. Oral and written comments were received by the Board during the comment period.

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

Comment 1: A commenter stated that NEW RULE I should be amended to allow CPAs from states that are not deemed substantially equivalent to demonstrate their individual qualifications and obtain a special practice permit.

Response 1: The Board does not have the statutory authority to make the suggested change. Such authority would require a legislative change. The Board intends to monitor the requests for special practice permits during the next 18 months in order determine what, if any, problems occur with the existing law.

Comment 2: A commenter suggested that an application for a special practice permit also be deemed to be a firm registration for the applicant's firm, in order to improve efficiency.

Response 2: The Board believes that the current firm registration process is speedy and efficient. Requiring an applicant to provide firm registration information at the time of application does not improve efficiency (for either the

applicant or the Board) if the applicant is a member of an already registered firm.

Comment 3: A commenter suggested that special practice permit applications be a simple, one page document that can filed electronically with the Board.

Response 3: A single page application, available electronically and which can be filed electronically, has already been developed by the Board.

Comment 4: A commenter requested that special practice permit applications and firm registrations become effective upon filing.

Response 4: The Board expects that most special practice permit applications will be granted on a same-day or next business day basis. However, in the event that an application is incomplete, shows that the applicant is not eligible, or the applicant does not remit the required fee, the Board believes that it can not lawfully deem such an application as granting a special practice permit.

Comment 5: A commenter stated that a "significant burden" of complying with Montana continuing education requirements will be placed on out-of-state CPAs in the case of a special practice permit holder who is from a state that does not require continuing education. The commenter noted that other states do not impose a similar requirement on practitioners who practice pursuant to "substantial equivalency" laws.

Response 5: The Board notes that Wisconsin is the only state which does not currently require CPAs to undertake continuing education. The Board further notes that under current rules, all out-of-state licensees must comply with Montana's continuing education requirements. The Board believes that continuing education is an essential component of ensuring practitioner competency after licensing. The Board also notes that it is charged with protection of the public's safety and welfare, not the convenience of the profession. The Board believes that any additional "burden" will be minimal on those few Wisconsin licensees who may seek a special practice permit in Montana.

Comment 6: A commenter suggested that submitting a copy of a firm's inspection report should be deemed to satisfy the requirements of NEW RULE III.

Response 6: The Board notes that under its existing rules, a firm that engages in the AICPA's peer review process can satisfy the profession monitoring requirements by submitting a copy of such a review.

Comment 7: Several commenters objected to the proposed elimination of the "A and A" (reporting on financial statements)

requirements as a component of required continuing education. Another commenter wrote in support of the proposed change.

Response 7: The Board recognizes that many accountants have strong feelings about whether or not 24 hours of continuing education credit on reporting on financial statements should be required for all licensees. The Board, after long discussion, originally made the proposal to eliminate the A and A requirement after hearing the arguments from public accountants whose practice does not include reporting on financial statements. Those practitioners said that requiring continuing education on a subject matter outside of the scope of their practice field was wasteful and inefficient. The Board also notes that public accountants have an ethical obligation to maintain their professional competency and not to accept engagements outside of their competency. The Board notes that practitioners whose work includes (or is perhaps limited to) reporting on financial statements will still have an ethical obligation to maintain their professional competency, and therefore may wish to take a majority of continuing education credits in that subject matter. The Board concludes that requiring public accountants to devote 20% of the required continuing education credits to an area that is outside the scope of the accountant's practice does not meaningfully protect the public that is purchasing public accounting services in Montana.

Comment 8: A commenter wrote in support of the proposed changes to ARM 8.54.415. Another commenter generally supported the proposed rule changes, without expressing a position on the proposed fees.

Response 8: The Board acknowledges the comments.

Comment 9: A commenter suggested that NEW RULE I be clarified to provide that the rule does not apply to persons preparing tax returns for either Montana residents or non-residents.

Response 9: The Board notes that while the preparation of tax returns is included within the practice of public accounting, tax return preparation is not exclusively performed by public accountants. A person may not represent her or his status as a CPA in Montana unless legally authorized to do so. Thus, if a CPA is preparing tax returns in Montana, that individual is engaged in the practice of public accounting in Montana. Accordingly, that individual must have an appropriate practice permit for that Montana practice.

Comment 10: A commenter stated that a CPA engaged in peer review of a Montana accounting firm is engaged in the practice of public accounting in Montana, and that if the CPA is from outside of Montana, NEW RULE I should apply.

Response 10: The Board agrees with the comment. The Board has

historically required that out-of-state CPA to obtain a Montana practice permit.

Comment 11: Two commenters stated that the proposed $90 fee for the special practice permit was excessive. One of the commenters suggested that a $25 to $40 fee would be more appropriate.

Response 11: The Board is required by law to set fees commensurate with costs. At this point, however, it is unclear whether the $90 fee is too high, too low, or exactly right, because the Board does not have any actual experience in determining the actual costs of all the issues raised by the special practice permit. During initial discussion regarding the proposed fee, the Board's members (as well as representatives of the profession) were of the opinion that the proposed fee was, in light of the overall cost of doing business, a nominal expense. The Board believes that Montana public accountants should not subsidize the cost of non-Montanans coming in to Montana to practice with a special permit. The Board intends to monitor the actual costs (including taking disciplinary action, where required) of the special practice permit implementation. If experience shows that the $90 fee is higher than needed, the Board will decrease the fee to a level commensurate with costs. Likewise, if experience shows that the fee is insufficient to cover costs, the Board will raise the fee. At the present, however, the Board believes that a $90 fee strikes a reasonable balance between not cost-shifting and not creating an economic disincentive to practice public accounting in Montana, whether as a regular permit holder or as a holder of a special practice permit.

Comment 12: A commenter stated that the proposed $500 fee for the late filing of profession monitoring documents is excessive, and that an initial late fee of $50 to $100 would be more appropriate if the documents were filed within 30 days of the due date, and with the $500 fee imposed only if the documents are more than 30 days late.

Response 12: The Board finds that a substantial amount of staff time and expense is consumed in getting profession monitoring documents from practitioners and firms that do not timely supply them to the Board. In addition to the time and expense of making sure that the documents are received by staff and distributed to the review teams, late filings also require a lot of workload juggling by staff to make sure that review teams get equitable workloads. However, because compliance, not revenue, is the Board's goal, the Board will adopt a two-tier late fee for untimely submission of the documents.

4. After fully considering the comments, the Board has amended ARM 8.54.415, 8.54.802, 8.54.803 and 8.54.804 exactly as proposed.

5. After fully considering the comments, the Board has amended ARM 8.54.410 as proposed, but with the following changes, stricken material interlined, new material underlined:

8.54.410 FEE SCHEDULE (1) through (k) remain as proposed.

(l) Late fee for failure to timely file profession monitoring program reports ~~500~~

(i) less than 31 days late 100

(ii) more than 30 days late 500

(2) remains as proposed.

AUTH: 37-50-203, 37-50-204, 37-50-323, MCA
IMP: 37-1-134, 37-50-204, 37-50-308, 37-50-314, 37-50-317, 37-50-323, MCA

6. After consideration of the comments, the Board adopts New Rules I through IV as follows:

NEW RULE I (24.201.531) SPECIAL PRACTICE PERMIT

NEW RULE II (24.201.2112) COMPLIANCE WITH CONTINUING EDUCATION FOR NONRESIDENTS

NEW RULE III (24.201.1111) PROFESSION MONITORING OF HOLDERS OF A SPECIAL PRACTICE PERMIT

NEW RULE IV (24.201.412) FEE ABATEMENT

7. The Board repeals ARM 8.54.808 as proposed.

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, LPA, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternative Rule Reviewer

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

Certified to the Secretary of State December 12, 2005

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of NEW RULE I pertaining to medical assistants and NEW RULE II pertaining to fee abatement | ) ) ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On October 6, 2005, the Board of Medical Examiners published MAR Notice No. 24-156-62 regarding the public hearing on the proposed adoption of the above-stated rules relating to medical assistants and fee abatement at page 1882, 2005 Montana Administrative Register, issue number 19.

2. A public hearing on the notice of proposed adoption was held on November 17, 2005. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 25, 2005. All of the comments received were in reference to New Rule I. No comments were received on New Rule II.

3. The Board of Medical Examiners (Board) has adopted NEW RULE II (ARM 24.156.410) exactly as proposed.

4. The Board is postponing the adoption of NEW RULE I until the comments can be reviewed and responded to.

BOARD OF MEDICAL EXAMINERS
MICHAEL LAPAN, DPM, PRESIDENT

/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 December 12, 2005.

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF ADOPTION
NEW RULES I - VI pertaining to )
private alternative adolescent )
residential or outdoor programs )

To: All Concerned Persons

1. On October 6, 2005, the Board of Private Alternative Adolescent Residential or Outdoor Programs published MAR Notice No. 24-181-1 regarding the public hearing on the proposed adoption of the above-stated rules relating to private alternative adolescent residential or outdoor programs, at page 1886 of the 2005 Montana Administrative Register, issue no. 19.

2. A public hearing on the proposed adoption was held on October 26, 2005. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 3, 2005.

3. The Board of Private Alternative Adolescent Residential or Outdoor Programs has thoroughly considered all of the comments made. A summary of the comments received and the Board responses are as follows:

Comment 1: Three individuals testified orally and two of the three oral presenters also submitted written comments. Written testimony was received from one individual who did not testify. All testimony and comments were generally in favor of adoption of the proposed new rules.

Response 1: The Board acknowledges the comments.

Comment 2: Oral testimony by two individuals concerned the requirement in proposed NEW RULE IV(1)(e) for a "list of all individuals and/or entities, not included in (1)(d) who provide services directly to program participants." Both individuals felt that this all-inclusive requirement would be overly burdensome, beyond the legislature's intention and possibly in violation of constitutional rights to employment information privacy in Montana. Further, they argued that the requirement might dissuade some programs from registering and that it would, in fact, be impossible for a large program to fulfill accurately since staff turnover, etc., would require constant updating of the list. A written brief on the matter was submitted by one of the individuals in support of their arguments.

Response 2: The Board agrees to delete subsection (1)(e) from the rule as requested.

Comment 3: The same individuals also commented on proposed NEW RULE IV(1)(g)'s requirement that programs provide "a copy of all program policies and procedures, including but not limited to:...(v) complaints or grievances;" Both commentors ask the Board to delete the word "all" and "(v) complaints or grievances." The commentors cited the burdensome nature of providing the information and the need to streamline the registration and information-gathering process to conform with the legislature's intentions.

Response 3: The Board agrees to change NEW RULE IV(1)(g) to eliminate the word "all." The Board declines to delete subsection (1)(g)(v) on the grounds that the Board believes that a written complaint or grievance policy promotes procedural due process.

Comment 4: The third individual, who was in strong support of the proposed new rules, commented orally on the testimony presented by the first two commentors. He stated that the Board's use of the term "all" in proposed NEW RULE IV(1)(e) and (g) to be appropriate and necessary.

Response 4: The Board recognizes that with respect to NEW RULE IV(1)(e), the level of detail sought for non-therapeutic staff is unduly burdensome. With respect to NEW RULE IV(1)(g), the Board recognizes that policies not affecting participants (such as employee sick leave or vacation policies) are not likely to have a significant impact upon program participants.

Comment 5: In written comments, the same commentor urged the Board to list on its website the names of programs, program managers and the addresses of programs that are not yet registered in order to inform the public of the scope of the Board's expected reach.

Response 5: The Board believes it does not have statutory authority to list programs that are not registered.

Comment 6: The same individual also asked the Board to pluralize the term "restraint" in proposed NEW RULE IV(1)(g)(vi)(E) because "restraints" are mechanical devices about which the Board should be notified.

Response 6: The Board will make the change as requested.

Comment 7: One written comment was received that asked that the proposed rules include sanctions to be imposed against programs that fail to register.

Response 7: The Board believes it lacks the statutory authority to impose sanctions upon programs that do not register.

Comment 8: The written comment also asked that a public notice requirement in excess of that of statutory requirements be

adopted to ensure that programs know about the new rules.

Response 8: The Board and the Department intend to publicize these rules in ways designed to reach the relevant programs and program operators. Those efforts will go beyond the minimal requirements of rulemaking as provided by MAPA.

4. After consideration of the comments, the Board adopts NEW RULE I (ARM 24.181.404), NEW RULE II (ARM 24.181.301), NEW RULE III (ARM 24.181.401), NEW RULE V (ARM 24.181.505) and NEW RULE VI (ARM 24.181.502) exactly as proposed.

5. After consideration of the comments, the Board has adopted NEW RULE IV (ARM 24.181.501), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE IV (ARM 24.181.501) APPLICATION FOR REGISTRATION

(1) through (1)(d) remain as proposed.

~~(e) a list of all individuals and/or entities, not included in (1)(d), who provide services directly to program participants;~~

(f) remains as proposed but is renumbered (e).

~~(g)~~ (f) a copy of ~~all~~ program policies and procedures, including but not limited to:

(i) through (D) remain as proposed.

(E) use of seclusion and/or ~~restraint~~ restraints.

(2) through (7) remain as proposed.

AUTH: 37-1-131, 37-48-103, MCA
IMP: 37-1-131, 37-48-103, MCA

BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS
PAUL CLARK, 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 December 12, 2005

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 32.24.501, 32.24.502, 32.24.504, 32.24.505, 32.24.507, and 32.24.525 pertaining to quota, utilization and marketing of Montana pooled raw milk | ) ) ) ) ) ) ) | NOTICE OF AMENDMENT |

To: All Concerned Persons

1. On November 10, 2005 the department of livestock published MAR Notice No. 32-5-174 regarding the proposed amendment of the above-stated rules at page 2161 of the 2005 Montana Administrative Register, Issue Number 21.

2. The department of livestock has amended ARM 32.24.501, 32.24.502, 32.24.504, 32.24.505, 32.24.507, and 32.24.525 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State December 12, 2005.

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

| | | |
|---|---|---|
| In the matter of the adoption of Rules I through XI, the amendment of ARM 37.104.101, 37.104.105, 37.104.106, 37.104.201, 37.104.203, 37.104.208, 37.104.212, 37.104.213, 37.104.218, 37.104.221, 37.104.306, 37.104.307, 37.104.311, 37.104.312, 37.104.316, 37.104.319, 37.104.329, 37.104.336, 37.104.401, 37.104.404, 37.104.616 and 37.104.805 and the repeal of ARM 37.104.219, 37.104.220, 37.104.317, 37.104.318, 37.104.327, 37.104.328, 37.104.402 and 37.104.403 pertaining to emergency medical services | ) | NOTICE OF ADOPTION, AMENDMENT AND REPEAL |

TO: All Interested Persons

1. On July 14, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-352 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules relating to emergency medical services, at page 1238 of the 2005 Montana Administrative Register, issue number 13.

2. The Department has adopted new rules I (37.104.204), II (37.104.109), III (37.104.111), IV (37.104.205), V (37.104.206), VI (37.104.114), VII (37.104.108), X (37.104.110), and XI (37.104.320) as proposed.

3. The Department has amended ARM 37.104.105, 37.104.106, 37.104.201, 37.104.208, 37.104.213, 37.104.218, 37.104.306, 37.104.307, 37.104.311, 37.104.312, 37.104.319, 37.104.329, 37.104.336, 37.104.401, 37.104.404, 37.104.616 and 37.104.805 and repealed ARM 37.104.219, 37.104.220, 37.104.317, 37.104.318, 37.104.327, 37.104.328, 37.104.402, and 37.104.403 as proposed.

4. The Department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE VIII [37.104.112] STANDARD OF CARE (1) All emergency medical personnel must provide care which conforms to the general standard of care ~~expected of persons who are~~

~~comparably trained, certified or licensed~~ promulgated by the board of medical examiners.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

RULE IX [37.104.330] EMT LEVEL OF CARE LIMITATIONS

(1) With the exception of a physician or the circumstances described in ARM 37.104.335(3), ~~no attempt may be made by~~ individual personnel ~~to~~ shall not provide a level of care higher than the level and type for which the emergency medical service is licensed~~, even though individual members of the emergency medical services may have a higher level of certification~~. The service must be licensed or authorized to operate at the highest level it plans to allow individuals to provide care.

~~(2) An EMT licensed or endorsed beyond the EMT B level may perform acts allowed under the EMT's licensure level or endorsement level only when authorized under the service license.~~

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

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

37.104.101 DEFINITIONS The following definitions apply in subchapters 1 through 4.

(1) through (5) remain as proposed.

~~(6) "Authorization" means department approval of an ambulance service or nontransporting medical unit (NTU) to provide advanced life support on a less than 24 hours per day, seven day per week basis due to limited personnel.~~

(6) "Authorization" means the authorization for an ambulance service or nontransporting medical unit to provide limited advanced life support as provided in ARM 37.104.109.

(7) through (11) remain as proposed.

~~(12) "Defibrillator with dual channel recording capabilities" means a device, approved by the department, capable of continuously recording the electrocardiogram and simultaneously recording the events at the scene, and shall be portable, self contained, DC powered, and capable of defibrillation according to the defibrillation protocol, either manually, semi automatically or automatically.~~

(13) through (21) remain as proposed but are renumbered (12) through (20).

~~(22) "First responder ambulance" means an individual licensed by the board as an EMT F with an ambulance endorsement as listed in ARM 24.156.2751.~~

(23) through (37) remain as proposed but are renumbered (22) through (36).

AUTH: Sec. 50-6-323, MCA
IMP: Sec. 50-6-323, MCA

37.104.203 EQUIPMENT (1) remains as proposed.

(2) When ~~table I in (6) shows that~~ a transportation equipment kit or safety and extrication kit is required, it must be physically in each ground ambulance at all times and available to each air ambulance on every call.

(3) remains as proposed.

~~(4) Table I in (6) shows the equipment kit which is required for licensure at each of the various types and levels of emergency medical services.~~

~~(5) For the purpose of Table I in (6), the following terms apply:~~

~~(a) basic means basic equipment kit;~~

~~(b) transport means transportation equipment kit;~~

~~(c) safety means safety and extrication kit; and~~

~~(d) ALS means advanced life support kit.~~

~~(6) TABLE I~~
~~Equipment kit~~

| | ~~Basic~~ | ~~Trans-port~~ | ~~Safety~~ | ~~ALS~~ |
|---|---|---|---|---|
| ~~Nontransport basic~~ | ~~X~~ | | | |
| ~~Nontransport ALS~~ | ~~X~~ | | | ~~X~~ |
| ~~Ambulance basic~~ | ~~X~~ | ~~X~~ | ~~X~~ | |
| ~~Ambulance-ALS~~ | ~~X~~ | ~~X~~ | ~~X~~ | ~~X~~ |
| ~~Air (rotor)-basic~~ | ~~X~~ | ~~X~~ | ~~X~~ | |
| ~~Air (rotor) ALS~~ | ~~X~~ | ~~X~~ | ~~X~~ | ~~X~~ |
| ~~Air (fixed) basic~~ | ~~X~~ | ~~X~~ | | |
| ~~Air (fixed) ALS~~ | ~~X~~ | ~~X~~ | | ~~X~~ |

AUTH: Sec. 50-6-323, MCA
IMP: Sec. 50-6-323, MCA

37.104.212 RECORDS AND REPORTS (1) through (4) remain as proposed.

(5) ~~As~~ Immediately or as soon as possible upon arrival at a receiving facility, but no later than 48 hours after the end of the patient transport, an ambulance service must provide a copy of the trip report to the hospital that receives the patient.

AUTH: Sec. 50-6-323, MCA
IMP: Sec. 50-6-323, MCA

37.104.221 MEDICAL CONTROL: ADVANCED LIFE SUPPORT

(1) An advanced life support service must have either:

(a) a two-way communications system, approved by the department, between the advanced life support service personnel and a 24-hour physician—staffed emergency department~~.~~; or

~~(a)~~(b) a physician approved by the medical director.

(2) remains as proposed.

AUTH: Sec. 50-6-323, MCA
IMP: Sec. 50-6-323, MCA

37.104.316 PERSONNEL REQUIREMENTS: BASIC LIFE SUPPORT GROUND AMBULANCE SERVICE (1) A basic life support ground ambulance service must ensure that at least two of the following individuals are on board the ambulance when a patient is loaded or transported, with the proviso that having only two ~~first responders ambulance~~ EMT-Fs with ambulance endorsements on a call is not allowed:

(a) a grandfathered person certified in advanced first aid;

~~(b) first responder ambulance;~~

~~(c)~~(b) an EMT-basic equivalent; or

~~(d)~~(c) a physician.

(2) remains as proposed.

AUTH: Sec. 50-6-323, MCA
IMP: Sec. 50-6-323, MCA

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

COMMENT #1: Deletion of the definition of "grandfathered nurse" would require grandfathered nurses to attend supplemental training in order to continue to provide pre-hospital services. This requirement would be unreasonable for nurses who have already been providing these services for 15 or more years. The supplemental training requirement would prevent the affected nurses from providing care in communities that are facing a shortage of pre-hospital personnel.

The Department's statement of reasonable necessity for ARM 37.104.101(26) does not cite any evidence that indicates a need for the elimination of the grandfather clause relating to the 50 registered nurses. We are aware of no evidence that patient care has been compromised by a grandfathered nurse. There is no provision in the proposed rules that would allow a service medical director to approve a grandfathered registered nurse to continue to provide emergency field care without supplemental training based upon the director's determination of training equivalency. Proposed ARM 37.104.101 clearly requires those nurses to complete supplemental training without exception.

We recommend amendment of the "grandfathered nurse" definition

to a format similar to that in the "Grandfathered advanced first aid" definition, or clear alternative language for those nurses who are already competent in their "knowledge and skill objectives comparable to the level of EMT training. . . ."

RESPONSE: The Department disagrees and has deleted the grandfathered nurse definition. We have clarified ARM 37.104.101(34) so that the service medical director, under his or her broad authority and responsibility for the medical aspects of emergency medical services (EMS) may individualize training for each nurse so it "complements their existing experience and education and results in knowledge and skill objectives comparable to the level of EMT training corresponding to the level at which the service is licensed". The Department has already received written authorization from the service medical director for each nurse added to service rosters since 1992. Therefore, the deletion of the grandfathered nurse definition will only require current grandfathered nurses to be authorized by the service medical director in a like manner to other nurses.

The rule does not require that grandfathered nurses attend the whole Department of Transportation (DoT) approved EMT course. This gives them latitude to supplement their knowledge base appropriately. Since the service medical director has complete discretion over what this training will be, the smallest EMS service has the ability to continue using nurses to supplement their ambulance crew. It requires only that nurses get education to the level that the ambulance service is licensed. If it is a basic life support (BLS) service, the level most likely to use nurses, there is no built-in barrier to service. Additionally, this will more clearly bring grandfathered nurses under the medical director's umbrella of responsibility. The Department intends that a service medical director will authorize qualified experienced nurses without any further training.

COMMENT #2: Content of the supplemental training course. What is the content of the supplemental training course? How will training be provided? By whom and where will it be conducted? What if a nurse already has the education and skills required to perform the job?

RESPONSE: The content, method, instructor, and location of supplemental training will be determined by the service medical director. The extent of the training, if any, will be determined individually based on the level at which the ambulance service is licensed and the nurse's training and experience. For more detail, please see the response to Comment #1.

COMMENT #3: The requirement of additional training for nurses conflicts with Board of Nursing jurisdiction.

RESPONSE: The Department respectfully disagrees. Section 50-6-323, MCA, Powers and Duties of Department, requires the Department to prescribe and enforce rules for EMSs. Rules of the Department may include minimum licensing standards for each type and level of service, "including requirements for personnel" and other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of EMSs. The Department believes it is necessary to establish training standards for EMS personnel. The supplemental training requirements for grandfathered nurses are no different from those of other EMS personnel providing pre-hospital services.

COMMENT #4: Why are grandfathered nurses different from "Grandfathered advanced first aid"? The grandfather clause relating to American Red Cross certified providers was preserved and carried forward without explanation for the disparate treatment.

RESPONSE: The Department's intent in deleting the grandfathered nurse definition is to bring grandfathered nurses under the oversight of the service medical director, a condition already met by the "grandfathered first aid" level of care providers (GFAs). The Department does not expect elimination of the grandfathered nurse category to present any hardship to services. Conversely, elimination of GFAs would require that they attend an EMT course and be licensed as EMTs. The Department encourages all GFAs to do this voluntarily so that the GFA definition can also be eliminated in a future revision.

COMMENT #5: Forty-eight hours to provide a trip report to the receiving hospital is far too long. The proposed amendment to ARM 37.104.212 could severely hamper the receiving facility's and personnel's ability to have the appropriate information needed to stabilize and transport the patient to a higher level of care, if necessary. Since the majority of Montana hospitals are rural, and they all transport major trauma cases, it is crucial for them to have accurate and timely information about what services were provided, and when, so that they may deliver accurate and timely treatment. A delay of nearly 48 hours could potentially jeopardize patient safety.

We understand the difficulty of back-to-back calls, but paperwork is often the infrastructure of safe patient care. We recommend deleting the proposed new language.

RESPONSE: The Department agrees that patient reports are essential to continuity of care and should be provided to the receiving hospital before the EMS personnel leave the receiving facility. In order to accommodate situations in which services may have multiple calls, current rules only require trip reports to be completed "as soon as practicable". This has been interpreted very broadly at times and is unenforceable. While 48 hours is not ideal, rules are designed to set a minimum

standard and this change reflects a minimum standard that is at least enforceable. Therefore, the Department has further strengthened this concept in the final rules.

The Department will be deploying a new web-based electronic data collection system in the fall of 2005. We plan to then use educational and quality improvement as the means to enable services to meet a higher standard. This entire rule on records and reports will be further revised as needed in the future.

COMMENT #6: A service medical director is authorized under ARM 37.104.221(1) to approve physicians as online medical control. If so, the service medical director would be reviewing the qualifications of a medical doctor, a process that implies a judgment relating to the qualifications and appropriateness of the physician. Where the service medical director is a physican assistant (PA), such approval process is counter intuitive.

RESPONSE: While ARM 37.104.218(3) does provide that a service medical director can be a PA who can approve physicians as online medical control, the decision is subject to the approval and oversight of the PA's supervising physician (ARM 24.156.116).

COMMENT #7: The proposed inclusion of "physician assistant" in ARM 37.104.218, "Medical Control: Service Medical Director" is unnecessary because PA orders are as if they come from the physician.

RESPONSE: The proposed definition follows the definition of a service medical director under the BOME rule. It specifically lists both the physician and PA. The Department has listed both as allowable service medical directors in order to prevent any confusion by licensed services.

COMMENT #8: We question the legality of allowing an EMT to perform advanced life support (ALS) within a service that is only licensed to the basic life support (BLS) level, but is authorized to provide limited ALS.

RESPONSE: The Department currently licenses all services that provide ALS (part-time and full-time) at the ALS level. Services that cannot provide ALS level care 24/7 are still held to ALS licensing standards even if the limitation on ALS care was due to the limited availability of ALS EMTs locally. Limited ALS and a full-time ALS license would blur the standard by which a service will be judged if there is a complaint.

The Department finds that licensing a limited ALS service at a (BLS) level, but authorizing ALS when sufficient personnel are available is a better policy. A BLS service with ALS authorization will be first judged on whether they provided BLS standard care. Then, if the complaint is about ALS care, the EMT that provided that care will be judged as to whether he

provided standard ALS care. The whole service is not at risk this way and it is much clearer to us, the service, and the public what level of care the service is able to provide. The process of licensing a service at a BLS level, but authorizing them to provide limited ALS mirrors the licensing process of the Board of Medical Examiners.

COMMENT #9: The process by which a basic life support service is "authorized" to operate beyond the scope of its department-issued license and to operate instead under the licenses of individual EMTs issued by the Board of Medical Examiners (BOME) is not contained in substantive rules but rather, is identified only in the nonsubstantive definition of the term "authorization" in ARM 37.104.101. The jurisdictional and other problems created by that process might be avoided by having a limited advanced life support level of EMS licensure. Attempting to piggyback an emergency medical service's level of authorized service onto the individual EMT's licensure and endorsement is of questionable legality and muddies the jurisdictional waters.

RESPONSE: The Department agrees, in part, and has moved the substantive provision to a rule, Rule II (ARM 37.104.109). The process of licensing a service at a BLS level, but authorizing them to provide limited ALS mirrors the licensing process of the Board of Medical Examiners. Under BOME rules, an EMT is licensed at a basic life support level, but receives endorsements to provide limited ALS. For further information, please see the response to Comment #7.

COMMENT #10: All levels of endorsements above the basic EMT level should be advanced life support and the proposed exception for the EMT-B 2 endorsement should be deleted.

RESPONSE: The Department agrees and has changed the rule accordingly.

COMMENT #11: The definition of "standard of care" should require emergency medical personnel to provide care that conforms to the general standards of care promulgated by the BOME.

RESPONSE: The Department agrees and has changed the rule accordingly. Additionally, the adoption of this definition reinforces the need to delete the definition "grandfathered nurse" to bring grandfathered nurses under the explicit oversight of service medical directors.

COMMENT #12: EMT level of care limitations. We recommend alternate language for Rule IX (ARM 37.104.330):

> "(1) With the exception of a physician or the circumstances described in ARM 37.104.335(3), individual personnel shall not provide care higher

than the level and type for which the EMS is licensed. The service must be authorized to operate at the highest level they plan to allow individuals to provide care."

RESPONSE: The Department agrees and has changed the rule accordingly.

COMMENT #13: The definition for a defibrillator in ARM 37.104.101 should be eliminated. The unit described does not exist and the definition limits the type of defibrillator that may be used.

RESPONSE: The Department agrees and has changed the rule accordingly.

COMMENT #14: The term "first-responder-ambulance" should be eliminated and replaced with "first-responder with an ambulance endorsement".

RESPONSE: The Department agrees and has changed the rule accordingly. The change furthers the Department's goal of making these rules consistent with BOME rules.

COMMENT #15: The term "physician assistant-certified" is no longer used and should be "physician assistant".

RESPONSE: The Department agrees and has changed the rule accordingly.

COMMENT #16: It should be made very clear in ARM 37.104.316 that the ultimate authorization for EMS function should be a physician.

RESPONSE: The purpose of this rule is to set a minimum standard for the personnel on a BLS ambulance. A service medical director's powers and duties are already clearly defined in ARM 37.104.101. Furthermore, the Department's definition of "online medical control" refers to the applicable BOME rule. The Department believes no further clarification is needed.

COMMENT #17: Equipment kits for each endorsement level of care should be defined within ARM 37.104.101(3) as "Advanced life support kit".

RESPONSE: The Department disagrees. This would not be an acceptable or easily enforceable provision. Under current rules, there are only two levels of advanced level EMT certification (EMT-I and EMT-P). Under the proposed rules, 14 additional endorsement levels of care were added above EMT-basic. While it acknowledges that minimum supplies and equipment for each of these levels could be defined, the Department would rather continue to allow a service medical director to apply for an exception to any of the minimum

requirements. Consequently, there could be as many variations in equipment and supplies as there are services and there would be no recognized minimum standard. The tracking and enforcement of these various levels would be problematic for the Department and would do nothing to improve the safety or care of patients.

COMMENT #18: Online physician control. We recommend the following alternative language for ARM 37.104.221:

37.104.221 MEDICAL CONTROL: ADVANCED LIFE SUPPORT

An advanced life support service must have either:

(a) a two-way communications system, approved by the department, between the advanced life support service personnel and a 24-hour physician-staffed emergency department; or

(b) a physician approved by the medical director.

RESPONSE: The Department agrees and has changed the rule accordingly. No change in the substantive content of the proposed rule is intended.

COMMENT #19: We support the proposed change to ARM 37.104.316(1) pertaining to the BLS ground ambulance service personnel roster. Must the two on board medical personnel necessarily be on the transport services' roster?

RESPONSE: The proposed change provides that it is allowable for a service to respond to a scene with only one of two required personnel on board. This allows for some flexibility under special circumstances, for example, when the second provider responds directly to the scene because it is closer or quicker than responding to the ambulance directly. This amendment does not change the current requirement that the two required providers, who must be on the service roster, be on board the ambulance when a patient is loaded or transported.

COMMENT #20: Would the ALS medical control rules apply when an authorized BLS service is supplying a higher level of care as provided in ARM 37.104.316(2) pertaining to BLS ground ambulance service personnel?

RESPONSE: This rule compliments other provisions of these rules which allow a BLS licensed service to provide limited ALS care through an authorization from the Department. As such, all services providing ALS care must have a service medical director.

COMMENT #21: We are concerned about the potential confusion that a BLS licensed service with an authorization for ALS may present to billing entities.

RESPONSE: In order to avoid any problems or issues, the

Department met with representatives of Medicare and Medicaid several months ago to explain the concept of endorsement levels of care. Neither agency anticipated any billing issues as a result of the new levels. Also, the Department has been issuing waivers to allow services to provide and bill for these endorsement levels for several months now. The Department is not aware of any related billing complaints or issues.

COMMENT #22: We are concerned about the similarity between a BLS service that occasionally provides advanced care and an ALS licensed service that provides advanced care 24 hours a day, seven days a week (24/7). It is very important the public understands there are two types of services available, that they render two types of care and that expectations should be different for each of them.

RESPONSE: The Department believes that, with the advertising restrictions in Rule II (ARM 37.104.109), the public will be protected from misleading claims. It should be noted that the BOME rules designate all skills above BLS as ALS. The emphasis of this rule revision is the adoption of the endorsement levels of care. For further information, please refer to the response to Comment #7. The Department acknowledges that this issue may merit further review. A rule revision process will begin as soon as this set of rule revisions is adopted. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #23: We are concerned that the advertising restrictions in Rule II (ARM 37.104.109) would allow BLS services with an authorization to provide limited ALS or an endorsement level of care to misrepresent their capabilities to the public.

RESPONSE: The Department believes Rule II (ARM 37.104.109) adequately addresses this concern. Additionally, the service plan required under that rule will clarify to the Department, the public, and others what level of care the service is capable of providing.

COMMENT #24: Rule VII(1)(b) (ARM 37.104.108) should be revised to more clearly state how EMS services may or may not advertise their level of licensure.

RESPONSE: The Department disagrees. The language of Rule VII (ARM 37.104.108) is intended to allow a service to advertise only at a level for which it is licensed. Currently, any service that provides any level of advanced life support, full-time or part-time, is licensed at an ALS level and can advertise that it provides ALS. Under these rules, only services that can provide ALS services 24/7 will be licensed as ALS and allowed to advertise as ALS services. The Department acknowledges there are still matters to be discussed and worked out. Therefore, the Department will present the comment to the EMS System Task Force and the EMS community in the next revision.

COMMENT #25: Rule II(2) (ARM 37.104.109) should be revised to require EMS services providing limited ALS services or endorsements to have an agreement with a licensed ambulance service of equal or higher level of care that provides transportation and patient care 24/7.

RESPONSE: The Department disagrees. While this may increase the level of patient care in and around the major cities of Montana, it would encumber limited ALS care in rural areas that are not reasonably close to any of the 24/7 services. The coordination of ambulance services is beyond the scope of this rule revision. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #26: The Department needs to define what should be contained in a service plan and what constitutes approval of a plan described in Rule II(2) (ARM 37.104.109) to allow a BLS service with endorsements to provide advanced care less than 24/7. Also, a recommendation was made to require all EMS services providing limited ALS services or endorsements to have an agreement in place with a licensed ambulance which provides ALS 24/7.

RESPONSE: Under ARM 37.104.106, services are required to apply for a license on forms specified by the Department. The service plan will be an additional form on the service license application. According to the form, the service will be asked to provide information about what endorsements will be available, where they will be available, and how often they anticipate the services to be available. Since the service medical director is ultimately responsible for the oversight of endorsement compliance, the Department does not anticipate that there will be a reason to deny the license as long as the service plan is complete. Complaints about endorsement care are under BOME jurisdiction. The Department will become involved when the service as a whole is not complying with the service plan and patient care is compromised.

COMMENT #27: The current structure of rules should be changed to provide for commercial and noncommercial licenses. We recommend that commercial licenses be granted only to those services that provide ALS 24/7, 52 weeks a year and that all noncommercial services would have to have an agreement with a commercial service in order to provide services.

RESPONSE: Such a revision would require a comprehensive restructuring of the entire EMS subchapter. It would further delay the adoption of rules for endorsement levels of care that are already ongoing. The Department acknowledges that the licensing structure may merit further review. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision. For a more detailed discussion

of agreements between services please see the response to Comment #23.

COMMENT #28: We recommend that Rule III (37.104.111) be expanded to require any agency or organization that provides medical care to license as an EMS service.

RESPONSE: The Department disagrees. Implementing this suggestion would unnecessarily expand licensing requirements, adding expense and delay to the licensing process. It would affect hundreds of fire departments, law enforcement agencies and other organizations. Such a revision would require a comprehensive revision of the licensing rules. It would delay the adoption of rules for endorsement levels of care under EMS service licenses. The Department acknowledges that this issue may merit further review. The Department will present it to the EMS System Task Force and the EMS community in the next revision.

COMMENT #29: We recommend that level of care be solely a responsibility of the service medical director. There should be no relationship between level of care and the service license. Additionally, authorized levels of care should be dependent on the ability to deliver endorsements "consistently" rather than "occasionally".

RESPONSE: The Department disagrees. Section 50-6-306, MCA provides that a person may not operate an emergency medical service without first obtaining a license from the Department. A separate license is required for each type and level of service. Under 50-6-301, MCA it is the Department's responsibility to establish minimum uniform standards for the operation of emergency medical services. The control, inspection, and regulation of persons providing emergency medical services is necessary to prevent or eliminate improper care that may endanger the health of the public. It would not be appropriate for the Department to delegate that responsibility to service medical directors.

COMMENT #30: No organization should be able to hold an ALS license unless it offers the services 24/7 and has paramedics employed to provide ALS services consistently. Services that offer ALS skills occasionally should not be considered or licensed as ALS. As an organization that maintains 24/7 coverage, we need some sort of assistance to maintain this level of services. They come at great cost to our organization.

The distinction of a paramedic service is lost under the definition of a "Advanced Life Support Service". It portrays EMT-B and EMT-I services with endorsements as the equivalent of a paramedic service. Although the endorsement program has greatly improved basic care, it still falls far short of ALS. We recommend that levels of care be described as Basic Care, Advanced Basic Care, Advanced Care, and Advanced Life Support.

RESPONSE: The Department declines to designate four levels of care in this rule revision. However, it acknowledges the concern of ALS services that have made a considerable commitment to providing consistent paramedic care to their communities. Alternate terms may help clarify levels of care to the Department, the services and the public, but such a revision would require a comprehensive revision of the licensing rules. The time necessary to do so would delay the adoption of endorsement levels of care under EMS service licensure. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #31: We oppose the deletion of the requirement that all licensed ambulance vehicles have a sticker under ARM 37.104.101(27) "Permit". It is important that law enforcement officers be able to visually determine that a vehicle is a bona fide ambulance.

RESPONSE: The Department agrees there are compelling reasons to retain the requirement for a sticker and to implement a program to provide visible permits for ambulances. Therefore, the Department has retained the existing language of this definition.

COMMENT #32: "Grandfathered advanced first aid" is not a recognized level of care. Therefore, it is not a level of care that can be governed by the Department or the BOME.

RESPONSE: The Department agrees that grandfathered advanced first aid certification should be raised to an EMT level. However, such a revision would require a broad discussion with the BOME and is beyond the scope of these rule changes. It would delay the adoption of endorsement levels of care under EMS service licensure. Therefore, the Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #33: We oppose the requirement that a service plan be submitted for a "commercially" licensed organization.

RESPONSE: These rules only require a service plan to be submitted by a BLS service applying for authorization to provide ALS on a less than 24/7 basis. There is no requirement for a service that provides advanced life support on a 24/7 basis to submit a service plan.

COMMENT #34: The Equipment kit table, Table I under ARM 37.10.203, should be deleted because it is confusing and unnecessary.

RESPONSE: The Department agrees and has changed the rule accordingly. Elimination of several of the kits referred to in the table was proposed in these rules and the Department has

eliminated the table to make the rule simpler and easier to understand. The Department has deleted references to Table I in these rules.

COMMENT #35: We recommend that ARM 37.104.208, "Sanitation" should be limited to a general reference to an OSHA required exposure plan.

RESPONSE: The Department disagrees, at least for purposes of this rule revision. The Department acknowledges that these rules require minimal guidelines that may or may not be specifically addressed in OSHA regulations. Further discussions to adequately address this issue would delay the adoption of endorsement levels of care under EMS service licensure. Therefore, the Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #36: ARM 37.104.213(1)(a) requiring current certificates and other evidence of legal authorization should only refer to "licensed EMTs".

RESPONSE: This subsection also covers nurses functioning on an EMS service. Therefore, the Department disagrees. Narrowing the subsection to licensed EMTs is not in the best interest of patients.

COMMENT #37: We recommend that the language of ARM 37.104.213, "Personnel requirements" be amended to read: "the person certified at the corresponding level must attend the patient when the patient's condition and treatment warrants it". As proposed, the rule limits the ability of lower level providers to obtain critical patient contact and on-the-job training to expand their education and experience.

RESPONSE: The Department believes the suggested language is unnecessary. The applicable rule language states: ". . . when providing care at an advanced life support level, the person certified at the corresponding level must attend the patient". These rules are not intended to limit patient contact by lower level providers.

COMMENT #38: ARM 37.104.306 should specify a minimum size for the required "ambulance" emblems on a ground ambulance or the definition is meaningless and should be deleted.

RESPONSE: The Department disagrees. No minimum size has ever been specified in the rules for "ambulance" emblems. Yet the Department is not aware of any service that has ignored the intent of this rule by minimizing these emblems because they help to assure the safety of the crews, the patients, and the public. There is no need to further complicate the rule.

COMMENT #39: ARM 37.104.306, "Ambulance Specifications: Ground Ambulances" should require all ambulances to undergo an annual

safety inspection.

RESPONSE: The emphasis of this rule revision is the adoption of the endorsement levels of care. The Department acknowledges that ambulance safety inspections may merit further review. It will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #40: There should be increased emphasis on regulation of aero-medical systems.

RESPONSE: As explained in the response to Comment #21, the emphasis of this rule revision is the adoption of the endorsement levels of care. The Department acknowledges that regulation of aeromedical systems may merit further review. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #41: The term "advanced life support EMT" should be changed in ARM 37.104.329 to "advanced life support paramedic". Only these advanced life support paramedics are qualified to provide air ambulance advanced life support.

RESPONSE: The Department disagrees. The discussion of whether these rules should require only advanced life support paramedics in air ambulances would delay the adoption of endorsement levels of care. The Department acknowledges that this may merit further review in a future rule revision process and will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #42: The Department should regulate air ambulance service response to 9-1-1 emergency calls.

RESPONSE: The Department disagrees, at least for purposes of this revision. While the regulation of air ambulance response to 9-1-1 calls in a tiered response system may merit further review, such a discussion would delay the adoption of endorsement levels of care. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #43: The Department should adopt different minimum staffing patterns for volunteer and full-time services. Higher standards are appropriate for full-time services. Labeling the types of services differently would enable the public to more clearly understand the level of care that each service provides.

RESPONSE: The Department disagrees. The Department acknowledges that further discussion of staffing patterns and requirements for volunteer and full-time services may be merited. However, such a discussion would delay the adoption of endorsement levels of care. The Department will present this issue to the EMS System Task Force and the EMS community in the

next revision.

COMMENT #44: The rules should take into account the different natures of commercial, noncommercial and nonemergency types of services.

RESPONSE: The Department disagrees. There may be merit to further rule revisions to accommodate other types of service licenses. Such a discussion would delay the adoption of endorsement levels of care. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #45: The rules should be revised to accommodate additional license requirements for sanitation and OSHA safety standards. The Department should adopt the national accreditation standards.

RESPONSE: The Department disagrees. There may be merit in further discussions about additional service regulation and accreditation. Such a discussion would delay the adoption of endorsement levels of care. The Department will present this issue to the EMS System Task Force and the EMS community in the next revision.

COMMENT #46: The Department should adopt rules to address the inspection process. Regular service inspections should be conducted.

RESPONSE: The Department currently inspects all new services and all new ambulances. Also, the Department currently conducts regular, random inspections of all services upon renewal. The Department agrees that regular service inspections have merit. It intends to revise the inspection process to a quality improvement-based method that will better assure that patient care is optimal.

COMMENT #47: Ambulance equipment: splints. The definition for rigid splints under Rule V(1)(g) and (h) (ARM 37.104.206) should be expanded to allow air and vacuum splints as well.

RESPONSE: The Department disagrees. The Department intends the term "rigid splints" to include any material or device which effectively splints a fractured extremity. Air and vacuum splints would fit the definition. Therefore, they need not be specifically listed.

COMMENT #48: Several of the proposed rules and amendments are contrary to the rules and requirements of the National Registry of Emergency Medical Technicians (NREMT). Since Montana is a nationally registered state, it must follow those requirements.

RESPONSE: The Department disagrees that these rules conflict with NREMT standards. The purpose of these rule revisions is to

harmonize emergency service licensing requirements with BOME rules.

COMMENT #49: The proposed rules equate BLS with EMT-Intermediate care. They are not the same thing.

RESPONSE: The Department agrees that BLS as contemplated in these rules is not equivalent to EMT-Intermediate care in BOME rules. These rules designate all endorsement levels of care above BLS, including EMT-Intermediate, as Advanced Life Support. For further discussion, please see the response to Comment #8.

| | |
|---|---|
| Dawn Sliva | Joan Miles |
| Rule Reviewer | Director, Public Health and Human Services |

Certified to the Secretary of State December 12, 2005.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 1.2.102, 1.2.202, 1.2.204, 1.2.205, 1.2.206, 1.2.210, 1.2.211, 1.2.212, 1.2.214, 1.2.216, 1.2.217, 1.2.218, 1.2.219, 1.2.401, 1.2.402, 1.2.404, 1.2.411, 1.2.422, 1.2.423, and 1.2.519, the amendment and transfer of ARM 1.2.321, 1.2.322, 1.2.412, and 1.2.421, the adoption of New Rules I through III, and the repeal of ARM 1.2.301 regarding the Administrative Rules of Montana, Montana Administrative Register, rule formatting, incorporation by reference, fees | ) | NOTICE OF AMENDMENT, TRANSFER, ADOPTION, AND REPEAL |

TO: All Concerned Persons

1. On November 10, 2005, the Secretary of State published MAR Notice No. 44-2-131 regarding the public hearing on the proposed amendment, transfer, adoption, and repeal of the above-stated rules at page 2211 of the 2005 Montana Administrative Register, issue number 21.

2. The Secretary of State has amended ARM 1.2.102, 1.2.210, 1.2.211, 1.2.212, 1.2.214, 1.2.216, 1.2.218, 1.2.219, 1.2.402, 1.2.411, 1.2.422, and 1.2.423; amended and transferred ARM 1.2.412 (1.2.229) and 1.2.421 (1.2.104); adopted New Rules I (1.2.105), II (1.2.207), and III (1.2.220); and repealed ARM 1.2.301 exactly as proposed.

3. The Secretary of State has amended the following rules as proposed but with the following changes, stricken matter interlined, new matter underlined:

1.2.202 ARRANGEMENT OF THE ADMINISTRATIVE RULES OF MONTANA (1) and (2) remain as proposed.

(a) Reserved chapter numbers are indicated in the title's chapter table of contents. An unnumbered page is placed in the ARM indicating where a reserved chapter falls.

(b) and (c) remain as proposed.

(4) through (7) remain as proposed, but are renumbered (3) through (6).

1.2.204 ARRANGEMENT OF TITLE CONTENT (1) and (1)(a) remain as proposed.

(b) ~~followed by~~ a chapter table of contents of all chapters found in Title 1 through Title 44; and

(c) through (2)(f) remain as proposed.

(g) ~~following the repealed rules table,~~ an old-to-new numbering table following the repealed rule table indicating the old rule numbers in ascending order assigned before recodification in 1980 and the new three-part rule number assigned as a result of recodification; and

(h) remains as proposed.

1.2.205 RULE TYPES AND LOCATIONS (1) There are two ways to categorize rules~~:~~, by subject matter and by duration.

(2) through (3)(b)(ii) remain as proposed.

(iii) to automatically expire 120 days after their effective date;

(iv) remains as proposed.

(v) ~~may~~ able to be adopted with limited or no prior public notice.

(c) through (3)(c)(ii) remain as proposed.

1.2.206 ARM PAGE UPDATES (1) Changes to the rules may include amendments to existing rules, the addition of new rules, transfer of existing rules, or repeal of rules. When changes are made to the rules, the affected pages of the ARM are replaced quarterly to include the changes. These new pages are referred to as replacement pages. ~~All replacement pages show the quarterly publication date in the footer~~ The footer date included on all replacement pages indicates the last day of the quarter for which that page has been printed.

(a) through (e) remain as proposed.

(2) If there is a discrepancy between the rule text in the ARM and the text in the Register proposal ~~and~~ or adoption notices, the text of the Register notices prevails as the correct text.

1.2.217 RULE HISTORY NOTES (1) through (1)(c)(iv) remain as proposed.

(v) EMERG denotes emergency action; ~~and~~

(A) Register information and the effective date are not given for emergency actions; and

(vi) through (3) remain as proposed.

1.2.401 PROCEDURES FOR FILING PROPOSED RULE CHANGES

(1) and (2) remain as proposed.

(4) and (5) remain as proposed, but are renumbered (3) and (4).

1.2.404 ADMINISTRATIVE ORDER (1) When the notice of proposed action results in the adoption, amendment, transfer, or repeal of a rule, the action must be certified and transmitted to the secretary of state for filing and publication. An administrative order must be filed with each adoption notice. This certifies and confirms the agency's action. Replacement pages do not need an administrative order.

(2) and (3) remain as proposed.

1.2.519 BASIC FORMAT REQUIREMENTS (1) through (1)(g) remain as proposed.

(h) For capitalization, hyphenation, punctuation, and grammar requirements, refer to the Gregg Reference Manual~~, tenth edition, which is incorporated by reference~~. The Secretary of State adopts and incorporates by reference t~~T~~he Gregg Reference Manual, tenth edition, which sets forth rules of style, grammar, usage, and formatting. A copy of the manual may be obtained ~~is available~~ from McGraw-Hill/Irwin, 1221 Avenue of the Americas, New York, NY, 10020;

(i) through (1)(m)(i) remain as proposed.

Sample forms 1 through 11 are repealed as proposed.

4. The Secretary of State has amended and transferred the following rules as proposed but with the following changes, stricken matter interlined, new matter underlined:

1.2.321 (1.2.225) OLD-TO-NEW NUMBERING TABLE (1) remains as proposed.

1.2.322 (1.2.226) NEW-TO-OLD NUMBERING TABLE (1) remains as proposed.

5. A public hearing was held on December 1, 2005 to consider the proposed amendment, transfer, adoption, and repeal. Oral and written testimony is summarized as follows with the response of the Secretary of State:

COMMENT 1: Two comments were received to allow for double earmarking. It is a useful drafting tool and is used by Congress, federal agencies in the Code of Federal Regulations and the Montana Legislature. The prohibition on double earmarking would create several difficulties that are unnecessary, such as the creation of ambiguity in citation and cross-referencing, and could create delays in the approval of agency rules by a federal agency.

RESPONSE 1: The Office disagrees. The proposed text places in rule what is current practice and will provide consistency in the format of the Administrative Rules of Montana by ensuring all agencies follow the same format requirements. The Secretary of State's Office existing format and style policy has been developed with the general public in mind to ensure ease of use and readability of the rules for those individuals and organizations directly impacted.

COMMENT 2: One commenter asked if each reserved chapter page will now have a page number.

RESPONSE 2: The proposed rule does not intend to imply that each reserved chapter page will have a page number. The proposed text in ARM 1.2.202(2)(a) has been amended to provide this clarification.

COMMENT 3: One commenter noted missing subsections in ARM 1.2.202 and 1.2.401.

RESPONSE 3: The Office agrees and has amended ARM 1.2.202 and 1.2.401 accordingly.

COMMENT 4: One commenter asked if ARM 1.2.202(4)(a)(i) should be earmarked (c) instead of (i).

RESPONSE 4: The Office has reviewed the proposed rule and it is correctly earmarked. Subsection (i) will go with (a).

COMMENT 5: One commenter questioned when proposed format changes to ARM replacement pages are to occur.

RESPONSE 5: The proposed format changes will be effective with the first quarter ARM replacement pages in 2006, due March 31, 2006.

COMMENT 6: One commenter noted in ARM 1.2.321 and 1.2.322 that hyphens should be added to the catchphrase to make it consistent with the text.

RESPONSE 6: The Office agrees and has amended ARM 1.2.321 and 1.2.322 accordingly.

COMMENT 7: One commenter questioned when proposed basic format changes will be effective for rule documents submitted for publication in the Register and ARM pages.

RESPONSE 7: The proposed basic format changes will be effective for all rule documents submitted for publication beginning with the first issue of the Register in 2006. For ARM replacement pages, the intent is to apply the basic format changes as pages are replaced and then to all pages within the applicable subchapter. The changes will be effective for the first quarter ARM replacement pages in 2006, due March 31, 2006. Agencies will apply the format changes to the subchapter in which the adopted rule falls, thus submitting whole subchapters as replacement pages.

COMMENT 8: One commenter inquired about rule text asking if "quarters" should be changed to "issues" of the Register, and if the correct reference was "repealed rule" or the "repealed rules" table?

RESPONSE 8: The text in ARM 1.2.102(3) is correct with "quarters", and the correct reference to the table in ARM 1.2.204(2)(f) and (g) is "repealed rule" table. The rule has been amended accordingly.

COMMENT 9: One commenter inquired if it is permissible to include text following a colon without earmarking and when earmarking is necessary.

RESPONSE 9: The comments do not pertain to ARM 1.2.205(1) content, but are directed at the format of the rule. The Office has amended the rule to follow format requirements.

COMMENT 10: One comment noted that in ARM 1.2.206(1) the usage of "publication date" did not seem to follow the same line of thinking as the usage of "publication date" in MAR Notice No. 44-1-103 published in Issue 19 where the publication date is the date the Register comes out. Perhaps it could use language such as "The footer date included on all replacement pages indicates the last day of the quarter for which that page has been printed." The same commenter questioned if "and" should be changed to "or" to clarify the discrepancy doesn't need to appear in both the proposal and adoption notice.

RESPONSE 10: The Office agrees and has amended ARM 1.2.206(1) accordingly.

COMMENT 11: One commenter inquired if legislative agency reorganization rules will still not use an effective date and asked if all the rules' history note information must be included for emergency rules?

RESPONSE 11: The Legislative agency reorganization rules do have an effective date, but will still not have Register information. Emergency rules are not published in the ARM and therefore do not include all rule history information as described in the proposed rule. The Office has amended ARM 1.2.217 to provide this clarification.

COMMENT 12: One commenter inquired if the provision to require that an adjective or interpretive rule be stated as such in the Register would be a disservice to those who are regulated by the rule.

RESPONSE 12: The Office disagrees. The subsection removed remains a statutory requirement in 2-4-308, MCA.

COMMENT 13: One commenter asked if ARM 1.2.402 should include provisions for rules impacted by legislative reorganization. This could explain the format the Secretary of State wants these notices in, what information is to be included to update the ARM, etc.

RESPONSE 13: The Office disagrees. The rule relates only to replacement pages and not to the publication of notices. Procedures on how to draft rule notices are not covered in this rulemaking notice. The Office acknowledges such "how to" information can be a valuable tool for agencies and will include such information in the formatting guidelines manual currently being drafted.

COMMENT 14: One commenter asked if transfers should be included in ARM 1.2.404.

RESPONSE 14: The Office agrees and has amended ARM 1.2.404 accordingly.

COMMENT 15: One commenter noted proposed text did not follow style requirements in ARM 1.2.210.

RESPONSE 15: The Office agrees and has amended ARM 1.2.519(1)(h) accordingly.

COMMENT 16: One commenter inquired, once the Gregg Reference Manual is adopted by reference, if the removal or insertion of a hyphen to conform to the style guidelines of the Manual constitute an amendment.

RESPONSE 16: The Office considers the removal or insertion of a hyphen to conform to style guidelines as minor editing and an amendment is not needed.

COMMENT 17: One informational comment received confirmed the agencies would not be charged a filing fee for quarterly replacement pages submitted for publication in the ARM. The commenter noted the number of replacement pages will increase as agencies will submit whole subchapters versus only the pages changed by rule actions with the proposed process of making format changes.

RESPONSE 17: The Office confirms that agencies are charged a filing fee for each page to be published in the Register. The agencies are not charged a filing fee for each replacement page submitted for publication in the ARM.

6. These amendments, transfers, adoptions, and repeal are effective January 1, 2006. All Notices submitted for the 2006 Montana Administrative Register and replacement pages submitted for the 2006 Administrative Rules of Montana must adhere to these rules.

| | |
|---|---|
| /s/ Brad Johnson | /s/ H. Elwood English |
| BRAD JOHNSON | H. ELWOOD ENGLISH |
| Secretary of State | Rule Reviewer |

Dated this 12th day of December 2005.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 44.5.114 Corporations - Profit and Nonprofit Fees, and 44.5.115 Limited Liability Company Fees | ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On November 10, 2005, the Secretary of State published MAR Notice No. 44-2-132 regarding the public hearing on the proposed amendment of the above-stated rules at page 2238 of the 2005 Montana Administrative Register, issue number 21.

2. The Secretary of State has amended the rules exactly as proposed.

3. No comments or testimony were received.

/s/ Brad Johnson
BRAD JOHNSON
Secretary of State

/s/ H. Elwood English
H. Elwood English
Rule Reviewer

Dated this 12th day of December 2005.

VOLUME NO. 51 OPINION NO. 10

EMPLOYEES, PUBLIC - Hiring of local public defender employees into the new statewide public defender system;
STATUTORY CONSTRUCTION - Construing the meaning of the word "may";
MONTANA CODE ANNOTATED - Sections 1-1-101, 1-2-102, -106, 2-3-221;
MONTANA CONSTITUTION - Article II, section 9.

HELD: Section 69 of the Montana Public Defender Act (Senate Bill 146 of the 2005 Legislature) allows but does not require the Public Defender Commission and the Office of the Public Defender to hire all current city and county public defender employees. The bill allows the Commission and the Office the discretion to decide whom to retain for the new public defender system.

December 6, 2005

Mr. James Park Taylor, Chairman
Public Defender Commission
P.O. Box 278
Pablo, MT 59855-0278

Dear Mr. Taylor:

You have requested my opinion on the following question:

> Does Section 69 of the Montana Public Defender Act (Senate Bill 146 of the 2005 Legislature) require the Public Defender Commission and the Office of the Public Defender to hire all current city and county public defender employees on July 1, 2006 or does it allow the Commission and the Office of the Public Defender discretion to decide whom to hire for the new public defender system?

The answer to your question requires an analysis of Section 69 using the well-established rules that the Montana Legislature and Supreme Court have developed to resolve questions of statutory interpretation.

Section 69 provides, in pertinent part:

> Section 69. Transition - transfer of county and city employees to state employment - rights. (1) Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in

> [section 7]. Transferred employees become state employees on July 1, 2006.
>
> (2) All transferred employees become subject to the state classification plan on July 1, 2006, except those specifically exempted under [section 7(2) and (3)(a)].
>
> (3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.
>
> . . . .

Your question arises from subsection (1) which states: "Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in [Section 7]. Transferred employees become state employees on July 1, 2006." (Emphasis added.)

Our rules of statutory construction flow from the simple premise articulated by the legislature in our code. "In the construction of a statute, the intention of the legislature is to be pursued if possible." Mont. Code Ann. § 1-2-102. When a statute requires interpretation, "the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-1-101. "Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language . . . ." Mont. Code Ann. § 1-2-106.

The word that must be construed to answer your question is the word "may." By using this word to address the transition and transfer of county or city employees to state employment, did the legislature intend that some of these employees would be offered state employment and some would not, or did the legislature intend that all such employees must be offered employment by the state?

"May" is commonly used to express possibility. Random House Unabridged Dictionary (2nd ed., 1993). For example, our Supreme Court has interpreted "may" as found in Mont. Code Ann. § 2-3-221 in Gaustad v. City of Columbus, 265 Mont. 379, 877 P.2d 470 (1994). The code section at issue provided that attorney fees "may be awarded" to the prevailing party in an action to enforce rights under article II, section 9 of the Montana Constitution. In the referenced case the prevailing party appealed when the district court declined to award attorney fees. The Supreme Court refused to require the award of attorney fees under the statute. The Court reasoned that "[i]n construing the meaning of a statute, we presume that the

terms and words used were intended to be understood in their ordinary sense. The word 'may' is commonly understood to be permissive or discretionary. In contrast, 'shall' is understood to be compelling or mandatory." 265 Mont. at 381-82 (citations omitted). The Court concluded that the award of attorney fees was discretionary with the district court and was not mandated by the statute.

Under the above analysis, the answer to your question appears to be clear: Section 69 of the Act allows the Commission and the Office of the Public Defender discretion to determine which current county and city public defender employees to retain for the new public defender system. But other means of statutory construction are useful in validating this conclusion.

The language of the bill itself strongly suggests that the legislature understood the possibility that some current employees of local public defender offices would not become state employees. Subsection (1) of Section 69 states that "Transferred employees become state employees on July 1, 2006." The adjective "transferred" is surplusage if all employees are to be transferred to state employment. The continuing reference throughout Section 69 to "transferred" employees is likewise surplusage unless the legislature intended to grant the Commission and the Public Defender office the power to transfer some, but not all of the current employees to the state system. And when the legislature desired to mandate the transfer of certain employees to the state system, it clearly expressed its intent to do so through the use of mandatory language. In Section 70(2) of the Act the legislature provided that the "Commission staff in the office of appellate defender . . . must be officially transferred to the office of state public defender." (Emphasis added.) The use of the mandatory "must" in Section 70 negates the inference that the legislature intended "may" to be mandatory in Section 69.

The testimony at the legislative hearings on Senate Bill 146 also supports this conclusion. At the meeting of the Judiciary Committee of the House of Representatives on March 31, 2005, the sponsor of the bill, Senator Dan McGee stated in his opening that "We are not saying that every public defender must come into a system and become a state employee." (Tape 1, Side A.) And Representative Gutsche commented that the bill "will not make all public defenders state employees. . . ." (Tape 2, Side B.)

While the term "may" can be interpreted as being mandatory where the statutory usage or legislative history indicates that this was the legislature's intent, see, e.g., Bascom v. Carpenter, 126 Mont. 129, 136, 246 P.2d 223, 226-27 (1952), such a conclusion is inappropriate here. These other bases of statutory interpretation confirm the legislative intent. The

legislature used the word "may" in its ordinary sense--conveying discretion--when it drafted and passed Senate Bill 146. See Gaustad, 265 Mont. at 382 (distinguishing Bascom on the basis of legislative history indicating intent that "may" implies existence of discretion).

THEREFORE, IT IS MY OPINION:

> Section 69 of the Montana Public Defender Act (Senate Bill 146 of the 2005 Legislature) allows but does not require the Public Defender Commission and the Office of the Public Defender to hire all current city and county public defender employees. The bill allows the Commission and the Office the discretion to decide whom to retain for the new public defender system.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH
Attorney General

mm/je/jym

VOLUME NO. 51 OPINION NO. 11

CONTRACTS - When alteration is permissible;
COUNTIES - Group health plans; payments to employees in lieu of participation;
COUNTY OFFICERS AND EMPLOYEES - Group health plans; payments to employees in lieu of participation; collective bargaining agreements;
EMPLOYEES, PUBLIC - Group Health Insurance; collective bargaining agreements;
INSURANCE - Group health insurance for public employees;
LABOR RELATIONS - Employment contracts; collective bargaining agreements;
STATUTORY CONSTRUCTION - Determining legislative intent;
MONTANA CODE ANNOTATED - Title 39, chapter 31; sections 1-2-101, -102, 2-18-701 to -711, -702, -703(2), 7-5-2101, -2107, 28-2-702, -904, -1601, -1602, 39-2-101, -904(1)(c), 39-31-306(3);
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 79 (1990).

HELD:

1. A board of county commissioners, in the exercise of its general authority to manage the business of the county and to set compensation for its employees, may offer payment to county employees in lieu of an employee's participation in a group health insurance plan.

2. Where an existing term of the collective bargaining agreement is a provision for payments in lieu of participation in a group health care insurance plan, that portion of the agreement may not be altered by the board of county commissioners without the written agreement of the collective bargaining unit.

3. For a non-union employee, the board may only terminate payments in lieu of participation if the termination is consistent with the employment agreement with the employee.

December 12, 2005

Mr. George H. Corn
Ravalli County Attorney
County Courthouse
205 Bedford Street, Suite C
Hamilton, Montana 59840

Dear Mr. Corn:

You have requested my opinion on a number of questions concerning the legality of payments offered to Ravalli County

employees "in lieu of" participation by the employee in a group health insurance plan. Specifically you have asked the following:

1. May a board of county commissioners offer payments to county employees "in lieu of" group health insurance contributions?

2. If "in lieu of" payments are offered as part of a collective bargaining agreement, can those payments be discontinued by vote of the board of county commissioners?

3. If a non-union employee is promised "in lieu of" payments at the time of hire, when can those payments be discontinued?

The current policy of Ravalli County provides county employees with the option of accepting payments in lieu of participation in the group health insurance program provided through county employment. This policy is defined in the Ravalli County Personnel Policy Manual at Article IX, Section 11.0 Group Health Insurance. This section specifies the following:

> Alternative Use of County Contribution: Any employee eligible to receive the county insurance contribution, or any portion thereof, and who elects to sign the waiver of participation in the insurance program, may elect to receive $150 per month, or the applicable portion. This amount may be added to the monthly earnings (less taxes and deductions), or become a participant in one of the approved Deferred Compensation Plans and have the monies deposited into that program.
>
> The $150 payment in lieu of insurance program participation is not part of the monthly earnings and is not subject to increase by the annual certified COLA.
>
> Any employee who initially elects not to participate in the insurance program, and in a later year elects to participate in the insurance, must realize that the $150 will no longer be available to add to either earnings or the Deferred Compensation Plan.

I understand that 55 county employees now accept payments in lieu of health insurance and that the present monthly payment is $250. This is either added to the employee's taxable income or contributed to a deferred compensation plan.

1. May a board of county commissioners offer payments to county employees "in lieu of" group health insurance contributions?

In any areas not expressly addressed by law, the board of county commissioners has been given broad statutory authority to represent the county and manage the business and the concerns of the county. Mont. Code Ann. § 7-5-2101 describes this authority:

> (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.
>
> (2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

Within the context of the extensive general authority of the board, Montana law makes specific provision for the employment of personnel by the board of county commissioners and the fixing of employee salaries. Mont. Code Ann. § 7-5-2107.

While most compensation issues are left wholly within the authority of the board, the legislature has imposed some restrictions and requirements in the area of group insurance for all public employees. These are found at Mont. Code Ann. §§ 2-18-701 to -711. Mont. Code Ann § 2-18-702 states that, with certain exceptions, "all counties, cities, towns, school districts and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health . . . contracts or plans for the benefit of their officers and employees and their dependents."

These sections specify several requirements that are imposed upon the group insurance plans of all public employees of the state. Others are imposed solely upon state employees and state-sponsored plans. One such restriction addresses payments in lieu of participation in a group health plan. For reasons that are not apparent from the text of the statute, the legislature prohibited payment to a state employee in lieu of participation in a group health plan: "An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution." Mont. Code Ann. § 2-18-703(2). This limitation is imposed only upon those covered by a state-sponsored plan and not upon all public employees. The statute does not prohibit payments to other public employees in lieu of participation in the group plan. I have found no other statute, appellate case or other

authority that would prevent a board of county commissioners from making such payments if it elected to do so.

Two fundamental principles of statutory interpretation assist in the analysis of the question presented. First, "In the construction of a statute, the intention of the legislature is to be pursued if possible." Mont. Code Ann. § 1-2-102. Our Supreme Court has held that "[i]f possible, legislative intent must be inferred from the plain meaning of the words contained in statutes; only if there exists ambiguity in such wording should the court resort to the rules of statutory construction." Sink v. School Dist. No. 6, 199 Mont. 352, 360, 649 P.2d 1263, 1267 (1982).

Second, "[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101.

Applying these principles leads to the conclusion that the county's policy is permissible. The legislature has expressed its intention with regard to payments in lieu of participation with reference to state sponsored plans. Payments to employees in lieu of participation in a state sponsored plan are expressly prohibited. The legislature has expressed no intention on the subject insofar as other public employees are concerned. Since it is not the office of the interpreter of a statute to insert language, terms or conditions that have been omitted, no legislative intent to prevent payments to other public employees may be inferred.

2. If "in lieu of" payments are offered as part of a collective bargaining agreement, can those payments be discontinued by vote of the board of county commissioners?

I understand that Ravalli County has union employees represented by several bargaining units. Each unit is covered by a separate contract resulting from the collective bargaining process. Each contract allows an employee to decline the health insurance provided by the county. In such case the contract specifies that the employee will be entitled to a payment in lieu of the county health insurance contribution. You have asked if the payment can be unilaterally discontinued by vote of the board of county commissioners.

Public employees have a right to bargain collectively that is recognized by statute. The general provisions of collective bargaining for public employees are set forth in statute at Mont. Code Ann. tit. 39, ch. 31. The right to bargain collectively necessarily includes the right to enter into binding contracts with public employers. When a written

collective bargaining agreement between a public employer and a labor representative is adopted pursuant to statute, the agreement "must be valid and enforced under its terms . . . ." Mont. Code Ann. § 39-31-306(3).

Traditional contract law applies to the modification of a collective bargaining agreement and generally will forbid the unilateral modification of the agreement. Our code addresses when a written contract may be modified: "A contract in writing may be altered by a contract in writing or by an executed oral agreement, and not otherwise." Mont. Code Ann. § 28-2-1602. (Emphasis added.)

In 1990, Attorney General Racicot issued an opinion that is closely related to the issue you have raised. The question related to a school district where some employees were represented by a collective bargaining unit and others were not. Several employees asked the board to change health insurance carriers. The collective bargaining agreement precluded the change without the consent of the union. The school district asked if it could change carriers without the agreement of the union. The opinion concluded that it could not. "A governing body . . . cannot ordinarily change existing terms and conditions of employment for represented employees without consent of those employees' collective bargaining unit . . . ." 43 Op. Att'y Gen. No. 79 at 5 (1990).

Once the parties have executed a collective bargaining agreement, each is bound by the terms of the agreement and neither may alter the terms absent a new written agreement. Where an existing term of the collective bargaining agreement is a provision for payments in lieu of participation in the group health care insurance plan, that portion of the agreement may not be altered by the board of county commissioners without the written agreement of the collective bargaining unit.

3. If a non-union employee is promised "in lieu of" payments at the time of hire, when can those payments be discontinued?

The answer to this question depends upon the nature of the "promise," or terms of the employment agreement, as evaluated under standard principles of contract and employment law. If the employee has a written contract, then anything affecting the employee's benefits is governed by the terms of the written agreement unless it has been subsequently modified. Mont. Code Ann. §§ 28-2-904, 28-2-1602. The applicable principles are the same if the employment agreement is oral.

Employment is defined by statute. "The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something

for the benefit of the employer or a third person." Mont. Code Ann. § 39-2-101. As a contract, an employment agreement is subject to the law applicable to contracts generally. The parties may mutually agree to terms that are not prohibited by law or do not otherwise violate the public policy of the state. Mont. Code Ann. § 28-2-702. Once the parties form a binding contract, whether oral or in writing, the contract may ordinarily be modified only by agreement of the parties. Mont. Code Ann. §§ 28-2-1601, -1602.

The content of a contract is generally a question of fact, and resolution of factual issues is beyond the proper scope of an opinion of this office. However, a number of potentially relevant factors can be identified. Among them are the nature and duration of any promises made at the time of hiring. The existence of a personnel policy manual may also have an impact on the respective rights of the parties to an employment agreement.

The Ravalli County personnel policy manual asserts that "none of the provisions shall be deemed to create a contractual right in any employee nor to limit the power of the Board of County Commissioners . . . to repeal or modify these rules." Ravalli County Personnel Policy, Section 2.0, scope. In this regard it is similar to many other manuals. Yet our Wrongful Discharge from Employment statute expressly recognizes that a violation of an employer's written personnel policy may form the basis of a wrongful discharge claim. Mont. Code Ann. § 39-2-904(1)(c). See also Buck v. Billings Mont. Chevrolet, 248 Mont. 276, 811 P.2d 537 (1991). The Montana Supreme Court has also suggested that a policy manual may become a contract term if its terms were bargained for and a part of the "meeting of the minds" over the terms of employment. Gates v. Life of Montana Ins. Co., 196 Mont. 178, 183, 638 P.2d 1063, 1066 (1982).

Each employment agreement will present unique facts affecting the answer to this question. The county's unilateral right to terminate payments in lieu of participation for non-union employees will depend upon the specific terms of each individual employment agreement. The county must honor those terms and may unilaterally terminate these payments only if termination is permitted under the terms of the employment agreement.

THEREFORE, IT IS MY OPINION:

1. A board of county commissioners, in the exercise of its general authority to manage the business of the county and to set compensation for its employees, may offer payment to county employees in lieu of an employee's participation in a group health insurance plan.

2. Where an existing term of the collective bargaining agreement is a provision for payments in lieu of participation in a group health care insurance plan, that portion of the agreement may not be altered by the board of county commissioners without the written agreement of the collective bargaining unit.

3. For a non-union employee, the board may only terminate payments in lieu of participation if the termination is consistent with the employment agreement with the employee.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH
Attorney General

mm/je/jym

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

**Interim Committees and the Environmental Quality Council**

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

**Economic Affairs Interim Committee:**

< Department of Agriculture;

< Department of Commerce;

< Department of Labor and Industry;

< Department of Livestock;

< Office of the State Auditor and Insurance Commissioner; and

< Office of Economic Development.

**Education and Local Government Interim Committee:**

< State Board of Education;

< Board of Public Education;

< Board of Regents of Higher Education; and

< Office of Public Instruction.

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

< Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

< Department of Corrections; and

< Department of Justice.

**Energy and Telecommunications Interim Committee:**

< Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

< Department of Revenue; and

< Department of Transportation.

**State Administration, and Veterans' Affairs Interim Committee:**

< Department of Administration;

< Department of Military Affairs; and

< Office of the Secretary of State.

**Environmental Quality Council:**

< Department of Environmental Quality;

< Department of Fish, Wildlife, and Parks; and

< Department of Natural Resources and Conservation.

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

# ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2005. This table includes those rules adopted during the period July 1, 2005 through September 30, 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 June 30, 2005, 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

| | |
|---|---|
| 1.2.102 | and other rules - Administrative Rules of Montana - Montana Administrative Register - Rule Formatting - Incorporation by Reference - Fees, p. 2211 |
| 1.2.419 | and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903, 2334 |

ADMINISTRATION, Department of, Title 2

| | |
|---|---|
| I-X | Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334, 1839 |
| I-X | State of Montana Voluntary Employees' Beneficiary Association (VEBA), p. 2779, 643, 911 |
| 2.5.201 | and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316, 1709, 1906, 2446 |
| 2.21.410 | and other rules - Military Leave, p. 767, 1506 |
| 2.21.501 | and other rules - Jury Duty - Witness Leave, p. 1633 |
| 2.21.701 | and other rules - Leave of Absence without Pay, p. 141, 372 |

2.21.1001 and other rules - Parental Leave, p. 286, 571
2.59.801 and other rules - Foreign Capital Depositories, p. 2130
2.59.1701 and other rule - Definitions - License Renewal of Mortgage Brokers and Loan Originators, p. 2959, 320

(Public Employees' Retirement Board)
I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329, 1670
I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021
I-VII When Salary Deferrals under a Cafeteria Plan Should be Treated as Compensation, p. 1626, 2241
2.43.441 and other rule - Transfer of Funds for Certain Service Purchases, p. 400, 913
2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461, 1907
2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458, 1908

(State Compensation Insurance Fund)
2.55.320 Classifications of Employments, p. 1944

AGRICULTURE, Department of, Title 4

I-III Cherry Research and Marketing Development Program, p. 771, 1279
4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)
4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532, 1909

STATE AUDITOR, Title 6

I-XII Insurance Standards for Safeguarding Personal Information, p. 2435, 426
I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464, 1771
6.6.504 and other rules - Medicare Supplements, p. 1131, 1537, 1672, 1910
6.6.6811 and other rules - Captive Insurance Companies, p. 861, 2448
6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 1947
6.6.8501 and other rules - Viatical Settlement Agreements, p. 1636

ENVIRONMENTAL QUALITY, Department of, Title 17

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

(Board of Environmental Review)
I Solid Waste - State Solid Waste Management and Resource Recovery Plan, p. 2016
17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 291, 959
17.8.335 Air Quality - Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, p. 2456, 321
17.8.504 and other rules - Air Quality Permit Application, Operation and Open Burning Fees, p. 997, 2058
17.8.743 Air Quality - Montana Air Quality Permits - When Required - Oil and Gas Well Facilities, p. 1479
17.8.759 Air Quality - Review of Permit Applications, p. 1476
17.24.116 Application Requirements for Operating Permit, p. 1649
17.30.670 and other rules - Water Quality - Nondegradation Requirements for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) - Definitions for Technology-based Effluent Limitations - Minimum Technology-based Controls - Treatment Requirements for the Coal Bed Methane Industry, p. 1844, 2288
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, 864, 1995
17.38.106 Public Water Supply - Fees for Review of Public Water and Sewage System Plans and Specifications, p. 2983, 577

(Board of Environmental Review and the Department of Environmental Quality)
17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular WQB-7 - Outstanding Resource Waters, p. 1957
17.36.345 and other rules - Public Water and Sewage System Requirements and Subdivisions - Adoption by Reference, Plans for Public Water Supply or Wastewater System - Fees - Treatment Requirements - Disinfection, p. 2002

TRANSPORTATION, Department of, Title 18

I-XIII Aeronautical Grant and Loan Program - Pavement Preservation Grant Program, p. 2151

of Withdrawal - Video Gambling Machine Testing Fees, p. 1735, 2248

23.16.209 and other rules - Bonus Games - Definitions - Display of Antique Slot Machines - Elimination of the Video Gambling Machine Permit Fee Surcharge - General Specifications and Software Specifications for Video Gambling Machines - Addition of Testing to Purposes for Which Illegal Video Gambling Devices May Be Imported or Exported by a Video Gambling Machine Manufacturer - Allowable Winning Patterns for Bingo - Permit Surcharge Which was Eliminated, p. 784, 1281, 1509

23.16.1823 Permit Fee Restrictions, p. 602, 964

LABOR AND INDUSTRY, Department of, Title 24

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

I-XVIII Elevator Services Occupational Licensing Program, p. 2293

8.15.101 and other rules - Transfer from the Department of Commerce - Construction Blasters - Hoisting and Crane Operators - Boiler Engineers, p. 581

8.15.302 and other rules - Boilers - Terminology - Licensure - Examinations - Responsibility of Licensees - Training, p. 2492, 583

8.77.101 and other rules - Weights and Measures, p. 2997, 445

24.17.127 Prevailing Wage Rates for Public Works Projects - Nonconstruction Services - Heavy and Highway Construction Services, p. 2290

24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services, p. 1347, 2064

24.29.1409 Travel Expense Reimbursement for Workers' Compensation Medical Services, p. 1350

24.29.1409 Travel Expense Reimbursement for Workers' Compensation Medical Services, p. 520, 1395

24.29.4301 and other rules - Workers' Compensation Reporting Database, p. 1570

24.30.102 Occupational Safety Matters in Public Sector Employment, p. 1355

24.35.111 and other rules - Independent Contractor Exemption Certificates, p. 874, 1511

24.35.121 and other rule - Fee for Independent Contractor Exemption Certificates - Fee for Construction Contractor Registration, p. 525

24.144.411 and other rule - Renewal of License or Endorsement, p. 2312

24.301.138 and other rules - Building Codes, p. 2021

(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, 745

(Board of Architects)
24.114.403 and other rule - Business Entity Practice - Fee Abatement, p. 889, 2077

(Crane and Hoisting Operating Engineers Program)
24.135.501 and other rules - Hoisting Operators License Requirements - Crane Hoisting Operators License Requirements - Mine Hoisting Operators License Requirements - Fee Schedule - Renewals - National Commission Certification - Failed Examinations - Applications - Citations and Fines, p. 1871

(Board of Dentistry)
24.138.301 and other rules - Definitions - Initial Licensure of Dentists by Examination - Initial Licensure of Dental Hygienists by Examination - Dentist Licensure by Credentials - Dental Hygienist Licensure by Credentials - Denturist Examination - Denturist Application Requirements - Definition of Continuing Education - Requirements and Restrictions - Requirements for Continuing Education in Anesthesia, p. 796, 1396

(State Electrical Board)
24.141.401 and other rules - Board Meetings - Apprentice Registration - Fee Schedule - Temporary Practice Permits - Examinations, p. 1219, 2458
24.141.403 Licensee Responsibilities, p. 317, 1397
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, 650

(Board of Landscape Architects)
24.153.403 Fee Schedule, p. 365, 750

(Board of Medical Examiners)
I & II Medical Assistants - Fee Abatement, p. 1882

(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, 742

8.32.402 and other rules - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse - Conduct of Nurses, p. 516, 1686
8.32.403 and other rules - Reexamination - Registered Nurse - Reexamination - Practical Nurse - Licensure by Endorsement - Temporary Practice Permit - Abatement of Fees - Foreign Educated Applicants - Licensure for Foreign Nurses, p. 866, 1687
8.32.427 General Requirements for Medication Aide Training Programs and Instructors, p. 1652, 2251
8.32.1701 and other rules - Delegation, p. 30, 1022, 1291

(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
24.162.420 Fee Schedule, p. 1490, 2252

(Board of Occupational Therapy Practice)
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, 651

(Board of Outfitters)
8.39.501 and other rules - Outfitter Licensing and Operations, p. 1549

(Board of Physical Therapy Examiners)
8.42.101 and other rules - Transfer from the Department of Commerce, p. 380
24.177.401 Fees, p. 2376

(Board of Plumbers)
24.180.607 and other rule - Temporary Practice Permits - Continuing Education Requirements, p. 893, 2460

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
I-VI Private Alternative Adolescent Residential or Outdoor Programs, p. 1886

(Board of Private Security Patrol Officers and Investigators)
8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926

(Board of Professional Engineers and Professional Land Surveyors)
8.94.3001 and other rules - Transfer from the Department of Commerce - Uniform Standards for Monumentation,

Certificates of Survey and Final Subdivision Plats, p. 966
24.183.1001 Form of Corner Records, p. 530, 1783

(Board of Psychologists)
24.189.601 and other rule - Application Procedures - Licensees from Other States or Canadian Jurisdictions, p. 729, 1294
24.189.2107 and other rule - Continuing Education Implementation - Fee Abatement, p. 1739, 2464

(Board of Public Accountants)
8.54.410 and other rules - Fees - Amount of Required Experience - Continuing Education Matters - Special Practice Permits for Nonresident Certified Public Accountants, p. 1864

(Board of Radiologic Technologists)
8.56.602C and other rules - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Code of Ethics, p. 2682, 649
24.204.401 and other rules - Fee Schedule - Permit Fees - Abatement of Renewal Fees - Radiologic Technologists Applications - Replacement Licenses and Permits - Permits-Practice Limitations - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Adoption of a Code of Ethics, p. 1226, 2465

(Board of Real Estate Appraisers)
24.207.402 Adoption of USPAP by Reference, p. 42, 652
24.207.502 Application Requirements, p. 369
24.207.517 and other rule - Trainee and Mentor Requirements, p. 622, 1400

(Board of Realty Regulation)
8.58.101 and other rules - Transfer from the Department of Commerce, p. 2455

(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 Social Work Examiners and Professional Counselors)
24.219.301 Defining Pastoral Counseling, p. 535

(Board of Veterinary Medicine)
8.64.101 and other rules - Transfer from the Department of Commerce, p. 323

LIEUTENANT GOVERNOR, Office of the, Title 30

30.2.201 and other rules - Centennial Grants - Centennial Sanctioning, p. 1358

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Lab Fees, p. 1493, 1785
32.18.202 and other rule - Sheep Permits, p. 1007, 1517
32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 1743, 2254
32.24.501 and other rules - Quota, Utilization and Marketing of Montana Pooled Raw Milk, p. 2161

(Board of Horse Racing)
32.28.501 and other rules - Horse Racing, p. 45, 383

MILITARY AFFAIRS, Department of, Title 34

I-VI Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving Outside Montana in a Contingency Operation, p. 1362, 1691

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 Municipal Use of Water, p. 2316
36.19.106 Reclamation and Development Grants Program, p. 1746, 2468
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

(State Board of Land Commissioners and the Department of Natural Resources and Conservation)
36.25.210 Increase Royalty Rates for Oil and Gas Leases on State School Trust Lands from Current Rates to 16.67%, p. 1654, 2255

(Board of Oil and Gas Conservation)
36.22.1242 Privilege and License Tax Rates for Oil and Gas, p. 538, 1045

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-V Medicare Part D Low Income Subsidies, p. 2423
I-IV Montana Clean Indoor Air Act, p. 1665, 2079

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, 820
I-VII Energy Utility Service Standards, p. 416, 1404
I-XIX Eligible Telecommunications Carriers, p. 2697, 653
38.5.2202 and other rule - Pipeline Safety, p. 2323
38.5.2202 and other rule - Pipeline Safety, p. 2795, 386
38.5.3301 and other rules - Telecommunications Service Standards, p. 2518, 568
38.5.4111 InterLATA and IntraLATA PIC Change Charges, p. 2440

REVENUE, Department of, Title 42

I Manufactured Homes and Real Property Taxes, p. 2326
42.2.304 Montana Source Income, p. 2443
42.2.304 and other rules - General Department Rules - Penalty and Interest Rules, p. 2198
42.15.112 and other rules - Personal Income Taxes, p. 2213, 3147, 1592
42.18.109 and other rules - Montana Reappraisal Plans for 2003 and 2009, p. 1891, 2469
42.18.118 and other rules - Industrial Property, p. 2798, 667
42.20.106 and other rules - Property Taxes, p. 1016, 1594
42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 1748, 2262
42.25.1801 and other rules - Oil, Gas, and Coal Natural Resources, p. 1896, 2470

SECRETARY OF STATE, Title 44

1.2.102 and other rules - Administrative Rules of Montana - Montana Administrative Register - Rule Formatting - Incorporation by Reference - Fees, p. 2211
1.2.419 and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903, 2334
44.5.114 and other rule - Corporations - Profit and Nonprofit Fees - Limited Liability Company Fees, p. 2238

(Commissioner of Political Practices)
I Lobbying and Regulation of Lobbying - Payment Threshold, p. 158, 387
44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1583, 2094

## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in November 2005 appear. Vacancies scheduled to appear from January 1, 2006, through March 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

**IMPORTANT**

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2005.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Alternative Health Care Board** (Labor and Industry) | | | |
| Ms. Molly Danison | Governor | reappointed | 11/4/2005 |
| Missoula | | | 9/1/2009 |
| Qualifications (if required): midwife | | | |
| **Board of Athletics** (Labor and Industry) | | | |
| Mr. John Paul Noyes | Governor | not listed | 11/22/2005 |
| Kalispell | | | 4/25/2008 |
| Qualifications (if required): public representative | | | |
| Ms. Jana Smith-Streitz | Governor | not listed | 11/22/2005 |
| Butte | | | 4/25/2008 |
| Qualifications (if required): public representative | | | |
| **Board of Environmental Review** (Environmental Quality) | | | |
| Ms. Heidi Kaiser | Governor | Brooke | 11/14/2005 |
| Park City | | | 1/1/2007 |
| Qualifications (if required): public member | | | |
| **Board of Funeral Service** (Labor and Industry) | | | |
| Mr. Larry Aber | Governor | Michelotti | 11/3/2005 |
| Columbus | | | 7/1/2010 |
| Qualifications (if required): crematory operator | | | |
| Mr. Thomas Meeks | Governor | Michelotti | 11/3/2005 |
| Great Falls | | | 7/1/2010 |
| Qualifications (if required): crematory operator | | | |
| **Board of Pharmacy** (Labor and Industry) | | | |
| Mr. Jim MacKenzie | Governor | Mann | 11/10/2005 |
| Whitefish | | | 7/1/2010 |
| Qualifications (if required): licensed pharmacist | | | |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Board of Physical Therapy Examiners** (Labor and Industry) | | | |
| Mr. Richard Smith | Governor | Swift | 11/14/2005 |
| Missoula | | | 7/1/2008 |
| Qualifications (if required): physical therapist | | | |
| **Board of Plumbers** (Labor and Industry) | | | |
| Ms. Marlene Jackson | Governor | reappointed | 11/14/2005 |
| Glasgow | | | 5/4/2009 |
| Qualifications (if required): public representative | | | |
| **Board of Psychologists** (Labor and Industry) | | | |
| Ms. Bonnie Hyatt Murphy | Governor | McLees | 11/7/2005 |
| Livingston | | | 9/1/2010 |
| Qualifications (if required): public representative | | | |
| **Board of Public Accountants** (Labor and Industry) | | | |
| Mr. Michael Johns | Governor | not listed | 11/22/2005 |
| Deer Lodge | | | 7/1/2010 |
| Qualifications (if required): certified public accountant | | | |
| Ms. Pamela Lynch | Governor | not listed | 11/22/2005 |
| Plains | | | 7/1/2010 |
| Qualifications (if required): certified public accountant | | | |
| Ms. Irma Paul | Governor | not listed | 11/22/2005 |
| Helena | | | 7/1/2010 |
| Qualifications (if required): public representative | | | |
| **Board of Realty Regulation** (Governor) | | | |
| Ms. Lucinda Willis | Governor | Tyler | 11/18/2005 |
| Polson | | | 5/9/2009 |
| Qualifications (if required): real estate salesperson | | | |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Board of Sanitarians** (Labor and Industry) | | | |
| Mr. Gerald Cormier<br>Billings<br>Qualifications (if required): sanitarian | Governor | not listed | 11/22/2005<br>7/1/2008 |
| Ms. Kathleen Driscoll Donovan<br>Hamilton<br>Qualifications (if required): public representative | Governor | Shea | 11/22/2005<br>7/1/2008 |
| Mayor Gene Townsend<br>Three Forks<br>Qualifications (if required): public representative | Governor | not listed | 11/22/2005<br>7/1/2008 |
| **Building Codes Council** (Governor) | | | |
| Mr. Dave Broquist<br>Great Falls<br>Qualifications (if required): professional engineer | Governor | reappointed | 11/18/2005<br>10/1/2008 |
| Mr. Rodney Driver<br>Bigfork<br>Qualifications (if required): elevator mechanic selected by the Department of Labor and Industry | Governor | not listed | 11/18/2005<br>10/1/2008 |
| Mr. Paul Filicetti<br>Missoula<br>Qualifications (if required): licensed architect | Governor | Karhu | 11/18/2005<br>10/1/2008 |
| Mr. Burl French<br>Kalispell<br>Qualifications (if required): representative of the Board of Electricians | Governor | Wolfe | 11/18/2005<br>10/1/2008 |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Building Codes Council** (Governor) cont. | | | |
| Mr. Tony Laslovich<br>Anaconda<br>Qualifications (if required): home building industry representative | Governor | Tartaglino | 11/18/2005<br>10/1/2008 |
| Mr. Scott Lemert<br>Livingston<br>Qualifications (if required): representative of the Board of Plumbers | Governor | reappointed | 11/18/2005<br>10/1/2008 |
| Mr. Allen Lorenz<br>Helena<br>Qualifications (if required): state fire marshal | Governor | Phillips | 11/18/2005<br>10/1/2008 |
| Mr. Mike McCourt<br>Missoula<br>Qualifications (if required): public member | Governor | reappointed | 11/18/2005<br>10/1/2008 |
| Ms. Joan Miles<br>Helena<br>Qualifications (if required): Director of the Department of Public Health and Human Services | Governor | Wynia | 11/18/2005<br>10/1/2008 |
| Mr. Neil Poulsen<br>Bozeman<br>Qualifications (if required): building inspector | Governor | Jenkins | 11/18/2005<br>10/1/2008 |
| Mr. Mike Seaman<br>Kalispell<br>Qualifications (if required): manufactured housing industry representative | Governor | Skinner | 11/18/2005<br>10/1/2008 |
| Mr. Mick Wonnacott<br>Butte<br>Qualifications (if required): representative of the building contractor industry | Governor | Hansen | 11/18/2005<br>10/1/2008 |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Capital Finance Advisory Council** (Governor) | | | |
| Mr. J.P. Crowley | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Board of Housing representative | | | |
| Rep. David Ewer | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Budget Director | | | |
| Ms. Karen B. Fagg | Governor | not listed | 11/22/2005 |
| Billings | | | 11/22/2007 |
| Qualifications (if required): Board of Investments representative | | | |
| Rep. Kevin Timothy Furey | Governor | not listed | 11/22/2005 |
| Milltown | | | 11/22/2007 |
| Qualifications (if required): state representative | | | |
| Secretary Brad Johnson | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Secretary of State | | | |
| Mr. Bill Kearns | Governor | not listed | 11/22/2005 |
| Townsend | | | 11/22/2007 |
| Qualifications (if required): Facility Finance authority representative | | | |
| Director Janet Kelly | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Department of Administration Director | | | |
| Sen. Rick Laible | Governor | not listed | 11/22/2005 |
| Victor | | | 11/22/2007 |
| Qualifications (if required): state senator | | | |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Capital Finance Advisory Council** (Governor) cont. | | | |
| Director Jim Lynch | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Department of Transportation Director | | | |
| Attorney Mike McGrath | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Attorney General | | | |
| Director Richard Opper | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Department of Environmental Quality Director | | | |
| Director Anthony J. Preite | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Department of Commerce Director | | | |
| Mr. Mark Semmons | Governor | not listed | 11/22/2005 |
| Great Falls | | | 11/22/2007 |
| Qualifications (if required): Board of Regents representative | | | |
| Director Mary Sexton | Governor | not listed | 11/22/2005 |
| Helena | | | 11/22/2007 |
| Qualifications (if required): Department of Natural Resources and Conservation | | | |
| **Clinical Laboratory Science Practitioners** (Labor and Industry) | | | |
| Dr. Thomas Bennett | Governor | Smith | 11/7/2005 |
| Billings | | | 4/16/2009 |
| Qualifications (if required): doctor of medicine qualified to direct a high complexity laboratory | | | |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Clinical Laboratory Science Practitioners** (Labor and Industry) cont. | | | |
| Ms. Wendy Palmer | Governor | Long | 11/7/2005 |
| Raynesford | | | 4/16/2009 |
| Qualifications (if required): clinical laboratory science practitioner | | | |
| **Flathead Basin Commission** (Natural Resouces and Conservation) | | | |
| Ms. Jan Metzmaker | Governor | Kohrt | 11/7/2005 |
| Whitefish | | | 10/1/2009 |
| Qualifications (if required): public representative | | | |
| Mr. Thompson Smith | Governor | Sliter | 11/7/2005 |
| Charlo | | | 10/1/2009 |
| Qualifications (if required): public representative | | | |
| Ms. Margaret Sogard | Governor | Vail | 11/7/2005 |
| Bigfork | | | 10/1/2009 |
| Qualifications (if required): public representative | | | |
| **Historical Preservation Review Board** (Historical Society) | | | |
| Mr. Donald Matlock | Governor | Knedler | 11/14/2005 |
| Hamilton | | | 10/1/2009 |
| Qualifications (if required): public representative | | | |
| **Mental Disabilities Board of Visitors** (Governor) | | | |
| Ms. Suzanne Hopkins | Governor | Dolan | 11/17/2005 |
| Lewistown | | | 7/1/2007 |
| Qualifications (if required): consumer of mental health services | | | |
| Ms. Gay Moddrell | Governor | reappointed | 11/17/2005 |
| Kalispell | | | 7/1/2007 |
| Qualifications (if required): consumer of developmental disability services | | | |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Montana Organic Commodity Advisory Council** (Agriculture) | | | |
| Mr. Steve Baril | Director | Boettcher | 11/7/2005 |
| Helena | | | 11/7/2007 |
| Qualifications (if required): organic producer | | | |
| Mr. Mark Bruckner | Director | Hinebauch | 11/7/2005 |
| Malta | | | 11/7/2007 |
| Qualifications (if required): organic producer | | | |
| Ms. Laura Garber | Director | Owsowitz | 11/7/2005 |
| Hamilton | | | 11/7/2007 |
| Qualifications (if required): organic producer | | | |
| Ms. Andre Giles | Director | Oien | 11/7/2005 |
| Fort Benton | | | 11/7/2007 |
| Qualifications (if required): organic handler | | | |
| **Montana Wheat and Barley Committee** (Agriculture) | | | |
| Mr. Frank Schoonover | Governor | Burgmaier | 11/7/2005 |
| Dutton | | | 8/20/2008 |
| Qualifications (if required): resident of District 4 | | | |
| **Peace Officers Standards and Training Advisory Council** (Justice) | | | |
| Mr. Mike Anderson | Governor | Allestad | 11/7/2005 |
| Havre | | | 2/9/2006 |
| Qualifications (if required): representative of the Board of Crime Control | | | |
| Mr. James Kropp | Governor | Ramsey | 11/7/2005 |
| Helena | | | 2/9/2006 |
| Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks | | | |

**BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2005**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **State Compensation Mutual Insurance Fund Board** (Governor) | | | |
| Mr. Joe Dwyer | Governor | Scoble | 11/18/2005 |
| Billings | | | 4/28/2007 |
| Qualifications (if required): representative of a Montana State Fund policy holder | | | |
| **Youth Justice Council** (Justice) | | | |
| Ms. Penny Kipp | Governor | Salois | 11/30/2005 |
| Pablo | | | 8/15/2007 |
| Qualifications (if required): having competency in addressing problems facing youth | | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Alternative Livestock Advisory Council** (Fish, Wildlife, and Parks) | | |
| Dr. Deborah Yarborough, Kalispell | Governor | 1/1/2006 |
| Qualifications (if required): veterinarian | | |
| Ms. Rebecca Mesaros, Cascade | Governor | 1/1/2006 |
| Qualifications (if required): representative of the alternative livestock industry | | |
| Mr. Stanley Rauch, Victor | Governor | 1/1/2006 |
| Qualifications (if required): sportsperson | | |
| **Appellate Defender Commission** (Administration) | | |
| Judge Richard A. Simonton, Glendive | Governor | 1/1/2006 |
| Qualifications (if required): district judge | | |
| Mr. Mike Sherwood, Missoula | Governor | 1/1/2006 |
| Qualifications (if required): attorney | | |
| **Board of Architects** (Labor and Industry) | | |
| Mr. Tobias Stapleton, Billings | Governor | 3/27/2006 |
| Qualifications (if required): licensed architect | | |
| **Board of Chiropractors** (Labor and Industry) | | |
| Dr. Pamela Blanchard, Great Falls | Governor | 1/1/2006 |
| Qualifications (if required): chiropractor | | |
| Ms. Jo Ausk, Terry | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |
| **Board of Dentistry** (Commerce) | | |
| Ms. Jean Hagan, Big Fork | Governor | 3/29/2006 |
| Qualifications (if required): public member who is a senior citizen | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Dentistry** (Commerce) cont. | | |
| Dr. James Johnson, Billings | Governor | 3/29/2006 |
| Qualifications (if required): dentist | | |
| **Board of Horse Racing** (Livestock) | | |
| Mr. Tim Donnelly, Miles City | Governor | 1/20/2006 |
| Qualifications (if required): representative of District 1 | | |
| Ms. Barbara Cole, Shelby | Governor | 1/20/2006 |
| Qualifications (if required): representative of District 3 | | |
| **Board of Pardons and Parole** (Corrections) | | |
| Ms. Roxanne Wilson, Busby | Governor | 1/1/2006 |
| Qualifications (if required): public member with knowledge of Indian culture | | |
| Mr. Darryl Dupuis, Polson | Governor | 1/1/2006 |
| Qualifications (if required): auxiliary member with knowledge of American Indian culture and problems | | |
| Ms. Margaret Hall, Pablo | Governor | 1/2/2006 |
| Qualifications (if required): Indian culture knowledge | | |
| **Board of Public Education** (Education) | | |
| Rep. Gay Ann Masolo, Townsend | Governor | 2/1/2006 |
| Qualifications (if required): Republican from District 1 | | |
| Mr. Randal Morris, Butte | Governor | 2/1/2006 |
| Qualifications (if required): representative of District 2 and an Independent | | |
| **Board of Regents of Higher Education** (Education) | | |
| Ms. Lynn Morrison-Hamilton, Havre | Governor | 2/1/2006 |
| Qualifications (if required): representative of District 3 and a Democrat | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Capital Finance Advisory Council** (Administration) | | |
| Mr. Dick Anderson, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Board of Investments | | |
| Sen. Bea McCarthy, Anaconda | Governor | 2/9/2006 |
| Qualifications (if required): legislator | | |
| Sen. Chuck Swysgood, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Budget Office | | |
| Sen. Royal C. Johnson, Billings | Governor | 2/9/2006 |
| Qualifications (if required): legislator | | |
| Mr. Jim Currie, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Transportation | | |
| Mr. Bob Thomas, Stevensville | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Board of Housing | | |
| Director Mark A. Simonich, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Commerce | | |
| Director W. Ralph Peck, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Agriculture | | |
| Director Bud Clinch, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Natural Resources and Conservation | | |
| Mr. Mark Semmens, Great Falls | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Board of Regents | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Capital Finance Advisory Council** (Administration) cont. | | |
| Director Jan Sensibaugh, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Environmental Quality | | |
| Ms. Michelle Barstad, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Montana Facility Finance Authority | | |
| **Commission on Practice of the Supreme Court** (Supreme Court) | | |
| Mr. Gary Davis, Helena | elected | 3/28/2006 |
| Qualifications (if required): none specified | | |
| Mr. Bruce A. Fredrickson, Kalispell | elected | 3/28/2006 |
| Qualifications (if required): none specified | | |
| **Developmental Disabilities Planning and Advisory Council** (Commerce) | | |
| Ms. Sylvia Danforth, Miles City | Governor | 1/1/2006 |
| Qualifications (if required): advocacy program representative | | |
| Mr. Dan McCarthy, Helena | Governor | 1/1/2006 |
| Qualifications (if required): agency representative | | |
| Dr. R. Timm Vogelsberg, Missoula | Governor | 1/1/2006 |
| Qualifications (if required): advocacy program representative | | |
| Ms. Bernadette Franks-Ongoy, Helena | Governor | 1/1/2006 |
| Qualifications (if required): advocacy program representative | | |
| Ms. Kimm Evermann, Helena | Governor | 1/1/2006 |
| Qualifications (if required): agency representative | | |
| Mr. Dennis Moore, Billings | Governor | 1/1/2006 |
| Qualifications (if required): advocacy program representative | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Developmental Disabilities Planning and Advisory Council** (Commerce) cont. | | |
| Ms. JoAnn Dotson, Helena | Governor | 1/1/2006 |
| Qualifications (if required): agency representative | | |
| Mr. Jeff Sturm, Helena | Governor | 1/1/2006 |
| Qualifications (if required): agency representative | | |
| **Judicial Nomination Commission** (Justice) | | |
| Mr. James Mockler, Helena | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |
| **Library Commission** (Education) | | |
| Mr. Ron Moody, Lewistown | Governor | 3/22/2006 |
| Qualifications (if required): resident of Montana | | |
| **Montana Abstinence Education Advisory Council** (Public Health and Human Services) | | |
| Dr. Tom Rasmussen, Helena | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Ms. Jessie Stinger, Polson | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Gary Swant, Deer Lodge | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Bryce Skjervem, Helena | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Jim Good, Bozeman | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Ms. Joleen Spang, Lame Deer | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Abstinence Education Advisory Council** (Public Health and Human Services) cont. | | |
| Rep. Jeff Laszloffy, Laurel | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Ms. Judy LaPan, Sidney | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Matt Antonich, Kremlin | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Collins Lawlor, Helena | Governor | 3/10/2006 |
| Qualifications (if required): non-voting youth representative | | |
| Sen. Sherm Anderson, Deer Lodge | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Ms. DeAnn Visser, Billings | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Dr. Ken Graham, Butte | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Joe Moerkerke, Conrad | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Brent Gyuricza, Missoula | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Ms. Carrie Price, Great Falls | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Mr. Chris Jones, Missoula | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Abstinence Education Advisory Council** (Public Health and Human Services) cont. | | |
| Mr. Lance Lanning, Billings | Governor | 3/10/2006 |
| Qualifications (if required): public member | | |
| Ms. Terry Reeser, Helena | Governor | 3/10/2006 |
| Qualifications (if required): non-voting youth representative | | |
| Mr. David Ames, Helena | Governor | 3/10/2006 |
| Qualifications (if required): non-voting youth representative | | |
| **Montana Children's Trust Fund Board** (Public Health and Human Services) | | |
| Ms. Jani McCall, Billings | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |
| Ms. Ann (Punky) Bullis, Crow Agency | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |
| **Montana Correctional Enterprises Ranch Advisory Council** (Corrections) | | |
| Mr. Don Davis, Deer Lodge | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Mr. Ray Lybeck, Kalispell | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Rep. Robert Thoft, Stevensville | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Sen. Chuck Swysgood, Helena | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Sen. Thomas Beck, Helena | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Correctional Enterprises Ranch Advisory Council** (Corrections) cont. | | |
| Rep. Edward (Ed) J. Grady, Canyon Creek | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Sen. Bill Tash, Dillon | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Sen. Gerald Pease, Lodge Grass | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Rep. Allen Rome, Garrison | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| Sen. Sherm Anderson, Deer Lodge | Governor | 2/25/2006 |
| Qualifications (if required): public member | | |
| **Montana Council on Developmental Disabilities** (Commerce) | | |
| Rep. Don Roberts, Billings | Governor | 1/1/2006 |
| Qualifications (if required): legislator | | |
| Sen. Carol Williams, Missoula | Governor | 1/1/2006 |
| Qualifications (if required): legislator | | |
| **Montana Grass Conservation Commission** (Natural Resources and Conservation) | | |
| Mr. Gary Unruh, Chinook | Governor | 1/1/2006 |
| Qualifications (if required): grazing district director | | |
| Mr. Larry Brence, Baker | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |
| **Montana High School Association Board of Control** (Governor) | | |
| Mr. Gail Peterson, Sidney | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Statewide Independent Living Council** (Public Health and Human Services) | | |
| Ms. Cecilia C. Cowie, Helena | Director | 1/5/2006 |
| Qualifications (if required): none specified | | |
| Mr. John Pipe, Wolf Point | Director | 1/5/2006 |
| Qualifications (if required): none specified | | |
| Mr. Tom Tripp, Butte | Director | 1/5/2006 |
| Qualifications (if required): none specified | | |
| Mr. Robert D. Liston, Missoula | Director | 1/5/2006 |
| Qualifications (if required): none specified | | |
| Ms. Carol LaRocque, Great Falls | Director | 1/5/2006 |
| Qualifications (if required): none specified | | |
| Ms. Donna M. Scott, Billings | Director | 1/5/2006 |
| Qualifications (if required): none specified | | |
| **Montana Vocational Rehabilitation Council** (Public Health and Human Services) | | |
| Rep. Carol Lambert, Broadus | Director | 1/1/2006 |
| Qualifications (if required): Statewide Independent Living Council position | | |
| Mr. Dick Trerise, Helena | Director | 1/1/2006 |
| Qualifications (if required): Office of Public Instruction position | | |
| **Noxious Weed Seed Free Forage Advisory Council** (Agriculture) | | |
| Director W. Ralph Peck, Helena | Director | 2/11/2006 |
| Qualifications (if required): Director of the Department of Agriculture | | |
| Mr. Dennis Cash, Bozeman | Director | 2/11/2006 |
| Qualifications (if required): ex officio | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Noxious Weed Seed Free Forage Advisory Council** (Agriculture) cont. | | |
| Mr. Ray Ditterline, Bozeman | Director | 2/11/2006 |
| Qualifications (if required): ex officio | | |
| Mr. Clay Williams, Livingston | Director | 2/11/2006 |
| Qualifications (if required): weed districts | | |
| Mr. Tim Schaff, Fishtail | Director | 2/11/2006 |
| Qualifications (if required): forage producer | | |
| Mr. Keith Kirscher, Townsend | Director | 2/11/2006 |
| Qualifications (if required): forage producer | | |
| Mr. John Kelly, Great Falls | Director | 2/11/2006 |
| Qualifications (if required): livestock/agriculture | | |
| Ms. Sharon Scognamiglio, Anaconda | Director | 2/11/2006 |
| Qualifications (if required): weed districts | | |
| **Peace Officers Standards and Training Advisory Council** (Justice) | | |
| Mr. Mike Batista, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Montana Law Enforcement Academy | | |
| Col. Paul K. Grimstad, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Montana Highway Patrol | | |
| Mayor Jim Smith, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the League of Cities and Towns | | |
| Ms. Elaine Allestad, Big Timber | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Crime Control Board | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Peace Officers Standards and Training Advisory Council** (Justice) cont. | | |
| Mr. Christopher Miller, Deer Lodge | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Montana Attorneys Association | | |
| Mr. Dennis McCave, Billings | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Montana Detention Officers Association | | |
| Dr. Raymond Murray, Missoula | Governor | 2/9/2006 |
| Qualifications (if required): representative of the public | | |
| Mr. John Ramsey, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks | | |
| Captain Bill Dove, Bozeman | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Police Protective Association | | |
| Ms. Winnie Ore, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Corrections | | |
| Ms. Shanna Bulik-Chism, Great Falls | Governor | 2/9/2006 |
| Qualifications (if required): representative of juvenile detention administrators | | |
| Ms. Anne Kindness, Billings | Governor | 2/9/2006 |
| Qualifications (if required): representative of 9-1-1 services | | |
| Chief Mark Tymrak, Bozeman | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Police Chiefs Association | | |
| Captain Greg Hintz, Missoula | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Deputy Sheriff's Association | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Peace Officers Standards and Training Advisory Council** (Justice) cont. | | |
| Mr. Jack Wiseman, Helena | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Department of Livestock | | |
| Sheriff Bill Troutwine, Winnett | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Sheriff's Association | | |
| Sheriff John Grainger, Wolf Point | Governor | 2/9/2006 |
| Qualifications (if required): representative of the Montana Sheriff and Peace Officers Association | | |
| Commissioner Albert Brown, Red Lodge | Governor | 2/9/2006 |
| Qualifications (if required): representative of MACO | | |
| **Small Business Health Insurance Pool Board** (Auditor) | | |
| Ms. Connie Welsh, Helena | Governor | 1/1/2006 |
| Qualifications (if required): management-level individual with knowledge of state employee health benefit plans | | |
| **State 9-1-1 Advisory Council** (Administration) | | |
| Mr. Jim Anderson, Helena | Director | 3/1/2006 |
| Qualifications (if required): Department of Military Affairs Disaster and Emergency Services Division | | |
| Mr. Geoff Feiss, Helena | Director | 3/1/2006 |
| Qualifications (if required): Montana Telephone Association | | |
| Mr. Richard Brumley, Lewistown | Director | 3/1/2006 |
| Qualifications (if required): Montana Emergency Medical Services Association | | |
| Mr. Chuck Winn, Bozeman | Director | 3/1/2006 |
| Qualifications (if required): Montana State Fire Chiefs Association | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **State 9-1-1 Advisory Council** (Administration) cont. | | |
| Mr. Joe Calnan, Montana City | Director | 3/1/2006 |
| Qualifications (if required): Montana State Volunteer Fire Fighters Association | | |
| Ms. Wilma Puich, Butte | Director | 3/1/2006 |
| Qualifications (if required): Association of Disaster and Emergency Services Coordinators | | |
| Mr. Larry Sheldon, Helena | Director | 3/1/2006 |
| Qualifications (if required): Qwest Communications | | |
| Sheriff Cheryl Liedle, Helena | Director | 3/1/2006 |
| Qualifications (if required): Montana Sheriff's and Peace Officers Association | | |
| Mr. Doug Kaercher, Havre | Director | 3/1/2006 |
| Qualifications (if required): Montana Association of Counties | | |
| Mr. Fred Leistiko, Kalispell | Director | 3/1/2006 |
| Qualifications (if required): Montana League of Cities and Towns | | |
| Mr. Kevin Myhre, Lewistown | Director | 3/1/2006 |
| Qualifications (if required): Montana Association of Chiefs of Police | | |
| Mr. Bill Rusche, Wolf Point | Director | 3/1/2006 |
| Qualifications (if required): Association of Public Safety Communications Officials | | |
| Mr. Thom Danenhower, Helena | Director | 3/1/2006 |
| Qualifications (if required): Department of Public Health and Human Services | | |
| Mr. Dave Rosencrans, Helena | Director | 3/1/2006 |
| Qualifications (if required): Public Safety Answering Point Representative | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **State 9-1-1 Advisory Council** (Administration) cont. | | |
| Ms. Lisa Kelly, Kalispell | Director | 3/1/2006 |
| Qualifications (if required): Century Tel | | |
| Ms. Bonnie Lorang, Helena | Director | 3/1/2006 |
| Qualifications (if required): Montana Independent Telecommunications Systems | | |
| Ms. Margaret Morgan, Helena | Director | 3/1/2006 |
| Qualifications (if required): Western Wireless | | |
| Ms. Aimee Grmolijez, Helena | Director | 3/1/2006 |
| Qualifications (if required): Verizon Wireless | | |
| Mr. Craig Bender, Great Falls | Director | 3/1/2006 |
| Qualifications (if required): 3 Rivers Wireless | | |
| **State Employees' Charitable Giving Campaign Steering Committee** (Administration) | | |
| Ms. Joy McGrath, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Alicia Pichette, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Mary Dalton, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Mr. Ed Caplis, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Mary Wright, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **State Employees' Charitable Giving Campaign Steering Committee** (Administration) cont. | | |
| Ms. Adeline Miller, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Marcia Armstrong, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Karen Shipley, Butte | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Mr. Tim McCauley, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Mr. Jack Lynch, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Mr. Rick Bush, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Jeanine McCarthy, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Mr. Wilbur Rehmann, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| Ms. Beki Glyde Brandborg, Helena | Director | 1/31/2006 |
| Qualifications (if required): none specified | | |
| **State Lottery Commission** (Commerce) | | |
| Mr. Thomas M. Keegan, Helena | Governor | 1/1/2006 |
| Qualifications (if required): attorney | | |

**VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2006 through MARCH 31, 2006**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **State Lottery Commission** (Commerce) cont. | | |
| Ms. Betty L. Wilkins, Missoula | Governor | 1/1/2006 |
| Qualifications (if required): public member | | |
| **Traumatic Brain Injury Advisory Council** (Public Health and Human Services) | | |
| Ms. Marilyn Patrick, Butte | Governor | 1/1/2006 |
| Qualifications (if required): family member of a survivor | | |