ISSUE NO. 11

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 6.6.8301, concerning updating references to the NCCI Basic Manual for new classifications affecting the aviation industry	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 17, 2006, the Montana Classification Review Committee proposes to amend the above-stated rule.

2. The Montana Classification Review Committee 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 Montana Classification Review Committee no later than 5:00 p.m., on June 29, 2006, to advise us of the nature of the accommodation needed. Please contact the Montana Classification Review Committee, attn: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; e-mail tim_hughes@ncci.com.

3. The rule shown below was recently amended, and no changes will be made to that rule. However, there are codes referenced by this rule that are being updated.

<u>6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2</u> (1) and (2) remain the same.

AUTH: 33-16-1012, MCA
IMP: 2-4-103, 33-16-1012, MCA

4. REASONABLE NECESSITY: It is necessary to amend ARM 6.6.8301 to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications that apply to various industries. The proposed classification changes by this revision will affect the aviation industry. The classifications affected are:

A. Code 7403-Air Carrier-Scheduled or Supplemental: All Other Employees & Drivers
B. Code 7405-Air Carrier-Scheduled or Supplemental: Flying Crew
C. Code 7409-Aerial Application, Seeding, Herding or Scintillometer Surveying: Flying Crew

D. Code 7420-Public Exhibition Involving Stunt Flying, Racing or Parachute Jumping: Flying Crew
E. Code 7421-Transportation of Personnel in Conduct of Employer's Business: Flying Crew
F. Code 7422-NOC-Other Than Helicopters: Flying Crew
G. Code 7423-Air Carrier-Commuter-All Other Employees & Drivers
H. Code 7425-NOC-Helicopters: Flying Crew
I. Code 7431-Air Carrier-Commuter: Flying Crew

5. This amendment is intended to be effective July 28, 2006.

6. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com and must be received no later than 5:00 p.m., June 29, 2006.

7. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com no later than June 29, 2006.

8. If the committee receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 100 persons based on the ten businesses who have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

9. The Montana Classification Review Committee maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this committee. 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 rulemaking actions of the Classification Review Committee. Such written requests may be mailed or delivered to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com, or by completing a request form at any rules hearing held by the Montana Classification Review Committee.

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

CLASSIFICATION
REVIEW COMMITTEE

By: /s/ Cliff Hanson
Cliff Hanson
Review Committee Chairperson

By: /s/ Alicia Pichette
Alicia Pichette
Rule Reviewer
St. Auditor's Office

Certified to the Secretary of State on May 22, 2006.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.222.301 definitions, 24.222.401 fees, 24.222.501, 24.222.506, 24.222.510, and 24.222.513 licensing and scope of practice, 24.222.701, 24.222.702, and 24.222.703 speech pathology and audiology aides, 24.222.2101, 24.222.2102 and 24.222.2103 continuing education, 24.222.2301 unprofessional conduct, the proposed adoption of NEW RULE I fee abatement, NEW RULES II-V, and the proposed repeal of 24.222.511, 24.222.512 and 24.222.704 licensure of speech-language pathologists and audiologists	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 22, 2006, at 1:00 p.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (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 of Speech-Language Pathologists and Audiologists (board) no later than 5:00 p.m. on June 16, 2006, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Speech-Language Pathologists and Audiologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdslp@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its administrative rules, the board is proposing a substantial number of revisions. Some of the proposed amendments are technical in nature, such as substituting modern language for archaic phrasing, amending rule catchphrases for accuracy, reorganizing and renumbering rules for easier reference and following amendment, and updating obsolete or inappropriate statutory references. Other rule changes reflect a decision by the board to attempt to streamline its rules. Accordingly, the board determined that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules and adopt new rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing duties regarding licensure, examination and fees between the department and the particular boards or programs. The bill was signed by the Governor on April 28, 2005, and became effective July 1, 2005. It is reasonable and necessary to amend the rules throughout to maintain compliance with the statutory changes and to further the intent of the legislation.

The 2005 Montana Legislature enacted Chapter 262, Laws of 2005 (Senate Bill 451), an act revising speech-language pathologists and audiologists licensing laws. The bill was signed by the Governor on April 15, 2005 and became effective on October 1, 2005. It is reasonable and necessary to amend several board rules and adopt new rules to comply with the statutory changes and to further the intent of the legislation.

Authority and implementation cites are being amended where necessary to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority and to delete references to erroneous or repealed statutes.

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

24.222.301 DEFINITIONS ~~(1) Currently practicing and/or actively engaged in practice shall be defined as minimum of 15 hours per week of active involvement in rendering clinical services to the public, teaching, performing research or in administration in the fields of speech-language pathology and/or audiology.~~

(2) "Certificate of clinical competence" ~~is interpreted as~~ means a current certificate.

(3) "Colleges, universities, and institutions approved by the board"~~, shall include~~ means those colleges, universities, and institutions accredited by ~~the American board of examiners in speech-language pathology and audiology~~ a nationally recognized accrediting agency approved by the board.

~~(4) Thirty days shall be defined at 30 clinical working days.~~

~~(5)~~ (4) ~~Whenever the term license~~ "License" ~~is~~ as used in these rules~~, it shall refer to~~ means a valid Montana full status license ~~as issued under this act. It~~ and does not ~~imply~~ include probationary or temporary ~~license~~ licenses.

~~(6)~~ (5) Speech-language pathology aides or assistants shall be classified ~~as~~ in one of the following categories:

(a) "aide I or assistant" ~~shall mean~~ means a person who holds an undergraduate degree in communication sciences and disorders, or its equivalent, and is currently enrolled in an accredited graduate program for the purpose of completing licensure requirements~~. The aide I shall submit verification of the required continuing education units set forth in ARM 24.222.2102 to the board annually~~;

(b) "aide II or assistant" ~~shall mean~~ means a person who holds an undergraduate degree in communication sciences and disorders, or its equivalent, but is not currently enrolled in an accredited graduate program~~. The aide II shall submit verification of the required continuing education units set forth in ARM~~

~~24.222.2102 to the board annually~~; and

(c) "aide III or assistant" ~~shall mean~~ means a person who holds no undergraduate degree in communication sciences and disorders or its equivalent. ~~The aide III shall submit verification of the required continuing education units set forth in ARM 24.222.2102 to the board annually.~~

~~(7)~~ (1) Audiology aides or assistants shall be classified ~~as~~ in one of the following categories:

(a) "audiology aide or assistant" ~~shall mean~~ means a person meeting the minimum requirements established by the board who performs any of the activities defined under the "practice of audiology" definition of 37-15-102, MCA, under the supervision of a licensed audiologist; and

(b) "industrial audiology aide or assistant" ~~shall mean~~ means an audiology aide who conducts pure tone air conduction threshold audiograms for the purpose of industrial hearing tests in addition to other acts and services as provided in the statutes and rules.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-202, 37-15-301, 37-15-303, 37-15-313, MCA

REASON: The board determined that it is reasonable and necessary to add "or assistant" to several sections of the rule. This amendment is needed to comply with statutory changes pursuant to Senate Bill 451, wherein the definitions of individuals meeting certain minimum requirements and working directly under the supervision of licensed speech-language pathologists or audiologists were amended to include aides or assistants.

24.222.401 FEES (1) through (2)(c)(i) remain the same.

(d) Placement or renewal of a license on inactive status for a speech-language pathologist and/or audiologist 50

(e) remains the same.

(f) Registration for speech-language pathologist aide or assistant and/or audiologist aide or assistant 30

~~(i) Late registration fee for aides is an additional $20 for registrations made after October 31.~~

(g) remains the same.

~~(3) The yearly registration fee for the unlicensed person shall be consistent with the initial application and license fee for a speech-language pathologist and/or audiologist. The yearly registration fee for an unlicensed person is $100. The unlicensed person provisions of 37-15-313, MCA, terminate June 30, 2003.~~

AUTH: 37-1-134, 37-15-202, MCA
IMP: 37-1-134, 37-15-307, ~~37-15-308, and 37-15-313,~~ MCA

REASON: It is reasonably necessary to delete the board's late renewal fee to comply with House Bill 182 that clarified that the department is responsible for setting administrative fees such as late registration and renewal fees.

The board is amending the rule to add "or assistant" to comply with statutory

changes pursuant to Senate Bill 451 that added assistants to the definitions of speech-language pathology aides and audiology aides.

It is reasonable and necessary to amend the rule to coincide with the proposed amendments to ARM 24.222.513 to require licensees on inactive status to renew annually. Currently, inactive status licensees pay a $50.00 renewal fee for a five-year inactive licensure period. Board staff had difficulty utilizing the database parameters in tracking those on inactive status. For board fees to be commensurate with costs and to ensure a timely and accurate record of individuals on inactive status licensure, the board decided to require the annual renewal. Approximately four inactive status licensees per year will be affected by the rule change and will result in an estimated $160.00 total annual increase in revenue.

House Bill 301 of the 1999 legislative session provided for the registration of unlicensed persons working in schools or special education cooperatives and terminated the registration provision effective June 30, 2003. It is reasonable and necessary to delete section (3) regarding the fee previously required for such registration to comply with the termination.

24.222.501 APPLICATIONS FOR LICENSE (1) An application for a license as a speech-language pathologist and/or audiologist shall be submitted to the board office in Helena on application forms provided by the ~~board~~ department.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-101, 37-1-104, ~~37-15-302,~~ MCA

REASON: It is reasonable and necessary to amend the rule to comply with statutory changes due to enactment of House Bill 182. The board is amending the rule to clarify that the department, not the board, provides and prescribes standardized application forms.

24.222.506 LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice speech-language pathology or audiology in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. The ~~candidate must meet the following requirements~~ applicant shall:

(a) ~~The candidate holds~~ hold a valid and unrestricted license to practice speech-language pathology or audiology in another state or jurisdiction, ~~which was issued under standards~~ upon determination by the board that the other state's or jurisdiction's license standards at the time of application to this state are substantially equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s)~~,~~;

(b) ~~The candidate shall~~ supply a copy of the certified transcript sent directly from a college, university, or institution approved by the board, including those programs accredited by the American Board of Examiners in Speech-Language Pathology and Audiology~~,~~; and

(c) ~~The candidate shall~~ supply proof of successful completion of ~~the~~ a

currently accepted national examination. ~~offered through the professional assessment for beginning teachers (PRAXIS series), educational testing services, Princeton, New Jersey. Candidate scores on the appropriate area of examination must be forwarded by PRAXIS directly to the board.~~

(2) A license to practice speech-language pathology or audiology in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee, and provides proof the applicant holds the certificate of clinical competence of the American Speech-Language-Hearing Association in the area for which the ~~candidate~~ applicant is applying for a license.

(3) If an applicant for audiologist licensure is the holder of a valid and unrestricted license to practice audiology in another state, which was issued under standards equivalent to or greater than current standards in this state prior to January 1, 2007, the applicant will not be required to obtain a doctorate to qualify for licensure to practice audiology in the future in this state.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-304, MCA

REASON: The educational requirement for audiologist licensure is being amended effective January 1, 2007, from a master's in audiology to a doctorate degree in audiology to comply with a shift in national standards. The board determined that it is reasonably necessary to amend this rule to clarify that out-of-state licensed audiologists applying for Montana licensure after January 1, 2007, will not be required to obtain a doctorate level degree.

24.222.510 EXAMINATIONS (1) Applicants shall ~~be administered the~~ take and pass a board accepted national examination ~~offered through the national teacher examinations, educational testing service, Princeton, New Jersey~~.

~~(2) Arrangements and fees are the responsibility of the applicant.~~

(2) ~~(3) It shall be the responsibility of the~~ The applicant ~~to assure~~ shall ensure that ~~his~~ the score on the ~~appropriate area~~ national examination is forwarded ~~by NTE~~ to the board. Applicants shall be notified of the board's decision concerning the examination following receipt of the examination score by the board.

~~(4) An applicant who fails his examination may be reexamined upon payment of another examination fee to the testing service.~~

~~(5)~~ (3) Applicants ~~must~~ shall also take and pass a jurisprudence examination as ~~composed and corrected~~ prescribed by the board, which measures the competence of the applicant regarding the statutes and rules governing the practice of speech-language pathology and audiology in Montana. The jurisprudence examination must be passed with a score of 95% or greater. Any applicant who fails the jurisprudence examination may re-take the examination two subsequent times. After a third failure, the applicant shall petition the board for each future re-examination.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-303, ~~37-15-304,~~ MCA

REASON: It is reasonable and necessary to amend the rule to comply with current national and board licensure examination procedures. The board does not administer a licensure examination, nor does the board accept payment or otherwise facilitate a licensure examination. The board has and will accept applicants' passage of any national speech-language pathology or audiology examination that is accepted under national standards. It is reasonably necessary to amend this rule to clarify these examination procedures.

24.222.513 INACTIVE STATUS AND ~~REACTIVATION~~ CONVERSION TO ACTIVE STATUS (1) A licensee may place the license on inactive status by paying the appropriate fee and either:

(a) indicating on the renewal form that inactive status is desired~~,~~ ; or

(b) ~~by~~ informing the board office~~,~~ in writing~~, that an inactive status is desired, and paying the appropriate fee~~.

(2) ~~It is the sole responsibility of the~~ The inactive licensee ~~to~~ shall:

(a) renew annually; and

(b) keep the board informed as to any change of address during the inactive status period ~~of time the license remains on inactive status~~.

~~(2)~~ (3) A licensee ~~may~~ shall not practice ~~any~~ speech-language pathology or audiology ~~work~~ in ~~the state of~~ Montana while ~~the license is in an~~ on inactive status.

~~(3)~~ (4) Upon application and payment of the appropriate fee, the board may ~~reactivate~~ consider an application to convert an inactive status license to an active status license if the applicant ~~does each of the following~~:

(a) signifies to the board, in writing, that upon ~~issuance of the~~ conversion to an active license, the applicant intends to ~~be an active practitioner~~ actively practice in ~~the state of~~ Montana~~,~~ ;

(b) presents satisfactory evidence that the applicant has attended ten hours of continuing education which comply with the continuing education rules of the board for each year or portion of a year that ~~licensee~~ applicant has been inactive~~,~~ ;

(c) submits ~~certification~~ license verification from ~~the licensing body of~~ all jurisdictions where the ~~licensee~~ applicant is licensed or has held a license during the inactive status period, documenting ~~practiced~~ that the applicant is either:

(i) in good standing and has not had any disciplinary ~~actions~~ action taken against the applicant's license~~,~~ ; or

(ii) if ~~the applicant is~~ not in good standing ~~by that jurisdiction~~, an explanation of the ~~nature of the~~ violation(s) resulting in that status~~;~~ , including the extent of the disciplinary ~~treatment~~ action imposed~~,~~ ; and

(d) remains the same.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA
IMP: 37-1-319, MCA

REASON: It is reasonable and necessary to amend the rule to comply with statutory changes from House Bill 182 which amended terminology and procedure for license renewal, lapse, expiration and termination as provided generally to all boards at 37-1-141, MCA. The board is amending the rule to address the conversion of inactive

status license to active status without use of the term "reactivate" which is now used differently following enactment of House Bill 182.

The board determined it reasonably necessary to amend the rule to require licensees on inactive status to renew annually. Currently inactive status licensees pay a $50.00 renewal fee for a five-year inactive licensure period. The board staff encountered difficulty in utilizing the database parameters in tracking those on inactive status. Additionally, in order for board fees to be commensurate with board costs and to ensure a timely and accurate record of individuals on inactive status licensure, the board decided to require the annual renewal. Approximately four inactive status licensees per year will be affected by the rule change and will result in an estimated $160.00 annual increase in revenue.

24.222.701 SUPERVISOR RESPONSIBILITY (1) All persons working in the capacity of a speech-language or audiology aide or assistant must be under the direct supervision of a fully licensed speech-language pathologist or audiologist. This supervisor assumes full legal and ethical responsibility for the tasks performed by the aide or assistant and for any services or related interactions with a client.

(2) When aides or assistants are providing direct services under a licensed supervisor to individuals under 18 years of age, the supervisor is responsible for so informing, in writing, the parent, guardian, surrogate parent, or person acting as a parent of a child in the absence of a parent or guardian.

(3) The speech-language pathology or audiology supervisor and/or appropriate administrative agency is responsible for ~~insuring~~ ensuring that the speech-language pathology or audiology aide or assistant is adequately trained for the tasks ~~he/she~~ the aide or assistant will perform. The amount and type of training required ~~should~~ must be based on the following:

(a) the skills and experience of the speech-language pathology or audiology aide or assistant~~,~~ ;

(b) the needs of the patients/clients served~~,~~ ;

(c) the service setting~~,~~ ;

(d) the tasks assigned; and

(e) any other factors as determined by the supervising speech-language pathologist and audiologist.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-313, MCA

REASON: The board determined it is reasonable and necessary to add "or assistant" throughout ARM 24.222.701, 24.222.702, and 24.222.703. This amendment is needed to comply with statutory changes in 37-15-102, MCA, pursuant to Senate Bill 451, wherein the definitions of individuals who meet certain minimum requirements and work directly under the supervision of licensed speech-language pathologists or audiologists were amended to include aides or assistants.

24.222.702 SCHEDULE OF SUPERVISION - CONTENTS (1) remains the same.

(2) Speech-language pathology aides or assistants shall be supervised in

accordance with their level of aide classification under the following schedule:

(a) aide I or assistant shall be supervised a minimum of 30% while performing diagnostic and interpretive functions in the first year of non-allowable activities. The supervision requirement will be 5% of client contact time, of which 2% shall be direct contact after the first year, at the discretion of the supervising speech-language pathologist;

(b) aide II or assistant shall be supervised 10% of client contact time, of which 5% shall be direct contact; and

(c) aide III or assistant shall be supervised 20% of client contact time, of which 10% shall be direct contact.

(3) Audiology aides or assistants shall be supervised in accordance with the following schedule:

(a) audiology aides or assistants shall be supervised under a proposed plan to be submitted by the supervisor with the aide application, but which shall include a minimum of 10% of client contact time; and

(b) industrial audiology aides or assistants shall be supervised under (3)(a) ~~above~~, but may be authorized to conduct pure tone air conduction threshold audiograms when performing outside the physical presence of a supervisor.

(4) remains the same.

(5) Each supervisor must also submit a supervisor summary form, as prescribed by the board, which lists each speech or audiology aide or assistant, number of hours, and other information as required by the board. The board will review the supervisor summary forms, which indicate a supervisor supervises three or more speech or audiology aides or assistants, for compliance with the appropriate ratio of supervisor hours as stated in the rules.

(6) The supervisor must complete a mid-year verification form by February 25 of each year, on ~~a~~ the supervisor's renewal form ~~supplied by the board~~, to indicate continuing compliance with the schedule of supervision previously filed under (1) ~~above~~.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, ~~37-15-202,~~ 37-15-313, MCA

24.222.703 FUNCTIONS OF AIDES OR ASSISTANTS (1) The supervisor is obligated to ensure that the aide assist only in the provision of those services which are within the abilities of the aide as determined by the training and experience of that aide or assistant. The supervisor is directly responsible for all decisions affecting the client in all phases of diagnosis, treatment, and disposition. It is recognized that administrative responsibilities for ~~the~~ an aide~~(s)~~ or assistant may be with other than the professional supervisor and those responsibilities are not included in this regulation.

(2) All speech-language pathology aides or assistants shall be under the appropriate supervision for their category of aide. Each aide or assistant shall comply with the following function guidelines for the appropriate aide category:

(a) aide I or assistant may:

(i) through (vii) remain the same.

(b) aide II or assistant may:

(i) through (vi) remain the same.

(c) aide III or assistant may:

(i) and (ii) remain the same.

(3) Speech-language pathology aides or assistants shall comply with the following guidelines on functions which are not allowed for the appropriate aide category:

(a) aide I or assistant may not refer clients to outside professionals;

(b) aide II or assistant may not:

(i) and (ii) remain the same.

(c) aide III or assistant may not:

(i) through (vii) remain the same.

(4) Speech-language pathologist aides I or assistants who are currently enrolled in a speech-language pathology master's program may perform nonallowable functions of aides I, under supervision, only if all of the following conditions have been met:

(a) through (c) remain the same.

(d) annual application for waiver of nonallowable functions of speech-language pathology aides I or assistants to the board for approval prior to commencement of performance as a speech-language pathologist aide I.

(5) Audiology aides or assistants and industrial audiology aides or assistants shall comply with the supervision plan and functions submitted by the supervisor at the time of application, and with all other statutory or rule requirements.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-313, MCA

24.222.2101 POLICY (1) The board expects all licensees to undertake continuing educational activities which are recognized by ~~our professional organizations~~ the board as being of value in furthering professional competence.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA
IMP: 37-1-131, 37-1-306, MCA

REASON: The board determined that it is reasonable and necessary to amend the board's continuing education (CE) rules ARM 24.222.2101, 24.222.2102, and 24.222.2103 to clarify that the board will review and approve all available CE programs and coursework. The amendment follows the board's determination to set CE requirements for licensees rather than continuing to limit CE opportunities by adhering only to national associations' interpretation of acceptable CE. The board anticipates the proposed amendments will result in clearer and more user-friendly rules and will hopefully alleviate restrictions on licensees' ability to obtain acceptable CE offerings in this large rural state.

24.222.2102 CONTINUING EDUCATION REQUIREMENTS (1) Each licensee shall affirm completion of the required continuing education ~~hours~~ before February 1 of each odd-numbered year, on the renewal form. The board will randomly audit 10% of the renewed ~~licensee's~~ licensees' continuing education ~~hours~~

submitted each odd-numbered year. Certificates of completion for continuing education credits reported must be submitted upon request of the board.

(2) remains the same.

(a) Speech-language pathology or audiology - 40 continuing education units (CEU)~~, at least 25 of which must be obtained through approved sponsor programs or academic course work~~.

(b) Dual licensure - 50 continuing education units, 25 in each area. ~~Fourteen CEUs in each area must be sponsored.~~

(c) New licensees' continuing education units will be prorated ~~accordingly~~ at 1.66 hours per month licensed.

(3) remains the same.

(4) Licensees who serve as instructors in approved ~~sponsor~~ programs or academic courses may be allowed appropriate credit for ~~the program's first~~ one-time presentation ~~only~~. No credit will be allowed for repeat sessions.

(5) A licensee may apply for an exemption from the continuing education requirements ~~of these rules~~ by filing a statement with the board setting forth good faith reasons why the licensee is unable to comply with these rules and an exemption may be granted by the board. Each exemption application will be considered on a case-by-case basis.

(6) Speech-language pathology aides I or assistants shall complete 20 units of approved continuing education annually~~, six of which must be sponsored as defined in ARM 24.222.2103,~~ and submit verification of the continuing education to the board at the time of registration. Fourteen ~~unsponsored~~ continuing education units may include on-the-job training as part of the supervision plan, and college coursework obtained through an accredited college or university.

(7) Speech-language pathology aides or assistants levels II and III shall submit verification of ten continuing education hours at the time of registration.

~~(7)~~ (8) Audiology aides and audiology industrial aides or assistants shall complete ~~six~~ ten units of approved continuing education annually~~, two of which must be sponsored and four unsponsored as defined in ARM 24.222.2103,~~ and submit verification of the continuing education to the board at the time of registration.

(9) Approved continuing education must include content that is relevant to the scope of practice of speech-language pathologists and audiologists as defined in [NEW RULES IV and V].

(10) Continuing education activities sponsored by the following organizations, which are germane to the profession of speech-language pathologists and audiologists, are approved by the board:

(a) American Speech-Language Hearing Association (ASHA);

(b) Montana Speech and Hearing Association (MSHA);

(c) American Academy of Audiologists (AAA);

(d) Academy of Dispensing Audiologists (ADA); and

(e) Montana Audiology Guild (MAG).

(11) Acceptable activities shall include, but are not limited to:

(a) seminars;

(b) workshops;

(c) conferences;

(d) in-service programs;

(e) video or on-line course work; and

(f) correspondence courses accompanied by a study guide, syllabus, bibliography, and/or examination.

(12) The board shall consider continuing education activities as obtained via apprenticeship or plan of action on a case-by-case basis.

(13) All continuing education must be documented with evidence from the instructor or sponsoring organization.

(14) The board, at its discretion, reserves the right to deny credit for continuing education units that do not receive prior approval from the board.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA
IMP: 37-1-131, 37-1-306, 37-15-102, 37-15-309, MCA

REASON: It is reasonably necessary to add and clarify CE requirements for all levels of speech-language pathology and audiology aides and assistants. The board concluded that in the interest of the public's protection, it is necessary to require all levels of aides and assistants, who work consistently with members of the public, to obtain at least ten hours of annual CE.

24.222.2103 CONTINUING EDUCATION DEFINITIONS (1) and (1)(a) remain the same.

(b) "Approved ~~sponsor program~~ continuing education" means any continuing education activity approved by the board or sponsored by an organization, agency, or other entity which has been approved by the ~~continuing education~~ board. ~~of the American speech-language-hearing association (ASHA) documented by the confirmation sheet, or approved by the American academy of audiologists (AAA) as documented by the confirmation sheet.~~

~~(c) "Unsponsored continuing education unit" means an educational activity that is directly oriented to improving the licensee's professional competence and is not obtained through approved sponsor programs or academic course work documented on forms provided by the board.~~

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

~~(i) one continuing education unit received in an ASHA or AAA approved sponsor program shall be considered 10 continuing education units for purposes of this subchapter.~~

(ii) remains the same but is renumbered (i).

(e) remains the same but is renumbered (d).

~~(f) "License period" means the time between the issuance of a license or renewal and the date on which the licensee applies for renewal.~~

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA
IMP: 37-1-131, 37-1-306, MCA

24.222.2301 UNPROFESSIONAL CONDUCT (1) The board defines "unprofessional conduct" as follows:

~~(1) Any of the following:~~

(a) ~~practice~~ practicing beyond the scope of practice encompassed by the

license;

(b) ~~practice~~ practicing beyond the level of practice for which the licensee is trained;

(c) accepting and performing occupational responsibilities which the licensee knows or has reason to know that ~~he or she~~ the licensee is not competent to perform;

(d) remains the same.

~~(2)~~ (e) ~~Violation of~~ violating statutory child abuse and elderly abuse reporting requirements;

~~(3)~~ (f) ~~Guaranteeing~~ guaranteeing the results of any speech or hearing therapeutic procedure;

~~(4)~~ (g) ~~Failing~~ failing to adequately supervise auxiliary staff to the extent that the client's health or safety is at risk~~.~~;

(h) failing to report the unsafe practice of speech-language pathology or audiology to the board, or to the appropriate facility; or

(i) failing to report unlicensed practice of speech-language pathology or audiology to the board, or to the appropriate facility.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA
IMP: 37-1-316, MCA

REASON: The board determined it is reasonably necessary to include in the definition of unprofessional conduct the failure of licensees to report other licensees' unsafe or unlicensed practice of speech-language pathology or audiology. The board concluded that it is within the professional responsibility of licensees to report such conduct and that the board better protects the public by requiring this reporting.

5. The proposed new rules provide as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Speech-Language Pathologists and Audiologists adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

Adoption and incorporation of ARM 24.101.301 will allow the department to promptly eliminate excess cash balances of the board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not

relieve the board from its duty to use proper rulemaking procedures to adjust the board's fee structure in the event of recurring instances of cash balances in excess of the statutorily allowed amount.

NEW RULE II LICENSE RENEWAL (1) Each licensed speech-language pathologist or audiologist shall pay the board the fee for renewal of the license according to rules adopted by the department, subject to the provisions of 37-1-138, MCA.

(2) The department shall notify each person licensed under this chapter of the date of expiration of the license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least one month before the expiration of the license.

(3) A suspended license is subject to lapse, expiration, and termination and may be renewed as provided in 37-1-141, MCA, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct that violates the order or judgment by which the license was suspended.

(4) A license revoked on disciplinary grounds is subject to lapse, expiration, and termination and may not be renewed.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-141, MCA

REASON: House Bill 182 repealed section 37-15-308, MCA, the board's licensure renewal statute, as part of the bill’s attempt to generally revise and consolidate professional and occupational licensing laws and distinguish duties regarding licensure, examination, and fees between the department and the particular boards or programs. It is reasonable and necessary to adopt New Rule II to address certain aspects of license renewal in administrative rule that was formerly included in the repealed statute and to further the intent of the legislation.

NEW RULE III QUALIFICATIONS FOR LICENSURE (1) To be eligible for licensing by the board as a speech-language pathologist, the applicant must:

(a) have completed a minimum of 75 semester hours of post-baccalaureate study that culminates in a minimum of a master's degree in speech language pathology or communication disorders. The graduate education in speech-language pathology must be initiated and completed in a program approved by the licensure board;

(b) demonstrate skills in oral and written communication, knowledge of ethical standards, research principles, and current professional and regulatory issues;

(c) have practicum experience that encompasses the breadth of the current scope of practice with both adults and children, resulting in a minimum of 400 clock hours of supervised practicum, of which at least 375 hours must be in direct client/patient contact and 25 hours of clinical observation;

(d) have a 36-week speech-language pathology clinical experience that establishes a collaboration between the clinical fellow and a mentor; and

(e) pass a speech pathology examination as determined by the board.

(2) In order to be licensed by the board as an audiologist:

(a) For applications made prior to January 1, 2007, an applicant shall:

(i) have completed a minimum of 75 semester credit hours of post-baccalaureate study that culminates in a minimum of a master's degree in audiology. The graduate education in audiology must be initiated and completed in an accredited program by the licensure board;

(ii) demonstrate skills in oral and written communication, knowledge of ethical standards, research principles, and current professional and regulatory issues;

(iii) have practicum experiences that encompass the breadth of the current scope of practice with both adults and children resulting in a minimum of 400 clock hours of supervised practicum, of which at least 375 hours must be in direct client/patient contact and 25 hours of clinical observation;

(iv) have a 36-week audiology clinical experience that establishes a collaboration between the clinical fellow and a mentor; and

(v) pass an audiology examination, as determined by the board.

(b) For applications made on or after January 1, 2007, an applicant shall:

(i) possess a Doctor of Audiology degree (Au. D.) or a Ph. D in audiology, from an accredited program approved by the board; and

(ii) pass an audiology examination as determined by the board.

(c) If the applicant is a holder of a valid Montana license prior to January 1, 2007, and maintains that license in good standing, the applicant will not be required to obtain a doctorate to maintain licensure to practice audiology in the future.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-301, 37-15-303, MCA

REASON: Senate Bill 451 amended section 37-15-303, MCA, deleting reference to qualifications set by a national association and specifying that qualifications for Montana licensure as speech-language pathologists and audiologists are to be defined in board rule. It is reasonably necessary to adopt New Rule III to adequately and clearly delineate the educational, clinical, and employment requirements necessary for licensure by the board. The proposed qualifications are equal to the standards generally accepted as the national norm and comply with licensure requirements currently accepted by the board.

NEW RULE IV AUDIOLOGY SCOPE OF PRACTICE (1) The scope of practice of audiology includes but is not limited to:

(a) identification, assessment, management, and interpretation of auditory/vestibular disorders;

(b) otoscopic examination and external ear canal management for removal of cerumen in order to:

(i) evaluate auditory/vestibular disorders;

(ii) make ear impressions;

(iii) fit hearing protection or prosthetic devices; and

(iv) monitor the continuous use of hearing aids;

(c) administration and interpretation of behavioral, electroacoustic, or

electrophysiologic methods used to assess auditory/vestibular disorders;

(d) evaluation and management of children and adults with auditory processing disorders;

(e) supervising and conducting newborn screening programs;

(f) measurement and interpretation of sensory and motor evoked potentials, electromyography, and other electrodiagnostic tests for purposes of neurophysiologic intraoperative monitoring;

(g) provision of hearing care by selecting, evaluating, fitting, facilitating, adjustment to, and dispensing prosthetic devices for hearing loss, including:

(i) hearing aids;

(ii) sensory aids;

(iii) hearing assistive devices;

(iv) alerting and telecommunication systems; and

(v) captioning devices;

(h) assessment of candidacy of persons with hearing loss for cochlear implants and provision of fitting, and audiological rehabilitation to optimize device use;

(i) provision of audiological rehabilitation including:

(i) speech reading;

(ii) communication management;

(iii) language development;

(iv) auditory skill development; and

(v) counseling for psycho-social adjustment to hearing loss for persons with hearing loss, their families, and care givers;

(j) consultation to educators as members of interdisciplinary teams about communication management, educational implications, classroom acoustics, and large-area amplification systems for children with hearing loss;

(k) prevention of hearing loss and conservation of hearing function by designing, implementation, and coordinating occupational, school, and community hearing conservation and identification programs;

(l) consultation and provision of rehabilitation of persons with balance disorders using habituation, exercise therapy, and balance retraining;

(m) designing and conducting basic and applied audiologic research, and disseminating research findings to other professionals and to the public, to:

(i) increase the knowledge base;

(ii) develop new methods and programs; and

(iii) determine the efficacy of assessment and treatment paradigms;

(n) education and administration in audiology graduate and professional education programs;

(o) measurement of functional outcomes, consumer satisfaction, effectiveness, efficiency, and cost-benefit of practices and programs to maintain and improve the quality of audiological services;

(p) administration and supervision of professional and technical personnel who provide support functions to the practice of audiology;

(q) screening of speech-language, use of sign language, and other factors affecting communication function for the purposes of an audiological evaluation or initial identification of individuals at risk for other communication disorders;

(r) consultation about accessibility for persons with hearing loss in public and private buildings, programs, and services;

(s) assessment and nonmedical management of tinnitus using:

(i) biofeedback;

(ii) masking;

(iii) habituation;

(iv) hearing aids;

(v) education; and

(vi) counseling;

(t) consultation to individuals, public and private agencies, and governmental bodies, or as an expert witness regarding legal interpretations of audiology findings, effects of auditory/vestibular disorders, and relevant noise related considerations;

(u) case management and service as a liaison for consumers, families, and agencies in order to monitor audiologic status and management and to make recommendations about educational and vocational programming; and

(v) consultation to industry on the development of products and instrumentation related to the management of auditory/vestibular function.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, MCA

REASON: Senate Bill 451 amended the statutory definition of the practice of audiology at 37-15-102, MCA, to the "nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule" and deleted the specific services included in the practice of audiology. It is reasonably necessary to adopt New Rule IV to clarify and delineate the services constituting the practice of audiology and to further implement the legislation.

NEW RULE V SPEECH-LANGUAGE PATHOLOGY SCOPE OF PRACTICE

(1) The scope of practice of speech-language pathology includes but is not limited to:

(a) screening, identification, assessment, treatment, intervention, and provision of follow-up services for disorders of:

(i) speech, including articulation, phonology, fluency, and voice;

(ii) language, including morphology, syntax, semantics, pragmatics, and disorders of receptive and expressive communication in oral, written, graphic, and manual modalities;

(iii) oral and pharyngeal functions, including disorders of swallowing and feeding;

(iv) cognitive aspects of communication; and

(v) social aspects of communication;

(b) determination of the need for augmentative communications systems and provision of training in the use of these systems;

(c) planning, directing, and conducting or supervising programs that render or offer to render a service in speech-language pathology;

(d) provision of nondiagnostic pure-tone testing, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;

(e) aural rehabilitation, including services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairments;

(f) oral motor rehabilitation, including services and procedures for evaluating and facilitating face, lip, jaw, and tongue mobility and control;

(g) cognitive retraining, including services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult;

(h) dysphagia therapy, including services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders;

(i) consultation to educators, parents, and related service providers as members of interdisciplinary teams about communication management and educational implications of speech/language disorders;

(j) education to the general public as a means of prevention;

(k) designing and conducting basic and applied speech-language pathology research, and the dissemination of research findings to other professionals and to the public, to:

(i) increase the knowledge base;

(ii) develop new methods and programs; and

(iii) determine the efficacy of assessment and treatment paradigms;

(l) education and administration in speech-language pathology (communication disorders) graduate and professional education programs; and

(m) administration and supervision of professional and technical personnel who provide support functions to the practice of speech-language pathology.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, MCA

REASON: Senate Bill 451 amended the statutory definition of the practice of speech-language pathology at 37-15-102, MCA, to the "nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule" and deleted the specific services included within the practice of speech-language pathology. It is reasonable and necessary to adopt New Rule V to clarify and delineate the services constituting the practice of speech-language pathology and to further implement the legislation.

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

24.222.511 PASS/FAIL CRITERIA found at ARM page 24-26047.

AUTH: 37-15-202, MCA
IMP: 37-15-304, MCA

REASON: It is reasonably necessary to repeal this rule as the board does not now, and will not in the future, have any involvement in setting licensure examination passing scores, but only determines which examinations are accepted by the board.

24.222.512 WAIVER OF EXAMINATION found at ARM page 24-26048.

AUTH: 37-15-202, MCA
IMP: 37-15-305, MCA

REASON: It is reasonably necessary to repeal the rule as the board has never waived the requirement for successful completion of a licensure examination. The board has concluded that requiring a licensure examination is necessary for protection of the public by further ensuring that only qualified applicants are licensed as speech-language pathologists and audiologists in Montana.

24.222.704 UNLICENSED INDIVIDUALS found at ARM page 24-26064.

AUTH: 37-15-202, MCA
IMP: 37-15-313, MCA

REASON: House Bill 301 of the 1999 Legislative session provided for the registration of unlicensed persons working in schools or special education cooperatives and included a termination provision to be effective June 30, 2003. It is reasonable and necessary to repeal this rule regarding these unlicensed individuals to comply with the termination of the legislation.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Speech-Language Pathologists and Audiologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620, by facsimile to (406)444-2638, or by e-mail to dlibsdslp@mt.gov and must be received no later than 5:00 p.m., June 30, 2006.

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.slpaud.mt.gov under the Board of Speech-Language Pathologists and Audiologists 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, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

9. The Board of Speech-Language Pathologists and Audiologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name included on the list shall make a written request that includes the name and mailing address of the person to receive

notices and specifies that the person wishes to receive notices regarding all Board of Speech-Language Pathologists and Audiologists administrative rulemaking proceedings. Such written request may be mailed or delivered to the Board of Speech-Language Pathologists and Audiologists, 301 S. Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdslp@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
MARILYN THADEN, 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 May 22, 2006.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.351.215 license fee schedule for weighing and measuring devices	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 22, 2006, at 10:00 a.m., a public hearing will be held in room 471 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Weights and Measures Bureau (bureau) of the Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the bureau no later than 5:00 p.m., June 16, 2006, to advise us of the nature of the accommodation you need. Please contact Jack Kane, 301 South Park Avenue, P.O. Box 200516, Helena, Montana 59620-0516; telephone (406) 841-2241; Montana Relay 1-800-253-4091; TDD (406) 444-0532; Facsimile (406) 841-2060; e-mail jkane@mt.gov.

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

24.351.215 LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES (1) Measuring device license fees are as follows:

(a) each gasoline meter, diesel meter, compressed natural gas dispenser or fuel oil meter with a listed maximum delivery rate of 20 or less gallons per minute (gpm)	~~$16~~ 21
(b) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery rate of between 130 gpm and 20 gpm	~~55~~ 70
(c) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery of over 130 gpm	~~65~~ 83
(d) each liquefied petroleum gas (LPG) meter	~~80~~ 102

(2) remains the same.

AUTH: 30-12-202, 82-15-102, 82-15-105, MCA
IMP: 30-12-203, 82-15-105, MCA

REASON: The Weights and Measures Bureau (bureau) operates as a special revenue program funded entirely by license fees assessed on all weighing (scales) and measuring (pumps and meters) devices in commercial use. No general fund monies are available or used for the bureau's operations. It is reasonable and

necessary to amend ARM 24.351.215 in order to keep license fees commensurate with the costs of the bureau's regulation of measuring devices.

Over the past ten years, the bureau's revenue from device license fees has increased 19.4% due to additional devices (primarily retail gasoline pumps) being placed in service. During this same period, personnel, operating, and equipment expenses have increased 36.5% with no increase in the number of bureau employees. Since FY03, even though the bureau has never exceeded its statutorily authorized appropriation, the bureau has expended more money than it has taken in. These past shortfalls have been made up through carry forward from previous years, vacancy savings, and an almost complete elimination of replacement equipment expenditures. However, due to an increase in personnel services as well as increased expenses for motel rooms, meals, gasoline, diesel fuel, and equipment maintenance, the bureau can no longer afford to operate without a fee increase. The department last imposed a fee increase in July 2000.

For FY06, the difference between the bureau's appropriation amount of $880,678 and the anticipated device fee income of $690,398 is $190,280. Since the bureau dedicates one-half of its personnel and monetary resources toward testing and inspecting pumps and meters, approximately one-half of the total shortfall should be made up through a fee increase on measuring devices. The fees for measuring devices are all being increased approximately 27%, rounded up to the nearest whole dollar. The second half of the shortfall will be addressed in the 2007 legislative session as the bureau intends to submit legislation to statutorily increase fees for weighing devices. Approximately 1,000 licensed petroleum entities will be affected by this fee increase and an estimated increase in annual revenue of $102,481 is projected.

There is also reasonable necessity to amend the authority cites while the rule is otherwise being amended, in order to fully identify the sources of the bureau's rulemaking authority.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted by mail to Jack Kane, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, P.O. Box 200516, Helena, Montana 59620-0516, by facsimile to (406) 841-2060, or by e-mail to jkane@mt.gov and must be received no later than 5:00 p.m., June 30, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the department and program's website on the World Wide Web at http://mt.gov/dli/bsd/wm/index.asp, in the Rules Notices section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep

its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all administrative rulemaking proceedings of the Weights and Measures Bureau or other administrative proceedings. Such written request may be mailed or delivered to the Weights and Measures Bureau, 301 South Park Avenue, P.O. Box 200516, Helena, Montana 59620-0516, faxed to the office at (406) 841-2060, e-mailed to jkane@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. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY

/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 May 22, 2006

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.2.403, pertaining to diagnostic laboratory fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 1, 2006, the Department of Livestock proposes to amend the above-stated rule pertaining to Department of Livestock diagnostic lab fees.

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 June 22, 2006, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, P.O. 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 as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

32.2.403 DIAGNOSTIC LABORATORY FEES (1) remains the same.

ABORTION STUDIES (kits): Includes histopathology and bacteriology (use SV43 form)	~~$30.00~~ 35.00
BACTERIOLOGY (use SV43 form):	
aerobic culture (first isolate)	~~$11.50~~ 13.00
aerobic culture (additional isolates)	4.00 each
anaerobic culture (facultative)	14.00
antibiotic sensitivity per isolate	7.00
Campylobacter (livestock reproductive disease)	~~10.00~~ 10.50
Campylobacter (intestinal contents)	~~10.00~~ 10.50
Chlamydia ELISA	~~16.00~~ 17.00
Clostridium FA	~~10.00~~ 10.50
Clostridium genotyping referral	cost of referral
dermatophyte culture and PAS stain	~~22.00~~ 23.00
direct darkfield microscopy	7.00
E. coli K99 latex agglutination	~~10.00~~ 11.00

Mycoplasma culture	12.00
non-dermatophyte fungal culture	~~18.50~~ 19.00
special requests	contact lab
Trichomonas culture	5.00
CLINICAL PATHOLOGY (clinical profiles):	
small animal health screen (SA Chem Panel, CBC/Differential, UA)	~~$35.00~~ 37.00
small animal clinical profile (SA Chem Panel, CBC/Differential)	~~26.00~~ 27.50
SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, Glu, TP, CBC/Differential)	~~19.00~~ 20.00
Feline ADR Profile (SA Chem Panel, T4, CBC/Differential, FeLV, FIV, FIA)	~~50.00~~ 55.00
large animal health screen (LA Chem Panel, CBC/Differential, Fibrinogen, UA)	~~35.00~~ 37.00
large animal clinical profile (LA Chem Panel, CBC/Differential, Fibrinogen)	~~26.00~~ 27.50
LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, CBC/Differential, Fibrinogen)	~~19.00~~ 21.00
Equine Fitness Profile (AST, GGT, Tbili, CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, CBC/Differential, Fibrinogen)	~~22.00~~ 23.00
CLINICAL PATHOLOGY (mini profiles):	
small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLu)	~~$12.50~~ 13.75
small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)	~~12.50~~ 13.75
Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase, LIPASE)	~~11.00~~ 13.75
canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)	~~17.00~~ 17.50
large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)	~~9.00~~ 10.00
large animal Renal Profile (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)	~~10.00~~ 11.00
SA/LA Gastrointestinal Profile (TP, ALB, Na, K, Cl)	~~8.00~~ 9.00
feline Thyroid Profile (ALP, ALT, AST, PO4, T4)	~~10.00~~ 11.00
Electrolytes (Na, K, Cl, TCO2)	7.00
cT4	7.00
T3	7.00
TSH	7.00
free T4	7.00
cTSH	7.00

cortisol	~~12.00~~ 13.00 each test
canine thyroid panel (CTT4, CTSH, PT4, TT3)	22.00
thyroid panel (equine/feline)	17.00
Sorbitol Dehydrogenase	contact lab
bile acids	contact lab
TLI	contact lab
Phenobarbitol	contact lab
CLINICAL PATHOLOGY (biochemical panels):	
small animal Chem Panel	$~~20.00~~ 21.00
large animal Chem Panel	~~20.00~~ 21.00
~~T4 add-on~~	~~7.00~~
individual biochemical tests	contact laboratory
CLINICAL PATHOLOGY (Cytology):	
solid tissue (FNA, imprint, or smear)	$~~24.00~~ 26.00
bone marrow analysis	~~26.00~~ 30.00
fluid analysis (total cell count, TP, SG, Cytology)	26.00
fluid smear (cytology only)	22.00
CSF analysis (SG, Microprotein, Cytospin cytology)	18.00 plus microprotien referral
CLINICAL PATHOLOGY (Hematology):	
small animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocytes, WBC/Differential, TP, RWD, MPV, Fibrigogen)	$~~10.00~~ 10.50
small animal CBC without Differential	~~5.00~~ 5.25
Reticulocyte count	~~5.00~~ 5.25
Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA)	~~30.00~~ 31.50
Large animal CBC (RBC, HCT, MCV, MCHC, Reticulocyte count, RDW, MPV, WBC/Differential, TP, Fbrinogen)	~~10.00~~ 10.50
large animal CBC without Differential	~~5.00~~ 5.25
Hemotropic Parasite Screen	3.00
Fibrinogen	3.00
CLINICAL PATHOLOGY (miscellaneous tests):	
blood cross match	$12.00
Buffy coat count	20.00
Coagulation per test (PT, APTT, RBR, FDP)	17.00
others	call ahead for prices
CLINICAL PATHOLOGY (urine evaluation):	
urinalysis (chemical, specific gravity, sediment evaluation)	$10.00
urinalysis with culture/sensitivity	~~26.50~~ 28.00

HISTOLOGY (use SV43 form):	
1 - 3 slides (one biopsy)	~~$24.00~~ 26.00
4 - 6 slides	~~30.00~~ 32.00
7 - 10 slides	~~36.00~~ 38.00
11 or greater slides	~~40.00~~ 42.00
duplicate H&E slide	~~8.00~~ 9.00
immunohistochemistry	~~22.00~~ 23.00
special stains	8.00
MILK LABORATORY (use SV43 form):	
added water	$3.00
antibiotic (depending on class of suspected antibiotic)	12.00 to 23.00
Brucella ring test	2.00
coliform (milk and water)	5.00
component testing	1.00
Gerber	3.00
Listeria culture	32.00
Majonnier	12.50
pesticide (organophosphate/carbamate)	24.00 minimum
pesticide (chlorinated hydrocarbon)	210.00
phosphatase	6.00
somatic cell count (direct microscopy)	5.00
somatic cell count (electronic)	1.00
standard plate count	5.50
yeast or mold	5.00
laboratory certification review	contact laboratory
MISCELLANEOUS TESTS (use SV43):	
bovine IgG	$12.00
equine IgG	12.50
ocular nitrate	12.00
duplicate test reporting	2.00
after hour fee (pathologist)	~~up to~~ 50.00
stat results (clinical pathology only)	15.00
minimum laboratory fee	6.00
referral testing	referral lab testing costs plus mailing costs and $6.00 handling fee
special testing/referral	contact laboratory
out-of-state fee	50% surcharge of total lab costs

NECROPSY: Includes gross examination, histopathology, and routine bacterial isolation, as deemed necessary by the pathologist. Contact the laboratory for procedural instructions. Euthanasia must be performed at animal departure point unless recommended otherwise by pathologist. cattle and horses fetus < 150 lbs. 150-500 lbs. > 500 lbs. sheep and goats fetus < 20 lbs. > 20 lbs. pigs fetus/s (same sow) < 25 lbs. 25-250 lbs. 250-500 lbs. dogs and cats other species carcass disposal rates small animals large animals wildlife insurance and legal cases research cases spinal cord removal (in addition to necropsy fees) transmissible encephalopathies necropsy brain removal IHC and ELISA testing	 $~~50.00~~ 55.00 + carcass disposal ~~65.00~~ 72.00 + CD ~~80.00~~ 90.00 + CD ~~120.00~~ 130.00 + CD ~~50.00~~ 55.00 + CD ~~50.00~~ 55.00 + CD ~~65.00~~ 72.00 + CD ~~50.00~~ 55.00 + CD ~~50.00~~ 55.00 + CD ~~65.00~~ 72.00 + CD ~~80.00~~ 90.00 + CD ~~80.00~~ 90.00 + CD 35.00 minimum 25.00 to 85.00 ~~25.00 to 200.00~~ 20/per hundred weight contract ~~per~~ FWP contact laboratory 125/hour contact laboratory 45.00 to 80.00 (minimum) 125.00 +CD (minimum) 30.00 referral costs plus shipping and handling
NEONATAL DIARRHEA STUDIES (kits): Includes histopathology and routine bacteriology with additional tests for K-99 E. coli LA, viral agents (EM), Cryptosporidium, endoparasitism, and serum immunoglobulin as history and age of calf dictates (use SV43 form)	 $~~65.00~~ 75.00

PARASITOLOGY:	
adult parasite or arthropod identification (referral)	$25.00
cryptosporidia exam	6.00
Dirofilaria immitis ELISA screening	~~7.00~~ 8.00
Dirofilaria immitis ELISA confirmation	~~12.00~~ 12.50
fecal flotation	9.00
Giardia ELISA	~~20.00~~ 25.00
special parasite ID procedures	contact laboratory
PCR TESTING	contact lab
RABIES:	
Submit entire brain or head in a refrigerated, fresh state. Do not submit live animals. Coincide specimen arrival with laboratory working schedule.	
FA examination (small animal)	$25.00
FA examination (large animal)	50.00
carcass disposal (does not apply to bats)	~~25.00 to 200.00~~ see carcass disposal
SEROLOGY (large animal):	
anaplasmosis cELISA	~~$6.00~~ 7.00
Avian Influenza AGID < 10	5.00
10 > 24	4.30
25 > 49	2.50
> 50	1.00
Bluetongue AGID	5.00
Bluetongue cELISA	7.50
Bovine Leukemia Virus, ELISA	6.00
Bovine Respiratory Syncytial Virus SN	referral
Bovine Virus Diarrhea Type I and II SN	12.00
Bovine Virus Diarrhea ELISA	5.00
> 100 BVD samples (each sample)	4.00
Brucella abortus, card, BAPA or FP	1.00 each
Brucella abortus CF, Rivanol, SPT, or STT	2.00 each
Brucella ovis ELISA, CF	~~5.00~~ 7.00
Equine Infectious Anemia AGID (Coggins) 1-15	7.00 each
16 > 50	5.50 each
> 50	4.50 each
Equine Infectious Anemia ELISA	12.50
Epizootic Hemorrhagic Disease AGID	10.00
Infectious Bovine Rhinotracheitis SN	6.00
Johne's (Paratuberculosis) AGID	10.00

Johne's (Paratuberculosis) ELISA	~~6.50 each~~ 7.00
Johne's ELISA CF	referral
Leptospirosis (8 routine serovars) MAT	6.50
Ovine Progressive Pneumonia/Caprine Arthritis Encephalitis AGID	5.00
Parainfluenza-3 HA	referral
Pseudorabies SN, LA	5.00
Salmonella pullorum MAT	4.00
Vesicular stomatitis CF	contact laboratory
Vesicular stomatitis SN (New Jersey or Indiana)	12.00
West Nile IgM ELISA	~~7.00~~ 8.00
SEROLOGY (small animals) (use SV43 form):	
Brucella canis Tube	$~~17.00~~ 20.00
Feline Infectious Peritonitis ELISA	23.00
Feline Leukemia ELISA	~~13.00~~ 14.00
Feline Leukemia/Feline Immunodeficiency Virus LISA	~~22.00~~ 23.00
TOXICOLOGY:	referral to outside contracted lab
VIROLOGY (use SV43 form):	
~~Bovine coronavirus~~	~~$17.50~~
BVD, IBR, Leptospira, EHV-1, and BRSV ~~FA~~ fluorescent antibody testing	$6.00 per agent
Bovine Viral Diarrhea ELISA 0 to 99 samples	5.00
> 100 samples (per sample)	4.00
Canine Parvovirus (fecal only) ELISA	20.00
electron microscopy (where applicable)	25.00
~~fluorescent antibody testing (livestock only)~~	~~6.00~~
virus isolation (livestock only)	~~18.00~~ 20.00 per virus
OTHER TESTS REQUESTED:	call ahead for prices
MISCELLANEOUS CHARGES/SUPPLIES:	
culturette	$3.45
duplicate test reporting	2.00
handling fee	6.00 plus shipping
kits	mailing costs
large shipper	11.50
minimum fee	6.00
out-of-state	cost of test plus 50%

(2) remains the same.

AUTH: 81-1-102, 81-2-102, MCA
IMP: ~~81-1-301, 81-1-302,~~ 81-2-102, MCA

REASON: ARM 32.2.403 is being amended to change fees that are currently charged by the Department of Livestock for diagnostic laboratory services. The fees are being increased to reflect increased costs associated with providing those services. The fees must, by statute, be set at levels commensurate with the costs of performing the tests or services listed.

Fees for each procedure and test were evaluated determining the cost of the test materials and labor for performance of the test. The fees were compared to regional government funded diagnostic laboratories and a private veterinary laboratory. The fees were adjusted to be competitive with these laboratories and to offset inflationary costs. The laboratory must continue to provide a utilized service to the Montana livestock industry in order to assure that a vital function and mission of the laboratory regarding disease surveillance is not compromised.

The increased fees charged by the department's diagnostic laboratory will potentially affect approximately 25,000 people who may use services at the laboratory. The cumulative amount of the fee increase will be $40,000.00 based on this number of lab users.

The IMP citations are being deleted, as those statutes do not pertain to diagnostic laboratory fees and are therefore inappropriate citations.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m., June 29, 2006.

5. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. June 29, 2006.

6. If the department receives requests for a public hearing on the proposed actions 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

7. An electronic copy of this proposal notice is available through the department's site at www.mt.gov/liv.

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 St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Marc Bridges"; or e-mailed to mbridges@mt.gov. Request forms may also be completed 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

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State May 22, 2006.

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

In the matter of the amendment of ARM 37.104.101, 37.104.109, 37.104.218, and 37.104.221 pertaining to emergency medical services	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 1, 2006 the Department of Public Health and Human Services proposes to amend 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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 22, 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; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. 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) remains the same.

(2) "Advanced life support service" means an ambulance service or nontransporting medical unit that has the capacity and is licensed by the department to provide care at ~~any of the following levels of care or endorsements~~ the EMT-Paramedic equivalent level 24 hours a day, seven days a week~~:~~.

~~(a) EMT-B 1, EMT-B 3, EMT-B 4, and EMT-B 5 endorsements;~~

~~(b) EMT-I and all EMT-I endorsements; or~~

~~(c) EMT-P and all EMT-P endorsements.~~

(3) through (20) remain the same.

(21) "First responder with an ambulance endorsement" means an individual licensed by the board as an EMT-F ambulance (EMT-F3) as listed in ARM 24.156.2751.

(21) through (21)(c) remain the same but are renumbered (22) through (22)(c).

~~(22)~~ (23) "Level of service" means ~~either~~ basic life support, intermediate life support or advanced life support services.

(23) and (24) remain the same but are renumbered (24) and (25).

~~(25)~~ (26) "Permit" means the sticker affixed to a ground ambulance or a certificate placed in an air or ground ambulance indicating the ambulance vehicle has met the requirements of these rules.

(26) through (31) remain the same but are renumbered (27) through (32).

~~(32)~~ (33) "Supplemental training" means a training program for registered nurses utilized by an emergency medical service that complements their existing education and experience and results in knowledge and skill objectives comparable to the level of EMT training corresponding to the license level ~~authorized by the service medical director~~ at which the service is licensed or authorized.

(33) through (35) remain the same but are renumbered (34) through (36).

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.109 BASIC LIFE SUPPORT SERVICE LICENSING (1) An ambulance service or nontransporting medical unit (NTU) capable of providing service only at the basic life support level will be licensed at the basic life support level.

~~(a) A basic life support service or NTU that provides care at the EMT-B 2 level will receive a basic life support license.~~

~~(b)~~ (a) ~~Other than as defined in (1)(a), an~~ An ambulance service or NTU that provides advanced life support but cannot reasonably provide it 24 hours per day, seven days per week due to limited personnel, will receive a basic life support license.

~~(2)~~ (b) Ambulance services or NTUs shall request authorization for (1)(a) ~~or (b)~~ by submitting a service plan on forms provided by the department.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.218 MEDICAL CONTROL: SERVICE MEDICAL DIRECTOR

(1) and (2) remain the same.

(3) As provided in ARM 24.156.2701, a designated service medical director must be a physician or physician assistant~~-certified~~ who is responsible professionally and legally for overall medical care provided by a licensed ambulance service.

AUTH: 50-6-323, MCA
IMP: 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, with either: ~~between the advanced life support service personnel and~~

(a) a 24-hour physician staffed emergency department; or

(b) a physician approved by the service medical director.

~~(2) A service that provides only endorsement level EMT-B 2 as provided for in ARM 24.156.2751 is not required to have online medical direction.~~

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

3. The Department of Public Health and Human Services (the department) is proposing these amendments to Administrative Rules of Montana (ARM) 37.104.101 "Definitions", 37.104.109 "Basic Life Support Service Licensing", 37.104.218 "Medical Control: Service Medical Director", and 37.104.221 "Medical Control: Advanced Life Support" pertaining to emergency medical services (EMS). The department believes these amendments are necessary to implement changes agreed to by the department in response to comments on EMS regulations it amended and adopted December 22, 2005. If these changes are not adopted, the rules regulating licensing of ambulance and nontransporting units will be inconsistent with each other and with the Board of Medical Examiners' rules, making them hard to understand. The inconsistencies will also make the rules difficult for EMS services and the public to comply with and will unnecessarily complicate the department's ability to administer them. One of the changes requires the amendment of ARM 37.104.109, a rule that was not mentioned in the original notice of intended action. The other proposed changes agreed to by the department were inadvertently omitted from the notice of adoption. Therefore, as provided in 2-4-302, MCA, the department is proposing these amendments.

On July 14, 2005, the department published MAR Notice No. 37-352 pertaining to the proposed adoption, amendment, and repeal of certain rules relating to emergency medical services, at page 1238 of the 2005 Montana Administrative Register, issue number 13. The department conducted a public hearing August 4, 2005 at 10:00 a.m. in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana. Several comments were submitted. The rules were adopted December 22, 2005 and a notice of their adoption was published at page 2681 of the Montana Administrative Register, issue number 24.

One commentor suggested that all levels of endorsement above the basic Emergency Medical Technician (EMT) level be defined as "advanced life support" and that the proposed licensing exception for providers with an EMT-B 2 endorsement (monitoring) be deleted. The department agreed, and in response to the comment stated that the applicable rules would be changed. Inadvertently, none of the necessary changes were included in the notice of adoption. Therefore, the department is proposing the amendment of ARM 37.104.101(2) "Advanced life support", ARM 37.104.101(23), "Level of Service", ARM 37.104.109, and ARM 37.104.221 to delete references to levels of care or endorsements above EMT basic (EMT-B).

Another commentor suggested that the term "first-responder-ambulance" should be eliminated and replaced with "first-responder with an ambulance endorsement". The department agreed, and indicated it had done so in the adoption notice. Inadvertently, the definition was not changed, but deleted altogether. Therefore, the

department is proposing the amendment of ARM 37.104.101 to add a definition "First responder with an ambulance endorsement" referring to the Board of Medical Examiners rule, ARM 24.156.2751.

Another commentor requested that specific language be added to proposed ARM 37.104.101 to clearly allow a service medical director to approve nurses who are already competent in their "knowledge and skill objectives comparable to the level of EMT training" without requiring experienced nurses to complete supplemental training. The department agreed to do so and, in its response to the comment stated the language it intended to add to ARM 37.104.101. Inadvertently, the language was not included in the rule as it was adopted. Therefore, the department is proposing the amendment of ARM 37.104.101(32) "Supplemental training" to include the necessary language allowing a service medical director to consider a nurse's experience when assessing supplemental training needs.

A commentor objected to the department's proposal to delete the requirement that all licensed ambulance vehicles have an identification sticker under ARM 37.104.101(27) "Permit". The department agreed that it is necessary for law enforcement officers to be able to visually determine that a vehicle is a bona fide ambulance. The department agreed to restore the identification sticker requirement. However, the necessary change was inadvertently omitted from the adoption notice. Therefore, the department is proposing an amendment to ARM 37.104.101(27) to restore the requirement and to specify that an identification sticker must be affixed to a ground ambulance as well.

The department is taking this opportunity to change the structure of ARM 37.104.221 to make it clear that an ALS must have a two-way communication system so that an ambulance vehicle can communicate with a 24-hour physician staffed emergency department or a physician approved by the medical director. As currently numbered, the rule could be misinterpreted. The proposed amendment would eliminate the need for interpretation. No change of meaning is intended.

Number of Persons Affected and Fiscal Impact

There are a total of 144 ambulance services and 112 nontransporting units in Montana that could be affected by the proposed rule amendments. Since these proposed amendments neither increase the existing license fee nor create a new fee, the department does not anticipate any financial impact on the department or the regulated entities resulting from this proposal.

4. Interested persons may submit their data, views, or arguments concerning the proposed action in writing 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 June 29, 2006. Data, views, or arguments may also be submitted by facsimile (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. If a person who is directly affected by the proposed action wishes to express data, views, and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on June 29, 2006.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 based on the 256 ambulance services and nontransporting units affected by rules covering emergency medical services.

/s/ John Koch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and Human Services

Certified to the Secretary of State May 22, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.1501 pertaining to definitions and ARM 2.59.1502 pertaining to application procedure required to engage in deposit lending, and the adoption of NEW RULE I pertaining to reports, NEW RULE II pertaining to schedule of charges, NEW RULE III pertaining to employees' character and fitness, NEW RULE IV pertaining to electronic deductions, and NEW RULE V pertaining to income verification	)	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 23, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-369 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 375 of the 2006 Montana Administrative Register, issue number 4. On March 9, 2006, the division published MAR Notice No. 2-2-370 at page 614 of the 2006 Montana Administrative Register, issue number 5, to amend the reasonable necessity statement.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has amended ARM 2.59.1502 exactly as proposed and adopted new rules II (2.59.1508) and V (2.59.1513) exactly as proposed.

3. The division has adopted the following rules as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

2.59.1501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) through (3) remain as proposed.

(4) "Manager" means a person employed by a deferred deposit lender as the person responsible for operating the business at the location where the person is employed.

(5) ~~(4)~~ "Monthly net income" means gross salary minus taxes and voluntary deductions. This term includes income from public assistance, child support, alimony, unemployment insurance payments, ~~and~~ workers' compensation, and other verifiable sources.

AUTH: 31-1-702, MCA
IMP: 31-1-705, 31-1-722, MCA

RULE I (2.59.1507) REPORTS (1) The following must be reported to the department:

(a) any instances of theft from the deferred deposit loan business ~~or missing funds~~ within ten days of ~~each occurrence~~ discovery of the theft;

(b) and (c) remain as proposed.

AUTH: 31-1-702, MCA
IMP: 31-1-702, MCA

NEW RULE III (2.59.1510) EMPLOYEES' CHARACTER AND FITNESS

(1) Licensees are responsible for conducting appropriate background checks on ~~all applicants for employment~~ new employees hired after July 1, 2006. At a minimum, each licensee shall:

(a) and (b) remain as proposed.

(c) within ten days of start of employment, request a Montana criminal records check from the Montana Department of Justice.

(2) and (3) remain as proposed.

(4) A criminal records check conducted by another agency or private company may be used by licensees as a substitute for the records check by the Montana Department of Justice as long as the information provided by the substitute records check contains the same information as the check conducted by the Montana Department of Justice.

AUTH: 31-1-702, MCA
IMP: 31-1-705, MCA

NEW RULE IV (2.59.1512) ELECTRONIC DEDUCTIONS (1) and (2) remain as proposed.

(3) An electronic deduction for nonsufficient funds authorized by the borrower under (1) may not be presented to the borrower's financial institution until the licensee has presented the check for payment ~~at least twice~~.

AUTH: 31-1-702, MCA
IMP: 31-1-703, MCA

4. The following comments were received and appear with the division's responses:

Comment 1: A comment was received in regard to ARM 2.59.1501(3) opposing the use of the phrase "other financial related crimes and judgments" in the definition of fraud or other dishonest financial dealings.

Response 1: The division recognizes the concern but believes that the statute and rule are sufficiently clear that only criminal behavior or civil judgments that show financial dishonesty such as fraud are subject to the restrictions on the statute. Divorces or other civil money judgments that do not pertain to fraudulent acts are not grounds for rejection or termination of employment.

Comment 2: A comment was received in regard to ARM 2.59.1501(4) stating that the definition of "monthly net income" was too restrictive.

Response 2: The division believes that monthly income must be determined only from sources that can be verified. Therefore, the division will amend the rule to include "other verifiable sources".

Comment 3: A comment was received that the term "managers" as used in the rules should be clarified to include only the employee in charge of the licensed location.

Response 3: The division agrees and amends ARM 2.59.1501 accordingly.

Comment 4: Comments were received in regard to New Rule I stating that reporting "missing funds" is onerous and over burdensome because cash drawers are short by a few pennies.

Response 4: The division agrees and amends New Rule I accordingly.

Comment 5: Comments were received in regard to New Rule I and whether ten days was too short of a reporting time for all the occurrences.

Response 5: The division agrees with the comments as far the reporting requirements of theft and amended the rule to reflect from time of discovery. The division does not agree with the comment as far as other occurrences are concerned. The division believes that ten days is a sufficient duration of time to provide notification of a change in managers or to submit officer questionnaires.

Comment 6: A comment was received in regard to New Rule I stating that some instances of missing funds are not associated with the deferred deposit business and that the reporting requirement should be only for theft of funds from the deferred deposit loan business.

Response 6: The division agrees and amends New Rule I accordingly.

Comment 7: A comment was received in regard to New Rule II stating that the phrase "easily readable" is ambiguous and should be replaced with a specific font size requirement.

Response 7: The division disagrees and believes that the phrase "easily readable" is sufficiently clear.

Comment 8: A comment was received in regard to New Rule II stating that a schedule of charges is unnecessary because the borrower already receives full disclosures before signing the agreement plus receives the pamphlet that outlines basics of the transaction.

Response 8: The division disagrees. The schedule of charges is necessary to allow the consumers to easily determine the cost of a deferred deposit loan.

Comment 9: Comments were received in regard to New Rule III stating that the verification of prior employment is problematic due to a legal climate that makes previous employers reluctant to discuss an applicant's employment. A reasonable attempt to verify and document should be the standard.

Response 9: The division recognizes that absolute verification of prior employment may be difficult. New Rule III contemplates a process where the licensee makes a good faith effort to verify employees' prior employment. In cases where the prior employer will not divulge information, the licensee has satisfied this provision by attempting to verify.

Comment 10: A comment was received in regard to New Rule III requesting that a background check conducted by a private company may be more efficient since it would be national in scope.

Response 10: The division recognizes that in some cases private companies may be more efficient at background checks. Therefore, the division amends the rule accordingly.

Comment 11: Comments were received in regard to New Rule III stating that as the rule is currently written, a licensee would have to do background checks on "all applicants" not just the applicants that were going to be offered employment.

Response 11: The division does not contemplate that licensees will have to conduct background checks on current employees and has clarified New Rule III accordingly.

Comment 12: A comment was received in regard to New Rule III in that the rule is silent as to whether employee records must be stored on location thus violating federal privacy laws.

Response 12: The division will require that employee records be stored and safeguarded according to the company's standard operating procedure for those types of records.

Comment 13: Comments were received in regard to New Rule III requesting that all employees that are hired before this rule takes effect not be subject to the rule.

Response 13: The division agrees and has amended New Rule III accordingly.

Comment 14: Comments were received in regard to New Rule IV stating that the requirements may be in conflict with federal law.

Response 14: The division disagrees. New Rule IV does not conflict with federal law and is in compliance with the National Automated Clearing House Association rules.

Comment 15: Comments were received in regard to New Rule IV stating that the requirements may have the adverse effect of increasing bank fees for the borrowers.

Response 15: The division recognizes that there may be an adverse financial impact for the borrowers. Therefore the division amends New Rule IV accordingly.

Comment 16: Comments were received in regard to New Rule V stating that requiring income verification for each loan was inappropriate. At this time licensees verify employment every six months, which is adequate. Requiring verification every time a loan is issued is burdensome on both the borrower and the industry.

Response 16: The division disagrees. Licensees may not issue a loan that is unconscionable. A loan may be unconscionable if it is more than 25% of a borrower's monthly income. Without verifying income for each loan, there is no way of determining whether a loan may be unconscionable.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State May 22, 2006.

BEFORE THE MONTANA COAL BOARD
COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 8.101.101, 8.101.201, 8.101.202, 8.101.301, 8.101.302, 8.101.303, 8.101.304, 8.101.305, 8.101.306, 8.101.307, and 8.101.308, and the repeal of 8.101.309 and 8.101.310 pertaining to the administration of coal board grants	))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On April 6, 2006, the Department of Commerce published MAR Notice No. 8-101-52 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 816 of the 2006 Montana Administrative Register, Issue No. 7.

2. No comments or testimony were received.

3. The department has adopted New Rule I (8.101.311) and amended and repealed the above-stated rules as proposed.

MONTANA COAL BOARD
COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

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

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

Certified to the Secretary of State May 22, 2006

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	CORRECTED NOTICE OF ADOPTION (AIR QUALITY) (ASBESTOS) (HAZARDOUS WASTE) (JUNK VEHICLES) (MAJOR FACILITY SITING) (METAL MINE RECLAMATION) (OPENCUT MINING) (PUBLIC WATER SUPPLY) (SEPTIC PUMPERS) (SOLID WASTE) (STRIP AND UNDERGROUND MINE RECLAMATION) (SUBDIVISIONS) (UNDERGROUND STORAGE TANKS) (WATER QUALITY)

TO: All Concerned Persons

1. On December 22, 2005, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-239 regarding a notice of public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 2523, 2005 Montana Administrative Register, issue number 24. On May 4, 2006, the board and department published the notice of amendment, repeal and adoption of the rules at page 1139, 2006 Montana Administrative Register, issue number 9.

2. This corrected notice of amendment is being published to add a portion of a sentence that was inadvertently omitted in the adoption notice for New Rule VIII (17.4.307). The language contained in New Rule VIII appeared in the notice of proposed rulemaking as New Rule VI(7). Upon adoption, the board and department deleted the language from New Rule VI and placed it in New Rule VIII(1). However, the underlined language was inadvertently omitted from New Rule VIII. New Rule VIII, as adopted, reads as follows with the previously omitted language underlined for illustrative purposes:

NEW RULE VIII (17.4.307) ECONOMIC BENEFIT (1) The department may increase the total adjusted penalty, as calculated under ARM 17.4.305, by an amount based upon the violator's economic benefit. The department shall base any penalty increase for economic benefit on the department's estimate of the costs of

compliance, based upon the best 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 ARM 17.4.305 to obtain the total penalty.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden By: */s/ Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Certified to the Secretary of State, May 22, 2006.

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

In the matter of the amendment of ARM 24.114.301 definitions, 24.114.401, 24.114.402, 24.114.403, 24.114.404, 24.114.405, 24.114.406, and 24.114.407 pertaining to general provisions, 24.114.501, 24.114.502, 24.114.503, and 24.114.510 pertaining to licensing, 24.114.2101 pertaining to renewals, 24.114.2301 pertaining to unprofessional conduct, and 24.114.2402 pertaining to screening panel, and the repeal of 24.114.2401 pertaining to complaint procedure	)))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On March 9, 2006, the Board of Architects (board) published MAR Notice No. 24-114-27 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 620 of the 2006 Montana Administrative Register, issue no. 5.

2. On March 30, 2006, a public hearing was held on the proposed amendment and repeal of the above-stated rules. No one appeared to give testimony at the hearing and no comments were received by the April 6, 2006, deadline.

3. While staff was preparing department MAR Notice No. 24-101-202, it was discovered that use of the term “unexpired” in ARM 24.114.406 would likely cause confusion with respect to the term’s usage pursuant to 37-1-141, MCA, as amended in 2005. The word will be stricken from ARM 24.114.406 to avoid confusion and as it is not necessary for clarity within the board rule. The board is also not proceeding with the proposed amendments to ARM 24.114.2101 as it was discovered that similar amendments were proposed simultaneously in the department rule notice 24-101-202 in an effort to standardize terminology and statutory cross-references pertaining to licensure renewals.

4. The board has amended ARM 24.114.301, 24.114.401, 24.114.402, 24.114.403, 24.114.404, 24.114.405, 24.114.407, 24.114.501, 24.114.502, 24.114.503, 24.114.510, 24.114.2301, and 24.114.2402, and has repealed ARM 24.114.2401 exactly as proposed.

5. The board is not amending ARM 24.114.2101 as proposed in MAR Notice No. 24-114-27.

6. The board has amended ARM 24.114.406 with the following changes, stricken matter interlined, new matter underlined:

24.114.406 SOLICITATION OF BUSINESS BY NONRESIDENT ARCHITECTS (1) A nonresident architect may offer architectural services in this state without compensation upon submission to the board of verification of the following:

(a) a current, ~~unexpired,~~ unrestricted architecture license issued by the state where the architect's principal offices are located; and

(b) and (2) remain as proposed.

AUTH: 37-1-131, 37-65-204, MCA
IMP: 37-65-301, MCA

BOARD OF ARCHITECTS
TOM WOOD, PRESIDENT

/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 May 22, 2006

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.121.301 definitions, 24.121.401 fees, 24.121.405 variances, 24.121.601 applications for licensure, 24.121.603 out-of-state applicants, 24.121.803 school requirements, 24.121.805 school operating standards, 24.121.809 student withdrawal, transfer, or graduating, 24.121.1105 teacher-training curriculum, 24.121.2101 continuing education-instructors/ inactive instructors, 24.121.2301 unprofessional conduct, the adoption of NEW RULE I fee abatement and NEW RULE II continuing education-licensees/inactive licensees, and the repeal of 24.121.811 field trips	) NOTICE OF AMENDMENT,) ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On March 9, 2006, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-3 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 629 of the 2006 Montana Administrative Register, issue no. 5.

2. On March 31, 2006, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Members of the public spoke at the public hearing. Several comments were received by the April 10, 2006, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows, arranged by the rule being commented upon:

ARM 24.121.301(10) Definitions – “Distance Education”

COMMENT 1: A commenter expressed opposition against distance learning the way the rule is written.

RESPONSE 1: The board believes it is taking a proactive stance by moving into distance learning by making more education options available through distance education, thereby by allowing licensees the opportunity to search out other avenues of continuing education.

ARM 24.121.401(13) Fees – Student Enrollment/Reenrollment

COMMENT 2: A commenter questioned the deletion of student enrollment fees in conjunction with the proposed amendment to ARM 24.121.805 to delete the current requirement that schools must report student registrations to the board office.

RESPONSE 2: The board has proposed deleting the requirement for schools to submit student registrations to the board office. Since this requirement will be deleted from ARM 24.121.805(4), there is no reason to require the fee. The board has determined other professions do not report educational progress to the state and the board has concluded it should not be maintaining such information.

ARM 24.121.803(7)(k)(i) - (xxiv), (8)(l)(i) - (xxvii), (9)(b)(i) - (x), (12)(k)(i) - (xv), (13)(k)(i) - (xix) School Requirements

COMMENT 3: Several commentors commented in favor of deleting the requirement of specific kit items stated that they were in favor of the deletion as one felt the students should provide their own items and another stated they paid $500.00 for their supply kit and priced it out at only $83.00.

RESPONSE 3: The board believes this amendment is a benefit to both the students and the schools. The amendment, deleting the list of required equipment, will allow schools to be more responsive to the changing profession and what equipment is necessary to meet current student needs, rather than needing a rule change each time the equipment list needs to be modified.

COMMENT 4: Some other commenters opposed the deletion of the student equipment kits, expressing concern that the deletion meant the school would not be able to “sell” kits to students and students would not have sufficient supplies to leave school and enter the work force with. Some commenters stated that kits are not affordable unless schools provide them.

RESPONSE 4: This amendment does not necessarily eliminate the kit requirement. It allows schools alternatives to provide dispensary tools and equipment or require a kit. The amendment is intended to address the changing profession and to allow schools to determine what student's equipment/tools are needed rather than require students to purchase outdated items or obtain an amendment to the rules every time new or different tools or equipment are needed.

ARM 24.121.805 School Operating Standards

COMMENT 5: A commenter was unsure how the board will determine who and how many students are registered with a particular school and believes the board is being very naïve to think that everyone is going to be truthful and not make mistakes. It is the commenter's opinion that if the amendment is adopted, dishonesty and corruption are only a matter of moments and board oversight was necessary to ensure proper accountability.

RESPONSE 5: The board believes it should no longer have to be "policemen" for records. The board notes that colleges and other post-secondary educational institutions do not report student registration and hours to other state agencies. The board concludes that it has the means necessary to determine if a school is systematically falsifying student records, and to take appropriate action if that is the case.

ARM 24.121.2301(1)(v) Unprofessional Conduct

COMMENT 6: A commenter stated that the passing of this rule and New Rule II will cause people to suffer both financially and professionally.

RESPONSE 6: Since the board is not adopting New Rule II, ARM 24.121.2301(1)(v) is being amended so that it will apply to instructor licensees only. Please also see the comments and responses with respect to New Rule II.

NEW RULE II Continuing Education Licensees/Inactive Licensees

COMMENT 7: Several commenters stated they support the adoption of this rule and feel continuing education is very important.

RESPONSE 7: Although some members of the board believe continuing education is important to have, the board has decided not to adopt New Rule II.

COMMENT 8: Numerous commenters felt this rule does nothing by way of protecting the public health, safety, and welfare, nor is it necessary in order to provide the consuming public with professional services. A commenter stated the rule fails to recognize the differences between the five different disciplines regulated by the board and the individual needs and requirements of each. There was some concern regarding the fact that there are no licensed barber schools in Montana and obtaining out-of-state continuing education would be prohibitive including the loss of income from having to close a shop or booth. There was also concern regarding the procedure for preapproval of the continuing education courses.

RESPONSE 8: The board does not agree with all of the comments that were made; however they feel that at this time it is best not to adopt this new rule. Although the board does not necessarily agree with all of the points made by the commenters, the board has concluded that in light of the comments, it would not adopt New Rule II and therefore continuing education will continue be required only for licensed instructors.

4. The board has amended ARM 24.121.401, 24.121.405, 24.121.601, 24.121.603, 24.121.803, 24.121.805, 24.121.809, 24.121.1105, 24.121.2101, and 24.121.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.121.402) exactly as proposed, but is not adopting NEW RULE II.

6. The board has repealed ARM 24.121.811 exactly as proposed.

7. The board has amended ARM 24.121.301 with the following changes, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS The following definitions shall apply as used in this chapter:

(1) through (13) remain as proposed.

(14) "Inactive" means the status of any ~~licensee or~~ instructor who fails to meet the continuing education requirement.

(15) through (22) remain as proposed.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA
IMP: 37-1-306, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

BOARD OF BARBERS AND COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING OFFICER

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State May 22, 2006

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.101 pertaining to the municipal use definition	)))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On November 23, 2005, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-110 regarding the proposed amendment of ARM 36.12.101 at page 2316 of the 2005 Montana Administrative Register, Issue No. 22. On February 26, 2006 the department published MAR Notice No. 36-22-112 regarding a notice of public hearing regarding the proposed amendment at page 199 of the 2006 Montana Administrative Register, Issue No. 2.

2. The department has amended ARM 36.12.101 exactly as proposed.

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

COMMENT 1: Commenter states that simply withdrawing a working definition, without proposing a new definition to take its place, will leave potential water right permit applicants, change of use applicants, and those parties who may object to such applications in a difficult place. For example, an applicant may not know whether to designate a proposed use "municipal" or "domestic". An applicant may not know whether their proposal would qualify as an exemption to the Upper Missouri Basin Closure. It is difficult to meaningfully comment on withdrawal of the municipal definition when nothing has been offered in its place.

RESPONSE 1: DNRC believes that the rule defining "municipal use" may be in conflict with law. The rule may limit municipal use beyond that intended by the legislature. DNRC has been issuing water rights for municipal purposes without a definition in rule since 1973. Removing the municipal definition does not create a vacuum, but instead allows DNRC to return to the way the statute had been implemented from 1993 to 2005. Since 1973, DNRC has issued numerous permits with municipal use to entities who are not a town or city. An example is Mountain Water Company, a public utility who supplies water to the town of Missoula. The legislature would have been aware of those water rights when it enacted the Basin Closure Laws in 1991 and 1993. Therefore, DNRC believes it prudent to revert to the historical practice rather than enforce a rule that may be illegal. DNRC will propose a new rule definition, with the opportunity for public comment, after further considering legislative intent, or DNRC may seek clarification directly from the legislature. Until a final determination is promulgated, DNRC will continue to operate under its historic practice, accepting applications for municipal use from entities who are providing water for uses that are similar to a municipality such as commercial, fire protection, watering parks, and household uses.

COMMENT 2: It also seems the DNRC proposes to eliminate the definition and then conduct a study for the proposal of a new definition. Therefore, there will be no definition whatsoever of the "municipal use" exemption for some period of time, including during the pending Utility Solutions, LLC application. This will inevitably lead to further confusion and inconsistency in the application of the various Basin Closure Laws, which is something that Montana's existing water rights holders and over appropriated water resources can ill afford. Moreover, any permit applications seeking a "municipal use" exemption to a Basin Closure Law that are to be filed during this interim period will not be subject to any clear standards or requirements for determining whether the exception applies. It simply is not proper for the DNRC to completely eliminate the definition of an important term such as this one without providing an immediate substitute.

RESPONSE 2: Please see Response 1. DNRC believes that the rule definition leads toward inconsistency. DNRC's historical practice has been to also accept applications for municipal use from entities other than towns or cities.

COMMENT 3: Commenter believes that the current rule is invalid as an improper interpretation of "municipal use" and supports the DNRC's repeal of this regulation. It is well-settled in Montana that a rule adding additional requirements to statutory standards renders the administrative rule void. In other words, Montana expressly denies an agency the authority to amend a statute by enacting a rule that purports to add requirements that are not found in statute. DNRC's rule limiting municipal uses to those appropriations made by cities and towns is valid if and only if that limitation is implicit in the meaning of the statutory concept of municipal use. DNRC's current rule is invalid, because the statutory concept of "municipal use" has never been limited to only those water uses made by cities and towns. As a result, the current rule unlawfully adds an additional requirement to a legislative standard.

RESPONSE 3: Please see Response 1.

COMMENT 4: The definition currently allows organized communities the option to get the water if needed. If this definition is repealed, what is going to be used in the interim before you get a new definition in place? The DNRC is wrong to change the rule. Municipalities are just that: municipalities. I think you need to keep the definition. You can't destroy all closed basins by repealing this definition of municipality. Look into Mike Wheat's bill and look at it and read it. Find out what they said before you change this definition.

RESPONSE 4: Please see Response 1.

COMMENT 5: The purpose of the basin closure wasn't to further and promote development. I think that is the fact of the matter and can't be reinvented into a statute that was intended to be something that would blow the doors open to any and all development. It was quite the opposite. In understanding what the exemption means it has to be construed narrowly, consistent with that of legislative intent.

RESPONSE 5: Please see Response 1. The DNRC's intent is not to promote or deter development, but rather to properly intrepret the term "municipal use."

COMMENT 6: I don't agree that common or statutory water law does not have distinctions built into it that are based upon the user as opposed to the use. The water reservation statutes are essentially Montana's codification of the common law of the "growing cities doctrine", where the municipality was allowed to appropriate water for the future. It is plausible to argue that the legislature meant some entities that had some type of public characteristic.

RESPONSE 6: Please see Response 1. The DNRC will further explore this issue when it proposes a new definition of municipal use.

COMMENT 7: SB 377 was rejected and is indicative of some of the thrust of legislative thinking that the term did have inherent in it some attribute or nature on the part of the person who is using it. If you're not a municipal or public entity it is difficult to see how you can characterize what you are doing as municipal. Otherwise all you have is a definition that is an aggregation of other uses and sort of a useless or redundant definition. The current definition that we have in place may be under-inclusive, but recognizes that there is some element that requires some kind of public duty, public obligation, governmental status so that there are checks and balances built in to regulate to determine the propriety of the use. I think there are arguments on both sides and therefore it is not appropriate to simply repeal the rule. Again, the proper approach legally and as a matter of sound administrative policy is to prepare another definition, have it in place and have a rulemaking to amend the rule.

RESPONSE 7: Please see Response 6.

COMMENT 8: Repealing this rule does not leave a void. There is common law that provides for a definition of municipality. There is law within the statutes relative to the adjudication that essentially identifies what that rule is. We're not leaving a void of anything.

RESPONSE 8: Please see Response 1.

COMMENT 9: If the DNRC allows anyone to be considered a municipality or use water for municipal use, it puts many water resources in more serious jeopardy than they already are and negates the protections under the basin closure law.

RESPONSE 9: Please see Response 1. Any entity that applies for a permit must still meet the criteria for issuance of a water right. That criteria is of key importance. An applicant must show that water is physically available, legally available, that the applicant won't adversely affect other legal water users. Also, that the construction and operation of the diversion works is adequate, that the use is beneficial and that the flow rate and volume is the amount necessary for the use,

and that the applicant has possessory interest in the place of use. Additionally, if a valid water quality objection is received, the applicant must present information addressing the water quality criteria. The criteria must be met by a preponderance of evidence in order for DNRC to grant an application. If the criteria is not met, the DNRC must deny the application.

COMMENT 10: My position is that the definition be left as is until a new definition can be put forward that is acceptable to the community and to the state at large and not necessarily to a particular purpose. The intent of the basin closure is to protect the natural resources and protect the quality and use of those natural resources by the existing people that are taking advantage of it. I would propose or state that I doubt that when the Missouri Basin Closure Law was passed that it was intended more to protect existing towns and municipalities as opposed to allowing development, even though it is said to be selective to come in and take over a natural resource that could potentially deplete it. A strong definition of municipality needs to be made if the intent of that law is to remain and not be destroyed by allowing anyone that says, I have a domestic use in terms of serving multiple families and therefore I want an exemption and I want to drain water that could be left in the river.

RESPONSE 10: Please see Response 1.

COMMENT 11: If you are looking at redefining “municipal,” why not redefine “stock”. Why is the timing of this now? There's already a reduction in the use of agriculture water now, and if we look at the removal of the definition now or the broadening of the use of the term as a direct conflict on our use and our ability to use our surface water which is and has been stated as being connected to ground water in the Gallatin River basin. We support retaining the definition as it is; we would hate to see it removed and not having a new definition would be detrimental to our water uses.

RESPONSE 11: Please see Responses 1 and 9. The DNRC is not at this time reviewing the definition of stock use.

COMMENT 12: I feel the change of definition would undermine the intent of the legislature to protect the waters of the Missouri River Basin, and all that implies. I feel that this decision has far reaching implications--not only for Montana but all the way down to the Gulf, affecting the Missouri and the Mississippi--as we are in an area of those headwaters. Other states have a great deal of concern about development and how it affects the aquifers that participate in supplying water not only to underground aquifers but to the rivers themselves. I think the keyword here is closed: this is a closed basin. If you change the definition you are going to undermine all of the protections of the Missouri River basin. It will allow development to come in; it will allow a developer, no matter what, as long as they have an intent to supply water to subdivisions, businesses, ponds, golf courses. It will allow that right up to the banks of the river; it will destroy all the protections; it will affect people who already have water rights on those rivers and the rivers can't

afford that. The Gallatin River has already lost 50% of volume from development. If the rivers dry up we have no economy or tourism. We can't change a protection the legislature clearly intended to make sure that there is water for future generations, and for the future of Montana and all that implies. If the Missouri Basin closure is destroyed by the change in the municipal exemption and augmentation being allowed, it will undermine everything and there might as well not be a basin closure. Commenter provided article related to Ogallala Aquifer depletion.

RESPONSE 12: Please see Responses 1 and 9.

COMMENT 13: The current definition of "municipal use" in ARM 36.12.101(39) properly limits the Basin Closure Law exemption to municipalities and unincorporated towns. This allows for validly existing cities and towns to appropriate water via public water systems for public purposes. Although the term "municipal use" is not defined in the Water Use Act, the current definition conforms to the intentions of the Montana Legislature. (Senate Bill 377 introduced during the 2005 legislative session would have amended MCA section 85-2-343 to define "municipal" as "a use of water by and under a public water supply system as defined in 75-6-102." The "Utility Solutions Bill" died in the House Natural Resources Committee, a clear indication of the Legislature's intent.) To altogether eliminate and/or weaken the current administrative definition would result in an enormous loophole to the Basin Closure Laws. This would effectively allow nonmunicipal entities (i.e., private developers) to obtain wholesale exemptions from the various Basin Closure Laws and appropriate vast quantities of surface water from already over-appropriated sources. This cannot be the intent of the Montana Legislature, and a policy change with such broad implications should not be undertaken by an administrative agency.

RESPONSE 13: Please see Responses 1 and 9.

COMMENT 14: Human over-population and rampant development just might take Montana out of the tourism market if we allow our natural resources to be polluted. I hereby urge the DNRC to deny the change in definition for the sake of the quality and quantity of the aquifer and our rivers.

RESPONSE 14: Please see Responses 1 and 9.

COMMENT 15: If the definition is changed, the ultimate outcome, for the rivers in Montana under Basin Closure Protection, will lead to their depletion and demise. The Montana Legislature intended to protect our rivers with the Missouri River Basin Closure Law in 1993.

RESPONSE 15: Please see Responses 1 and 9.

COMMENT 16: Most of us would say to leave it as is because municipalities have water rights and then you get to the first in time is first in right and so the municipalities with early rights should be honored as well as agriculture early rights and do it in a progression. There could be an adverse effect to the river if we let the

municipality definition get too broad. Our statement would be to leave it pretty much as is.

RESPONSE 16: Please see Responses 1 and 9. Further, any new use of water granted would be subject to prior existing water rights.

COMMENT 17: DNRC should follow the spirit of the basin closure law and restrict municipal to what it is supposed to be: incorporated towns.

RESPONSE 17: Please see Response 1. There are only 129 incorporated towns in Montana, and all of the other towns are unincorporated. DNRC does not believe that the legislature intended to limit “municipal use” to incorporated towns given the large number of unincorporated towns in Montana.

COMMENT 18: The definition should be further clarified and/or narrowed to firmly establish that the "municipal use" exemption from the Basin Closure Laws is available only to lawfully incorporated municipalities, as that term is defined in Mont. Code Ann. 7-1-4121(9).

RESPONSE 18: Please see Response 17.

COMMENT 19: DNRC should make the most strict interpretation of municipal and not allow private developers and utility companies to have the same rights as incorporated towns.

RESPONSE 19: Please see Responses 1 and 17.

COMMENT 20: This is not a matter of statewide concern, but a matter of providing certain concessions, to certain developers, in a certain portion of the state.

RESPONSE 20: Please see Response No. 1.

COMMENT 21: The first Basin Closure Law in 1991 for the Upper Clark Fork River contained no municipal exemption. The second, third, and fourth Basin Closure Laws passed by the 1993 legislature included the same definition whereby "municipal" and "domestic" were not the same (otherwise the term municipal would have been duplicative and unnecessary). The fifth Basin Closure Law for the Bitterroot River passed in 1999, which was the legislature's most recent pronouncement through the passage of a law, and clearly limited the exemption to a "municipal water supply." The term "municipal" has to mean cities or towns. Your definition was right one year ago, and is right today.

RESPONSE 21: Please see Response 1. Many citizens in Montana are supplied water by entities other than cities or towns.

COMMENT 22: The language in the statute § 85-2-302(2), the department shall adopt rules that are necessary to determine whether or not an application is

correct and complete. So what you have here then is implicit in the fact that the municipal definition was included in the initial rulemaking package is a determination that it is necessary that there be a definition. What is happening here is that the definition that was assumed to be necessary apparantly is no longer necessary. If you repeal it without putting something in its place you are leaving a void. The department knows that there is some necessity here for defining, providing for some administrative interpretation of the municipal exception in the basin closure statute. The jist of this proposed action today is to throw that out, to say no there isn't something necessary when everything else the department is doing and saying and acting suggests that it is.

RESPONSE 22: Including the municipal definition in the rules that became effective on January 1, 2005, was not done solely in response to the requirement for rules under Mont. Code Ann. § 85-2-302(2). That rule package included many rules that are not applicable to the correct and complete determination. Procedurally, an applicant must show that an application can be accepted in a basin closure area. Then, if that showing is made, the application is reviewed to determine if the application is correct and complete. However, the DNRC agrees that a definition is needed, but at the same time the agency wants to be sure that it is not setting in rule a definition that is not consistent with legislative intent. Please see also Reponse 1.

COMMENT 23: Please consider that water and sewer districts are different in legal form from a statutorily defined municipality. See Mont. Code Ann. § 7-3-2201(3). Water and sewer districts are commonly thought as entities which only manage water resources to provide service for the citizens residing in and benefiting from the district. Additionally, the districts are by law required to conserve water for future use and appropriate, acquire and conserve water and water rights for the purposes of the district. To those ends, water and sewer districts carry obligations similar to municipalities. It would be a disservice to citizens within water and sewer district to interpret "municipal uses" as only applying to incorporated villages, town and classes A, B, and C cities. Many citizens of Montana do not reside in incorporated municipalities. Simply because an area is not incorporated does not mean that the citizens of that area are not receiving services comparable to those provided by municipalities. Water and sewer districts should be included within the definition of municipal uses.

RESPONSE 23: Please see Response 1. DNRC's historical practice has been to accept applications for municipal use from entities other than towns or cities, including water and sewer districts. By removing the definition, the DNRC would revert to its historical practice, which would allow applications for municipal use from entities other than cities or towns.

COMMENT 24: The definition is fine the way it is. I recommend DNRC not repeal the existing definition. The basin closure was done to protect the Upper Missouri Basin. The description of what a municipality is just fine the way it is. If it is disregarded, why then "Katie bar the door". Senate Bill 377 was defeated in the last

legislature, which its objective was to change the definition of what a municipality is which would open up the door for a lot of things.

RESPONSE 24: Please see Response 1.

COMMENT 25: Commenter provided tapes from the Four Corners Sewer and Water District board meetings. That commenter said, "that gives what is really going on out at Four Corners." It sounds like commenter wants to show how a district performs its duties as opposed to a private entity.

RESPONSE 25: DNRC does not understand how the manner in which a water and sewer district functions is relative to repeal of the municipal rule, or what was the commenter's intent in supplying the tapes. Therefore, the tapes were not viewed and will be returned to the commenter after the final rule notice is adopted.

COMMENT 26: Commenter requested that depositions of Jack Stults, Terri McLaughlin, and Kim Overcast from the Utility Solutions case be incorporated into this rulemaking process.

RESPONSE 26: The depositions are part of the record as having been submitted. However, commenter did not identify specific information in the voluminous depositions that commenter believed was important to this rulemaking process. DNRC did not attempt to determine the information the commenter believed important. Because the commenter did not identify specifc language in the depositions as relevant, DNRC cannot respond to this comment.

/s/ Mary Sexton
MARY SEXTON,
Director, Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State May 22, 2006.

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

In the matter of the adoption of new Rules I through XLI, the amendment of 37.37.316 and 37.37.318, and the repeal of ARM 37.97.1001, 37.97.1002, 37.97.1006, 37.97.1011, 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018, and 37.97.1019 pertaining to youth foster homes	)))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-360 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 2379 of the 2005 Montana Administrative Register, issue number 23, and on February 23, 2006, published MAR Notice No. 37-372 pertaining to the notice of extension of comment period on proposed adoption, amendment, and repeal of the above-stated rules, at page 524 of the 2006 Montana Administrative Register, issue number 4.

2. The department has adopted new RULE I (37.51.101), RULE II (37.51.102), RULE III (37.51.201), RULE IV (37.51.202), RULE VI (37.51.207), RULE VII (37.51.208), RULE VIII (37.51.209), RULE IX (37.51.210), RULE XII (37.51.217), RULE XIII (37.51.601), RULE XIV (37.51.602), RULE XV (37.51.607), RULE XVI (37.51.608), RULE XVII (37.51.609), RULE XVIII (37.51.301), RULE XIX (37.51.305), RULE XX (37.51.306), RULE XXI (37.51.307), RULE XXIII (37.51.311), RULE XXIV (37.51.801), RULE XXV (37.51.802), RULE XXVI (37.51.805), RULE XXVII (37.51.806), RULE XXIX (37.51.815), RULE XXX (37.51.816), RULE XXXI (37.51.820), RULE XXXII (37.51.603), RULE XXXVII (37.51.1001), XXXVIII (37.51.1401), RULE XXXIX (37.51.1404), and RULE XL (37.51.1405) as proposed.

3. The department has amended ARM 37.37.316 and 37.37.318, and repealed ARM 37.97.1001, 37.97.1002, 37.97.1006, 37.97.1011, 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018, and 37.97.1019 as proposed.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE V (37.51.203) YOUTH FOSTER HOMES: LICENSURE AND RENEWAL (1) remains as proposed.

(2) For placement made on or after ~~[effective date]~~ June 2, 2006, the number of children for whom a ~~kinship~~ foster home is licensed will be based in part on the number of children already residing in the home. There shall be a maximum of

seven children residing in a ~~kinship~~ foster home at any one time unless an exception is made by the regional administrator ~~to accommodate placement of a sibling group~~.

(3) through (4) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE X (37.51.216) YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION (1) The department, through written notice to the applicant or licensee, shall deny, revoke, or restrict a license upon finding that:

(a) the applicant, licensee, or member of the applicant's or licensee's household~~, or anyone living on the foster home property~~ 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, or member of the applicant's or licensee's household~~, or anyone living on the foster home property~~ 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; or

(c) the applicant, licensee, or member of the applicant=s or licensee=s household~~, or anyone living on the foster home property~~ 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 or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs; or

(d) the applicant, licensee, or member of the applicant's or licensee's household~~, or anyone living on the foster home property~~ has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

(a) the applicant, licensee, or member of the licensee's household ~~or anyone residing on the foster home property~~ 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) through (h) remain as proposed.

(i) the foster parents or anyone living in the foster home ~~or on foster home property~~ may pose any risk or threat to the safety or welfare of a child placed in the foster home.

(3) and (4) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XI (37.51.218) YOUTH FOSTER HOMES: REMOVAL OF A CHILD

(1) The department, after providing the foster home with notice, may ~~immediately~~ remove a child in the care or custody of the department from a foster home at any time it determines that another placement is more appropriate. ~~or that~~ The department may immediately remove any foster child if there is a need to protect the child from possible harm.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXII (37.51.310) YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each person living in the household. ~~or on the foster home property.~~

(2) remains as proposed.

(3) If a new applicant who has lived only in Montana cannot be successfully fingerprinted or if two fingerprint cards cannot be successfully read by the Department of Justice, a Montana name-based criminal records check will be used for applicants who have not lived in a state other than Montana.

(4) If an applicant who has lived in states other than Montana cannot be successfully fingerprinted, or if two fingerprint cards cannot be successfully read by the Department of Justice, a Montana name-based criminal records check will be completed, and:

(a) through (c) remain as proposed.

(5) An annual name-based criminal records check and a motor vehicle check for licensed foster parents are required for relicensure.

(6) through (9) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXVIII (37.51.810) YOUTH FOSTER HOMES: CHILD CLOTHING

(1) through (3) remain as proposed.

(4) The foster parent shall inventory the child's clothing and other possessions when the child is placed in the foster home and ~~again at the time of discharge from the foster home~~ maintain the inventory throughout the time the child is in the foster home.

(a) remains as proposed.

(b) All clothing or other items that are outgrown, worn out, or missing shall be noted on the inventory list; however, no clothing or other possessions that came with the child from the child's home shall be disposed of without approval from the child's social worker;

~~(b)~~ (c) All of the child's current clothing and other possessions shall be sent with the child to any subsequent placement, including a return to the child=s home;

~~(c)~~ (d) Foster parents shall record the cost of clothing on the inventory list when the clothing is purchased with funds from the maintenance payment and shall maintain receipts for clothing purchased with funds ~~provided by the department~~ specifically provided to purchase clothing for the child; and

~~(d)~~ (e) Foster parents shall provide the clothing receipts and the inventory list at any time upon request of the department and shall provide the receipts and inventory list to the child's social worker when the child leaves the foster home.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXXII (37.51.603) YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES (1) Therapeutic foster parents must meet all requirements for regular foster parents set forth in this rule, the requirements set forth in ARM 37.37.101, et seq., and the additional requirements in this rule and ~~[Rule XLII]~~ [Rule XLI] ARM 37.51.1403.

(2) through (9)(d) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-666, MCA

RULE XXXIII (37.51.825) YOUTH FOSTER HOMES: PHYSICAL CARE OF CHILDREN (1) through (3) remain the same.

(4) The foster parents, in consultation with the placing ~~worker~~ agency, shall arrange for each child to have a complete early periodic screening, diagnosis, and treatment (EPSDT) well child examination which includes a medical, dental, vision, and hearing screen within 30 days of placement in foster care. Subsequent examinations and treatment must be completed ~~yearly thereafter unless more frequent examinations are~~ as recommended by the child's physician.

~~(5) A child two years of age or older who has not had a dental examination within a year prior to placement in foster care shall have one within 90 days after admission. Reexamination shall be done at least annually unless more frequent examinations are recommended by the child's dentist.~~

(6) through (9) remain as proposed but are renumbered (5) through (8).

~~(10)~~ (9) ~~All children residing in the home under 12 years of age~~ The foster parents must work with the placing agency to ensure that each foster child ~~shall be~~ is immunized in accordance with ARM 37.51.306 and 37.51.307. ~~Any child with a history of measles is considered immunized against measles.~~

~~(11) The medical and immunization history of the child will be recorded on forms provided by the department and kept on file in both the foster home and the placing agency.~~

(12) through (16) remain as proposed but are renumbered (10) through (14).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXXIV (37.51.826) YOUTH FOSTER HOMES: DISCIPLINE

(1) remains as proposed.

(2) The foster parents shall not use spanking or other forms of physical punishment ~~or any other disciplinary technique which is humiliating, shaming, cruel, capricious, frightening, or otherwise damaging to a child~~.

(3) The foster parents shall not use any other disciplinary technique which is humiliating, shaming, cruel, capricious, frightening, or otherwise damaging to a child.

(4) through (10) remain as proposed but are renumbered (5) through (11).

~~(3)~~ (4) No child in care shall be subjected to any form of abuse.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-622, MCA

RULE XXXV (37.51.901) YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS (1) through (5) remain as proposed.

(6) The foster parents must protect any foster child from any ~~threat~~ environmental danger or other hazard on the foster care property that the foster parent is aware of and that could affect the ~~to a child's~~ health, welfare, or safety of children in care. ~~in the neighborhood that t~~The foster parent ~~is aware and~~ must notify the licensing worker of the concern.

(7) and (8) remain as proposed.

(9) If the home's water supply is not from a municipal system, the foster home must arrange to, at a minimum, have a basic screen water test conducted at least annually through the Department of Public Health and Human Services, Public Health and Safety Division, Laboratory Services Bureau, Environmental Laboratory Section, Cogswell Building, 1400 Broadway, Room B-204, Helena, Montana 59620 to ensure that the water supply remains safe for human consumption. Documentation of the test results must be provided to the licensing worker. If a home's water supply is obtained from an approved source, but the water is stored in a cistern, it is recommended that a basic screen water test be conducted each time the water is replaced and the results provided to the licensing worker.

(10) Children shall not be exposed to ~~paint containing lead in excess of .06%~~ unsafe levels of lead as determined by the Environmental Protection Agency.

(11) remains as proposed.

(12) Any pet or animal present at the home with the foster parents' permission shall not pose a threat to the safety or well being of any child placed in the home.

(a) and (b) remain as proposed.

(c) Foster parents are ~~legally and financially~~ responsible for their negligent actions and any resulting injuries that may be caused by any animal allowed in or around the foster home.

(13) through (15) remain as proposed.

(16) The foster parents shall make swimming and wading pools, ~~and~~ swimming areas, and hot tubs inaccessible to children except when directly supervised by a responsible adult.

(17) Foster children in the care or custody of the department may not

participate in high risk activities including, but not limited to hunting, snowmobiling, four-wheeling, or rock climbing without written consent of the ~~licensing supervisor~~ department community social worker supervisor for the child ~~and,~~ who will determine if consent from ~~where appropriate,~~ the birth parents is needed. Foster parents caring for a child who is not in the care or custody of the department must work with the agency responsible for the child to ensure that permission to participate in high risk activities is obtained.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXXVI (37.51.902) YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS (1) through (3) remain as proposed.

(4) Each foster home in which fuel burning heat or appliances are used must have at least one carbon monoxide detector installed in the home.

(4) through (8) remain as proposed but are renumbered (5) through (9).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XLI (37.51.1410) YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES (1) remains as proposed.

(2) Each year thereafter, therapeutic foster parents must ~~each~~ complete a total of 30 hours of annual training that may include training in the general areas identified in ARM 37.51.1403(2), but which must also include a minimum of 15 hours of training directly related to:

(a) and (b) remain as proposed.

(3) Each therapeutic foster parent in a two parent foster home must complete at least five hours of training directly related to (2)(a) and (b).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

5. The department has corrected a typographical error from the published notice in Rule XXXII(1) (37.51.603) from Rule XVII to Rule XLI (37.51.1403) so that the rule now will accurately cross reference the other rule cited. There was not a Rule XLII proposed in the proposal notice.

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

RULE V (37.51.203) YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

COMMENT #1: Rule V (37.51.203) should be changed so that no exception is allowed for kinship care unless all of the children are from one family. Taking several different family members' children into the same house is not any safer than for regular foster care homes. One set of foster parents cannot care for more than

six to seven children if more than two are foster children because they need so much care and time. Allowing a kinship home to keep too many children jeopardizes the ability to provide adequate care to all of the children.

RESPONSE: The word "kinship" was inadvertently included in this rule. Notice of the error and the correction was provided at the public hearing on January 5, 2006 and through MAR Notice Number 37-372 which appeared on page 524, issue No. 4 of the 2006 Montana Administrative Register. The original intent of the rule was that it would apply to all foster homes and the rule has been amended to reflect that position.

COMMENT #2: A maximum of seven children is too few children. There are foster families capable of effectively handling more than seven children.

RESPONSE: The department agrees that although rare, there are some families who are capable of caring for more than seven children. The rule is being amended to allow the regional administrator to make an exception to the limit of seven without requiring that exception be to accommodate placement of a sibling group.

COMMENT #3: There should be no limit on the number of children residing in the home. The number of children in the home should not be limited by the state. If there is a limit, the limit should be decided by the local licensing worker or local staff.

RESPONSE: The department continues to believe that the ability to limit the number of children in a foster home is necessary to ensure that the needs of all children in the home be appropriately met. Allowing local licensing worker or other staff to make the decision would result in too much inconsistency. The regional administrator should have the responsibility of deciding when an exception should be made so this language has been retained in the rule. The licensing worker will have the responsibility of justifying to the regional administrator why an exception should be made.

COMMENT #4: What are the age limits? Is it any youth 18 or younger or can older teens be exempted?

RESPONSE: The rule applies to all children under age 18 and does not provide for an exemption for older teens.

COMMENT #5: The rule should be amended to allow the regional administrator to make an exception to the limit on the number of children. An exception by the regional administrator will require justification and proof that the family is capable for caring for more children.

RESPONSE: The department concurs and is amending the rule to allow exceptions to the limit of a total of seven children for reasons other than to accommodate placement of a sibling group.

RULE IX (37.51.210) YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS

COMMENT #6: In Rule IX (37.51.210), either the regional administrator or a designee should be allowed to grant an exception to issuance of a license to a person whose child has been in foster care.

RESPONSE: The department's position is that the regional administrator is the appropriate person to make this exception. The rule remains as proposed.

RULE X (37.51.216) YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

COMMENT #7: Meth is a big problem in Montana and Rule X(1)(a) and (b) (37.51.216) is a problem. Five years is not sufficient time before allowing a person who was convicted of a drug related offense to be able to become licensed as a foster parent. The rule should be changed to at least 10 years to ensure protection of a foster child especially when there are some other offenses that would prevent you from ever becoming a foster parent. Can this be made stricter than the federal requirements?

RESPONSE: Rule X (37.51.216) addresses the action that the department may take upon learning that an applicant or licensee has criminal history as described in this rule. Rule X (37.51.216)(1)(c) specifically addresses the negative licensing action that the department may take when the criminal history is specific to a drug related offense. The rule provides the department with authority to assess and utilize an applicant's or licensee's criminal history in negative licensing actions and does not, in any way, require that the department must license an applicant who has a meth related drug offense simply because the offense is more than five years old. The department does not believe it is necessary to adopt language that is stricter than the federal requirement.

COMMENT #8: In Rule X (37.51.216), what is considered to be "the foster home property"? What if the applicant is not the property owner? What if they live in a townhouse, condo, or apartment building? Is this a violation of other renters and homeowner's rights? How do providers obtain a release of information from these individuals who are not members of the applicant's household? Do we have to check all minors on the property? What if the applicant or foster parent owns a trailer court and lives in the trailer court?

RESPONSE: This rule was intended to require background checks on other people living on property owned by the applicant or foster parent, such as a basement apartment. The "foster home property" language elicited many comments which made it clear that, even if limited to property owned by the foster parents, the language was problematic in particular situations. For example, if a foster family owned and operated a campground where individuals can pay fees to stay on the property, either short term or long term, it would be impossible to conduct background checks on all guests. That would also be true if the foster family owned

and operated any other type of overnight accommodations on their property. Therefore, the department is deleting the phrase "or anyone living on the foster home property" from the rule.

RULE XI (37.51.218) YOUTH FOSTER HOMES: REMOVAL OF A CHILD

COMMENT #9: Rule XI (37.51.218) should have language that requires regional administrator approval.

RESPONSE: The department does not believe that regional administrator approval is warranted or necessary given the language changes made to Rule XI (37.51.218), so that language is not being added.

COMMENT #10: Rule XI (37.51.218) allows removal at any time day or night based on a more appropriate placement, the appropriateness being determined by an unspecified process or person. This can be emotionally damaging as well as extremely disruptive to the child and foster family. Removing "that another placement is more appropriate" from this rule makes it fair and reasonable.

RESPONSE: The department does not agree that the rule as proposed is unfair or unreasonable. However, the department has amended the rule to require notification to foster parents when a child in the department's care or custody is being moved to a more appropriate placement.

RULE XIV (37.51.602) YOUTH FOSTER HOMES: REPORTS OF CHANGE IN COMPOSITION OF FOSTER HOME

COMMENT #11: Some foster parents take in foreign exchange students. What constitutes adequate documentation of a background check on these students when it cannot be obtained from the other country?

RESPONSE: Background checks generally mean a criminal and CPS check, and these checks are not routinely conducted nor are they required for minors. If a foster family has or wants to accept placement of a minor foreign exchange student, the family will be expected to provide sufficient information regarding the exchange student to the licensing worker to allow for an assessment of the potential impact of the exchange student on foster children that are or may be placed in the foster home. The licensing worker must provide written justification regarding placement of the exchange student to the licensing supervisor.

COMMENT #12: Other than a personal statement of health, what records are we required to obtain from the foreign exchange student's placing agency?

RESPONSE: Licensing workers, through the foster family, should attempt to obtain all available information on the exchange student. Any agency worker conducting a licensing study must obtain sufficient information regarding the student to assess the ability of the foster parents to meet the needs of children already in the home. The

licensing worker must be able to provide a written recommendation to the licensing supervisor along with supporting documentation if a change in the license is being recommended.

COMMENT #13: Do the changes in employment notification requirements include promotions or changes in the company the foster parent works for?

RESPONSE: Any changes in employment are to be reported.

COMMENT #14: Why are there so many different timelines regarding changes in household composition?

RESPONSE: There are different timelines because the potential impact on foster children in the home and on the foster home license differs depending on the specific change. For example, foster parents are required to report a planned move at least 30 days in advance so an inspection of the new residence can be scheduled as soon as possible. A foster home license does not transfer from one residence to another (some licensing requirements are specific to the residence) so a prompt assessment of the new residence is necessary.

RULE XV (37.51.607) YOUTH FOSTER HOMES: REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT

COMMENT #15: Does Rule XV (37.51.607) require foster parents to "report any incident of known or suspected child abuse or neglect of any child" or only children placed in the family?

RESPONSE: Foster parents are required to report any suspected abuse or neglect involving any child. The reporting requirements are not limited to children placed in the foster home.

RULE XVI (37.51.608) YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS

COMMENT #16: What constitutes a serious incident as referenced in Rule XVI (37.51.608)? What if a foster parent believes that something is not a serious incident, but a social worker does. I consider a runaway a serious incident, but that does not have to be reported until the next working day. I would also consider a discipline violation a serious incident, but we are given 48 hours to report that.

RESPONSE: "Serious incident" is defined in Rule II (37.51.102). Foster parents should not wait to report anything that the foster parent considers to be a serious incident. If a foster parent and a social worker disagree as to whether something should have been reported, the licensing worker is responsible for determining if a licensing violation occurred.

RULE XVIII (37.51.301) YOUTH FOSTER HOMES; GENERAL REQUIREMENTS

FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

COMMENT #17: Can good moral character in Rule XVIII (37.51.301) be used in negative licensing action?

RESPONSE: Good moral character can be used in negative licensing action. Foster parents are required by rule to be of good moral character. The Montana Supreme Court has held that "good moral character" is defined in state law as a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

RULE XIX (37.51.305) YOUTH FOSTER HOMES: HEALTH VERIFICATION REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

COMMENT #18: The timeframe for health verification (personal statement of health in Rule XIX) (37.51.305) should be changed from two weeks to four weeks.

RESPONSE: The department's position is that four weeks is too long to wait for the information contained in a personal statement of health from a person residing in a foster home. The rule will remain as proposed.

RULE XX (37.51.306) YOUTH FOSTER HOMES: PRESCHOOL AGE CHILD IMMUNIZATION REQUIREMENTS AND RULE XXI (37.51.307) YOUTH FOSTER HOMES: SCHOOL AGED CHILD IMMUNIZATION REQUIREMENTS

COMMENT #19: Are all of the required immunizations Rule XX (37.51.306) and XXI (37.51.307) on the blue immunization form that foster parents are asked to complete? Is it correct that foster parents are asked to fill the form out and licensing staff just verifies that it is complete?

RESPONSE: There is space for all of the immunizations listed in the rules to be entered on the (blue) current State of Montana - Certificate of Immunizations Form. If foster parents choose to use the immunization form it should be completed by a health department or health care provider, or by a school or day care official who certifies that the information has been transferred from acceptable documentation of the immunizations. Foster parents should not be completing the form themselves and submitting it to the department. Under the proposed rule, a foster parent is not required to submit the Certificate of Immunizations Form, but may submit other forms of documentation.

Licensing staff must review each immunization form or other immunization documentation that is submitted to ensure that a child has received immunizations appropriate for his age.

COMMENT #20: Do Rules XX (37.51.306) and XXI (37.51.307) apply to children placed in a foster home? If the foster child's birth parent has an exemption for the

child's immunizations, how does this impact the license of the foster home where the child is placed?

RESPONSE: The immunizations required by Rules XX (37.51.306) and XXI (37.51.307) do apply to children placed in the foster home as clarified in Rule XXXIII(9) (37.51.825), as amended. If the foster child's birth parent has an exemption for the child's immunizations, the social worker should obtain legal advice regarding the exemption and any action to be taken. The immunizations or lack of immunizations of a foster child in this circumstance will have no impact on the license of the foster parents with whom the child is placed.

COMMENT #21: If a family does not immunize their own children due to religious convictions, can they still be licensed? If so, what documentation is required?

RESPONSE: A family whose children are not immunized cannot be licensed as a youth foster home. There is no exemption provision regarding immunizations for children residing in a foster home in the current youth foster home licensing rules and none proposed under these rules.

COMMENT #22: It is our understanding that Montana state law allows a religious exemption for a child who is not immunized to attend public school. Yet we are being told that there is no such exemption for the foster/adoption requirements that would allow us to open our home to children needing a stable and loving home. We find it very troubling that because our child's lack of immunizations we can never be allowed to foster or adopt children, yet we see from Rule IX (37.51.210) that a person who has been convicted of abuse, sexual abuse, or neglect can receive a foster home license. How can that happen? This is not right! It is our strong belief, based upon other Montana state laws as well as the first amendment of the United States Constitution that the new proposed Rules XX (37.51.306) and XXI (37.51.307) regarding youth foster homes and immunization requirements should allow for an exemption. Please review this matter and change this rule to better fit the rights and freedoms allowed by our state and country.

RESPONSE: A family whose children are not immunized cannot be licensed as a youth foster home under the current and proposed rules. While education is a mandatory requirement for all school-aged children, there is no requirement to serve as a foster parent and no entitlement to a foster care license. Children who are placed in foster care often have had their health neglected and are at greater risk for health problems than children in the general population. The department has a responsibility to protect the health and safety of children who are placed in foster care, as well as the health and safety of children residing in the foster home. The risks of placing children in homes where there are children who are not immunized are too great.

Rule IX (37.51.210) does allow the regional administrator to consider individual circumstances in determining that a restricted license (a license issued for the care of a specific child or children) may be issued to a person who has an abuse or

neglect substantiation of a child or a conviction of abuse, neglect, or exploitation of an elderly person or a person with developmental disability. The exception is rarely used and is most often used in kinship situations. For example, a person may have had problems with alcohol abuse in their early twenties and neglect of the person's children was substantiated. At age 60, after years of sobriety and no further substantiations, if this person applies to become a kinship foster parent for a grandchild, it may be appropriate to make an exception and license the grandparent.

COMMENT #23: Rule XXI (37.51.307) sounds more like the imposition of socialist ideas upon the foster home which the state does not have the right to do. With recent information regarding some immunizations being in some cases detrimental to their very lives, it must remain the foster parent's right to choose whether or not they want their own children to be immunized.

RESPONSE: It is the right of a parent to choose whether to immunize his or her child. However, if this parent applies to become a youth foster parent, the application will be denied because there is no exemption allowed to the immunization requirements for the same reasons as are contained in the response to Comment #21.

RULE XXII (37.51.310) YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS

COMMENT #24: Rule XXII (37.51.310) no longer excludes minors under the age of 18. Do child placing agencies complete name-based checks on all minors? If yes, are they processed the same way?

RESPONSE: Name-based criminal history checks are not required for minors. Unless a minor has been charged as an adult, there would be no criminal history that could be obtained from a name-based check. However, licensing staff should request information from the applicant regarding anyone in the household, including a minor, who is under court supervision or treatment as a result of a violent, sexual or drug related crime even if the minor was not charged with a crime.

COMMENT #25: What if the applicant is not the property owner? What if they live in a townhouse, condo or apartment building? Is Rule XXII (37.51.310) a violation of other renters or homeowner's rights? If I have acreage and have rentals on that acreage, my tenants should not have to forfeit their privacy to accommodate the department. How do providers obtain a release of information from individuals who are not a member of the applicant's household? Do we have to check all minors on the property also?

RESPONSE: The department is deleting the phrase "or anyone living on the foster home property" in Rule XXII (37.51.310).

COMMENT #26: Criminal background checks are costs assumed by the provider. This rule adds additional costs to the child placing agency. Will there be an increase

in therapeutic foster care room and board rates to offset these costs?

RESPONSE: There will be no additional costs for criminal background checks as a result of adopting the rule as it is being amended since background checks are currently required on all adults in the home. There will be no increase in board rates as a result of the adoption of this rule.

COMMENT #27: For persons who have been former foster parents and are reapplying, are they required to be fingerprinted again or can the original fingerprints be used and named-based checks be completed?

RESPONSE: If a former foster parent has not been licensed for more than one year or if a former foster parent has lived out-of-state for any period of time, the person will be treated as a new applicant. A new applicant is required to have a fingerprint based criminal records check.

COMMENT #28: The logistics of retrieving this (child protective services) information will be difficult, particularly with older families with adult children. The rule will be difficult to enforce.

RESPONSE: The department does not agree that this rule will be difficult to enforce. Applicants are already expected to provide information regarding every place they have lived after the age of 18. The rule does not require that child protective services information must be obtained from every state in which the applicant has lived since this is not always feasible, however information does need to be requested from every state in which an applicant has resided.

RULE XXIII (37.51.311) YOUTH FOSTER HOMES: PSYCHOLOGICAL AND MEDICAL EXAMINATIONS

COMMENT #29: In Rule XXIII (37.51.311), do child placing agencies request psychological and medical examinations or do we ask the department to request them? Who pays for these examinations? Is it different before they are licensed vs. after they are licensed?

RESPONSE: Either the child placing agency or the department may request a psychological evaluation or medical examination. If a child placing agency identifies concerns with one or more family members when assessing a foster home for licensure, the child placing agency may make the request of the family. If concerns arise with a family that is already licensed, the child placing agency should notify the responsible licensing supervisor and work with the supervisor to determine who will make the request. The applicant or foster parent is responsible for the cost of the evaluation or examination although the child placing agency or department may choose to cover the cost.

COMMENT #30: Are our rights to privacy given up because we became foster parents? If I have a mental issue which is not detrimental to the health and well

being of a foster child in our home and I seek help for this, does this mean I lose my rights to privacy? Unheard of!

RESPONSE: The department has a right to request medical or psychological information that the department determines is necessary to assess the suitability of an applicant or a foster parent. The applicant or foster parent must sign a release before information will be released to the department. The applicant or foster parent may refuse to obtain an examination or refuse to allow information to be released to the department, however doing so may result in negative licensing action.

RULE XXIV (37.51.801) YOUTH FOSTER HOMES: GENERAL PROGRAM REQUIREMENTS

COMMENT #31: In Rule XXIV (37.51.801), what type of documentation will be required by child placing agencies and therapeutic foster homes for accounting of allowances, earning, gifts, or other financial resources made available to the child?

RESPONSE: By contract, child placing agencies are required to:

"...segregate the personal accounts of all youth receiving the Contractor's services under this (therapeutic foster care) contract and to account for these funds accurately and separately from the Contractor's regular accounts. Personal expenditures for or by each youth will be recorded with documentation in the youth's account, to minimally include for each transaction the date, the amount of the transaction, balance and must be initiated by the staff and youth. When a youth's account exceeds $50.00, the Contractor agrees to send the placing professional (who has financial responsibility for the youth) monthly statements that minimally include the debits, credits, and balance for each youth's personal account. The monthly statement should be attached to the corresponding monthly progress report and a final statement will be submitted with the discharge summary."

This rule does not impact the contract requirements for child placing agencies.

Under current rule, foster parents are required to account for money earned by a child or received as a gift or an allowance separately from foster home funds and this rule maintains that requirement. At a minimum, documentation should include the date, the source of funds added to the account or the reason for the expenditure and the balance.

RULE XXV (37.51.802) YOUTH FOSTER HOMES: COOPERATION OF FOSTER PARENTS

COMMENT #32: Does Rule XXV (37.51.802) include extended family such as grandparents?

RESPONSE: The child's social worker is responsible for identifying with whom the child should have visits. If the child is to have visits with grandparents, the foster

parent must permit and encourage such visits.

RULE XXVI (37.51.805) YOUTH FOSTER HOMES: CHILD EDUCATION AND TRAINING

COMMENT #33: Does Rule XXVI (37.51.805) apply only to youth in foster care? There are foster homes that home school their own children. Should this say school age children?

RESPONSE: This rule applies only to foster children. A foster parent is entitled to make the decisions regarding school attendance for the foster parent's children. Adding school age to the rule is unnecessary.

RULE XXVII (37.51.806) YOUTH FOSTER HOMES: CHILD RELIGIOUS AND CULTURAL EXPRESSION

COMMENT #34: In Rule XXVII (37.51.806), take out the language giving the birth parents the right to say or demand that we take the children to their church unless it is reasonable and the parent has been regularly attending the church they are expecting the foster parents to attend.

RESPONSE: This rule does not say or demand that foster parents must take the children to the church the parent has requested. The rule requires that the foster parent allow the child to attend available services in the community. Foster parents must work cooperatively with the social worker, the birth parent, and the child to allow the foster child to participate in religious activities.

RULE XXVIII (37.51.810) YOUTH FOSTER HOMES: CHILD CLOTHING

COMMENT #35: Therapeutic foster parents generally do not receive clothing allowances in addition to their stipend, but a portion of their stipend is required to be used for clothing. Under Rule XXVIII (37.51.810) are child placing agencies and therapeutic foster homes required to keep receipts and submit them to the placing worker at discharge? If the receipts demonstrate that the foster family has spent more than their stipend, will they be reimbursed?

RESPONSE: The department is amending Rule XXVIII (37.51.810) to limit the requirement for receipts for clothing purchased using funds provided specifically to purchase clothing (clothing allowance). There is no provision to reimburse foster families who spend more than the stipend provided for the care of the child.

COMMENT #36: Rule XXVIII(4) (37.51.810) should be changed to say that foster parents must provide the clothing receipts to the social worker within 30 days of receiving the clothing allowance and provide the inventory list in the same 30 days. The inventory list should be provided when a child leaves the home. If the foster parent fails to comply with this rule, then the foster parent should have to return the money to the department so the department can issue the clothing allowance to

foster parents who will buy clothing for the foster child. If foster parents fail to purchase clothing for the foster child, their license can and should be revoked. Why do we allow foster parents to keep the money and not return it if they do not buy the clothes? There needs to be enforcement of the current rules and the new rules.

RESPONSE: Requiring clothing receipts and the inventory list within 30 days is unnecessarily restrictive. The clothing allowance may not have been spent within 30 days of receipt in every case. Foster parents who do not use the clothing allowance for the child for whom it was intended may face negative licensing action. Rule X allows the department to take negative licensing action against a foster parent who does not use foster care payments for the support of the foster child.

COMMENT #37: Inventory of the child's clothing when they come into foster care is possible due to the fact that there is usually little or nothing to inventory. Adding to the inventory each time a purchase is made is impossible and too daunting a task due to the need for so much and the fact that you are adding to the supply constantly.

RESPONSE: While keeping an inventory of child's clothing and possessions will take time, the department believes that an inventory is needed to ensure that the child's personal clothing and possessions are clearly identifiable. Having an inventory increases the likelihood that the clothing and possessions will be sent with the child. By contract, therapeutic foster parents are currently required to inventory and maintain an inventory of the child's clothing.

COMMENT #38: Sending everything that was purchased and added to the inventory at the time the child is placed elsewhere or returned home is impossible due to the fact that they have grown out of most of it and it has been passed on to someone else. I do not feel that I should have to save outgrown or worn out clothing to make sure that it is passed on with them.

RESPONSE: Language in the rule has been amended to clarify the expectation regarding worn or outgrown clothing. Foster parents must note on the inventory if items are outgrown, worn, or have been lost. Worn clothing may be disposed and outgrown clothing passed on to another child. However, foster parents should not dispose of clothing or other possessions that came with the child from the child's home without approval from the child's social worker.

COMMENT #39: I have numerous children, not all from the same family. It would be near impossible to have the receipts for each child separate. If there are foster parents not providing clothing or the essentials then it should be addressed with those parents. The rest of us who are doing a good job of providing need to be rewarded by not being bookkeepers for the department.

RESPONSE: The rule has been amended to require receipts only for clothing purchased with funds specifically provided for clothing (clothing allowance). The cost of other clothing which has been purchased with funds from the maintenance

payment is to be noted on the inventory, but maintaining receipts for all clothing is no longer required.

COMMENT #40: Keeping records for clothing purchased from a clothing allowance is reasonable.

RESPONSE: The rule has been changed to require that receipts are required only for clothing purchased with a clothing allowance.

RULE XXX (37.51.816) YOUTH FOSTER HOMES: SLEEPING ARRANGEMENTS AND REQUIREMENTS

COMMENT #41: Does Rule XXX(2) (37.51.816) require that sleeping areas have to meet egress window requirements?

RESPONSE: The department is not requiring that egress window requirements be met in this situation.

COMMENT #42: How about just requiring approval by the social work supervisor and the licensing worker for a child over 24 months of age to routinely sleep in the same room with an adult?

RESPONSE: The department believes that this decision is best made by the licensing supervisor.

COMMENT #43: Guardrails used until the child is how old? I can't imagine having a guardrail up for a 13 year old.

RESPONSE: The rule does not specify an age at which guardrails no longer need to be used and the department sees no reason to add an age.

COMMENT #44: A "designee" in addition to regional administrator should be added to Rule XXX as a person authorized to make an exception to a kinship home.

RESPONSE: The department's position is that the regional administrator is the appropriate person to grant an exception.

COMMENT #45: The licensing worker should decide on the number of bunks on a bunk-bed. There are families who have three bunks and they are very safe with their use and who sleeps in the top bunk. An exception should be made which allows a three tier bunk-bed if the height does not exceed the height of a double bunk-bed.

RESPONSE: The department disagrees that the number of bunks on a bunk bed should be at the discretion of the licensing worker. The department has set this requirement based upon safety concerns regarding the height of bunk beds. However, having three bunks within the vertical space generally provided for two

raises concerns regarding crowding and ventilation. The department is adopting the rule as proposed.

RULE XXXII (37.51.603) YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES

COMMENT #46: Rule XXXII (37.51.603) states that therapeutic foster parents must be available 24/7 for supervision. The definition refers to "availability" as usually two adult parents. There are many excellent, single therapeutic foster parents and they have the need to be employed outside the home. Therapeutic foster parents cannot rely on their stipend as a source of income. How is availability defined?

RESPONSE: There is not a definition in the rules that refers to availability as usually two parents. There is no requirement that a therapeutic foster home must be a two parent home. Therapeutic foster parents must be available by phone or able to come to the school, day care, or other setting when requested, and resume direct supervision of the child or take the child home if warranted.

RULE XXXIII (37.51.825) YOUTH FOSTER HOMES: PHYSICAL CARE OR CHILDREN

COMMENT #47: Rule XXXIII(4) (37.51.825) should be removed. Studies have proven that children have not suffered because their parents work. This rule would cut out professional people who have the resources to comply with what the department requires and would result in a higher rate of stress and burnout when one parent has to take care of a therapeutic foster child 24/7. In many areas of the state it has been difficult to recruit enough foster parents to meet the demand. In allowing this rule to stand, it would make it even more difficult to recruit new foster parents.

RESPONSE: The rule allows for an exception to be made by the regional administrator that would allow a preschool age child to be placed in a therapeutic foster home in which the parent or parents were employed. In situations where preschool age children have such high needs that therapeutic foster care is required, careful consideration needs to be made regarding the appropriateness of day care to allow a parent to work.

COMMENT #48: A minimum of only four hours a day of child care on school vacations and summer break is often not enough to allow the treatment parents to work and the youth's supervision needs to be met. Consideration should be given to increasing the amount of time.

RESPONSE: The rule does not limit child care to four hours a day for all children. The rule allows more than four hours per day if approved by the regional administrator.

COMMENT #49: There is inconsistency from region to region regarding the

processing of written approval of the department regional administrator. We recommend that "or designee" be added to the statement in (4) and that a standard form be created for these requests.

RESPONSE: The department agrees that development of a standard form would be beneficial for all parties and will develop such a form. However, if exceptions can only be granted by the regional administrator greater consistency can be maintained, therefore designee will not be added to the rules.

COMMENT #50: Many foster children need the socialization, positive environment, and learning opportunities of a good day care. Many children in therapeutic foster care are behind academically and need any learning opportunity they can take advantage of. Most children in society today are in day care.

RESPONSE: The department concurs that day care can be a positive experience for a child. However, for a child whose needs are such that therapeutic foster care is required, careful assessment needs to be made as to whether the child will receive the therapeutic services that are needed and being paid for if the child is in a day care setting more than four hours per day. The availability of day care setting with sufficient staff to child ratios and staff trained to manage a child with the therapeutic needs varies greatly.

COMMENT #51: In some locations, it is impossible to get a dental exam within the time limit stated. No dentist will accept Medicaid so foster parents have to travel to the Ronald McDonald House to obtain services. The rule should be altered to allow for this type of situation.

RESPONSE: Rule XXXIII(5) (37.51.825) has been deleted and (4) amended to reflect that the required EPSDT screening should include a dental assessment. Foster parents, in consultation with the child’s social worker, are responsible for arranging for follow-up services, including dental care, identified as needed during the EPSDT exam.

COMMENT #52: Does "inaccessible to children" mean secured with a key lock?

RESPONSE: No, a key lock is not required although depending on the ages and behaviors of the children in care, it may be needed to ensure that medication is truly in a place inaccessible to children.

COMMENT #53: Rule XXXIII(11) (37.51.825) says that the medical and immunization history of the child will be recorded on forms provided by the department. Will the department still be using the blue forms, just with the understanding that the exemptions provided on the forms do not apply to foster care?

RESPONSE: Rule XXXIII (37.51.825) applies to children placed in foster homes. Section (11) of the rule has been withdrawn. The department is not specifying on

which form immunizations for foster children are to be recorded.

COMMENT #54: Does exposure to second hand smoke mean the lit cigarette or can smoke in furniture, drapes, etc., be considered second hand smoke?

RESPONSE: As defined in Rule II, both the smoke from the end of a lit cigarette, pipe, or cigar and the smoke exhaled by smokers is second hand smoke. Second hand smoke can remain in the air for days, even when it is no longer visible and the air in the home appears clear. The smoky smell may be smoke in the air that is not visible rather than smoke in drapes or other furnishings.

RULE XXXIV - YOUTH FOSTER HOMES; DISCIPLINE

COMMENT #55: Rule XXXIV (37.51.826), on discipline, would be easier to understand if (2) just addressed physical discipline. The spanking issue is such a big one; it almost needs to stand alone.

RESPONSE: The department concurs and has separated (2) into two sections. (2) will pertain to physical punishment and the department has adopted a new section (3) pertaining to other disciplinary techniques. All other following portions of the rule have been renumbered to accommodate this change.

RULE XXXV (37.51.901) YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS

COMMENT #56: While protection of the foster child is the priority, it is difficult to protect children from real threats and impossible to protect them from any threat. Rule XXXV(6) (37.51.901) is neither reasonable nor enforceable. Foster parents cannot control all activities in other homes in the immediate neighborhood or the larger neighboring area. Adding language such as foster parents "are expected to be observant and to exercise reasonable caution" and/or "must do everything in their power" to protect any foster child would make this more palatable.

RESPONSE: The department concurs that the proposed language was too broad and has amended the language in the rule.

COMMENT #57: Does Rule XXXV (37.51.901) require that foster parents always have to go to the Department's Public Health and Safety Division in Helena to have their water tested? Can we go to a local business?

RESPONSE: The department has amended the proposed rule to require that water be tested by the Department of Public Health and Human Services or by another certified drinking water laboratory. Foster parents can obtain instructions and collection supplies from their local county sanitarian, by stopping by the department's environmental laboratory, in room B-204 in the Cogswell Building at 1400 Broadway in Helena or by contacting the environmental laboratory and requesting that supplies and instructions be sent to them. The environmental laboratory will also provide a

current list of laboratories certified to conduct drinking water analyses upon request.

COMMENT #58: If a family has water delivered or uses bottled water for cooking and drinking, can the well test be waived?

RESPONSE: The rule does not include a provision for an exception to the well water testing. If well water is used, the test is required.

COMMENT #59: Who pays for the test?

RESPONSE: The foster parent is responsible for paying for well water testing.

COMMENT #60: Is there a standard process for all counties statewide?

RESPONSE: The rule requires that all well water testing be conducted by the department or by a certified drinking water laboratory. There is a standard process for submitting well water samples.

COMMENT #61: How will a foster parent be expected to enforce this rule that children shall not be exposed to paint containing lead in excess of .06%? How does a person know if a house has lead based paint? Is this required for all existing paint or new paint? Does this mean that families living in older homes with old paint cannot be licensed?

RESPONSE: If a home was built prior to 1978, there is good chance that lead paint was used in the home. Homes built before 1960 are likely to have the most lead paint. Lead paint is most often found on windows, doors, trim, railings, porches, and outside walls. Any home in which lead based paint may have been used should be tested. Lead-based paint is a major source of lead poisoning for children and can also affect adults. Lead poisoning in children can cause irreversible brain damage and can impair mental functioning.

COMMENT #62: What is exposure?

RESPONSE: A child may be exposed to unsafe levels of lead by breathing or swallowing lead dust especially during renovations that disturb painted surfaces, by putting their hands or other objects covered with lead dust in their mouths, by eating soil or paint chips containing lead or by drinking water which contains high levels of lead. The rule is being amended to require that children be protected from exposure to any unsafe level of lead. Information on protecting children from lead poisoning and other information regarding lead is available by calling 1-800-424-LEAD (424-5323) and at www.epa.gov/lead or www.hud.gov/offices/lead.

COMMENT #63: How does one test for lead paint?

RESPONSE: The best way to test for lead paint is to hire a testing professional who will use a range of methods including a visual inspection of the condition and

location of the paint and lab tests of samples of paint. The National Lead Information Center (NLIC) 1-800-424-LEAD (424-5323) can provide a list of contacts.

COMMENT #64: In Rule XXXV(12) (37.51.901) do the foster parents need to have documentation that their dogs have current rabies shots?

RESPONSE: The rule does not specifically require that dogs must have rabies shots.

COMMENT #65: Clarification is requested as to what is considered to be actions and any resulting injuries that may be caused by an animal allowed in or around the foster home. It appears that this rule is neither reasonable nor enforceable.

RESPONSE: Foster parents are expected to provide supervision for every child placed in a foster home. If a foster child is harmed by an animal that had access to the child or the child to the animal without the knowledge of the foster parents or if the foster parents were not providing adequate supervision, the foster parents are responsible.

COMMENT #66: In Rule XXXV(13) (37.51.901), is a trigger lock ok as far as the requirement of kept in locked storage?

RESPONSE: No, a trigger lock does not meet the requirements of this rule.

COMMENT #67: Should hot tubs be included in Rule XXXV(16) (37.51.901)?

RESPONSE: Hot tubs should have been included and have been added to the rule.

COMMENT #68: To list these as high risk activities for all families is simply not feasible or accurate. A child can be hurt by swallowing a Lego, surely we will not write a rule about Legos. Foster care is about including children in normal family activities, not excluding them because there are unique rules for a foster child or children.

COMMENT #69: The statement "not limited to" opens up the gamut of potentially injurious activities. What about swimming, river bank and lake fishing, snow skiing, water skiing, scuba diving, snorkeling, ice fishing, ice skating, skateboarding, or horseback riding? Who decides? Cultural competence requires acknowledgement that our culture is more than our skin color, language, or ethnic background. Our culture is the beliefs, values, and traditions of each family. Montana has unique and important activities that reflect our values and our beliefs. We have families whose traditions are based around fall hunting trips, horseback riding, and snowmobiling. A restriction on certain activities such as horseback riding and hunting specifically targets Native American culture, foster families, and restricts Indian children from experiencing their culture.

COMMENT #70: The department needs to have respite available to foster families for those children that are not allowed to participate with the family in high risk activities. We farm and ranch and therefore four wheelers, motorcycles, and such are part of the normal routine. If they are not allowed to participate, there needs to be some way to provide care while the rest of us are working. The children who are with us enjoy these activities and are also paid well for working on the ranch. I understand the liability of these activities but also understand that I am not giving up my life to be a foster parent, only volunteering with a stipend to help children in need.

RESPONSE TO COMMENTS #68, #69, AND #70: Language in Rule XXXV (37.51.901) has been changed to make the intent clearer. The intent is to include the legal custodian in decision making and to obtain permission from the legal custodian before a foster child in the care or custody of the department is allowed to participate in activities that are considered to have a high risk of injury associated with them. The rule was not and is not intended to limit activities of foster families, to restrict all foster children from participating in certain activities, or to target Native American families or children. The department has agreed to develop a form that can be used by foster parents to indicate what activities they would like the child to be able to participate in. The community social worker supervisor for the child will determine if consent from the birth parents is needed. If a child is not in the care or custody of the department, the foster parent must work with the agency supervising the child's placement to ensure that permission regarding high risk activities is obtained.

COMMENT #71: Why is the licensing supervisor the best person to give consent? This person does not even know the child. Why not give authority to the treatment team to approve the activities? A department social worker or staff person is part of that team.

RESPONSE: The rule has been amended to require that the community social worker supervisor for a child in the care or custody of the department will determine if consent from the birth parents is needed. If a child is not in the care or custody of the department, the foster parent must work with the agency supervising the child's placement to ensure that permission regarding high risk activities is obtained. While involving the treatment team for children in therapeutic foster care in assessing appropriate activities for a child is encouraged, the treatment team does not have the authority to consent to such activities.

RULE XXXVI (37.51.902) YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS

COMMENT #72: Does Rule XXXVI (37.51.902) require a smoke detector in every bedroom or only bedrooms in which foster children are sleeping?

RESPONSE: A smoke detector is required in every bedroom in the foster home.

COMMENT #73: Smoke detectors should not be required in the bedrooms but should be required in the kitchen which is more prone to fires.

RESPONSE: In addition to having a smoke detector on each floor of a home, smoke detectors are required to be located in bedrooms and the area outside of bedrooms because most deaths and injuries occur in fires that begin at night when occupants of a home are asleep. The department did consult with the Fire Prevention and Investigation Section of the Department of Justice, formerly the State Fire Marshal's office, when drafting this rule.

COMMENT #74: What are the mounting requirements for fire extinguishers?

RESPONSE: The fire extinguisher should be at least 4 inches from the floor with top of the fire extinguisher no more than 60 inches from the floor. It is recommended that fire extinguishers be located near outside exit doors.

COMMENT #75: To comply with Rule XXXVI (37.51.902), do licensing workers need to ask for a certificate that says the woodburning stove, pellet stove or fireplace meets building codes.

RESPONSE: If the stove or fireplace was installed after the foster parents moved to the home, the licensing worker should ask if the stove or fireplace was inspected after the installation, and request a copy of the inspection. If the stove or fireplace was installed prior to the foster parents moving to the home, the licensing worker should ask if a home inspection was completed, and request a copy of the inspection.

RULE XXXVII (37.51.1001) YOUTH FOSTER HOMES: TRANSPORTATION

COMMENT #76: It makes sense in Rule XXXVII (37.51.1001) to get permission to take a foster child out-of-state or the country, but why the county? Providers serve regionally and have many foster homes and respite providers live in various counties. Foster families have friends in and family in other counties. Often families live in one county and work and shop in another. It is not uncommon for youth to attend school in a county adjacent to their home county. This rule is too restrictive and does not take into consideration the special circumstances of rural communities.

RESPONSE: For many years, foster parents who accept children who are in the care or custody of the department have been expected to obtain permission before taking the foster child out-of-county. The expectation was never in rule, however. In instances where a family routinely travels to another county, e.g., a foster family who lives in Jefferson County and travels to Lewis and Clark County regularly, an authorization for multiple day trips may be used. Foster parents are not expected to request authorization for every trip.

RULE XXXVIII (37.51.1401) YOUTH FOSTER HOMES: REQUIRED TRAINING

COMMENT #77: Training required under the rules should be limited to actual training seminars. Otherwise, some foster parents may just watch "Nanny 911" and count it as training. I have spoken to several foster parents and they feel if training was required, they would do it, but it is easy to say, "I read a book".

RESPONSE: Due to extremely rural locations of some foster parents, requiring that all annual training be obtained by attending formal training seminars would be too prohibitive. There are other recognized options for obtaining quality training.

RULE XLI (37.51.1410) YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES

COMMENT #78: Therapeutic foster parents are required to have 18 hours of orientation and preservice training plus an additional 15 hours of training prior to licensure as well as 30 hours of annual training. This rule seems to indicate that each parent has to complete this training which is over 60 hours per year. Does this rule mean that in a two adult family that each parent must achieve 30 hours of training annually? We have lost families who cannot maintain this level of training.

RESPONSE: All foster parents are expected to complete a minimum of 18 hours of orientation and training. Therapeutic foster parents must complete an additional 15 hours of preservice training to assist them in meeting the greater needs of children placed in therapeutic foster homes. The department is required to ensure that foster parents are prepared to meet the needs of children who will be placed with them.

COMMENT #79: Foster parents are held to a higher standard than professionals in the field and are required to have more continuing education units (CEU) in a year than licensed social workers and licensed professional counselors.

RESPONSE: In their professional capacity, licensed social workers and licensed professional counselors do not generally provide full-time foster care to children who have been physically, emotionally, or sexually abused, neglected, abandoned, etc. In addition, licensed social workers and licensed professional counselors have received many hours of training prior to obtaining a license unlike most foster parents, including foster parents who have successfully raised children, but who have had little or no preparation for the challenges of caring for children placed in foster care. The department has amended Rule XLI(2) (37.51.1404) to require that 30 hours of annual training per therapeutic foster home.

COMMENT #80: We have found that if foster parents complete the 15 hours of training when the child is in the home instead of before the child is in the home, there is more benefit.

RESPONSE: While foster parents may be able to apply training more readily when a child is in the home, it is still necessary that a therapeutic foster parent be prepared to meet the child's needs from the day the child is placed in the home.

COMMENT #81: Respite is not included in the rules. Respite parents must also have 30 hours of training and be licensed. Nurses do not have ongoing training requirements. This huge amount of training impedes the ability to get families to be foster parents.

RESPONSE: Respite providers are not a recognized subcategory of youth foster homes. By contract, if respite is provided by someone other than a family member or a person familiar with and known to the child, respite providers are currently required to meet the same requirements as licensed therapeutic foster parents since they are providing care to children placed in therapeutic foster care. The department is willing to work toward establishing rules that specifically address respite and the expectations of respite providers.

COMMENT #82: Does the rule mean that a family that only provides respite must have 33 hours of preservice training in therapeutic interventions? Is each adult required to have 30 hours of annual training?

RESPONSE: A family that provides respite care for a child who is placed in therapeutic foster care must meet the same licensing requirements as a therapeutic foster home. Therapeutic foster parents are each required to have 18 hours of orientation and preservice training and 15 hours of preservice training as described in (2)(a) and (b). Thirty hours of annual training are required per therapeutic foster home, not per foster parent.

COMMENT #83: How much annual training is needed by parents who have been doing foster care for 10 or more years? The department should look at doing a sliding scale of required yearly training based on the number of years of experience the foster family already has.

RESPONSE: The rule does not make a correlation between the number of years a person has provided foster care and the annual training requirement. The number of years that a provider has been caring for foster children does not necessarily translate into less need for training.

/s/ Michelle Maltese
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and Human Services

Certified to the Secretary of State May 22, 2006.

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

In the matter of the amendment of ARM 37.85.212 pertaining to resource based relative value scale (RBRVS)	)))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 6, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-376 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 872 of the 2006 Montana Administrative Register, issue number 7.

2. The department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) through (7)(b)(iii) remain as proposed.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), clinical laboratory services and anesthesia services, if neither Medicare nor Medicaid sets RVUs, then reimbursement is by report.

(a) remains as proposed.

(b) For state fiscal year 2007, the by report rate is ~~45%~~ 46% of the provider's usual and customary charges.

(9) through (14) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The department is changing the “by report rate” for fiscal year 2007 established in ARM 37.85.212(8) from 43% to 46%, not 43% to 45% as proposed. The “by report rate” in this rule applies when Montana Medicaid calculates reimbursement as a percent of the provider's usual and customary charges because the federal Medicare or Medicaid programs do not set a relative value unit (RVU) for the procedure code. The by report rate is the ratio of total Medicaid reimbursement paid for RBRVS covered services to total Medicaid billings. It is calculated using the prior fiscal year numbers for pay-to-charge. The final numbers for fiscal year 2006 showed that Medicaid paid 46% of charges, not 45% as original calculated. The department will implement a 46% by report rate, which results in a slight increase in payment for services reimbursed according to the by report rate.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State May 22, 2006.

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

In the matter of the adoption of new 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 ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-366 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 2572 of the 2005 Montana Administrative Register, issue number 24, and on January 26, 2006, published MAR Notice No. 37-368 pertaining to the amended notice of proposed adoption, amendment, and repeal of the above-stated rules, at page 201 of the 2006 Montana Administrative Register, issue number 2.

2. The department has adopted new rules I (37.95.145), III (37.95.171), IV (37.95.156), VI (37.95.161), VII (37.95.154), XI (37.95.155), XIII (37.95.153), XIV (37.95.149), XV (37.95.150), XVIII (37.95.181), XIX (37.95.182), XXII (37.95.173), XXIII (37.95.174), XXIV (37.95.168), XXV (37.95.172), XXVI (37.95.175), and XXIX (37.95.166) as proposed. The department is not adopting rules XVII and XX.

3. The department has amended ARM 37.95.108, 37.95.139, 37.95.140, 37.95.141, 37.95.214, 37.95.215, 37.95.225, 37.95.702, 37.95.705, 37.95.706, and 37.95.708 as proposed.

4. The department has repealed ARM 37.95.109, 37.95.618, 37.95.620, 37.95.701, and 37.95.907 as proposed.

5. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.95.160) DAY CARE FACILITIES: STAFF RECORDS

(1) The provider shall maintain ~~written~~ records regarding each care-giver

which include:

(a) a record of training and verifiable experience;

(b) through (d) remain as proposed.

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

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

RULE V (37.95.703) GROUP AND FAMILY DAY CARE HOMES: PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) through (1)(e) remain as proposed.

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

(3) The provider, or an approved care-giver designated by the provider, shall be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities.

(4) remains as proposed.

(5) Orientation training does not count toward the required eight hours of ~~continuing~~ approved education or training education as specified in (6).

(6) The provider and all care-givers must annually verify that they have met the training requirements set out in ARM 37.95.162.

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

RULE VIII (37.95.162) DAY CARE FACILITIES: REQUIRED ANNUAL TRAINING (1) The provider and all care-givers 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~~:

(a) by national, state, or local child care organizations~~,~~ ;

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

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

(3) ~~Continuing education~~ Approved education and training must relate to the Montana ~~e~~Early ~~c~~Care and ~~e~~Education ~~k~~Knowledge ~~b~~Base and must fall within the following categories:

(a) through (k) remain as proposed.

(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~~ approved education or training annually.

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

RULE IX (37.95.176) 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) and (b) remain as proposed.

(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) through (l) remain as proposed.

(3) remains as proposed.

(4) If a licensee is placed on a probationary or other provisional status, the department ~~may~~ shall 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.

(5) If a license or registration certificate has been denied to an applicant, or negative licensing action is proposed against a license or registration certificate based upon a conviction identified in (1)(a) through (d) or (2)(a), and the applicant, licensee, or registrant requests a fair hearing and establishes by clear and convincing evidence that the convicted person has been sufficiently rehabilitated to warrant the public trust, the department may issue the license or registration certificate or may withdraw the proposed negative licensing action.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

RULE X (37.95.623) DAY CARE CENTERS: CHILD-TO-STAFF RATIOS

(1) The child-to-staff ratio for a day care center is:

(a) through (d) remain as proposed.

~~(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)~~ (2) Only the ~~provider~~ day care center director, primary care-givers, and aides may be counted as staff ~~in~~ when determining the staff ratio.

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

RULE XII (37.95.146) DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE (1) and (2) remain as proposed.

(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 within ten working days.

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

RULE XVI (37.95.622) DAY CARE CENTERS: STAFFING QUALIFICATIONS (1) through (1)(d) remain as proposed.

~~(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.~~

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

(6) through (6)(g) remain as proposed but are renumbered (3) through (3)(g).

~~(7)~~ (4) Course completion as indicated in ~~(6)~~(3)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.

~~(8)~~ (5) An aide must be directly supervised by a primary care-giver and shall be at least 16 years of age and must:

(a) through (b) remain as proposed.

(c) successfully complete a minimum of at least eight hours of ~~documented~~ verified ~~continuing~~ education or training annually as required in ARM 37.95.162.

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

RULE XXI (37.95.165) DAY CARE ~~CENTERS,~~ FACILITIES: ~~SCHOOL-AGED CARE:~~ NOTICE OF CURRENT ADDRESS (1) remains as proposed.

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

RULE XXVII (37.95.184) DAY CARE FACILITIES: HEALTH HABITS

(1) Good health habits, such as washing hands, must be taught during everyday activities. The care-givers must ensure that each child washes his hands:

~~(a) upon arriving at the facility;~~

~~(b)~~ (a) before eating;

~~(c)~~ (b) before participating in food preparation activities; and

~~(d)~~ (c) 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)~~ ARM 37.95.139(4) for which a child would be excluded;

(b) through (c) remain as proposed.

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

NEW RULE XXVIII (37.95.183) DAY CARE FACILITIES: FIRST AID REQUIREMENTS (1) Each provider shall adopt and follow written policies for first aid consistent with recommendations from the American ~~r~~Red ~~c~~Cross. These policies must include but are not limited to:

(a) procedures for handling medical emergencies, including calling the emergency Montana ~~p~~Poison ~~c~~Control ~~c~~Center at 1 (800) 222-1222 when a child is suspected of having ingested any poisonous or toxic substance; and

(b) remains as proposed.

(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 ~~e~~Emergency Montana ~~p~~Poison ~~c~~Control ~~c~~Center or upon directive of the local emergency service program (i.e., 911 operator, local hospital, or physician);

(b) through (e) remain as proposed.

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

(g) and (h) remain as proposed.

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

(3) through (5) remain as proposed but are renumbered (4) through (6).

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

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

(2) "Care-giver" means a licensee, registrant, employee, aide, or volunteer

who is responsible for the direct care and supervision of children in a day care facility.

(3) through (23) remain as proposed.

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

(25) through (46) remain as proposed.

~~(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) remains as proposed but is renumbered (47).

~~(49)~~ (48) "Supervision" means the provider and all care-givers shall be able to see or hear the children at all times.

(50) remains as proposed but is renumbered (49).

~~(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.~~

(52) through (55) remain as proposed but are renumbered (50) through (53).

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

37.95.106 DAY CARE FACILITIES, REGISTRATION, OR LICENSING ~~APPLICATION~~ (1) through (2) remain as proposed.

(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) through (e) remain as proposed.

(f) a DPHHS personal statement of health for licensure form for each care-giver, 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 care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(h) list of ~~current staff with ages, addresses, and telephone numbers;~~ each staff person's legal name, position, age, residential and mailing addresses, and telephone numbers;

(i) through (j) remain as proposed.

(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 care-giver, aide, or volunteer who has direct contact with the children in care;

(b) remains as proposed.

(c) a criminal background and child and adult protective services check on the provider or staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services

being provided by an individual covered by this requirement;

(d) through (7) remain as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.121 SAFETY REQUIREMENTS (1) through (10) remain as proposed.

(11) The ~~e~~Emergency Montana ~~p~~Poison ~~c~~Control ~~c~~Center number, 1 (800) 222-1222 must be posted at all telephone locations at the day care facility.

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

(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) remains as proposed.

(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~~ escaping, the facility shall have no lock or fastening device which prevents free escape from the interior.

(c) through (f) remain as proposed.

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

37.95.132 TRANSPORTATION (1) The provider shall obtain written consent from the parents 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) remains as proposed.

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

(5) 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.

(5) and (6) remain as proposed but are renumbered (6) and (7).

~~(7)~~ (8) Facilities providing transportation for children under six years of age 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 ~~d~~Department of ~~t~~Transportation recommendations for the age and weight of the child being transported;

(b) through (e) remain as proposed.

~~(8)~~ (9) No child shall be left unattended in a vehicle.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, 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 provided under direct adult supervision.

(2) ~~(a) This requirement~~ The requirement in (1) 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) and (ii) remain as proposed but are renumbered (a) and (b).

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

(v) and (vi) remain as proposed but are renumbered (e) and (f).

~~(b) Only (1)(a)(ii) through (iv) are applicable to programs offered by a day care facility exclusively serving school aged children.~~

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

37.95.610 DAY CARE CENTERS, SPACE (1) through (2) remain as proposed.

(3) In facilities licensed after ~~the effective date~~ June 2, 2006 ~~of this rule~~, this requirement shall be deemed to have been satisfied if 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.~~

(4) 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:

(a) periods when children are using their rest equipment. ; or

(b) when large group activities, such as educational assemblies, occur.

(5) During sleep periods, the area must be sufficient to provide spacing between the children using sleep equipment.

(5) through (7)(c) remain as proposed but are renumbered (6) through (8)(c).

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

37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

(1) through (2)(f) remain as proposed.

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

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

(1) through (5) remain as proposed.

(6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and the eEmergency mMontana pPoison cControl cCenter (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: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING

(1) through (4) remain as proposed.

(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~~ The use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first.

(6) through (8) remain as proposed.

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

7. The department has corrected a reference in Rule XXVII (37.95.184). There was an internal reference in (2)(a) to (4) in the rule, which did not exist. The reference is being corrected to refer to ARM 37.95.139(4) which is the correct reference.

The department on its own initiative has removed ARM 37.95.613(7) based on comments received on other rules pertaining to school aged child care. Further explanation is in the comment section of this notice pertaining to ARM 37.95.613.

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

COMMENT #1: The department should change all references of "day care" to "child care".

RESPONSE: The department disagrees. The Montana Child Care Act at Title 52, Chapter 2, part 7, MCA, uses the term "day care" predominately, even though both child care and day care terms can be used interchangeably as stated in 52-2-703, MCA. The provider may use the term child care. However, in order to be consistent with statutory language, the department will continue to use the day care term.

COMMENT #2: There were three individuals who commented that insufficient notice was given to providers.

RESPONSE: The department disagrees. As is legally required, the department sent its rule notices to all people who are listed on the department's interested parties list. Additionally, the department sent post cards to all licensed and registered providers informing them of the proposed rule changes with information on how to access the document via the Internet, or by request to the department for a printed copy. Further, the department sent notices to each Child Care Resource and Referral Agency with a request that this information be included in the newsletters sent out by those agencies. Lastly, the department had its Early Childhood Services Bureau enclose the notices of the proposed rule changes with the state assisted payment checks mailed to providers.

COMMENT #3: If a child care center is sold, will it be required under the new rules to upgrade to the new rule requirements or will it be allowed to operate within the existing rules?

RESPONSE: If an existing child care center is sold, then the upgrades as specified at ARM 37.95.610 would be required. The center would be considered a new facility under new management.

COMMENT #4: When the department is requiring outside equipment to be anchored, is the department referring to Little Tykes equipment which is meant to be portable?

RESPONSE: Most Little Tykes equipment is made to use water as its anchor, and the manufacturer lists restrictions on the equipment's use based on the child's weight so that the equipment will not tip and cause injury. If the manufacturer's recommendations are followed, further anchoring is not necessary.

COMMENT #5: According to the proposed rule, the department is eliminating the requirement for care-giving staff to have a TB test. Why? TB is more prominent now than it was ten years ago.

RESPONSE: The department disagrees. TB is not more prominent in Montana, and the incidence of TB has dramatically decreased over the last ten years. The department's Communicable Disease Control and Prevention Bureau and the U.S. Centers for Disease Control and Prevention no longer recommend annual TB testing. However, prescreening of new employees and follow-up screening of at-risk groups is not prohibited by the rule. These procedures can still be accomplished by the facility.

COMMENT #6: Please show the study which indicates that overcrowding is associated with upper respiratory infections.

RESPONSE: A study has been conducted and is supported by the American Academy of Pediatrics, the American Public Health Association, and the U.S. Department of Health and Human Services. The information can be found in Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs, Second Edition, Chapter 5. This publication is a joint effort produced by all of these health associations. The document was published in 2002 by the American Academy Pediatrics, ISBN #1-58110-074-5. A copy of the report is available for viewing at the department's Child Care Licensing Program's central office at 2401 Colonial Drive, Helena, Montana.

COMMENT #7: Will existing child care facilities or programs be grandfathered in, or will they have to make the appropriate changes specified in these rules?

RESPONSE: Under the proposed rules, existing child care facilities would be grandfathered in until the facility is sold or ownership is transferred.

COMMENT #8: When will these rules go into effect?

RESPONSE: The rules become effective the day after the notice of adoption (meaning this notice) is published by the Montana Secretary of State in the Montana Administrative Register.

COMMENT #9: I operate a child care center that provides care for 2 through 12 year olds in three different locations. One consists of 2 to 5 year olds, one has kindergarten and 1st and 2nd graders, and one has 3rd through 6th graders. Is my operation considered exclusively as a school-aged program? All three of these locations fall under one license. Would this change?

RESPONSE: If the individual programs are in three separate locations in separate structures, then three separate licenses are issued. The programs caring for 1st through 6th graders would certainly qualify as a school-aged program.

COMMENT #10: What is a recognized preschool program?

RESPONSE: A preschool is a program that meets the statutory definitions found at 52-2-703(4)(b), MCA, and 20-5-402, MCA. The statutory definitions are restricted to a facility that cares for children 3 to 5 years of age, has a structured educational curriculum, and limits preschool hours to three hours per day for children under 5 years of age, or up to five hours per day for 5 year olds.

RULE I (37.95.145) DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES

COMMENT #11: In outlining its renewal procedures in Rule I, the department did not provide for an extension of renewal for extenuating circumstances such as the death of a family member.

RESPONSE: The department disagrees. Rule I(2) (37.95.145) clearly states: "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."

COMMENT #12: Rule I(2) (37.95.145) is vague with respect to the words, "or other good cause shown".

RESPONSE: The department concurs that the particular wording is vague. However, the department cannot absolutely anticipate all situations that may affect the ability of a provider to renew timely. The rule language allows for those unanticipated circumstances.

COMMENT #13: The words "if applicable" should be added at the end of the sentence in Rule I(2) (37.95.145).

RESPONSE: The department disagrees with the comment to add "if applicable". The condition of the rule's applicability is implied.

COMMENT #14: Rule I(5) (37.95.145) addresses the process for reapplication once a provider license is terminated for failure to renew timely. The department should exempt the applicant from having to attend the new provider orientation.

RESPONSE: The department disagrees. If providers fail to renew their license or registration in a timely fashion, the provider's license or registration is terminated. When reapplying for license or registration, the providers are considered to be new providers subject to the same process and requirements as first time providers.

RULE II (37.95.160) DAY CARE FACILITIES: STAFF RECORDS

COMMENT #15: The department should omit the word "written" when referring to records as specified in Rule II(1) (37.95.160). Training records are rarely written but are mostly electronic due to the training through the Training Approval System by the Early Childhood Project Career Development Program.

RESPONSE: The department agrees and will strike the word "written" in Rule II(1) (37.95.160).

COMMENT #16: The following language should be added to Rule II(1)(a) (37.95.160): a record of approved continuing education/training through the Training Approval System administered by the Early Childhood Project Career Development Program and verifiable experience.

RESPONSE: The department partially agrees. The department does agree that experience should be verifiable and will add the words "verifiable experience" to Rule II(1)(a) (37.95.160). While the department understands the reasons for the comment, there are real circumstances where care-giver training is outside of the accepted Training Approval System. For example, a care-giver may have received training outside of the state of Montana but is applying to become a care-giver, primary care-giver, or director in Montana. The department would not be able to approve the training for this person which would prohibit the person's employment.

COMMENT #17: Rule II (37.95.160) should contain a provision on keeping staff records that contain information on each staff person's legal name, residential and mailing addresses, phone number, job position, and age.

RESPONSE: The department agrees and will add the following words as (2): "The facility shall maintain a current list of staff that specifies each staff person's legal name, position, age, residential and mailing addresses, and phone numbers."

RULE IV (37.95.156) DAY CARE FACILITIES: CONFIDENTIALITY REQUIREMENTS

COMMENT #18: Do the confidentiality requirements in Rule II (37.95.156) apply to master lists of parents which include the parent names and phone numbers?

RESPONSE: Yes. The requirements of Rule IV (37.95.156) specify that any information about the child and his family is not to be disclosed to another family. Confidentiality must be maintained. ARM 37.95.141(2) requires providers to maintain a master list and have it readily accessible to the department upon request. Any master list information which is in the department's possession remains confidential. The master list shall not be made available, nor should it be easily accessible, to other parents whose children are enrolled.

RULE V (37.95.703) GROUP AND FAMILY DAY CARE HOMES: PROVIDER RESPONSIBILITIES AND QUALIFICATIONS

COMMENT #19: Rule V(1)(e) (37.95.703) specifies that providers must demonstrate they are of "good moral character". Please define this term.

RESPONSE: The Montana Supreme Court has found that "good moral character" means "a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation." Since the definition is defined in law, it is not necessary to define it in rule.

COMMENT #20: Rule V(2) (37.95.703) gives 15 days for a provider to submit materials necessary for staff approval. This is not enough time.

RESPONSE: The department disagrees. The current rule has specified that the documentation for approving care-givers must be submitted to the department within a "reasonable time". The department has long interpreted "reasonable time" as being 15 working days by policy. Providers have not found it difficult to submit the necessary information within that period of time.

COMMENT #21: Regarding Rule V(2) (37.95.703), please explain who has the supervisory responsibility for staff members while waiting for staff members' approval status.

RESPONSE: Rule V(2) (37.95.703) is specific to group and family day care homes. Supervisory responsibility lies with the registrant and any other approved care-givers for that facility.

COMMENT #22: Rule V(3) (37.95.703) specifies that the provider shall be responsible for direct care, supervision, and guidance of the children. Does that mean that the provider must be onsite at all times?

RESPONSE: Yes. By definition, a provider is defined as "the applicant for license or registration, the licensee or registrant". The department considers the person

holding the registration certificate to be the provider. Under Rule V(3) (37.95.703), the provider would be required to be onsite at all times.

The department understands that there are times when the provider must be away from the facility and the approved care-givers are left to provide day care services to the children. The department will amend the language in Rule V(3) (37.95.703) to read: "The provider, or an approved care-giver designated by the provider, shall...", thus allowing the provider to be off the premises without violating the rules.

COMMENT #23: In Rule V(5) (37.95.703), do the requirements of orientation apply to day care center staff, or only to home care-givers?

RESPONSE: The Rule V(5) (37.95.703) requirements on orientation training pertain only to family and group home providers. It is not required, and would not be appropriate, for day care center staff.

COMMENT #24: In Rule V(5) (37.95.703), please substitute "approved education/training" instead of using the term "continuing education".

RESPONSE: The department agrees and will strike the words "continuing education" and will add the words "approved education or training" as suggested.

COMMENT #25: Please add the phrase, "equivalent to the American Red Cross" to the end of Rule V(7) (37.95.703).

RESPONSE: The department disagrees. The American Red Cross is not the only source of CPR and first aid training. There are other entities such as the American Heart Association that provide CPR and first aid training, and not all of these entities use the same training techniques or mechanisms employed by the American Red Cross. To be acceptable, the department requires the CPR and first aid training programs to show that they have national recognition, issue completion and certification documentation, and have completion criteria based upon direct and practical instruction.

RULE VI (37.95.161) DAY CARE FACILITIES: CRIMINAL BACKGROUND CHECKS

COMMENT #26: Rule VI(1) (37.95.161) specifically pertains to the requirement that volunteers have criminal background checks. It is burdensome and restrictive to have such checks conducted on persons who are coming into the facility for brief presentations or providing an inside field trip for the children.

RESPONSE: In Rule VI(1)(a) (37.95.161), the department is not referring to the occasional guest presenter that would be in the facility conducting a presentation for the children. The department is aware that many facilities have volunteers provide care-giving services to the facility without compensation. The volunteer care-giving staff, although not paid, are considered by the department as direct care-giving staff.

All direct care staff are subject to proper background checks.

COMMENT #27: Comments were received with regard to the requirement that all care-givers must have motor vehicle background checks conducted as part of the approval process. The commentors requested that the department limit this requirement to only those persons providing transportation services.

RESPONSE: The rule requires all care-giving staff to have the motor vehicle check unless they do not possess a driver's license and do not drive a vehicle. The motor vehicle check may disclose repeated convictions of serious driving offenses such as DUI, which may be inconsistent with the good moral character requirements for day care staff.

COMMENT #28: If a fingerprint check is conducted as required in Rule VI(3) (37.95.161), does the provider still have to submit a request for a criminal check for each state where the potential employee has lived?

RESPONSE: No. A fingerprint card allows for an FBI criminal history check through the Criminal Justice Information Network. The FBI database contains information for all 50 states, thus eliminating the need to do a state-by-state check.

COMMENT #29: In Rule VI(4) (37.95.161), are background checks only conducted back to the age of 18?

RESPONSE: Yes. A person is considered an adult at the age of 18, and any criminal history occurring as an adult is stored within the Criminal Justice Information Network database.

COMMENT #30: The department should not allow the use of an affidavit to verify criminal history, as stated in Rule VI(5) (37.95.161).

RESPONSE: The department disagrees. There are some people who, due to age or medical conditions, do not have sufficient ridges on their fingers to produce readable fingerprints. In these cases, the department is not able to obtain criminal background check results from the fingerprint process. The department can conduct a name-based check on the Criminal Justice Information Network. An affidavit can be used while waiting for those results. The affidavit is a supplemental document, and it would not supplant the acquisition of actual background check results.

COMMENT #31: Under Rule VI(5) (37.95.161), can the care-giver work in the facility while waiting for background results?

RESPONSE: Yes, however, such an employee must be directly supervised and not be alone with any of the children until the results of the background check are known.

COMMENT #32: Should Rule VI(5) (37.95.161) be considered a department policy

and not a rule?

RESPONSE: The department feels it is necessary to have the requirements in the form of a rule so that it may exercise enforcement as necessary and appropriate.

COMMENT #33: When requiring an out-of-state background check as required in Rule VI(6) (37.95.161), must the five years lived out-of-state be consecutive years?

RESPONSE: No. If the person has lived in another state at any time during the previous five years, then an out-of-state background check must be conducted. It does not have to be for a period of five consecutive years.

RULE VIII (37.95.162) DAY CARE FACILITIES: REQUIRED ANNUAL TRAINING

COMMENT #34: In Rule VIII(1) (37.95.162), please raise the number of care-giver training hours from eight hours to 12 hours for all care-givers.

RESPONSE: The department disagrees. The department purposefully elected not to revise the overall training for day care providers but instead chose to increase training hours incrementally, beginning with center directors. The department's position is that with the exception of the requirements for center directors, the current training requirement is adequate and meets the intent of the rule established in 2000. Further, the department determined that the need for increased regulations involving health and safety was a higher priority than increasing the overall training hours. In choosing which rules to propose for change, the health and safety factors outweighed any justification for increasing the overall training requirement.

COMMENT #35: In Rule VIII(2) (37.95.162), the department should require that all training be obtained through any Early Childhood Project approved by local, state, or national sponsors, or institutions of higher education that are regionally accredited through the established state processes.

RESPONSE: The department partially agrees. The department will amend Rule VIII(2) (37.95.162) to read that training is to be obtained through any approved local, state or national sponsors or institutions of higher education that are regionally accredited through the established state processes. The department did not specifically list Early Childhood Project because if for some unknown reason the department's contract with Early Childhood Project ended, the department would be unable to gain training approval through any other source, including itself, without changing the rule.

COMMENT #36: Rule VIII(3) (37.95.162) should include the words "approved" in front of "continuing education", and "training" at the end of that phrase.

RESPONSE: The department agrees and will strike the words "continuing education" and will add the words, "approved education or training" to Rule VIII(3) and (4) (37.95.162) as suggested.

RULE IX (37.95.176) DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

COMMENT #37: There is some confusion between Rule IX(1) and (2) (37.95.176) pertaining to the use of the words "shall" and "may" when referring to negative licensing action and when it is to occur.

RESPONSE: The term "may" is discretionary, allowing the department to consider the circumstances when taking negative licensing action. The term "shall" is a mandatory word and does not allow the department discretion when taking negative licensing action. The term "must" is the same as "shall".

COMMENT #38: Please define the phrase, "any person staying in the facility on a regular or frequent basis" as the phrase is used in Rule IX(1)(a) (37.95.176).

RESPONSE: Webster's Dictionary defines "regular" and "frequent" as follows: "regular" means "recurring or functioning at fixed or uniform intervals". "Frequent" means "common, usual, happening at short intervals; habitual, persistent". Based upon these definitions, a person who does not work at the day care but has a persistent, habitual, or recurring presence in a licensed or registered day care facility must be subject to all criminal and protective service background checks.

COMMENT #39: In Rule IX(4) (37.95.176), the department should change the wording from "may" to "must" when indicating that parents will be notified when a provider is placed on a probationary or other provisional status.

RESPONSE: The department agrees. The department will modify the rule to require a reasonable notification of all the parents on the facility's master list. Notification will occur in a method chosen by the department if there is a change in the license status regarding probationary or other provisional licensure or registration status.

The department on its own initiative has added (5) to Rule IX (37.95.176) in order to be consistent with the requirements of 37-1-203, MCA, which prohibits the denial of a professional or occupational license based solely upon a criminal conviction, and Ulrich v. State of Montana Board of Funeral Service, 1998 MT 196, 289 Mont. 407, 961 P.2d 126, where the Montana Supreme Court has held that a licensee or a license applicant who has been convicted of a criminal offense that is related to the public health, safety, and welfare as applicable to the license must have the opportunity to show that he has been sufficiently rehabilitated so as to warrant the public trust. Rule IX(1)(a) through (d) and (2)(a) (37.95.176) identify specific criminal offenses which are related to the public health, safety, and welfare as applied to providing day care. An applicant, licensee, or registrant who faces proposed negative licensing action based upon a conviction must meet the burden of establishing by clear and convincing evidence at an administrative fair hearing that the convicted person has been sufficiently rehabilitated so as to warrant the public trust.

RULE X (37.95.623) DAY CARE FACILITIES: CHILD TO STAFF RATIOS

COMMENT #40: In Rule X(2) (37.95.623), the staff and child ratio proposed for school aged children is inappropriate.

RESPONSE: The department partially agrees, but it would not characterize the ratio as inappropriate. However, based on comments received regarding the department's proposed school aged child care regulations, the department will withdraw the proposed staff and child ratio for facilities providing care exclusively for school aged children by striking in its entirety Rule X(2) (37.95.623).

COMMENT #41: For Rule X(3) (37.95.623), please clarify that child care center directors are also included as staff who may count in the child and staff ratio.

RESPONSE: The department agrees. Directors can be included in the child-to-staff ratio. The department will amend Rule X(3) (37.95.623) to read "only the day care center director, primary care-givers and aides may be counted when determining the staff ratio".

RULE XI (37.95.155) DAY CARE FACILITIES: RECORDS

COMMENT #42: In Rule XI(1) (37.95.155), the department should specifically identify what policies, records, and reports must be maintained.

RESPONSE: The department disagrees. 52-2-732, MCA, provides that the licensee shall "keep and maintain such records as the department may prescribe, and [shall] permit inspection of these records". The required records are mentioned throughout the day care rules, and to specify them in Rule IX (37.95.155) would be duplicative.

COMMENT #43: Would providing the records to the department violate an individual's right to privacy?

RESPONSE: No. The department's access to these records does not violate a person's right to privacy. The department is authorized to review healthcare information while conducting its regulatory process. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), at 45 CFR 164.512(d)(1)(iii), and the Montana legal provisions of 52-2-723, MCA, and 50-16-530, MCA, give the department the authority to view any facility records as the department deems necessary for its health oversight activities. Under these laws, the department must maintain the confidentiality of these records, and it cannot release the records to any person or organization that operates outside of the department's regulatory process. This confidentiality requirement is in 50-16-603, MCA.

COMMENT #44: The department should limit its review of records to only enrolled children.

RESPONSE: The department disagrees. As is often the case when conducting facility investigations, there may be times when the department will need to review records of children who no longer attend the facility.

RULE XII (37.95.146) DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE

COMMENT #45: In Rule XII(3) (37.95.146), the department should add a timeline of ten days to notify the department of any facility changes.

RESPONSE: The department agrees and has made that change.

RULE XIII (37.95.153) DAY CARE FACILITIES: NOTICE OF CHANGES

COMMENT #46: In Rule XIII(1) (37.95.153), the department should further specify the types of facility changes that need to be reported.

RESPONSE: The department disagrees. The changes that must be reported to the department are those that affect the terms of the license or registration. The department believes Rule XIII (37.95.153) adequately explains the type of reportable changes.

RULE XVI (37.95.149) DAY CARE FACILITIES: STAFFING QUALIFICATIONS

COMMENT #47: The department received many comments concerning the inappropriateness of the department's proposal regarding qualifications for day care center directors found at Rule XVI(2) through (4)(b) (37.95.149). The department was requested, given the economic structure of Montana and the very limited employment pool, to withdraw this proposal and revisit the issue later. Concern was also raised about whether a staff person retains the years of experience if the person moves out-of-state and returns. Concerns were also raised regarding the directors who wished to remain in their current positions and earned their status through years of experience. Another comment concerned the rule's language being unclear.

RESPONSE: The department agrees with the comments. Rule XVI(2) through (4)(b) (37.95.149) as proposed will be withdrawn. The department will use the staffing qualifications presently found at ARM 37.95.620(1), which had been originally slated for repeal. The language in ARM 37.95.620(1) was placed in Rule XVI (37.95.149), while the remainder of ARM 37.95.620 is repealed.

COMMENT #48: Please define what "good moral character" means in Rule XVI(1)(d) (37.95.149).

RESPONSE: Please see response to Comment #19.

COMMENT #49: A comment supported the department's proposed language about onsite teaching directors in Rule XVI(2) (37.95.149).

RESPONSE: The department thanks the commentor for the support.

COMMENT #50: Three other comments did not support the proposed language as found in Rule XVI(2) (37.95.149), specifically the requirement of having an onsite director. The commentors believed the language requires a director to be on the premises at all times.

RESPONSE: The commentor's assessment of the word "onsite" is correct. However, given the comments concerning (2) as well as other concerns over Rule XVI(2) through (4)(b) (37.95.149), the proposed language will be withdrawn. The department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47.

COMMENT #51: Will the department define what a "recognized preschool" is in Rule XVI(4)(a) (37.95.149)?

RESPONSE: See response to Comment #10. After consideration of the public comment concerning section (2) through (4)(b), the proposed language will be withdrawn. The department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47.

COMMENT #52: Rule XVI(5) (37.95.149) appears to indicate that the 15 hours of training for directors applies only to those newly employed as of the effective date of the rule.

RESPONSE: The department agrees and will change the language so that it is clear that the 15 hours of training applies to all child care center directors regardless of when they were hired. In Rule XVI(5) (37.95.149), the department will strike the words "newly" through "career path and" so that the rule will read: "A center director must obtain 15 hours of approved education or training on an annual basis".

COMMENT #53: In Rule XVI(5) (37.95.149), the department should increase the number of hours of training for directors from 15 hours to 20 hours.

RESPONSE: The department disagrees. Fifteen hours of training is incremental and reasonable at this time.

COMMENT #54: In Rule XVI (37.95.149), the department should require a training course on the administering of medication for all center directors.

RESPONSE: The department agrees that all directors who agree to dispense medications should participate in mandatory training concerning medication administration. However, the department is aware that this training is not yet available. The department has awarded a contract to Child Care Resources in

collaboration with the Missoula Public Health Department for the development of this training. While the training will be ready for implementation in October 2006, these rules will be in effect prior to that time. The department does not feel it can mandate training that has not been fully developed and implemented. The department may revisit the issue of making the training a requirement in rule once the training program is established.

COMMENT #55: In Rule XVI(5) (37.95.149), the department should consider removing the listed requirements on how to obtain a level 3 on the Montana Early Care and Education Path because there are a number of ways people can attain this level.

RESPONSE: After consideration of the public comment concerning Rule XVI(2) through (4)(b) (37.95.149), the proposed language change for director qualifications will be withdrawn and the department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47. Because of this change, the department does not feel that it can implement the requirement for directors to be at a level 3 on the Montana Early Care and Education Career Path.

COMMENT #56: In Rule XVI(2) through (4)(b) (37.95.149), the following language should be added: "All directors must have at least a current Child Development Specialist Apprenticeship credential with active status on the practitioner registry at Level 3 and must complete 15 hours of approved continuing education/training". This requirement should be applied to all new nonteaching directors.

RESPONSE: The department disagrees at this time. After considering the public comment, the department will withdraw Rule XVI(2) through (4)(b) (37.95.149), and the department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47. The department will consider the commentor's suggestion in the future.

COMMENT #57: In Rule XVI(5) (37.95.149), consider removing the reference of "two years" in Rule XVI(5)(e)(i) (37.95.149), and replace it with "4,000 hours". Also, consider replacing the existing language at Rule XVI(5) (37.95.149) with the following language for the qualification of primary care-givers:

(ii) credential or Montana Child Development Specialist Apprenticeship Certificate (level 3 or 4 on the MT practitioner registry)

(iii) an associate or bachelor's degree in early childhood education/child development (level 5 or 6 on the MT practitioner registry)

(iv) an associate or bachelor's degree in education or social science with 20 semester credits in early childhood education/child development (level 5 or 6)

(v) an associate or bachelor's degree in an unrelated field with 20 semester credits in early childhood education/child development (level 5).

RESPONSE: The department disagrees. The language concerning the requirements for primary care-givers in Rule XVI(5) (37.95.149) was only slightly changed and is appropriate at this time. The department may consider the

commentor's proposal at a future date.

COMMENT #58: In Rule XVI(8)(c) (37.95.149) the department should add the word "approved training" when referring to "continuing education".

RESPONSE: The department agrees and has made the change.

RULE XVII - DAY CARE FACILITIES: SCHOOL AGED CARE

COMMENT #59: The comments received regarding Rule XVII were the same as those for Rule X (37.95.623) regarding staff ratios. However, along with these comments, the department was asked to consider adding a mandatory training on the administration of medication for staff of school aged child care programs.

RESPONSE: After considering the public comment concerning the proposed rules for school aged care, the department will be withdrawing Rule XVII and other provisions concerning school aged care and will revisit them at a future date.

RULE XVIII (37.95.181) DAY CARE FACILITIES: MEDICATION ADMINISTRATION

COMMENT #60: Regarding Rule XVIII(1) (37.95.181), a facility's possible refusal to administer medications may affect children with disabilities. Would it be considered discrimination if the facility does not administer medications, and as a result refuses to enroll a child with a disability who needs medication? If so, what is the liability of the department?

RESPONSE: This question pertains to the Americans with Disabilities Act (ADA). The ADA is a civil rights law. The department has no authority or jurisdiction over ADA issues. Questions regarding ADA compliance should be reviewed by the provider's private legal counsel.

COMMENT #61: One comment was received in favor of the proposed language in Rule XVIII(1) (37.95.181) regarding medication administration.

RESPONSE: The department thanks the commentor.

COMMENT #62: Rule XVIII (37.95.181) should include language concerning the recently developed over-the-counter (OTC) checklist.

RESPONSE: While the department obviously agrees that an OTC checklist is helpful, the department does not feel it necessary to list those forms within the text of the rule. The department will make available forms and checklists pertaining to administration of medication, and will revise and update them as needed.

RULE XIX (37.95.182) DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION

COMMENT #63: One comment was received in support of Rule XIX (37.95.182).

RESPONSE: The department thanks the commentor.

COMMENT #64: In Rule XIX(1)(d) (37.95.182), the department should clarify what the term "dispose" means. In particular, if the provider gives the medication back to the parent, is the medication considered disposed?

RESPONSE: Yes. To "dispose" is to "get rid of". Giving the medication back to the parent would be an acceptable method of disposing the medication.

COMMENT #65: In Rule XIX(2) (37.95.182), the department should remove the words "use by" from this section.

RESPONSE: The department disagrees. The term "use by" specifies that the medication is there because the child needs it and it is "used by" a specific child.

COMMENT #66: In Rule XIX(3)(c) (37.95.182), do medications that must be refrigerated require storage in a separate refrigerator away from food?

RESPONSE: The reason for this rule is to avoid medication being confused with food. Medications can be stored in the same refrigerator as long as it is stored separately from the food. For example, the medication can be stored in a small locked box in the same refrigerator.

COMMENT #67: The department should specify that parents must indicate in writing when they last administered any medication.

RESPONSE: The department agrees. Because this issue pertains to the authorization and administration procedure, the department will add this requirement to its Authorization Consent form.

RULE XX - DAY CARE FACILITIES, SCHOOL AGED CARE: DIRECTOR AND STAFF QUALIFICATION

COMMENT #68: Comments were received regarding the department's proposed rules for qualification of directors and staff of school aged child care programs. All of these comments indicate that the department is being too restrictive in its provisions for the qualifications of directors and staff.

RESPONSE: After considering all of the comments, the department will withdraw Rule XX. The department will revisit this issue of requirement for school aged child care at a future date.

COMMENT #69: Please define the term "good moral character" in Rule XX(1)(d).

RESPONSE: Please see response to Comment #19.

COMMENT #70: Subjecting volunteers to background checks, as stated in Rule XX(2), is inappropriate and should not be required.

RESPONSE: See responses to Comments #26 and #68.

COMMENT #71: The department should eliminate the requirement in Rule XX(3)(c) that onsite directors be present at the facility at all times.

RESPONSE: See response to Comment #68.

RULE XXV (37.95.172) DAY CARE FACILITIES: SUPERVISION AT ALL TIMES

COMMENT #72: To comply with Rule XXV(1) (37.95.172), does a staff person have to be physically present at all times in the same room where the children are sleeping? Would there be adequate supervision if the sleeping room had a window for staff viewing?

RESPONSE: Even though the children are sleeping, appropriate staffing levels must be met. In order to provide supervision or be able to rescue a child in the event of an emergency, an adult staff member must be able to see or hear the children. Viewing windows may be appropriate depending on the number of children in the sleeping room, whether staff are physically near the room, and whether other staff are available to assist in cases of emergencies.

RULE XXVII (37.95.184) DAY CARE FACILITIES: HEALTH HABITS

COMMENT #73: The requirement in Rule XXVII(1)(a) (37.95.184) providing that children must wash their hands upon arrival at the child care facility should be stricken due to the difficulty of implementing it.

RESPONSE: The department agrees and will strike the words "upon arriving at the facility" in Rule XXVII(1)(a) (37.95.184).

RULE XXVIII (37.95.183) DAY CARE FACILITIES: FIRST AID REQUIREMENTS

COMMENT #74: In Rule XXVIII(1) (37.95.183), "American Red Cross" should be capitalized.

RESPONSE: The department agrees and will make this change.

COMMENT #75: Please clarify if the department is requiring syrup of ipecac or activated charcoal for first aid kits in Rule XXVIII(2)(a) (37.95.183).

RESPONSE: The department is requiring that first aid kits contain an unexpired bottle of syrup of ipecac. 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 Regional Poison Control Center in Denver, first aid kits should contain ipecac because of Montana's rural nature and potential for long transport times. However, the substance may only be administered under medical direction or by instruction of the regional poison control center. Activated charcoal is no longer recommended by the American Academy of Pediatrics or the Regional Poison Control Center for use by nonmedical professionals and is no longer required to be in the first aid kit.

COMMENT #76: What is meant by "sterile, absorbent bandages" in Rule XXVIII(2)(b) (37.95.183)?

RESPONSE: The department believes the terminology is self-explanatory. All first aid kits must contain bandages which are sterile and are absorbent. Over-the-counter products are clearly labeled accordingly.

COMMENT #77: Is the phone number listed in Rule XXVIII(2)(f) (37.95.183) the correct number for the poison control center?

RESPONSE: The department has verified that the number published is correct.

COMMENT #78: Define the term "hazard" as it is used in Rule XXVIII(2)(i).

RESPONSE: "Hazard" is defined in Webster's Dictionary as: "a source of danger". Rule XXVIII (37.95.183) requires a day care provider to notify the department anytime there is a "source of danger" that would affect the health, welfare, or safety of children in care.

In examining this rule, and taking the comment into consideration, the department feels there is a need to further clarify the rule. The department will add "each day care provider is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care".

COMMENT #79: Does Rule XXVIII(4) (37.95.183) mean that every time a parent chooses to take a child to the physician for treatment, it must be reported by the facility?

RESPONSE: Department notification is only required when a child sustains an injury while at the child care facility. If the injury is so serious that medical transport is necessary, or if the parent chooses to have the injury examined by a doctor, then the instance must be reported to the department.

COMMENT #80: Why is Rule XXVIII(5) (37.95.183) being added?

RESPONSE: This is not new rule language. The language is existing rule language from ARM 37.95.139(15) that has been moved to Rule XXVIII (37.95.183) to make it

easier for providers to locate.

37.95.102 DEFINITIONS

COMMENT #81: Please clarify the term "remote means of egress" in ARM 37.95.102(43).

RESPONSE: The department thinks the definition is adequate. The purpose of having a "remote means of egress" is to help prevent the possibility that the two required exits would both be blocked by a fire. To calculate whether the two required exits are remote, measure the room under consideration diagonally and divide that measurement in half. If the measured distance between the exits is less than 1/2 of the diagonal distance of the room, the exits are not considered to be remote. The second exit door or egress window would not be counted as the acceptable second means of exit.

COMMENT #82: Please clarify the term "restricted certificates" in ARM 37.95.102(45).

RESPONSE: A restricted certificate is a license or registration status that is given when a day care provider is unable to meet certain criteria, but is complying with an agreed-upon plan of correction. For example, a provider may be prohibited from caring for infants until a course of training is approved. The department in this case would issue a licensing/registration restriction to prevent the provider from caring for children under the age of 2 until that training and other corrective actions are completed.

37.95.102 DEFINITIONS

The department on its own initiative removed the definitions of "school age child care facility" and "teaching director" in ARM 37.95.102 based on comments received on other rules pertaining to school aged child care.

37.95.106 DAY CARE FACILITIES, REGISTRATION, OR LICENSING

COMMENT #83: Do the requirements of ARM 37.95.106(3) apply to day care centers only?

RESPONSE: Yes. A license is only granted to day care centers. ARM 37.95.106(4) contains the criteria for the issuance of a registration.

COMMENT #84: Add the following language to ARM 37.95.106(3)(h): "a list of current staff, role type with legal name, residential mailing address, residential phone number and age".

RESPONSE: The department agrees and will add the phrase "a list of each current staff person's legal name, position, age, residential and mailing addresses, and

telephone numbers" to ARM 37.95.106(3)(h). The information requested is critical to the timely and proper processing of information on provider training. The suggested language is more specific and will be beneficial for the Montana State University's Early Childhood Project for purposes of the training registry.

ARM 37.95.108 DAY CARE FACILITIES REGISTRATION AND LICENSING PROCEDURES

COMMENT #85: For ARM 37.95.107(7)(a), please reconsider the requirement that a three year license be granted only upon verification that no deficiencies exist. The department should allow three year licenses to be granted for minor deficiencies.

RESPONSE: The criteria established for issuing a three year license are clearly specified in 52-2-721(5), MCA. The department may only issue a three year license when a provider has no deficiencies. The department cannot change a statute by a rule.

ARM 37.95.121 SAFETY REQUIREMENTS

COMMENT #86: In ARM 37.95.121(7), please clarify what "unguarded" means, and discuss why this change has occurred.

RESPONSE: This is not new proposed language and is not one of the rules being proposed for change. However, the department will clarify what "unguarded" means. On certain slides there are ladders which are totally open with nothing but the actual step pieces of the ladder for children to hang on to. The intent of this rule is that the ladder leading to the top of the slide must have safety guards on each side of the step, or protective enclosures to allow children to hang on to while climbing up to the top of the slide.

COMMENT #87: The department should change the word "eloping" to "escaping" in ARM 37.95.121(13)(b).

RESPONSE: The department agrees and will change the word as requested.

COMMENT #88: In ARM 37.95.121, can both front and rear entrances of a facility have doors equipped with locks so that a person can always exit from the inside while the doors are locked to the outside? Can a bell system be used to gain access from the outside of the building?

RESPONSE: Any door which is locked must be able to open from the inside to allow exit. Locking devices cannot be used to prevent the department, other appropriate agencies, or parents from coming into the facility without the prior knowledge of the provider. The department is unsure how to answer the question concerning whether a bell system could be used because it is not sure what the system entails. The bottom line is that no locking device can prohibit exit from the inside, nor can it prevent unannounced access by authorized persons including

parents. How that is accomplished can vary by facility.

COMMENT #89: ARM 37.95.121(13)(e) does not adequately address "unannounced access".

RESPONSE: The department disagrees. The intent of this proposed language is to allow day care providers to use locking devices for self protection and for the protection of children in care. Locking devices cannot be used to prevent the department, other appropriate agencies, or parents from coming into the facility without the prior knowledge of the provider. How that is accomplished can vary by facility.

ARM 37.95.132 TRANSPORTATION

COMMENT #90: Regarding ARM 37.95.132, the Department of Transportation has outlawed the use of 15-seat passenger vans for the transportation of children.

RESPONSE: The commentor did not specify whether the restriction was due to state or federal Department of Transportation law. The department is not aware of the ban and will do further research. The department shares jurisdiction with many other authorities, and it does not need to change the rule if a transportation agency does not permit 15-seat vans to be used for transporting children. The department may make rule changes in the future depending on what the department learns.

COMMENT #91: In ARM 37.95.132(2)(a), the requirement that bus drivers for school aged child care programs be certified in CPR/First Aid is restrictive.

RESPONSE: The department is withdrawing all proposed rules regarding school aged child care. See response to Comment #68. The provision in (2)(a) will be removed. (2)(b) has been renumbered as (5).

COMMENT #92: The requirements of ARM 37.95.132(2)(b) and (7) are the same. There is no need to repeat the language.

RESPONSE: The department disagrees. ARM 37.95.132(2)(b) applies specifically to facilities that are transporting children under the age of 4, while (7) applies to all children regardless of age. The specifications in (2)(b), now (5), are made because according to the National Highways Safety Administration, children under age 4 must be transported in vehicles that support the inclusion of proper safety restraints. Vehicles such as buses cannot be fitted for use of car seats or booster seats. As such, a bus cannot be used to transport children under 4 years of age. Additionally, some older vans are being used but cannot be retrofitted for proper safety restraints. (2)(b), now (5), specifically addresses these types of instances. (7) is a general rule applicable for transporting all children.

COMMENT #93: The department is requested to strike all rule language in ARM 37.95.132(7) and consider developing and using the requirements as a policy rather

than a rule.

RESPONSE: The department disagrees. The department feels it is necessary to have the requirements in the form of a rule so that the program may exercise enforcement as necessary and appropriate.

COMMENT #94: The department should amend the language in ARM 37.95.132(7) to reflect requirements for transporting children under 60 pounds by bus, rather than requiring all vehicles to be equipped with car seats or boosters.

RESPONSE: The department disagrees. This requirement already exists in the state's motor vehicle law in 61-9-420, MCA. In order for the department to adequately comply with existing state law, the language must be updated to be reflected in the administrative rules.

COMMENT #95: Implementing ARM 37.95.132(7)(a) will cause a hardship for school-aged child care programs.

RESPONSE: The department disagrees. This is not new rule language, with the exception of the word "recommendation" replacing "standard". Existing programs have already been following this guideline. The national standards for transportation of children address transportation and restraint issues involving all ages of children, including school aged ones.

ARM 37.95.139 DAY CARE FACILITIES: HEALTH CARE REQUIREMENTS

COMMENT #96: In ARM 37.95.139(3)(c)(v), the department's expectation that children must be on an antibiotic for 24 hours before they can return to the day care is unreasonable if a child only has an infected hangnail.

RESPONSE: ARM 37.95.139(3)(c)(v) was not a rule open to proposed changes within this rule notice. The department will reexamine this particular reference. Any proposed changes to this subsection may be made in a future rule notice.

COMMENT #97: Will the department clarify the term "communicable disease" in ARM 37.95.139(4)(c)?

RESPONSE: There are many diseases that are considered communicable. "Communicable disease" is defined as any disease transmitted from one person or animal to another. The types of disease agents include viruses, bacteria, fungi, and parasites. Communicable diseases are those conditions also known as contagious diseases and include the influenza virus, chicken pox, and measles, among others. Rules concerning communicable disease reporting and prevention are found at ARM Title 37, Chapter 114.

ARM 37.95.140 IMMUNIZATION

COMMENT #98: In ARM 37.95.140(1), the department should consider exempting immunizations for children in school aged child care programs as the state does for schools, such as allowing for religious exemptions, for the children of the same age.

RESPONSE: State law found at 52-2-735, MCA, does not permit the department to consider religious exemptions from immunizations in child care settings. The HIB vaccine is the only exception allowed for child care facilities. The department is withdrawing all proposed rules regarding school aged child care, so the comment no longer applies.

COMMENT #99: The department should exclude the requirement for the varicella (chicken pox) vaccine in ARM 37.95.140(1).

RESPONSE: The department disagrees. The Advisory Council on Immunization Practices has recommended this immunization for all children. Each year in the United States, an average of 11,000 people were hospitalized and up to 100 people died from complications of chicken pox before the vaccine became available. Chicken pox is easily spread through the air by sneezing and coughing, and anyone can be infected just by being in the same room with someone who has the disease. Child care facilities are ideal environments for this disease to migrate.

Having requirements for this vaccination helps to achieve protection not only in day care settings but in school and other community environments as well, which results in less illness and school/day care time missed by healthy children, and less danger of infecting children who cannot be vaccinated. Persons who are not able to receive chicken pox vaccine include children with leukemia and other cancers, persons taking high doses of steriod medication for such things as asthma, pregnant women, and infants less than one year of age -- all of whom are likely to attend, work at or frequent a child care environment. These people have a higher risk of developing complications from chicken pox should they contract it. The only way to protect them is to achieve high levels of vaccination coverage among other people in the community so that those who cannot have the vaccine are less likely to come in contact with a person with chicken pox.

COMMENT #100: In ARM 37.95.140(4), why did the department change the existing rule to reflect DTaP requirements for 5 through 12 year olds?

RESPONSE: The immunization schedule outlined in ARM 37.95.140(1) only addresses the immunizations necessary for children up to 19 months. The new language in (4) was added in an attempt to specify those vaccines needed for children who are ages 5 through 12 and who attend child care facilities.

ARM 37.95.215 NUTRITION

COMMENT #101: The requirement in ARM 37.95.215(3)(b) for a dietician to annually review day care center menus for programs that do not participate in the child care food program is excessive and can be very expensive.

RESPONSE: The department disagrees. The dietician review of menus for nutritional assessment has been required for quite some time. Also, this rule was not proposed for any changes. The department is not able to make any amendments at this time under the Montana Administrative Procedure Act (MAPA) process.

ARM 37.95.225 WATER SYSTEMS

COMMENT #102: Is ARM 37.95.215 necessary? The department should strike it in its entirety.

RESPONSE: The department disagrees. Assuring a safe water supply system is critical to the health and safety of children in care as well as those adults who utilize the water from a nonmunicipal system. The changes update the language and make it easier for providers to understand the testing requirements for wells.

ARM 37.95.602 DAY CARE CENTERS, PROGRAM REQUIREMENTS

COMMENT #103: The department should change the words "age appropriate" to "developmentally appropriate" in ARM 37.95.602(1)(a)(iii).

RESPONSE: The department agrees and will make that change.

COMMENT #104: The department should remove the interlined language regarding "assisting in planning activities" in ARM 37.95.602(1)(a)(iii).

RESPONSE: The department disagrees. It is developmentally appropriate to have children participate in the planning of activities involving themselves. This fosters self confidence and ownership, is easily accomplished, and allows the children to be part of something greater than themselves.

COMMENT #105: The current regulations proposed in ARM 37.95.602(1)(b) for school aged child care programs are insufficient based upon the trends and needs of school aged children.

RESPONSE: The department is withdrawing all proposed rules regarding school aged child care. This provision will also be removed. (1)(a) will be changed to (2), and the remaining sections will be renumbered accordingly.

ARM 37.95.610 DAY CARE CENTERS, SPACE

COMMENT #106: In ARM 37.95.610(3), the department's requirement for 35 square feet of space per designated activity area will eliminate large group activities such as assemblies or group movies.

RESPONSE: The department agrees. The department will amend (3) to read as

follows: "When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child must be provided, except for:

(a) periods when children are using their sleep equipment; or

(b) when large group activities, such as educational assemblies, occur.

(4) During sleep periods, the area must be sufficient to provide spacing between children using sleep equipment."

COMMENT #107: In ARM 37.95.610(3), can the department define the term "sufficient" concerning spacing between children and sleep equipment when children are sleeping?

RESPONSE: Yes. The department intended to allow exceptions for the 35 square feet per child per activity area for those times when children are napping. For example, a room which might only accommodate 15 children during activity time could accommodate 20 children for purposes of napping as long as the equipment and the space does not cause over-crowding for the children. There must be room between each child for a child or an adult to be able to walk by and enough room for children to exit the room in a safe manner should evacuation be necessary.

ARM 37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

COMMENT #108: To comply with ARM 37.95.611(3)(b), can the designated office area be used as a rest area so that staff who choose to not leave the building can have a break?

RESPONSE: Yes.

COMMENT #109: Regarding ARM 37.95.611(3)(c), a commentor was concerned about the accessibility of service vehicles and the impact of that upon school aged child care programs.

RESPONSE: The department is withdrawing all proposed rules regarding school aged child care. This provision will also be removed.

ARM 37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

COMMENT #110: The department should consider the impact that this rule imposes upon school aged child care programs. This provision should be excluded.

RESPONSE: The department is withdrawing all proposed rules and relevant rule sections in other rules in this notice regarding school aged child care. Consequently the provision on school aged child care has been removed.

COMMENT #111: ARM 37.95.613(3) and (4) should be exempted for all school aged child care programs.

RESPONSE: The department is withdrawing all proposed rules regarding school

aged child care. These provisions will be removed.

ARM 37.95.705 GROUP AND FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS

COMMENT #112: ARM 37.95.705(1) contains areas of exclusion when determining countable space. The department is implementing this section in a restrictive way and it should be dropped.

RESPONSE: The department disagrees. This rule has previously defined areas that are not counted in useable square footage calculations. The previous language was vague and left much to the interpretation of the providers and the department. The department's intent is to clarify countable areas. The language identifies areas not to be included by clarifying noncountable space areas. The areas defined as not usable in this rule are areas that no child should regularly be in for day care activities.

COMMENT #113: Does ARM 37.95.705(4)(a) affect existing facilities, and if an existing facility is sold, will the new rule language apply to that facility?

RESPONSE: The requirement will only apply to facilities licensed on or after the effective date of the rules. The rule will affect those programs whose ownership changes after the rule adoption date.

ARM 37.95.706 GROUP AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS

COMMENT #114: In ARM 37.95.706(2), the department should eliminate the requirement that fire extinguishers be mounted. Locating the extinguisher by the outside door is sufficient.

RESPONSE: The department disagrees. The importance of mounting the extinguisher in a familiar location is a basic life safety issue. When responding to a fire, a trained facility staff or fire specialist/rescue person does not have time to look around and find the extinguisher. Mounting the device in a familiar and consistent place off the floor will assist anyone in locating the extinguisher and prevent someone from accidentally moving it.

ARM 37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING

COMMENT #115: The department received one favorable comment supporting all the proposed changes in ARM 37.95.1005.

RESPONSE: The department thanks the commentor.

COMMENT #116: In ARM 37.95.1005(2), please clarify the issues surrounding sleep positions when an infant rolls onto his belly during sleep time.

RESPONSE: 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 lay them on their backs and allow them to adapt to whatever position makes them comfortable. A parent must present a physician's note to the provider if a child cannot sleep on his back due to medical reasons.

COMMENT #117: Regarding ARM 37.95.1005(3)(a), if a parent gave permission, would the department allow a child to sleep in a swing or a car seat?

RESPONSE: No. If there is a medical reason that the child should be sleeping in a swing or car seat, proper medical documentation must be on file. Usually, if a physician recommended such a sleep practice, it would only be for a specific period of time, not on a regular basis. According to the American Academy of Pediatrics, the National SIDS Resource Center and the American Public Health Association, infants that are allowed to sleep routinely in swings and car seats are at a higher risk of SIDS. Children do fall asleep in these apparatuses, but they should be moved to an appropriate sleeping surface such as a crib.

COMMENT #118: The department should reconsider its prohibition on the use of stackable cribs as specified in ARM 37.95.1005(5). Many programs have built their infant areas based upon the knowledge they can have stackable cribs. The proposed prohibition will cause a significant economic impact as well as potentially eliminating any infant care within their facilities.

RESPONSE: The department partially agrees. The department feels that stackable cribs pose safety hazards in certain circumstances. However, the department acknowledges the potential financial impact to programs that have designed their programs around the use of stackable cribs. The department will add to ARM 37.95.1005(5) the following words: "Use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first". The department feels the original safety risk concerns can be reduced with the addition of the amended language.

COMMENT #119: Please clarify what types of blankets are acceptable in ARM 37.95.1005(6).

RESPONSE: If a blanket is to be used, the American Academy of Pediatrics and the National SIDS Resource Center recommend the use of lightweight fabric blankets. This position is supported by the department.

COMMENT #120: The commentor feels that the statement in ARM 37.95.1005(8) is incomplete.

RESPONSE: The department disagrees. The statement is written as intended. The provider must investigate all cries of infants to determine the reasons for the

crying.

/s/ Russell Cater
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State May 22, 2006.

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

In the matter of the amendment of ARM 38.5.2001, 38.5.8201, and 38.5.8209 and the adoption of New Rule I regarding energy standards for public utilities	)))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On April 6, 2006, the Public Service Commission (commission) published MAR Notice No. 38-2-193 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 878 of the 2006 Montana Administrative Register, issue number 7.

2. After consideration of the comments, the commission has amended ARM 38.5.2001, 38.5.8201, and 38.5.8209 exactly as proposed.

3. After consideration of the comments, the commission has adopted New Rule I [38.5.8301] with the following changes, new matter underlined, stricken matter interlined:

RULE I (38.5.8301) RENEWABLE ENERGY RESOURCE STANDARD

(1) remains as proposed.

(2) For public utilities operating in Montana within the geographic boundaries of the Western Electricity Coordinating Council, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Western Renewable Energy Generation Information System (WREGIS) or, if WREGIS is not operational, such other tracking system as the commission may approve on application of the utility. For public utilities operating in Montana within the geographic boundaries of Midwest Reliability Organization, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Midwest Renewable Energy Tracking System (MRETS) or, if MRETS is not operational, such other tracking system as the commission may approve on application of the utility.

(3) through (8) remain as proposed.

4. The following comments were received and appear with the commission's responses:

COMMENT 1: At the public hearing, a representative of NorthWestern Energy supported the rules as proposed. He stated that the commission's treatment of the issues regarding cost caps comported with the legislative intent and that the commission was right to defer any determination of the effect of ambiguous language.

RESPONSE: The commission appreciates the supportive comment.

COMMENT 2: At the public hearing, a representative of Powerex requested that the commission clarify that "eligible renewable resource" includes resources located in Canada.

RESPONSE: Section 69-8-1003(6), MCA, provides that "eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and produces electricity from certain designated sources. The Legislature chose to use the term "another state." In other statutes, the Legislature has chosen to use the phrase "another state or foreign country." See, e.g., 16-6-301, 40-5-201, and 50-15-223, MCA. The commission may not insert into a statute something that the Legislature has left out. The commission may not conclude that the Legislature meant "another state or Canadian province" when it said "another state."

COMMENT 3: At the public hearing, a representative of Renewable Northwest Project and Natural Resources Defense Council stated that the commission's solution regarding the cost cap language was reasonable, that the problem with the language remains, and that he wanted to underscore that the issue will not go away.

RESPONSE: The commission appreciates this comment and recognizes the on-going concern with the proper interpretation of the statutory language.

COMMENT 4: In written comments, Montana Dakota Utilities, Co. (MDU) stated that the rules need to clearly indicate that MDU is not currently subject to the Montana Renewable Power Production and Rural Economic Development Act (Act).

RESPONSE: MDU's assertion that it is not subject to the Act is based on the codification of the Act in Title 69, chapter 8, part 10, MCA. Section 69-8-201(9)(a), MCA provides, "Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory." The enrolled bill did not include a provision excusing MDU from complying with the Act. The Legislature directed that the Act be codified in Title 69, MCA, but did not direct that it be in Title 69, chapter 8, MCA. See Montana Renewable Power Production and Rural Economic Development Act, ch. 457, § 11, 2005 Mont. Laws 1689. When there is an inconsistency between the effect of the MCA and the enrolled bill, the enrolled bill controls. 1-11-103(6), MCA. MDU's assertion that it is not currently subject to the Act is erroneous.

COMMENT 5: MDU, in commenting on the overall structure of the proposed rules, asserted that the commission must establish, by administrative rule,

certification standards for eligible renewable resources together with a system for tracking and verifying eligible renewable resource credits. MDU stated that the proposed rules do not comply with the requirements of the Act. MDU also stated that the cost caps are self effectuating and their application is not a matter of commission discretion.

RESPONSE: Section 69-8-1006(2)(b), MCA, requires the commission to "establish a system by which renewable resources become certified as eligible renewable resources." Rule I establishes such a system. A public utility is required to petition the commission to certify a facility before entering into a long-term contract. In its petition, a public utility may rely on mechanisms in regional renewable energy tracking systems or must provide sufficient information to enable the commission to determine that the source is an eligible renewable resource under the standards and criteria established by the statute. Similarly, 69-8-1006(2)(a), MCA, requires the commission to "select a renewable energy credit tracking system to verify compliance" with the Act. By Rule I, the commission selects WREGIS and MRETS tracking systems for their applicable geographic areas. Finally, nothing in Rule I requires a public utility to take electricity from an eligible renewable resource if the cost exceeds the cost caps. Rule I merely requires a public utility to demonstrate to the commission that electricity from an eligible renewable resource is not available at a cost that does not exceed the cost caps. This requirement is consistent with the Legislature's mandate that the commission "has the authority to generally implement and enforce the provisions" of the Act, 69-8-1006(1), MCA.

COMMENT 6: MDU commented the commission is charged with establishing a tracking system and there is a distinct possibility that neither WREGIS nor MRETS will be operational in the early compliance years and requested the phrase "or such other tracking system as the commission may approve upon the application of the utility" be added to the end of each sentence in Rule I(2).

RESPONSE: The commission is charged with selecting, not establishing, a tracking system. 68-8-1006(2)(a), MCA. Rule I(2) selects a tracking system for each appropriate geographical area. The commission recognizes that there is some probability that one or both of the selected tracking systems will not be operational. Rule I(2) has been modified to authorize the commission to approve an alternative tracking system on the application of a public utility if the applicable tracking system is not operational.

COMMENT 7: MDU commented the first sentence of Rule I(3) barred a utility from entering into a contract without first obtaining permission of the commission to contract and that nothing in the Act vests such power in the commission. MDU further commented it is not possible for a utility to combine a petition for authority to contract with a petition for pre-approval of the signed contract. Additionally, MDU asserts that Rule I(3) is confusing and shifts the responsibility of establishing resource certification and tracking to public utilities from the commission.

RESPONSE: MDU misconstrues the first sentence of Rule I(3). Nothing in Rule I(3) prohibits a public utility from entering into any contract. Rule I(3) merely requires a public utility to petition for certification that a resource is an eligible renewable resource if the utility intends to use renewable energy credits from the resource to meet the obligations imposed by the Act. Rule I(3) does not require a public utility to combine a petition for resource certification with a petition for advanced approval of a contract. The rule merely allows a public utility to combine its requests into a single petition. This will most likely occur if the public utility has entered into a contract with commission-approval as a condition precedent to the utility's obligation to purchase. The signing of a contract by a public utility that contains "regulatory out" provision does not violate the first sentence of Rule I(3). The commission does not agree that Rule I(3) is confusing. The commission does not agree that Rule I(3) shifts responsibilities to public utilities. The Legislature charged the commission with establishing a system by which renewable resources become certified as eligible renewable resources. Rule I(3) establishes a contested case proceeding as such a system.

COMMENT 8: MDU asserted that Rule I(4)(c) must be deleted because the application of the cost caps is not the subject of commission discretion or approval.

RESPONSE: As stated above in response to Comment 5, the commission has the authority to generally implement and enforce the provisions of the Act. This authority includes ensuring that a utility uses a correct and accurately calculated benchmark in determining its cost cap and that a public utility makes a correct determination that electricity from an eligible renewable resource is not available at a cost that does not exceed the cost cap. Rule I(4)(c) is necessary to enable the commission to carry out its charge.

COMMENT 9: MDU commented that Rule I(6) specifies that every application for advanced approval of the contract must include the underlying Request for Proposal and responses to it. MDU stated that it had entered into a contract for the development of a wind project where the developer qualified as a PURPA facility and that there was no RFP or RFP responses. MDU suggested that the phrase "if applicable" be added to the end of Rule I(6)(d) and Rule I(6)(e).

RESPONSE: MDU correctly describes the requirements of Rule I(6)(d) and (e). The commission is authorized to establish the procedures under which contracts for eligible renewable resources and eligible renewable energy credits may receive advanced approval. 69-8-1005(4) and 69-8-1006(2)(d), MCA. The commission has established the use of an RFP as a condition for advanced approval of a contract. The commission declines MDU's request to eliminate this condition.

COMMENT 10: MDU commented that it does not understand why the commission wants to delay its deliberations on the advanced approval of contracts for renewable resources beyond the time it takes deliberating on the advanced approval of contracts for other resources.

RESPONSE: Rule I(7) states, "The commission will consider requests for expedited processing of petitions for advanced approval, but petitions submitted pursuant to this rule are not subject to the 180 day limit in 69-8-421, MCA." Section 69-8-421(d), MCA, requires the commission to issue an order within 180 days of receipt of an adequate application unless it determines that extraordinary circumstances require additional time. Section 69-8-421(c), MCA, requires the commission to determine whether an application is adequate within 45 days of its submission. The commission does not intend to delay its deliberations on the advanced approval of contracts for renewable resources. The commission specifically states that it will consider requests for expedited processing of petitions for advanced approval. The commission discerns no benefit to establishing a deadline for action that can be extended by a finding of extraordinary circumstances.

COMMENT 11: MDU asserts that Rule I(8) must be deleted in its entirety. MDU asserts that this section purports to require a utility that has not been offered cost effective renewable resources to file an application with the commission. MDU states that it does not have to file an application to apply the law. MDU also asserts that the structure of the rule has no obvious connection to the structure of the Act. MDU also postulated that in certain circumstances a utility would be precluded from relying on the cost caps.

RESPONSE: A public utility must both comply and demonstrate that it is complying with the Act. A public utility may not rely on some secret determination that no electricity from an eligible renewable resource is available at a cost not greater than the utility's cost cap. Section 69-8-1004, MCA, creates increasing, long-term renewable resource standards. A public utility will need to work toward complying with the Act both in the short-term and in its long-term planning. With the amendments to ARM 38.5.2001, 38.5.8201, and 38.5.8209, compliance with the Act is an integral part of a public utility's long-term planning responsibilities; public utilities should be thinking ahead with respect to how to comply with the renewable resource standards in the most cost-efficient way possible. Rule I(8) requires a public utility to submit an application to the commission when its long-term planning process determines that the cost of available compliance methods will exceed the cost caps. As stated above in response to Comment 5, the commission has the authority to generally implement and enforce the provisions of the Act. This authority includes ensuring that a utility uses a correct and accurately calculated benchmark in determining its cost cap and that a public utility makes a correct determination, in the context of its long term planning process, that electricity from an eligible renewable resource is not available at a cost that does not exceed the cost cap. The commission does not agree that Rule I(8) precludes a public utility from relying on the cost caps. Under Rule I(4), even if a public utility's long-term planning process indicated compliance with the standards could be accomplished within the cost caps, a utility could still rely on the cost caps to the extent actual circumstances differ from what was assumed in the planning process. The commission declines to delete Rule I(8).

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State May 22, 2006.

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 or Register) 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

2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2005. This table includes those rules adopted during the period January 1 through March 31, 2006 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 or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 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 2005 and 2006 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, 2699
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-VIII	Montana Land Information Act, p. 950
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, 883
2.5.201	and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316, 1709, 1906, 2446, 79
2.59.307	Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 373, 1138
2.59.801	and other rules - Foreign Capital Depositories, p. 2130, 205
2.59.1409	Duration of Loans - Interest - Extensions, p. 1099

ENVIRONMENTAL QUALITY, Department of, Title 17

I-XVIII Methamphetamine Cleanup Program - Decontamination of Inhabitable Property Contaminated by Clandestine Manufacture of Methamphetamine, p. 142, 1042
17.50.201 and other rule - Motor Vehicle Recycling and Disposal- Motor Vehicle Wrecking Facility License, p. 2506, 758
17.56.101 and other rules - Underground Storage Tanks, p. 115, 913
17.74.343 and other rules - Asbestos Control - Asbestos Control Program, p. 125

(Board of Environmental Review)
I Solid Waste - State Solid Waste Management and Resource Recovery Plan, p. 2016, 909
17.8.101 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 823
17.8.504 and other rules - Air Quality - Establishing a Registration System for Certain Facilities That Presently Require an Air Quality Permit, p. 2513, 893
17.8.504 and other rules - Air Quality Permit Application, Operation and Open Burning Fees, p. 997, 2058
17.8.740 and other rules - Air Quality - Definitions - Incorporation by Reference - Mercury Emission Standards - Mercury Emission Credit Allocations, p. 1112
17.8.743 Air Quality - Montana Air Quality Permits - When Required - Oil and Gas Well Facilities, p. 1479, 2660
17.8.759 Air Quality - Review of Permit Applications, p. 1476, 2663
17.24.116 Application Requirements for Operating Permit, p. 1649, 2544, 154
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, 1247
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, 532

(Board of Environmental Review and the Department of Environmental Quality)
17.24.132 and other rules - Air Quality - Asbestos - Hazardous Waste - Junk Vehicles - Major Facility Siting - Metal Mine Reclamation - Opencut Mining - Public Water Supply - Septic Pumpers - Solid Waste - Strip And Underground Mine Reclamation - Subdivisions - Underground Storage Tanks - Water Quality - Revising Enforcement Procedures Under the Montana Strip and Underground Mine Reclamation Act, Metal Mine Reclamation Laws, and Opencut Mining Act - Providing Uniform Factors for Determining Penalties, p. 2523, 1139

17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular WQB-7 - Outstanding Resource Waters, p. 1957, 528
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, 540

(Petroleum Tank Release Compensation Board)
17.58.326 and other rule - Applicable Rules Governing the Operation and Management of Petroleum Storage Tanks and Review of Claims, p. 1202

TRANSPORTATION, Department of, Title 18

I-XIII Aeronautical Grant and Loan Program - Pavement Preservation Grant Program, p. 2151, 81
18.6.202 and other rules - Transportation Commission - Outdoor Advertising, p. 276
18.8.101 and other rules - Motor Carrier Services Regulations for Over Dimensional and Overweight Vehicles and Loads, p. 2142, 206
18.8.1501 and other rules - Incorporation of Amendments to Federal Regulations Pertaining to Motor Vehicle Standards - General Revisions to Clarify Scope of Rules, p. 617, 1160
18.9.704 Definitions for Motor Fuels, p. 14, 676
23.5.101 and other rules - Transfer from the Department of Justice - Motor Carrier Safety Assistance Program, p. 2059

CORRECTIONS, Department of, Title 20

I-VIII Establishment of a Residential Methamphetamine Treatment Center, p. 1337, 1917, 2060
20.9.101 and other rules - Youth Placement Committees - Juvenile Detention Intervention Program (JDIP), p. 831
20.9.601 and other rules - Licensure of Youth Detention Facilities, p. 1722, 2665, 677

JUSTICE, Department of, Title 23

I-V Credit Counseling Services, p. 2373, 207
I-V Administration of the Address Confidentiality Program, p. 1731, 2332, 2453
I-V Credit Counseling Services, p. 1485, 2452
I-VI Operation of the Identity Theft Passport Program, p. 1541, 2061
I-VI Administration of the Forensic Rape Examination Payment Program, p. 1545, 2063

LABOR AND INDUSTRY, Department of, Title 24

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

24.122.401 and other rule - Boiler and Boiler Operator Program - Boiler Operating Engineers Licenses, p. 300, 1277
24.144.411 and other rule - Renewal of License or Endorsement, p. 2312, 224
24.301.138 and other rules - Building Codes, p. 2021, 567

(Board of Alternative Health Care)
I & II Fee Abatement - License Renewal for Activated Military Reservists, p. 706

(Board of Architects)
24.114.301 and other rules - Definitions - General Provisions - Licensing - Renewals - Unprofessional Conduct - Screening Panel - Complaint Procedure, p. 620
24.114.403 and other rule - Business Entity Practice - Fee Abatement, p. 889, 2077

(Board of Athletics)
24.117.301 and other rules - Definitions - General Provisions - Contest Regulations - Boxing Regulations - Ring Regulations - Boxing Officials - Club Boxing - Promoter - Bout Approval - Referee - Fee Abatement - Suspension and Revocation - Mixed Martial Arts, p. 157, 1161

(Board of Barbers and Cosmetologists)
24.121.301 and other rules - Definitions - Fees - Variances - Applications for Licensure - Out-of-State Applicants - School Requirements - School Operating Standards - Student Withdrawal, Transfer, or Graduating - Teacher-Training Curriculum - Continuing Education-Instructors/Inactive Instructors - Unprofessional Conduct - Fee Abatement - Continuing Education-Licensees/Inactive Licensees - Field Trips, p. 629

(Board of Chiropractors)
24.126.301 and other rules - Definitions - Fee Schedule - Licensing and Scope of Practice - Licensing and Board Specific Rules - Impairment Evaluators - Renewals-Continuing Education Requirements - Unprofessional Conduct - Fee Abatement - Participation in Disaster and Emergency Care-Liability of Chiropractor, p. 845

(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, 219

(State Electrical Board)
24.141.401 and other rules - Board Meetings - Apprentice Registration - Fee Schedule - Temporary Practice Permits - Examinations, p. 1219, 2458

24.141.405 and other rules - Fee Schedule - Continuing Education - Licensee Responsibilities - Fee Abatement, p. 17, 1278

(Board of Funeral Service)
24.147.302 and other rules - Definitions - Substantive Rules - Licensing - Mortuary Requirements - Crematory Rules - Cemetery Regulation Rules - Branch Facilities - Prearranged Funeral Agreements - Continuing Education - Complaint Filing - Fee Abatement - Renewal of Cemetery Licenses - Cemetery Authority Rules, p. 642, 1169

(Board of Medical Examiners)
I & II Medical Assistants - Fee Abatement, p. 1882, 2676, 759
I-IX Professional Assistance Program, p. 1015
24.156.1601 and other rules - Physician Assistant Licensure, p. 483

(Board of Nursing)
8.32.301 and other rules - Nursing, p. 956
8.32.427 General Requirements for Medication Aide Training Programs and Instructors, p. 1652, 2251

(Board of Nursing Home Administrators)
24.162.420 Fee Schedule, p. 1490, 2252

(Board of Occupational Therapy Practice)
24.165.401 and other rule - Fees - Fee Abatement, p. 495, 1049
24.165.404 and other rules - Application for Licensure - Examinations - Continuing Education, p. 710

(Board of Outfitters)
8.39.501 and other rules - Outfitter Licensing and Operations - Transfer from the Department of Commerce, p. 1549, 324

(Board of Pharmacy)
24.174.301 and other rules - Definitions - General Provisions - Licensing - Internship Regulations - Pharmacy Technicians - Certified Pharmacies - Mail Service Pharmacies - Institutional Pharmacies - Wholesale Drug Distributors Licensing - Dangerous Drugs - Renewals and Continuing Education - Screening Panel - Inactive License - Telepharmacy Operations - Remote Telepharmacy Dispensing Machine Sites - Central Filling by Hub Pharmacies - Ambulatory Surgical Facilities - Fee Abatement, p. 23

(Board of Physical Therapy Examiners)
24.177.401 Fees, p. 2376, 225

(Board of Plumbers)
24.180.607 and other rule - Temporary Practice Permits - Continuing Education Requirements, p. 893, 2460, 764

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
I-VI Private Alternative Adolescent Residential or Outdoor Programs, p. 1886, 2677

(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)
24.183.404 and other rules - Fee Schedule - License Seal - Classification of Experience for Engineering Applicants - Continuing Education - Safety, Health, and Welfare of the Public - Classification of Experience - Branch Offices - Fee Abatement, p. 303
24.183.2101 and other rule - Expiration of License - Renewal - Expired Certificate - Renewal Grace Period, p. 713

(Board of Psychologists)
24.189.2107 and other rule - Continuing Education Implementation - Fee Abatement, p. 1739, 2464

(Board of Public Accountants)
8.54.101 and other rules - Transfer from the Department of Commerce, p. 2668
8.54.410 and other rules - Fees - Amount of Required Experience - Continuing Education Matters - Special Practice Permits for Nonresident Certified Public Accountants, p. 1864, 2671, 83

(Board of Radiologic Technologists)
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, 84

(Board of Real Estate Appraisers)
24.207.401 and other rules - Fees - Licensing - Continuing Education - Renewals, p. 52, 765, 919
24.207.505 and other rules - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Trainee Requirements, p. 716

(Board of Realty Regulation)
8.58.101 and other rules - Transfer from the Department of Commerce, p. 2455
24.210.667 and other rule - Continuing Real Estate Education - New Licensee Mandatory Continuing Education for Salespersons, p. 2546, 1171

(Board of Sanitarians)
24.216.402 Fee Schedule, p. 61, 1051

(Board of Veterinary Medicine)
24.225.301 and other rule - Definitions - Out-of-State Licensure Endorsement - Occasional Case Exemption - Fee Abatement, p. 64, 766

LIEUTENANT GOVERNOR, Office of the, Title 30

30.2.201 and other rules - Centennial Grants - Centennial Sanctioning, p. 1358, 226

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - License Fees - Permit Fees - Miscellaneous Fees, p. 853, 1282
32.6.701 and other rules - Animal Feeding, Slaughter, and Disposal, p. 657, 1021, 1283

(Board of Milk Control)
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, 2680
32.24.513 Computation of Price for Quota Milk and Excess Milk, p. 2551, 330

(Board of Horse Racing)
32.28.501 and other rule - Horse Racing, p. 194, 680
32.28.505 Purse Disbursement, p. 860, 1284

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Specifying Deadline for Water Rights Adjudication Fee Appeals under Adjudication Fee, p. 197, 767
36.11.304 and other rules - Equipment Operation in the SMZ - Retention of Trees and Clearcutting in the SMZ - Site-specific Alternative Practices - Definitions - Penalties for Violation of the Streamside Management Zone Law, p. 499
36.12.101 Municipal Use of Water, p. 2316, 199
36.19.106 Reclamation and Development Grants Program, p. 1746, 2468
36.21.415 Fee Schedule for Water Well Contractors, p. 720, 1177

(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

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-V Medicare Part D Low Income Subsidies, p. 2423, 575
I-IV Montana Clean Indoor Air Act, p. 1665, 2079
I-XIV State Trauma Care System, p. 723
I-XV Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx), p. 2558, 336
37.12.401 Laboratory Testing Fees, p. 1227
37.30.102 and other rules - Vocational Rehabilitation Program, p. 1577, 2257
37.30.405 Vocational Rehabilitation Program Payment for Services, p. 1223
37.36.604 and other rule - Montana Telecommunications Access Program (MTAP), p. 510, 1052
37.37.101 and other rules - Implementation of a Children's Mental Health Direct Care Worker Wage Increase, p. 863
37.37.316 and other rules - Youth Foster Homes - Further Amendment of Rule V, p. 2379, 524
37.40.307 and other rules - Medicaid Reimbursement of Nursing Facilities, p. 1024
37.62.2101 and other rules - Modification of Child Support Orders, p. 2414, 574
37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1657, 2078
37.75.101 and other rules - Child and Adult Care Food Program (CACFP), p. 2168, 331
37.85.212 Resource Based Relative Value Scale (RBRVS), p. 872
37.85.406 and other rules - Medicaid Hospital and Ambulatory Surgical Center Reimbursement, p. 68, 768
37.86.1001 and other rules - Medicaid Dental Services - Durable Medical Equipment - Eyeglass Services - Ambulance Services - Transportation, p. 1126
37.86.1105 Medicaid Outpatient Drugs - Pharmacy Reimbursement for Medicare Part D Dual Eligibles, p. 2319, 227
37.86.2207 and other rules - Comprehensive School and Community Treatment Program (CSCT), p. 1374, 1787, 2260
37.86.2901 and other rules - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 1030
37.89.103 and other rules - Mental Health Access Plan Prescription Drug Benefits for Persons Eligible for Medicare, p. 513, 1053
37.95.102 and other rules - Licensure of Day Care Facilities, p. 2572, 201
37.104.101 and other rules - Emergency Medical Services, p. 1238, 2681, 229
37.106.704 Minimum Standards for a Critical Access Hospital, p. 804, 1295, 2258
37.106.1946 and other rules - Outpatient Crisis Response Facilities, p. 2428, 1023, 1285