

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-2-353 (Public Employees' Retirement Board)
Notice of Public Hearing on Proposed Amendment -
Transfer of Funds for Certain Service Purchases. 400-403

COMMERCE, Department of, Title 8

8-119-46 Notice of Proposed Amendment - Tourism
Advisory Council. No Public Hearing Contemplated. 404-406

EDUCATION, Title 10

10-57-236 (Board of Public Education) Notice of
Public Hearing on Proposed Amendment - Educator
Licensure. 407-410

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-343 Notice of Public Hearing on Proposed
Amendment - Medicaid Payments to Nursing
Facilities. 411-415

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-187 Notice of Public Hearing on Proposed
Adoption - Energy Utility Service Standards. 416-420

PUBLIC SERVICE REGULATION, Continued

38-2-188 Notice of Public Hearing on Proposed Adoption - Utility Implementation of Rate Changes and Billing Practices. 421-422

38-2-189 Notice of Public Hearing on Proposed Adoption - Eligible Telecommunications Carriers and Lifeline/Link-Up. 423-425

RULE SECTION

STATE AUDITOR, Title 6

NEW Insurance Standards for Safeguarding Personal Information. 426-429

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

NEW (Fish, Wildlife, and Parks Commission) Blackfoot River Special Recreation Permit Program. 430-441

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Hazardous Waste) Authorization of the
NEW Hazardous Waste Program. 442
REP

AMD (Underground Storage Tanks) Installation of
Underground Storage Tanks. 443-444

LABOR AND INDUSTRY, Department of, Title 24

AMD Weights and Measures.
TRANS
NEW
REP 445-446

NEW (Occupational Therapy Practice) Modalities
REP and Medications - Definitions - Approval to
Use Modalities - Permission to Use Electrical
or Sound Physical Agents. 447-452

AMD (Respiratory Care Practitioners) Definitions
NEW - Application for Licensure - Temporary
Permit - Examination - Institutional
Guidelines Concerning Education -
Certification and Authorization to Perform
Pulmonary Function Testing and Spirometry. 453-456

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD Tax Increment Revenue Bonds Under the
NEW Drinking Water State Revolving Fund Act. 457

AMD Tax Increment Revenue Bonds Under the Water
NEW Pollution Control State Revolving Fund Act. 458

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

NEW Medicaid Provider Requirements.
AMD 459-479

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 480-481

How to Use ARM and MAR. 482

Accumulative Table. 483-491

Boards and Councils Appointees. 492-497

Vacancies on Boards and Councils. 498-515

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 2.43.441 and) HEARING ON
2.43.1015 pertaining to) PROPOSED AMENDMENT
transfer of funds for)
certain service purchases)

TO: All Concerned Persons

1. On May 2, 2005, at 10:00 a.m. a public hearing will be held in the conference room at 100 North Park, Suite 200 of the Montana Public Employee Retirement building at Helena, Montana, to consider the amendment of ARM 2.43.441 and 2.43.1015 pertaining to transfer of funds from a member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan prior to the member's severance from employment.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on April 25, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@state.mt.us.

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

2.43.441 PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) ~~At~~ Subject to (2), any time prior to retirement, a member who is statutorily eligible to do so ~~may~~ purchase service in the member's current retirement system through a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's ~~26 U.S.C.~~ 403(b) tax-sheltered annuity or ~~26 U.S.C.~~ 457 governmental plan.

(2) A transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code. A purchase of service pursuant to 19-3-513, 19-6-804, 19-7-804, or 19-8-904, MCA, is not a purchase of permissive service credit.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA

IMP: 19-2-704, 19-3-2113, 19-3-2115, MCA

2.43.1015 PURCHASE OF SERVICE NOT PERMITTED BY PARTICIPANT IN DEFINED CONTRIBUTION RETIREMENT PLAN (1) A member of the PERS with an existing service purchase contract entered into pursuant to any MPERA statute or rule who wishes to elect the defined contribution retirement plan (DCRP) or the Montana university system's optional retirement plan (ORP) must terminate or complete the service purchase contract before the election will be confirmed by MPERA.

(2) If a member of the PERS with an existing service purchase contract files an election form electing either the DCRP or the ORP, MPERA will send written notice to the member that the election cannot be confirmed until the service purchase contract is either terminated or completed.

(3) The notice will give the member 30 days to provide MPERA with written notification of the member's intentions.

(4) The member must choose one of the following options:

(a) pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP; or

(b) pay nothing more to MPERA and have the prorated amount of service purchased under the contract transferred to the DCRP; or

(c) change the member's election to the defined benefit retirement plan (DBRP).

(5) If a member chooses the option in (4)(a), the member may, pursuant to ARM 2.43.441, complete the service purchase contract with a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) tax-sheltered annuity or 26 U.S.C. 457 governmental plan, subject to (5)(a):-

(a) A transfer of funds from the member's 26 USC 403(b) or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code. A purchase of service pursuant to 19-3-513, 19-6-804, 19-7-804, or 19-8-904, MCA, is not a purchase of permissive service credit.

(6) If a member chooses the option in (4)(a), but then fails to complete the service purchase contract by the end of the member's 12-month election window, MPERA will unilaterally implement (4)(b).

(7) If a member with an existing service purchase contract fails to provide MPERA with written notice of the member's intentions within 30 days, MPERA will unilaterally implement (4)(b). MPERA will take this action at the close of the 30-day timeframe.

(8) A member with an existing service purchase contract who elects the DCRP or the ORP in the last month of the member's 12-month election window may pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP. The payment must accompany the election form.

(a) If the member does not pay the entire amount due at the time the member files the election form, MPERA will unilaterally implement (4)(b).

(b) The member will not be given time to pay off the existing service purchase contract after the close of the member's 12-month election window.

(9) A PERS member with an existing service purchase contract entered into pursuant to any MPERA statute or rule who does not elect the DCRP or the ORP may not terminate the service purchase contract pursuant to this rule.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA

IMP: 19-2-710, 19-3-2111, 19-3-2112, 19-3-2115, MCA

REASON: The Montana Public Employees' Retirement Board (the Board), pursuant to 19-2-1010, MCA, must administer the retirement plans in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code and consequent federal regulations. Recent Internal Revenue Service regulations proscribe transfers under certain circumstances. The proposed amendments are necessary to conform the Board's rules to the Internal Revenue Service regulations for qualified governmental plans.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@state.mt.us and must be received no later than May 2, 2005.

5. Carolyn Miller, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana 59620-0131 has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office

at (406) 444-5428; or e-mailed to cmillerstate.mt.us; or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow, President
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on March 21, 2005.

BEFORE THE MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 8.119.101) AMENDMENT
pertaining to the Tourism)
Advisory Council) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On April 30, 2005, the Montana Promotion Division proposes to amend the above-stated rule pertaining to the Tourism Advisory Council.

2. The Department of Commerce 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 no later than 5:00 p.m., April 12, 2005, to advise us of the nature of the accommodation that you need. Please contact Barbara Sanem, Montana Promotion Division, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533; telephone (406) 841-2769; facsimile (406) 841-2871; TDD (406) 841-2702; e-mail to bsanem@mt.gov.

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

8.119.101 TOURISM ADVISORY COUNCIL (1) remains the same.

(2) The tourism advisory council incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2004~~ 2005," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Promotion Division, Department of Commerce, 301 S. Park Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2004~~ 2005."

AUTH: Sec. 2-15-1816, MCA
IMP: Sec. 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule to provide clarification because the "2005 Regulations and

Procedures for the Regional/CVB Tourism Organizations" have been revised and reorganized.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Barbara Sanem, Montana Promotion Division, Department of Commerce, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533, by facsimile to (406) 841-2871, or by e-mail to bsanem@mt.gov to be received no later than 5:00 p.m., April 28, 2005.

5. If persons who are directly affected by the proposed amendment wish to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to Barbara Sanem, Montana Promotion Division, Department of Commerce, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533, by facsimile (406) 841-2871, or by e-mail to bsanem@mt.gov to be received no later than 5:00 p.m., April 28, 2005.

6. If the Division receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on 10 Convention and Visitor Bureaus, six Tourism Regions and at least 184 potential applicants for grants of accommodations tax funds.

7. An electronic copy of this Notice of Proposed Amendment is available through the Department's site on the World Wide Web at <http://commerce.mt.gov>. The Department strives to make the electronic copy of this Notice of Proposed Amendment 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.

8. The Montana Promotion Division maintains a list of interested persons who wish to receive notices of rulemaking

actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Montana Promotion Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Montana Promotion Division, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533 or by phone at (406) 841-2769, or may be made by completing a request form at any rules hearing held by the agency.

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

MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE

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

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

Certified to the Secretary of State March 21, 2005.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
proposed amendment of ARM) ON PROPOSED AMENDMENT
10.57.102, 10.57.104,)
and 10.57.201 relating to)
educator licensure)

TO: All Concerned Persons

1. On April 27, 2005, at 9:00 a.m. a public hearing will be held in room 102B of the Office of the Commissioner of Higher Education building at 2500 Broadway, Helena, Montana, to consider the amendment of the above-stated rules relating to educator licensure.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on April 13, 2005 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

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

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) remains the same.

(2) "Accredited" refers to program approval (accreditation) by the national council for the accreditation of teacher education (NCATE) and/or ~~approval~~ accreditation by a state board of education or a state agency. In circumstances where the accrediting body is a state board of education or a state agency, the Montana board of public education has the discretion to determine whether such accreditation ensures that the standards are substantially equivalent or greater than the standards required in Montana.

(3) "Accredited professional educator preparation program" means:

(a) an educator preparation program ~~a program for teacher preparation~~ accredited by NCATE; and/or

(b) an educator preparation program approved (accredited) by a state board of education or a state agency. In circumstances where the accrediting body is a state board of education or a state agency, the Montana board of public education has the discretion to determine whether such accreditation ensures that the standards are substantially equivalent or greater than the standards required in Montana. ~~Those persons who enrolled in a regionally accredited teacher~~

~~preparation program or master's degree program prior to January 1, 2003 will be allowed to receive licensure based on a degree from such program.~~

(4) "Accredited specialist program" means:

~~(a) a program for the preparation of specialists accredited by a national professional accrediting body; and/or~~

~~(b) a program for the preparation of specialists approved by a state board of public education or a state agency. In circumstances where the accrediting body is a state board of education or a state agency, the Montana board of public education has the discretion to determine whether such accreditation ensures that the standards are substantially equivalent or greater than the standards required in Montana approval by a state board of education or an equivalent.~~

~~(5) through (13) remain the same.~~

~~(14) "Minimal education licensure requirements" means:~~

~~(a) a baccalaureate degree from a regionally accredited institution of higher education;~~

~~(b) six semester credits in any coursework under a department of education from an accredited education preparation program either in Montana or elsewhere; and~~

~~(c) verification of student teaching or one year of teaching experience in an elementary and/or secondary school or school district either in Montana or elsewhere.~~

~~(15) "Regional accrediting agency" means one of the following accrediting associations:~~

~~(a) middle states association of schools and colleges;~~

~~(b) New England association of schools and colleges;~~

~~(c) north central association of schools and colleges;~~

~~(d) northwest commission on colleges and universities;~~

~~(e) southern association of schools and colleges; and~~

~~(f) western association of schools and colleges.~~

~~(16) "Regionally accredited institution" means an institution of higher education accredited by one of the regional accrediting agencies specified in (15).~~

~~(14) through (17) remain the same but are renumbered (17) through (20).~~

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, MCA

10.57.104 STUDENT TEACHING/SUPERVISED PRACTICE

~~(1) Persons seeking initial licensure must successfully complete a supervised teaching experience ~~in~~ as part of an accredited ~~school~~ professional educator preparation program and/or complete one year of teaching experience in an elementary and/or secondary school or school district either in Montana or elsewhere. ~~Supervised teaching is student teaching under an appropriate student teaching program and/or supervised practice as a class 5 alternative license holder. The superintendent of public instruction may not waive this requirement.~~~~

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-102, MCA

10.57.201 GENERAL PROVISIONS TO ISSUE LICENSES

(1) Teacher, specialist, or administrator licenses are issued by the superintendent of public instruction to applicants who submit acceptable evidence of successful completion of a an accredited professional educator preparation program ~~accredited by NCATE and/or a state board of education.~~

(2) remains the same.

(a) individuals who have a current professional - not provisional or alternative - teacher, specialist, or administrator license from another state in an area that can be licensed in Montana. This section applies only to individuals who have completed an applicable accredited professional educator preparation program in an area that can be licensed in Montana and have satisfied minimal education licensure requirements as defined in ARM 10.57.102; ~~or~~

(b) individuals who have graduated within the last five years from a an accredited teacher, specialist, or administrator professional educator preparation program in an area that can be licensed in Montana and have satisfied minimal education licensure requirements as defined in ARM 10.57.102 ~~that is either accredited by NCATE or a state board of public education; or~~

(c) individuals who hold a current license from the national board for professional teaching standards in an area that can be licensed in Montana and have satisfied minimal education licensure requirements as defined in ARM 10.57.102;
or

(d) individuals who currently hold a class 5 alternative license who meet one or more of the above three qualifications and have satisfied minimal education licensure requirements as defined in ARM 10.57.102.

(3) and (4) remain the same.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

4. Statement of Reasonable Necessity: The Board of Public Education finds that it is reasonable and necessary to amend these rules in order to enable educators who have completed alternative route teacher education programs in other states to have reciprocity with the educator licensure requirements in Montana. The proposed amendments ensure that educators from other states have completed programs that are substantially equivalent, or greater than the educator licensure requirements in Montana. The amendments also clarify that the Board of Public Education has the authority to evaluate alternative teacher preparation programs from other states to determine if those programs are substantially equivalent to the teacher education program requirements for Montana.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on April 28, 2005.

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

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

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

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

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

Certified to the Secretary of State March 21, 2005.

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

In the matter of the)
amendment of ARM 37.40.311)
pertaining to medicaid)
payments to nursing)
facilities)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On April 20, 2005, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 11, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES (1) For each state fiscal year ~~2005~~, the department will provide a mechanism for a one time, lump sum payment to non-state governmental owned or operated facilities for medicaid services according to the methodology specified in this rule. These payments will be for the purpose of maintaining access and viability for a class of "at risk" county affiliated facilities who are predominately rural and are the only nursing facility in their community or county or who provide a significant share of nursing facility services in their community or county.

~~(a)~~ (2) A nursing facility is eligible to participate in this lump sum payment distribution if it is a non-state governmental owned or operated facility.

~~(b)~~ (a) The department will calculate the amount of lump sum distribution that will be allowed for each county affiliated provider so that the total per day amount does not exceed the computed medicare upper payment limit for these providers. Distribution of these lump sum payments will be based on the medicaid utilization at each participating facility for the period July 1, ~~2004~~ of the previous year through June 30, ~~2005~~ of the current year.

~~(e)~~ (b) In order to qualify for this lump sum adjustment effective ~~July 1, 2004~~, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the written agreement.

~~(2)~~ (3) ~~Effective for the period commencing on~~ On or after July 1, ~~2004~~ of each year, the department will provide for a one time, lump sum distribution of funding to nursing facilities not participating in the funding for "at risk" facilities for the provision of medicaid services.

~~(a)~~ (4) The department will calculate the maximum amount of the lump sum payments that will be allowed for each participating non-state governmental owned or operated facility, as well as the additional payments for other nursing facilities not participating in the funding for "at risk" facilities for the provision of medicaid services in accordance with state and federal laws, as well as applicable medicare upper payment limit thresholds. This payment will be computed as a per day add-on based upon the funding available. Distribution will be in the form of lump sum payments and will be based on the medicaid utilization at each participating facility for the period July 1, ~~2004~~ of the preceding year through June 30, ~~2005~~ of the current year.

(5) There may be no pre-arranged formal or informal agreements with the nursing facility to return or redirect any portion of the lump sum nursing facility payment to the county in order to fund other medicaid services or nonmedicaid services.

(a) Payments or credits for normal operating expenses and costs are not considered a return or redirection of a medicaid payment.

(6) "Normal operating expenses" and "costs" include, but are not limited to:

- (a) taxes, including health care provider related taxes;
- (b) mill levies;
- (c) fees;
- (d) payment of bonds;
- (e) health insurance costs, unemployment insurance, workers compensation and other employee benefits;
- (f) payments in lieu of taxes (PILT);
- (g) mortgage or rent payments;
- (h) payment of building insurance;
- (i) forgiveness of rent or other debts;
- (j) other business relationships with county governments unrelated to medicaid in which there is no connection to medicaid payments; and
- (k) legitimate in-kind services provided by the county to the nursing facility without actual charge, such as building maintenance, legal services, accounting and advertising.

(7) Charges for in-kind services must be reasonable and the services must be documented.

(a) Documentation supporting charges for in-kind services are subject to the audit and record retention provisions in ARM 37.85.414.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

3. The State of Montana, Department of Public Health and Human Services (DPHHS) proposes the amendment of ARM 37.40.311 pertaining to rate adjustments for county funded rural nursing facilities effective July 1, 2005. The purpose of the proposed amendments is to eliminate the sunset provision related to the "at risk" supplemental payment program for county affiliated and noncounty affiliated nursing facilities. The proposed amendments would repeal the June 30, 2005 ending date in this rule and would continue the practice of allowing nursing facilities to participate in the reimbursement methodology for using local county funds to provide for lump sum payments to "at risk" county affiliated facilities and provide for one-time lump sum distributions of funding to other nursing facilities not determined to be "at risk" for provision of Medicaid services into the future. The Department is taking this opportunity to renumber the rule so it will be easier to read and understand.

The proposed amendments to ARM 37.40.311(1) would continue the mechanism for one-time lump sum distribution of funding to nursing facilities participating in the funding for "at risk" facilities for the provision of Medicaid services effective July 1, 2005 and in subsequent years.

The proposed amendments are intended to eliminate the sunset provision on the mechanism for allowing expenditures of county funds to be used as part of the nonfederal share of nursing facility reimbursement match in the Medicaid program. The proposed amendments will continue the existing mechanism for rural "at risk" county nursing facilities to receive additional reimbursement up to the Medicare upper limit effective July 1, 2005 and in subsequent years. No changes in the methodology for computation of the payments is proposed.

The proposed amendments to ARM 37.40.311(2) would continue the mechanism for one-time lump sum distribution of funding to nursing facilities not participating in the funding for "at risk" facilities for the provision of Medicaid services effective July 1, 2005 and in subsequent years. No changes in the methodology for computation of the payments is proposed.

The Department determined that it would propose a repeal of the sunset provision for "at risk" county nursing facilities because these facilities will continue to be faced with declining census and the need for increased staffing for the foreseeable future. The lump sum adjustment is necessary to maintain viability and assure that quality nursing facility services are available to Medicaid eligible residents.

In order to qualify for a lump sum adjustment, each nonstate government owned or operated nursing facility must enter into a written agreement to transfer local county funds to be used as matching funds by the Department. The contract will specify the amount of the lump sum payment. Participation by the county is voluntary, but those counties that agree to participate must abide by the terms of the agreement. Distribution of these lump sum payments would continue to be based on the Medicaid utilization at each participating facility.

Proposed new ARM 37.40.311(5) would add new limitations on the types of financial transactions that may occur between the county and the nursing facility. For a nursing facility to participate in the "at risk" lump sum payment program, there may be no pre-arranged formal or informal agreements with the county to return or redirect any portion of the lump sum nursing facility payment to the county for the purpose of funding other Medicaid services or nonmedicaid services. These limitations are necessary to obtain authorization from the Centers for Medicare and Medicaid Services (CMS) for Federal financial participation in the lump sum and "at risk" payments to nursing facilities.

Proposed new ARM 37.40.311(6) and (7) would clarify the types of normal operating expenses and costs of conducting business, which are not considered a return, or redirection of a Medicaid payment to the county, which are allowable under the "at risk" payment program. This provision is necessary to assist nursing facilities in complying with the requirements of ARM 37.40.311(5).

Fiscal Impact: DPHHS anticipates no aggregate cost increases or decreases in reimbursement of nursing facilities as a result of this proposal. The estimated total funding impact of the one-time payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk" is estimated at \$5,653,133 of state special revenue funds and approximately \$19,728,069 in total appropriated funding for the nursing facility program in 2006.

Persons and entities affected: As of March 16, 2005, there were 36 nonstate governmental nursing facilities participating in the one-time lump sum payments. There were 57 other "at risk" nursing facilities receiving supplemental payments.

4. The Department intends the proposed rule amendment to be effective July 1, 2005.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than

5:00 p.m. on April 28, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to Secretary of State, March 31, 2005

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

In the matter of the proposed) NOTICE OF PUBLIC
adoption of New Rules I through) HEARING ON
VII, pertaining to Energy Utility) PROPOSED ADOPTION
Service Standards)

TO: All Concerned Persons

1. On May 3, 2005, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of New Rules I through VII.

2. The PSC 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 PSC no later than 5:00 p.m. April 26, 2005 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, or email conniej@mt.gov.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS In this subchapter the following definitions shall apply unless the context otherwise clearly demands:

(1) "Interruption" means a loss of service to one or more customers.

(2) "Interruption duration" means the period of time, in minutes, between the time an electric utility first becomes aware of a service interruption and the time of restoration of service to the customer(s).

(3) "Major event" means a catastrophic event that:

(a) exceeds the design limits of the electric power system;

(b) causes extensive damage to the electric power system; and

(c) results in a simultaneous sustained electric service interruption to more than 10% of the customers in an operating area.

(4) "Operating area" means a geographical subdivision of an electric utility's Montana service territory that is a distinct area for administration, operation, or data collection. These areas may also be referred to as regions, divisions, or districts.

AUTH: 69-3-103, MCA

IMP: 69-3-201, MCA

RULE II ENERGY UTILITY SERVICE INTERRUPTION NOTIFICATION

(1) Each energy utility shall report promptly to a local radio station and other local news media capable of timely dissemination of information on any specific occurrence or development which interrupts or is likely to interrupt the utility's natural gas and/or electric service to 100 or more of its customers for a time period longer than two hours.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE III ENERGY UTILITY PLANNED OUTAGES

(1) In the event that service must be interrupted for more than two hours for planned work on utility facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers, including consideration of weather conditions. The utility shall attempt to notify each affected customer at least 24 hours in advance of the interruption, either personally or, when personal notification would be impractical, by advance notice in local media outlets.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE IV GENERAL OBLIGATIONS OF ENERGY UTILITIES

(1) Each energy utility shall make reasonable efforts to avoid and prevent interruptions of service. However, when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety and good utility practices.

(2) Each energy utility's transmission and distribution facilities shall be designed, constructed, maintained, reinforced, and supplemented as required to reliably perform the natural gas and power delivery burden placed upon them in the storm and traffic hazard environment in which they are located.

(3) Each energy utility shall carry on an effective preventive maintenance program and shall be capable of emergency repair work on a scale which its storm and traffic damage record indicates as appropriate to its scope of operations and to the physical condition of its transmission and distribution facilities.

(4) In appraising the reliability of the electric utility's transmission and distribution system, the commission will consider the condition of the physical property and the size, training, supervision, availability, equipment, and mobility of the maintenance forces, all as demonstrated in actual cases of storm and traffic damage to the facilities.

(5) Each energy utility shall keep records of interruptions of service on its primary distribution system and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions.

(6) Each energy utility shall make reasonable efforts to reduce the risk of future interruptions by taking into account the age, condition, design, and performance of transmission and distribution facilities and providing adequate investment in the maintenance, repair, replacement, and upgrade of facilities and equipment.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE V ELECTRIC UTILITY SYSTEM RELIABILITY (1) The following service reliability indices measure the frequency and duration of service interruptions. They are recognized as standard reliability indices for the electric utility industry and may be applied to entire distribution systems and operating areas. For purposes of this rule, "interruption" means the loss of service for five minutes or more.

(a) "Customer average interruption duration index" is the average interruption duration for those customers of electricity service who experience interruptions during the year. It is calculated by dividing the annual sum of all customer interruption durations by the total number of customer interruptions.

(b) "System average interruption duration index" is the average interruption duration per customer served during the year. It is calculated by dividing the sum of the customer interruption durations by the total number of customers served during the year.

(c) "System average interruption frequency index" is the average number of interruptions per customer during the year. It is calculated by dividing the total annual number of customer interruptions by the total number of customers served during the year.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE VI RECORDKEEPING REQUIREMENTS FOR ELECTRIC UTILITIES (1) Each electric utility shall maintain and record complete records of service interruptions on the distribution system as a whole and for each operating area on the distribution system. These records shall enable the utility to calculate the customer average interruption duration index, system average interruption duration index, and system average interruption frequency index, both with and without the data associated with major events.

(2) An electric utility shall retain the records required by this rule for a minimum of five years and shall provide them to the commission upon request.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

RULE VII ANNUAL ELECTRIC RELIABILITY REPORT (1) Each

electric utility shall submit to the commission on or before March 1 of each year an annual reliability report for the previous calendar year for the Montana jurisdiction. The report shall include the following information:

(a) aggregate system reliability performance, comprised of customer average interruption duration index, system average interruption duration index, and system average interruption frequency index for the previous calendar year for the Montana service territory and each defined Montana operating area. These indices shall be calculated twice, once with the data associated with major events and once without. This assessment should contain tabular and graphical presentations of the trend for each index as well as the trends of the major causes of interruptions; and

(b) the customer average interruption duration index, system average interruption duration index, and system average interruption frequency index reliability average values for the previous three calendar years for the Montana service territory and each defined Montana operating area. These average values shall be calculated twice, once with the data associated with major events and once without.

AUTH: 69-3-103, MCA
IMP: 69-3-201, MCA

4. Adoption of the new rules is necessary to allow the commission to more accurately track and monitor energy utility quality of service performance. This will be the second public hearing on the proposed rules. The proposed rules now incorporate some changes, including withdrawal of proposed Rule VIII, resulting from the first hearing. (Refer to MAR Notice No. 38-2-185, published August 5, 2004, on page 1750 of the 2004 Montana Administrative Register, Issue No. 15.)

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than May 3, 2005, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than May 3, 2005. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-05.03.1-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, emailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State March 21, 2005.

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

In the matter of the proposed) NOTICE OF PUBLIC
adoption of New Rule I, pertaining) HEARING ON PROPOSED
to Utility Implementation of Rate) ADOPTION
Changes and Billing Practices)

TO: All Concerned Persons

1. On May 3, 2005, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of New Rule I.

2. The PSC 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 PSC no later than 5:00 p.m. April 26, 2005 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, or email conniej@mt.gov.

3. The proposed new rule provides as follows:

RULE I UTILITY IMPLEMENTATION OF RATE CHANGES

(1) Temporary and permanent changes in utility rates must be implemented on the basis of services rendered on or after the rate-change effective date. The commission may waive this requirement for good cause shown.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-110, 69-3-201, 69-3-305, MCA

4. Adoption of the new rule is necessary because utility implementation of rate changes on a basis other than a services-rendered basis (e.g., a bills-rendered basis) results in usage and bills for that usage not corresponding during a period up to and including the number of days in the utility's billing cycle. Waiver is necessary to address unique circumstances that may justify utility implementation of rate changes on other than a services-rendered basis. This is the second public hearing on the proposed rule. The proposed rule incorporates no changes from the first notice. (Refer to MAR Notice No. 38-2-179, published August 5, 2004, on page 1742 of the 2004 Montana Administrative Register, Issue No. 15.)

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may

also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than May 3, 2005, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than May 3, 2005. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-05.03.2-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, emailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State March 21, 2005.

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

In the matter of the proposed) NOTICE OF
adoption of New Rule I, pertaining) PUBLIC HEARING
to Eligible Telecommunications) ON PROPOSED ADOPTION
Carriers and Lifeline/Link-Up)

TO: All Concerned Persons

1. On May 3, 2005, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of New Rule I.

2. The PSC 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 PSC no later than 5:00 p.m. April 26, 2005, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, or email conniej@mt.gov.

3. The proposed new rule provides as follows:

RULE I ELIGIBLE TELECOMMUNICATIONS CARRIERS --
CERTIFICATION AND VERIFICATION OF SUBSCRIBER ELIGIBILITY FOR
FEDERAL LIFELINE/LINK-UP ON TRIBAL LANDS (1) Each eligible telecommunications carrier providing federal lifeline/link-up service to a qualifying low-income subscriber who is an eligible resident of tribal lands, as defined at 47 CFR 54.400, must obtain that subscriber's signature on a document certifying under penalty of perjury that:

(a) the subscriber receives benefits from one of the qualifying low-income programs designated by the federal communications commission at 47 CFR 54.405 and related provisions, and identifying the program or programs from which that consumer receives benefits; or

(b) the subscriber's household income is at or below 135% of the federal poverty guidelines and that the subscriber's presented documentation of income accurately represents the subscriber's household income; and

(c) the subscriber will notify the carrier if the subscriber ceases to participate in the program or programs or if the subscriber's income exceeds 135% of the federal poverty guideline.

(2) If a subscriber is qualifying for the federal lifeline/link-up program under the criterion of household income below 135% of the federal poverty guidelines, an eligible telecommunications carrier must require the subscriber to

present documentation of the subscriber's income prior to the subscriber's enrollment in the program that is in accordance with the requirements adopted by the federal communications commission at 47 CFR 54.410 and related provisions.

(3) In order to verify subscribers' continued eligibility for the federal lifeline program on tribal lands, each eligible telecommunications carrier must annually survey a statistically valid sample of subscribers who have qualified either as recipients of one of the qualifying low-income programs designated by the federal communications commission or under the criterion of household income under 135% of federal poverty guidelines. A consumer contacted in the eligible telecommunications carrier's survey must prove his or her continued eligibility and self-certify continued eligibility in accordance with the requirements adopted by the federal communications commission, at 47 CFR 54.410 and related provisions.

AUTH: 69-3-822, MCA
IMP: 69-3-840, MCA

4. Adoption of the new rule is necessary to implement new federal requirements, primarily at 47 CFR 54.410, and also to further clarify and unify the Lifeline/Link-Up subscriber certification and subscriber verification procedures Montana eligible telecommunications carriers shall follow regarding subscribers on tribal lands.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than May 3, 2005, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than May 3, 2005. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-05.03.3-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes

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

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State March 21, 2005.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through XII)
pertaining to insurance)
standards for safeguarding)
personal information)

TO: All Concerned Persons

1. On October 21, 2004, the State Auditor's Office published MAR Notice No. 6-157 pertaining to insurance standards for safeguarding personal information, at page 2435 of the 2004 Montana Administrative Register, issue no. 20.

2. The Department has adopted the following rules exactly as proposed: New Rules I (ARM 6.6.7001), III (ARM 6.6.7003), IV (ARM 6.6.7007), V (ARM 6.6.7008), VI (ARM 6.6.7009), VII (ARM 6.6.7010), VIII (ARM 6.6.7011), X (ARM 6.6.7013), and XI (ARM 6.6.7018).

3. The Department has adopted the following rules as proposed, but with the following changes, stricken material interlined, new material underlined:

RULE II (6.6.7002) DEFINITIONS For purposes of ~~{Rules I through XII}~~ this subchapter, the following definitions apply:

(1) through (4) remain as proposed.

(5) "Service provider" means a person that maintains, processes or otherwise is permitted access to personal information through its provision of services directly to the licensee, ~~and includes an "insurance support organization" as defined in 33-19-104, MCA.~~

AUTH: Sec. 33-19-106, MCA

IMP: Sec. 33-19-102 and 33-19-104, MCA

RULE IX (6.6.7012) OVERSEE SERVICE PROVIDER ARRANGEMENTS (1) and (1)(a) remain as proposed.

(b) requires its service providers to implement appropriate measures designed to meet the objectives of this rule, and where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations. ~~This requirement to implement appropriate measures must be described in the service provider agreements required in 33-19-306 and 33-19-307, MCA.~~

AUTH: Sec. 33-19-106, MCA

IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE XII (6.6.7019) EFFECTIVE IMPLEMENTATION DATE

(1) Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to these rules by ~~January~~ October 1, 2005.

AUTH: Sec. 33-19-106, MCA

IMP: Sec. 33-19-102, 33-19-104, 33-19-105, 33-19-306, and 33-19-405, MCA

4. A public hearing was held on November 18, 2004, to consider the proposed adoption. Members of the public spoke at the public hearing, and additional comments were received prior to the closing of the comment period.

Comment 1: Two insurance company trade groups commented that the National Association of Insurance Commissioner's (NAIC) model regulation, Standards for Safeguarding Customer Information, implements safeguarding privacy protections required by the federal Graham Leach Bliley Act (GLBA) and only protects non-public information belonging to "customers." The term "customer" only refers to individuals actually insured by a company and does not refer to other individuals that insurance companies collect information from, such as applicants and third party claimants (known as "consumers" in the NAIC model regulation). The commenters note "companies do not retain much personal non-public information on these people" (applicants and third party claimants) and that "the Montana rules would require companies to put in place systems and workflows for these people."

Response 1: When the Montana legislature amended the Insurance Information Privacy Protection Act (privacy act) to comply with GLBA requirements, it chose to retain many of the elements of Montana's privacy law that were more protective than GLBA. One of those elements that is most basic and most important is that Montana's privacy act protects "individuals" (as defined in 33-19-104(8), MCA) whose "personal information" (as defined in 33-19-104(21), MCA) is collected in connection with an insurance transaction. Montana's definition of "individual" protects a broader group of people than GLBA requires and includes applicants and third party claimants. GLBA allows the states to be more protective, and Montana chose to maintain the broader privacy protections that it had in place prior to GLBA.

Furthermore, 33-19-306, MCA states that "a licensee may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction" except as provided in the disclosure exceptions listed in subsections (2) through (24). An "inadvertent" disclosure that occurred because a licensee failed to safeguard an individual's information could be a violation of the privacy act. Montana's privacy act protects all individual's personal information in the same manner,

including applicants and third party claimants. The rules must follow the precedent set in the statute and not reduce protections that were already put in place by the legislature. In addition, if a licensee does not keep information relating to third-party claimants and applicants (if it is destroyed), then safeguarding is not much of a burden.

Comment 2: Two insurance company trade groups commented, Rule IX "mandates that insurers require service providers to implement security measures in the service provider contracts and prohibit them from redisclosing information." The commenters also note that proposed Rule II adds the phrase "including an insurance support organization as defined in 33-19-104" to the NAIC model definition of "service provider." The commenters recommend that the rule be changed to require service providers to only use the information for the purpose provided (which could permit redisclosure) because it is necessary for some insurance support organizations to redisclose information to accomplish their purpose (i.e., fraud detection).

Response 2: The proposed rules do NOT mandate that insurers require service providers to implement security measures and prohibit them from redisclosing information. Rule VI clearly states that Rules VII through X are "examples of methods of implementation of the requirements of Rules IV and V" and are "non-exclusive illustrations of actions and procedures that licensees may follow to implement Rules IV and V." The Rule that concerns the commenters is Rule IX, and it is in the "example" section, which does not contain "mandates."

The privacy act does not contain a definition for "service provider" and the proposed rules follow the model definition, except for the reference to "'insurance support organization' as defined in 33-19-104, MCA." Because some of the commenters were concerned that that language would place an additional burden on them that is not required by the model regulation or existing statute, the department is striking that language from proposed RULE II(5). However, the department notes that to the extent that an insurance support organization may also fit within the definition of "service provider," any reference in the rule to service provider may also apply to insurance support organizations.

Comment 3: Two commenters were also concerned that proposed Rule IX(1)(b) adds the following language to the existing model language: "This requirement to implement appropriate measures must be described in the service provider agreements required in 33-19-306(18) and 33-19-307(4), MCA." The commenter "suggests that an amendment, addendum to or a separate nondisclosure agreement be stated in the rule as sufficient to comply with this part of the rule."

Response 3: Once again, Rules VII through X are examples and illustrations, not "mandates." Because the commenters found the language added to the model rule to be confusing, the department is striking that language from the rule.

Comment 4: The commenters object to the "mandates" in Rules VII through X.

Response 4: As stated in responses 2 and 3, Rules VII through X are not "mandates." As amended, Rules VII through X reflect the language of the NAIC model regulation exactly.

Comment 5: Several commenters also expressed concern about the effective date of the rules because they would not have enough time to implement compliance.

Response 5: The date has been changed to October 1, 2005, and Rule XII has been renamed "IMPLEMENTATION DATE" to better reflect the content of the rule.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

Certified to the Secretary of State on March 21, 2005.

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

In the matter of the)
adoption of New Rules I) NOTICE OF ADOPTION
through XVI, pertaining to)
the Blackfoot River Special)
Recreation Permit Program)

TO: All Concerned Persons

1. On January 13, 2005, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-301 regarding the public hearing on the proposed adoption of New Rules I through XVI pertaining to the special recreation permit program on the Blackfoot River at page 4 of the 2005 Montana Administrative Register, Issue Number 1.

2. The commission has adopted the following new rules exactly as proposed:

- Rule I (ARM 12.11.6501)
- Rule III (ARM 12.11.6510)
- Rule IV (ARM 12.11.6515)
- Rule VII (ARM 12.11.6530)
- Rule VIII (ARM 12.11.6535)
- Rule XI (ARM 12.11.6550)
- Rule XII (ARM 12.11.6555)
- Rule XIII (ARM 12.11.6560)
- Rule XV (ARM 12.11.6570)
- Rule XVI (ARM 12.11.6575)

3. The commission has adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

- Rule II (ARM 12.11.6505)
- Rule V (ARM 12.11.6520)
- Rule VI (ARM 12.11.6525)
- Rule IX (ARM 12.11.6540)
- Rule X (ARM 12.11.6545)
- Rule XIV (ARM 12.11.6565)

NEW RULE II (12.11.6505) SPECIAL RECREATION PERMIT
DEFINITIONS (1) "Commercial use" means recreational use of ~~public~~ lands owned or managed by the department and related waters for business or financial gain and includes any person, group or organization, including nonprofit organizations and academic institutions that make or attempt to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in recreational activities occurring on lands or related waters that are owned or managed by the department.

(2) "Competitive event" means any organized, sanctioned, or structured use, event, or activity on public lands owned or managed by the department or related waters in which two or more contestants compete, the participants register, enter, or complete an application for the event, and/or a predetermined course or area is designated.

(3) "Organized group activity" means a structured, ordered, consolidated, or scheduled event on, or occupation of, public lands owned or managed by the department or related waters that is not commercial or competitive.

(4) "Publicly advertised event or activity" means a competitive event or organized group activity that is advertised to the general public, via newspaper, radio, flier, public newsletter, etc., or the event is posted on a web site accessible from the internet. A local network within an office or organization that is not accessible to the public via the internet would not meet the requirement of publicly advertised.

(5) "Vending" means the sale of goods or services, not from a permanent structure, associated with recreation on the public lands owned or managed by the department or related waters, including but not limited to food, beverages, clothing, firewood, souvenirs, photographs or film (video or still) or equipment repairs.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE V (12.11.6520) BLACKFOOT RIVER PERMIT WAIVERS

(1) The department may waive the requirement to obtain a special recreation permit for a competitive event or organized group activity if the event or activity:

- (a) is not commercial;
- (b) does not award cash prizes;
- (c) is not publicly advertised;
- (d) poses no appreciable risk for damage to public lands adjacent to the river that are owned or managed by the department or related water resource values;
- (e) requires no specific management or monitoring;
- (f) is consistent with the recreation management guidelines in the department's Blackfoot River Recreation Management Direction; and
- (g) poses no appreciable risk to public health and safety.

(2) The department may waive the requirement to obtain a special recreation permit for commercial use, a competitive event or organized group activity if the use, event or activity:

- (a) is conducted by an individual or entity owning land adjacent to the Blackfoot River that is managed by the department; and
- (b) occurs entirely on the land owned by the individual or entity and managed by the department.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE VI (12.11.6525) SPECIAL RECREATION PERMITS AND HUNTING, TRAPPING AND FISHING LICENSES (1) remains as proposed.

(2) Outfitters ~~and guides~~ providing services to hunters, trappers, or anglers shall obtain special recreation permits from the department.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE IX (12.11.6540) PERMITTING DECISIONS (1) The department has discretion over whether to issue a special recreation permit. Permitting decisions are based on the following factors to the extent that they are relevant:

(a) conformance with laws, rules, recreation management plans, and land use plans;

(b) public safety;

(c) conflicts with other users in regard to timing, location, site capacity, and other similar considerations;

(d) resource protection;

(e) the public interest served;

(f) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies; ~~and~~

(g) conformance with maximum group size requirements identified in the department's environmental assessment decision notice and the department's parks division biennial fee rule; and

~~(g)~~(h) such other information that the department finds appropriate.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE X (12.11.6545) BLACKFOOT RIVER SPECIAL RECREATION PERMIT FEES (1) remains as proposed.

(2) The department may waive special recreation permit fees on a case-by-case basis for:

(a) noncommercial use for organized group activities that are for educational purposes, accredited academic, scientific, and research institutions, therapeutic, providing a public service, or administrative uses; and

(b) commercial use, competitive events, or organized group activities conducted by individuals or entities entirely on land they own adjacent to the Blackfoot River that is managed by the department and available to the public.

(3) through (6) remain as proposed.

AUTH: 23-1-105, 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XIV (12.11.6565) PERMIT TRANSFERS (1) ~~The department may transfer a commercial special recreation permit only in the case of an actual sale of a business or a~~

~~substantial part of a business. Only the department can approve the transfer or assignment of permit privileges to another person or entity.~~

~~(2) The person or entity seeking to acquire the commercial special recreation permit must complete the standard permit application process as provided for in [NEW RULES VII and VIII] In the case of a sale or transfer of a business that is authorized to conduct commercial use on the Blackfoot River, the person or entity acquiring the business must complete the standard permit application process as provided for in New Rules VII and VIII [ARM 12.11.6530 and 12.11.6235].~~

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA

IMP: 23-1-106, 87-1-301, 87-1-303, MCA

4. The public commented on the commission's proposed administrative rules that would require and implement special recreation permits on the Blackfoot River and lands adjacent to the river that are owned or managed by the department. These rules are adopted in accordance with the River Recreation Rules, ARM Title 12, Chapter 11, subchapter 4. The public also commented on the department's Environmental Assessment (EA) on the proposed criteria that would be used to evaluate a special recreation permit application for commercial use, a competitive event or an organized group activity, including the proposed maximum group size guidelines for each section of the river. The proposed administrative rules and the EA are two separate documents. The following comments address the proposed administrative rules. Comments on the EA are not included in this document but can be obtained by contacting the Fish, Wildlife & Parks regional headquarters, 3201 Spurgin Road, Missoula, Montana 59804, (406) 542-5500.

The following comments were received and appear with the commission's responses:

General Comments Supporting the Proposed Rules

COMMENT 1: Approximately 87% of the people who commented expressed support for the proposal to require a special recreation permit for commercial use, competitive events, and organized group activities on the Blackfoot River. The majority (71%) of the people who supported the proposal also recommended that the department reduce the maximum group size guidelines identified in the EA. As stated in paragraph four of this rule notice, these comments and others specific to the EA can be obtained by contacting the department.

Generally speaking, people supportive of the proposed rules commented that the special recreation permit was needed to help address the increasing amount of use occurring on the Blackfoot River and associated impacts to the natural resources and the human experience.

RESPONSE: The commission appreciates the support for the proposed special recreation permit rules and shares the public's interest in protecting the natural resources and the public's recreational experience.

The commission recognizes that some members of the public support the rules that would require a special recreation permit but believe the EA's proposed maximum group size guidelines are too high for some reaches of the river. The department is proposing to reduce maximum group size in certain reaches of the river to reflect the public's interests, resulting in protection of the resources in and along the river. The commission is amending the rules to make it clear that permitting decisions will be in conformance with maximum group size guidelines identified in the department's EA decision notice and the department's parks division biennial fee rule.

Comments Opposed to the Rules

COMMENT 2: Some people commented that they do not want to see a permit system implemented on the Blackfoot River. One person commented that the laws that are in existence now are not enforced, and, therefore, the commission should not create more laws.

RESPONSE: Even if the commission did not adopt these rules to implement special recreation permits on the Blackfoot River, the Bureau of Land Management (BLM) is required by federal regulations to begin implementing special recreation permits on the portions of the Blackfoot River where BLM has land ownership. The adoption of New Rules I through XVI (ARM 12.11.6501 through ARM 12.11.6575) represents both agencies efforts to work together to minimize confusion and to avoid displacement of users on the river.

The commission and the department acknowledge that with limited resources it is difficult for enforcement officials to visit all sections of the Blackfoot River on a regular basis. The commission points out, however, that enforcement personnel do enforce existing laws when they encounter violations. Additional staff will be hired in association with implementation of the permit system to educate and check compliance with these rules.

COMMENT 3: One person commented that, as a fly fishing outfitter, he is already licensed by the state. This individual stated that he doesn't understand why it should be necessary to obtain a second license to use the river. This person also commented that outfitters already are required to submit records on use to the Board of Outfitters and this person believes it would be a waste of tax money to duplicate this effort. This person also thought it would be unfair to charge a fee to the clients of outfitters, a fee which other anglers are exempted from.

RESPONSE: The license issued by the Montana Board of Outfitters only authorizes a person to outfit on waters of the state. The special recreation permit program on the Blackfoot River will manage group sizes for commercial use, competitive events, and organized group activities. Additionally, the Blackfoot River is not the first river to have a permitting system in place. Rivers like the Smith River or the Alberton Gorge on the Clark Fork River have permitting requirements for commercial use of public lands.

In regard to record keeping, the commission has instructed the department to coordinate with the Board of Outfitters in order to design record keeping forms that meet the needs of the department and the Board of Outfitters. Forms that fulfill the needs of both agencies should minimize paperwork for the fishing outfitters. The non-angling outfitters are not licensed by the state and therefore are not required to submit records to the Board of Outfitters.

Fees discussed in the proposed rule are intended to seek compensation from commercial interests who financially benefit from public resources.

COMMENT 4: One person commented that they are not a fan of the permitting system as it is proposed, and they would hate to see it reach the point that has occurred on the Beaverhead and Big Hole rivers (and that is the next step) where outfitted use is regulated and restricted.

RESPONSE: The commission and the department have made it clear that the special recreation permit program is for the purpose of managing group sizes, collecting river use information, and collecting a fee for commercial use of public lands. Furthermore, before implementing further restrictions on the Blackfoot River, the department would follow the guidelines set by the statewide river recreation rules where public input is required.

COMMENT 5: One person asked whether it is it really necessary to begin permitting and regulating on the Blackfoot River right now. This person commented that if it is necessary to do this, why is the department not also proposing to limit numbers now. He went on to comment that limitations should be the last step taken by the managing agency, and when limitations are implemented they should be based upon data that substantiate the agency's need. This person recommended that river regulations should be limited to the times, dates, or stretches of the river where they are needed and for the specific uses that are causing the concern, e.g., if fishing is not an issue and whitewater trips are the concern, then just limit whitewater. Whenever one begins regulating it limits opportunity, so it should be done cautiously and as the last resort.

RESPONSE: The commission points out that the special recreation permit is for the purpose of managing group sizes, collecting information, and collecting fees. There is a need to manage these types of recreational activities to ensure that they are compatible with other types of recreation occurring on or along the river, to prevent harm to natural and cultural resources along the river, and to provide for the health and safety of the participants. The popularity of the Blackfoot River has led to an increase in the number of people participating in water-based recreation, which can impact the quality of the recreation experience. There is more competition for space on the river and conflicts arise between different types of recreational use and with landowners along the river. The occurrence of commercial use, competitive events, and organized group events adds to the overall use of the river. As mentioned in response to comment two, BLM will begin implementing special recreation permits on their portions of the Blackfoot River where they have land ownership because of federal requirements. Both BLM and the department are working together to minimize confusion to the public and to avoid displacement of users on the river.

The special recreation permit is not being implemented for the purpose of rationing use on the river. Managing group sizes on the river is a less-intrusive management tool that can help to prevent social conflicts without rationing use. The statewide river recreation rules make it clear that the commission and the department are to use less-restrictive management tools before using more-restrictive management tools. The commission is hopeful that it can address the social conflicts on the Blackfoot River in a manner that has the least impact on the users.

The special recreation permit program will also yield information on the timing, amount, location, and types of commercial use on the river. The information will help the commission and the department to accurately assess the conditions on the river and design management actions that are appropriate for the conditions that are present.

COMMENT 6: Several people commented that this proposal addresses the "good people" too much, and the "bad people" not enough. They commented that the problems of trespassing and littering, etc., have more to do with the "disorganized groups," i.e., the general public on the river. These individuals thought that the outfitters and the organized groups are not the problem. These individuals stated that large, informal groups that would not need a permit under the new rules are the ones throwing beer bottles in the river, making a lot of noise, and showing disrespect to the landowners and other people on the river. These types of groups are having the greatest impact on the river. These commentators thought that compared to a large, informal group, a large organized group can have a good impact on the river.

RESPONSE: The focus of the special recreation permit program is on commercial use, competitive events, and organized groups. The commission acknowledges that the sector of use on the river that won't be required to obtain a permit can have an impact on natural resources and the recreation experience. The department has existing rules and regulations in place for proper use of public lands. These regulations apply to all individuals using public land. The department also has enforcement personnel to ensure compliance with these rules and regulations. The commission has heard from a number of people who are concerned about the overall amount of use occurring on the river and will take this into account when planning for the future. The commission is very appreciative of organized groups and outfitters who are good stewards on the river.

COMMENT 7: One person commented that, as a guide, they are concerned that "big money" landowners along the river could use a proposal like this to restrict the public's access to the river. This person also commented that everyone has a right to be on the river, even the beer drinking college kids, and that everyone should try to get along without regulations that keep people off the river.

RESPONSE: The commission points out that the special recreation permit program does not affect public access to the river and, consequently, it does not reduce opportunities for the public to access the river. In the case of the Blackfoot River, the commission believes the special recreation permit program will help to manage for social conflicts.

Comments on the Application of the Rules to Private Lands

COMMENT 8: Some people commented about the use of the term "lands managed by the department". They asked if the special recreation permit program would apply to private lands in the river corridor that have in the past been managed by the department through a cooperative management agreement with the landowners.

RESPONSE: In regard to private lands, the special recreation permit will only apply to those private lands adjacent to the river that are managed for public use by the department through an agreement with a willing landowner (i.e., Blackfoot Corridor Agreement).

COMMENT 9: One person commented that the proposed administrative rule regarding "permit waivers" makes no mention of private lands managed by the department. As presently stated in New Rule V (12.11.6520) of the proposed administrative rules, "(1) The department may waive the requirement to obtain a special recreation permit for a competitive event or organized group activity if the event or activity:....(d) poses no appreciable risk for damage to public land or related water resource values." This person asked if this means that the

department may NOT waive the requirement to waive a special recreation permit for a competitive event or organized group involving private lands managed by the department. They commented that this issue has implications for private landowners who might be impacted by such a waiver decision, e.g., those who are within the corridor and provide public access to the 50-foot mark.

RESPONSE: The commission has amended New Rule V (12.11.6520(1)(d)) by striking the words "public land" and inserting "lands owned or managed by the department." This change is intended to clarify that a waiver for a special recreation permit can be given to a competitive event or organized group on any lands "owned or managed by the department." Therefore, the department can waive the need for a permit for a competitive event or organized group activity for private lands managed by the department. However, any permit waiver authorized by the department is issued at the department's discretion. When requests for permit waivers are received, the care of the resource will be a critical consideration, whether the resource is owned by the department or managed by the department. Finally, when the department has entered into an agreement with a private landowner to manage a landowner's land for recreational use, the department must consider the terms of the agreement when deciding if a waiver is permissible.

In addition, the commission amended New Rule V (ARM 12.11.6520(2)) to make it clear that a landowner whose land is managed by the department for public use does not need to obtain a special recreation permit if they are conducting commercial use, a competitive event, or an organized activity on land they own. These landowners will, however, have to obtain a special recreation permit if they enter the river or use other private or public lands managed by the department for public use.

The commission also amended New Rule X (12.11.6545) so that a private landowner whose land is managed by the department will not have to pay the special recreation permit fee if they use the river and the use originates and terminates on lands they own.

Comments on the Definitions and Terms Used in the Rules

COMMENT 10: A few people made recommendations for improving the definitions and terms used in the administrative rules. One person commented that the proposed rules should include a better definition for "publicly advertised event". This person said that if someone has a web site, whether it is for commercial or private purposes, it becomes a "public web site". Also bulletin boards are out there for the public to see. This person recommended that the rules include a definition of what a "privately advertised event" is.

RESPONSE: The commission has amended New Rule II (ARM 12.11.6505) to include a definition for a "publicly advertised event".

COMMENT 11: One person commented on the use of the term "commercial fishing" in paragraph 4 of the administrative rule notice. This person thought that this term infers that people are commercially fishing on the Blackfoot River, which is entirely different from an outfitter guiding clients on the river. Commercial fishing implies harvesting fish, e.g., a commercial fisherman in Alaska. They suggested that this term be changed.

RESPONSE: The commission points out that the new rules do not include the term "commercial fishing," and therefore the new rules do not cover that type of commercial use. The rules do apply to fishing outfitters that take clients out to fish.

COMMENT 12: One person commented that New Rule III (ARM 12.11.6510) uses the term "main stem of the Blackfoot River". This person wanted to know whether or not the use of the words "main stem" implies that the proposal would apply to the tributaries to the river. They recommended that the rules define this term.

RESPONSE: The use of the words "main stem" means that the special recreation permit does not apply to the tributaries to the Blackfoot River, with the exception of the North Fork of the Blackfoot River, as noted in New Rule III (ARM 12.11.6510).

Comments on the Permit Holder

COMMENT 13: Two people recommended that the rules state that the permit be issued to the business entity that is providing the service, rather than to the individual outfitter or their guides.

RESPONSE: In response to this comment, the commission has amended New Rule VI (ARM 12.11.6525) and eliminated the words "and guides" in section (2). The commission's intention is that the special recreation permit for commercial use be issued to the business entity that is sponsoring or conducting the use. In some situations, a business entity hires an independent outfitter to provide services. The special recreation permit would be issued to the business entity. An independent outfitter would be required to obtain a special recreation permit if they are acting on their own accord. Guides are not required to obtain a special recreation permit if they are employed by a business entity and/or an outfitter with a special recreation permit.

Comments on Applicability of Rules to Trapping

COMMENT 14: One person commented on the proposed rules' applicability to trapping. They commented that the rules are unclear as to whether trapping is considered a commercial activity. According to this person, the Montana Attorney General's opinion is that trapping is a commercial activity. This person wondered if the special recreation permit definition of commercial use applies to trapping. If so, would trappers be required to pay 3% of their gross earnings, or \$90, whichever is greater?

RESPONSE: The Montana Attorney General issued an opinion in this regard on November 15, 1985, and it can be found at 41 Op. Atty. Gen. Mont. No. 36. The Attorney General opined that trapping is not a "recreational use" contemplated by the stream access law. Therefore, all trappers must be licensed under 87-2-601, MCA, and any trapping that is done, even within the ordinary high water mark, must be done by license, invitation, or privilege to enter or remain upon the land. Although the Attorney General's opinion does treat trapping as a commercial venture, the commission will not apply the new rules to hunting, fishing and trapping. People engaged in hunting, fishing and trapping have an established set of hunting, fishing, and trapping regulations to follow. If a trapper is using the services of an outfitter, the outfitter will be required to get a special recreation permit because the commercial venture this permit applies to is outfitting, not trapping.

Comments on the Transferability of an Outfitter's Business and Permit

COMMENT 15: One person commented on the transfer of an outfitter's business and the applicability of these rules. This individual was concerned about how these rules apply to an outfitter who outfits on more than one river in the state. This person commented that it is critical for an outfitter to be able to transfer their use to another outfitter by selling their Blackfoot River business only and retaining the rest of their business. This person commented that it is important for an outfitter to be able to sell that portion of their business, (not just the permit), separately from the rest of their business. For example, if they want to transfer their Blackfoot River business to a son or daughter or another outfitter in 2020, they should be able to do so without having to sell the rest of their business, be it hunting, fishing or whitewater outfitting anywhere else.

RESPONSE: Under the rules as adopted in this rulemaking, the special recreation permit program does not allocate river-use days and is not a restricted use program. Therefore, a new owner or transferee of an outfitter's business will have to apply for and receive a new special recreation permit. That new permit will not be denied as long as the criteria in the new rules are satisfied.

By: /s/ M. Jeff Hagener
M. Jeff Hagener,
Secretary, Fish, Wildlife
and Parks Commission

By: /s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State March 21, 2005

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT,
of ARM 17.53.102, 17.53.105,)	ADOPTION AND REPEAL
17.53.107, 17.53.208,)	
17.53.212, 17.53.213,)	
17.53.301, 17.53.401,)	(HAZARDOUS WASTE)
17.53.502, 17.53.602,)	
17.53.702, 17.53.708,)	
17.53.802, 17.53.803,)	
17.53.902, 17.53.1002,)	
17.53.1102, 17.53.1202, and)	
17.53.1302, the adoption of)	
New Rules I through III, and)	
the repeal of ARM 17.53.106)	
pertaining to authorization of)	
the hazardous waste program)	

TO: All Concerned Persons

1. On January 13, 2005, the Department of Environmental Quality published MAR Notice No. 17-224 regarding a notice of public hearing on the proposed amendment, adoption and repeal of the above-stated rules at page 14, 2005 Montana Administrative Register, issue number 1.

2. The Department has amended ARM 17.53.102, 17.53.105, 17.53.107, 17.53.208, 17.53.212, 17.53.213, 17.53.301, 17.53.401, 17.53.502, 17.53.602, 17.53.702, 17.53.708, 17.53.802, 17.53.803, 17.53.902, 17.53.1002, 17.53.1102, 17.53.1202 and 17.53.1302, adopted New Rules I (17.53.214), II (17.53.215) and III (17.53.1402), and repealed ARM 17.53.106 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Tom Livers
TOM LIVERS, Deputy Director

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State March 21, 2005.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 17.56.101, 17.56.1301,)	
17.56.1303, 17.56.1304,)	(UNDERGROUND STORAGE
17.56.1401, 17.56.1404 and)	TANKS)
17.56.1410 pertaining to the)	
installation of underground)	
storage tanks)	

TO: All Concerned Persons

1. On December 2, 2004, the Department of Environmental Quality published MAR Notice No. 17-221 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2877, 2004 Montana Administrative Register, issue number 23.

2. The Department has amended ARM 17.56.101, 17.56.1303, 17.56.1304, 17.56.1401, 17.56.1404 and 17.56.1410 exactly as proposed, and has amended ARM 17.56.1301 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.56.1301 DEFINITIONS (1) through (5) remain as proposed.

(6) "Major installation" means the installation of underground storage tanks, piping, vapor or ground water leak detection monitoring wells, corrosion protection, interstitial tank probes and sensors and corrosion protection system anodes. Repair or modification of the above-listed items, and activities not defined as a "minor installation" are also considered major installations.

(7) "Minor installation" means the installation of replacement spill buckets, offset sleeves on tank risers, boots on piping flex connectors, ball-float vent valves in existing risers, drop-tubes, drop-tube shut-off valves and auto dialers, and the extension or replacement of vent standpipes. Minor installation also includes the decommissioning of ground water and vapor leak detection monitoring wells.

(8) and (9) remain as proposed.

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

COMMENT NO. 1: Mr. Wadsworth and Mr. Hicks, both of Petroleum Tank Release Compensation Board (PTRCB) staff, expressed the concern that by identifying the "decommissioning of groundwater and vapor monitoring wells" as minor installations requiring a permit, the Department may interpret the decommissioning of remediation monitoring wells as being within the UST Program's regulatory authority.

RESPONSE: The Department will modify the proposed amendments to read, "leak detection monitoring wells" to prevent this interpretation.

COMMENT NO. 2: Mr. Scrimm recommended that the fee increase be higher than proposed to support both a more thorough review of permit applications and an increased field presence. He recommended that the Department review the proposed definitions of major installations and minor installations to ensure they were appropriately defined to address the Department's needs, and Mr. Scrimm recommended that tank and piping closures be included in major installations. Finally, Mr. Scrimm questioned whether the "new rules allow for the program to continue to track the UST system components at a facility. . . ."

RESPONSE: The Department does not believe that a larger fee increase is justified at this time. Presently, reviews are thoroughly conducted by experienced staff. Further, an increased field presence is affordable and anticipated within the proposed program budget. The proposed definitions of major and minor installations accurately reflect the level of review needed, considering technical complexity and environmental risk. As the proposed definitions read, closures of piping and tanks are a subcategory of major installations. The proposed amendments do not address or impact the Department's ability to track UST system components at a facility. The Department believes no modification to the proposed amendments is necessary in response to these comments.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Tom Livers
TOM LIVERS, DEPUTY DIRECTOR

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, March 21, 2005.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment and transfer of)	AND TRANSFER, ADOPTION,
ARM 8.77.101, 8.77.102,)	REPEAL, AND TRANSFER
8.77.103, 8.77.105, 8.77.107,)	
8.77.108, 8.77.109, 8.77.201,)	
8.77.203, 8.77.301 and)	
8.77.302, the adoption of)	
NEW RULES I through VII,)	
the repeal of ARM 8.77.104 and)	
the transfer of ARM 8.77.106,)	
8.77.303 and 8.77.304, all)	
pertaining to weights and)	
measures)	

TO: All Concerned Persons

1. On December 16, 2004, the Department of Labor and Industry published MAR Notice No. 24-351-189 regarding the public hearing on the proposed amendment and transfer, adoption, repeal, and transfer of the above-stated rules relating to weights and measures, at page 2997 of the 2004 Montana Administrative Register, issue no. 24.

2. On January 19, 2005, at 9:00 a.m., a public hearing was conducted in Helena, Montana. No members of the public were present at the public hearing. In addition, no written comments were received prior to the closing of the comment period.

3. The following rules are amended and transferred exactly as proposed:

<u>OLD</u>	<u>NEW</u>	
8.77.101	24.351.227	Scale Pit Clearance
8.77.102	24.351.211	Fees For Testing And Certification
8.77.103	24.351.201	NIST Handbook 44 - Specifications, Tolerances And Other Technical Requirements For Weighing And Measuring Devices
8.77.105	24.351.221	Weighing Device License Transfer
8.77.107	24.351.215	License Fee Schedule For Weighing And Measuring Devices
8.77.108	24.351.101	Definitions
8.77.109	24.351.204	Uniform Regulation For National Type Evaluation
8.77.201	24.351.301	NIST Handbook 130 - Uniform Laws And Regulations
8.77.203	24.351.311	Random Inspection Of Packages
8.77.301	24.351.411	Sampling Of Petroleum Products

8.77.302 24.351.401 NIST Handbook 130 - Uniform Laws
And Regulations

4. The following rules are adopted exactly as proposed:

NEW RULE I (24.351.321) NIST HANDBOOK 133 - CHECKING THE
NET CONTENTS OF PACKAGED GOODS

NEW RULE II (24.351.1101) VOLUNTARY REGISTRATION PROGRAM
FOR SERVICEPERSONS AND SERVICE AGENCIES

NEW RULE III (24.351.1104) INDIVIDUAL APPLICANTS FOR
REGISTRATION

NEW RULE IV (24.351.1107) AGENCY APPLICANTS FOR
REGISTRATION

NEW RULE V (24.351.1111) PRIVILEGES AND OBLIGATIONS OF A
CERTIFICATE HOLDER

NEW RULE VI (24.351.1115) RENEWAL OF CERTIFICATE OF
REGISTRATION

NEW RULE VII (24.351.1117) REGISTRATION BY RECIPROCITY

5. The Department has repealed ARM 8.77.104 as proposed.

6. The following rules are transferred exactly as proposed:

<u>OLD</u>	<u>NEW</u>	
8.77.106	24.351.224	Accessibility To Stock Scales
8.77.303	24.351.421	Charges For Liquefied Petroleum Gas
8.77.304	24.351.425	Receipt To Be Left At Time Of Delivery

/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 March 21, 2005.

BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION AND
NEW RULES I through XIV regarding) REPEAL
modalities and medications, and)
the repeal of ARM 24.165.301)
definitions, ARM 24.165.503)
approval to use modalities,)
ARM 24.165.508 permission to use)
electrical or sound physical agents)

TO: All Concerned Persons

1. On October 21, 2004, the Board of Occupational Therapy Practice (Board) published MAR Notice No. 24-165-15 regarding the public hearing on the proposed adoption and repeal of the above-stated rules relating to modalities and medications, definitions, and electrical and sound physical agents at page 2505 of the 2004 Montana Administrative Register, issue no. 20.

2. A public hearing on the notice of proposed adoption and repeal was held on November 18, 2004. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 29, 2004.

3. The Board has thoroughly considered all of the comments made. A summary of the comments received (grouped by rule) and the Board's responses are as follows:

NEW RULE I (ARM 24.165.509) APPROVED INSTRUCTION

Comment 1: One commenter recommended that the Board modify the rule to accept as approved instruction the successful completion of coursework in entry-level occupational therapy programs that include sound and electrical physical agent modalities.

Response 1: The Board was not aware that some entry-level program curricula include coursework in sound and electrical physical agent modalities. The Board is not amending the rule to include the entry-level coursework at this time. However, the graduate could demonstrate the course requirements at submission of the applicant's course syllabus and transcript.

NEW RULE II (ARM 24.165.510) APPROVED TRAINING

Comment 2: One commenter requested clarification as to the terms "approved" and "certified" regarding the definition of "qualified person" in this New Rule.

Response 2: Approved training may be provided by a "qualified person", which includes a licensed occupational therapist previously approved by the Board to administer superficial, sound and electrical physical agent modalities for iontophoresis and phonophoresis. There is no separate "certification" required of these trainers. The Board has determined that the current language creates undue confusion and has amended the rule accordingly.

Comment 3: One commenter asked whether any individuals would be "grandfathered" in for initial "certification" in administering sound and electrical physical agent modalities.

Response 3: There is no separate "certification" required. The Board determined that no individuals would be "grandfathered" and that all persons seeking approval in the administration of physical agent modalities must satisfy the Board's requirements.

NEW RULE III (ARM 24.165.511) DOCUMENTATION OF INSTRUCTION AND TRAINING

Comment 4: One commenter stated that the documentation requirements of New Rule III seemed to apply to "instruction", and that the documentation to show "training" should be defined more adequately.

Response 4: The Board concluded that the documentation requirements of this rule apply to both proof of "training" and "instruction". The Board is satisfied that the documentation is necessary to ensure adequate preparation of persons desiring to administer sound or electrical physical agent modalities.

Comment 5: One commenter suggested that requirement of a course syllabus be amended to allow other evidence of course content if a syllabus is not obtainable.

Response 5: The Board concluded that submission of a course syllabus is necessary to sufficiently verify completion of formal instruction or training programs.

NEW RULE IV (ARM 24.165.513) APPROVAL TO USE SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES

Comment 6: One commenter asked whether there should be consistency in the use of either "and" or "or" when referring to sound and electrical physical agent modalities in the title and body of New Rule IV. The commenter also expressed confusion by the use of the terms "training" and "proctored treatment" in this rule.

Response 6: The title of a rule is a general overview of all the subjects addressed within the body of the rule. The use

of "or" in (1) is to explain that even those licensees who want to use only sound or only electrical physical agent modalities would still be required to meet the requirements in New Rule IV for both sound and electrical. The term "training" is defined in New Rule II and would include "proctored treatments". Didactic education is included in the definition of "instruction" set forth in New Rule I.

NEW RULE V (ARM 24.165.514) QUALIFICATION TO APPLY TOPICAL MEDICATIONS - CLINICIAN DEFINED

Comment 7: One commenter requested clarification as to the types of "licensed medical practitioners" able to supervise the additional proctored treatments under (2) of New Rule V.

Response 7: The Board intended for the required proctored treatments to be directly supervised by licensed health care practitioners having more than one year of clinical experience in the use of these modalities. The Board has amended New Rule V to include a reference to New Rule II(2)(b) to clarify the meaning of "licensed medical practitioners".

NEW RULE VII (ARM 24.165.517) PROTOCOLS FOR USE OF TOPICAL MEDICATIONS

Comment 8: One commenter expressed concern with the requirements of (2)(c) regarding appropriate record keeping of the application or administration of topical medications. The commenter stated that it is impractical in a large facility setting to have single-use files for each patient. The commenter also stated that it might be difficult for clinicians to maintain the required information in patient charts to prove that the topical medications were purchased from a licensed Montana pharmacy.

Response 8: The Board has determined that the protocols in New Rule VII apply to both private practice and larger facility venues. The Board is satisfied that all the record-keeping requirements of (2)(c) are needed to ensure proper topical medications are used and the public is protected.

NEW RULE XII (ARM 24.165.522) ADRENOCORTICO-STEROID AGENT PROTOCOLS

Comment 9: Following the publishing of the proposed notice, Board staff discovered several spelling errors in New Rule XII. The word "adrenocortico-steriod" should be correctly spelled as "adrenocortico-steroid".

Response 9: New Rule XII has been amended accordingly.

NEW RULE XIV (ARM 24.165.525) DOCUMENTING EDUCATION AND COMPETENCE TO PERFORM SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES -- OUT-OF-STATE PRACTITIONERS

Comment 10: Two commenters expressed concern that the requirement for out-of-state education and training to be substantially similar to Montana's may make Montana licensure difficult for applicants from states that do not "license" occupational therapists.

Response 10: The Board responded that Montana is a licensure state and the Board has determined what requirements are necessary to ensure the licensure of qualified and safe practitioners in the state. The Board has concluded that out-of-state applicants must prove that their education and training in sound and electrical physical agent modalities is substantially similar to or exceeds Montana's education and training requirements.

GENERAL COMMENTS:

Comment 11: One commenter suggested that the Board provide a link on its website to the Board of Pharmacy website where the list of approved topical medications is likely to be maintained.

Response 11: The Board responded that the suggestion would be taken to the Department of Labor and Industry Health Care Licensing Bureau for consideration.

Comment 12: One commenter asked whether or not the Board would retain the modality endorsements of therapists having current Board approval to use superficial or sound and electrical physical agent modalities.

Response 12: The Board concluded that all requests for physical agent modalities approved prior to the implementation of these rules would remain in effect. Individuals were approved based on the statutory requirements that were in place when Board approval was sought. The Board determined that there is no reason to require currently approved individuals to seek approval again.

4. The Board has adopted NEW RULE I (ARM 24.165.509), NEW RULE III (ARM 24.165.511), NEW RULE IV (ARM 24.165.513), NEW RULE VI (ARM 24.165.516), NEW RULE VII (ARM 24.165.517), NEW RULE VIII (ARM 24.165.518), NEW RULE IX (ARM 24.165.519), NEW RULE X (ARM 24.165.520), NEW RULE XI (ARM 24.165.521), NEW RULE XIII (ARM 24.165.524) and NEW RULE XIV (ARM 24.165.525) and repealed ARM 24.165.301, ARM 24.165.503 and 24.165.508 exactly as proposed.

5. After consideration of the comments, the Board has amended the following rules as proposed, with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (ARM 24.165.510) APPROVED TRAINING (1) through (2)(a) remain as proposed.

(i) approved by the board to administer superficial physical agent modalities and ~~is certified to administer~~ sound and electrical physical agent modalities for iontophoresis and phonophoresis; and

(ii) and (b) remain as proposed.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-105, 37-24-106, MCA

NEW RULE V (ARM 24.165.514) QUALIFICATIONS TO APPLY TOPICAL MEDICATIONS - CLINICIAN DEFINED (1) remains as proposed.

(2) In addition to the five hours of instruction required by (1), a licensee shall, pursuant to 37-24-107, MCA, prior to administering topical medication, perform one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner, as described in ARM 24.156.510(2), and either:

(a) through (3) remain as proposed.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-106, 37-24-107, MCA

NEW RULE XII (ARM 24.165.522) ~~ADRENOCORTICO-STERIOD~~ ADRENOCORTICO-STERIOD AGENT PROTOCOLS (1) Clinicians may use ~~adrenocortico-steriod~~ adrenocortico-steroid agents as directed by a licensed medical practitioner with prescriptive authority.

(2) ~~Adrenocortico-steriod~~ Adrenocortico-steroid agents act by diffusing across cell membranes to combine with specific cytoplasmic receptors. The resulting complexes enter the nucleus and bind to DNA, thereby irritating cytoplasmic synthesis of the enzymes responsible for systemic effects of adrenocortico-steroids.

(3) ~~Adrenocortico-steriod~~ Adrenocortico-steroid agents are indicated for inflammation (such as tendonitis, bursitis, arthritis, or myositis), and for antipruritic and vasoconstrictor actions.

(4) ~~Adrenocortico-steriod~~ Adrenocortico-steroid agents are contraindicated or require special care when used with children, growing adolescents and pregnant women. The use of adrenocortico-steroids is also contraindicated:

(a) through (e) remain as proposed.

(5) The ~~adrenocortico-steriod~~ adrenocortico-steroid agents permitted by this rule are:

(a) through (d) remain as proposed.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
ELSPETH RICHARDS, CHAIRPERSON

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

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

Certified to the Secretary of State March 21, 2005.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.213.301 definitions,) AND ADOPTION
ARM 24.213.402 application for)
licensure, ARM 24.213.405)
temporary permit, ARM 24.213.408)
examination and adoption of)
NEW RULES I and II pertaining)
to institutional guidelines)
concerning education and)
certification and authorization)
to perform pulmonary function)
testing and spirometry)

TO: All Concerned Persons

1. On October 7, 2004, the Board of Respiratory Care Practitioners published MAR Notice No. 24-213-14 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to definitions, application for licensure, temporary permit, examination, institutional guidelines concerning education and certification and authorization to perform pulmonary function testing and spirometry at page 2352, 2004 Montana Administrative Register, issue no. 19.

2. A public hearing on the notice of proposed amendment and adoption was held on November 8, 2004. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 17, 2004.

3. The Board of Respiratory Care Practitioners (Board) has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

Comment 1: The American Association of Respiratory Care (AARC) supports the Board's proposed rules and has written a position paper in support of respiratory care practitioners performing conscious sedation.

Response 1: The Board thanks the AARC for their support and their position paper.

NEW RULE I (ARM 24.213.501) INSTITUTIONAL GUIDELINES
CONCERNING EDUCATION AND CERTIFICATION -- WHEN REQUIRED

Comment 2: Mr. Chad Green is in support of the proposed rule.

Response 2: The Board thanks Mr. Green for his comments.

Comment 3: Lorraine Schneider, Board Counsel for the Montana Board of Nursing provided both written and verbal comments on behalf of the Board of Nursing. The Board of Nursing is proposing that the proposed rule delegates to institutions the functions of establishing the education and training required for respiratory care practitioners.

Response 3: The Board of Respiratory Care Practitioners (RCP) is not delegating authority to the institutions. It is merely regulating RCP licensees. Each institution has the right to choose the education and training of its employees. However, licensees still must meet the licensing guidelines established by the Board of Respiratory Care Practitioners. Hospitals are accredited and standards are set by the Joint Commission on Accreditation of Health Care Organizations (JACO).

Comment 4: The Board of Nursing noted that the new rule is inconsistent with the final paragraph of the declaratory ruling dated January 6, 2003. The new rule only recommends Advanced Cardiac Life Support (ACLS) certification. The Board of Nursing proposes that the rule require ACLS certification.

Response 4: The Board of Respiratory Care Practitioners appreciates and agrees with Board of Nursing comment and will change section (4) of NEW RULE I to read: "The board requires that all respiratory care practitioners performing IV conscious sedation have advanced cardiac life support (ACLS) certification."

Comment 5: The Board of Nursing feels that IV conscious sedation is used for many purposes other than respiratory care procedures. The Board of Nursing was concerned that this rule authorizes licensees to administer IV conscious sedation for purposes other than respiratory care procedures and that it would be an expansion of the scope of practice set by the legislature.

Response 5: The Board of Respiratory Care Practitioners reminds the Board of Nursing there is a scope of practice for licensees. If that scope is exceeded in any way, the Board will take appropriate action against that licensee but the Board of Respiratory Care Practitioners does not control assignments of duties by institutions and also recognizes that it only has authority over the licensee. As a result, it would hope that institutions would not ask licensees to exceed their authorized scope of practice and would expect licensees to know exactly what their scope of practice entails.

Comment 6: The Board of Nursing has requested that the Board of Respiratory Care Practitioners adopt an authoritative definition of conscious sedation to distinguish it clearly from deep and moderate sedation and to make clear that the

rule does not authorize licensees to perform anesthesia services requiring a medical or CRNA license.

Response 6: The Board of Respiratory Care Practitioners states that facilities that perform conscious sedation have their own guidelines for using qualified individuals. Conscious sedation is conscious sedation and there is no reason to isolate an individual to just a pulmonary procedure. Conscious sedation is not organ or system specific. When an individual is qualified to perform conscious sedation he or she is not limited to a procedure. As for an authoritative definition of conscious sedation, there is a nationally recognized definition which all licensees are aware of. The Board of Respiratory Care Practitioners recognizes that it has not adopted that definition and will begin the process of rulemaking to adopt that definition.

Comment 7: One commenter stated that the American Society of Respiratory Care recognizes the fact that respiratory therapists are called upon to assist physicians with the administration of sedatives and analgesic medications during diagnostic and therapeutic procedures.

Response 7: The Board agrees with the comment and with the amendment to New Rule I(4) that the Board's requirements will exceed the American Society of Anesthesiologists' (ASA) guideline.

Comment 8: One commenter is concerned that conscious sedation was not included in school programs or board examinations.

Response 8: The National Board for Respiratory Care (NBRC) examination matrix was identified by the Board to include on page 8, Section E.1.L, conscious sedation, as well as page 15, section F.1.L, showing that the respiratory care practitioner is tested on the national exam in the area of conscious sedation.

Comment 9: Robert Wafstet is the director of the respiratory care program at the University of Montana, Missoula, College of Technology and teaches a patient care and assessment class. He stated that students also take an advanced assessment class. When they graduate, students are ACLS certified, they are pediatric advanced life support certified and they are neonatal resuscitation program certified. He stated that there is always a physician present when RCPs are performing conscious sedation.

Response 9: The Board thanks Mr. Wafstet for his comments.

Comment 10: Linda Henderson, MN, RN, C commented that New Rule I allows the discretion of the facility the regulation of respiratory therapy care practitioners. It is her understanding that this is the function of the Board of

Respiratory Care Practitioners and this rule would abrogate this responsibility.

Response 10: The Board of Respiratory Care Practitioners authorizes licensees to perform particular procedures, but does not try to regulate the clinical context in which those procedures are performed.

4. The Board of Respiratory Care Practitioners specifically wants to thank all those individuals who testified and submitted written commentary. Their suggestions were invaluable to this determination.

5. After consideration of the comments, the Board has amended ARM 24.213.301, ARM 24.213.402, ARM 24.213.405, ARM 24.213.408 and adopted NEW RULE II (ARM 24.213.504) exactly as proposed.

6. After consideration of the comments, the Board has adopted NEW RULE I as proposed with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (ARM 24.213.501) INSTITUTIONAL GUIDELINES CONCERNING EDUCATION AND CERTIFICATION -- WHEN REQUIRED

(1) through (3) remain as proposed.

(4) The board ~~recommends, but does not require,~~ requires that all respiratory care practitioners performing IV conscious sedation have advanced cardiac life support (ACLS) ~~accreditation~~ certification.

(5) remains as proposed.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-28-101, 37-28-102, MCA

BOARD OF RESPIRATORY CARE PRACTITIONERS
GREGORY PAULAUSKIS, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State March 21, 2005.

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

In the matter of the amendment) NOTICE OF AMENDMENT AND
of ARM 36.23.102, and the) ADOPTION
adoption of New Rule I)
relating to tax increment)
revenue bonds under the)
Drinking Water State Revolving)
Fund Act)

To: All Concerned Persons

1. On February 10, 2005, the Montana Department of Natural Resources and Conservation published MAR Notice No. 36-23-105 regarding the proposed amendment of ARM 36.23.102 and adoption of New Rule I (ARM 36.23.121) pertaining to tax increment revenue bonds under the Drinking Water State Revolving Fund Act at page 210 of the 2005 Montana Administrative Register, Issue Number 3.

2. The Department of Natural Resources and Conservation has amended ARM 36.23.102 exactly as proposed.

AUTH: 75-6-205, MCA
IMP: 75-6-202 and 75-6-224, MCA

3. The Department of Natural Resources and Conservation has adopted New Rule I (ARM 36.23.121) exactly as proposed.

AUTH: 75-6-205, MCA
IMP: 75-6-224, MCA

4. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Mary Sexton
Mary Sexton
Director

By: /s/ Tim Hall
Tim Hall
Rule Reviewer

Certified to the Secretary of State March 21, 2005.

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

In the matter of the amendment) NOTICE OF AMENDMENT AND
of ARM 36.24.102, and the) ADOPTION
adoption of New Rule I)
relating to tax increment)
revenue bonds under the Water)
Pollution Control State)
Revolving Fund Act)

To: All Concerned Persons

1. On February 10, 2005, the Montana Department of Natural Resources and Conservation published MAR Notice No. 36-23-104 regarding the proposed amendment of ARM 36.24.102 and adoption of New Rule I (ARM 36.24.112) pertaining to tax increment revenue bonds under the Water Pollution Control State Revolving Fund Act at page 203 of the 2005 Montana Administrative Register, Issue Number 3.

2. The Department of Natural Resources and Conservation has amended ARM 36.24.102 exactly as proposed.

AUTH: 75-5-1105, MCA
IMP: 75-5-1102 and 75-5-1113, MCA

3. The Department of Natural Resources and Conservation has adopted New Rule I (ARM 36.24.112) exactly as proposed.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

4. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Mary Sexton
Mary Sexton
Director

By: /s/ Tim Hall
Tim Hall
Rule Reviewer

Certified to the Secretary of State March 21, 2005.

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

In the matter of the adoption)
of new rules I and II and)
amendment of ARM 37.85.414)
pertaining to medicaid)
provider requirements)

NOTICE OF ADOPTION AND
AMENDMENT

TO: All Interested Persons

1. On November 4, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-336 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to medicaid provider requirements, at page 2690 of the 2004 Montana Administrative Register, issue number 21.

2. The Department has adopted new rule II (37.85.413) as proposed.

3. The Department has adopted 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.

RULE I [37.85.412] INTERPRETATION OF RULES (1) The department will interpret its rules by giving meaning to the plain language of the rules. ~~Any department~~ If a provider requests an interpretation of a rule to provide clarification of an a perceived ambiguity, clarification must be provided received in writing from the department before the service is provided billed to the medicaid, recipient or the provider may not rely on it.

(2) Documentation of the clarification must contain:

(a) the date of the response;

(b) the identity of the person providing the clarification; and

(c) the specifics of the text of the provider's inquiry.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

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

37.85.414 MAINTENANCE OF RECORDS AND AUDITING (1) All providers of services must maintain records which fully demonstrate the extent, nature and medical necessity of services and items provided to Montana medicaid recipients. The records must ~~which~~ support the fee charged or payment sought for the

services and items, and which demonstrate compliance with all applicable requirements. ~~All supportive documentation, including but not limited to orders, prescriptions, certificates of medical necessity, referrals and medical records, must be signed and dated by the physician or other licensed practitioner acting within the scope of the practitioner's practice before the claim is submitted to medicaid for reimbursement.~~

(a) All records which support a claim for a service or item must be complete within 90 days after the date on which the claim was submitted to medicaid for reimbursement. A record that is required to be signed and dated, including but not limited to an order, prescription, certificate of medical necessity, referral or progress note, is not complete until it has been signed and dated.

(b) When reimbursement is based on the length of time spent in providing the service, the ~~documentation~~ records must specify the time ~~treatment began and ended~~ spent or the time ~~treatment began and ended~~ for each procedure billed to the nearest minute. Total time billed using one or multiple procedure codes may not exceed the total actual time spent with the medicaid client.

(c) These records must be retained for a period of at least six years and three months from the date on which the service was rendered or until any dispute or litigation concerning the services is resolved, whichever is later.

(a) through (e) remain the same but are renumbered (d) through (h).

(2) remains as proposed.

(3) The department, the designated review organization, the legislative auditor, the department of revenue, the medicaid fraud control unit, and their legal representatives shall have the right to inspect or evaluate the quality, appropriateness, and timeliness of services performed by providers, and to inspect and audit all records required by this rule.

(a) Upon the department's request for records, the provider shall submit a true and accurate copy of each record ~~as it existed at the time the provider submitted its claim to medicaid for the service being reviewed~~ of the service or item being reviewed as it existed within 90 days after the date on which the claim was submitted to medicaid.

(b) and (4) remain as proposed.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

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

Rule I (ARM 37.85.412), Interpretation of Rules

COMMENT #1: For clarity between providers and the Department, please identify DPHHS positions that are authorized to provide

official rule interpretations to providers.

RESPONSE: It is not feasible for the Department to identify DPHHS positions that are authorized to provide official rule interpretations to providers because frequent internal reorganizations at the Department result in positions being renamed. If the provider does not know who to contact for clarification, the provider can call the administrator of the appropriate division, namely Senior and Long Term Care Division, Addictive and Mental Disorders Division, Health Resources Division, or Disability Services Division, or the administrator of the Quality Assurance Division. The administrator will refer the provider to a person authorized to give an official rule interpretation. Additionally, the requirement that an interpretation of a rule be in writing provides some protection to providers, as an unauthorized person is unlikely to sign his or her name to a written interpretation without authorization to do so.

COMMENT #2: For clarity please specify what an interpretation "in writing" may include, i.e., e-mail, a response on agency letterhead, etc.

RESPONSE: An interpretation is in writing if it is communicated by e-mail, fax, computer generated message, or a handwritten or typed message on the Department's letterhead.

COMMENT #3: For clarity, please identify how rule interpretations given to any one provider will be communicated by DPHHS to all providers in a timely manner and by whom.

RESPONSE: The method of communication by DPHHS to all providers will depend upon the nature of the inquiry. Many inquiries and responses are unique to a provider's own circumstances, and do not warrant mass distribution. The method for circulating those responses to inquiries that do warrant further distribution will be determined by the specific division or program. Methods used in the past have included "The Claim Jumper", Provider Notices, and direct mailing to all providers of a specified type.

COMMENT #4: We would like to be able to rely on the oral advice of Department personnel regarding an ambiguity in the rules or a code designation. It is simply much easier to discuss an issue on the phone, obtain the needed advice, and then act on that advice than having to wait for a written confirmation from the Department. In many cases, time is of the essence in providing a service to a customer, and a provider cannot wait for a written confirmation of a rule interpretation. Currently, if a provider is concerned about the validity of oral advice given, it can write to the Department confirming the advice and request that the Department respond within a certain time period if the Department has had a change of heart. At least in this instance the provider can control the time frame, taking into consideration that the customer needs service quickly. In the

alternative, the provider can simply accept or ignore the oral advice without confirming it in writing, and, if necessary due to an audit, argue its case based on the oral advice.

RESPONSE: The Department agrees that providing timely responses to providers is important and also concurs that verbal communication is an essential tool in Department-Provider relations. However, experience has demonstrated that misunderstandings or disagreements over what advice was given often result when advice is given orally rather than in writing. The provision that a provider may only rely on clarification which is given in writing is intended to benefit both the provider and the Department by avoiding disputes over what advice was given. Such disputes may result in overpayments and, in turn, administrative reviews and fair hearings. The Department has, however, changed Rule I (ARM 37.85.412) to allow the provider to rely on written advice that is received before the service is billed to Medicaid, rather than before the service is provided. This will allow the provider to provide quicker service to its customers/patients since the provider will not have to wait until the written clarification is received to provide the service.

In response to the suggestion that a provider be allowed to provide a service based on oral advice and then confirm the advice by writing to the Department and requesting a response within a certain time period, the Department does not agree to be bound by the provider's written summary of the Department's clarification if the Department does not respond within a specified period of time. The Department strives to provide responses to all inquiries in a timely manner, but it may not always be possible to respond within the time set by the provider. For example, if the person to whom the summary was sent was on vacation or was no longer employed in the same position, it might not be possible to respond in the time specified. Therefore, although the Department will try to provide written responses as quickly as possible, the Department is unable to commit to a set time frame for providing a response.

COMMENT #5: We are not sure what this rule intends.

RESPONSE: This rule is intended to put providers on notice that they should not be guided by advice about the meaning and requirements of Department rules if the advice is given orally and is not confirmed in writing. Pursuant to this rule, a provider who bills incorrectly and is asked to repay the overpayment will not be permitted to raise as a defense the fact that the provider was advised to bill as the provider did if the advice was provided orally and was not confirmed in writing.

COMMENT #6: We don't believe a plain reading of the rules is possible.

RESPONSE: The Department believes that a plain reading of the rules is possible. However, practically speaking, there are instances whereby a provider will seek clarification unique to his or her own circumstances. The Department believes that in these instances, documentation of the communication and clarification is key to successful Department-Provider relations.

COMMENT #7: It is impractical for providers to seek policy advice in advance of providing services in all cases.

RESPONSE: The Department agrees. This rule only requires that the provider seek written clarification in the relatively rare instances when the plain reading of the rule cannot be applied to the specific circumstances a provider finds itself in. Additionally, Rule I (ARM 37.85.412) has been changed to allow the provider to obtain clarification before the service is billed to Medicaid rather than before the service is provided.

COMMENT #8: Rule I should specify what the written clarification should contain.

RESPONSE: The Department agrees and Rule I (ARM 37.85.412) has been revised to specify that the clarification must state the date it was written, who wrote it, and the specifics of the question from the provider which elicited the clarification.

Rule II (ARM 37.85.413), Limitations on Coding Advice

COMMENT #9: As currently drafted, no consideration is given to the timely provision of services or the timely submittal of a claim. If the Department were to still adopt these rules, then it must include time frames in which the Department must respond to the inquiry.

RESPONSE: The Department agrees that timely response is desirable. We are, however, unable to specify a time frame for response. Some clarifications will require involvement of multiple Department personnel because of their precedent-setting nature. Some will require consultation with the Center for Medicare and Medicaid Services. The Department will strive to be as timely as we can be, but we are unable to commit to a set time frame.

COMMENT #10: It is the Provider's responsibility for coding any item being billed to Medicaid. It is reasonable that the Department not be burdened with providing basic coding assistance. This should be done through available commercial sources and the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC). However, whenever the Department inserts itself into the coding process either at the request of the Provider or on its own, it must be followed up in writing in a timely fashion. Two hours after offering such coding advice is more than sufficient time for the Department to follow up in

writing.

RESPONSE: The Department agrees that the provider is responsible for coding its claims correctly but does not agree that two hours is sufficient time for the Department to provide written coding advice. For the reasons outlined in the response to Comment #9, and due to the complexity of questions asked and the limited state personnel available (usually one program officer has multiple assignments), it is not always possible to respond within a two hour time frame.

COMMENT #11: The Department appears to be limiting the agency relationship created by its own staff and contractors. Providers often seek coding advice from the Department and its contractors since Medicaid does not always follow standard coding conventions. We don't necessarily object to the notion that the advice ought to be provided in writing. We suggest that the Department adopt this, or a similar standard, for its employees and contractors.

RESPONSE: The Department is not sure what this comment means. The Department is not limiting the agency relationship between the Department and its contractors or other agents, as the rule allows a provider to rely on coding advice given by the Department's contractor or agent if the advice is provided in writing before the provider submits a claim for a service. The Department also agrees that important communications between Departmental employees and contractors and agents of the Department should be written rather than oral to the extent that this is practical, but this rule does not govern relations between the Department and its contractors and agents, only relations between the Department and Medicaid providers.

It appears the commentor is also asking the Department to adopt standard coding conventions. In fact, the Department has adopted standard coding conventions in many instances. The Department's rules do require many types of providers such as physicians, mid-level practitioners, therapists, and providers of durable medical equipment to bill using the procedure codes and modifiers set forth in the Center for Medicare and Medicaid Services' common procedure coding systems (HCPCS). See ARM 37.85.212(14) for example. The provider manuals governing many types of providers also state that providers must use uniform procedure and diagnosis coding, particularly those established in the most current editions of the International Classification of Diseases (ICD-9-CM), Current Procedural Terminology (CPT-4) and HCPCS Level II manuals, unless the manual states otherwise. Providers should refer to the rules and manuals which govern their provider type.

ARM 37.85.414, Maintenance of Records and Auditing

COMMENT #12: Currently lab orders and clinic office notes are not signed. Will electronic authentication be sufficient?

RESPONSE: Signatures on medical documentation require a legible identity of who provided the services. The method used can be hand written, electronic, or signature stamp. However, certificates of medical necessity state on the form "Signature and date stamps are not acceptable". A provider needs to check the requirements for the type of documentation used and the specific requirements for their provider type.

COMMENT #13: Obtaining signatures is an administrative activity, which is required and ultimately done. It should not be something that delays rendering care/service to patients, nor should it delay issuance of a claim for payment. We anticipate a delay with billing our Medicaid claims up to 30 days and consequently a delay in our Medicaid reimbursement, which is totally inappropriate. This is a step backward. Medicare no longer requires an attestation statement to be signed and dated before a claim is submitted to them. Requiring signatures and dates on Medicaid claims will delay claim submission drastically and cause serious cash flow issues. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) currently uses a 30-day standard for completion of records. Adopting this language will require medical providers to create and follow a separate document process for Medicaid beneficiaries. This is an unreasonable burden to place onto providers. The Department could require physician signatures on appropriate documents as a standard to substantiate the service, without regard to the day the service was billed.

RESPONSE: Although the Department is not required to follow the policies of Medicare or JCAHO, the Department agrees that it is not always necessary or possible to require supporting documentation to be signed before the service is provided, since this would result in delays in furnishing services to Medicaid recipients. Therefore, ARM 37.85.414 is being changed to provide that the signature may be obtained within 90 days of submitting the claim to Medicaid for reimbursement. This record-keeping requirement is the minimum required by the Department, however.

Providers must also comply with any specific and possibly more restrictive requirement applicable to the service the provider furnishes as outlined in ARM 37.85.414(1)(h). For example, ARM 37.86.1802(2) governing durable medical equipment and supplies and prosthetic devices provides that a written prescription must be obtained before the item is delivered to the Medicaid recipient. Thus, a provider of durable medical equipment and supplies must obtain the signature of a physician or other licensed medical practitioner on the prescription before

providing the item, rather than obtaining it within 90 days after the claim is submitted.

COMMENT #14: Preventing the claim from being submitted for reimbursement until the physician signs and dates the record adds no value. For example, holding a claim simply because the physician still needs to sign a verbal order for Tylenol is ridiculous.

RESPONSE: The Department agrees and has modified the rule to provide that the signature may be obtained within 90 days of submitting the claim to Medicaid for reimbursement, except in cases where another more specific rule requires the signature to be obtained sooner.

COMMENT #15: It may take physicians weeks to sign a record. However, as long as a facility has a corporate compliance program, there should be no risk of fraudulent documentation occurring just to cover a claim. In reading the justification for the amendment, it appears that Medicaid is painting all providers with the same non-compliant brush due to the indiscretion of "some providers". Rather than burden all providers, it is to the advantage of all parties involved that individual providers be addressed when their billing activity is not within the current regulations. Part of the responsibilities in the Health Information Management profession is to make sure all documentation is complete, including physicians' signatures, before a medical record is considered finished. There is a thorough system of checks and balances, both internal and external, to safeguard the work. This will cause an unnecessary burden on staff to track these records separately. This would further complicate a system already mired in bureaucratic redundancies. If documentation does not support the claim, a letter of appeal could be submitted with any additional information. Then the original record is not altered.

RESPONSE: This rule is a general Medicaid rule and applies to all provider types, not just facilities. Most providers do not operate under a corporate compliance program. The Department agrees that many providers are already keeping adequate records but has determined that the amendment of this rule is needed to clarify documentation requirements of the Medicaid program to address erroneous billing practices by some providers.

COMMENT #16: I understand the proposed change clarifies the requirement that records be signed prior to submission of a claim. I am unclear about who is required to sign in certain instances. Services are often delivered and medical record entries made by nonlicensed persons. A requirement of having each and every individual note countersigned by supervising licensed professionals would be expensive, counterproductive and make compliance with this rule extremely difficult, especially in rural communities.

RESPONSE: The Department agrees that all records that support a claim do not have to be signed by a licensed physician or medical practitioner. As suggested, there are instances where it is appropriate for a nonlicensed person to provide a service and sign and date a progress note in the medical records documenting that the service was provided. It is not always necessary for a physician or other licensed professional to countersign the medical record in such a case. Therefore, the Department has deleted the proposed language stating that all supportive documentation must be signed and dated by a physician or other licensed practitioner. The Department has changed the rule to provide that any record that is required to be signed and dated must be signed and dated within the time periods specified in the rule. The requirements as to who must sign specific types of records such as prescriptions or certificates of medical necessity are specified elsewhere in the Medicaid rules and in the Medicaid provider manuals.

COMMENT #17: The amendments severely limit the Department's flexibility in reviewing relevant information. We are very concerned that cases could arise where the Department, in its discretion, requests more information after a claim has been submitted, but the provider cannot submit this information because the amendments literally would prohibit this. The amendments must be clarified so that the provider can meaningfully respond to the Department's documentation requests following submittal of a claim. There will be occasions when a provider will submit signed and dated information postclaim that is reliable and supports the provision of services for a medically necessary condition. As written, the amendments would choke off the Department's ability to review this data. The Department must retain the flexibility to review reliable information whether submitted with the claim or postclaim.

RESPONSE: The Department believes that records created at the time of the service and/or filing of the claim are more reliable than information created after the fact when an audit is being conducted. For this reason, the Department will not remove the requirement that all supportive documentation be complete no later than 90 days after submission of the claim. The Department will consider other relevant information in its postpayment review process, however.

COMMENT #18: To require all documentation that is used to support a claim to be signed and dated by a physician or other health care practitioner is unreasonable. There are many documents other than those created by the physician or practitioner used for medical necessity. To have every document signed and dated would be very burdensome and would slow approval and ultimately slow the delivery process. If all paperwork that supports a claim needs to be submitted initially, and the Department determines that a review is required, at that point, additional documentation would need to be submitted. We

are unable to always predict what the Department will require for each individual claim. Most providers try to submit correct and necessary documentation, but there are too many individual and variable cases. The Department is limiting itself in the case of a review. There are too many cases where the request for services is not cut and dried and more documentation is needed.

RESPONSE: The Department agrees that a physician or other licensed professional does not have to sign all supportive documentation and has changed the rule to reflect that. See response to Comment #16. Some information that may be needed, such as manufacturer's suggested list price or warranty information, does not require signatures. A provider does not need to guess what documentation is needed. The Department's rules and manuals state what documentation is required.

COMMENT #19: Requiring all supportive documentation prior to the submission of a claim is not only unreasonable but it severely limits the review process in the event the claim is denied. If a claim is denied for not having enough medical justification, this rule as proposed prevents the provider from obtaining additional information to support the claim and resubmit the claim for review. Not allowing the additional information after the fact does not allow for a fair claims review process. In addition, there is other information in physician, hospital, and other records that may not be as easily accessible prior to the submission of the claim.

RESPONSE: The Department disagrees. The provider manuals and rules state what documentation is required. If a provider submits other information (for example, physician records or hospital records), this documentation would be signed and dated as is required for that provider type. If the provider can justify that there is reasonable documentation in the file to establish medical necessity, but the Department requests further information, this additional information will be considered in the review process.

COMMENT #20: Unless Medicaid defines medical necessity with no room for interpretation then this rule does not work. What provider would provide a piece of equipment if there were any reason the claim might not meet medical necessity for which interpretation may be required? What would happen is the Medicaid recipient would have to wait until all documentation was gathered and Medicaid determines in writing that this piece of equipment is medically necessary. The time delays would be unacceptable.

RESPONSE: This comment appears to address ARM 37.85.410, the rule governing determinations of medical necessity, rather than ARM 37.85.414. The Department is not amending ARM 37.85.410 at this time. ARM 37.85.414 has always provided that providers must maintain records, which fully demonstrate the medical

necessity of services and items provided. This is not a new requirement. The Department may review medical records and recoup any payment that was made in error if the Department determines that the service or item was not medically necessary.

COMMENT #21: We believe that the Department is exceeding its authority to specify how a provider operates its business processes. This rule goes beyond the need for adequate documentation and micro-manages the documentation process itself. The rules may be redundant to some circumstances, but invasive and over burdensome in others. The rule does not account for process changes that are imminent due to the adoption of electronic health records and electronic transactions.

RESPONSE: The Department disagrees. The Department is not specifying how a provider is to operate its business. It is merely relaying the documentation requirements that it has determined are necessary to obtain payment from Medicaid. Electronic documentation is acceptable as long as it meets the requirements.

COMMENT #22: There are times when a durable medical equipment provider cannot reasonably obtain a written prescription before a product is delivered. For example, a physician will, by phone, order the product and ask that it be provided promptly, but cannot immediately follow up with a written prescription because the physician had emergency surgery or some other exigent circumstance arose. The Department needs to be flexible in such circumstances so that it can consider the written prescription that is provided after the product is delivered.

RESPONSE: ARM 37.85.414(1)(h) as proposed to be amended provides that the record keeping requirements of ARM 37.85.414 are minimum requirements and providers must also comply with record requirements applicable to their provider type, which may be more restrictive. ARM 37.86.1802(2) states "Reimbursement for prosthetic devices, durable medical equipment and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed in writing prior to delivery by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law". Thus, a provider must obtain a written prescription prior to delivering durable medical equipment (DME), medical supplies or prosthetic devices to a Medicaid recipient pursuant to ARM 37.86.1802, which the Department is not amending.

COMMENT #23: The Medicaid payments to health care providers in Montana are lower than all other payers. With the implementation of this rule change and anticipated payment delays, this amendment will have a dramatic financial impact on providers in Montana, who presently are struggling to remain in the black and financially viable. It seems that we constantly

have to jump through hoops for the Montana Medicaid Program. No other payer has the requirements for billing that Medicaid does. We are already receiving less than our costs when servicing Medicaid clients through the emergency room, and now this amendment will result in further problems. This proposed requirement is completely unnecessary and a regressive impediment of medical care in the state of Montana. The requirement would cost providers time and money. This requirement would likely lead fairly quickly to having to discontinue following Medicaid patients completely. I strongly urge DPHHS to remove this language from the amendment.

RESPONSE: The Department has modified this rule to allow required signatures to be obtained within 90 days after the claim is submitted based on the comments received. It is not the Department's intent to have a detrimental financial impact on any provider. The rule was initially changed to better clarify what documentation is acceptable. The Department thanks all providers for their willingness to be a provider for Montana's medical assistance programs.

COMMENT #24: We anticipate a strain on the physician/hospital relationship as we become more aggressive in attempts to secure the physician's signature on all documents prior to billing. This means repeated communications to physicians and their offices in our attempts to secure signatures, which consumes precious time for all of us. This added burden might push even more physicians to stop taking Medicaid patients, since the "hassle factor" will increase for them.

RESPONSE: The Department has modified this rule to allow required signatures to be obtained within 90 days after the claim is submitted based on the comments received.

COMMENT #25: The proposed rule change is directed solely to hospitals and not other health care providers. The application of this rule is inconsistent, biased, and unfair.

RESPONSE: The Department disagrees. This rule is a general Medicaid rule and applies to all provider types. The Department strives to apply the rule in a fair, unbiased, and consistent manner.

COMMENT #26: I am encouraged that changes will be made in the rule in order for Montana Medicaid regulations to be consistent with Medicare.

RESPONSE: ARM 37.85.414 is not being amended to provide that the Montana Medicaid Program will follow Medicare policies in regard to record keeping or any other matter. Medicaid does not follow Medicare guidelines except where the Medicaid rules or provider manuals specifically state that Medicaid will follow Medicare guidelines. Providers should know Medicaid requirements through knowledge of the rules, regulations and

policies of the Department, since Medicaid requirements are sometimes different from Medicare requirements.

COMMENT #27: Why is Medicaid holding school therapists to a higher standard than Medicare and other insurance companies?

RESPONSE: We are unable to determine, based on the comment, what the perceived "higher standard" is. In any event, Medicaid has its own set of rules, regulations and policies, and does not necessarily follow the guidelines of other payers.

COMMENT #28: This proposal places an unreasonable burden on therapists, to constantly log the exact time for beginning and ending a procedure. The time of day makes no difference. Do we need to indicate exact time in and out with a sign in sheet? This is unnecessary and unreasonable. It leaves questions as to whether this requires "clock time", i.e., treatment from 10:30 to 11:30 a.m. or treatment was rendered for one hour or does treatment for several different modalities require itemized time frames for each item delivered? How do non-time based treatments enter into the total treatment time when done with time based treatments? This is an ineffective use of time that could be better spent helping patients. The policy of CMS, and other insurers, is that the total time for treatment is sufficient. If Medicaid has a different rule, it is going to be just one more mistake that people often make. If someone comes 20 minutes early to be taped (the start of their treatment), and then exercises independently for 15 minutes, has a 55 minute treatment, ices [an unbilled service] for 15 minutes, and is then taped again, the total treatment time would be 60 minutes. But, starting time may look like 1:00 and ending time may be 2:40. Starting time and ending time will only confuse the record. Further, it is one more little detail that will be easy to record inaccurately. Thus, an innocent mistake may look like fraud. Please do NOT require extra documentation. The more regulations, and the lower your fees, the more likely it is that health care providers will NOT participate in Medicaid. The patients are the ones that lose. I feel that the current documentation standards are sufficient to ensure quality patient care, accurate documentation of each treatment and correct billing procedures. I urge you to NOT adopt the proposed rule and if you must have a rule, please keep it the same as CMS and require only total treatment time.

RESPONSE: The Department agrees and has modified this rule to be consistent with CMS policy. The therapist should record the total treatment time OR the actual beginning and ending time of treatment for services described by timed codes. This policy now matches the policy described in the current Medicaid Therapy Services manual.

COMMENT #29: Clarification is needed from Medicaid as it pertains to the start of care for physical therapy services. Will the therapist's documentation of the verbal order be

sufficient to begin the treatment or will the patient be denied services until the written prescription is obtained which may be as long as 30 days? What would be required as "written support"? The therapy manual states that treatment may begin with a verbal order. Does a verbal order constitute enough documentation to process the claim as per the therapist manual?

RESPONSE: The therapist may start treatment with a verbal order, as long as the therapist documents in the record that a verbal order was received from the physician and the therapist signs and dates the medical record entry. This is sufficient documentation to bill Medicaid. As stated in ARM 37.86.606(3) governing therapy services, all verbal orders or referrals must be followed up by a written order received by the provider within 30 days of the verbal order or referral. This is an example of a case, as referred to in ARM 37.85.414(1)(h), where requirements for a specific provider type are more restrictive than ARM 37.85.414 and must be followed.

COMMENT #30: The requirement to document a starting and ending time is inherent in the statement that a provider must maintain records that support the payment sought for a service, in cases where the payment is based on the length of time spent. This new proposal is not necessary as the therapy manual interpretation of ARM 37.85.414 from the documentation section adequately covers the subject matter. The current documentation requirements as presented in the manual are consistent with the documentation requirements released from Medicare.

RESPONSE: The Department disagrees that this requirement is not necessary, since this is a general Medicaid rule and applies to all provider types, not just therapists. Other provider types have procedure codes that are based on time. Nevertheless, the rule has been modified to make documentation requirements consistent with current Medicaid Therapy Services manual and with Medicare. The rule as revised will allow a provider to specify either the time spent or the time treatment began and ended for each procedure billed.

COMMENT #31: Direct service staff members or office billing personnel are subject to more calculation errors when start and end times are computed using times that end in one minute intervals rather than five minute intervals. Consider allowing start and end times to be rounded to five minutes.

RESPONSE: The Department disagrees and cannot allow the time to be rounded to five-minute intervals. The actual time spent for each procedure code billed must be documented when a procedure code is time based.

COMMENT #32: The Department must pre-authorize many products. It is impossible for the provider to state the exact beginning and ending times of showing a customer how to use a particular

product. The requirement that the documentation must specify the beginning and ending times is not possible.

RESPONSE: The time spent or the time treatment began and ended for each procedure must only be documented when reimbursement is based on the length of time spent. The time is not needed prior to providing the service. Documentation of the time spent is needed to support the provider's billing. Most procedure codes that require prior authorization are not time based codes.

COMMENT #33: A problem exists when billing for untimed procedure codes. Currently, "a procedure code that does not have a delineated time unit is counted as one hour within the system, whether the service takes 30 minutes or three hours". If each untimed code counts as one hour, the billing of these codes may artificially inflate the hours, and decrease patient access to medical care with the 40 hour capped system. If the intent of Medicaid is to accurately reflect the treatment performed, the charging of an "hour" for an untimed procedure or modality is not consistent with what Medicaid is attempting to achieve.

RESPONSE: The Department agrees, but with our current computer system, there is no way to keep track of the actual time that untimed procedure codes are performed (as applies to the 40 hour cap). The Department has determined that counting one hour for each untimed procedure code is a good estimate. Evaluations for physical therapy and occupational therapy are not counted toward the 40-hour capped limit. The majority of claims billed by physical therapists and occupational therapists are timed 15-minute increment codes. Therefore, the Department feels that this problem is not significant.

COMMENT #34: The amendments that address the lack of documentation caused by loss, destruction or other event are too broad. We do not believe that all of the medical providers are "covered entities" under HIPAA and are required to have back up systems. The Department should provide a specific citation and discussion that supports the view that all Medicaid providers covered by the Department's Medicaid rules must have a back up system.

RESPONSE: In the Department's rationale, it was stated that HIPAA requires medical providers to have a backup system for their records. The commenter is correct that not all providers must comply with HIPAA. Only providers who bill electronically must comply with HIPAA. The portion of the HIPAA regulations that requires a contingency/back up plan for those providers is 45 CFR 164.308(a)(7), which becomes effective April 2005. When HIPAA created a rule that providers need a contingency plan for any loss of data and that a backup plan must be established, the Department thought this was a good idea for all providers. All providers must ensure that medical records are safeguarded against any possible loss and can be retrieved when requested by

the Department if they want to be reimbursed. For further clarification, please see the response to the following comment.

COMMENT #35: We understood that records and documents must be "protected and secure" but not backed up by a separate system. This is extremely stringent and could cause undo hardship on small providers. Clarification is needed as to what qualifies as a back up system for recovery of destroyed documents. The requirement the Department has listed far exceeds the requirements of HIPAA. The guidelines that the Department is requiring should in fact mirror the federal guidelines of HIPAA.

RESPONSE: Section (1) of this rule states that all providers must maintain records which fully demonstrate the extent, nature and medical necessity of services and items provided which support the claim billed to Medicaid. This section further clarifies that if a provider cannot provide medical records to support that a service billed to Medicaid was provided, then Medicaid will recover all reimbursement paid to the provider for this service. In other words, if it isn't documented, it didn't happen. The provider should determine what is the appropriate backup system to accomplish this, based on the provider's size, complexity, capabilities, risk and cost. This rule is technologically neutral. It does not direct a provider on which technology choices to make but rather states that medical records must be protected. This is consistent with HIPAA regulations.

COMMENT #36: Even if a backup system of some kind is required, the HIPAA regulations are flexible in that they require protection against reasonably anticipated threats or hazards. The Department's proposed changes, however, cover any cause, whether reasonably anticipated or not. Will Medicaid audit providers after natural disasters to see how much documentation is lost and then seek recovery? This rule seems unreasonable. If a document has been lost or destroyed because of a force or major event, the Department should be able to consider and weigh affidavits from the provider and others, stating that the documents did exist but were lost or destroyed for reasons beyond the provider's control.

Courts consider affidavits in many contexts, and the Department should be able to do the same. We recommend that the proposed changes be modified to allow a provider to offer and the Department to consider explanations why the documentation cannot be provided. For example, the wording could reflect the concept that lack of documentation creates a rebuttable presumption that the service was not provided, which would allow the provider to offer affidavits and the like to overcome the presumption.

RESPONSE: The Department will not audit based solely on a natural disaster happening. However, the provider needs to ensure that medical records are available if an audit is conducted for some other reason. The method used to ensure that

documentation is available when requested is up to the provider, but the Department will assume that the service was not provided and seek repayment if medical records cannot be furnished to support a claim when requested.

COMMENT #37: The language is unnecessary. Covered entities must comply with HIPAA, and, when applicable, Montana statutes. Those providers who are not subject to HIPAA (small providers and those who do not perform electronic claims transactions) are required to follow Montana statutes alone.

RESPONSE: The Department disagrees. It is necessary to specify that providers must comply with HIPAA and the Uniform Health Care Information Act in addition to the confidentiality provisions in ARM 37.85.414(2) to remind providers of their obligation to comply with those acts to the extent that they are applicable to the provider. The Department is not requiring a provider who is not covered by HIPAA to comply with HIPAA confidentiality provisions; rather, this provision specifies that a provider must comply with any confidentiality provision of HIPAA, which is applicable to the provider.

COMMENT #38: Since ARM 37.85.414(1) is being changed to specify that documentation must be complete within 90 days after the submission of the claim rather than before the claim is submitted, section (3) must be changed to state that the provider must submit a true copy of the record as it existed either when the claim was submitted or within 90 days after submission of the claim when the Department requests records from the provider.

RESPONSE: The Department agrees and ARM 37.85.414(3) has been changed to specify that the provider must submit a true copy of the record as it existed within 90 days after submission of the claim.

COMMENT #39: We believe the requirement that a provider send a "true copy" of a medical record that existed at the time the claim was submitted for payment goes beyond the authority of the Department. This is incongruent with the medical record standards in practice today, and the rights provided by HIPAA to amend, correct, object and seek changes to the medical record. We request that this section of the rule be deleted.

RESPONSE: The Department disagrees that this goes beyond our authority. When the Department requests records, the provider must submit copies of the original, unaltered medical records that are in the file within 90 days of the claim submission. A provider must not recreate or create the medical record at the time of the request. HIPAA's regulation 45 CFR 164.526 allows for an individual to request a medical record to be amended. This regulation only applies to changes in the medical record that are initiated by an individual, not by a provider. The additional material is appended or otherwise linked to the

original medical record when requested. ARM 37.85.415(3)(a) does not preclude this additional information from being attached to the original and true copy of the medical record.

COMMENT #40: Does the statement that the records submitted per the Department's request must be copies of the original, unaltered record maintained in the provider's files prior to billing Medicaid, allow for printing a medical record from an electronic medical record (EMR) upon the Department's request? I'd like to see language that recognized the EMR as valid documentation.

RESPONSE: Any documentation needed to support the service is acceptable, whether it is electronic, paper or some other medium.

COMMENT #41: The amendments severely limit the Department's flexibility in reviewing relevant information. We are very concerned that cases could arise where the Department, in its discretion, requests more information after a claim has been submitted, but the provider cannot submit this information because the amendments literally would prohibit this. The amendments must be clarified so that the provider can meaningfully respond to the Department's documentation requests following submittal of a claim. There will be occasions when a provider will submit signed and dated information postclaim that is reliable and supports the provision of services for a medically necessary condition. As written, the amendments would choke off the Department's ability to review this data. The Department must retain the flexibility to review reliable information whether submitted with the claim or postclaim. I would submit one change to the following on the request for medical records to read "submit a copy of the medical record that supports the claim submitted".

RESPONSE: The Department disagrees. The Department believes that records created at the time of the service and/or filing of the claim are more reliable than information created after the fact when an audit is being conducted. For this reason, the Department will not remove the requirement that all supportive documentation be complete no later than 90 days after submission of the claim. Changing the language to read "submit a copy of the medical record that supports the claim submitted" would revert this rule back to the original version. This would not stop providers from creating records at the time of the request. If the Department feels more information is needed, it will give the provider the opportunity to provide this. This additional information cannot be created, but can be obtained from other sources, such as doctor's records or hospital records. This section does not preclude the Department from reviewing such additional information during the review process.

Miscellaneous

COMMENT #42: Perhaps in the future the Department might consider the negotiated rulemaking process when it proposes to adopt new rules affecting Medicaid. In the proper context, negotiated rulemaking, which is conducted in a less formal environment, can yield fruitful results.

RESPONSE: Section 2-5-104, MCA, provides that a state agency may use a negotiated rulemaking process to develop a proposed rule and specifies factors to be considered by the agency in determining whether to use negotiated rulemaking. One factor specified in 2-5-104(1)(b), MCA is whether there is a limited number of identifiable interests that will be significantly affected by the rule. The State of Montana has 12,851 enrolled Medicaid providers. There are 91 general provider types and 97 specialty provider types. When the Department considered whether to use negotiated rulemaking to develop these proposed rules, the Department decided that the large number of different provider types potentially affected by these rules would make negotiated rulemaking impractical in this case. The Department does consider whether to use negotiated rulemaking each time it decides to adopt or amend a rule and may use this process in the future when it is appropriate.

COMMENT #43: The proposed rule changes will add to the already significant paperwork responsibilities that burden providers of Medicaid service. Clearly, the group understands that the program must be able to justify expenditures of public money based on sound accounting and auditing practices, but at times it seems that the requirements do not rationally relate to the goals of the Medicaid statutes. No one benefits if businesses decide not to provide Medicaid service because the administration requirements become too overwhelming. We encourage the Department to remain as flexible as possible in administering the Medicaid Program. The Department understands better than anyone that making Medicaid work from the administration of the program to the provision of services to those eligible customers is complicated. Retaining appropriate flexibility will help everyone address this complexity.

RESPONSE: The Department understands that the proposed rules may put an additional burden on providers to justify expenditures. However, the Department believes the additional requirements are necessary for the reasons explained in the responses above and does not consider them to be unduly burdensome. Additionally, the Department believes that the changes being made to the rules also benefit providers by clarifying provider requirements. It is hoped that the changes will benefit providers as well as the Department by reducing misunderstandings that result in administrative reviews and fair hearings which are costly and time-consuming for providers and the Department alike.

COMMENT #44: We are concerned that Medicaid be consistent in applying Medicare guidelines. In the past, Medicaid has indicated that they will follow Medicare national guidelines for coverage and medical necessity. Then they add a lot of if this, then that or except in this case, etc. It makes billing very complex and causes beneficiary confusion.

RESPONSE: The Department is not amending ARM 37.85.410 pertaining to the determination of medical necessity at this time. Therefore, this comment is outside the scope of this rule notice. In regard to the comment about applying Medicare guidelines, see response to Comment #26.

COMMENT #45: What efforts did Medicaid take to inform providers of these changes? How do you deem these efforts reasonable? My opinion is that more time is needed to review this issue by providers and also by the Department.

RESPONSE: The Department believes that sufficient time was provided to review the proposed changes. This rule was properly noticed in accordance with state law and an opportunity was given for public comment. Public comment is solicited in two ways. First, the rule notice is published by the Secretary of State for public review. This was done on November 4, 2004. Second, DPHHS sent notice to all "interested parties" who had previously requested to be notified when the Department is proposing a rule change. This was done on November 8, 2004. DPHHS also publishes all proposed rules on our Department website for public review. The rule was posted to the DPHHS website on November 4, 2004. A hearing was held on December 1, 2004 to solicit comment. Finally the rule was left open for comments until December 6, 2004 to solicit even further comment. The Department has received many comments on these rules and some changes in the proposed rules have been made in response to comments received.

COMMENT #46: These proposed rules appear to add to the paper work burden without a corresponding substantive benefit.

RESPONSE: The Department disagrees. The requirements of Rules I (ARM 37.85.412) and II (ARM 37.85.413) that interpretations of rules and coding advice be obtained in writing should benefit both providers and the Department by assuring clarity of communication and reducing misunderstandings. This in turn should result in fewer administrative reviews and fair hearings, which will benefit providers since litigation can be costly and time-consuming. The Department also believes the changes to ARM 37.85.414 regarding record requirements will benefit the majority of providers who comply with Departmental requirements, since the enhanced documentation requirements will ensure that Medicaid pays only for services which were provided and properly billed.

Dawn Sliva
Rule Reviewer

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

Certified to Secretary of State, March 31, 2005

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

and

- Office of Economic Development.

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

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

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

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

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

ADMINISTRATION, Department of, Title 2

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

(State Fund)

- 2.55.320 Classifications of Employments, p. 2429, 3013

AGRICULTURE, Department of, Title 4

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

STATE AUDITOR, Title 6

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

(Classification Review Committee)

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

COMMERCE, Department of, Title 8

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

EDUCATION, Title 10

(Superintendent of Public Instruction)

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

(Board of Public Education)

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

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

(Fish, Wildlife, and Parks Commission)

- I Hunting Season Extensions, p. 1887, 2341, 2911
- I-VII Exotic Wildlife, p. 358
- I-XII River Recreation, p. 1436, 2718

- I-XVI Blackfoot River Special Recreation Permit Program, p. 4
 - 12.11.202 and other rules - Beaverhead and Big Hole Rivers, p. 144
 - 12.11.3985 No Wake Zone on Seeley Lake, p. 2874, 373
- (Department of Fish, Wildlife, and Parks and the Fish, Wildlife, and Parks Commission)
- 12.9.204 Lone Pine Game Preserve, p. 1101, 1552, 2370

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.345 Subdivisions - Adoption by Reference of Department Circular DEQ-4, p. 1345, 2589
 - 17.50.215 Junk Vehicle - Disposal of Junk Vehicles through State Disposal Program, p. 885, 2382
 - 17.50.802 and other rules - Septage Cleaning and Disposal - Cesspool, Septic Tank and Privy Cleaners, p. 2350, 698, 2383, 2914
 - 17.53.102 and other rules - Hazardous Waste - Authorization of the Hazardous Waste Program, p. 14
 - 17.56.101 and other rules - Underground Storage Tanks - Installation of Underground Storage Tanks, p. 2877
 - 17.56.502 and other rule - Underground Storage Tanks - Release Reporting - Corrective Action, p. 2668, 87
- (Board of Environmental Review)
- 17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 291
 - 17.8.335 Air Quality - Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, p. 2456, 321
 - 17.8.505 and other rule - Air Quality - Air Quality Operation Fees - Open Burning Fees, p. 1355, 2547
 - 17.20.201 and other rules - Major Facility Siting Act, p. 2459, 252
 - 17.24.301 and other rules - Montana Strip and Underground Mine Reclamation Act, p. 777, 2548
 - 17.30.716 and other rules - Water Quality - Incorporation by Reference of DEQ-4 as It Pertains to Water Quality, p. 1347, 2579, 86
 - 17.30.1303 and other rules - Water Quality - Concentrated Animal Feeding Operations (CAFOs) - Adoption of Department Circular DEQ 9 (Montana Technical Standards for CAFOs), p. 2962
 - 17.38.101 and other rules - Public Water Supply - Public Water and Sewage System Requirements, p. 2444, 3016, 257
 - 17.38.106 Public Water Supply - Fees for Review of Public Water and Sewage System Plans and Specifications, p. 2983

(Petroleum Tank Release Compensation Board)

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

TRANSPORTATION, Department of, Title 18

(Transportation Commission)

I-VII Montana Scenic-Historic Byways Program, p. 2677, 93
18.6.202 and other rules - Outdoor Advertising, p. 2126, 89

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

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

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

CORRECTIONS, Department of, Title 20

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

JUSTICE, Department of, Title 23

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

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

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

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

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

LABOR AND INDUSTRY, Department of, Title 24

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

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

I Abatement of Renewal Fees, p. 1292, 2286

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

8.15.302 and other rules - Boilers - Terminology - Licensure
- Examinations - Responsibility of Licensees -
Training, p. 2492

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

(Board of Alternative Health Care)

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

(Board of Barbers and Cosmetologists)

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

(State Electrical Board)

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

(Board of Funeral Service)

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

(Board of Hearing Aid Dispensers)

- 24.150.510 Allowable Dispensing Fees, p. 1372, 2816

(Board of Landscape Architects)

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

(Board of Nursing)

- 8.32.305 and other rules - Educational Requirements and Other Qualifications Applicable to Advanced Practice Registered Nursing - Clinical Nurse Specialist Practice - Application for Initial Approval - Special Reports - Initial Application Requirements for Prescriptive Authority - Special Limitations Related to the Prescribing of Controlled Substances, p. 311
- 8.32.402 and other rules - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse, p. 2345

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

(Board of Nursing Home Administrators)

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

(Board of Occupational Therapy Practice)

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

(Board of Optometry)

- 24.168.401 Fees, p. 200

(Board of Physical Therapy Examiners)

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

(Board of Psychologists)

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

(Board of Public Accountants)

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

(Board of Radiologic Technologists)

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

(Board of Real Estate Appraisers)

- 24.207.502 Application Requirements, p. 369

(Board of Respiratory Care Practitioners)

- 24.213.301 and other rules - Definitions - Application for Licensure - Temporary Permit - Examination - Institutional Guidelines Concerning Education and Certification and Authorization to Perform Pulmonary Function Testing and Spirometry, p. 2352

(Board of Sanitaricians)

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

(Board of Speech-Language Pathologists and Audiologists)

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

(Board of Veterinary Medicine)

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

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 2047, 2591

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

(Board of Horse Racing)

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

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

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

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

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

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

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

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

36.25.117 Renewal of Lease or License and Preference Right, p. 2361, 2918

36.25.128 and other rules - Land Banking, p. 1452, 2399

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

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

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-XIX Eligible Telecommunications Carriers, p. 2697
- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 1595, 2592
- 38.3.402 and other rule - Motor Carrier Protestant Filing Requirements - Motor Carrier Application Fees, p. 1739, 2931
- 38.5.301 and other rules - Municipality-Owned Utilities, p. 1746, 2933
- 38.5.2202 and other rule - Pipeline Safety, p. 2795, 386
- 38.5.3301 and other rules - Telecommunications Service Standards, p. 2518
- 38.5.3403 Operator Service Providers, p. 1744, 2934

REVENUE, Department of, Title 42

- I & II Qualified Research Expenses for a Qualified Corporation, Individual, Small Business Corporation, Partnership, Limited Liability Partnership, or Limited Liability Company, p. 2707, 164
- I & II Capital Gain Credit, p. 2098, 2600
- 42.4.103 and other rules - Personal Income Taxes, Credits, Incentives, and Exemptions, p. 429, 1965, 2601
- 42.9.101 and other rules - Pass-through Entities, p. 1919, 2751
- 42.12.122 and other rule - Liquor Licensing, p. 3010, 269

- 42.15.112 and other rules - Personal Income Taxes, p. 2213, 3147
- 42.16.101 and other rules - Personal Income Taxes, p. 2251, 3153
- 42.17.101 and other rules - Business and Estimated Payment Taxes, p. 2054, 2754
- 42.18.106 and other rules - Annual Appraisal Plan - Exemption for Qualified Disabled Veterans for Property Taxes, p. 2264, 3156
- 42.19.1235 and other rules - Industrial Property, p. 2798
- 42.20.601 and other rules - Agricultural Property Taxes, p. 2710, 3160
- 42.21.113 and other rules - Personal, Industrial and Centrally Assessed Property Tax Trend Table Updates, p. 2077, 2603
- 42.31.101 and other rules - Cigarette and Tobacco Taxes, p. 1925, 2935

SECRETARY OF STATE, Title 44

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

(Commissioner of Political Practices)

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

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in February 2005 appear. Vacancies scheduled to appear from April 1, 2005, through June 30, 2005, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of March 11, 2005.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Aeronautics (Transportation)			
Mr. Bill Hunt, Jr. Shelby	Governor	Warner	2/22/2005 1/1/2009
Qualifications (if required):	Montana League of Cities and Towns	member and an attorney	
Mr. Fred Leistiko Kalispell	Governor	Hanson	2/22/2005 1/1/2009
Qualifications (if required):	Montana Airport Managers Association	representative	
Mr. Roger Lincoln Gildford	Governor	Metz	2/22/2005 1/1/2009
Qualifications (if required):	Montana Aerial Applicators Association	member	
Ms. Tricia McKenna Belgrade	Governor	Tolliver	2/22/2005 1/1/2009
Qualifications (if required):	Montana Chamber of Commerce	representative	
Rep. Ted Schye Fort Peck	Governor	Bass	2/22/2005 1/1/2009
Qualifications (if required):	Montana Pilots Association	member	
Board of Crime Control (Justice)			
Mr. Mike Anderson Havre	Governor	Allestad	2/11/2005 1/1/2009
Qualifications (if required):	representative of local law enforcement		
Ms. Shannon Augare Browning	Governor	Cole	2/11/2005 1/1/2009
Qualifications (if required):	citizen member representing a community organization		
Ms. Mikie Baker-Hajek Great Falls	Governor	Brooks	2/11/2005 1/1/2009
Qualifications (if required):	citizen member representing a community organization		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice) cont.			
Mr. Jim Cashell Bozeman	Governor	Brophy	2/11/2005 1/1/2009
Qualifications (if required): representative of local law enforcement			
Mr. Lyndon K. Erickson Glasgow	Governor	Jones	2/11/2005 1/1/2009
Qualifications (if required): representative of local law enforcement			
Mr. Harold F. Hanser Billings	Governor	Mercer	2/11/2005 1/1/2009
Qualifications (if required): citizen member			
Attorney General Mike McGrath Helena	Governor	not listed	2/11/2005 1/1/2009
Qualifications (if required): representative of state law enforcement			
Rep. Brad Newman Butte	Governor	Flynn	2/11/2005 1/1/2009
Qualifications (if required): representative of local law enforcement			
Mr. Jim Oppedahl Helena	Governor	not listed	2/11/2005 1/1/2007
Qualifications (if required): public member			
Mr. Godfrey Saunders Bozeman	Governor	not listed	2/11/2005 1/1/2007
Qualifications (if required): representative of the education community			
Director Bill Slaughter Helena	Governor	not listed	2/11/2005 1/1/2007
Qualifications (if required): representative of state law enforcement			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice) cont.			
Ms. Janet Stevens-Donahue Missoula	Governor	not listed	2/11/2005 1/1/2009
Qualifications (if required): local government representative			
Ms. Bonnie Wallem Kalispell	Governor	Shea	2/11/2005 1/1/2009
Qualifications (if required): citizen member representing community organizations dealing with juvenile crime prevention			
Board of Investments (Administration)			
Ms. Elouise Cobell Browning	Governor	Long	2/8/2005 1/1/2009
Qualifications (if required): informed and experienced in the subject of investments			
Ms. Teresa Cohea Helena	Governor	Beams	2/8/2005 1/1/2009
Qualifications (if required): informed and experienced in the subject of investments			
Mr. Jack Prothero Great Falls	Governor	Anderson	2/8/2005 1/1/2009
Qualifications (if required): informed and experienced in the subject of investments			
Mr. James Turcotte Helena	Governor	Ryan	2/8/2005 7/1/2005
Qualifications (if required): Teachers' Retirement Board representative			
Facility Finance Authority (Administration)			
Mr. J. William Kearns, Jr. Townsend	Governor	Carpenter	2/22/2005 1/1/2009
Qualifications (if required): background in investments and finances			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Facility Finance Authority (Administration) cont.			
Mr. Richard King	Governor	Asay	2/22/2005
Missoula			1/1/2009
Qualifications (if required): background in investments or finances			
Mr. Jon Marchi	Governor	Evans	2/22/2005
Polson			1/1/2009
Qualifications (if required): background in investments and finances			
Mr. Larry Putnam	Governor	Jockers	2/22/2005
Malta			1/1/2009
Qualifications (if required): public member			
Human Rights Commission (Labor and Industry)			
Ms. Janine Pease	Governor	Stevenson	2/8/2005
Billings			1/1/2009
Qualifications (if required): resident of Montana			
Rabbi Allen Secher	Governor	Schechtman	2/8/2005
Whitefish			1/1/2009
Qualifications (if required): resident of Montana			
Ms. Franke Wilmer	Governor	Hindoien	2/8/2005
Bozeman			1/1/2009
Qualifications (if required): resident of Montana			
Transportation Commission (Transportation)			
Mr. Rick Griffith	Governor	Anderson	2/22/2005
Butte			1/1/2009
Qualifications (if required): resident of District 2 and a Democrat			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Transportation Commission (Transportation) cont.			
Mr. William Kennedy	Governor	Reiter	2/22/2005
Billings			1/1/2009
Qualifications (if required):	resident of District 5 and a Democrat		
Rep. Deb Kottel	Governor	Rice	2/22/2005
Great Falls			1/1/2009
Qualifications (if required):	resident of District 3 and a Democrat		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Athletics (Labor and Industry) Mr. John C. Kinna, Fairfield Qualifications (if required): public member	Governor	4/25/2005
Board of Clinical Laboratory Science Practitioners (Commerce) Mr. John Michael Long, Glendive Qualifications (if required): clinical lab science practitioner	Governor	4/16/2005
Dr. Peter A.F. Smith, Kalispell Qualifications (if required): physician	Governor	4/16/2005
Board of County Printing (Administration) Mr. Verle L. Rademacher, White Sulphur Springs Qualifications (if required): representative of the printing industry	Governor	4/1/2005
Ms. Nancy Clark, Ryegate Qualifications (if required): public member	Governor	4/1/2005
Mr. Curtis H. Starr, Malta Qualifications (if required): representative of the printing industry	Governor	4/1/2005
Ms. Marianne Roose, Eureka Qualifications (if required): County Commissioner	Governor	4/1/2005
Ms. Julie Jordan, Miles City Qualifications (if required): County Commissioner	Governor	4/1/2005
Board of Directors of State Compensation Insurance Fund (Administration) Mr. Herbert Leuprecht, Butte Qualifications (if required): representative of private industry and a policy holder	Governor	4/28/2005
Mr. Derek Grewatz, Missoula Qualifications (if required): licensed insurance producer	Governor	4/28/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Directors of State Compensation Insurance Fund (Administration) cont. Mr. Jack Morgenstern, Lewistown Qualifications (if required): representative of private enterprise and a policyholder	Governor	4/28/2005
Mr. Mark Cole, Shelby Qualifications (if required): policyholder and representing private enterprise	Governor	4/28/2005
Board of Hail Insurance (Agriculture) Ms. Lillian Ostendorf, Powderville Qualifications (if required): public member	Governor	4/18/2005
Board of Nursing Home Administrators (Commerce) Ms. Deborah M. Wilson, Kalispell Qualifications (if required): nursing home administrator	Governor	5/28/2005
Board of Optometry (Commerce) Dr. Cynthia Johnson, Bozeman Qualifications (if required): optometrist	Governor	4/3/2005
Board of Plumbing (Commerce) Ms. Marlene Jackson, Glasgow Qualifications (if required): public member	Governor	5/4/2005
Board of Real Estate Appraisers (Labor and Industry) Mr. Donald Andrews, Ronan Qualifications (if required): real estate appraiser	Governor	5/1/2005
Mr. Douglas Mackay, Billings Qualifications (if required): real estate appraiser	Governor	5/1/2005
Board of Realty Regulation (Commerce) Ms. Vicky Hammond, Missoula Qualifications (if required): real estate broker and a Democrat	Governor	5/9/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Chief Water Judge (Supreme Court) Mr. C. Bruce Loble, Bozeman Qualifications (if required): none specified	Chief Justice	6/30/2005
Commission on Practice of the Supreme Court (Supreme Court) Mr. John Warren, Dillon Qualifications (if required): none specified	elected	5/3/2005
Ms. Mary Jo Ridgeway, Miles City Qualifications (if required): none specified	elected	5/3/2005
Mr. Stephen R. Brown, Jr., Havre Qualifications (if required): none specified	elected	5/3/2005
Mr. James A. Hubble, Stanford Qualifications (if required): none specified	elected	6/5/2005
District Court Council (Supreme Court) Judge John C. McKeon, Malta Qualifications (if required): none specified	Supreme Court	6/30/2005
Electronic Government Advisory Council (Administration) Director Jeff Hagener, Helena Qualifications (if required): representative of a state agency	Governor	6/18/2005
Mr. James E. Reno, Billings Qualifications (if required): representative of local government	Governor	6/18/2005
Mr. Gene Vuckovich, Anaconda Qualifications (if required): public member	Governor	6/18/2005
Ms. Wendy Keating, Helena Qualifications (if required): representative of a state agency	Governor	6/18/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electronic Government Advisory Council (Administration) cont. Mr. Christian Mackay, Billings Qualifications (if required): public member	Governor	6/18/2005
Governor's Council on Families (Public Health and Human Services) Mr. Stan Rathman, Choteau Qualifications (if required): public member	Governor	4/29/2005
Ms. Floral Goodman, Laurel Qualifications (if required): public member	Governor	4/29/2005
Ms. Melissa Sundberg, Florence Qualifications (if required): public member	Governor	4/29/2005
Rep. John Sinrud, Belgrade Qualifications (if required): public member	Governor	4/29/2005
Mr. Jeff Greer, Missoula Qualifications (if required): public member	Governor	4/29/2005
Mr. Tom Burnett, Belgrade Qualifications (if required): public member	Governor	4/29/2005
Ms. Arlene Diehl, East Helena Qualifications (if required): public member	Governor	4/29/2005
Dr. Paul Olson, Kalispell Qualifications (if required): public member	Governor	4/29/2005
Ms. Annette Friesen, Billings Qualifications (if required): public member	Governor	4/29/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Families (Public Health and Human Services) cont. Mr. Rick Robinson, Lame Deer Qualifications (if required): public member	Governor	4/29/2005
Mr. Ed Matter, Havre Qualifications (if required): public member	Governor	4/29/2005
Ms. Laurie Koutnik, Helena Qualifications (if required): public member	Governor	4/29/2005
Ms. Amber Gundlach, Baker Qualifications (if required): public member	Governor	4/29/2005
Ms. Maria Jimenez, Helena Qualifications (if required): public member	Governor	4/29/2005
Ms. Annette Osen, Bozeman Qualifications (if required): public member	Governor	4/29/2005
Mr. Steven Fred Geisser, Townsend Qualifications (if required): public member	Governor	4/29/2005
Great Falls College of Technology MSU Executive Board (University System) Mr. Jack King, Great Falls Qualifications (if required): public member	Governor	4/15/2005
Helena College of Technology UM Executive Board (University System) Mr. Eric Schindler, East Helena Qualifications (if required): public member	Governor	4/15/2005
Judicial Standards Commission (Justice) Mr. Victor F. Valgenti, Missoula Qualifications (if required): attorney	Supreme Court	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Judicial Standards Commission (Justice) cont. Judge Gary L. Day, Miles City Qualifications (if required): none specified	Supreme Court	6/30/2005
MSU Billings Executive Board (University System) Mr. Jeffery J. Oven, Billings Qualifications (if required): public member	Governor	4/15/2005
MSU Northern Executive Board (University System) Mr. David C. Henry, Havre Qualifications (if required): public member	Governor	4/15/2005
Montana Alberta Bilateral Advisory Council (Commerce) Sen. Glenn A. Roush, Cut Bank Qualifications (if required): member of the Montana Senate	Governor	5/12/2005
Sen. Jerry Black, Shelby Qualifications (if required): member of the Montana Senate	Governor	5/12/2005
Director David A. Galt, Helena Qualifications (if required): Director of the Department of Transportation	Governor	5/12/2005
Director Mark A. Simonich, Helena Qualifications (if required): Director of the Department of Commerce	Governor	5/12/2005
Director W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	5/12/2005
Lt. Governor Karl Ohs, Harrison Qualifications (if required): chairman	Governor	5/12/2005
Mr. Mark Cole, Shelby Qualifications (if required): representative of private sector (transportation)	Governor	5/12/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Alberta Bilateral Advisory Council (Commerce) cont.		
Rep. Edith J. Clark, Sweet Grass	Governor	5/12/2005
Qualifications (if required): member of the Montana House of Representatives		
Rep. John L. Musgrove, Havre	Governor	5/12/2005
Qualifications (if required): member of the Montana House of Representatives		
Mr. Dave Gibson, Helena	Governor	5/12/2005
Qualifications (if required): representative of the Office of the Governor		
Mr. Joe Horel, Ruyard	Governor	5/12/2005
Qualifications (if required): representative of private sector (agriculture)		
Mr. Lynn Cornwell, Glasgow	Governor	5/12/2005
Qualifications (if required): representative of the private sector		
Montana Heritage Preservation and Development Commission (Historical Society)		
Ms. Maureen Averill, Bigfork	Governor	5/23/2005
Qualifications (if required): member of the Tourism Advisory Council		
Mr. Brian Cockhill, Helena	Governor	5/23/2005
Qualifications (if required): Montana historian		
Rep. Jeanette S. McKee, Hamilton	Governor	5/23/2005
Qualifications (if required): experienced in historic preservation		
Montana Potato Advisory Committee (Agriculture)		
Mr. Steve McCullough, Townsend	Director	5/20/2005
Qualifications (if required): none specified		
Mr. Sid Schutter, Manhattan	Director	5/20/2005
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Potato Advisory Committee (Agriculture) cont. Mr. Dan Lake, Ronan Qualifications (if required): none specified	Director	5/20/2005
Montana Special Education Advisory Panel (Office of Public Instruction) Mr. Bob Maffit, Helena Qualifications (if required): business concerned with transitions	Director	6/30/2005
Rep. Holly Raser, Missoula Qualifications (if required): Legislator	Director	6/30/2005
Mr. Russ Bean, Augusta Qualifications (if required): state/local administrator	Director	6/30/2005
Mr. Steve Gibson, Helena Qualifications (if required): representative from juvenile and adult corrections	Director	6/30/2005
Ms. Diana Colgrove, Eureka Qualifications (if required): Part C/IDEA representative	Director	6/30/2005
Mr. Jeff Stelloh, Billings Qualifications (if required): private school representative	Director	6/30/2005
Mr. Gary Perleberg, Bigfork Qualifications (if required): parent of a child with disabilities	Director	6/30/2005
Ms. Norma Wadsworth, Billings Qualifications (if required): higher education	Director	6/30/2005
Ms. WyAnn Northrop, Missoula Qualifications (if required): teacher of children with disabilities	Director	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Ms. Janet Jansen, Lavina Qualifications (if required): regular classroom teacher	Director	6/30/2005
Mr. Dick Slonaker, Chinook Qualifications (if required): special education program administrator	Director	6/30/2005
Mr. Cody Sinnott, Helena Qualifications (if required): student representative	Director	6/30/2005
Mr. Bob Peake, Helena Qualifications (if required): state agency	Director	6/30/2005
Montana State University Executive Board (University System)		
Mr. Lee Oldenburger, Manhattan Qualifications (if required): public member	Governor	4/15/2005
Montana State Veterans Cemetery Advisory Council (Military Affairs)		
Mr. Mickey Nelson, Helena Qualifications (if required): technical expert	Director	5/1/2005
Ms. Alma Dickey, Helena Qualifications (if required): Disabled American Veterans Auxiliary	Director	5/1/2005
Ms. Alma Dickey, Helena Qualifications (if required): Prisoners of War	Director	5/1/2005
Mr. George Paul, Helena Qualifications (if required): Military Order of the Cooties	Director	5/1/2005
Mr. Jim Heffernan, Helena Qualifications (if required): Marine Corps League	Director	5/1/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. M. Herbert Goodwin, Helena Qualifications (if required): First Special Service Force	Director	5/1/2005
Mr. Robert C. McKenna, Helena Qualifications (if required): technical expert	Director	5/1/2005
Mr. George Poston, Helena Qualifications (if required): Disabled American Veterans	Director	5/1/2005
Ms. Eve Longfellow, Helena Qualifications (if required): Veterans of Foreign Wars Auxiliary	Director	5/1/2005
Mr. Don Buffington, Conrad Qualifications (if required): 40 & 8	Director	5/1/2005
Mr. Joe Foster, Helena Qualifications (if required): Chairman	Director	5/1/2005
Mr. Bob Schwegel, Fort Harrison Qualifications (if required): Veterans of Foreign Wars	Director	5/1/2005
Mr. Gary White, Helena Qualifications (if required): American Legion	Director	5/1/2005
Ms. JoAnn Ellison, Anaconda Qualifications (if required): American Legion Auxiliary	Director	5/1/2005
Mr. Arlie Rognstad, Helena Qualifications (if required): Military Order of the Purple Heart	Director	5/1/2005
Mr. Mike Hampson, Helena Qualifications (if required): Vietnam Veterans of America	Director	5/1/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Mr. Chris Denning, Fort Harrison Qualifications (if required): Department of Military Affairs	Director	5/1/2005
Montana Tech of the University of Montana Executive Board (University System) Mr. Daniel T. Berube, Anaconda Qualifications (if required): public member	Governor	4/15/2005
Montana Vocational Rehabilitation Council (Director) Mr. Haley Beaudry, Butte Qualifications (if required): State Workforce Investment Board position	Director	6/18/2005
Montana Vocational Rehabilitation Council (Public Health and Human Services) Mr. Ronald Mills, Miles City Qualifications (if required): vocational rehabilitation consumer	Director	6/3/2005
Noxious Weed Management Advisory Council (Agriculture) Director W. Ralph Peck, Helena Qualifications (if required): Director	Director	6/30/2005
Mr. Jerry Weber, Joliet Qualifications (if required): eastern county representative	Director	6/30/2005
Rep. Diane Rice, Harrison Qualifications (if required): Montana Weed Control Association	Director	6/30/2005
Ms. Carol Sparks, Plevna Qualifications (if required): livestock production	Director	6/30/2005
Ms. Josie Dahlberg, Brockton Qualifications (if required): agriculture crop production	Director	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Management Advisory Council (Agriculture) cont.		
Ms. Ramona Ehnes, Great Falls	Director	6/30/2005
Qualifications (if required): sportsman/wildlife group		
Mr. Jerry Marks, Missoula	Director	6/30/2005
Qualifications (if required): biological research and control		
Mr. Jack Eddie, Dillon	Director	6/30/2005
Qualifications (if required): western county representative		
Mr. Dave Philipps, Lewistown	Director	6/30/2005
Qualifications (if required): herbicide dealer and applicator		
Ms. Pachy Burns, Big Timber	Director	6/30/2005
Qualifications (if required): consumer group		
Ms. Verna Billedeaux, Browning	Director	6/30/2005
Qualifications (if required): at-large member		
Petroleum Tank Release Compensation Board (Governor)		
Mr. Daniel Manson, Butte	Governor	6/30/2005
Qualifications (if required): attorney		
Mr. Barry Johnston, Bigfork	Governor	6/30/2005
Qualifications (if required): representative of the banking industry		
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks)		
Mr. Dan Walker, Billings	Governor	6/30/2005
Qualifications (if required): member of the Fish, Wildlife, and Parks Commission		
Ms. Darlyne Dascher, Fort Peck	Governor	6/30/2005
Qualifications (if required): landowner		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont.		
Ms. Mary Jo Ridgeway, Miles City Qualifications (if required): sportswoman	Governor	6/30/2005
Mr. Paul Roos, Ovando Qualifications (if required): outfitter	Governor	6/30/2005
Mr. Michael Nathe, Redstone Qualifications (if required): landowner	Governor	6/30/2005
Mr. Craig Roberts, Lewistown Qualifications (if required): landowner and a sportsman	Governor	6/30/2005
Sen. Ken "Kim" Hansen, Harlem Qualifications (if required): legislator	Governor	6/30/2005
Rep. Michael Lange, Billings Qualifications (if required): legislator	Governor	6/30/2005
Mr. Thomas Pugrud, Winnett Qualifications (if required): landowner	Governor	6/30/2005
Mr. Todd Tash, Dillon Qualifications (if required): landowner	Governor	6/30/2005
Mr. George Bettas, Stevensville Qualifications (if required): sportsman	Governor	6/30/2005
Mr. Don Bothwell, Kalispell Qualifications (if required): sportsman	Governor	6/30/2005
Mr. Vito Quatraro, Bozeman Qualifications (if required): sportsman	Governor	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont.		
Mr. Jamie Byrne, Ekalaka Qualifications (if required): outfitter	Governor	6/30/2005
Mr. Jack Rich, Seeley Lake Qualifications (if required): outfitter	Governor	6/30/2005
Ms. Donna McDonald, Alder Qualifications (if required): outfitter	Governor	6/30/2005
Public Employees' Retirement Board (Administration)		
Mr. Terry Teichrow, Helena Qualifications (if required): public employee	Governor	4/1/2005
Risk Management Advisory Council (Administration)		
Mr. Scott Darkenwald, Helena Qualifications (if required): Director of the Department of Administration	Governor	6/20/2005
Mr. Hal Luttschwager, Missoula Qualifications (if required): public member	Governor	6/20/2005
Mr. Randy Penton, Billings Qualifications (if required): public member	Governor	6/20/2005
Mr. Allen Hulse, Helena Qualifications (if required): public member	Governor	6/20/2005
Mr. Greg Jackson, Helena Qualifications (if required): public member	Governor	6/20/2005
Ms. Tana Wilcox, Butte Qualifications (if required): public member	Governor	6/20/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (Administration) cont. Ms. Jacquie Duhamel, Missoula Qualifications (if required): public member	Governor	6/20/2005
State Library Commission (State Library) Mr. Alvin Randall, Troy Qualifications (if required): public member	Governor	5/22/2005
Ms. Gail Staffanson, Sidney Qualifications (if required): public member	Governor	5/22/2005
State-Tribal Economic Development Commission (Indian Affairs) Mr. Lloyd Irvine, Pablo Qualifications (if required): representative of the Confederated Salish and Kootenai Tribe	Governor	6/30/2005
Mr. Jake Parker, Box Elder Qualifications (if required): representative of the Rocky Boy Tribe	Governor	6/30/2005
Mr. John Woodenlegs, Lame Deer Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	6/30/2005
University of Montana Executive Board (University System) Colonel Sam A. Roberts, Missoula Qualifications (if required): public member	Governor	4/15/2005
University of Montana Western Executive Board (University System) Ms. Maryellen Wilkerson, Dillon Qualifications (if required): public member	Governor	4/15/2005
Water Court Judge (Supreme Court) Judge Joe L. Hegel, Forsyth Qualifications (if required): none specified	elected	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Water Court Judge (Supreme Court) cont. Judge Ted Mizner, Anaconda Qualifications (if required): none specified	elected	6/30/2005
Judge Roy C. Rodeghiero, Roundup Qualifications (if required): none specified	elected	6/30/2005
Judge Jeffrey Sherlock, Helena Qualifications (if required): none specified	elected	6/30/2005
Western Interstate Commission on Higher Education (Commissioner of Higher Education) Ms. Sheila Stearns, Helena Qualifications (if required): educator engaged in the field of higher education	Governor	6/19/2005
Youth Justice Council (Justice) Dr. Pedro Hernandez, Billings Qualifications (if required): public member	Governor	6/20/2005
Mr. Marko Lucich, Butte Qualifications (if required): public member	Governor	6/20/2005
Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	6/20/2005
Ms. Sally K. Stansberry, Missoula Qualifications (if required): public member	Governor	6/20/2005
Ms. Cathy Kendall, Helena Qualifications (if required): public member	Governor	6/20/2005
Commissioner Peggy Beltrone, Great Falls Qualifications (if required): public member	Governor	6/20/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Sen. Jeff Mangan, Great Falls Qualifications (if required): public member	Governor	6/20/2005
Ms. Shanna Bulik-Chism, Great Falls Qualifications (if required): public member	Governor	6/20/2005
Ms. Katie Yother, Bozeman Qualifications (if required): public member	Governor	6/20/2005
Mr. Tracy King, Harlem Qualifications (if required): public member	Governor	6/20/2005
Mr. Tony Wagner, Browning Qualifications (if required): public member	Governor	6/20/2005
Mr. Joe Johnson, Butte Qualifications (if required): public member	Governor	6/20/2005
Mr. Steve Gibson, Helena Qualifications (if required): designee of the director of	Governor	6/20/2005
Mr. Michael Donahoe, Helena Qualifications (if required): public member	Governor	6/20/2005
Ms. Karin Billings, Helena Qualifications (if required): public member	Governor	6/20/2005
Mr. John Chappius, Helena Qualifications (if required): public member	Governor	6/20/2005
Ms. Nancy Wikle, Helena Qualifications (if required): public member	Governor	6/20/2005

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2005 through JUNE 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont.		
Ms. Frances Combs, Poplar	Governor	6/20/2005
Qualifications (if required): representative of law enforcement and Native American issues		
Ms. Shae Saunders, Bozeman	Governor	6/20/2005
Qualifications (if required): youth representative		