

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of ARM 23.16.1823 concerning ) ON PROPOSED AMENDMENT  
permit fee restrictions )

TO: All Concerned Persons

1. On May 18, 2005, at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the amendment of the above-stated rule.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 13, 2005, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; FAX (406) 444-9157; or email rask@mt.gov.

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

23.16.1823 PRORATION OF PERMIT FEE AND ANNUAL PERMIT SURCHARGE - RENEWAL (1) through (3) remain the same.

(4) Video gambling machine permits may not be issued to a licensee whose premises are subject to the common ownership restriction contained in 23-5-629, MCA, unless the department receives written application from the common owners that provides written consent and authorization to permit the video gambling machines at one of the identified locations under common ownership.

(5) Licensees whose premises are subject to the common ownership restriction contained in 23-5-629, MCA, but who are authorized to receive permits until September 30, 2005, may upon application receive temporary video gambling machine permits that will expire on September 30, 2005. Upon or prior to expiration of the temporary permits, the licensee shall file a letter of withdrawal and quarterly report for each video gambling machine as required by law. The department shall only charge a final-quarter fee (e.g., April 1 through June 30) for such temporary permits.

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

AUTH: 23-5-115, ~~23-5-605~~, MCA  
IMP: ~~23-5-605~~, 23-5-612, 23-5-629, MCA

4. RATIONALE Pursuant to 23-5-629, MCA, a gambling licensee may not receive video gambling machine permits if (a)

their premises are within 150 feet of another premises which has received video gambling machine permits and (b) the two premises have one or more common owners. The statute also provides that, subject to certain conditions, premises licensed prior to 1985 for on-premises alcoholic beverage sales are not subject to the restriction, while premises licensed prior to February 1, 1995 may receive video gambling machine permits until September 30, 2005. Application of the law to existing premises which are subject to the restriction can result in the denial of video gambling machine permits to both premises. Therefore, the proposed amendment provides a method for the licensees of the restricted premises to mutually agree as to which of the locations will continue to receive video gambling permits after October 1, 2005; allows temporary permits to be issued at renewal and for their expiration on September 30, 2005; and provides for assessment of one-quarter of a yearly fee for the temporary permits. The Gambling Control Division projects no more than seven gaming locations will need to submit agreements. There may be a small decrease in revenue due to the statute taking effect; however, the rule should not affect revenue.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424, and must be received no later than May 26, 2005.

6. Ali Bovingdon, Assistant Attorney General, Department of Justice, Legal Services Division, has been designated to preside over and conduct the hearing.

7. The Department of Justice 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 of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Ali Bovingdon, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Ali Bovingdon, e-mailed to abovingdon@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

By: /s/ Mike McGrath  
MIKE McGRATH, Attorney General  
Department of Justice

/s/ Ali Bovingdon  
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State April 18, 2005.

BEFORE THE BOARD OF PRIVATE SECURITY PATROL  
OFFICERS AND INVESTIGATORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
amendment and transfer of ARM ) HEARING ON PROPOSED  
8.50.423, 8.50.424, 8.50.427 ) AMENDMENT AND TRANSFER,  
through 8.50.433, and 8.50.438 and ) ADOPTION AND REPEAL  
the repeal of ARM 8.50.425, )  
8.50.437, and 8.50.501 through )  
8.50.506, pertaining to private )  
security patrol officers and )  
investigators, and the proposed )  
adoption of New Rule I, fee )  
schedule and New Rule II, firearms )  
training course curriculum and )  
standards )

TO: All Concerned Persons

1. On May 19, 2005, at 9:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and transfer, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Security Patrol Officers and Investigators (Board) no later than 5:00 p.m., on May 13, 2005 to advise us of the nature of the accommodation that you need. Please contact Sandy Matule, Board of Private Security Patrol Officers and Investigators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2387; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of administrative rules, and in conjunction with the 2001 legislation transferring the Board of Private Security Patrol Officers and Investigators from the Department of Commerce to the Department of Labor and Industry, the Board is proposing a number of revisions to the Board rules. Some of the proposed amendments are technical in nature, such as the proposed renumbering of the rules to designate where the rules are to be placed when transferred from ARM Title 8 (Department of Commerce) to ARM Title 24 (Department of Labor and Industry). Similar technical changes substitute modern language for archaic phrasing, correct grammatical errors, and update obsolete or inappropriate

statutory references. The Board determined that it is reasonably necessary to amend the rules to address areas of concern and confusion raised by licensees, license applicants, and the Board. Accordingly, the Board determined that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt two new rules at this time. The proposed amendments are also part of the Board's and Department's ongoing comprehensive rule review in an effort to reduce confusion, eliminate redundancy and archaic language, and increase the overall effectiveness in applying the rules of the Board. This statement of reasonable necessity applies to all the proposed rule actions. Where there are specific bases for a proposed action, the Board will identify those additional reasons immediately following the applicable rule.

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

8.50.423 (24.186.301) DEFINITIONS As used in Title 37, chapter 60, MCA, and ~~these rules this chapter~~, the following words and phrases definitions will be construed to have the following meanings apply:

(1) "Direct supervision", regarding private investigator trainees, means daily contact between supervisor and trainee while engaged in an investigation, including one in-person, face-to-face meeting per week.

~~(1) (2) As used in 37 60 303, MCA, "d~~d~~ishonorable discharge" means any military discharge which specifically states that stating it is a dishonorable discharge.~~

~~(2) For the purpose of evaluating experience qualifications for licensure the word "year" shall mean 12 consecutive average work months (including leaves for vacation with pay) during which the individual was engaged in full time employment. In this context, full time employment is considered to be employment for compensation when the work schedule constitutes at least 1800 hours annually or more. Self employment must be verified by someone who knows of your experience and self employment condition.~~

~~(3) For purposes of 37 60 321(4), MCA, any crime involving moral turpitude means generally any crime enumerated in Title 45, MCA, or any other crime involving venality, dishonesty, obstruction of justice, lack of integrity, abuse of alcohol and/or use of dangerous drugs, or a third conviction of driving under the influence over any five year period.~~

~~(4) An "internal investigator or auditor" is one who only investigates incidents occurring within the internal affairs of an agency or company by which he is singularly employed and only investigates acts committed by persons who are employed by that company or agency.~~

~~(5) (3) "A r~~ Retail merchant" is any means a person who operates a store for the purpose of making sales of and sells

goods to ~~other persons~~ individuals who purchase the goods solely for their own use and ~~not for resale~~.

AUTH: 37-1-131, 37-60-202, MCA  
IMP: 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-303, MCA

REASON: The Board has determined it is reasonable and necessary to move the definition of "direct supervision" into the rule on definitions, and to delete certain obsolete and antiquated definitions that are no longer valid. The remaining definitions are renumbered in alphabetical order to comply with current ARM standards.

8.50.424 (24.186.507) TEMPORARY PERMIT (1) An applicant for any category of licensure, other than ~~security guard private investigator~~, who has met all requirements for licensure other than passage of the licensing examination, may apply for a temporary practice permit in accordance with 37-1-305, MCA, and subject to the following conditions:

(a) The permit holder may practice only under the ~~direct, on-site~~ supervision of an individual licensed:

- (i) in good standing; ~~i~~
- (ii) without pending or final disciplinary action; ~~and~~
- (iii) in the category for which the applicant seeks licensure.

(b) ~~The individual providing supervision~~ supervising licensee is personally responsible for conduct of the temporary permit holder as if the conduct were the licensee's own.

(2) Upon meeting the qualifications of this ~~section rule~~, ~~an otherwise qualified~~ the applicant ~~shall~~ may be issued a temporary practice permit by the board. For purposes of ~~applying~~ 37-1-305, MCA, the first license examination for which the applicant is eligible ~~following issuance of the permit~~, is an examination ~~that is~~ taken by the applicant no later than 60 days following temporary permit issuance ~~of the permit~~. ~~The temporary permit remains valid after issuance until the applicant either fails the license examination or passes the examination, meets all other qualifications for licensure and is granted a license.~~

(3) In performance of duties, temporary ~~P~~permit holders shall not:

- (a) wear, carry, or possess firearms; ~~or~~
- (b) have access to a firearms; ~~or in the performance of duties~~. ~~Permit holders shall not~~
- (c) have unsupervised access to valuables.

AUTH: 37-1-131, 37-60-202, MCA  
IMP: 37-60-302, 37-60-309, 37-60-310, 37-60-312, 37-60-407, MCA

8.50.427 (24.186.501) REQUIRED INFORMATION FOR APPLICATION (1) Prior to granting any license, ~~T~~the board

~~shall conduct or have conducted such investigation on each applicant verify the statements made in applications for licensure as it deems deemed necessary to protect the public health, safety and welfare before granting any license. The board shall seek information from law enforcement officials and other interested and informed persons to determine the character, competence and integrity of the applicant before approval for examination notify local law enforcement pursuant to 37-60-304, MCA.~~

~~(2) Each applicant shall provide:~~

~~(a) his or her the applicant's social security number; and answer questions concerning military service if applicable.~~

~~(3) An applicant must list five references (not related by blood or marriage) and two of the five shall be former employers or individuals or firms with which he/she had a working contractual agreement if self employed, or has knowledge of the agreement or working relationship.~~

~~(4) An individual who may desire licensure in more than one licensure category must pass an exam in each licensure category when required.~~

~~(5) (b) In addition to other pertinent information the board may require, each person who applies for an original license shall supply two one passport-type photos photo of the applicant. Name of applicant should be typed or printed on the back side of the photo.; and~~

~~(c) other pertinent information and documents the board may require to verify application information.~~

~~(3) An applicant may be required to pass an exam in each category for which licensure is sought.~~

~~(6) (4) Fingerprints required under this chapter to be submitted to the board Title 37, chapter 60, MCA, shall be submitted to the federal bureau of investigation and the Montana department of justice for examination. The board may issue a probationary or temporary practice permit upon receipt of the criminal history report from the Montana department of justice. Issuance of such license or permit does not guarantee that the applicant will ultimately be licensed. Final license decision will be made licensure is granted only following receipt and review of the federal bureau of investigation report and any investigations thereof. A fingerprint report is valid for one year from date of receipt of the report from the federal bureau of investigation.~~

~~(5) An applicant for private investigator, resident manager or qualifying agent must list the names and telephone numbers of three references not related to the applicant by blood or marriage. Two of the three references must be:~~

~~(a) former employers;~~

~~(b) individuals or firms with which the applicant had a contractual working agreement if self-employed;~~

~~(c) individuals or firms having knowledge of the agreement or working relationship; or~~

~~(d) as determined acceptable by the board.~~

(6) Upon preliminary approval of an application for contract security companies, proprietary security organizations, electronic security companies, and private investigators, the applicant will have 60 days to provide proof of insurance per ARM 8.50.431 [24.186.405] or the application will be closed.

(7) Prior to obtaining licensure as an armed or unarmed private security guard, applicants shall be required to submit proof of the applicant's employment with a licensed contract security company or proprietary security organization.

(8) Contract security companies, proprietary security organizations and electronic security companies shall provide proof of registration with the Montana secretary of state's office and provide the following information:

(a) for individual ownership, the name of the owner and the owner's address;

(b) for a partnership, a list of partners and their addresses;

(c) for a limited liability company, a list of the members and their addresses; or

(d) for a corporation, a list of principal officers and their addresses.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-60-304, MCA

REASON: The Board has determined it is reasonable and necessary to amend this rule to reword and reorganize for clarity. It is also reasonable to clarify that private security guards must be employed by a licensed security company before the Board will grant the security guard a license. The Board does not license independently practicing security guards.

8.50.428 (24.186.503) EXPERIENCE REQUIREMENTS

(1) Experience requirements for ~~contract security company and proprietary security organization~~ shall be resident managers and/or qualifying agents of contract security companies and proprietary security organizations are as follows:

(a) two years full-time (35 or more hours per week) ~~lawful~~ experience; as:

(i) ~~as~~ an employee or employer in the field ~~to be licensed for which licensure is sought~~; ~~or~~

(ii) ~~as~~ a sworn member of any:

(A) federal investigative agency;

(B) ~~or as a sworn member of the~~ military police; or

(C) ~~as a sworn member of any~~ state, county, or city investigative or law enforcement group or police department; or

(iii) ~~as~~ a supervisor or administrator in industrial or governmental security; or

(b) vocational training of at least four, 12-credit semesters in security company operations. ~~All education and~~

~~training must be verified and supplied with the application, including transcripts, diplomas, seminar certificates, course completion or other supporting evidence;~~

(2) Experience requirements for resident managers and/or qualifying agents of electronic security companies are as follows:

(a) two years full-time (35 or more hours per week) experience as an employer or employee in the field for which licensure is sought.

(3) Experience requirements for private investigators are as follows:

(a) three years full-time experience:

(i) engaged in the private investigative business;

(ii) employed as a private investigator or having held a certificate of authority to conduct a private investigative business; or

(iii) having been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government.

(b) In determining experience qualifications for private investigator licensure, "three years" means an accumulation of 5400 hours of experience. Self employment must be verified by tax returns.

(4) Proof of education and training must be submitted with the application and may include:

(a) transcripts;

(b) diplomas;

(c) seminar certificates;

(d) course completion certificates; or

(e) other supporting evidence.

~~(5) Six months of the experience requirement may be met by successful completion and verification of the basic course of at the Montana law enforcement academy and proper verification.~~

~~(6) All applicants may use a A combination of experience, education and training may be used to meet the experience requirement, but education and training may not exceed 1/2 the experience required.~~

~~(7) One and one-half years experience as a licensed insurance investigator may be counted applied towards the three-years of experience requirements required as for a private investigator.~~

AUTH: 37-60-202, MCA

IMP: 37-60-303, MCA

REASON: It is reasonable and necessary to amend this rule to include specific experience requirements for private investigator licensure that are being deleted from 37-60-303, MCA, pursuant to Chapter 126, Laws of 2005 (House Bill 203 in the 2005 Montana legislature). The Board is proposing to further clarify the varying experience requirements for licensure of security companies and licensure of the companies' resident managers and qualifying agents.

8.50.429 (24.186.505) WRITTEN EXAMINATION (1) If a written examination is required for licensure, All applicants must achieve successfully pass a written examination in their area of licensure with a minimum score of 70% or more on each part of the exam to pass.

(2) Examination fees are set by and payable directly to the examination administrator or vendor.

~~(2)~~ (3) The Examination shall may consist of questions in the following areas, but shall not be limited to, those areas: on Montana criminal and civil procedures and Montana laws and rules applicable to the area(s) of licensure sought.

~~(a) private investigator — legal rights and limitations on powers of private investigators, areas of investigation, private investigator law and rules, sources of information, service of legal papers, report writing, interrogation and investigative procedures, contracts and recovery and disposal of property.~~

~~(b) contract security company and proprietary security organization — private investigator law and rules, principles of management and supervision, report writing, legal procedures, electronics, applicable federal law and rules and other related material in the licensure area.~~

~~(c) security alarm installers — law and rules, principles of management and supervision, report writing, legal procedures, electronics, applicable federal law and rules and other related material in the licensure area.~~

~~(3)~~ (4) Prior to taking the examination, Applicants for examination applicants must deposit with the examination proctor, all books, notebooks or and other papers before starting to write the examination. No applicant is allowed to take with them may remove any papers from the examination room in which the examination is administered.

~~(4)~~ (5) All applicants for examination Examination applicants must have present the notice of examination for the department with the exam identification number before they will to be admitted to the examination.

~~(5)~~ (6) An applicant may retake that any failed section of the examination he/she has failed upon payment of another examination fee. In the event an applicant shall fail his/her second examination, he/she shall not be eligible for another examination until such time as he/she has furnished documentation of additional education, training or experience in law enforcement or related activities.

~~(a) In no instance will he/she be eligible for a third exam for a period of six months.~~

~~(6)~~ (7) Examinations will be held in Helena The department shall schedule examinations by appointment. Special examinations may be made available by prior arrangements with the department.

(8) Waiver of the examination requirement may be granted at the board's discretion, following an applicant's submission of a written request for such waiver.

AUTH: 37-1-131, 37-60-202, MCA  
IMP: 37-60-303, MCA

REASON: It is reasonable and necessary to amend this rule to adapt the requirements to current and future licensure examination processes. Some types of licensure do not require passage of an examination and the Board is in the process of contracting with a vendor for the administration of Board examinations. The amended rule would also provide the Board with the ability to waive the examination requirement upon request and upon the Board's review and consideration. The Board receives requests for examination waiver due to length of relevant experience in other states or for other reasons, but has not in the past had the discretion to even consider such waiver requests. The Board has determined that it is reasonable for the Board to allow exam waiver in instances where the Board determines that sufficient experience is present to ensure the adequate protection of the public.

8.50.430 (24.186.403) IDENTIFICATION POCKET CARD

(1) Only one identification card shall be issued for each licensee licensure category. ~~The holder of an identification card shall be licensee is~~ responsible for the maintenance, custody and control of the ~~identification~~ card, and shall ~~neither let, loan, sell nor otherwise not~~ permit any unauthorized ~~persons or employees~~ use it of the card. If an identification card ~~shall be is~~ altered in any way, it ~~shall become is~~ invalid.

(2) Identification cards are renewed ~~in the same way as license renewal in~~ pursuant to ARM 8.50.433 [24.186.513].

(3) Each photograph ~~(1 1/2" x 1 1/2")~~ submitted ~~shall~~ must fairly and accurately represent the appearance of the applicant. If the department determines that its file copy does not bear substantial resemblance to the applicant, ~~it the~~ department may ~~request~~ require a new photograph.

AUTH: 37-60-202, MCA  
IMP: 37-60-309, MCA

8.50.431 (24.186.405) INSURANCE REQUIREMENTS

(1) Persons regulated by Title 37, chapter 60, MCA, and licensed as ~~a private investigator, a security alarm installer, a contract security company or a proprietary security organization~~ follows shall file with the board, a yearly certificate of insurance with the board-:

(a) ~~Persons licensed as private~~ Private investigators shall ~~carry~~ maintain a minimum of ~~\$25,000~~ \$500,000 occurrence form of commercial general liability which includes personal injury.

(i) ~~Persons~~ If licensed with armed status, private investigators shall ~~carry~~ be covered by liability for firearms coverage.

(b) ~~Persons licensed as security alarm installers~~ Electronic security companies shall ~~carry~~ maintain a minimum

of ~~\$100,000~~ \$500,000 occurrence form of commercial general liability which includes personal injury and errors and omissions coverage.

(c) ~~Persons licensed as contract~~ Contract and proprietary security companies shall ~~carry~~ maintain a minimum of ~~\$100,000~~ \$500,000 occurrence form of commercial general liability which includes personal injury.

(i) ~~Persons~~ If licensed with armed status, employees of contract and proprietary security companies shall carry liability for firearms coverage.

(2) Except as provided in ~~(4)~~ this rule, all licensees must be insured by a carrier:

(a) ~~that is~~ licensed in the state in which the insurance ~~has been~~ was purchased and ~~which is~~ covered by that state's insolvency fund; or

(b) ~~that is~~ licensed in the state of Montana.

(3) Each licensee shall sign a release ~~allowing its~~ requesting the insurance carrier to inform the board ~~in the event that~~ if the coverage is canceled or allowed to lapse.

~~(4) Proof of financial responsibility may be accepted in lieu of an insurance policy. Such proof shall consist of a property bond, a fiduciary bond, trust fund, escrow account or a combination therefore, as follows:~~

~~(a) Persons licensed as private investigators shall carry a minimum of \$25,000.~~

~~(b) Persons licensed as security alarm installers shall carry a minimum of \$100,000.~~

~~(c) Persons licensed as contract and proprietary security companies shall carry a minimum of \$100,000.~~

AUTH: 37-1-131, 37-60-202, MCA  
IMP: 37-60-202, MCA

REASON: It is reasonable and necessary to amend this rule to update the insurance requirements of licensees to harmonize such requirements with current insurance industry standards and minimum policy limits available. The rule is further being reorganized for clarity and to lessen confusion among readers. The Board has determined it is reasonable and necessary to no longer allow proof of financial responsibility in lieu of proof of insurance for applicants and licensees. This exception was rarely used and served to create confusion among both license applicants and licensees.

8.50.432 (24.186.407) REGULATIONS OF UNIFORM (1) No individual shall, while performing any ~~of the duties~~ duty regulated by Title 37, chapter 60, MCA, have or utilize any:

(a) uniform, vehicle or equipment displaying the words, "police", "law enforcement officer", or the equivalent thereof; i or

(b) ~~have any~~ patch, emblem, sign marking, accessory or insignia ~~that may indicate that~~ indicating such uniform, vehicle or equipment is the property of a public law

enforcement agency, ~~or of~~ the state of Montana, or any of its political subdivisions.

(2) ~~Any person, while performing any of the duties regulated by Title 37, chapter 60, MCA, who is~~ A licensee required to wear a uniform while performing any duty regulated by Title 37, chapter 60, MCA, must have the uniform approved by the board.

(a) All uniforms shall, on the outermost garment except for rainwear or foul weather clothing, ~~have~~ clearly identified display:

- (i) the company name; i
- (ii) the individual's name; and
- (iii) the occupational category.

(3) ~~All~~ Uniformed security guards shall wear a patch on their uniforms as follows:

(a) no less than one inch by three inches in size;  
(b) ~~with~~ displaying the words "security", "security officer" or "security guard":

- (i) in block letters; and
- (ii) of contrasting colors; and
- (c) ~~on~~ above the left ~~breast~~ chest pocket.

AUTH: 37-60-202, MCA  
IMP: 37-60-407, MCA

8.50.433 (24.186.513) LICENSE RENEWAL (1) The board shall send Each each licensee, will be notified by mail to at his the licensee's last known address, of the current renewal fee and furnished with an application for renewal, indicating the renewal fee, prior to expiration of license.

(2) ~~Each person who applies for renewal of a license shall~~ At renewal, the board may require applicants to submit one recent photograph showing full face, head and shoulders of the applicant, with the application for renewal which will to be used for the current identification card. It must be of a size that can be cut to 1 1/2 inch by 1 1/2 inch and still retain full face, head and shoulders in the photo.

(3) ~~An expired~~ Expired licenses may be renewed within 90 days of ~~its~~ the renewal expiration date, as shown in ARM 8.2.208, with the upon payment of the renewal fee and late fee. If more than 90 days have passed since ~~any license has expired~~ expiration, to obtain a new license the applicant must:

- (a) submit a new application ~~must be made~~; i
- (b) take and pass the appropriate examination; ~~taken and~~
- (c) ~~passed with~~ pay the required appropriate fees ~~paid,~~ before any new license will be issued.

AUTH: 37-60-202, MCA  
IMP: 37-60-312, MCA

8.50.438 (24.186.511) PRIVATE INVESTIGATOR TRAINEE

(1) Applicants ~~On a form provided by the board, a person who is~~ are at least ~~19~~ 18 years of age, but ~~does not meeting~~

the experience requirements of ~~37-60-303(1) and (3)~~, MCA a private investigator, may apply for a private investigator trainee license as a ~~private investigator~~.

(a) The application shall be:

(i) on a board-approved form; and

(ii) ~~accompanied by~~ include a statement from a licensed private investigator:

(A) ~~who that the licensee~~ will employ and provide direct supervision of the trainee ~~license holder~~; and

(B) setting forth the scope of the trainee's ~~license holder's~~ duties and training.

~~(2) Direct supervision for the purposes of (1) means daily contact while the trainee licensee is engaged in an investigation including one face to face meeting on a weekly basis. A trainee license holder may not conduct an independent business or act as an independent contractor.~~

~~(3) The e Employment and training of the trainee license holder may not ~~commence~~ begin until:~~

(a) the board has approved the application; and

(b) the applicant has received the trainee license and identification card.

~~(4) The t Trainee licenses expires annually and may be renewed three times as set forth in ARM 8.2.208.~~

(5) Private investigators shall submit quarterly reports, on a board-approved form, regarding each private investigator trainee they supervise.

AUTH: 37-60-202, MCA

IMP: 37-60-202, MCA

REASON: The Board has determined it is reasonable and necessary to amend the minimum age requirement for private investigator trainees from 19 to 18 years of age to match the minimum age requirement for other licensees as set forth in 37-60-303, MCA. The Board is also amending this rule to require private investigators to submit quarterly reports to the Board on every private investigator trainee supervised. Submission of such reports will assist the Board in ensuring such trainees are being adequately supervised pursuant to the requirements in rule. The definition of "direct supervision" has been moved to the definitions rule at 8.50.423 (24.186.301). The Board has determined to delete the three-time limitation on trainees' licensure renewal as such a requirement does not serve to enhance the Board's protection of the public.

5. The proposed new rules provide as follows:

NEW RULE I FEE SCHEDULE

(1) License application fees are as follows:

(a) Contract security companies, proprietary security organizations and electronic security companies:

(i) Company \$200

(ii) Resident manager or qualifying agent 100

(iii) Security guard, alarm installer or alarm response runner	25
(b) Private investigator	200
(c) Private investigator trainee	100
(d) Certified firearms instructor (biannual)	100
(e) Armed status	25
(2) License renewal fees are as follows:	
(a) Contract security companies, proprietary security organizations and electronic security companies:	
(i) Company	100
(ii) Resident manager or qualifying agent	75
(iii) Security guard, alarm installer or alarm response runner	45
(b) Private investigator	100
(c) Private investigator trainee	45
(d) Certified firearms instructor (biannual)	100
(e) Armed status	25
(f) Late renewal	50
(3) Miscellaneous fees are as follows:	
(a) Duplicate license or photo ID card (original lost or destroyed)	10
(b) FBI processing fee	24
(c) Department of justice processing fee	8
(d) Temporary practice permit	25
(e) License history/license verification	15
(f) Changes of employer, address or name	10
(g) List of licensees for continuing education purposes only	40
(h) Copies, per page	.35
(i) Certified copies, per page	.50
(j) Training program certification (application and renewal)	50
(4) Fees are deemed earned by the board upon receipt and all fees are nonrefundable.	

AUTH: 37-1-134, 37-60-202, MCA

IMP: 25-1-1104, 37-1-134, 37-60-304, 37-60-312, MCA

REASON: The Board has determined there is reasonable necessity to repeal the existing fee schedule rule at ARM 8.50.428 and adopt a new fee schedule rule (New Rule I). The Board is required by 37-1-134, MCA, to set licensure fees at a level commensurate with costs. The Board performed a review of the fees charged for licensure and other services rendered by the Board. Following the review, the Board is proposing that certain fees be adjusted to be commensurate with the Board licensure costs. The proposed New Rule uses a user-friendly format for the Board fees by more clearly organizing and listing fees. Language choice and other technical changes are proposed to clearly and correctly set forth the specific entities and individuals licensed and regulated by the Board.

The majority of the Board licensure fees remain unchanged from the existing fee schedule. Original licensure fees for resident managers, qualifying agents and private investigator

trainees are being reduced from \$200 to \$100. This will affect approximately 13 applicants and will result in a reduction of \$1,300 in revenue. Original licensure for certified firearms instructors is being increased from \$25 to \$100. The Board determined that the current \$25 fee was not commensurate with the costs associated with this type of licensure. This change will affect approximately 5 persons per biannual renewal period with an estimated biannual revenue increase of \$375.

The Board is proposing to charge a \$25 armed status fee, at original licensure and renewal, to cover the costs of the additional administrative steps required in processing armed status licenses. This will affect approximately 105 new armed status applicants and 425 renewal applicants, with an estimated annual increase in revenue of \$13,250.

Renewal fees for contract security companies, proprietary security organizations and electronic security companies are being reduced from \$120 to \$100. This will affect approximately 115 companies annually, with an estimated decrease in revenue of \$2,300. Renewal fees for private investigators are being reduced from \$120 to \$100, and will affect approximately 191 licensees and result in a \$3,820 decrease in annual revenue. Renewal fees for resident managers and qualifying agents are being reduced from \$120 to \$75, and will affect approximately 120 persons and result in a \$5,400 reduction in annual revenue. Renewal fees for private investigator trainees are being reduced from \$120 to \$45, and will affect approximately 16 licensees, resulting in an annual revenue reduction of \$1,200.

Fees for license history and verification, changes of employer, address or name, licensee lists for continuing education purposes, and document copies will now be included in the fee schedule. The Board office has always provided these services upon request, and charged for such services, but had never delineated the specific costs in rule. It is reasonable and necessary to include these fees in the rule to provide licensees and the public clear notice of the available services and the associated costs.

In order to comply with the requirements of 37-60-202(5), MCA, the Board is proposing to adopt a \$50 fee for applications for the certification of private investigator and private security guard training programs. This new fee will affect approximately 100 courses annually and will result in an estimated \$5,000 increase in annual revenue.

The proposed fee changes will affect approximately 1,089 applicants, licensees, companies or programs, and will result in an estimated annual aggregate revenue increase of \$4,605.

NEW RULE II CURRICULUM AND STANDARDS FOR FIREARMS TRAINING COURSES (1) Certified firearms instructors shall submit course outlines for board approval. Firearms training courses must meet the objectives of firearm safety and

shooting proficiency, with emphasis on shooting distances of less than 15 yards.

(2) Firearms training courses must address the following issues:

- (a) weapon familiarization, including:
  - (i) safety levers;
  - (ii) decocking levers;
  - (iii) magazine release;
  - (iv) slide-lock release; and
  - (v) reloading;
- (b) safe handling of the weapon, emphasizing:
  - (i) negligent discharge;
  - (ii) muzzle direction;
  - (iii) dropping a weapon;
  - (iv) finger on trigger;
  - (v) proper grip;
  - (vi) sight picture;
  - (vii) proper holstering;
  - (viii) weapon retention;
  - (ix) management of malfunctions; and
  - (x) firearms in the home;
- (c) use of deadly force;
- (d) shooting judgment; and
- (e) civil and criminal liability.

(3) Demonstrated competency for both the proficiency test and the written test shall be determined by the certified firearms instructor.

AUTH: 37-60-202, MCA  
IMP: 37-60-202, 37-60-303, MCA

REASON: The Board determined it is reasonable and necessary to propose New Rule II to update the rules regarding curriculum and standards for firearms training courses. The Board has determined that the existing rules on firearms training courses are outdated and do not correspond with current standards and trends on content of such courses. The Board reviewed current industry standards and other states' requirements and is proposing New Rule II to replace the outdated rules, which are proposed for repeal.

6. The Board proposes to repeal the following rules:

8.50.425 RESIDENT MANAGER AND QUALIFYING AGENTS found at ARM page 8-1377.

AUTH: 37-60-202, MCA  
IMP: 37-60-302, MCA

REASON: This rule is proposed for repeal as the requirements for resident managers and qualifying agents are specified elsewhere in the rules. This rule is redundant and therefore unnecessary.

8.50.437 FEE SCHEDULE found at ARM page 8-1382.

AUTH: 37-1-134, 37-60-202, MCA  
IMP: 25-1-1104, 37-1-134, 37-60-304, 37-60-312, MCA

REASON: It is reasonable and necessary to repeal ARM 8.50.437 as it is being reorganized for clarity and replaced with New Rule I.

8.50.501 FIREARMS SAFETY AND PROFICIENCY TEST - MINIMUM REQUIREMENTS found at ARM page 8-1389.

AUTH: 37-60-202, MCA  
IMP: 37-60-202, MCA

8.50.502 REGISTRATION REQUIRED ANNUALLY found at ARM page 8-1389.

AUTH: 37-60-202, MCA  
IMP: 37-60-202, MCA

8.50.503 CRITERIA FOR A CERTIFIED SHOOTING COURSE found at ARM page 8-1389.

AUTH: 37-60-202, MCA  
IMP: 37-60-202, MCA

8.50.504 REQUIREMENTS FOR FIREARMS INSTRUCTORS' CERTIFICATION found at ARM page 8-1390.

AUTH: 37-60-202, MCA  
IMP: 37-60-202, MCA

8.50.505 EMPLOYERS' RESPONSIBILITY found at ARM page 8-1391.

AUTH: 37-60-202, MCA  
IMP: 37-60-202, MCA

8.50.506 TYPE OF FIREARM found at ARM page 8-1391.

AUTH: 37-60-202, MCA  
IMP: 37-60-405, 37-60-406, MCA

REASON: It is reasonable and necessary to repeal ARM 8.50.501 through 8.50.506 because the existing rules are outdated and do not correspond with current standards for firearms training courses. The Board reviewed the existing rules and decided to review and redraft the firearms training course requirements in their entirety, which are proposed as New Rule II in this notice.

7. The remainder of the Board of Private Security Patrol Officers and Investigators rules not being amended and

transferred or repealed at this time will be renumbered and transferred when final action is taken on the proposed rule amendments, new rule adoptions and rule repeals.

8. 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 Sandy Matule, Board of Private Security Patrol Officers and Investigators, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdpssp@mt.gov](mailto:dlibsdpssp@mt.gov) and must be received no later than 5:00 p.m., May 27, 2005.

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

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

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

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

BOARD OF PRIVATE SECURITY PATROL  
OFFICERS AND INVESTIGATORS  
RAY MURRAY, PhD, CHAIRPERSON

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State, April 18, 2005.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.207.517 ) ON PROPOSED AMENDMENT  
and ARM 24.207.518 pertaining )  
to trainee and mentor )  
requirements )

TO: All Concerned Persons

1. On May 24, 2005, at 9:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Barb McAlmond no later than 5:00 p.m., May 18, 2005, to advise us of the nature of the accommodation you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsrea@mt.gov.

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

24.207.517 TRAINEE REQUIREMENTS (1) through (9) remain the same.

(10) A trainee shall perform qualifying experience within Montana ~~and within a 100 mile radius of the mentor's business address for residential appraisals. A trainee is not geographically limited for non residential assignments in Montana.~~

(11) remains the same.

AUTH: 37-1-131, 37-54-105, MCA  
IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: The Board of Real Estate Appraisers finds it reasonably necessary to propose this amendment at this time to address specific concerns raised by the 2005 Legislature. This amendment is intended to eliminate the specific mileage limitation on performing appraisal assignments currently placed on the trainee. This amendment will allow trainees to complete their qualifying experience in Montana and not limit it to a specific distance from a mentor's business address.

Trainees are allowed to conduct appraisals anywhere and of any level their mentor is competent to complete.

24.207.518 MENTOR REQUIREMENTS (1) through (1)(g) remain the same.

(h) inspect the first 100 properties with each trainee under the mentor's supervision; ~~and~~

(i) be limited to mentoring a total of ~~two~~ three trainees at any particular time; ~~and~~

(j) be limited to mentoring trainees in geographic areas where the mentor is competent to perform appraisals.

(2) remains the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, 37-54-416, MCA

REASON: This amendment allows a qualified mentor to supervise up to three trainees at a time. This number mimics the guidelines established by the Appraisal Qualifications Board. The AQB establishes guidelines and requirements states must follow to remain in compliance with Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Removing the mileage limitation on the appraisals conducted by a trainee under a mentor and shifting the responsibility to the mentor's competence rather than geographic area better reflects the true intent of the requirement. Mentors must determine if they are competent to perform appraisals in a geographic area before they can supervise a trainee performing the appraisal assignment.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Barb McAlmond, Board of Real Estate Appraisers, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323 or by e-mail to [dlibsrea@mt.gov](mailto:dlibsrea@mt.gov) and must be received no later than 5:00 p.m., June 1, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Program's site on the World Wide Web at <http://www.realestateappraiser.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a

person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to [dlibsarea@mt.gov](mailto:dlibsarea@mt.gov) or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF REAL ESTATE APPRAISERS  
TIM MOORE, CHAIRPERSON

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State April 18, 2005

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

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

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 23, 2005, at 1:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed 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 May 9, 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.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)  
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) through (e) remain the same.

(f) "Resource based relative value scale (RBRVS)" means the most current version of the medicare resource based relative value scale contained in the physicians' medicare fee schedule adopted by the centers for medicare and medicaid services (CMS) of the U.S. department of health and human services and published at in the 69 Federal Register annually 66235 (November 15, 2004), effective January 1, ~~2004~~ 2005 which is adopted and incorporated by reference. A copy of the medicare fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(g) and (h) remain the same.

(2) through (2)(s) remain the same.

(3) Except as set forth in (8), (9), (10) and (11) the fee for a covered service provided by any of the provider types specified in (2) is determined by multiplying the RVUs determined in accordance with (7) by the conversion factor,

which is required to achieve the overall budget appropriation listed under ~~(4)~~, for physician services in House Bill 2 of the 2005 legislative session (the General Appropriations Act of 2005) and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (4) or (5), if any.

~~(4) Fees will be set to achieve the following budget appropriations:~~

~~(a) for state fiscal year 1998, no less than 85% of and no more than 140% of the medicaid fee for that procedure in state fiscal year 1997;~~

~~(b) for state fiscal year 1999, no less than 80% of and no more than 145% of the medicaid fee for that procedure in state fiscal year 1997;~~

~~(c) for state fiscal year 2000:~~

~~(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 1999 shall be frozen at that level;~~

~~(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 1999 shall receive a 1% increase in provider fees.~~

~~(d) for state fiscal year 2001:~~

~~(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 1999 shall be frozen at that level;~~

~~(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2000 shall receive a 1% increase in provider fees.~~

~~(e) for state fiscal year 2002:~~

~~(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 2001 shall be frozen at that level;~~

~~(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2001 shall receive a 2.3% increase in provider fees.~~

~~(f) for state fiscal year 2003:~~

~~(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 2001 shall be frozen at that level less 2.6%;~~

~~(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2002 shall be frozen at their state fiscal year 2002 levels, less 2.6%.~~

~~(g) effective state fiscal year 2004, all codes will be paid at the federal RVUs without being frozen at any level;~~

~~(h) for state fiscal year 2005, no rate increase or decrease is allocated and fees will be budget neutral.~~

(4) The reimbursement increases will be effective as follows:

(a) On July 1, 2005:

(i) \$1,233,000 will be applied to maternity related services;

(ii) \$3,448,000 will be applied to physician related services, that is, those procedures priced by RBRVS and performed by a physician, mid-level practitioner, podiatrist, independent diagnostic testing facility (IDTF), or public health clinic.

(b) On January 1, 2006, \$324,500 additional total funds will be applied to well child preventive visits.

(c) Policy adjustors will be used to accomplish the funding allocations in (4)(a) and (b).

~~(5) Subject to funding,~~ A policy adjustor of up to 10% may be applied to ~~maternity related services and~~ family planning services.

(a) The department's list of specific maternity related services and family planning services as amended through January 1, 2005 ~~July 1, 1997~~ is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) through (7) remain the same.

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

(a) remains the same.

(b) For state fiscal year ~~2005~~ 2006, the "by-report" rate is ~~45%~~ 43% of the provider's usual and customary charges.

(9) through (11)(d)(ii) remain the same.

(12) Subject to the provisions of (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) through (a)(ii) remain the same.

(iii) The department's list of the specific percents for the modifiers used by medicaid as amended through January 1, 2005 ~~July 1, 1997~~ is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) through (vi) remain the same.

(13) and (14) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

3. The Medicaid program provides medical assistance to qualified low income and disabled residents of Montana. The State of Montana and the federal government jointly fund the program. The purpose of this rule amendment is to update the Resource Based Relative Value Scale (RBRVS) fees in accordance with the most recently published relative value units (RVUs) released by Center for Medicare and Medicaid (CMS). The RVUs are backed by research done to assure services are reimbursed

appropriately. Work units, malpractice liability and office/facility practice expenses are included in the RVU calculation.

The RBRVS administrative rule is updated annually to incorporate the updated RVUs and legislative appropriation. Leaving the rule unchanged would mean that the payment systems utilized for Medicare and Medicaid would no longer be synchronized, which would create difficulties and confusion for health care providers. Medicare is the de facto benchmark system for RBRVS provider payments, with the result that when Medicare makes RVU changes, related systems such as Montana Medicaid do as well.

As of April 7, 2005 the Legislature's general appropriation bill includes additional total funds for reimbursement as follows:

- \$1,233,000 will be applied to maternity related services as of July 1, 2005
- \$3,448,000 will be applied to physician related services as of July 1, 2005
- \$324,500 will be applied to well child preventive visits as of January 1, 2006

Additional total funds means both state and federal medicaid funds. All the reimbursement increases will be applied to physician related services that are reimbursed via the RBRVS methodology. Physician related services are those provided by physicians, mid-level practitioners, podiatrists, independent diagnostic testing facilities (IDTFs) and public health clinics.

To date, the budget impact is expected to be additional funds of \$5,005,000. The proposed amendment impacts approximately 83,500 clients and 6,000 RBRVS providers.

Until the adjournment of the 2005 Legislative session, this information is subject to change.

4. The Department intends to make these rule changes effective July 1, 2005 to comply with the legislative directives for maintaining funding of some services and funding increases for physician related services, maternity related services and well child visit benefits. The legislative funding increases for maternity related services and physician related services will be available July 1, 2005. The legislative funding increase for well child visit benefits will be available January 1, 2006.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 26, 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.

Russ Cater  
Rule Reviewer

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

Certified to the Secretary of State, April 18, 2005

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of new rules I and II and the	)	ON PROPOSED ADOPTION AND
amendment of ARM 37.40.302,	)	AMENDMENT
37.40.307, 37.40.330 and	)	
37.40.361 pertaining to	)	
nursing facility	)	
reimbursement	)	

TO: All Interested Persons

1. On May 18, 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 adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 9, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I NURSING FACILITY SERVICES (1) Nursing facility services are provided in accordance with 42 CFR, part 483, subpart B, or intermediate care facility services for the mentally retarded provided in accordance with 42 CFR, part 483, subpart I. The department adopts and incorporates by reference 42 CFR, part 483, subparts B and I, that define the participation requirements for nursing facility and intermediate care facility for the mentally retarded (ICF/MR) providers, copies of which may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(2) The term "nursing facility services" includes the term "long term care facility services".

(3) Nursing facility services include, but are not limited to:

- (a) a medically necessary room;
- (b) dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet;
- (c) nursing services;
- (d) minor medical and surgical supplies; and

(e) the use of equipment and facilities.

(4) Payment for the services listed in these rules are included in the per diem rate determined by the department under ARM 37.40.307 or 37.40.336 and no additional reimbursement is provided for such services.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

RULE II NURSING FACILITY SERVICES: REIMBURSABLE SERVICES

(1) Nursing facility services include but are not limited to the following or any similar items:

(a) all general nursing services, including but not limited to administration of oxygen and medications, handfeeding, incontinence care, tray service, nursing rehabilitation services, enemas, and routine pressure sore/decubitis treatment;

(b) services necessary to provide for residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life;

(c) services required to attain or maintain the highest practicable physical, mental, and psychosocial well being of each medicaid recipient who is a resident in the facility;

(d) items furnished routinely to all residents without charge, such as resident gowns, water pitchers, basins and bed pans;

(e) items routinely provided to residents including but not limited to:

(i) antibacterial/bacteriostatic solutions, including betadine, hydrogen peroxide, 70% alcohol, merthiolate, zepherin solution;

(ii) cotton;

(iii) denture cups;

(iv) deodorizers (room-type);

(v) distilled water;

(vi) enema equipment and/or solutions;

(vii) facial tissues and paper toweling;

(viii) finger cots;

(ix) first aid supplies;

(x) foot soaks;

(xi) gloves (sterile and unsterile);

(xii) hot water bottles;

(xiii) hypodermic needles (disposable and nondisposable);

(xiv) ice bags;

(xv) incontinence pads;

(xvi) linens for bed and bathing;

(xvii) lotions (for general skin care);

(xviii) medication-dispensing cups and envelopes;

(xix) ointments for general protective skin care;

(xx) ointments (antibacterial);

(xxi) personal hygiene items and services, including but not limited to:

(A) bathing items and services, including but not limited to towels, washcloths and soap;

(B) hair care and hygiene items, including but not limited to shampoo, brush and comb;

(C) incontinence care and supplies appropriate for the resident's individual medical needs;

(D) miscellaneous items and services, including but not limited to cotton balls and swabs, deodorant, hospital gowns, sanitary napkins and related supplies, and tissues;

(E) nail care and hygiene items;

(F) shaving items, including but not limited to razors and shaving creme;

(G) skin care and hygiene items, including but not limited to bath soap, moisturizing lotion, and disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection; and

(H) tooth and denture care items and services, including but not limited to toothpaste, toothbrush, floss, denture cleaner and adhesive;

(xxii) safety pins;

(xxiii) sterile water and normal saline for irrigating;

(xxiv) sheepskins and other fleece-type pads;

(xxv) soaps (hand or bacteriostatic);

(xxvi) supplies necessary to maintain infection control, including those required for isolation-type services;

(xxvii) surgical dressings;

(xxviii) surgical tape;

(xxix) over-the-counter drugs (or their equivalents), including but not limited to:

(A) acetaminophen (regular and extra-strength);

(B) aspirin (regular and extra-strength);

(C) cough syrups;

(D) specific therapeutic classes D4B (antacids), D6S (laxatives and cathartics) and Q3S (laxatives, local/rectal) including but not limited to:

(I) milk of magnesia;

(II) mineral oil;

(III) suppositories for evacuation (dulcolax and glycerine);

(IV) maalox; and

(V) mylanta;

(E) nasal decongestants and antihistamines;

(xxx) straw/tubes for drinking;

(xxxii) suture removal kits;

(xxxiii) swabs (including alcohol swab);

(xxxiiii) syringes (disposable or nondisposable hypodermic; insulin; irrigating);

(xxxv) thermometers, clinical;

(xxxvi) tongue blades;

(xxxvii) water pitchers;

(xxxviii) waste bags;

(xxxix) wound-cleansing beads or paste;

(f) items used by individual residents which are reusable and expected to be available, including but not limited to:

(i) bathtub accessories (seat, stool, rail);

(ii) beds, mattresses, and bedside furniture;

- (iii) bedboards, foot boards, cradles;
- (iv) bedside equipment, including bedpans, urinals, emesis basins, water pitchers, serving trays;
- (v) bedside safety rails;
- (vi) blood-glucose testing equipment;
- (vii) blood pressure equipment, including stethoscope;
- (viii) canes, crutches;
- (ix) cervical collars;
- (x) commode chairs;
- (xi) enteral feeding pumps;
- (xii) geriatric chairs;
- (xiii) heat lamps, including infrared lamps;
- (xiv) humidifiers;
- (xv) isolation cart;
- (xvi) IV poles;
- (xvii) mattress (foam-type and water);
- (xviii) patient lift apparatus;
- (xix) physical examination equipment;
- (xx) postural drainage board;
- (xxi) room (private or double occupancy as provided in ARM 37.40.331);
- (xxii) raised toilet seat;
- (xxiii) sitz baths;
- (xxiv) suction machines;
- (xxv) tourniquets;
- (xxvi) traction equipment;
- (xxvii) trapeze bars;
- (xxviii) vaporizers, steam-type;
- (xxix) walkers (regular and wheeled);
- (xxx) wheelchairs (standard); and
- (xxxi) whirlpool bath;
- (g) laundry services whether provided by the facility or by a hired firm, except for residents' personal clothing which is dry cleaned outside of the facility; and
- (h) nonemergency routine transportation as defined in ARM 37.40.302(11).

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

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

37.40.302 DEFINITIONS Unless the context requires otherwise in this subchapter, the following definitions apply:

(1) through (12) remain the same.

(13) "Nursing facility services" means nursing facility services as provided in [Rules I and II]. ~~accordance with 42 CFR, part 483, subpart B, or intermediate care facility services for the mentally retarded provided in accordance with 42 CFR, part 483, subpart I. The department hereby adopts and incorporates herein by reference 42 CFR, part 483, subparts B and I, which define the participation requirements for nursing~~

~~facility and intermediate care facility for the mentally retarded (ICF/MR) providers, copies of which may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210. The term "nursing facility services" includes the term "long term care facility services". Nursing facility services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Payment for the services listed in this subsection is included in the per diem rate determined by the department under ARM 37.40.307 or 37.40.336 and no additional reimbursement is provided for such services. Nursing facility services include but are not limited to the following or any similar items:~~

~~(a) all general nursing services, including but not limited to administration of oxygen and medications, handfeeding, incontinence care, tray service, nursing rehabilitation services, enemas, and routine pressure sore/decubitis treatment;~~

~~(b) services necessary to provide for residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life;~~

~~(c) services required to attain or maintain the highest practicable physical, mental, and psychosocial well being of each medicaid recipient who is a resident in the facility;~~

~~(d) items furnished routinely to all residents without charge, such as resident gowns, water pitchers, basins and bed pans;~~

~~(e) items routinely provided to residents including but not limited to:~~

~~(i) anti bacterial/bacteriostatic solutions, including betadine, hydrogen peroxide, 70% alcohol, merthiolate, zepherin solution;~~

~~(ii) cotton;~~

~~(iii) denture cups;~~

~~(iv) deodorizers (room type);~~

~~(v) distilled water;~~

~~(vi) enema equipment and/or solutions;~~

~~(vii) facial tissues and paper toweling;~~

~~(viii) finger cots;~~

~~(ix) first aid supplies;~~

~~(x) foot soaks;~~

~~(xi) gloves (sterile and unsterile);~~

~~(xii) hot water bottles;~~

~~(xiii) hypodermic needles (disposable and non disposable);~~

~~(xiv) ice bags;~~

~~(xv) incontinence pads;~~

~~(xvi) linens for bed and bathing;~~

~~(xvii) lotions (for general skin care);~~

~~(xviii) medication dispensing cups and envelopes;~~

~~(xix) ointments for general protective skin care;~~

~~(xx) ointments (anti bacterial);~~

- ~~(xxi) personal hygiene items and services, including but not limited to:~~
  - ~~(A) bathing items and services, including but not limited to towels, washcloths and soap;~~
  - ~~(B) hair care and hygiene items, including but not limited to shampoo, brush and comb;~~
  - ~~(C) incontinence care and supplies appropriate for the resident's individual medical needs;~~
  - ~~(D) miscellaneous items and services, including but not limited to cotton balls and swabs, deodorant, hospital gowns, sanitary napkins and related supplies, and tissues;~~
  - ~~(E) nail care and hygiene items;~~
  - ~~(F) shaving items, including but not limited to razors and shaving creme;~~
  - ~~(G) skin care and hygiene items, including but not limited to bath soap, moisturizing lotion, and disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection; and~~
  - ~~(H) tooth and denture care items and services, including but not limited to toothpaste, toothbrush, floss, denture cleaner and adhesive;~~
- ~~(xxii) safety pins;~~
- ~~(xxiii) sterile water and normal saline for irrigating;~~
- ~~(xxiv) sheepskins and other fleeee type pads;~~
- ~~(xxv) soaps (hand or bacteriostatic);~~
- ~~(xxvi) supplies necessary to maintain infection control, including those required for isolation type services;~~
- ~~(xxvii) surgical dressings;~~
- ~~(xxviii) surgical tape;~~
- ~~(xxix) over the counter drugs (or their equivalents), including but not limited to:~~
  - ~~(A) acetaminophen (regular and extra strength);~~
  - ~~(B) aspirin (regular and extra strength);~~
  - ~~(C) cough syrups;~~
  - ~~(D) specific therapeutic classes D4B (antacids), D6S (laxatives and cathartics) and Q3S (laxatives, local/rectal) including but not limited to:~~
    - ~~(I) milk of magnesia;~~
    - ~~(II) mineral oil;~~
    - ~~(III) suppositories for evacuation (dulcolax and glycerine);~~
    - ~~(IV) maalox; and~~
    - ~~(V) mylanta;~~
    - ~~(E) nasal decongestants and antihistamines;~~
- ~~(xxx) straw/tubes for drinking;~~
- ~~(xxxii) suture removal kits;~~
- ~~(xxxiii) swabs (including alcohol swab);~~
- ~~(xxxiiii) syringes (disposable or non disposable hypodermic; insulin; irrigating);~~
- ~~(xxxv) thermometers, clinical;~~
- ~~(xxxvi) tongue blades;~~
- ~~(xxxvii) water pitchers;~~
- ~~(xxxviii) waste bags;~~
- ~~(xxxviiii) wound cleansing beads or paste;~~

- ~~(f) items used by individual residents which are reusable and expected to be available, including but not limited to:~~
- ~~(i) bathtub accessories (seat, stool, rail);~~
  - ~~(ii) beds, mattresses, and bedside furniture;~~
  - ~~(iii) bedboards, foot boards, cradles;~~
  - ~~(iv) bedside equipment, including bedpans, urinals, emesis basins, water pitchers, serving trays;~~
  - ~~(v) bedside safety rails;~~
  - ~~(vi) blood glucose testing equipment;~~
  - ~~(vii) blood pressure equipment, including stethoscope;~~
  - ~~(viii) canes, crutches;~~
  - ~~(ix) cervical collars;~~
  - ~~(x) commode chairs;~~
  - ~~(xi) enteral feeding pumps;~~
  - ~~(xii) geriatric chairs;~~
  - ~~(xiii) heat lamps, including infrared lamps;~~
  - ~~(xiv) humidifiers;~~
  - ~~(xv) isolation cart;~~
  - ~~(xvi) IV poles;~~
  - ~~(xvii) mattress (foam type and water);~~
  - ~~(xviii) patient lift apparatus;~~
  - ~~(xix) physical examination equipment;~~
  - ~~(xx) postural drainage board;~~
  - ~~(xxi) room (private or double occupancy as provided in ARM 37.40.331);~~
  - ~~(xxii) raised toilet seat;~~
  - ~~(xxiii) sitz baths;~~
  - ~~(xxiv) suction machines;~~
  - ~~(xxv) tourniquets;~~
  - ~~(xxvi) traction equipment;~~
  - ~~(xxvii) trapeze bars;~~
  - ~~(xxviii) vaporizers, steam type;~~
  - ~~(xxix) walkers (regular and wheeled);~~
  - ~~(xxx) wheelchairs (standard);~~
  - ~~(xxxi) whirlpool bath;~~
- ~~(g) laundry services whether provided by the facility or by a hired firm, except for residents' personal clothing which is dry cleaned outside of the facility; and~~
- ~~(h) nonemergency routine transportation as defined in (11).~~

(14) through (16) remain the same.

(17) "Rate year" means a 12-month period beginning July 1. For example, rate year ~~2004~~ 2006 means a period corresponding to the state fiscal year July 1, ~~2003~~ 2005 through June 30, ~~2004~~ 2006.

(18) through (20) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price-based

reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain the same.

(d) The total payment rate available for the period July 1, ~~2001~~ 2005 through June 30, ~~2002~~ 2006 will be the rate as computed in (5), plus any additional amount computed in ARM 37.40.311.

(3) ~~For providers~~ Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, 2005 ~~2001~~ ~~for this transition year~~. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

AUTH: Sec. 53-6-113, MCA

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

37.40.330 SEPARATELY BILLABLE ITEMS (1) In addition to the amount payable under the provisions of ARM 37.40.307(1) or (4), the department will reimburse nursing facilities located in the state of Montana for the following separately billable items. Refer to the department's nursing facility fee schedule for specific codes and refer to healthcare common procedure coding system (HCPCS) coding manuals for complete descriptions of codes:

(a) through (aw) remain the same.

(ax) ~~effective October 1, 1989~~, oxygen concentrators and portable oxygen units (cart, E tank and regulators), if prior authorized by the department.

(i) through (6) remain the same.

(7) Nonemergency routine transportation for activities other than those described in ARM 37.40.302~~(12)~~(11), may be billed separately in accordance with department rules applicable to such services. Emergency transportation may be billed separately by an ambulance service in accordance with department rules applicable to such services.

(8) through (10) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) Effective for the period July 1, ~~2001~~ 2005 and every six months thereafter, nursing facilities must report to the department entry level and average hourly wage and benefit rates paid for direct care workers. The reported data shall be used by the department for the purpose of comparing rates of pay for comparable services. ~~There will be no separate per day add on computed for direct~~

~~care wages after June 30, 2001.~~

(2) The department will pay medicaid certified nursing care facilities located in Montana that submit an approved request to the department, a per day add-on payment in addition to the amount paid as provided in (1) as an add-on to their computed medicaid payment rate to be used only for wage and benefit increases for direct care workers in nursing facilities.

(a) The department will determine a per day add-on payment, commencing July 1, 2005 and at the beginning of each state fiscal year thereafter, as a pro rata share of appropriated funds allocated for increases in direct care wages and benefits.

(b) To receive the direct care add-on, a nursing facility shall submit for approval a request form to the department stating how the direct care add-on will be spent in the facility. The facility shall submit all of the information required on a form to be developed by the department in order to continue to receive the additional add-on amount for the entire rate year. The form will request information including but not limited to:

(i) the number of full-time employees employed by category of authorized direct care worker that will receive the benefit of the increased funds;

(ii) the current per hour rate of pay with benefits for each category of worker;

(iii) the projected per hour rate of pay with benefits after the direct wage increase has been implemented;

(iv) the number of staff receiving a wage or benefit increase by category of worker, effective date of implementation of the increase in wage and benefit; and

(vi) the number of projected hours to be worked in the budget period.

(c) A facility that does not submit a qualifying request for use of the funds distributed under (2) includes all of the information requested by the department, within the time established by the department, or a facility that does not wish to participate in this additional funding amount shall not be entitled to their share of the funds available for wage and benefit increases for direct care workers.

(d) The department shall make retroactive adjustment to the payment rate established on July 1, 2005 that will reduce the medicaid per day payment amount by the amount of funds that have been designated for the direct care wage add-on for any nonparticipating or nonqualifying facility. Any amount paid by the department up to that time for the direct care wage add-on shall be recovered by the department.

(3) A facility that receives funds under this rule must maintain appropriate records documenting the expenditure of the funds. This documentation must be maintained and made available to authorized governmental entities and their agents to the same extent as other required records and documentation under applicable medicaid record requirements, including but not limited to the provisions of ARM 37.40.345, 37.40.346 and 37.85.414.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

4. The Department of Public Health and Human Services (the Department) is proposing the amendment of ARM 37.40.301, 37.40.307, 37.40.330 and 37.40.361 pertaining to Medicaid reimbursement of nursing facilities. These amendments are necessary to implement legislative funding for nursing facility reimbursement and add-on payments for direct care worker salary and benefit increases for state fiscal year 2006 as mandated by the current version of House Bill 2 before the 2005 Montana Legislature. The rate increases and add-on payments are necessary to maintain the availability of nursing facility services, especially in the rural communities of Montana. Nursing facilities continue to be faced with declining resident populations and an increasing need for care because residents are older and more medically fragile. These trends increase costs of nursing facility services. If Medicaid reimbursement rates do not keep pace with costs, some facilities may not be able to provide services to Medicaid recipients. The Department does not have available, at the time of publication, all of the information necessary establish final payment rates for nursing facility providers effective July 1, 2005. The final rates will be dependent on the funding levels authorized by the 2005 Montana legislature.

The Department will provide rate sheets to all providers in advance of the rule hearing, for verification purposes and in order to facilitate comments, when final case mix information and Medicaid utilization data and other details necessary to compute accurate reimbursement rates become available. These sheets will distribute the funding available in order to meet the Department goals for a price based system of reimbursement and will incorporate legislative appropriated funding levels.

House Bill 2 appropriations by the 2005 Montana Legislature authorized the Department to distribute to facilities an additional amount for wage and benefit increases for direct care workers in nursing facilities.

The Department will require that nursing facilities provide documentation showing that the funds appropriated for that purpose are used solely for direct care worker wage increases. The documentation will include initial wage rates, wage rates after the rate increases have been applied and wage rates every six months after the rate increases have been granted. The legislature intends that the direct care salaries be raised 75 cents an hour and that benefits be raised 26 cents an hour. Not all providers or types of direct care workers must receive the same rate increase. If the appropriation is insufficient to cover the full amount of intended increases, the lowest paid direct care worker wage rates will be increased first. These funds will be distributed in the form of a direct care wage add-

on to the established price based rate set on July 1, 2005.

If funding levels are not sufficient to continue a price based nursing facility reimbursement approach, the Department will be faced with the following issues. Statewide occupancy rates are currently at 76% in Montana nursing facilities. At the same time, the care needs of a typical nursing facility resident are increasing. Residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As the trends toward lower occupancy and increased acuity of care continue, it becomes more important that nursing facility providers receive rate increases that are reflective of the increased cost of doing business. If Medicaid rates do not stabilize, small rural providers of nursing facility services will find it more difficult to keep their doors open. Decreasing occupancy levels and the inability to predict the level of funding that may be available will make it difficult to determine the best way to provide nursing facility services in rural communities. Increased costs due to lower occupancy levels and unpredictability in the system of reimbursement are likely to be passed on to privately paying individuals.

Funding from voter initiative 149 (I-149) tobacco tax revenue will provide funding for a 3% rate increase for nursing facility providers, as well as funding for nursing facility direct care wages for FY 2006 of \$.16 an hour plus benefits. Funds have been approved from I-149 and general fund revenues to provide for additional direct care wages for nursing facilities up to \$1.00 per hour. If approved by the Legislature, HB 749 will increase the nursing facility provider tax assessed on occupied nursing facility beds from \$5.30 to \$7.05 in 2006 to provide additional state special revenue that can be utilized to fund nursing facility rate increases above the direct care wages and the 3% provider rate increase.

Additionally, the legislature continues to approve the use of local county matching funds as a source of additional revenue for nursing facility providers in order to maintain access to, and the quality of, nursing facility services.

Price Based System:

For rate year 2006 (July 1, 2005 - June 30, 2006) the nursing facility per diem rate will be computed as follows:

- (1) Medicaid per diem rates will be established annually each July 1st.
- (2) The minimum data set (MDS) case mix assessment data will be used in the computation of each facility's resident acuity. Each nursing facility's case mix index will be calculated quarterly based upon a set point in

time, using the most recent annual or quarterly MDS information. Nonclassifiable MDS assessment will be excluded from the computation of case mix indexes during the transition period. Medicaid case mix for annual rate setting will be based on the most recent 4 quarter average of Medicaid CMIs for each nursing facility.

New Rules I and II

The Department is taking this opportunity to move the list of nursing facility services, ARM 37.40.302(13), from the reimbursement rule to two separate new rules. This should make both rules easier to read and use. No policy change is intended by the Department.

Price based rate increase:

Funding from I-149 tobacco tax initiative provides funding for a 3% rate increase for nursing facility providers on the state and federal share of the funding for nursing facility reimbursement. If approved by the Legislature HB 749 will increase the nursing facility provider tax assessed on occupied nursing facility beds from \$5.30 to \$7.05 in 2006 to provide additional state special revenue that can be utilized to fund nursing facility rate increases above the direct care wages and the 3% provider rate increase for fiscal year 2006.

Additional Payments for Direct Care Wage and Benefit Increases:

Funding from I-149 tobacco tax increases appropriated by the 2005 Montana legislature in the amount of \$1,400,198 in total funds would authorize the Department to distribute to nursing facilities a direct care wage increase of \$.16 plus benefits.

Additional funding above the executive budget is estimated in the amount of \$5,179,679 and would authorize the Department to distribute an additional amount for direct care wage and benefit increase of up to \$1.00 per hour to nursing facility providers.

These funds will be distributed in the form of a direct care wage add-on to the established price based rate set on July 1, 2005.

Estimated Financial and Budget Effects:

These proposed rule changes are necessary to implement legislative funding for nursing facility reimbursement for state fiscal year 2006. The legislature has tentatively provided for rate increases in FY 2006 through increases in provider taxes, direct care worker wage and benefit increases and a 3% overall reimbursement rate increase for nursing facilities. The total state and federal funding available for fiscal year 2006 is currently projected at \$141,183,342, which includes \$11,949,470 in additional state special and federal revenue that would be

provided by the increase in the nursing facility provider tax from the \$5.30 amount to \$7.05, an increase of \$1.75 per day in FY 2006. The estimated total funding available for fiscal year 2006 for nursing facility reimbursement is estimated at approximately \$170,633,780 of combined state funds, federal funds and patient contributions. Appropriated days for state fiscal year 2006 are estimated at 1,219,985 using legislative fiscal division estimates of caseload adopted by the legislature.

The estimated financial impact of the proposed provider funding increases is approximately \$20,617,708 in additional state revenue and federal funds in fiscal year 2006 over the FY 2005 appropriated level.

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. There are 93 nursing facilities in the State of Montana that will be affected by this rule change and approximately 5,200 medicaid recipients.

5. The Department intends to make these rule changes effective July 1, 2005. The legislative funding increases will be available July 1, 2005, to allow the increases in reimbursement that are being proposed for fiscal year 2006. This date is necessary to comply with legislative intent.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 26, 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.

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

Ellie Parker  
Rule Reviewer

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

Certified to the Secretary of State, April 18, 2005

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of new Rules I through X (ARM )  
2.18.1930 through 2.18.1934 )  
and 2.18.1937 through )  
2.18.1941) pertaining to the )  
State of Montana Voluntary )  
Employees' Beneficiary )  
Association )

TO: All Concerned Persons

1. On November 18, 2004, the Department of Administration published MAR Notice Number 2-2-349 regarding the proposed adoption of new rules pertaining to the State of Montana Voluntary Employees' Beneficiary Association at page 2779 of the 2004 Montana Administrative Register, issue number 22.

2. The Department has adopted Rule I (ARM 2.18.1930), Rule II (ARM 2.18.1931), Rule III (ARM 2.18.1932), Rule VI (ARM 2.18.1937), Rule VIII (ARM 2.18.1939), Rule IX (ARM 2.18.1940), and Rule X (ARM 2.18.1941) as proposed.

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

Rule IV (2.18.1933) MONTANA VEBA HRA ADMINISTRATION

(1) ~~Employers must allow the department to make educational presentations about Montana VEBA HRA to employees. The department shall provide educational presentations about the Montana VEBA HRA upon request.~~

(2) through (9) remain as proposed.

AUTH: Sec. 2-18-1305, MCA  
IMP: Sec. 2-18-1302, MCA

Rule V (2.18.1934) FEES

(1) remains as proposed.

(2) Members shall pay a monthly administration fee, plus a ~~percent~~ percentage of the monthly HRA administration expenses as determined by the department. The fee will start when their accounts are established and continue until the account has a zero balance.

AUTH: Sec. 2-18-1305, MCA  
IMP: Sec. 2-18-1302, MCA

Rule VII (2.18.1938) ELECTIONS

(1) through (4) remain as proposed.

(5) ~~All elections shall be conducted by secret ballot. Employers must make a reasonable effort when conducting an~~

election to maintain the privacy of each individual ballot. Employers also must include provisions for absentee voting for those employees not present during an election.

(6) remains as proposed.

(7) Members of a VEBA group may hold an annual election to determine whether or not they will continue their participation in the Montana VEBA HRA if at least 25% of the members of the VEBA group request an election.

(a) through (c) remain as proposed.

(8) The effective date of the VEBA group must begin no later than 30 days following completion of the vote and announcement of the election outcome which creates the VEBA group.

AUTH: Sec. 2-18-1305, MCA

IMP: Sec. 2-18-1302, MCA

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

Comment #1: Regarding Rule VII(7), how may a VEBA group determine whether an election would be held or not? Rule VII(2) discusses 25% of the employees requesting an election. Once a group is formed, the rule does not address how another election would be determined to be necessary.

Response: The Department agrees and has amended Rule VII (ARM 2.18.1938(7)) as indicated above.

Comment #2: One comment expressed concern regarding VEBA participation being mandatory. "We do not want to be forced into a program that isn't a benefit to us."

Response: Thank you for your comments regarding participation. However, the IRS statute that the Department operates under does not allow for individual choice.

Comment #3: I am positive in support of the VEBA and feel the program will discourage people from using their sick-leave unnecessarily and will be a great way to keep up with medical bills after retirement.

Response: Thank you. As you have no doubt read in current news, post-retirement healthcare costs are rising at a significant rate. The VEBA is just one way in which the State of Montana can assist their employees with these costs.

Comment #4: Rule V(2) states, "Members shall pay a monthly administration fee, plus a 'PERCENT' of the..."

Response: The Department agrees and has amended Rule V (ARM 2.18.1934(2)) as indicated above.

Comment #5: One comment expressed concern about "all employees in a group being required to be VEBA participants." Also, had the understanding that fees would be assessed before a balance was created in their account. As a part-time employee, I have concerns.

Response: When an employee group votes to become members in the VEBA, no fees are paid until individual accounts are established. At this point, an individual's sick leave cash out balance transfers to a VEBA account. As provided in 2-18-1311, MCA, there are circumstances which also trigger creation of VEBA accounts. With regards to part-time State of Montana employees, the VEBA will not be available as an option unless a State employee works 20 hours or more per week, earns state share, and contributes to the MPERA retirement system.

Comment #6: One comment expressed concern regarding Rule IV(1), where it states "employers MUST allow the department to make education presentations."

Response: The Department agrees with these concerns and has amended Rule IV (ARM 2.18.1933(1)) as indicated above.

Comment #7: The Department took the safe position and did not fully educate employees on the pros and cons of existing retirement strategies vs. the VEBA.

Response: Retirement strategies for employees include not only employer sponsored options but also personal retirement options. The VEBA program is only one element of an individual's retirement plan. The Department has attempted to provide a detailed description of this and other retirement programs. This is not designed to be an entire financial planning program and individuals are encouraged to meet with their own financial advisor to consider all options available to them.

Comment #8: What about GABA and its consideration on the last 36 months of pay?

Response: The Department considered GABA and has worked with MPERA to provide general information about the impact of a VEBA program. On a case-by-case basis, MPERA will assist members in their own personal calculations to determine the impact of VEBA on their retirement.

Comment #9: Concern over the use of the word, "voluntary."

Response: The IRS code permitting the federal tax basis for this program is entitled, Voluntary Employees' Beneficiary Association. The link to the program being voluntary comes in the process of choosing to vote for or against the program.

Comment #10: Rule VI(4) pertains to employees being excluded from participation without violating the nondiscrimination provisions. The comment also addressed Defined Benefit vs. Defined Contribution plans.

Response: Rule IV(4), pertaining to non-discrimination, addresses specific IRS requirements relative to the treatment of differing categories of employees based on their employment status. The impact of VEBA on employees relative to their participation in the separate retirement programs, Defined Benefit vs. Defined Contribution, is not the topic the IRS addressed in the discussion on non-discrimination rules. Please see the response to Comment #8 above regarding why individuals need to consider VEBA and its impact on their specific circumstances.

Comment #11: In Rule VI(4), I would like to see language to allow persons to self-identify if they are eligible for benefits through the Veteran's Administration and could therefore elect not to participate even though they may meet the requirements of the VEBA group.

Response: This suggestion borders on "individual choice" as described by the IRS. The MT VEBA HRA Consultant advised the Department that if an employer has members of the group that wish to identify, they must ALL agree to be out of the VEBA. The definition of voting group must exclude all similarly situated individuals and may not permit individual choice, i.e., "opt out." The Department believes that even with Military coverage, there can often be co-payments, deductibles, office visits, vision expenses, dependant coverage premiums, Medicare Part B premiums, retiree dental premiums, etc., which are all eligible for reimbursement under the VEBA.

Comment #12: Regarding Rule VII(5), the commenter has difficulty with the language of "secret ballot." One agency encountered problems with the vote being conducted under the premise of this language.

Response: The Department agrees and has amended Rule VII (ARM 2.18.1938(5)) as indicated above.

Comment #13: One comment expressed concern regarding the use of companies from the State of Washington vs. the State of Montana businesses.

Response: The Department is required by statute to offer this benefit. Services were bid in accordance with State procurement laws. The successful bidder in the RFP process was selected from Washington. All bids were entertained.

Comment #14: One comment expressed concern regarding the notation that hours over 240 would be eligible to be

contributed to the VEBA. There was an assumption that it would automatically convert to the VEBA without input from the individual.

Response: The VEBA opportunity to cash out hours over 240 is at the direction of the individual. If the employee's employer group has agreed to the contribution method of sick leave hours in excess of 240, each employee may choose whether to convert sick leave hours to the employee's individual VEBA account or retain the hours. Employers also may establish a cap or limit on hours eligible to convert in a given period. For example, an employer may establish a cap of 100 sick leave hours converting to 25 VEBA hours over a 12-month period.

Comment #15: The rules are appropriate as proposed. We would like to be advised of any amendments or changes.

Response: Thank you and we will do so.

Comment #16: One comment expressed concern regarding mandatory group participation. This individual planned to use cash from a sick-leave payout to move.

Response: The program, as passed into law, instructs the State of Montana regarding the use of the hours, the number to be used, and how the hours are cashed out to fund the program. Those variables are not within the Department's control.

Comment #17: Regarding Rule IV(1), the Department received multiple comments expressing concern about the considerable time that passed between education sessions and a VEBA vote.

Response: The Department will work with the employer to be as efficient as possible. Educators for the VEBA program work closely with the Department to obtain answers to individual questions. Requiring information and education to be held 14 days prior to a group vote may not be possible for education efforts in larger organizations. The Department will make an effort to work with employers to establish an agreeable plan. Website access will improve the Department's communication efforts.

Comment #18: Regarding Rule VII, Elections, the Department received several comments regarding the request to have employees receive prior written notice of at least 30 days before an election is conducted, as well as a provision for absentee voting.

Response: In Rule VII(2), it is stated that, "an employer must facilitate the election within 60 calendar days from the date of the request." To address the above concern, the Department has added language as indicated above in Rule VII (ARM 2.18.1938(8)). This statement permits flexibility for

employers regarding the formation, education, and execution of the VEBA group process.

In response to the comment regarding absentee voting, the Department agrees and has amended Rule VII (ARM 2.18.1938(5)) as indicated above.

Comment #19: Regarding Rules VII(6) and VIII, would like language added to state that the VEBA group becomes effective the first full pay period 30 days following the date of the vote.

Response: The Department recognizes the need to define an effective date and has added language in Rule VII (ARM 2.18.1938(8)) as indicated above. This permits accommodation for the varying pay-cycles and employer needs. This allows the employer and the group to mutually determine an effective date that meets the needs of both sides.

BY: /s/ Dal Smilie  
Dal Smilie  
Rule Reviewer

/s/ Janet R. Kelly  
Janet R. Kelly  
Director

Certified to the Secretary of State April 18, 2005.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF DECISION ON  
amendment of ARM 8.56.602C, ) PROPOSED RULE ACTIONS  
permit examinations and the )  
proposed adoption of NEW RULES)  
I through IV pertaining to )  
radiologist assistants, scope )  
of practice, supervision, and )  
adoption of a code of ethics )

TO: All Concerned Persons

1. On November 4, 2004, the Board of Radiologic Technologists published MAR Notice No. 8-56-30 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to permit examinations, radiologist assistants, scope of practice, supervision and adoption of a code of ethics, at page 2682 of the 2004 Montana Administrative Register, issue no. 21.

2. A public hearing on the notice of the proposed amendment and adoption on the above-stated rules was held on December 7, 2004.

3. The Board of Radiologic Technologists (Board) has decided that in light of the comments made, and in light of the 2005 Legislature's enactment of House Bill 457, the Board will not amend or adopt any of these rules as currently proposed. The Board intends to revise the proposals in light of the legislation and comments, and then re-notice the new proposals through the formal rulemaking process.

4. The Board also notes that subsequent to publishing the notice of public hearing, it transferred its administrative rules from ARM Title 8, chapter 56 to ARM Title 24, chapter 204. Notice of the transfer was published on December 16, 2004, at page 3033 of the 2004 Montana Administrative Register, issue no. 24.

BOARD OF RADIOLOGIC TECHNOLOGISTS  
JOHN ROSENBAUM, CHAIRPERSON

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State April 18, 2005.

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.147.1101 crematory ) AND REPEAL  
facility regulation, and repeal of )  
ARM 24.147.1113 designation as )  
crematory operator or technician )

TO: All Concerned Persons

1. On February 10, 2005, the Board of Funeral Service published MAR Notice No. 24-147-31 regarding the public hearing on the proposed amendment and repeal of the above-stated rules relating to crematory facility and designation of crematory operator or technician, at page 197 of the 2005 Montana Administrative Register, issue no. 3.

2. A public hearing on the notice of proposed amendment and repeal of the above-stated rules was held on March 3, 2005. The Board did not receive any testimony or comments on ARM 24.147.1101 or ARM 24.147.1113.

3. The Board amends ARM 24.147.1101 and repeals ARM 24.147.1113 exactly as proposed.

BOARD OF FUNERAL SERVICE  
JERED SCHERER, CHAIRPERSON

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State April 18, 2005.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 24.168.401, )  
pertaining to fees )

TO: All Concerned Persons

1. On February 10, 2005, the Board of Optometry published MAR Notice No. 24-168-36 regarding the public hearing on the proposed amendment of the above-stated rule relating to fees, at page 200 of the 2005 Montana Administrative Register, issue no. 3.

2. On March 4, 2005, a public hearing on the proposed amendment of the above-stated rule was conducted in Helena. Public comments were received concerning the proposed rule changes. The Board of Optometry (Board) has thoroughly considered the comments and the Board's responses are as follows:

COMMENT 1: Two commenters objected to the proposed doubling of the annual renewal fee as a financial hardship. One commenter stated that the Board should demonstrate to licensees that all possible cost reduction measures have been taken.

RESPONSE 1: The Board is statutorily mandated to set and maintain fees that are commensurate with licensing costs of the Board. Following the budgetary review process, it was determined that unless the Board increases the fees in the amount proposed, the Board will encounter a shortage of operating funds by the 2006 licensure renewal period. The Board and Department review projected operating expenses and potential methods of cost reduction during every biannual budgetary analysis. The Board has not determined to move to a two or three year licensure renewal cycle at this time.

3. The Board has amended the rule exactly as proposed.

BOARD OF OPTOMETRY  
LARRY OBIE, CHAIRPERSON

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State April 18, 2005.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment            ) NOTICE OF AMENDMENT  
of ARM 24.207.402, regarding            )  
adoption of USPAP by reference        )

TO: All Concerned Persons

1. On January 13, 2005, the Board of Real Estate Appraisers published MAR Notice No. 24-207-22 regarding the proposed amendment of the above-stated rule relating to adoption of USPAP by reference, at page 42 of the 2005 Montana Administrative Register, issue no. 1.

2. No public hearing was contemplated or conducted. In addition, no written comments were received prior to the closing of the comment period.

3. The Board has amended ARM 24.207.402 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS  
TIM MOORE, CHAIRPERSON

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State April 18, 2005.

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

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through XIX )  
pertaining to Eligible )  
Telecommunications Carriers )

TO: All Concerned Persons

1. On November 4, 2004, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice No. 38-2-181 regarding a public hearing on the proposed adoption of New Rules I through XIX concerning eligible telecommunications carriers, at page 2697 of the 2004 Montana Administrative Register, issue number 21.

2. The PSC has adopted proposed New Rules I, II, IV, V, VI, XI, XVIII, and XIX, with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (38.5.3201) PURPOSE AND SCOPE OF RULES

(1) Federal and Montana laws include provisions that apply to commission designation of eligible telecommunications carriers and also to commission review of the status of existing eligible telecommunications carriers. The rules in this sub-chapter are minimum standards ~~additional to, supplemental to,~~ and must be read and applied in conjunction with, federal and Montana law applying to designation of eligible telecommunications carriers and maintenance of eligible telecommunications carrier status.

(2) ~~To properly process, implement, and incorporate changes in applicable federal or Montana laws, commission eligible~~ Eligible telecommunications carrier ~~proceedings will be considered on a case by case basis~~ applications will be evaluated to determine whether the commission's public interest standard is met. ~~Following proper notice and opportunity to respond, additional standards that are in accordance with federal and Montana laws governing eligible telecommunications carriers and these rules may be considered and applied in any designation and maintenance of status proceeding.~~

(3) Waiver of a rule in this sub-chapter will not be routinely granted, but may be granted, in the commission's discretion, for clearly demonstrated good cause, ~~in fact and law, particularly including upon demonstration that a change in applicable federal or Montana law was not anticipated by these rules and upon demonstration that a particular rule does not properly reflect important distinguishing features between or among certain types (e.g., incumbent, competitive, rural, nonrural, wireline, fixed wireless, mobile wireless, satellite, voice over internet protocol, cable, power line, and so forth)~~ of applicants or existing eligible telecommunications carriers.

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

NEW RULE II (38.5.3203) BURDEN IN PROCEEDINGS (1) An applicant for designation as an eligible telecommunications carrier has the burden of demonstrating in fact and law that the requirements for designation as an eligible telecommunications carrier have been met. An eligible telecommunications carrier, in any annual or other process involving certification as an eligible telecommunications carrier or maintenance of status as an eligible telecommunications carrier, has the burden of demonstrating in fact and law that the requirements for certification or maintenance of status have been met. ~~The complainant in any complaint pertaining to an eligible telecommunications carrier retaining status as an eligible telecommunications carrier has the burden to demonstrate in fact and law the status should be changed.~~

(2) Applicants in designation proceedings shall include, with the application for designation, prefiled testimony and supporting analysis establishing a prima facie case for designation.

AUTH: 69-3-822, MCA  
IMP: 69-3-103, 69-3-840, MCA

NEW RULE IV (38.5.3206) DESIGNATION AND MAINTENANCE -- SUPPLEMENTAL PROCEEDINGS COMPLIANCE WITH CONDITIONS (1) ~~For good cause demonstrated, the commission may grant eligible telecommunications status to an applicant or affirm an existing carrier's eligible telecommunications carrier status notwithstanding inability of the applicant or existing carrier to demonstrate that the provisions of federal and Montana laws including these rules or the provisions of assurances given at the time of the application or review of status will be met. In such cases a supplemental proceeding will be commenced at a time designated by the commission, generally not to exceed one year from designation or review of status. The commission may revoke the applicant's or existing carrier's eligible telecommunications carrier status if the applicant or existing eligible telecommunications carrier is then unable to establish that it meets the commission compliance directives and conditions, provisions of federal and Montana laws including these rules, or the assurances that have been provided by the eligible telecommunications carrier to the commission.~~

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

NEW RULE V (38.5.3209) DESIGNATION AND MAINTENANCE -- FULFILLING PRINCIPLES OF UNIVERSAL SERVICE MINIMUM ADDITIONAL REQUIREMENTS (1) ~~In order to fulfill the principles of universal service, an~~ An applicant for eligible telecommunications carrier status must demonstrate the ~~following requirements for designation will exist~~ be met upon designation

or within a reasonable time following designation, and, on request by the commission, existing eligible telecommunications carriers must demonstrate the following requirements for designation exist or will exist are being met or will be met within a reasonable time following a review of status proceeding+.

~~(a) the telecommunications service provided is quality service;~~

~~(b) the rate at which service is provided is just, reasonable, and affordable;~~

~~(c) advanced telecommunications and information services are available in the areas served;~~

~~(d) low income, low density, rural, insular, and high cost customers are served;~~

~~(e) services subscribed to by a substantial majority of residential customers and provided by other eligible telecommunications carriers serving the area are provided;~~

~~(f) the services supported by universal service funds are provided to all requesting customers within the designated service area; and~~

~~(g) eligible telecommunications status is in the public interest.~~

(2) The minimum requirements for designation and maintenance of status as an eligible telecommunications carrier include:

(a) offering the services that are supported by the federal universal service support mechanisms as required by 47 CFR 54.201(d)(1) and identified in 47 CFR 54.101 and 47 USC 254(c);

(b) advertising the availability of the supported services and the charges for those services using media of general distribution as required by 47 CFR 54.201(d)(2);

(c) providing the supported services throughout the designated service area to all customers making a reasonable request for service, including low-income, low-density, rural, insular, and high-cost customers, and, for service in rural areas, in a manner reasonably comparable and at a rate reasonably comparable to similar services offered in urban areas;

(d) satisfying applicable consumer protection and service quality standards;

(e) offering a local usage plan comparable to the one offered by the incumbent local exchange carrier; and

(f) demonstrating eligible telecommunications carrier status is in the public interest.

AUTH: 69-3-822, MCA

IMP: 69-3-840, MCA

NEW RULE VI (38.5.3210) DESIGNATION AND MAINTENANCE -- PUBLIC INTEREST (1) Consideration of the public interest will apply in all eligible telecommunications carrier designation and maintenance of status proceedings.

~~(2) In the service areas of rural telephone companies and~~

~~the rural areas served by nonrural telephone companies, the commission may determine that designation of additional eligible telecommunications carriers is not in the public interest. As a general guideline applying in these areas, less than five access lines per square mile may support one eligible telecommunications carrier, five to 19 access lines per square mile may support two eligible telecommunications carriers, and 20 or more access lines per mile may support more than two eligible telecommunications carriers. All designation and maintenance of status in such areas will be determined on a case by case basis.~~

~~(3) The value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.~~

~~(4) Mobility and competitive choice are not among the universal service goals enumerated in the federal Telecommunications Act of 1996.~~

~~(5) Until such time as broadband services are added to the federal list of supported services, the commission will not require applicants to provide broadband services as a prerequisite to designation. However, in determining whether an application is in the public interest, the commission may consider whether the applicant's technology platform is compatible with broadband and other advanced service offerings.~~

~~(6) As a prerequisite to designation and maintenance of status, an applicant must provide equal access to interexchange carriers.~~

(2) The commission is not required to designate additional eligible telecommunications carriers in any service area, nonrural or rural. The commission may determine designation of an eligible telecommunications carrier in any service area, rural or nonrural, is not in the public interest.

(3) Consideration of the "public interest" means the commission will consider all known factors regarding the designation of an eligible telecommunications carrier and the maintenance of status as an eligible telecommunications carrier that clearly demonstrate a public benefit or a public detriment, including, but not limited to:

(a) the ability of the eligible telecommunications carrier to provide the supported services in the manner required;

(b) the ability and willingness of the eligible telecommunications carrier to comply with all laws governing eligible telecommunications carriers;

(c) the ability of a service area to support or continue to support an additional eligible telecommunications carrier;

(d) the effect designation of an additional eligible telecommunications carrier will have on an existing eligible telecommunications carrier, primarily in regard to the provision of services and cost as relates to density, terrain, service, and so forth;

(e) whether the eligible telecommunications carrier technology platform is compatible with broadband and other advanced service offerings and facilitates availability of advanced telecommunications and information services in the areas served;

(f) the ability of the eligible telecommunications carrier to provide equal access to interexchange carriers in the event no other eligible telecommunications carrier is providing equal access in the service area;

(g) the extent to which the eligible telecommunications carrier is able to provide service to customers throughout the service area using the eligible telecommunications carrier's own network;

(h) the effect that designation or maintenance of status will have on the availability of universal service funds;

(i) the effect that designation or maintenance of status will have on the principles of universal service;

(j) the public convenience, including things such as mobility, quality of service, availability of competition, and market choices; and

(k) public necessity, including factors such as public safety, reliability of service, ability to operate in emergencies.

(4) Any one public interest factor, identified in (3) or otherwise relevant for consideration, is unlikely to be determinative in and of itself, regarding the designation of an eligible telecommunications carrier or the maintenance of status as an eligible telecommunications carrier. A determination of public interest will generally include a consideration and balancing of all relevant factors.

AUTH: 69-3-822, MCA

IMP: 69-3-840, MCA

NEW RULE XI (38.5.3213) DESIGNATION AND MAINTENANCE -- COVERAGE (1) Applications for designation as a competitive eligible telecommunications carrier and, upon request by the commission, existing eligible telecommunications carriers, must provide a plan demonstrating the manner in which customers in the service area for which designation is sought or exists is served or will be served have or will have access to service no later than two years from the date of designation or request. The plan for coverage must be in terms of percentage of customers served, minimum of 98%, within designated periods of time in years, up to five years. The commission may approve the plan or modify the plan if the circumstances demonstrate modification is in the public interest.

~~(2) The applicant for designation and the existing eligible telecommunications carrier, if determined by the commission to not be serving the entire area, shall commit to providing the commission with an independent engineering study at the end of each year following the date of designation or determination on review of status. To maintain status as an eligible telecommunications carrier, the applicant or existing carrier must demonstrate voice communications service is accessible by 80% of the residences and businesses within the entire service area of the incumbent within one year of designation or determination, and 98% of the residences and businesses within the entire service area of the incumbent~~

~~within two years of designation or determination.~~

~~(3) (2) For purposes of this rule "accessible access to service" means that the indicated percentage of residences and businesses must be able to utilize the designated carrier's services from their residence or business locations at a level of service quality commensurate with the level of service quality and standards in these rules or referenced by these rules. In the case of a wireless eligible telecommunications carrier, "accessible access to service" also means that the customer customers within the maximum required coverage for the period designated shall not be required to purchase any equipment, beyond a typical handheld mobile phone, that may be required to enhance the ability to transmit or receive the wireless communications service.~~

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

NEW RULE XVIII (38.5.3216) MAINTENANCE -- INVESTIGATIONS, AUDITS, REPORTING, NOTICES (1) The commission may conduct investigations and audits of any or all designated eligible telecommunications carriers in Montana. The investigations and audits will be limited to compliance with eligible telecommunications carrier requirements.

(2) The commission may require reporting by any or all eligible telecommunications carriers in Montana. ~~The report may be modeled on an existing format (e.g., national exchange carriers association), and may require tracking of the expenditure of universal service funds and ensuring that expenditures are consistent with the purpose of the universal service fund.~~ Upon commission notification, eligible telecommunications carriers shall submit reports to the commission in a format prescribed by the commission, which may require affidavits in support. The reports will be limited to compliance with eligible telecommunications carrier requirements.

(3) Eligible telecommunications carriers receiving or intending to receive federal universal service funding for services provided by means other than customary wireline or mobile wireless service (e.g., satellite, internet, voice over internet protocol, cable, power line, and so forth) must file with the commission notification of receipt or notification of intent to seek funding. During an annual certification procedure or upon commission request, such carriers must demonstrate that ~~their~~ the provision of basic exchange service by means other than customary wireline or mobile wireless (e.g., satellite, internet, voice over internet protocol, cable, power line, and so forth) satisfies all of the requirements of federal and Montana law, including the requirements of these rules.

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

NEW RULE XIX (38.5.3218) MAINTENANCE -- ANNUAL

CERTIFICATIONS (1) The process for the annual certifications of eligible telecommunications carriers will be designed to meet all federal and Montana requirements for annual certification, and The process will be as prescribed by commission letter notice to all Montana eligible telecommunications carriers, with necessary reference to federal and Montana law, including these rules. The notice will be provided to all Montana eligible telecommunications carriers in advance of the annual certification deadline. Each eligible telecommunications carrier will receive the same notice, or, if certification distinctions are necessary, each nonrural eligible telecommunications carrier will receive an identical notice and each rural eligible telecommunications carrier will receive an identical notice.

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

3. The PSC does not adopt proposed New Rules III, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI and XVII.

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

GENERAL COMMENTS: McCone, Petroleum, and Fallon Counties, Mid-Rivers Telephone Cooperative and Cable & Communications Corporation (jointly, Mid-Rivers), 3 Rivers Telephone Cooperative, Inc., and 3 Rivers PCS (jointly, 3 Rivers), WWC Holding Co., Inc. (Western Wireless), Qwest Corporation (Qwest), and Mike Green (Green) comment in opposition to the rules.

One or more of these commenters suggests the rules are adverse to consumers, unfair, inequitable, prohibitive, burdensome, unclear, ambiguous, internally conflicting, inconsistent with or contrary to federal and state law, subject to possible litigation and federal preemption, favorable to incumbent wireline technology, effectively a denial of wireless technology and new communications technology and competition in communications, preemptive of the market place, an improper attempt at cooperative and wireless regulation, beyond the PSC's rulemaking authority, inadequately reviewed, inappropriate in addressing exclusive federal subject matter, a creation of technically difficult standards for certain technologies, a ruination of investment in new technology, contrary to a reduction in consumer prices, a creation of barriers to entry, a failure to recognize that carriers need supplemental funding to provide adequate service, and a failure to promote predictability or stability. At least one commenter has suggested the PSC has no authority to revoke Eligible Telecommunications Carrier (ETC) designations.

PSC RESPONSE: The PSC appreciates the comments on the proposed rules and recognizes that a substantial effort has been made by all interested persons to assist the PSC regarding this rulemaking. Although the PSC does not agree with all of the

comments submitted, the PSC has determined the comments demonstrate rules III, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, and XVII are problematic in their present form and the PSC will not adopt these rules in this proceeding. The PSC does agree with some of the comments opposing the rules and determines that both the general comments and the specific comments do justify the PSC taking a minimalist approach to this rulemaking and amending the remaining rules. At some future time the PSC might revisit rulemaking regarding those rules not adopted, the rules adopted, and other ETC rules that might become necessary for consideration.

The PSC agrees that "public interest" needs to consider many factors and many factors will be related to particular geographic areas. Modifications to proposed new rule VI resolve the concern.

The PSC disagrees with the commenter assertions the PSC lacks authority to adopt rules governing ETC designation and maintenance of status. Congress has authorized states to designate ETCs. 47 USC 254(e)(2). Montana has accepted that authority and the Montana Telecommunications Act (Title 69, Ch. 3, Part 8, MCA) authorizes the PSC to designate ETCs. 69-3-840, MCA. The PSC may adopt rules to implement the Montana Telecommunications Act. 69-8-822, MCA. Therefore, the PSC may adopt rules governing ETCs.

The PSC's authority regarding designation and maintenance is not limited to what one or more commenters refer to as "standards" identified in 47 USC 214(e)(1) and 47 USC 254. As pointed out by other commenters, 214(e)(1) and 254, especially 254, are broad direction including rulemaking direction to the FCC. The PSC's regulatory authority, including the PSC's rulemaking authority, includes enactments pursuant to that broad direction, whether through FCC rule or order or court determination. However, the PSC agrees adoption of state rules that are inconsistent with FCC rules might be problematic. 47 USC 254(f).

The PSC does not intend to bar ETC status of any particular type of carrier, so long as the public interest justifies the grant of ETC status. The PSC disagrees with those commenters who argue that the PSC may be attempting through these rules to regulate unregulated cooperative and wireless carriers. The PSC is not seeking out new entities to regulate. However, the authorizations referenced above regarding ETCs apply to all ETCs, notwithstanding the carrier's exemption from further regulation by the PSC. 69-3-840, MCA. Therefore, PSC rules governing ETCs will apply to all ETCs, including those ETCs not otherwise regulated by the PSC. This is because of ETC status, not because of cooperative, wireless, or other status.

The PSC supports universal service and is presently tending toward favoring designation of additional ETCs, so long as each designation is in the public interest. However, designation and receipt of funds is not an unqualified matter of right in carriers. Federal and state law and PSC policy contemplate that at least one carrier will be designated an ETC in every study area or service area in the state. Neither federal nor state

law require designation of additional ETCs unless, in areas served by nonrural carriers, the public interest requires the designation of an additional ETC, or, in areas served by rural carriers, the public interest supports the designation of an additional ETC and the PSC chooses to designate additional ETCs.

The PSC disagrees that it does not have authority to revoke ETC designations. Accompanying any authority to grant a status that requires obligations be met on an ongoing basis is the authority to revoke the status if the obligations are not being met. As far as the general comments pertaining to the remaining rules being vague, discriminatory, unfair, etc., the PSC does not agree, but modifications to the proposed rules may address the assertions in any event.

COMMENTS, RULE I: Mid-Rivers opposes the idea that additional standards may be developed and applied on a case-by-case basis, and suggests the standards be uniform and be uniformly applied. 3 Rivers and Western Wireless suggest the rule cannot be applied in conjunction with federal and Montana law as the rule is inconsistent with federal and Montana law, the rule is internally inconsistent as it provides for minimum standards yet allows for additional standards, "good cause" is not defined regarding waiver, which is contrary to the certainty and predictability purpose of rulemaking, and the exception for technical differences indicates the rule is not technologically neutral or competitively neutral. Qwest argues if ETC designations are to be on a case-by-case basis there is no purpose for the rule. Qwest suggests the rule demonstrates an intent to discriminate on a carrier-by-carrier basis.

PSC RESPONSE: The PSC amends the rule in a manner that should mitigate the commenters' concerns. The PSC intends that all ETCs will be regulated in a uniform manner. However, individual ETCs and types of ETCs can present important distinguishing and unique features regarding capabilities, service areas, public interest, and so forth. The differences must be fairly addressed in PSC proceedings and actions. The proposed rule is intended to accommodate and address important differences among ETCs and promote true neutrality among technologies. "Good cause" needs no definition, as it is terminology of general understanding in law. Parts of the PSC response to general comments are also applicable to this rule.

COMMENTS, RULE II: Mid-Rivers comments that an application itself should be a prima facie case and interested persons opposing the application should have the burden. Mid-Rivers views the rule burden on maintenance of status superfluous. Western Wireless and 3 Rivers argue the rule may be a barrier to entry and some information pertaining to designation of a competitive ETC is only available from the incumbent ETC. Western Wireless comments the rule should be amended to clarify how the burden applies in regard to public interest which requires a balancing test which can only be accomplished with presentation by all interests affected. Western Wireless also

suggests an applicant should not be required to provide information that is not in the applicant's interest.

Western Wireless argues there is no legal basis for complaint proceedings, especially the limitless allowance the PSC has proposed, and the provision is likely to generate frivolous and time-consuming proceedings regarding isolated-instance consumer dissatisfaction and competing carrier harassment.

PSC RESPONSE: The PSC amends the rule for clarification purposes and includes part of proposed rule III pertaining to filing requirements. The burdens are in complete accordance with the general law on burdens. True unavailability of information on any particular point which the ETC may have a burden will not result in any immediate dismissal based on failure to carry a particular burden, as the information can eventually be obtained through procedures, such as discovery.

The PSC has deleted the reference to complaint proceedings, as the complaint process is adequately covered in existing PSC procedural rules. Generally, the initial public interest burden on an ETC applicant can be met by basic information demonstrating that designation as an ETC will result in benefits to the public. Rule VI has been amended to provide more direction in this regard. The PSC response to general comments is also applicable to comments on this rule.

COMMENTS, RULE IV: Mid-Rivers argues the current self-certification process is sufficient and the proposed rule process is duplicative of what other agencies involved with ETC oversight already do. Qwest argues the PSC cannot confer an interim ETC designation because the governing statutes are mandatory, not optional. Qwest argues there is no statutory authority for the PSC to revoke an ETC designation. Western Wireless comments that the rule assumes the PSC can deny ETC status if the ETC cannot demonstrate it is currently meeting federal requirements, as federal standards only require the applicant demonstrate that the applicant will provide the required services. Western Wireless comments the supplemental proceeding is vague and unworkable and the resulting ambiguities need to be corrected. Western Wireless suggests a probationary designation is problematic and will likely be suspect to other agencies administering ETC matters.

PSC RESPONSE: The PSC has amended the rule in a manner that should mitigate the commenters' concerns. The current self-certification process (also see proposed rule XIX) may be sufficient, but the rules provide notice that the process may be expanded, as it has been expanded in previous years, primarily to respond to FCC expanded certification requirements.

The PSC intends ETC designation applications to be either denied or granted. Interim or probationary designations are unlikely, but conditions may accompany a PSC grant of ETC status to accommodate the applicant regarding time required to comply with certain requirements. In this regard, the PSC agrees with

Western Wireless that an applicant's demonstration that certain ETC requirements are not being met at the time of designation need not result in denial of an application if there is a demonstration that the requirements will be met within a reasonable time.

PSC requirements that might duplicate requirements of other agencies involved with ETCs is not a basis for abandoning or amending the rule in instances when the duplication is necessary regarding PSC need for the information reported, reinforcement of a particular requirement, or for formal adoption of a requirement for it to be in effect in Montana. The PSC response to general comments is also applicable to parts of this rule.

COMMENTS, RULE V: Mid-Rivers, Western Wireless, and Qwest argue this rule takes a collection of federal guidelines and makes them standards, which is inappropriate and results in evolving guidelines becoming vague statements of requirements that cannot be proven. Western Wireless and Qwest view the rules as vague, incapable of application, and of little guidance. Mid-Rivers suggests the rule statements are discriminatory, applying only to new applicants. Mid-Rivers also points out that the rule expands the federal list of covered services and does not distinguish between qualified and unqualified customers. Western Wireless argues the federal principles upon which the rule is based are not designation requirements but are designed for policy development. Western Wireless argues the PSC cannot develop its own standards, but must base standards on federal rules and decisions. Western Wireless also suggests the PSC rules are selective in accepting the federal principles.

Western Wireless suggests the rule does not recognize the details of distinctions among Montana service areas. Western Wireless and Qwest argue several of the rule requirements are contrary to federal law. 3 Rivers argues the rule provisions do not meet the competitive neutrality and consistency with federal law requirements, key definitions are not included in the rule, the principles upon which the rule is based remain in development, require an applicant to submit information the applicant does not have, conflict internally, and do not recognize the importance of market choices in selecting services. 3 Rivers also suggests some existing ETCs can require customers to contribute to facilities expansion and this should be available to all ETCs.

PSC RESPONSE: The PSC agrees the comments demonstrate that this rule requires clarification and modification. The PSC amends the rule accordingly, including to provide a more complete list of federal requirements. The PSC also amends rule VI, which will clarify the rule requirements regarding public interest. The PSC response to general comments also applies to several comments directed at this rule.

COMMENTS, RULE VI: 3 Rivers is concerned about the lack of a definition of "public interest," as applicants cannot be

compliant without a definition. 3 Rivers and Western Wireless argue the guidelines are arbitrary, violate federal laws, and ignore customer choice, innovative services, and new technologies, which are public benefits. Western Wireless comments that new technologies are important in rural areas for many reasons, including public safety and economic development.

Western Wireless argues the PSC density guidelines will eliminate additional ETCs in most areas of Montana. Mid-Rivers views this rule as in blatant disregard of the technological neutral concept, favoring incumbents, arbitrary, mischaracterizing the purpose of support, and is contrary to federal law. 3 Rivers and Mid-Rivers suggest that elements like mobility and competition can and should be considered in regard to public interest. Mid-Rivers points out that mobile service is premiere in regard to public health and safety.

Qwest comments the concept of maintenance of status is problematic and in violation of Montana law. Qwest argues the PSC has no authority to expand the public interest test to include incumbent ETCs. Qwest also comments that broadband services should be deleted from the rule until added to the federal list of supported services. Western Wireless argues the public interest standard does not apply to ETCs in nonrural areas, public interest should be explicitly defined, and other provisions require definitions and are unclear. Western Wireless suggests the PSC use terms of common and accepted usage.

Western Wireless comments the public interest standard does not apply to nonrural areas. Western Wireless also comments the rule reference to "value of increased competition" is unnecessary, as it is part of an FCC statement, and could be misleading, as it is incomplete or selective incorporation, which may unduly discount goals of universal service, including competition. Western Wireless comments that the rule reference to "mobility and competitive choice" as not being enumerated in federal law, distorts the proper public interest analysis. Western Wireless suggests the rule reference to "broadband services" provides no guidance and needs an accompanying definition and may be irrelevant, as the FCC has not included Internet access as a supported service, and conflicts with proposed rules related to the size of the fund, as such service would be costly. Western Wireless comments that the "equal access" provision of the rule conflicts with federal law, is impossible and unnecessary for wireless carriers to provide, would necessitate re-engineering of wireless systems and be costly, burdening the universal service fund, would result in consumers paying for long-distance twice, and fails to recognize customers can use dial-around to obtain access.

PSC RESPONSE: The FCC has recently settled the matter of the public interest standard applying to rural and nonrural ETCs. The FCC has determined the standard applies to both. The FCC has also addressed equal access. Otherwise the PSC generally accepts the comments and has amended the rule in a manner that should mitigate the concerns expressed. The PSC

response to general comments is also applicable to this rule.

COMMENTS, RULE XI: Mid-Rivers comments the rule runs afoul of principles of neutrality among technologies and is discriminatory. Qwest comments that the rule is an unlawful expansion of ETC eligibility requirements of 69-2-840, MCA. Qwest also argues that this rule could not apply to carriers that have rates set by the PSC, such as Qwest, because there are particular requirements for setting tariffed rates. 3 Rivers argues incumbents have been given many years to be compliant, but a competitor must be compliant in short order, which is favorable to incumbents and wireline. 3 Rivers comments that factors outside of the carrier's control are present in regard to compliance. 3 Rivers argues the rule is arbitrary and inconsistent with other proposed PSC rules. Western Wireless suggests wireless carriers serve requesting customers, not geographical areas and geographic coverage is not relevant to any valid ETC standards. Western Wireless argues service obligations, not coverage requirements, are the proper standard.

Western Wireless comments that the rule is arbitrary, the 2-year requirement being without justification and not recognizing the FCC licensing provisions and the industry standard of 5-year build-out plans, and the reality that remote power, access to local exchange carrier facilities, interconnection, and siting can take considerable time. Western Wireless also suggests the rule is federal subject matter, particularly for wireless, improperly references business customers (not a subject of universal service), violates the principle of technological neutrality, is discriminatory, and in conflict with other laws.

PSC RESPONSE: The rule is amended in a manner that should mitigate the concerns expressed by the commenters. Flexibility will be allowed in regard to build-out requirements, if the circumstances require. The PSC response to general comments is also applicable to this rule.

COMMENTS, RULE XVIII: Western Wireless comments this rule provides no guidance to interested persons, as it fails to provide a reason, circumstances, scope, details, or process, including timing, for investigations, audits, and reports. Western Wireless also comments that the rule is broad and should not be construed to cover matters over which the PSC has no jurisdiction. Western Wireless also comments the rule may create incentives for competitors to instigate time-wasting PSC action.

3 Rivers comments the NECA report is not appropriate, as it is designed for purposes other than reporting how universal service funds are expended. 3 Rivers comments that notification of means of providing service is not needed, as it can be provided in applications or annual certifications, and the related "customary" is not defined. Qwest comments that the rule suggests the PSC can require ad hoc reporting of certain ETCs. Qwest argues that this cannot be lawfully done and if

reporting is required it must be a nondiscriminatory reporting requirement.

Mid-Rivers comments the rule is not technology neutral, the public interest is not affected by the means through which service is offered, and the rule imposes needless and duplicative reporting requirements.

PSC RESPONSE: For the most part the PSC overrules the comments. The rule is essential in the PSC monitoring of ETCs and the PSC has unquestionable authority to do exactly what the rule proposes. The PSC has amended the rule provisions on reporting formats, as being unnecessary. The PSC response to general comments is also applicable to comments on this rule.

COMMENTS, RULE XIX: Qwest comments that it appears this rule suggests different carriers may receive different letters. Qwest also comments the rule eliminates predictability as to what rules apply to certifications. Mid-Rivers comments that the current certification procedures are sufficient. 3 Rivers agrees with an annual certification process, but comments that the rules upon which it will be based do not establish a fair and comprehensive certification. Western Wireless comments the rule is unnecessary. Western Wireless also suggests the rule is inappropriate, as the PSC should simply adopt certification rules, if any are needed.

PSC RESPONSE: The rule is amended to clarify that all ETCs will receive the same instructions for annual certification, with a possible distinction between nonrural and rural ETCs. Carriers should anticipate that annual certification details may change from year to year. The details of the annual certification are not readily subject to a firm commitment by the PSC at this time. The PSC is still considering a balance of simplicity in the process with meeting obligations to monitor ETCs. If it becomes possible to establish a fixed annual certification process, the PSC will consider doing so by rule. The PSC response to general comments is also applicable to this rule.

/s/ Greg Jergeson  
Chairman,  
Public Service Commission

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State April 18, 2005.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT,  
of ARM 42.18.210, 42.19.1235, ) AMENDMENT AND TRANSFER,  
42.20.107, 42.21.132, ) TRANSFER, AND REPEAL  
42.22.1301, 42.22.1304, )  
42.22.1305, 42.22.1306, )  
42.22.1309, and 42.22.1310; )  
amendment and transfer of ARM )  
42.18.118 (42.13.1314), )  
42.18.119 (42.22.1315); )  
transfer of ARM 42.18.209 )  
(42.22.1316); and repeal of ARM)  
42.22.1302 and 42.22.1303 )  
relating to industrial property)

TO: All Concerned Persons

1. On November 18, 2004, the department published MAR Notice No. 42-2-746 regarding the proposed adoption, amendment, amendment and transfer, transfer, and repeal of the above-stated rules relating to industrial property at page 2798 of the 2004 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 13, 2004, to consider the proposed adoption, amendment, amendment and transfer, transfer, and repeal. Oral testimony received at the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Mary Whittinghill, representing the Montana Taxpayers' Association, testified that she felt it would be helpful if the department moved some of the text from the proposed new rules into the current rules rather than adopt new rules in this area. She further stated that the department should clarify when it plans to consider economic obsolescence in an industrial property appraisal. She indicated that it appears the department plans to require this information in each instance, even during a general appraisal process. Or, at a minimum, it could be requested at any time.

RESPONSE NO. 1: The department concurs with Ms. Whittinghill with regard to the location of the content of the new rules and has amended the rules accordingly. See the explanation in 4 below. The department does not believe that it is necessary to state by rule when it plans to consider economic obsolescence because it might depend on the circumstances of the appraisal. See the amendments to ARM 42.22.1304, 42.22.1306 and 42.22.1309 below.

3. The department has decided not to transfer ARM 42.18.210 but rather amend it further to remove any reference

to the industrial appraiser positions. This rule applies to the standard appraiser certification sequence. The rule that deals with industrial appraisers is ARM 42.18.209 and the department is transferring that rule to ARM 42.13.1316.

42.18.210 INDUSTRIAL APPRAISER CERTIFICATION SEQUENCE

(1) through (3) remain as proposed.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-107 and 15-7-111, MCA

4. As a result of the comments received the department has decided not to adopt New Rules I through III. It was determined that New Rules II and III contained specific language that is not routinely used due to the fact that the department does not receive all the necessary information to determine indicators of value. The department has instead opted for the more general provision that multiple indicators of value may be used on a case-by-case basis if it is determined to accurately estimate market value. Part of New Rule I will be placed in ARM 42.22.1309. The department deleted the proposed definition for "band of investment method" from ARM 42.22.1301 because that term was used in proposed New Rule III, which is not going to be adopted. Therefore, the department further amends ARM 42.22.1301, 42.22.1305, 42.22.1306, and 42.22.1309 with the following changes:

42.22.1301 DEFINITIONS The following definitions apply to terms found in this subchapter:

~~(1) "Band of investment method" means a technique in which the capitalization rates attributable to components of a capital investment are weighted and combined to derive a weighted average rate attributable to the total investment.~~

(2)(1) "Industrial appraiser" means a person who has completed the necessary training and is certified to appraise industrial property in Montana.

(2) "INDUSTRIAL IMPROVEMENTS" MEANS ALL IMPROVEMENTS UPON THE LAND, OF A CIVIL CONSTRUCTION CHARACTER, UTILIZED TO HOUSE THE INDUSTRIAL PROCESS. ALL STORAGE FACILITIES SHALL BE TREATED AS IMPROVEMENTS TO LAND.

(3) "Industrial plant" means a combination of land, land improvements, improvements and machinery that have been organized into a functioning unit. The value of the several components will be placed in the proper tax classification according to the use of the property.

(4) "Industrial property" means property used in the extraction, production, distribution, and changing the form of raw materials or assembling components and parts, packing and warehousing, and shipping of the finished products.

(5) "MANUFACTURING MACHINERY AND EQUIPMENT" MEANS ALL PROPERTY USED IN THE MANUFACTURING PROCESS, WHETHER PERMANENTLY OR TEMPORARILY IN PLACE, USED TO TRANSFORM RAW OR FINISHED MATERIALS INTO SOMETHING POSSESSING A NEW NATURE OR NAME AND ADOPTED TO A NEW USE.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-8-111, MCA

42.22.1305 INDUSTRIAL PROPERTY OTHER THAN LAND

(1) Property used in the manufacturing process and not treated as land or INDUSTRIAL improvements to land, which includes such items as manufacturing machinery and equipment whether permanently or temporarily in place, shall be placed in class eight.

~~(2) Manufacturing machinery and equipment is all property used in the manufacturing process, whether permanently or temporarily in place, used to transform raw or finished materials into something possessing a new nature or name and adopted to a new use.~~

~~(3)~~ All property which THAT has been certified by the department of environmental quality to control air or water pollution shall be placed in class five.

~~(4)~~(3) All property which THAT has been included in a new industry classification shall be placed in class five.

(4) SEE ARM 42.19.1235 FOR TAX INCENTIVES FOR NEW OR EXPANDING INDUSTRIES.

(5) SEE 15-6-218, MCA, FOR EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR INDUSTRIAL PROPERTY.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-8-111, MCA

42.22.1306 VALUATION OF INDUSTRIAL PROPERTY OTHER THAN LAND

(1) All property other than land or INDUSTRIAL improvements to land shall be valued by trending the original installed cost to a current replacement cost, then depreciating on an age/life basis to compensate for ordinary physical deterioration and/or functional obsolescence.

~~(2) All approaches to valuation will be considered if adequate market data exist, see [NEW RULE II] THE DEPARTMENT MAY APPLY THE APPROACHES TO VALUATION DESCRIBED IN ARM 42.22.1309.~~

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-8-111, MCA

5. The following rules were not part of the original proposal notice but were discussed by Ms. Whittinghill at the hearing and she recommended that the department consider amending them at this time. The department believes that some measure of valuation is necessary when the standards do not apply or are not adequate. Therefore, the department amends ARM 42.22.1304, 42.22.1309 and 42.22.1310 as follows:

42.22.1304 VALUATION OF INDUSTRIAL IMPROVEMENTS

(1) All ~~property~~ INDUSTRIAL IMPROVEMENTS ~~determined by the department to be an improvement to the land~~ shall be valued by the use of the ~~1996~~ 2002 Montana Appraisal Manual, ~~developed by the firm Cole Layer Trumble Company.~~

(2) The department appraiser shall use ~~his~~ THEIR best judgment to establish the effective age by examining the condition, desirability and utility of the property.

(3) Upon the determination of the property's effective age, it shall be depreciated on an age/life basis according to the internal program schedules of the 2002 Montana ~~a~~Appraisal ~~m~~Manual.

(4) If the reproduction cost of the property is not listed, or is not accurately listed in the ~~2004~~ 2002 Montana ~~a~~Appraisal ~~m~~Manual for the specific property being appraised, then the department may use other appropriate cost manuals such as "Means" or "Marshall Valuation Service" to obtain the best estimate of reproduction cost. This reproduction cost would be depreciated on an age/life basis to arrive at market value for assessment purposes.

(5) IF APPROPRIATE, THE DEPARTMENT MAY APPLY THE APPROACHES TO VALUATION DESCRIBED IN ARM 42.22.1309.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-134, MCA

42.22.1309 ECONOMIC OBSOLESCENCE VALUATION METHODS FOR INDUSTRIAL PROPERTIES (1) WHEN DETERMINING THE MARKET VALUE OF INDUSTRIAL PROPERTIES, DEPARTMENT APPRAISERS MAY CONSIDER, BASED ON GENERALLY ACCEPTED APPRAISAL PRINCIPLES, THE COST APPROACH, THE INCOME APPROACH, AND THE MARKET APPROACH TO VALUE, IF THE NECESSARY INFORMATION IS AVAILABLE.

(2) Extraordinary functional and/or economic obsolescence ~~are~~ is treated on a case-by-case basis.

(3) THROUGH THE APPRAISAL PROCESS, THE DEPARTMENT SHALL ARRIVE AT A VALUATION THAT MOST ACCURATELY ESTIMATES MARKET VALUE.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-8-111, MCA

42.22.1310 ISSUANCE OF DEPRECIATION AND TRENDING SCHEDULES (1) The schedules referred to in ARM 42.22.1307 and 42.22.1308 shall be ~~supplied to its local agent published~~ published by the 15th day of January of each year. ~~A taxpayer may request such documents from the department of revenue after January 15.~~

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-8-111, MCA

6. The department repeals ARM 42.22.1303 because the text from this rule was moved into ARM 42.22.1301(2) and therefore the rule is no longer necessary.

42.22.1303 CLASSIFICATION OF INDUSTRIAL BUILDINGS IMPROVEMENTS which can be found on page 42-2257 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-134, MCA

7. Therefore, the department amends ARM 42.18.210,

42.22.1301, 42.22.1304, 42.22.1305, 42.22.1306, 42.22.1309 and 42.22.1310 with the amendments listed above; repeals ARM 42.22.1303 as stated above; and amends ARM 42.19.1235, 42.20.107, and 42.21.132; amends and transfers ARM 42.18.118 (42.22.1314), 42.18.119 (42.22.1315); transfers ARM 42.18.209 (42.22.1316); and repeals ARM 42.22.1302 as proposed.

8. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State April 18, 2005

VOLUME NO. 51

OPINION NO. 2

INITIATIVE AND REFERENDUM - An unconstitutional amendment to a law by initiative or referendum leaves the section intact as it had been before the attempted amendment;

STATUTORY CONSTRUCTION - A statutory provision may not be severed if such provision is necessary to the integrity of the statute or was the inducement to its enactment;

STATUTORY CONSTRUCTION - Severance of an unconstitutional provision must leave the resulting statute capable of being executed in accordance with the intention of the people of Montana;

MONTANA CODE ANNOTATED - Sections 13-27-204, -207, -308;

MONTANA CONSTITUTION - Article II, sections 16, 18; article III, section 4, (2); article VI, section 10; article VIII; article XIV, section 9, (1);

UNITED STATES CONSTITUTION - Amendment XIV;

UTAH LAWS OF 1917 - Chapter 56, section 1.

HELD: A judicial decision invalidating the county distribution requirements for signatures to qualify an initiative petition for the ballot, as approved in Constitutional Amendments 37 and 38 and enacted in their implementing legislation, restores the language of the constitution and statutes as they existed before the approval of the invalid amendments.

April 7, 2005

Representative Gary Matthews  
Speaker of the House  
Montana House of Representatives  
P.O. Box 201706  
Helena, MT 59620-1706

Dear Mr. Speaker:

You have requested my opinion concerning the following question:

What will be required to qualify a proposed initiative and amendment by initiative as a result of the United States District Court's ruling in Montana PIRG v. Johnson?

In 2002, Montana's voters approved two constitutional amendments referred to them by the 2001 Legislature. The first ballot issue, Constitutional Amendment No. 37 ("C-37"), amended the distribution requirements for constitutional initiative petitions in article XIV, section 9(1):

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of ~~two-fifths~~ at least one-half of the ~~legislative districts~~ counties.

The second ballot issue, Constitutional Amendment No. 38 ("C-38"), amended the distribution requirements for statutory initiative petitions in Article III, Section 4(2):

Section 4. Initiative. . . . (2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least ~~one-third~~ one-half of the ~~legislative representative districts~~ counties and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

The 2003 Legislature then amended the statutory petition forms to reflect the amended distribution requirements. Mont. Code Ann. § 13-27-204, -207. The statute governing the actual certification of petitions as "containing a sufficient number of signatures" was not amended because it simply incorporates the constitutional requirements for petition signatures. Mont. Code Ann. § 13-27-308.

On November 10, 2003, individuals and organizations interested in the initiative process sued the Secretary of State and the Attorney General for a declaration that the amended distribution requirements of C-37 and C-38 were unconstitutional, and for an injunction against their enforcement. Montana PIRG v. Johnson, CV 03-183-M-DWM (D. Mont.). Following the plaintiffs' motion for summary judgment and subsequent briefing, the United States District Court for Montana granted the motion in part, holding that "Montana's county distribution requirement results in unequal treatment of qualified electors in different counties," and that "it is unconstitutional on its face under the Fourteenth Amendment's Equal Protection Clause and therefore invalid." Montana PIRG v. Johnson, CV 03-183-M-DWM, Order at 17 (D. Mont., Mar. 28, 2005). The court indicated that it would enter judgment "declaring that the Montana constitutional and statutory provisions comprising the county distribution requirement violate the Fourteenth Amendment of the United States Constitution," and "permanently enjoining Montana from enforcing those provisions." Id. While the court has not yet

entered a final judgment, it is expected to do so before the 2006 elections.

"Constitutional Provisions are interpreted by use of the same rules as those used to interpret statutes." Kottel v. State, 2002 MT 278, ¶ 9, 60 P.3d 403. An unconstitutional amendment to a law "leav[es] the section intact as it had been before the attempted amendment." State ex rel. Woodahl v. District Court, 162 Mont. 283, 290, 511 P.2d 318, 322 (1973). In this instance, the nullification of CI-37 and CI-38 as unconstitutional results in a return to the distribution requirements "intact as [they] had been before the attempted amendment." Therefore, the original legislative district distribution requirements fill the void left by the county distribution requirements' unconstitutionality. Moreover, as the District Court noted, distribution requirements based on legislative districts "do[] not violate equal protection." Montana PIRG, Order at 16; see also Idaho Coalition United for Bears v. Cengarusa, 342 F.3d 1073, 1078 (9th Cir. 2003) ("Idaho could achieve the same end through a geographic distribution requirement that does not violate equal protection, for example, by basing any such requirement on existing state legislative districts.").

In an apparently similar case the Utah Supreme Court declared a county distribution requirement unconstitutional, but severed that requirement from the initiative enabling statute, leaving only the requirement that an initiative petition receive signatures equal to 10 percent of qualified electors. See Gallivan v. Walker, 54 P.3d 1069, 1100 (Ut. 2002). Under this analysis, it has been suggested that in the absence of the county distribution requirements, the Montana Constitution now requires only the signatures of 5 or 10 percent of qualified electors statewide to qualify statutory or constitutional initiatives, respectively. Mont. Const. art. III, § 4; art. XIV, § 9.

However, the Utah Supreme Court's analysis in Gallivan does not support severance of any distribution requirement instead of reversion to the original distribution requirement. The Gallivan court scrutinized the entire initiative enabling statute, which had contained a county distribution requirement since its initial enactment in 1917. See 54 P.3d at 1098; 1917 Utah Laws Ch. 56, § 1. Therefore, in asking "whether the legislature would have enacted the initiative enabling statute without the constitutionally infirm multi-county signature requirement," the court faced a stark choice between severing part of the overall enactment or striking down the entire initiative process in Utah. Gallivan, 54 P.3d at 1100. Because, like the Montana Constitution, Utah's constitution compels the availability of an initiative process, the court had to assume that the legislature "would have met its constitutional responsibility by enacting the initiative

enabling statute without the unconstitutional subsection."  
Id.

A similar severability analysis would produce a different result as applied to C-37 and C-38 because there is nothing to sever: unlike Utah's initiative enabling statute, the two amendments at issue adopted no more than the county distribution requirements held to be unconstitutional. Even in the presence of a severability clause, lacking in both C-37 and C-38, the Montana Supreme Court has refused to sever objectionable parts of a constitutional amendment when a constitutional defect pervades the entire amendment. Marshall v. State ex rel. Cooney, 1999 MT 33, ¶ 25, 975 P.2d 325, 332 (invalidating entire constitutional initiative because amendments to article VIII, article II, § 18, and article VI, § 10 violated separate-vote requirement). When a constitutional amendment fails because of a constitutional defect, it is "nugatory and of no effect." State ex rel. Montana Citizens for Preservation of Citizen's Rights v. Waltermire, 227 Mont. 85, 99, 738 P.2d 1255, 1264 (1987) (invalidating amendment to article II, section 16 because of "material constitutional defects in the manner it was presented to the electors for a vote"). Thus, following Montana Citizens, the Montana Supreme Court applied Article II, Section 16 as it existed before the amendment it had invalidated two years before. Meech v. Hillhaven West, Inc., 238 Mont. 21, 776 P.2d 488 (1989).

Moreover, a statutory provision may not be severed if "such provision is necessary to the integrity of the statute or was the inducement to its enactment." Montana Auto. Ass'n v. Greely, 193 Mont. 378, 399, 632 P.2d 300, 311 (1981), quoting Hill v. Rae 52 Mont. 378, 389-90, 158 P. 826, 831 (1916). The sole purpose of C-37 and C-38 was to broaden the distribution requirements from legislative districts to counties, and accomplishing that purpose necessarily was the inducement to its enactment. Excising the distribution requirements entirely, as the court did in Gallivan, would accomplish precisely the opposite of the result intended by the voters, eliminating rather than broadening the distribution of voter signatures required to qualify an initiative for the ballot. Therefore, in my opinion the failure of C-37 and C-38 leaves the Montana Constitution as it was before their enactment, with the original legislative district distribution requirements intact. Cf. Finke v. State ex rel. McGrath, 2003 MT 48, ¶ 28, 65 P.3d 576, 582 (striking entirety of enactment held to violate the Fourteenth Amendment, and leaving law as it was before the enactment, where severance would produce statutory result at odds with legislative purpose).

The question underlying severability analysis is whether the resulting statute is "capable of being executed in accordance with the intention of the people of Montana." Montana Auto. Ass'n, 193 Mont. at 400, 632 P.2d at 312. Twice the people of

Montana have indicated their intent that initiative petitions contain a distribution requirement: first in the approval of article XIV, section 9 and article III, section 4 of the Montana Constitution, and again in broadening those requirements in C-37 and C-38. The excision of the preexisting distribution requirements from the Montana Constitution would create a law neither enacted by the legislature nor approved by the people of Montana. Indeed, it would contravene the clear purpose of C-37 and C-38 to broaden the distribution requirements, and instead would eliminate them altogether. Reversion of the distribution requirements to their original legislative district basis, on the other hand, respects both the decisions by the Montana Supreme Court in similar circumstances and--subject only to the constitutional restraints imposed by the court in Montana PIRG v. Johnson--the people's will.

THEREFORE, IT IS MY OPINION:

A judicial decision invalidating the county distribution requirements for signatures to qualify an initiative petition for the ballot, as approved in Constitutional Amendments 37 and 38 and enacted in their implementing legislation, restores the language of the constitution and statutes as they existed before the approval of the invalid amendments.

Very truly yours,

/s/ Mike McGrath  
MIKE McGRATH  
Attorney General

mm/acj/jym

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

**Interim Committees and the Environmental Quality Council**

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

**Economic Affairs Interim Committee:**

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

and

- ▶ Office of Economic Development.

**Education and Local Government Interim Committee:**

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

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

- ▶ Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

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

**Energy and Telecommunications Interim Committee:**

- ▶ Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

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

**State Administration, and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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.

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- 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

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- 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 March 2005 appear. Vacancies scheduled to appear from May 1, 2005, through July 31, 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 April 12, 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 MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Banking</b> (Administration)			
Ms. Evelyn Casterline Culbertson	Governor	Staples	3/31/2005 7/1/2007
Qualifications (if required): public representative			
<b>Board of Hail Insurance</b> (Agriculture)			
Mr. Gary Gollehon Brady	Governor	Ostendorf	3/9/2005 1/1/2008
Qualifications (if required): public member			
Auditor John Morrison Helena	Governor	not listed	3/9/2005 1/1/2009
Qualifications (if required): State Auditor			
Director Nancy K. Peterson Helena	Governor	Peck	3/9/2005 1/1/2009
Qualifications (if required): Director of the Department of Agriculture			
<b>Board of Labor Appeals</b> (Labor and Industry)			
Ms. Elizabeth Best Great Falls	Governor	Vega	3/29/2005 1/1/2009
Qualifications (if required): public representative			
Mr. Ed Logan Billings	Governor	Thares	3/29/2005 1/1/2009
Qualifications (if required): public representative			
<b>Board of Livestock</b> (Livestock)			
Ms. Janice French Hobson	Governor	Kinross-Wright	3/17/2005 3/1/2011
Qualifications (if required): swine producer			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Livestock</b> (Livestock) cont.			
Mr. William Hedstrom Kalispell	Governor	Leep	3/17/2005 3/1/2011
Qualifications (if required): dairy producer			
Ms. Linda Nielsen Nashua	Governor	Lee	3/17/2005 3/1/2011
Qualifications (if required): cattle producer			
<b>Board of Pardons and Parole</b> (Corrections)			
Mr. Vance Curtiss Great Falls	Governor	McCann	3/30/2005 1/1/2009
Qualifications (if required): education or experience in criminology			
Mr. Melbert Eaglefeathers Butte	Governor	Fournier	3/30/2005 1/1/2009
Qualifications (if required): education or experience in education			
Ms. Teresa McCann O'Connor Billings	Governor	Hoffarth	3/30/2005 1/1/2009
Qualifications (if required): education or experience in law			
<b>Board of Personnel Appeals</b> (Labor and Industry)			
Mr. David Alberi Dillon	Governor	O'Neill	3/31/2005 1/1/2009
Qualifications (if required): full-time management employee in organization with a collective bargaining unit			
Mr. Allan Audet Billings	Governor	Schneider	3/31/2005 1/1/2009
Qualifications (if required): full-time elected official of a labor union recognized by the board			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Personnel Appeals</b> (Labor and Industry) cont.			
Mr. Jay Reardon Helena	Governor	not listed	3/31/2005 1/1/2009
Qualifications (if required): full-time employee of a labor union or an association recognized by the board			
<b>Board of Public Assistance</b> (Department of Public Health and Human Services)			
Ms. Amy Christensen Helena	Governor	Belcher	3/31/2005 1/1/2009
Qualifications (if required): resident of Montana			
Mr. Scott Sorenson Whitefish	Governor	Millam	3/31/2005 1/1/2009
Qualifications (if required): resident of Montana			
<b>Board of Regents</b> (Education)			
Mr. Stephen M. Barrett Bozeman	Governor	Roehm	3/4/2005 2/1/2012
Qualifications (if required): resident of District 2			
<b>Developmental Disabilities Planning and Advisory Council</b> (Commerce)			
Ms. Melissa Clark Great Falls	Governor	not listed	3/8/2005 1/1/2009
Qualifications (if required): primary consumer representative			
Ms. Sylvia Danforth Miles City	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): advocacy program representative			
Ms. JoAnn Dotson Helena	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): agency representative			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Developmental Disabilities Planning and Advisory Council</b> (Commerce) cont.			
Ms. Keogh Duffy Missoula	Governor	not listed	3/10/2005 1/1/2009
Qualifications (if required): primary consumer representative			
Ms. Kimm Evermann Helena	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): agency representative			
Ms. Bernadette Franks-Ongoy Helena	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): advocacy program representative			
Ms. Lisa Hathaway Bozeman	Governor	Wenaas	3/8/2005 1/1/2009
Qualifications (if required): primary consumer representative			
Mr. Rocky Hughes Kalispell	Governor	not listed	3/8/2005 1/1/2009
Qualifications (if required): primary consumer representative			
Mr. Dan McCarthy Helena	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): agency representative			
Mr. Dennis Moore Billings	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): advocacy program representative			
Ms. Barbara Olind Baker	Governor	not listed	3/8/2005 1/1/2009
Qualifications (if required): secondary consumer representative			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Developmental Disabilities Planning and Advisory Council (Commerce) cont.</b>			
Mr. Shawn Parker Box Elder	Governor	Nopen	3/8/2005 1/1/2009
Qualifications (if required): primary consumer representative			
Ms. P.J. Rismon-Beckley Kalispell	Governor	not listed	3/8/2005 1/1/2009
Qualifications (if required): secondary consumer representative			
Mr. Jeff Sturm Helena	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): agency representative			
Ms. Diana Tavary Helena	Governor	not listed	3/8/2005 1/1/2009
Qualifications (if required): secondary consumer representative			
Dr. R. Timm Vogelsberg Missoula	Governor	not listed	3/8/2005 1/1/2006
Qualifications (if required): advocacy program representative			
Ms. Brenda Walters Shepherd	Governor	Holdeman	3/8/2005 1/1/2009
Qualifications (if required): secondary consumer representative			
<b>Governor's HIV/AIDS Advisory Council (Public Health and Human Services)</b>			
Lt. Gov. John Bohlinger Billings	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Ms. Donna Davis Helena	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services) cont.			
Ms. Wendy Doely Kalispell	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Mr. Frank Gary Butte	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Mr. Barry Grace Kalispell	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Ms. Kathy Hall Billings	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Mr. David Herrera Missoula	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Mr. Richard Holman Butte	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Ms. Brittany Kukes Helena	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): student representative			
Mr. Andrew Laue Missoula	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services) cont.			
Ms. Mary Jane Nealon Missoula	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Ms. Kelly Parsley Helena	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Ms. Vicki Peterson Polson	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Mr. Casey Rudd Belgrade	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Rev. Lois Van Leer Bozeman	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
Mr. Walter White Tail Feather Poplar	Governor	not listed	3/28/2005 0/0/0
Qualifications (if required): public representative			
<b>Hard-Rock Mining Impact Board</b> (Commerce)			
Ms. Mary Ellen Cremer Big Timber	Governor	Rehm	3/31/2005 1/1/2009
Qualifications (if required): representative of a major financial institution and resident of district 1, an impact area			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Hard-Rock Mining Impact Board</b> (Commerce) cont.			
Ms. Kristen K. Koss Custer	Governor	Johnson	3/31/2005 1/1/2009
Qualifications (if required): representative of the hard-rock mining industry and resident of district 2			
Commissioner Ed Tinsley Helena	Governor	Aye	3/31/2005 1/1/2009
Qualifications (if required): elected county commissioner and resident of district 2			
<b>Lottery Commission</b> (Administration)			
Mr. Craig Anderson Glendive	Governor	Brohpy	3/17/2005 1/1/2009
Qualifications (if required): member of law enforcement			
Mr. Wilbur Rehmann Helena	Governor	Sterhan	3/17/2005 1/1/2009
Qualifications (if required): public member			
<b>Milk Control Board</b> (Livestock)			
Mr. Gary Parker Fort Shaw	Governor	Olson	3/17/2005 1/1/2009
Qualifications (if required): resident of Montana			
Mr. Jim Prinkki Roberts	Governor	Hertel	3/17/2005 1/1/2009
Qualifications (if required): resident of Montana			
Mr. Larry Van Dyke Manhattan	Governor	Gleason	3/17/2005 1/1/2009
Qualifications (if required): resident of Montana			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Arts Council</b> (Montana Arts Council)			
Mr. Tim Holmes Helena	Governor	Frazier	3/31/2005 2/1/2010
Qualifications (if required):	resident of Montana		
Mr. Rob Quist Kalispell	Governor	Seifert	3/31/2005 2/1/2010
Qualifications (if required):	resident of Montana		
Mr. Kevin Red Star Roberts	Governor	Reed	3/31/2005 2/1/2010
Qualifications (if required):	resident of Montana		
Ms. Kathleen Schlepp Miles City	Governor	Lynde	3/31/2005 2/1/2008
Qualifications (if required):	resident of Montana		
Ms. Youpa Stein Missoula	Governor	Knierim	3/31/2005 2/1/2010
Qualifications (if required):	resident of Montana		
Mr. Wilbur Wood Roundup	Governor	Olson	3/31/2005 2/1/2010
Qualifications (if required):	resident of Montana		
<b>Montana Council on Developmental Disabilities</b> (Commerce)			
Ms. Mamie Flinn Helena	Governor	Schultz	3/29/2005 1/1/2009
Qualifications (if required):	secondary consumer representative		
Ms. Jan Wenaas Great Falls	Governor	not listed	3/10/2005 1/1/2009
Qualifications (if required):	secondary consumer representative		

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Information Technology Act (Administration)</b>			
Commissioner Greg Jergeson Chinook	PSC	not listed	3/31/2005 3/31/2007
Qualifications (if required): none specified			
Rep. Brady Wiseman Bozeman	Speaker of the House	not listed	3/14/2005 3/15/2007
Qualifications (if required): representing the House of Representatives			
<b>Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)</b>			
Mr. Keith Brophy Valier	Director	Pfau	3/3/2005 3/3/2007
Qualifications (if required): representative who is involved in the processing of forage into pellets			
Mr. Dennis Cash Bozeman	Director	not listed	3/3/2005 3/3/2007
Qualifications (if required): extension service ex officio			
Mr. Miles Hutton Turner	Director	Flynn	3/3/2005 3/3/2007
Qualifications (if required): representative of an outfitter or guide's association			
Ms. Virginia Knerr Townsend	Director	not listed	3/3/2005 3/3/2007
Qualifications (if required): extension service ex officio			
Mr. Richard Maki Monarch	Director	Leininger	3/3/2005 3/3/2007
Qualifications (if required): forage producer			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Noxious Weed Seed Free Forage Advisory Council</b> (Agriculture) cont.			
Mr. Charles Miller Hamilton	Director	Wagner	3/3/2005 3/3/2007
Qualifications (if required): forage producer			
Mr. David Wichman Moccasin	Director	not listed	3/3/2005 3/3/2007
Qualifications (if required): agricultural experiment station ex officio			
<b>Respiratory Care Practitioners</b> (Labor and Industry)			
Mr. Leonard Bates Great Falls	Governor	Pollard	3/31/2005 1/1/2009
Qualifications (if required): respiratory care practitioner			
Rep. Eileen Carney Libby	Governor	Davis	3/31/2005 1/1/2009
Qualifications (if required): public representative			
<b>State Library Commission</b> (State Library)			
Mr. Ron Moody Lewistown	Governor	Broadbent	3/17/2005 3/22/2006
Qualifications (if required): resident of Montana			
<b>State Workforce Investment Board</b> (Labor and Industry)			
Mr. Evan Barrett Butte	Governor	Gibson	3/21/2005 0/0/0
Qualifications (if required): Governor's Office representative			
Director Keith Kelly Helena	Governor	Keating	3/21/2005 0/0/0
Qualifications (if required): representative of the Department of Labor and Industry			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Aging Advisory Council</b> (Public Health and Human Services) Ms. Mary Alice Rehbein, Lambert Qualifications (if required): public member	Governor	7/18/2005
Ms. Pauline Nikolaisen, Kalispell Qualifications (if required): public member	Governor	7/18/2005
Ms. Dorothea C. Neath, Helena Qualifications (if required): public member	Governor	7/18/2005
<b>Board of Banking</b> (Administration) Mr. Max Agather, Kalispell Qualifications (if required): public member	Governor	7/1/2005
Mr. Wayne Edwards, Denton Qualifications (if required): state bank officer of a small sized bank	Governor	7/1/2005
<b>Board of Funeral Services</b> (Commerce) Mr. John Michelotti, Billings Qualifications (if required): mortician engaged in a crematory operation	Governor	7/1/2005
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry) Mr. John Delano, Helena Qualifications (if required): public member who uses a hearing aid	Governor	7/1/2005
Ms. Susan Kalarchik, Butte Qualifications (if required): licensed hearing aid dispenser with national certification in audiology	Governor	7/1/2005
<b>Board of Investments</b> (Administration) Mr. James Turcotte, Helena Qualifications (if required): Teachers' Retirement Board representative	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Landscape Architects</b> (Labor and Industry) Mr. David M. Hummel, Billings Qualifications (if required): public member	Governor	7/1/2005
Ms. Shelly Engler, Bozeman Qualifications (if required): landscape architect	Governor	7/1/2005
Ms. Janet Thomas, Hobson Qualifications (if required): public member	Governor	7/1/2005
<b>Board of Nursing</b> (Commerce) Ms. Kim Powell, Missoula Qualifications (if required): RN	Governor	7/1/2005
<b>Board of Nursing Home Administrators</b> (Commerce) Ms. Deborah M. Wilson, Kalispell Qualifications (if required): nursing home administrator	Governor	5/28/2005
<b>Board of Pharmacy</b> (Commerce) Mr. Robert Mann, Plentywood Qualifications (if required): pharmacist	Governor	7/1/2005
<b>Board of Physical Therapy Examiners</b> (Labor and Industry) Mr. Jeff Swift, Great Falls Qualifications (if required): physical therapist	Governor	7/1/2005
<b>Board of Plumbing</b> (Commerce) Ms. Marlene Jackson, Glasgow Qualifications (if required): public member	Governor	5/4/2005
<b>Board of Professional Engineers and Land Surveyors</b> (Labor and Industry) Mr. Daniel M. McCauley, Helena Qualifications (if required): professional engineer	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Professional Engineers and Land Surveyors</b> (Labor and Industry) cont. Mr. Jake Neil, Great Falls Qualifications (if required): professional engineer	Governor	7/1/2005
<b>Board of Public Accountants</b> (Labor and Industry) Mr. Michael Johns, Deer Lodge Qualifications (if required): certified public accountant	Governor	7/1/2005
<b>Board of Radiologic Technologists</b> (Labor and Industry) Ms. Carole V. Erickson, Missoula Qualifications (if required): public member	Governor	7/1/2005
Dr. Dennis Palmer, Helena Qualifications (if required): radiologist	Governor	7/1/2005
Ms. Jackie Barnes, Helena Qualifications (if required): permit holder	Governor	7/1/2005
Mr. John Rosenbaum, Havre Qualifications (if required): radiologic technologist	Governor	7/1/2005
Dr. John V. Hanson, Billings Qualifications (if required): physician who employs a radiologic technologist	Governor	7/1/2005
<b>Board of Real Estate Appraisers</b> (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

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Realty Regulation</b> (Commerce) Ms. Vicky Hammond, Missoula Qualifications (if required): real estate broker and a Democrat	Governor	5/9/2005
<b>Board of Research and Commercialization</b> (Commerce) Mr. John Youngberg, Bozeman Qualifications (if required): public member	Governor	7/1/2005
<b>Board of Sanitarians</b> (Labor and Industry) Mr. John Shea, Missoula Qualifications (if required): public member	Governor	7/1/2005
<b>Board of Veterinary Medicine</b> (Commerce) Ms. Mary Hinebauch, Miles City Qualifications (if required): public member	Governor	7/31/2005
Dr. Linda Kauffman, Stevensville Qualifications (if required): veterinarian	Governor	7/31/2005
<b>Chief Water Judge</b> (Supreme Court) Mr. C. Bruce Loble, Bozeman Qualifications (if required): none specified	Chief Justice	6/30/2005
<b>Commission on Community Service</b> (Labor and Industry) Ms. Sherry Stevens Wulf, Kalispell Qualifications (if required): representative of volunteer agencies	Governor	7/1/2005
Mr. Bob Maffit, Helena Qualifications (if required): representative of the disabled community and an ex officio member	Governor	7/1/2005
Ms. Bea Ann Melichar, Billings Qualifications (if required): representative of senior programs	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Commission on Community Service</b> (Labor and Industry) cont.		
Mr. John Allen, Helena	Governor	7/1/2005
Qualifications (if required): representative of the National Service Corporation and an ex officio member		
Ms. Nan LeFebvre, Helena	Governor	7/1/2005
Qualifications (if required): representative of the Department of Public Health and Human Services		
Rep. Margaret H. Campbell, Poplar	Governor	7/1/2005
Qualifications (if required): representative of tribal government		
Mr. Michael J. McGinley, Dillon	Governor	7/1/2005
Qualifications (if required): representative of local government		
<b>Commission on Practice of the Supreme Court</b> (Supreme Court)		
Mr. John Warren, Dillon	elected	5/3/2005
Qualifications (if required): none specified		
Ms. Mary Jo Ridgeway, Miles City	elected	5/3/2005
Qualifications (if required): none specified		
Mr. Stephen R. Brown, Jr., Havre	elected	5/3/2005
Qualifications (if required): none specified		
Mr. James A. Hubble, Stanford	elected	6/5/2005
Qualifications (if required): none specified		
<b>Committee on Telecommunications Access Services for Persons with Disabilities</b> (Public Health and Human Services)		
Mr. Edward Van Tighem, Great Falls	Governor	7/1/2005
Qualifications (if required): deaf		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Committee on Telecommunications Access Services for Persons with Disabilities</b> (Public Health and Human Services) cont.		
Mr. Jack Sterling, Billings Qualifications (if required): representative of an independent local exchange company	Governor	7/1/2005
Ms. Char Harasymczuk, Billings Qualifications (if required): deaf	Governor	7/1/2005
<b>District Court Council</b> (Supreme Court)		
Judge John C. McKeon, Malta Qualifications (if required): none specified	Supreme Court	6/30/2005
<b>Economic Development Advisory Council</b> (Commerce)		
Director Mark A. Simonich, Helena Qualifications (if required): director of the Department of Commerce	Governor	7/23/2005
Ms. Kathie Bailey, Lewistown Qualifications (if required): public member	Governor	7/23/2005
Mr. Dave Gibson, Helena Qualifications (if required): chief business development officer	Governor	7/23/2005
Mr. James Klessans, Joliet Qualifications (if required): public member	Governor	7/23/2005
Ms. Linda Twitchell, Wolf Point Qualifications (if required): public member	Governor	7/23/2005
<b>Electronic Government Advisory Council</b> (Administration)		
Director Jeff Hagener, Helena Qualifications (if required): representative of a state agency	Governor	6/18/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Electronic Government Advisory Council</b> (Administration) cont.		
Mr. James E. Reno, Billings	Governor	6/18/2005
Qualifications (if required): representative of local government		
Mr. Gene Vuckovich, Anaconda	Governor	6/18/2005
Qualifications (if required): public member		
Ms. Wendy Keating, Helena	Governor	6/18/2005
Qualifications (if required): representative of a state agency		
Mr. Christian Mackay, Billings	Governor	6/18/2005
Qualifications (if required): public member		
<b>Family Education Savings Program Oversight Committee</b> (Commissioner of Higher Education)		
Auditor John Morrison, Helena	Governor	7/1/2005
Qualifications (if required): Commissioner of Insurance		
Mr. Donald Sterhan, Billings	Governor	7/1/2005
Qualifications (if required): public member with experience in investment management		
<b>Interagency Coordinating Council for State Prevention Programs</b> (Public Health and Human Services)		
Mr. Marko Lucich, Butte	Governor	7/1/2005
Qualifications (if required): representative of prevention programs and services		
Mr. William Snell, Billings	Governor	7/1/2005
Qualifications (if required): representative of prevention programs and services		
<b>Judicial Standards Commission</b> (Justice)		
Mr. Victor F. Valgenti, Missoula	Supreme Court	6/30/2005
Qualifications (if required): attorney		

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Judicial Standards Commission</b> (Justice) cont.		
Ms. Barbara Evans, Missoula Qualifications (if required): public member	Governor	7/1/2005
Judge Gary L. Day, Miles City Qualifications (if required): none specified	Supreme Court	6/30/2005
<b>Mental Disabilities Board of Visitors</b> (Governor's Office)		
Ms. Kathleen Driscoll Donovan, Hamilton Qualifications (if required): consumer representative	Governor	7/1/2005
Ms. Cindy Dolan, Great Falls Qualifications (if required): consumer of mental health services	Governor	7/1/2005
Ms. Gay Moddrell, Kalispell Qualifications (if required): consumer of developmental disabilities services	Governor	7/1/2005
<b>Montana Agriculture Development Council</b> (Agriculture)		
Mr. Earl Bricker, Moore Qualifications (if required): engaged in agriculture	Governor	7/1/2005
Mr. Robert Hanson, White Sulphur Springs Qualifications (if required): engaged in agriculture	Governor	7/1/2005
Ms. Cathy Cottom, Dillon Qualifications (if required): engaged in agriculture	Governor	7/1/2005
<b>Montana-Alberta Bilateral Advisory Council</b> (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

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana-Alberta Bilateral Advisory Council</b> (Commerce) cont. 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. Gov. 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
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): member of the Montana House of Representatives	Governor	5/12/2005
Rep. John L. Musgrove, Havre Qualifications (if required): member of the Montana House of Representatives	Governor	5/12/2005
Mr. Dave Gibson, Helena Qualifications (if required): representative of the Office of the Governor	Governor	5/12/2005
Mr. Joe Horel, Rudyard Qualifications (if required): representative of private sector (agriculture)	Governor	5/12/2005
Mr. Lynn Cornwell, Glasgow Qualifications (if required): representative of the private sector	Governor	5/12/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Consensus Council</b> (Administration) Rep. Jon Sesso, Butte Qualifications (if required): public member	Governor	7/1/2005
Dr. Nelson Wert, Townsend Qualifications (if required): public member	Governor	7/1/2005
Mr. LeRoy Not Afraid, Crow Agency Qualifications (if required): public member	Governor	7/1/2005
Ms. Phyllis Denton, Dillon Qualifications (if required): public member	Governor	7/1/2005
<b>Montana Cooperative Agricultural Pest Survey Advisory Council</b> (Agriculture) Ms. Sue Blodgett, Bozeman Qualifications (if required): Montana State University Extension Service	Director	7/1/2005
Ms. Holly Brosten, Kalispell Qualifications (if required): Montana Grain Growers Association	Director	7/1/2005
Ms. Robin Childers, Missoula Qualifications (if required): Montana Nursery and Landscape Association	Director	7/1/2005
Mr. Jack Lake, Ronan Qualifications (if required): Montana Potato Improvement Association	Director	7/1/2005
Mr. Bob Peterson, Bozeman Qualifications (if required): Montana State University	Director	7/1/2005
Mr. Greg Denitto, Missoula Qualifications (if required): USDA Forest Service	Director	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Cooperative Agricultural Pest Survey Advisory Council</b> (Agriculture) cont.		
Mr. Gary Adams, Helena Qualifications (if required): USDA APHIS PPQ	Director	7/1/2005
Mr. Steve Baril, Helena Qualifications (if required): Montana Department of Agriculture	Director	7/1/2005
<b>Montana Heritage Preservation and Development Commission</b> (Historical Society)		
Ms. Maureen Averill, Bigfork Qualifications (if required): member of the Tourism Advisory Council	Governor	5/23/2005
Mr. Brian Cockhill, Helena Qualifications (if required): Montana historian	Governor	5/23/2005
Rep. Jeanette S. McKee, Hamilton Qualifications (if required): experienced in historic preservation	Governor	5/23/2005
<b>Montana Historical Society Board of Trustees</b> (Historical Society)		
Mr. Burton O. Bosch, Havre Qualifications (if required): public member	Governor	7/1/2005
Ms. Ana Brenden, Scobey Qualifications (if required): public member	Governor	7/1/2005
Mr. Timothy C. Fox, Helena Qualifications (if required): public member	Governor	7/1/2005
Ms. Shirley Groff, Butte Qualifications (if required): public member	Governor	7/1/2005
<b>Montana Mint Committee</b> (Agriculture)		
Mr. Clyde Fisher, Columbia Falls Qualifications (if required): representative of the mint industry research council	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Mint Committee</b> (Agriculture) cont. Mr. Kirk Passmore, Kalispell Qualifications (if required): mint grower	Governor	7/1/2005
<b>Montana Potato Advisory Committee</b> (Agriculture) Mr. Steve McCullough, Townsend Qualifications (if required): none specified	Director	5/20/2005
Mr. Sid Schutter, Manhattan Qualifications (if required): none specified	Director	5/20/2005
Mr. Dan Lake, Ronan Qualifications (if required): none specified	Director	5/20/2005
<b>Montana Power Authority</b> (Natural Resources and Conservation) Lt. Gov. Karl Ohs, Harrison Qualifications (if required): representing irrigated agriculture and residential energy consumption	Governor	7/2/2005
Ms. Karen B. Fagg, Billings Qualifications (if required): member at large with academic or business credentials	Governor	7/2/2005
<b>Montana Special Education Advisory Panel</b> (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

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Special Education Advisory Panel</b> (Office of Public Instruction) cont.		
Mr. Steve Gibson, Helena	Director	6/30/2005
Qualifications (if required): representative from juvenile and adult corrections		
Ms. Diana Colgrove, Eureka	Director	6/30/2005
Qualifications (if required): Part C/IDEA representative		
Mr. Jeff Stelloh, Billings	Director	6/30/2005
Qualifications (if required): private school representative		
Mr. Gary Perleberg, Bigfork	Director	6/30/2005
Qualifications (if required): parent of a child with disabilities		
Ms. Norma Wadsworth, Billings	Director	6/30/2005
Qualifications (if required): higher education		
Ms. WyAnn Northrop, Missoula	Director	6/30/2005
Qualifications (if required): teacher of children with disabilities		
Ms. Janet Jansen, Lavina	Director	6/30/2005
Qualifications (if required): regular classroom teacher		
Mr. Dick Slonaker, Chinook	Director	6/30/2005
Qualifications (if required): special education program administrator		
Mr. Cody Sinnott, Helena	Director	6/30/2005
Qualifications (if required): student representative		
Mr. Bob Peake, Helena	Director	6/30/2005
Qualifications (if required): state agency		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana State Veterans Cemetery Advisory Council</b> (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
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

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana State Veterans Cemetery Advisory Council</b> (Military Affairs) cont. 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
Mr. Chris Denning, Fort Harrison Qualifications (if required): Department of Military Affairs	Director	5/1/2005
<b>Montana Vocational Rehabilitation Council</b> (Public Health and Human Services) Mr. Haley Beaudry, Butte Qualifications (if required): State Workforce Investment Board position	Director	6/18/2005
Mr. Ronald Mills, Miles City Qualifications (if required): vocational rehabilitation consumer	Director	6/3/2005
<b>Motorcycle Safety Advisory Committee</b> (Office of Public Instruction) Ms. Michele Hand, Missoula Qualifications (if required): representative of a motorcycle group	Governor	7/1/2005
<b>Noxious Weed Management Advisory Council</b> (Agriculture) Director W. Ralph Peck, Helena Qualifications (if required): Director	Director	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Noxious Weed Management Advisory Council</b> (Agriculture) cont.		
Mr. Jerry Weber, Joliet	Director	6/30/2005
Qualifications (if required): Eastern County representative		
Rep. Diane Rice, Harrison	Director	6/30/2005
Qualifications (if required): Montana Weed Control Association		
Ms. Carol Sparks, Plevna	Director	6/30/2005
Qualifications (if required): livestock production		
Ms. Josie Dahlberg, Brockton	Director	6/30/2005
Qualifications (if required): agriculture crop production		
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		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Petroleum Tank Release Compensation Board</b> (Environmental Quality)		
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		
<b>Private Land/Public Wildlife Advisory Council</b> (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		
Ms. Mary Jo Ridgeway, Miles City	Governor	6/30/2005
Qualifications (if required): sportswoman		
Mr. Paul Roos, Ovando	Governor	6/30/2005
Qualifications (if required): outfitter		
Mr. Michael Nathe, Redstone	Governor	6/30/2005
Qualifications (if required): landowner		
Mr. Craig Roberts, Lewistown	Governor	6/30/2005
Qualifications (if required): landowner and a sportsman		
Sen. Ken "Kim" Hansen, Harlem	Governor	6/30/2005
Qualifications (if required): legislator		
Rep. Michael Lange, Billings	Governor	6/30/2005
Qualifications (if required): legislator		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Land/Public Wildlife Advisory Council</b> (Fish, Wildlife, and Parks) cont.		
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
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
<b>Risk Management Advisory Council</b> (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

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Risk Management Advisory Council</b> (Administration) cont. 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
Ms. Jacquie Duhamel, Missoula Qualifications (if required): public member	Governor	6/20/2005
<b>State Electrical Board</b> (Commerce) Mr. Joe Wolfe, Helena Qualifications (if required): master electrician	Governor	7/1/2005
<b>State Library Commission</b> (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
<b>State-Tribal Economic Development Commission</b> (Indian Affairs) Mr. Lloyd Irvine, Pablo Qualifications (if required): representative of the Confederated Salish and Kootenai Tribe	Governor	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State-Tribal Economic Development Commission</b> (Indian Affairs) cont. 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
<b>Teachers' Retirement Board</b> (Administration) Mr. James Turcotte, Helena Qualifications (if required): public member	Governor	7/1/2005
<b>Tourism Advisory Council</b> (Commerce) Ms. Carolyn B. Valacich, Great Falls Qualifications (if required): representative of Russell Country	Governor	7/1/2005
Ms. A. Ramona Holt, Lolo Qualifications (if required): representative of Glacier Country	Governor	7/1/2005
Ms. Michele Reese, Whitefish Qualifications (if required): representative of Glacier Country	Governor	7/1/2005
Mr. George Willett, Neihart Qualifications (if required): representative of Russell Country	Governor	7/1/2005
Mr. Scott Asche, Bozeman Qualifications (if required): representative of Yellowstone Country	Governor	7/1/2005
Mr. Mike Scholz, Big Sky Qualifications (if required): representative of the Montana Innkeepers Association	Governor	7/1/2005
<b>Water Court Judge</b> (Supreme Court) Judge Joe L. Hegel, Forsyth Qualifications (if required): none specified	elected	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Water Court Judge</b> (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
<b>Western Interstate Commission on Higher Education</b> (Commissioner of Higher Education) Ms. Sheila Stearns, Helena Qualifications (if required): educator engaged in the field of higher education	Governor	6/19/2005
<b>Youth Justice Council</b> (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 -- MAY 1, 2005 through JULY 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Youth Justice Council</b> (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 the Department of Corrections	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 -- MAY 1, 2005 through JULY 31, 2005

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